



# CITY OF HENDERSONVILLE CITY COUNCIL REGULAR MEETING

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792  
Wednesday, February 08, 2023 – 5:45 PM

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## AGENDA

1. **CALL TO ORDER**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **PUBLIC COMMENT** - *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*
4. **CONSIDERATION OF AGENDA**
5. **CONSENT AGENDA** - *Items are considered routine, noncontroversial in nature and are considered approved by a single motion and vote.*
  - A. Adoption of City Council Minutes – *Jill Murray, City Clerk*
  - B. Consideration of Ordinance Amending Chapter 20, Article II, Noise of the Hendersonville City Code – *Lew Holloway, Blair Myhand, Angela Beeker and John Connet*
  - C. Annexation: Certificate of Sufficiency- Cottages at Mastermind (C23-02-ANX) – *Tyler Morrow, Planner II*
  - D. Street Closure: Resolution of Intent- Portion of Laws Avenue (C23-01-SCL) – *Tyler Morrow, Planner II*
  - E. Revision of the Personnel Policy –Amending Article III. Section 8 and Article VII. Sections 8 and 14 – *Jennifer Harrell, HR Director*
  - F. Budget Amendments FY23 Vehicles and Equipment – *Jenny Floyd, Budget and Management Analyst*
  - G. FY23 Mid-Year Budget Amendments – *Adam Murr, Budget Manager*
  - H. Resolution Authorizing the Sale of Two Harley Davidson Motorcycles to the Two of Waynesville – *Blair Myhand, Chief of Police*
  - I. Henderson County Tax Adjustments -*Amanda Lofton, Deputy Tax Collector*
  - J. Approval of General Fund Vehicle and Equipment Financing Agreement – *John Buchanan Finance Director*
  - K. Resolution in Support of an Application by the City of Brevard for USDOT RAISE Grant Funding to Construct the Ecusta Trail in Transylvania County – *Brent Detwiler, City Engineer*

- L. Ordinance to Amend and Correct CZD Ordinance #O-22-08 – *Lew Holloway, Community Development Director*

## **6. PRESENTATIONS**

- A. Introduction of Deputy Fire Chief – D. James Miller, Fire Chief
- B. Quarterly MVP Recipients – *John Connet, City Manager*
- C. MVP of the Year – *John Connet, City Manager*
- D. Understanding Flood Risk – *Brendan Shanahan, Projects Division Manager*

## **7. UNFINISHED BUSINESS**

- A. Zoning Text Amendment: Lightning Ordinance (P22-100-ZTA) – *Lew Holloway, Community Development Director*

## **8. NEW BUSINESS**

- A. Designation of Limited Parking Zone on Oakland Street – *John Connet, City Manager*
- B. Continuation of American Rescue Plan Discussions – *Adam Murr, Budget Manager*
- C. Amendments to City Code to Conform with SB 300 – *Daniel Heyman, Staff Attorney*

## **9. BOARDS/COMMISSIONS/COMMITTEE APPOINTMENTS**

- A. Appointments to Tree Board, Planning Board & Environmental Sustainability Board – *Jill Murray, City Clerk*
- B. Appointment of Recreation Master Plan Steering Committee Member – *Jennifer Hensley, Council Member*

## **10. CITY COUNCIL COMMENTS**

## **11. CITY MANAGER REPORT** - John F. Connet, City Manager

## **12. CLOSED SESSION**

- A. Closed Session – *John Connet, City Manager*

## **13. ADJOURN**

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





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Jill Murray, *CMC, NCCMC,*  
*City Clerk*

**MEETING DATE:** February 8, 2023

**AGENDA SECTION:** CONSENT

**DEPARTMENT:** Administration

**TITLE OF ITEM:** Adoption of City Council Minutes – *Jill Murray, City Clerk*

**SUGGESTED MOTION(S):**

I move that City Council adopt the minutes of the January 5, 2023 Regular Meeting and the January 25, 2023 Second Monthly Meeting.

**SUMMARY:**

The City Clerk has prepared minutes of the following meeting(s) for Council consideration:

- i. January 5, 2023, Regular Meeting Minutes [DRAFT]
- ii. January 25, 2023, Second Monthly Meeting Minutes [DRAFT]

**BUDGET IMPACT:** \$0

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

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

**ATTACHMENTS:**

- i. January 5, 2023, Regular Meeting Minutes [DRAFT]
- ii. January 25, 2023, Second Monthly Meeting Minutes [DRAFT]



# MINUTES

January 5, 2023

## REGULAR MEETING OF THE CITY COUNCIL

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

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

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

### 1. **CALL TO ORDER**

Mayor Volk called the meeting to order at 5:47 p.m. and welcomed those in attendance. A quorum was established with all members in attendance.

### 2. **INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**

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

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

Ty Keplinger addressed City Council regarding the splash pad for Patton Park and how exciting that it is becoming a reality.

Lynn Williams addressed City Council via Zoom electronic software regarding Boyd Park and keeping the mini golf course there. She also spoke of the dismissal of the lawsuit on Chadwick Ave/Greenville Highway and asked for more access and ability to have a voice with City Council.

### 4. **CONSIDERATION OF AGENDA**

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

### 5. **CONSENT AGENDA**

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

**B. Utility Extension Agreement for the Half Moon Heights Subdivision** – Brendan Shanahan, Project Division Manager

Resolution# 23-01

#### **RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH HALF MOON LAND HOLDINGS, LLC FOR THE HALF MOON HEIGHTS SUBDIVISION**

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

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

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

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

**WHEREAS**, Half Moon Land Holdings, LLC., the "Developer" and "Owner", will enter into a Utility Extension Agreement with the City to provide water service to the Half Moon Heights Subdivision.

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

1. The Utility Extension Agreement with Half Moon Land Holdings, LLC, the "Developer" and "Owner" to provide water service to the Half Moon Heights Subdivision is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute

amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

- 3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

**C. Utility Extension Agreement for the Orchards at Howard Gap** – *Brendan Shanahan, Project Division Manager*

Resolution #23-02

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH HOWARD GAP, LLC. FOR THE ORCHARDS AT HOWARD GAP**

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

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

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

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

**WHEREAS**, Howard Gap, LLC., the "Developer" and "Owner", will enter into a Utility Extension Agreement with the City to provide water service to the Orchards at the Howard Gap.

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

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

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

**D. Utility Extension Agreement for the Dodd Meadows Subdivision** – *Brendan Shanahan, Project Division Manager*

Resolution #23-03

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH HOWARD GAP, LLC. FOR THE DODD MEADOWS SUBDIVISION**

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

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

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

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

**WHEREAS**, Henderson County Habitat for Humanity, Inc., the "Developer" and "Owner", will enter into a Utility Extension Agreement with the City to provide water service to the Dodd Meadows Subdivision.

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

- 1. The Utility Extension Agreement with Henderson County Habitat for Humanity, Inc., the "Developer" and "Owner" to provide water service to the Dodd Meadows Subdivision is approved, as presented.

2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

**E. Utility Extension Agreement for Haywood Park Subdivision** – *Brendan Shanahan, Project Division Manager*

Resolution #23-04

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH HAYWOOD PARK, LLC. FOR THE CAMP JUDAEA CABINS**

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

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

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

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

**WHEREAS**, Haywood Park, LLC., the "Developer" and "Owner", will enter into a Utility Extension Agreement with the City to provide water service to the Haywood Park Subdivision.

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

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

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

**F. Capital & Grant Project Ordinances** – *Jennifer Floyd, Budget & Mgmt. Analyst*

Ordinance #23-01

**CAPITAL PROJECT ORDINANCE FOR THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE APPLE RIDGE WATER IMPROVEMENT CAPITAL PROJECT**

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

**Section 1:** The project authorized is a City project described as the Apple Ridge Water Improvement Capital Project.

**Section 2:** The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
460	1014	550103	22101	Capital Outlay - CIP	\$800,000
Total Project Appropriation					\$800,000

**Section 3:** The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		

460	0000	470100	22101	Transfer In (from 460)	\$400,000
460	0000	470100	22101	Transfer In (from ARP #G2101)	\$400,000
Total Project Appropriation					\$800,000

**Section 4:** The Finance Director is hereby directed to maintain within the Water & Sewer Capital Project Fund (460) sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the Water & Sewer Fund (060) and Water & Sewer Capital Project Fund (460) as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 5<sup>th</sup> day of January, 2023.

Ordinance #23-02

GRANT PROJECT ORDINANCE FOR THE EXECUTION, ACQUISITION, CONSTRUCTION, AND  
INSTALLATION OF THE GOVERNOR’S HIGHWAY SAFETY PROGRAM TRAFFIC ENFORCEMENT  
OVERTIME

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**Section 1:** The project authorized is a City project described as the Governor’s Highway Safety Program Traffic Enforcement Overtime Grant Project

**Section 2:** The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	1300	501010	G2302	Overtime (HPD)	\$20,720
301	1300	502001	G2302	FICA Tax Expense	\$1,579
301	1300	502050	G2302	Retirement Expense	\$2,701
Total Project Appropriation					\$25,000

**Section 3:** The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	0000	420050	G2302	Grant Revenue (NCDOT)	\$25,000
Total Project Appropriation					\$25,000

**Section 4:** The Finance Director is hereby directed to maintain within the Grant Project Fund (301) sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the General Fund (010) as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 5<sup>th</sup> day of January, 2023.

Ordinance #23-03

GRANT PROJECT ORDINANCE FOR THE EXECUTION, ACQUISITION, CONSTRUCTION, AND  
INSTALLATION OF THE GOVERNOR’S CRIME COMMISSION EMBEDDED CLINICIAN GRANT  
PROJECT

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**Section 1:** The project authorized is a City project described as the Governor’s Crime Commission Embedded Clinician Grant Project

**Section 2:** The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	1300	519200	G2303	Contracted Services	\$53,625
Total Project Appropriation					\$53,625

**Section 3:** The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	0000	420050	G2303	Grant Revenue	\$53,625
Total Project Appropriation					\$53,625

**Section 4:** The Finance Director is hereby directed to maintain within the Grant Project Fund (301) sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the General Fund (010) as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 5<sup>th</sup> day of January, 2023.

Ordinance #23-04

GRANT PROJECT ORDINANCE FOR THE EXECUTION, ACQUISITION, CONSTRUCTION, AND  
INSTALLATION OF THE GOVERNOR’S CRIME COMMISSION ACCREDITATION GRANT PROJECT

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**Section 1:** The project authorized is a City project described as the Governor’s Crime Commission Accreditation Grant Project

**Section 2:** The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	1300	519200	G2304	Contracted Services	\$39,650
Total Project Appropriation					\$39,650

**Section 3:** The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	0000	420050	G2304	Grant Revenue	\$39,650
Total Project Appropriation					\$39,650



**Section 4:** The Finance Director is hereby directed to maintain within the Grant Project Fund (301) sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the General Fund (010) as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 5<sup>th</sup> day of January, 2023.

**G. Tentative Contract Award for Construction of the WWTF Ultraviolet Disinfection Improvements Project – Adam Steurer, Utilities Engineer**

Resolution #23-05

**RESOLUTION BY THE CITY OF HENDERSONVILLE OF TENTATIVE AWARD AND AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE CONSTRUCTION OF THE WWTF UV DISINFECTION IMPROVEMENTS PROJECT**

**WHEREAS**, the City uses ultraviolet (UV) disinfection at its wastewater treatment facility (WWTF) to disinfect treated wastewater before discharging to the receiving Mud Creek. The existing equipment was commissioned in 2001 and is in need of replacement due to unreliable operation, significant wear, lack of redundancy, damage potentially related to lightning strikes, and the increasing cost of continued maintenance; and

**WHEREAS**, the project generally consists of construction of a new concrete channel and installation of new, more efficient UV disinfection equipment to replace the existing equipment, provide process redundancy, and facilitate future facility expansion; and

**WHEREAS**, On December 8, 2022 three sealed formal bids were received: Turner

Murphy Company, Inc.: \$2,332,193

The Harper Corporation - General Contractors: \$3,046,000

J.S. Haren Company: \$3,692,000; and

**WHEREAS**, formal bids were reviewed for completeness and accuracy. Turner Murphy Company, Inc is the lowest responsive, responsible bidder; and

**WHEREAS**, the final contract award is tentative and is contingent on approval from the North Carolina Department of Environmental Quality, which is administering the grant funding for the project.

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

1. The City Manager is authorized to award and execute a contract for the construction of the WWTF UV Disinfection Improvements Project upon approval from the North Carolina Department of Environmental Quality to Turner Murphy Company, Inc., the lowest responsive and responsible bidder in the total amount of \$2,332,193.00.
2. The City Manager is authorized to approve change orders which cumulatively do not exceed 5% of the approved contract amount of \$2,332,193.00, provided however that any necessary budget ordinance or project ordinance amendments must be brought back to the City Council for approval.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

**H. Rescission of the COVID-19 Test Positive Policy – Jennifer Harrell, HR Director**

**I. Conveyance of Right of Way for N. Main/US 25 Intersection Improvements – John Connet, City Manager**

Resolution #23-06

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL APPROVING THE CONVEYANCE OF CITY PROPERTY TO NCDOT FOR THE WIDENING OF NORTH MAIN STREET IN HENDERSONVILLE, NC**



**WHEREAS** the City of Hendersonville owns the property identified by Tax Parcel ID 9569705860 and known as Edwards Park; and

**WHEREAS**, the North Carolina Department of Transportation (NCDOT) has a project identified as TIP Project: SM-6114C and known as North Main Street/ US Hwy. 25 Intersection Improvements; and

**WHEREAS**, NCDOT needs to acquire approximately .007 acres of new right of way from the City of Hendersonville for the road and sidewalk improvements; and

**WHEREAS**, NCDOT needs to obtain approximately .049 acres from the City of Hendersonville for a temporary construction easement; and

**WHEREAS** the Hendersonville City Council recognizes that improvements to the North Main Street/ Hwy 25 intersection are desperately needed and in the best interest of the City of Hendersonville.

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

1. That the City of Hendersonville will convey at no cost approximately .007 acres for use as public right way and .049 acres as temporary construction easement for this project.
2. The City Manager and City Attorney are authorized to negotiate and execute the necessary deeds and agreements.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

**J. January Budget Amendments – Adam Murr, Budget Manager**

**K. Untitled Hallmark Christmas Movie Special Event Application – Jamie Carpenter, Downtown Manager**

**L. Resolution for the City of Hendersonville to Pursue a NCDOT Division of Integrated Mobility Paved Trails and Sidewalk Feasibility Studies Grant – Brent Detwiler, City Engineer**

Resolution# 23-07

**RESOLUTION FOR THE CITY OF HENDERSONVILLE TO PURSUE A NCDOT PAVED TRAILS AND SJDEWALK FEASIBILITY STUDIES GRANT**

**WHEREAS**, the City Council of the City of Hendersonville considers bicycle and pedestrian transportation to be of utmost importance to the region by providing Western North Carolina with recreation and equitable transportation opportunities as well as increased economic viability and community development; and

**WHEREAS**, the City Council of the City of Hendersonville adopted a resolution on April 5, 2012 supporting a regional recreational greenway along the Ecusta rail corridor to link the City of Hendersonville in Henderson County to the City of Brevard in Transylvania County and the Pisgah National Forest; and

**WHEREAS**, the North Carolina Department of Transportation (NCDOT)'s Division of Integrated Mobility (IMD) has recently implemented a Paved Trails and Sidewalk Feasibility Studies Grant Program; and

**WHEREAS**, the purpose of the Paved Trails and Sidewalk Feasibility Studies Grant Program is to improve the pipeline of bicycle and pedestrian projects accessing state and federal funding, resulting in successful implementation of projects led by communities prioritizing multimodal infrastructure; and

**WHEREAS**, a feasibility study will produce a well-conceived project with demonstrated community support that will be competitive in the State Transportation Improvement Program (STIP) and for federal investment. Quantity-based preliminary cost estimates will be generated for route alignments to help inform further decision making, identify funding needs, and develop next steps for project implementation; and

**WHEREAS**, City staff has developed a preliminary project, "Above the Mud," to reconnect the 7<sup>th</sup> Avenue area through streetscaping, a new greenway connection to the Ecusta Trail, and flood mitigation;

**NOW THEREFORE, BE IT RESOLVED** that the City of Hendersonville shall submit an application to NCDOT for Paved Trails and Sidewalk Feasibility Studies Grant to further study the Above the Mud project to engage the community, determine potential solutions, and develop cost estimates for project implementation.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

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

6. PRESENTATIONS

A. **MLK Day of Service Proclamation - Mayor Barbara G. Volk**

**Proclamation**  
**Dr. Martin Luther King Jr. Day Of Service**

WHEREAS, Dr. Martin Luther King Jr. devoted his life to advancing equality, social justice, and opportunity for all, while challenging all Americans to participate in reconcile and the never-ending work of building a more perfect union; and

WHEREAS, Dr. King recognized that everyone can be great because everyone can serve requiring only grace and love to do so and during his or her lifetime by encouraging all Americans to serve their neighbors and their communities; and

WHEREAS, Dr. King’s message of moving forward included dignity, discipline and non-violence is the way forward that we cannot walk alone in this walk to justice, and we cannot turn back; and

WHEREAS, the Dr. Martin Luther King Jr. Day of Service has been recognized by Congress since 1994 and throughout the United States communities have come together to do acts of service; and

THEREFORE, I, Barbara Volk, Mayor of the City of Hendersonville, North Carolina in honor and recognition of the contributions of Dr. Martin Luther King Jr. to the advancement of equality in our country, proclaim January 16, 2023 “Dr. Martin Luther King Jr. Day of Service” and urge our citizens to honor this day with giving back to their communities and remembering that MLK Day of Service empowers everyone with engaging people from all walks of life and strengthens our diverse city of Hendersonville, North Carolina.

**PROCLAIMED** this 5<sup>th</sup> day of January, 2023.

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

B. **Proclamation-National Blood Donation Month - Mayor Barbara G. Volk**

**Proclamation**  
**National Blood Donor Month**  
**January, 2023**

**WHEREAS**, since 1969, January has been recognized as National Blood Donor Month to bring awareness to the importance of routine blood donation; and

**WHEREAS**, National Blood Donor Month is a national effort to encourage the eligible blood donor population to donate blood every 56 days; and

**WHEREAS**, there is no replacement for blood, and it must be donated on one’s own accord; and

**WHEREAS**, The Blood Connection is the primary blood provider of blood products to local hospitals and ensures this community has a safe and adequate blood supply; and

**WHEREAS**, the responsibility of maintaining that safe and adequate blood supply also falls on each member of this community that is eligible to donate blood; and

**WHEREAS**, one blood donation can save up to three lives, costs nothing but your time, and can mean the difference between life or death for local hospital patients; and

**NOW THEREFORE**, be it resolved that I, Barbara Volk, Mayor of the City Hendersonville, North Carolina, do hereby proclaim January as National Blood Donor Month.

**PROCLAIMED** this 5<sup>th</sup> day of January, 2023.

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

C. **Caregivers of Mother Earth Update – Elle Travis, Caregiver of Mother Earth**

Elle Travis said I was here in September when City Council unanimously agreed to be the first city for Caregivers of Mother Earth and since that time I have talked with several people

and Lyndsey has put together a proof of a road sign and I am here tonight to see if there are any questions or discussion that we need to have.

City Manager Connet explained that there is no vote tonight and that they're working with Elle the City Attorney on the application and agreement to make sure everything follows the statutes and meets public purpose and then you can use that going forward.

**D. Employee Recognition – Adam Murr, Budget Manager and LuAnn Welter, HR Coordinator**

Adam Murr recognized Jenny Floyd for successfully completing her graduate capstone project as part of Western Carolina University's Master of Public Affairs (MPA) Program.

**E. EAN Leadership Academy Participants – Jennifer Harrell, Human Resources Director**

City Manager Connet explained that in our continued effort to provide leadership training with our staff, we had several individuals who completed the EAN Leadership Academy: Allison Justus, Suzanna McCall, Cameron Womack, Cerissa Justice, Paul Kaplan, Monica Howard, Brittany Watson, Jesse Ivens, Bethany Beddingfield, Brandon Mundy, LuAnn Welter, Deborah Sholl and Tyler Morrow. We just wanted to take the time to recognize them and thank them for taking the time to complete this.

## **7. PUBLIC HEARINGS**

**A. Zoning Text Amendment: Lighting Ordinance (P22-100-ZTA) – Lew Holloway, Community Development Director**

The City Clerk confirmed this public hearing has been advertised in accordance with North Carolina General Statutes.

The public hearing was opened at 6:04 p.m.

Lew Holloway presented a PowerPoint presentation discussing the proposed lighting ordinance and stated that there are two things to vote on tonight:

- Establish standards for exterior lighting under the General Provisions of the Zoning Ordinance.
- Establish standards for streetlighting in the City Code of Ordinances.

The Planning Board voted 4-3 approval as presented and the general feedback was:

- Amortization Concerns
- Exemption Concerns
- Support of Requested Clarifications
- Discussion of proves to date and concessions made over the course of review

Susan Frady addressed Council and asked that if Council passes an ordinance that they go with the recommendation of the Business Advisory Committee with no amortization, one foot candle for non-residential to residential interface and that you add an exemption for existing lighting in the stream buffer.

Debbie Bell addressed Council regarding her concern on enforcement of this ordinance should it pass.

Bill McKibbin with the Chamber of Commerce addressed the Council with regards to bringing non-conforming businesses to conforming and the cost associated with that which is likely to be costly. The amortization schedule is a concern to the Chamber, as well as, the cost in having staff, or additional staff, to enforce it. Lastly, safety. The businesses that do business after dark, want their customers to feel safe. In conclusion, we would like you to address solutions as they come up instead of creating a blanket solution.

Marilyn Gordon addressed the Council and said my family and I have operated 24-hour convenience stores for over 40 years in Hendersonville so I'm very familiar about the importance of outdoor lighting. To me, this ordinance speaks to reducing outdoor lighting. The safety and security is your primary obligation and I would respectfully request that you refer this back to the Planning Board and Business Advisory Committee and ask them to revise this draft so that it is focused on safety and security.

Ken Gordon addressed the Council and said he also operates 24-hour convenience stores and said he thinks that nearly all businesses would be affected by this and wanted to point out the amortization is a burden that you're placing on existing businesses. Also, I understand the need to have a stream buffer, however, for example, we have a diesel fueling island located within the stream buffer that's been there 42 years and has lighting over the top of it. If I understand this correctly, in ten years, and this is a 24-hr location, it will have no light over the diesel fueling island which by the International Illuminating Engineers Society standards, it needs to have six foot candles and you're telling me that I'm going to have zero.

Bob Williford of the Chamber of Commerce addressed the Council, I just wanted to reiterate one talking point and that's the potential reoccurring costs to the city to find staff or a lighting engineer that's going to be able to go out and find out who is in compliance and who is not and to provide them with equipment and office space, office supplies etc. You're talking about \$150k-\$200k. As far as the amortization clause, we prefer that you stay with the "grandfather" clause that you typically see in most cities rather than the amortization.

Lynne Williams addressed Council remotely via Zoom electronic software and spoke in favor of the ordinance as presented and ideally she would like to see a five-year amortization. Perhaps a fund for create a lighting amortization expense fund over the next ten years to help the businesses out.

Ralph Hammond-Greene addressed Council remotely via Zoom electronic software and spoke in favor of the ordinance. It does not reduce lighting; it redirects lighting so that it is not going upward as that is wasted energy. Businesses are concerned about light expenses but the new lights are less expensive to operate. As for the amortization, most light fixtures have a lifetime of 5-10 years and normally get replaced because they're either broken or don't work anymore so I think the 10-year amortization is a reasonable period of time and I encourage it be left in the ordinance. As for dark parking lots, it doesn't require dark parking lots, it's up to the owners to light it.

The public hearing was closed at 7:47 p.m.

Consensus of Council was to put this back on the agenda for January 25<sup>th</sup>.

~Mayor Volk called for a five-minute recess at 7:53p.m.~

## **8. UNFINISHED BUSINESS**

### **Consideration of Ordinance Amending Chapter 20, Article II, Noise of the Hendersonville City Code – Lew Holloway, Blair Myhand, Angela Beeker, John Connet**

Several months ago, the Police Department raised concerns about several inconsistencies in our Noise Ordinance. After hearing comments from City Council at the November 2022 meeting, staff has reviewed the ordinance and made several amendments. This ordinance amendment will require two readings.

Attorney Angie Beeker gave a brief overview of noise level studies.

Police Chief Blair Myhand used a noise meter for Council to hear the difference between 50 decibels and then 65 decibels.

Attorney Angie Beeker added that they are not looking for a vote tonight but rather wanted Council to have all of the information necessary to make an informed decision when the time comes.

## **9. NEW BUSINESS**

### **A. Parking Fee Amendment – Brian Pahle, Assistant City Manager**

Assistant City Manager Brian Pahle gave a brief PowerPoint presentation explaining the parking fee amendment which would become effective on March 1, 2023. Thus far the permit RSVP has gone as follows:

Deck – 197 Available; 148 Remaining;  
 Interior – 93 Available; 25 Remaining;  
 Exterior – 184 Available; -8 Remaining; **Oversold**  
 The majority of permit holders are business owners/managers

**Final Decisions made by Council were as follows:**

Handicapped parking will be paid parking; No time limit and see how it goes;  
 Dogwood Lot parking w/permit Monday through Saturday, Sunday is first come-first served;  
 All other fee schedule amendments remain the same;

***Council Member Jennifer Hensley moved to approve the fee schedule amendment as presented. A unanimous vote of the Council followed. Motion carried.***

**B. Resolution Requisition Local Modification to 160A-301(a) – John Connet, City Manager**

Resolution #23-08

**RESOLUTION REQUESTING A LOCAL MODIFICATION TO NORTH CAROLINA GENERAL  
 STATUTE §160A-301**

**WHEREAS**, North Carolina General Statute §160A-301 regulates parking enforcement within North Carolina municipalities; and

**WHEREAS**, §160A-301 specifies that proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations; and

**WHEREAS**, it is the desire of the City of Hendersonville to use revenue from parking meters on public streets to also defray the cost of constructing and maintaining public parking assets; and

**WHEREAS**, numerous North Carolina municipalities had received a local modification to allow public street parking meter revenue to be used in the same manner as off-street parking facility revenue as specified in §160A-301(b).

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

1. The City Council humbly requests the Henderson County legislative delegation to submit a local modification to §160A-301 on behalf of the City of Hendersonville that states: Notwithstanding the provisions of G.S. 160A-301(a), a Hendersonville may use the proceeds from parking meters on public streets in the same manner in which proceeds from off-street parking facilities are permitted under G.S. 160A-301(b).

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5<sup>th</sup> day of January, 2023.

***Council Member Lyndsey Simpson moved to approve the resolution as presented. A unanimous vote of the Council followed. Motion carried.***

**C. Establish 2023 NCLM Legislative Priorities and Appoint Mayor Volk as NCLM Voting Delegate – John Connet, City Manager**

City Manager Connet explained that at each legislative session the North Carolina League of Municipalities establishes legislative goals. This year they have developed sixteen (16) draft goals and would like each municipality to select our top 10 goals. Once the top 10 goals are selected by the City Council, your voting delegate will vote on behalf of the City Council. Mayor Volk serves on the NCLM Legislative Advocacy Committee. Therefore, I recommend her appointment as your voting delegate. The ten goals Mr. Connet recommended are:

- Expand federal and state resources for affordable housing;
- Revitalize vacant and abandoned properties with enhanced legal tools and funding;
- Create an adequate and permanent funding stream for local infrastructure;
- Expand state transportation funding streams for construction and maintenance for municipal and state-owned secondary roads;
- Support integrated and multi-modal transportation solutions;
- Increase state funding for public transportation operations;
- Expand incentives and funding for local economic development;
- Expand incentives that encourage regionalization of water and sewer, as well as, other municipal services, when appropriate;
- Enhance state systems and resources for local law enforcement officer recruitment, training and retention;

- Provide local revenue options beyond property tax;

***Council Member Jennifer Hensley moved to nominate Mayor Barbara Volk as the delegate on the NCLM Legislative Advocacy Committee and endorse the recommended ten legislative goals. A unanimous vote of the Council followed. Motion carried.***

**D. Special Event Fee Amendment – Jamie Carpenter, Downtown Manager**

Jamie Carpenter explained that in September she presented the special event fee schedule and this is an amended fee schedule. We are still working on updates to the special event policy to adapt to public safety needs and a few other things.

***Council Member Debbie O’Neal Roundtree moved to adopt the amended special event fee schedule as presented. A unanimous vote of the Council followed. Motion carried.***

**E. Discussion Regarding Placement of Kiwanis’ Club Splashpad at Patton Park – John Connet, City Manager**

City Manager Connet explained that for a year or more, we have been looking for a spot for a splash pad. City staff has evaluated several locations for the proposed Kiwanis’ Splashpad. We would recommend placing the splashpad at Patton Park. The splashpad would replace the existing kiddie pool.

***Council Member Lyndsey Simpson moved, seconded by Jennifer Hensley, to approve the placement of Kiwanis’ Club Splashpad at Patton Park. A unanimous vote of the Council followed. Motion carried.***

**F. Rescheduling of February 2, 2023, and April 6, 2023 City Council Meetings - John Connet, City Manager**

The North Carolina City and County Management Conference in Winston-Salem is scheduled for February 1-3, 2023, and Council Member Hensley is going to be out of town for the April 6, 2023, meeting. Therefore, I would like to propose that we reschedule these City Council meetings from Thursday, February 2, 2023 to Wednesday, February 8, 2023, Thursday, April 6, 2023 to Wednesday, April 12, 2023, as well as, Thursday August 3, 2023 to Wednesday, August 9, 2023 respectively.

***Council Member Jerry Smith moved to reschedule the February 2, 2023, April 6, 2023 and August 3, 2023 City Council meetings to February 8, 2023, April 12, 2023, August 9, 2023. A unanimous vote of the Council followed. Motion carried.***

**10. BOARDS/COMMISSIONS/COMMITTEE APPOINTMENTS**

**A. Board and Committee Appointments for December, 2022 – Jill Murray, City Clerk**

Council made nominations for each of the three boards as follows:

**Historic Preservation Committee**

***Council Member Jennifer Hensley moved that City Council appoint Jane Branigan to serve another term on the Historic Preservation Committee ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.***

***Council Member Jerry Smith moved that City Council appoint Ralph Hammond-Green to serve another term on the Historic Preservation Committee ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.***

***Council Member Lyndsey Simpson moved that City Council appoint Crystal Cauley to serve another term on the Historic Preservation Committee ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.***

**Planning Board**

*Council Member Jerry Smith moved that City Council appoint Neil Brown to serve another term on the Planning Board ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.*

*Council Member Jennifer Hensley moved that City Council appoint Peter Hanley to serve another term on the Planning Board ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.*

*Council Member Lyndsey Simpson moved that City Council appoint Laura Flores to serve another term on the Planning Board ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.*

*Council Member Jennifer Hensley moved that City Council appoint Dr. Stuart Glassman to serve another term on the Planning Board ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.*

*Council Member Lyndsey Simpson moved that City Council appoint Samantha Jamison to serve a term on the Planning Board filling Frederick Nace's term ending December 31, 2024. A unanimous vote of the Council followed. Motion carried.*

**Tree Board**

*Council Member Jennifer Hensley moved that City Council appoint Rebecca Doll to serve a term on the Tree Board ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.*

*Council Member Lyndsey Simpson moved that City Council appoint Serena Crismali to serve a term on the Tree Board ending December 31, 2025. A unanimous vote of the Council followed. Motion carried.*

*Council Member Debbie O'Neal Roundtree moved that City Council appoint Joseph Peiso to serve a term on the Tree Board filling Mark Madsen's term ending December 31, 2024. A unanimous vote of the Council followed. Motion carried.*

**B. Parks & Recreation Master Plan Committee – John Connet, City Manager**

The following people were nominated to be on the newly formed Parks & Recreation Master Plan Committee:

Lyndsey Simpson nominated Virginia Tegel  
Jennifer Hensley nominated Hunter Marks  
Jerry Smith nominated Hunter Jones  
Mayor Volk nominated Sarah Kiwalick

*A unanimous vote of the Council followed. Motion carried.*

*Council Member Jennifer Hensley moved to appoint Council Member Jerry Smith to be the Council Member to serve on the Parks and Recreation Master Plan Committee. A unanimous vote of the Council followed. Motion carried.*

Council Member Debbie O'Neal Roundtree will have her pick at the January 25, 2023 City Council Meeting.

**11. CITY COUNCIL COMMENTS – Council had no comments.**

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**12. CITY MANAGER REPORT – John F. Connet, City Manager**



City Manager Connet explained that in December, we adopted a resolution to begin conversations about establishing a Water/Sewer Commission with Henderson County. County Manager Mitchell and I are going to meet next Wednesday morning and I would like the Mayor to join us if she can and suggest that we invite the chair of the county commission so we can evaluate if we want to move forward.

### 13. CLOSED SESSION

#### A. Closed Session – *John Connet, City Manager*

At 9:44 p.m. Council Member Jerry A. Smith Jr., J.D. moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1), (4) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, to discuss matters relating to the location or expansion of industries and businesses in the area served by the public body and to consider the qualifications, competence, performance and character, fitness conditions of an individual public officer. A unanimous vote of the Council followed. Motion carried.

*At approximately 10:12 p.m. Council Member Jerry Smith moved that City Council return to open session. A unanimous vote of the Council followed. Motion carried.*

### 14. ADJOURN

There being no further business, the meeting was adjourned at approximately 10:12 p.m. upon unanimous assent of the Council.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST:

\_\_\_\_\_  
Jill Murray, City Clerk



# MINUTES

January 25, 2023

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

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

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

### 1. **CALL TO ORDER**

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

### 2. **CONSIDERATION OF AGENDA** Mayor Barbara G. Volk suggested putting the lighting ordinance at the end of the meeting and taking care of all other business first.

*Council Member Jerry Smith moved to approve the agenda as amended. A unanimous vote of Council Members present followed. Motion carried.*

### 3. **CONSENT**

**A. Letter of Support for the Land of Sky Regional Council (LOSRC) to Apply for Funding to Secure a Safe Routes to School Coordinator - Brent Detwiler, City Engineer**

**B. Purchase Approval for New Sewer Combination Truck – Chad Freeman, Utility Operations**

*Council Member Dr. Jennifer Hensley moved that the City Council approve the consent agenda as presented. A unanimous vote of Council Members present followed. Motion carried.*

### 4. **PRESENTATIONS**

**A. Edwards Park Update – January, 2023 - Brian Pahle, Assistant City Manager**

Assistant Manager Brian Pahle gave a brief update on the status and next steps of Edwards Park. They have closed on the property purchase, the building demo is complete, fencing/access has been installed and site work clearing/grubbing has commenced. The next steps are rough grade and storm drainage, mini-golf (late Feb.) and Substantial Completion (Fall 202). They have a suggested list of names for each of the 18 holes of mini-golf and he explained that many in the community have stepped up to help or donate in some way and they are hoping to combine old with the new while still honoring the history and tradition of Boyd Park and Ninth Avenue School. Brian asked Council for their opinion on having an arch of some kind at the park. Consensus of Council was saying yes to the arch but not the one that he presented as they are afraid people would try to climb it.

### 5. **UNFINISHED BUSINESS**

**A. Zoning Text Amendment: Lighting Ordinance (P22-100-ZTA) - Lew Holloway, Community Development Director**

Council discussed the ordinance and what they would like to see. Consensus of Council is to not change the ordinance except for the foot candle by going to a one-foot candle instead of ½. They will decide on February 8<sup>th</sup> whether to include amortization and said we need to define ornamental.

**B. Parks & Recreation Master Plan Committee Appointment – Council Member Roundtree**

Council Member Debbie O'Neal-Roundtree recommended Phyllis Bailey to be on the Parks and Recreation Master Plan Committee.

*Council Member Debbie O'Neal Roundtree moved that the City Council approve the recommendation of Phyllis Bailey to the Parks and Recreation Master Plan Committee. A unanimous vote of Council Members present followed. Motion carried.*

## **6. NEW BUSINESS**

### **A. Consideration of a Resolution Requesting a Local Option One-Quarter Cent City Sales and Use Tax – John Connet, City Manager**

City Manager Connet explained that the establishment of a ¼ cent sales and use tax would reduce the City's dependence on the property tax. City Council believes that the establishment of this tax would greatly benefit the citizens and visitors of Hendersonville. Council Member Jennifer Hensley added that we voted on doing this last year but it never happened so I hope we can do this and educate the public on what exactly it means.

*Council Member Jennifer Hensley moved to approve the Resolution by the City of Hendersonville City Council Requesting a Local Option One-Quarter Cent City Sales and Use Tax. A unanimous vote of Council Members present followed. Motion carried.*

Resolution #23-09

#### **RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL REQUESTING A LOCAL OPTION ONE-QUARTER CENT (1/4) CITY SALES AND USE TAX**

**WHEREAS**, the City of Hendersonville is the commercial center of Henderson County and provide services to all Henderson County residents and visitors, including public safety, street maintenance and general public services; and

**WHEREAS**, the property tax is currently the only revenue source that is within complete control of the City Council; and

**WHEREAS**, the City of Hendersonville's property tax rate for fiscal year 2022-23 is \$0.52 per \$100, and the City Council is often faced with increasing this rate to fund services that are used by all county residents and visitors; and

**WHEREAS**, the City of Hendersonville City Council is seeking alternative revenue sources to fund city services; and

**WHEREAS**, it is estimated that a one-quarter cent City sales and use tax would bring an estimated \$2.5 million dollars in additional revenues per year; and

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

1. We request the Henderson County legislative delegation to introduce a local bill authorizing the City of Hendersonville to hold a public referendum to authorize the establishment of an additional one-quarter cent sales tax for all qualified purchases within the City of Hendersonville.
2. This tax would be collected by the North Carolina Department of Revenue and directly allocated to the City of Hendersonville as unrestricted revenue for the provision of local government serves as directed by the Hendersonville City Council.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 25<sup>th</sup> day of January, 2023.

### **B. Water & Sewer Joint Commission Appointees – John Connet, City Manager**

City Manager Connet explained that he is looking for City Council to appoint three people to represent on this committee. After much debate, it was suggested by Attorney Angie Beeker that all of Council be on the committee and those that can attend will attend and if someone can't make it, that's ok. The first meeting will be held On Tuesday, January 31, 2023 at 10:00 a.m. at the City of Hendersonville Operations Center.

*Council Member Jerry Smith moved that all five members of Council be on the committee and that no City business will take place at these meetings. A unanimous vote of Council Members present followed. Motion carried.*

The meeting was recessed at 5:34p.m. so that Council could go the studio to get their group/individual photos taken.

There being no further business, the regular meeting was adjourned at 6:06 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Jill Murray, City Clerk

DRAFT



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** John Connet

**MEETING DATE:** February 8, 2023

**AGENDA SECTION:** CONSENT AGENDA

**DEPARTMENT:** Administration

**TITLE OF ITEM:** Consideration of Ordinance Amending Chapter 20, Article II, Noise of the Hendersonville City Code – *Lew Holloway, Blair Myhand, Angela Beeker and John Connet*

### **SUGGESTED MOTION(S):**

I move that City Council adopt *An Ordinance of the City Hendersonville City Council to Amend Chapter 20 Article II of the Code of Ordinances* – Noise, as presented for the second reading.

### **SUMMARY:**

Several months ago, the Police Department raised concerns about several inconsistencies in our Noise Ordinance. After hearing comments from City Council at the November 22 meeting, staff has reviewed the ordinance and made several amendments. This ordinance was adopted on first reading at the January 5, 2023, City Council meeting.

**BUDGET IMPACT:** \$ NA

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

**If no, describe how it will be funded.**

### **ATTACHMENTS:**

Proposed Ordinance

Ordinance #\_\_\_\_ - \_\_\_\_

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND  
CHAPTER 20 ARTICLE II OF THE CODE OF ORDINANCES- NOISE**

**WHEREAS**, the City of Hendersonville is desirous of amending and updating provision of the Code of Ordinance regulating noise within the municipal limits of the City, in particular Chapter 20, Article II- Noise; and

**WHEREAS**, a proposed modifications have been prepared and presented to City Council for consideration; and

**WHEREAS**, City Council wishes to adopt these modifications as presented.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina that Chapter 20, Environment, Article II, Noise, of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**CHAPTER 20 - ENVIRONMENT**

**ARTICLE II. NOISE**

**Sec. 20-31. Article designated noise control ordinance.**

**(a)** \_\_\_\_ This article shall be known as the "Noise Control Ordinance for the City of Hendersonville."

**(b)** *Statement of policy. The City of Hendersonville will maintain a peaceful community while recognizing that certain noises are part of acceptable economic and recreational activity in a vibrant community. The goal of the city is to encourage such activity while ensuring that persons in the community are not disturbed by unreasonably loud, raucous or disturbing noise, particularly during time periods when customarily at rest or have a reasonable expectation of peaceful enjoyment of their residences.*

**Sec. 20-32. Terminology and methodology.**

- (a)** *Definitions and Terminology. The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context.* All terminology used in this article not defined below shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.
- (1)** *A-weighted sound level: The sound pressure level in decibels ~~as is~~ measured on a sound level meter using the Aweighting-frequency-weighted network and slow meter response setting. The level so read is ~~designed~~ Sound levels are represented herein by the designation dB (A).*



(2) *Decibel (dB)*: A unit for describing the amplitude of sound, equal to 20 times the logarithm to the base ten of the ratio for the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

(3) *Nighttime. 10pm – 7am*

(34) *Sound pressure level*: 20 times the logarithm to the base ten of the ratio of the RMS sound of 20 micronewtons per square meter.

(45) *Sound level meter*: An instrument, which includes a microphone, amplifier, RMS detector, integrator, or time-averaged, output meter.

(56) *Sound level*: The weighted sound pressure level ~~obtaining by the use of~~ obtained using a sound level meter and frequency weighted network, such as A, B, or C as specified in American National Standards Institute or the latest approved version thereof) ANSI S1.4-1971, or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(67) *Emergency work*: Any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

(78) *Outdoor amplified sound*: Any sound using amplifying equipment whose sound is outside ~~or whose source is inside, and the sound propagates outside through open doors or windows or other openings in the building.~~

(89) *Sound amplifying equipment*: Any device for the amplification of the human voice, music, or any other sound, including jukeboxes, stereos, and radios.

(10) MSD: A municipal service district established pursuant to North Carolina General Statutes Chapter 160A, Article 23, Municipal Service Districts.

(b) *Methodology- Noise violation based on sound level meters.* ~~It shall be unlawful to create, cause or allow the continuance of any noise that exceeds the decibel limits provided in Section 20-35 below. However, enforcement of this article does not require the use of a sound level meter to determine compliance. When a sound level meter is used to determine sound levels pursuant to this article, the S~~standards, instrumentation, personnel, measurement procedures, and reporting procedures ~~to be used in the measurement of sound as provided for in this section shall be those as specified herein; shall be as specified in this section, and all terminology not defined in this section shall be in conformance with the ANSI.~~

(1) Sound level measurement shall be made with a sound level meter using the “A”-weighting scale, set on “slow” response.

(2) Sound level meters shall be ~~of at least type three meeting American National Standard Institute Incorporated (ANSI) S1.4-1971 requirements. The entire sound measurement system serviced, and calibrated and operated as recommended by the manufacturer, and in accordance with regulations prescribed by the Chief of Police.~~ Persons using the sound level meters shall be trained in sound level measurement and the operation of sound level measuring equipment.



(3) ~~The chief of police or his designee may adopt standards for sound level measurement and enforcement consistent with this article.~~ Sound level measurements shall be made from within the boundary line of an adjoining or complaining property. Whether the sound level violates the prescribed limits in section 20-35 below will be determined by whether the readings taken within the adjoining or complaining property are in excess of the levels allowed by Section 20-35 below.

(4) The sound level measurement shall be averaged over a period of at least one (1) minute for purposes of determining the sound level. In the case of noise that is impulsive or not continuous, any such sound or noise that exceeds the prescribed level more than two (2) times in a minute shall be deemed to exceed the prescribed sound levels.

(6) If an officer does not have possession of a department-owned and ANSI-approved sound level meter at the time of responding to a noise complaint, sound level measurements for the purpose of determining violations of this article may not be taken using any other device, including but not limited to applications on cellular devices or any hand-held personal sound level meters obtained from any other source. The officer shall instead proceed under the other sections of this article in order to determine whether a violation of this ordinance is occurring.

(c) Methodology- In addition to the methodology contained in Section 20-32(b) above, violations of this ordinance (including but not limited to violations of Section 20-33(a) below) may also be determined as follows:

- (1) Any police officer responding to a noise complaint may, in the officer's discretion, issue a civil citation or enforce any other penalties under this article if the officer determines that a violation of this ordinance has occurred or is occurring.
- (2) An officer does not have to use a sound level meter or actually witness the sound or noise personally in order to take enforcement action under this section. Citations may be issued based upon statements and evidence obtained from complaining witnesses when the officer determines that such evidence is reliable, appropriate, and sufficient. Examples of such evidence may include, but are not limited to, the following: that a person could not hear a person standing next to them speak at a conversational tone or level, or that furniture, windows or floor were rattling or thumping from vibrations created by the noise.
- (3) It shall be a violation of this article for any person to communicate a noise complaint to any city staff or official, using the 911 system or otherwise, for the purpose of harassing the subject of the complaint, and knowing or having reason to know that no violation of this ordinance actually exists or existed.
- (4) Factors to consider in determining whether a violation of this ordinance has occurred or is occurring include, but are not limited to, the following:
  - a. The volume of the noise;
  - b. The intensity of the noise;
  - c. Whether the nature of the noise is usual or unusual;
  - d. Whether the origin of the noise is natural or unnatural;
  - e. The volume and intensity of the background noise, if any;

- f. The proximity of the noise to residential sleeping facilities;
- g. The density of the inhabitation of the area from which the noise emanates;
- h. The time of the day or night the noise occurs;
- i. The duration of the noise;
- j. Statements of any complaining witnesses, including any pictures or audio/video documentation produced by complaining witnesses; and
- k. Whether the noise is recurrent, impulsive, intermittent, or constant.
- l. Whether the noise exceeds the levels stated in Section 20-35 below.

### Sec. 20-33. Noises prohibited, nuisances.

- (a) *General prohibitions.* ~~It shall be unlawful to create, cause or allow the continuance of any unreasonably loud, disturbing, or frightening noise, particularly during nighttime which substantially interferes with neighboring residents' reasonable use and enjoyment of their properties. It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continued any loud, raucous and/or disturbing noise, which term shall mean any sound which, because of its volume level duration and/or character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville.~~
- (b) *Specific prohibitions.* In addition the general definition of "loud, raucous and/or disturbing noise" contained in Section 20-33 above, these terms shall be deemed to include the ~~The~~ following acts, which are prohibited and shall be considered nuisance acts:
- (1) *Horns and signaling devices.* The intentional sounding of any horn or signaling device of a motor vehicle on any street or public place continuously or intermittently in a manner that would annoy, disturb, or injure the comfort, health or peace of a reasonable person in the vicinity, except as a danger or emergency warning.
  - ~~(2) *Motor vehicles.* Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order to effectively prevent loud or explosive noises therefrom.~~
  - ~~(3)~~ (2) *Exterior loudspeakers.* Operating or permitting the operation of any mechanical device or loudspeaker, ~~without a permit to do so,~~ in a fixed or moveable position exterior to any building or mounted on any aircraft or motor vehicle in such a manner that the sound therefrom is ~~in excess of~~ more than the maximum decibel level as described in section 20-35 of this chapter.
  - ~~(4)~~ (3) *Power equipment.* Operating or permitting the operation of any power saw, sander, drill, grinder, leaf blower, lawn mower, or other garden equipment, or tools of a similar nature, outdoors during nighttime.
  - ~~(5) *Explosives.* The use or firing of explosives, firearms, fireworks, or similar devices which create impulsive sounds.~~ (4) *Fireworks.* Launching or permitting the launching of fireworks during nighttime.



(65) *Security alarms.* The sounding of a security alarm, for more than 20 minutes after being notified by law enforcement personnel.

~~(7) *Dogs and other animals.* Allowing one or more dogs or other animals to bark or make disturbing noises continuously or intermittently for more than 30 minutes.~~

(86) *Motor vehicle speakers or speakers located in or on a motor vehicle.* Operating or permitting the operation of any speaker or sound in or on a motor vehicle in such a manner that the sound therefrom is ~~in excess of more than~~ the maximum decibel level described in sections 20-35 of this chapter when registered ~~25-10~~ or more feet from the motor vehicle.

(7) *Burnouts. Operating or permitting the operation of a motor vehicle or motorcycle in such a manner that the motor vehicle remains stationary and the tires are spun rapidly against a solid surface continuously or intermittently producing loud noise. The friction between the tires and the solid surface typically produces smoke in addition to loud noise.*

~~(9) Any business situated within the municipal services district that permits to be played within its building any electronically amplified music or speech, regardless of whether such music is live, shall not permit any door from any street or alley into such building to be or remain open during such amplification except while persons or goods are actively entering or exiting the building through such door, nor shall it permit any window to be or remain open during such amplification.~~

## Sec. 20-34. Exceptions.

The following are exempt from the provisions of this article:

- (1a) Sound emanating from regularly scheduled outdoor athletic events on the campus of local schools.
- (2b) Construction operations from 7:00 a.m. to ~~9~~10:00 p.m. ~~on weekdays and 8:00 a.m. to 9:00 p.m. on weekends~~ for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of the government; providing all equipment is operated in accord with manufacturer's mufflers and noise-reducing equipment is in use and in proper operating condition.
- (3c) Noises of safety signals, warning devices, emergency pressure relief valves, and all church bells.
- (4d) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- (5) ~~Any other noise resulting from activities of a temporary duration permitted by law, and for which a license or permit therefor has been granted by the city in accordance with section 20-37, below. Regulations of noise emitting from operations under a permit shall be according to the conditions and limits stated on the permit and contained above.~~

- (6e) ~~Unamplified and amplified sound at street fairs and parades permitted pursuant to section 46-84 of the Code.~~ Events which have received a special events permit from City Council.
- (7f) All noises ~~coming~~ that come from the normal operations of properly equipped aircraft (not including scale model aircraft).
- (8g) All noises that come from normal operation of motor vehicles properly equipped with the manufacturer's standard mufflers and in good working order.
- (9h) Noise from lawful fireworks and noisemakers on holidays and at religious ceremonies.
- (10i) Lawn mowers, agricultural equipment, and landscape maintenance equipment that are used between the hours of 7:00 a.m. and ~~9~~10:00 p.m. when operated with all the manufacturer's standard mufflers and noise-relating equipment in use and in proper operating condition.
- (11j) Musical accompaniment or firearm discharge related to military or law enforcement ceremonies.
- (12k) ~~Sound amplification equipment used in conjunction with telecommunications systems on business properties to notify employees of that business of incoming phone calls, providing that this system be used only between the hours of 7:00 a.m. and 10:00 p.m. And that any speakers attached to the system be oriented toward the interior of the property.~~ Fireworks permitted by law, except during nighttime hours.
- (13l) Emergency work that is necessary to restore property to a safe condition following a fire, accident or natural disaster, ~~or~~ to restore public utilities, or to protect persons or property ~~form an~~ from imminent danger.
- (14m) Noises resulting from the provision of government services.
- (15n) Noises resulting from the provision of sanitation services between the hours of 7:00 a.m. and ~~9~~10:00 p.m.

## Sec. 20-35. Maximum permitted sound level.

~~In addition to the requirements of section 20-34, above, and except as otherwise provided herein or in conjunction with special events permits, it shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continue any loud, raucous and disturbing noise, which term shall mean any sound which, because of its volume level, duration, and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville. The term loud, raucous, and disturbing noise shall be limited to loud, raucous, and disturbing noises heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise, or upon the grounds thereof.~~



As provided in Section 20-32(b) above, the sound levels for the source of noise, taken from within the boundary line of an adjoining or complaining property, may not exceed the limits for the category of the complaining property, stated in the table below. As an example, if a house outside of an MSD is located next to a bar (regardless of whether or not the bar is also in the MSD), noise level measurements taken from the house tract for sound generated by the bar cannot exceed the Residential limits stated below.

<u>Maximum Sound Level Readings</u>	
<u>Adjoining or Complaining Property is located Downtown (defined as the Main Street and 7<sup>th</sup> Avenue MSDs)</u>	
<u>7am to midnight: 75 dB(A) (outdoor)</u> <u>60 dB(A) (indoor)</u>	<u>Midnight to 7am: 65 dB(A)(outdoor)</u> <u>50 dB(A) (indoor)</u>
<u>Adjoining or Complaining Property is Residential (including all types or residential properties, but excluding residential properties in the Main Street and 7<sup>th</sup> Avenue MSDs). Structures or developments containing both residential and nonresidential uses shall be considered residential.</u>	
<u>7am to 10pm: 65 dB(A)(outdoor)</u> <u>50 dB(A) (indoor)</u>	<u>10 pm to 7am: 55 dB(A)(outdoor)</u> <u>45 dB(A) (indoor)</u>
<u>Adjoining or Complaining Property is Nonresidential (including all types of nonresidential properties, but excluding nonresidential properties located in the Main Street and 7<sup>th</sup> Avenue MSDs)</u>	
<u>7am to midnight: 75 dB(A)(outdoor)</u> <u>60 dB(A) (indoor)</u>	<u>Midnight to 7am: 65 dB(A)(outdoor)</u> <u>50 dB(A) (indoor)</u>

Sec. 20-36. - ~~Motor vehicle noise.~~ Reserved

- ~~(a) — It shall be unlawful for any person to drive, operate, move or permit to be driven, operated or moved, a motor vehicle or combination of vehicles at any time in such a manner that the sound level of the vehicle or combination of vehicles exceeds 75 db(A) measured at a distance of 25 feet from the nearest lane(s) being monitored and at a height of at least four feet above the immediate surrounding surface.~~
- ~~(b) — This section shall apply to the total noise from a vehicle and shall not be construed as limiting or precluding the enforcement of any other provisions of this article.~~
- ~~(c) — Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements under this section.~~



### Sec. 20-37. ~~Permits to exceed limits.~~ Reserved

~~(a) — A person or group of persons may produce or cause sound to be produced more than levels authorized in sections 20-35, above, only if a permit to exceed the limit for the time and place of the activity has been obtained.~~

~~(b) — Any person or group or persons desiring a permit shall apply as provided herein and shall provide all the information required. All applications shall be submitted to the chief of police or his designer at least 48 hours prior to the scheduled event. Failure to comply with this requirement shall be grounds for denying the permit.~~

~~(c) — The chief of police or his designee shall have the authority to take decisive action on all applications for permits specified in this article. In considering and acting on such applications, the chief of police or his designee shall consider, but shall not be limited to, the following in issuing or denying such permit: the timeliness of the application; the nature of the requested activity; previous experience with the applicant; the nature of the event; other activities in the vicinity of the location proposed; the frequency of the application; the cultural or social benefit of the proposed activity; the effect of the activity on the residential areas of the city; previous violations, if any, of the applicant.~~

~~(d) — Permits to exceed limits shall specify the duration for which noncompliance shall be permitted and may prescribe the conditions or requirements necessary to minimize adverse effects upon the community or surrounding neighborhood. The chief of police or his designee may require, but shall not be limited to, the following:~~

~~(1) — That no sound speakers shall be set up more than ten feet above the ground.~~

~~(2) — That the permit holders change the arrangement of the loudspeakers or the sound instruments to minimize the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically causing the dispersal of sound beyond the property lines.~~

~~(e) — Permit holders shall agree to cooperate with the police department in enforcing the noise control article by having signers of the permit available at the site of the event during the entire time for which a permit has been issued and capable of assisting the police in enforcing the noise control ordinance. The failure of the permittee or designees to be present or to assist the police in compliance with this article will result in the revocation of said permit.~~

### Sec. 20-38. Violations.

~~(a) Any person who violates any portion of this article shall be subject to a fine of not less than \$50.00 dollars nor more than \$500.00 plus court costs the penalties stated in this Section 20-38. Each failure to obey an order to cease or abate shall constitute a separate violation of this article. Multiple violations may occur within the same day. Violation of this section is cause for immediate revocation of a permit to exceed.~~

- (b) Repeated violations of this article by the same person, or repeated violations at the same address, within a 12-month rolling period shall be subject to civil penalties as follows:
- (1) First violation: \$250.00
  - (2) Second violation: \$500.00
  - (3) Third violation: \$750.00
  - (4) Fourth and all subsequent violations: \$1,000.00 per offense
- (c) The 12-month rolling period is defined as the 12 months immediately preceding the violation. For example, for a violation of this article occurring on January 7, all violations occurring on or after January 8 of the preceding year shall be included for purposes of calculating civil penalties under this subsection.
- (d) Any person who willfully fails to comply with the directive of a law enforcement officer to come into compliance with this article shall be subject to a civil penalty of \$1000.00. Violation of this subsection shall constitute a separate violation of this article.
- (e) In addition to the remedies stated herein, the City may enforce the provisions of this article by appropriate equitable remedies as outlined in sections 1-6.
- (f) Violation of the following sections of this Article, including all subsections, sub-subsections, sub-sub-subsections, and all other paragraphs, shall constitute a Class 3 misdemeanor, and shall subject the offender to a fine of not less than \$50.00 dollars nor more than \$500.00 plus court costs.
- (1) Section 20-32. Terminology and methodology.
  - (2) Section 20-33. Noises prohibited, nuisances.
  - (3) Section 20-35. Maximum permitted sound level.

Sec. 20-39. Owner and occupant responsibility.

- (a) Penalties for violations of this article may be assessed against any of the following:
- (1) Persons who are responsible for or in control of the premises on which the violation occurs, including but not limited to a business owner, an onsite manager or supervisor, or a tenant.
  - (2) Persons in possession or control of any device producing or causing the violation.
  - (3) The owner of the premises on which the violations occur.
- (b) An owner of any premises, as well as any person responsible for or in control of such premises, shall be responsible for and may be held in violation of this article for, actions of tenants, guests, or other licensees that constitute violations of this article. This subsection shall not be interpreted to relieve any other person from responsibility for violations of this article.



Adopted on the first reading of the City Council of the City of Hendersonville, North Carolina on the \_\_\_\_ day of \_\_\_\_ 2022, and adopted on the second reading of the City Council of the City of Hendersonville, North Carolina on the \_\_\_\_ day of \_\_\_\_, 2022.

[Not to be signed until after passing the second reading.]

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

\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

## Noise Ordinance Notes

**1972 – Congress adopted the Noise Control Act.** Required the EPA to develop and publish criteria with respect to levels of environmental noise the maintenance and attainment of which are necessary under various conditions to protect the public health and welfare with an adequate margin of safety.

- Public Health and welfare includes:
  - Physical health (hearing loss, physiological responses to noise)
  - Mental health
  - Disruption with normal activities (Annoyance)
- Intended to provide guidance to states and their local governments regarding their responsibility to control the use of noise sources and the levels of noise to be permitted in their environment.
- 1974 – Produced the “information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety”

**Environmental Noise** – the intensity, duration and character of sounds from all sources.

- Used a statistical approach to come up with averages and measures that can be applied to most situations.
- Determined that the magnitude of sound is the most important insofar as cumulative noise effects are concerned.
  - Leq – average over a period of time, i.e. equivalent sound level
  - Equivalent A-weighted sound level is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sounds.
  - Basic unit of sound is the decibel
- It should be recognized that an equivalent sound level of a 24 hour period would permit intermittent sounds as high as 110dB, at that level, for less than 1 second during the 24 hour period..

### Sound Level Notes

- Continuous exposure to levels in excess of **70dB** can result in hearing loss.
- The effect of activity interference is often referred to in terms of **annoyance**. Other factors also factor into an individual's reaction to activity interferences.
- Noise/Sound is more acceptable when it is voluntary – i.e. involuntary sound produces a higher annoyance factor.
- **Focused on Speech** - Levels of interfering sound required to mask the desired sound has been quantified for speech by measuring the interference with speech intelligibility as a function of the level of the intruding sound, relative to the level of the speech sounds. Other types of



annoyances/disruptions were evaluated based on community surveys, but is consequence of activity interferences.

#### **Residential Areas (day/night level)**

- Relaxed/Normal conversation is considered to be an activity that is interrupted by sound.
- **Indoors, normal conversation** can occur at 100% intelligibility with an environmental noise level of 45 dB when that talker and listener separation is 1.1 or greater (should be able to hear at the same level throughout the room due to reverberation and acoustics).
- **Outdoors**, 95% intelligibility is considered acceptable, and occurs where environmental noise level is 55 dB, and the speaker listener are 3 meters apart. 60 dB at 2 meters apart; 66dB at 1 meter apart.
  - Note: Typical absorption by building walls is 15dB, so an outdoor noise level of 60dB, on average, would create an indoor level of 45dB.
- Since conversation is not the only activity interrupted (others include reading, thinking, sleeping, listening to TV, music) **outdoor recommended levels are reduced by 5 dB as a safety factor.**
- **Resulting Indoor (with outdoor safety factor of 5 dB): 40dB**
- **Outdoor (with safety factor of 5dB for 2 meters between speaker/listener): 55dB.**
  - Protection Against Sleep Interference: 32dB

#### **Commercial/Industrial Areas:**

- Dependent upon types of activity –



EQUIVALENT SOUND LEVEL IN DECIBELS NORMALLY OCCURING INSIDE VARIOUS PLACES	
SPACE	Leq (average over typical day)
Small Store (1-5 clerks)	60
Large Store (more than 5 clerks)	65
Small office (1-2 desks)	58
Medium Office (3-10 desks)	63
Large office (more than 10 desks)	67
Residences	
Typical movement of people – no tv/radio	40-45
Speech at 10 feet, normal voice	55
TV listening at 10 feet, no other activity	55-60
Stereo Music	50-70





PERCENTAGE INTERFERENCE WITH SENTENCE INTELLIGIBILITY IN THE  
 PRESENCE OF A STEADY INTRUDING NOISE CYCLED ON AND OFF  
 PERIODICALLY IN SUCH A WAY AS TO MAINTAIN  
 CONSTANT EQUIVALENT SOUND LEVEL, AS A FUNCTION OF THE  
 MAXIMUM NOISE LEVEL AND DURATION<sup>D-39</sup>  
 (Assumes 100% intelligibility during the off-cycle)

Situation	A-Weighted level of intruding noise during "on-cycle," decibels	Duration of intruding noise as percent of total time	Percent interference if intruding noise were continuous	Average percent interference in cycled noise
<b>INDOORS</b>				
Relaxed conversation, background	45	100	0	0
$L_{eq} = 45$ dB,	50	32	0.5	0.16
100% intelligibility	55	10	1	0.10
if background noise were	60	3	2	0.06
continuous at 45 dB	65	1	6	0.06
	70	0.3	40	0.12
	75	0.1	100	0.10
	80	0.03	100	0.03
<b>OUTDOORS</b>				
Normal voice at 2 meters, background	60	100	5	5.0
$L_{eq} = 60$ dB,	65	32	7.7	2.5
95% intelligibility	70	10	53	5.3
if background noise were continuous at 60 dB	75	3	100	3.0
	80	1	100	1.0

(REF: Task Group #3 Report)



Changes to the Ordinance: Two Pronged Approach

- Absolute violations based on noise level measured from the complaining property.

<u>Maximum Sound Level Readings</u>	
<u>Adjoining or Complaining Property is located Downtown (defined as the Main Street and 7<sup>th</sup> Avenue MSDs)</u>	
<u>7am to midnight: 75 dB(A) (outdoor)</u>	<u>Midnight to 7am: 65 dB(A) (outdoor)</u>
<u>60 dB(A) (indoor)</u>	<u>50 dB(A) (indoor)</u>
<u>Adjoining or Complaining Property is Residential (including all types of residential properties, but excluding residential properties in the Main Street and 7<sup>th</sup> Avenue MSDs). Structures or developments containing both residential and nonresidential uses shall be considered residential.</u>	
<u>7am to 10pm: 65 dB(A) (outdoor)</u>	<u>10pm to 7am: 55 dB(A) (outdoor)</u>
<u>50 dB(A) (indoor)</u>	<u>45 dB(A) (indoor)</u>
<u>Adjoining or Complaining Property is Nonresidential (including all types of nonresidential properties, but excluding nonresidential properties located in the Main Street and 7<sup>th</sup> Avenue MSDs)</u>	
<u>7am to midnight: 75 dB(A) (outdoor)</u>	<u>Midnight to 7am: 65 dB(A) (outdoor)</u>
<u>60 dB(A) (indoor)</u>	<u>50 dB(A) (indoor)</u>

As an example, if a house outside of an MSD is located next to a bar (regardless of whether or not the bar is also in the MSD), noise level measurements taken from the house tract for sound generated by the bar cannot exceed the Residential limits stated below

- Nuisance approach – *It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continued any loud, raucous and/or disturbing noise, which term shall mean any sound which, because of its volume level duration and/or character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville*
- Listed exceptions
- Graduated Penalties (evaluated over rolling 12 month period), including potential criminal charges -
  - \$250.00 (1<sup>st</sup> offense); \$500.00 (2<sup>nd</sup> offense); \$750.00 (3<sup>rd</sup> offense); \$1,000.00 (4<sup>th</sup> offense+)







Resolution #\_\_-\_\_\_\_

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

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

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

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

**Section 1.** A public hearing on the question of annexation of the contiguous area described herein will be held at the City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. March 2<sup>nd</sup>, 2023, or as soon thereafter as it may be heard.

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

Being all of that real property consisting of PINs 9579-48-2415 and 9579-48-6832 described in the plat recorded in Book 2023- \_\_\_\_ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9579-48-2415 and 9579-48-6832 being described by metes and bounds as follows:

BEGINNING at a 1" crimped top pipe being a corner on the northern property line of Bon Worth Francis Road, LLC (hereinafter "BWFR") as described in Deed Book 1267, Page 107; said pipe having "NAD 83 (2011)" coordinates of N: 598,493.05 feet and E: 974,463.91 feet and lying a grid bearing and distance of North 68°26'59" West 1168.52 feet from NCGS CORS Station "NCHE" (with coordinates of N: 598,063.83 feet and E: 975,550.74 feet); thence from said POINT OF BEGINNING with the BWFR line South 01°07'30" East 57.19 feet to 3/4" open top pipe; thence South 81°07'51" West 234.84 feet to a 5/8" rebar lying in the eastern limit of the right-of-way of Francis Road (S.R. 1517); thence leaving the BWFR line with the right-of-way of Francis Road the following 4 (four) calls:

- 1) On a curve to the left having a radius of 184.43 feet, an arc length of 44.97 feet, a chord bearing of North 00°48'44" West, and a chord distance of 44.86 feet to a 1" open top pipe;
- 2) On a curve to the left having a radius of 184.43 feet, an arc length of 36.32 feet, a chord bearing of North 13°26'23" West, and a chord distance of 36.26 feet to a 5/8" rebar with "EHA" cap;
- 3) On a curve to the left having a radius of 332.37 feet, an arc length of 64.35 feet, a chord bearing of North 24°37'42" West, and a chord distance of 64.25 feet to a 5/8" rebar with "EHA" cap;
- 4) North 30°10'30" West 103.92 feet to a 5/8" rebar with "EHA" cap;

Thence leaving Francis Road with the existing City limits also being the southernmost line of Cedar Bluffs Limited Partnership (hereinafter "CBLP") as described in Deed Book 1006, Page 141 on a bearing of North 76°05'56" East 215.70 feet to a 1" open top pipe; thence continuing with the existing City limits also being the eastern CBLP line North 05°22'49" East (passing a 1" square iron at 399.58 feet; and passing a 5/8" rebar with "EHA" cap at 627.93 feet) a total distance of 657.94 feet to an

unmarked point in the center of the creek known as Allen Branch, said point also lying on the southern line of Wal-Mart Real Estate Business Trust (hereinafter "Walmart") as described in Deed Book 1085, Page 91; thence leaving the CBLP line with the existing City limits also being the center of Allen Branch and the southern Walmart line, the following 32 (thirty two) calls:

- 1) South 77°56'58" East 24.45 feet to an unmarked point;
- 2) South 82°02'13" East 21.98 feet to an unmarked point;
- 3) North 88°06'05" East 48.93 feet to an unmarked point;
- 4) South 82°28'37" East 64.97 feet to an unmarked point;
- 5) South 58°50'20" East 11.90 feet to an unmarked point;
- 6) South 76°43'27" East 16.95 feet to an unmarked point;
- 7) South 61°28'08" East 26.29 feet to an unmarked point;
- 8) South 79°03'33" East 16.10 feet to an unmarked point;
- 9) South 61°29'15" East 50.12 feet to an unmarked point;
- 10) South 66°59'05" East 29.12 feet to an unmarked point;
- 11) South 48°56'44" East 9.77 feet to an unmarked point;
- 12) South 69°45'29" East 37.15 feet to an unmarked point;
- 13) South 74°01'28" East 23.15 feet to an unmarked point;
- 14) South 64°37'46" East 9.50 feet to an unmarked point;
- 15) South 51°12'36" East 9.91 feet to an unmarked point;
- 16) South 59°06'54" East 16.14 feet to an unmarked point;
- 17) South 51°54'17" East 22.27 feet to an unmarked point;
- 18) South 69°09'16" East 14.47 feet to an unmarked point;
- 19) North 88°04'25" East 18.65 feet to an unmarked point;
- 20) South 75°31'01" East 12.91 feet to an unmarked point;
- 21) South 44°16'47" East 19.76 feet to an unmarked point;
- 22) South 47°21'26" East 31.56 feet to an unmarked point;
- 23) South 54°24'42" East 25.85 feet to an unmarked point;
- 24) South 69°58'01" East 18.46 feet to an unmarked point;
- 25) South 83°11'00" East 34.15 feet to an unmarked point;
- 26) South 34°28'04" East 7.59 feet to an unmarked point;
- 27) South 54°16'23" East 40.45 feet to an unmarked point;
- 28) South 34°54'26" East 34.80 feet to an unmarked point;
- 29) South 43°34'08" East 18.45 feet to an unmarked point;
- 30) South 59°25'04" East 25.78 feet to an unmarked point;
- 31) South 39°09'59" East 35.96 feet to an unmarked point;
- 32) South 44°44'37" East 13.66 feet to an unmarked point;

Thence leaving the center of Allen Branch with the property lines of Walmart and Robert D. Williams as described in Deed Book 597, Page 321, Deed Book 700, Page 37, and Deed Book 188, Page 178 on a bearing of South 14°06'49" West (passing a 5/8" rebar at 28.17 feet) a total distance of 581.02 feet (the last 120.74' more or less running with existing City limits) to a 1" square iron at the northeastern corner of the BWFR property; thence leaving the Williams line with the northern BWFR line North 84°36'57" West 498.45 feet to the POINT AND PLACE OF BEGINNING, containing 12.76 acres, more or less.

Re: Petition for Contiguous Annexation

Petitioners: John Hammond, as Trustee of The Hammond Family Trust (228 Mastermind Lane), John and Betty Hammond (102 Francis Road)

File No. C23-02-ANX

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

Adopted by the City Council of the City of Hendersonville, North Carolina on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

**CERTIFICATE OF SUFFICIENCY**

Re: Petition for Contiguous Annexation  
Petitioners: The Hammond Family Trust (228 Mastermind Lane), John and Betty  
Hammond (102 Francis Road)  
File No. C23-02-ANX

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

1. A petition has been received for contiguous annexation of property consisting of +/- 12.76 acres located on Francis Road and Mastermind Lane in Hendersonville, NC, being tax parcels PIN 9579-48-2415 and 9579-48-6832, and being more particularly described on Exhibit A, attached hereto and incorporated by reference, hereinafter "Petition."
2. An investigation has been completed as required by N.C.G.S. § 160A-31 of the Petition for compliance with the requirements of N.C.G.S. § 160A-31.

Based upon this investigation, I find that

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

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

In witness hereof, I have set my hand and the City Seal on this the 2<sup>nd</sup> day of February, 2023.

(City Seal)



  
Jill Murray, City Clerk

# EXHIBIT A

## LEGAL DESCRIPTION

Being all of that real property consisting of PINs 9579-48-2415 and 9579-48-6832 described in the plat recorded in Book 2023- \_\_\_\_ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9579-48-2415 and 9579-48-6832 being described by metes and bounds as follows:

BEGINNING at a 1" crimped top pipe being a corner on the northern property line of Bon Worth Francis Road, LLC (hereinafter "BWFR") as described in Deed Book 1267, Page 107; said pipe having "NAD 83 (2011)" coordinates of N: 598,493.05 feet and E: 974,463.91 feet and lying a grid bearing and distance of North 68°26'59" West 1168.52 feet from NCGS CORS Station "NCHE" (with coordinates of N: 598,063.83 feet and E: 975,550.74 feet); thence from said POINT OF BEGINNING with the BWFR line South 01°07'30" East 57.19 feet to 3/4" open top pipe; thence South 81°07'51" West 234.84 feet to a 5/8" rebar lying in the eastern limit of the right-of-way of Francis Road (S.R. 1517); thence leaving the BWFR line with the right-of-way of Francis Road the following 4 (four) calls:

- 1) On a curve to the left having a radius of 184.43 feet, an arc length of 44.97 feet, a chord bearing of North 00°48'44" West, and a chord distance of 44.86 feet to a 1" open top pipe;
- 2) On a curve to the left having a radius of 184.43 feet, an arc length of 36.32 feet, a chord bearing of North 13°26'23" West, and a chord distance of 36.26 feet to a 5/8" rebar with "EHA" cap;
- 3) On a curve to the left having a radius of 332.37 feet, an arc length of 64.35 feet, a chord bearing of North 24°37'42" West, and a chord distance of 64.25 feet to a 5/8" rebar with "EHA" cap;
- 4) North 30°10'30" West 103.92 feet to a 5/8" rebar with "EHA" cap;

Thence leaving Francis Road with the existing City limits also being the southernmost line of Cedar Bluffs Limited Partnership (hereinafter "CBLP") as described in Deed Book 1006, Page 141 on a bearing of North 76°05'56" East 215.70 feet to a 1" open top pipe; thence continuing with the existing City limits also being the eastern CBLP line North 05°22'49" East (passing a 1" square iron at 399.58 feet; and passing a 5/8" rebar with "EHA" cap at 627.93 feet) a total distance of 657.94 feet to an unmarked point in the center of the creek known as Allen Branch, said point also lying on the southern line of Wal-Mart Real Estate Business Trust (hereinafter "Walmart") as described in Deed Book 1085, Page 91; thence leaving the CBLP line with the existing City limits also being the center of Allen Branch and the southern Walmart line, the following 32 (thirty two) calls:

- 1) South 77°56'58" East 24.45 feet to an unmarked point;
- 2) South 82°02'13" East 21.98 feet to an unmarked point;
- 3) North 88°06'05" East 48.93 feet to an unmarked point;

- 4) South 82°28'37" East 64.97 feet to an unmarked point;
- 5) South 58°50'20" East 11.90 feet to an unmarked point;
- 6) South 76°43'27" East 16.95 feet to an unmarked point;
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- 31) South 39°09'59" East 35.96 feet to an unmarked point;



32) South  $44^{\circ}44'37''$  East 13.66 feet to an unmarked point;

Thence leaving the center of Allen Branch with the property lines of Walmart and Robert D. Williams as described in Deed Book 597, Page 321, Deed Book 700, Page 37, and Deed Book 188, Page 178 on a bearing of South  $14^{\circ}06'49''$  West (passing a  $5/8''$  rebar at 28.17 feet) a total distance of 581.02 feet (the last 120.74' more or less running with existing City limits) to a 1" square iron at the northeastern corner of the BWFR property; thence leaving the Williams line with the northern BWFR line North  $84^{\circ}36'57''$  West 498.45 feet to the POINT AND PLACE OF BEGINNING, containing 12.76 acres, more or less.

I, C.M. EDGERTON JR., N.C. P.L.S., CERTIFY THAT THIS PURSUANT TO SUBSECTION (i), THE PROVISIONS OF G.S. 47-30 SHALL NOT APPLY TO BOUNDARY PLATS OF AREAS TO BE ANNEXED BY MUNICIPALITIES, NOR TO PLATS OF MUNICIPAL BOUNDARIES, WHETHER OR NOT REQUIRED BY LAW TO BE RECORDED.

THE FOLLOWING INFORMATION WAS OBTAINED BY GNSS OBSERVATIONS AND USED TO OBTAIN N.C. GRID NORTH, NAD 83 (2007) ORIENTATION:

TYPE OF GPS FIELD PROCEDURE: STATIC (POST-PROCESSED USING TOPCON TOOLS SOFTWARE)  
DATE OF GNSS FIELD SURVEY: 10/20/2022  
HORIZONTAL DATUM/EPOCH: NAD 83 (NSRS 2011)  
VERTICAL DATUM: NAVD 88  
PUBLISHED/FIXED HORIZONTAL CONTROL: NCGS MONUMENT "HENDERSONVILLE AZ MK"  
LOCALIZATION POINT: N: 598,461.92', E: 974,166.96'  
GEOID MODEL: GEOID 16  
COMBINED GRID FACTOR: 0.99977557  
UNITS: U.S. SURVEY FEET

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS DATE \_\_\_\_\_

N.C. PROFESSIONAL LAND SURVEYOR \_\_\_\_\_ L-4815  
LICENSE#

THIS PLAT REPRESENTS THE AREA BEING ANNEXED TO THE CITY OF HENDERSONVILLE, NC PURSUANT TO NCGS 160A-31, BY ORDINANCE DULY ADOPTED (ANNEXATION ORDINANCE \_\_\_\_\_).

THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

JILL MURRAY, CITY CLERK

#### PURPOSE STATEMENT

THIS PURPOSE OF THIS PLAT IS TO ANNEX PIN 9579-48-6832 & PIN 9579-48-2415 (12.76 CONTIGUOUS ACRES) INTO THE CITY OF HENDERSONVILLE AS SHOWN ON THIS SURVEY.

Being all of those certain parcels of land lying and being in the City of Hendersonville ETJ, Henderson County, North Carolina, being the same properties as described in Deed Book 3752, Page 161 and in Deed Book 3817, Page 216 and being more particularly described as follows:

BEGINNING at a 1" crimped top pipe being a corner on the northern property line of Bon Worth Francis Road, LLC (hereinafter "BWFR") as described in Deed Book 1267, Page 107, said pipe having "NAD 83 (2011)" coordinates of N: 598,463.05 feet and E: 974,463.91 feet and lying a grid bearing and distance of North 68°26'59" West 1168.52 feet from NCGS CORS Station "NCHE" (with coordinates of N: 598,063.83 feet and E: 975,550.74 feet); thence from said POINT OF BEGINNING with the BWFR line South 01°07'30" East 57.19 feet to 3/4" open top pipe; thence South 81°07'51" West 234.84 feet to a 5/8" rebar lying in the eastern limit of the right-of-way of Francis Road (S.R. 1517); thence leaving the BWFR line with the right-of-way of Francis Road the following 4 (four) calls:

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- 3) On a curve to the left having a radius of 332.37 feet, an arc length of 64.35 feet, a chord bearing of North 24°37'42" West, and a chord distance of 64.25 feet to a 5/8" rebar with "EHA" cap;
- 4) North 30°10'30" West 103.92 feet to a 5/8" rebar with "EHA" cap;

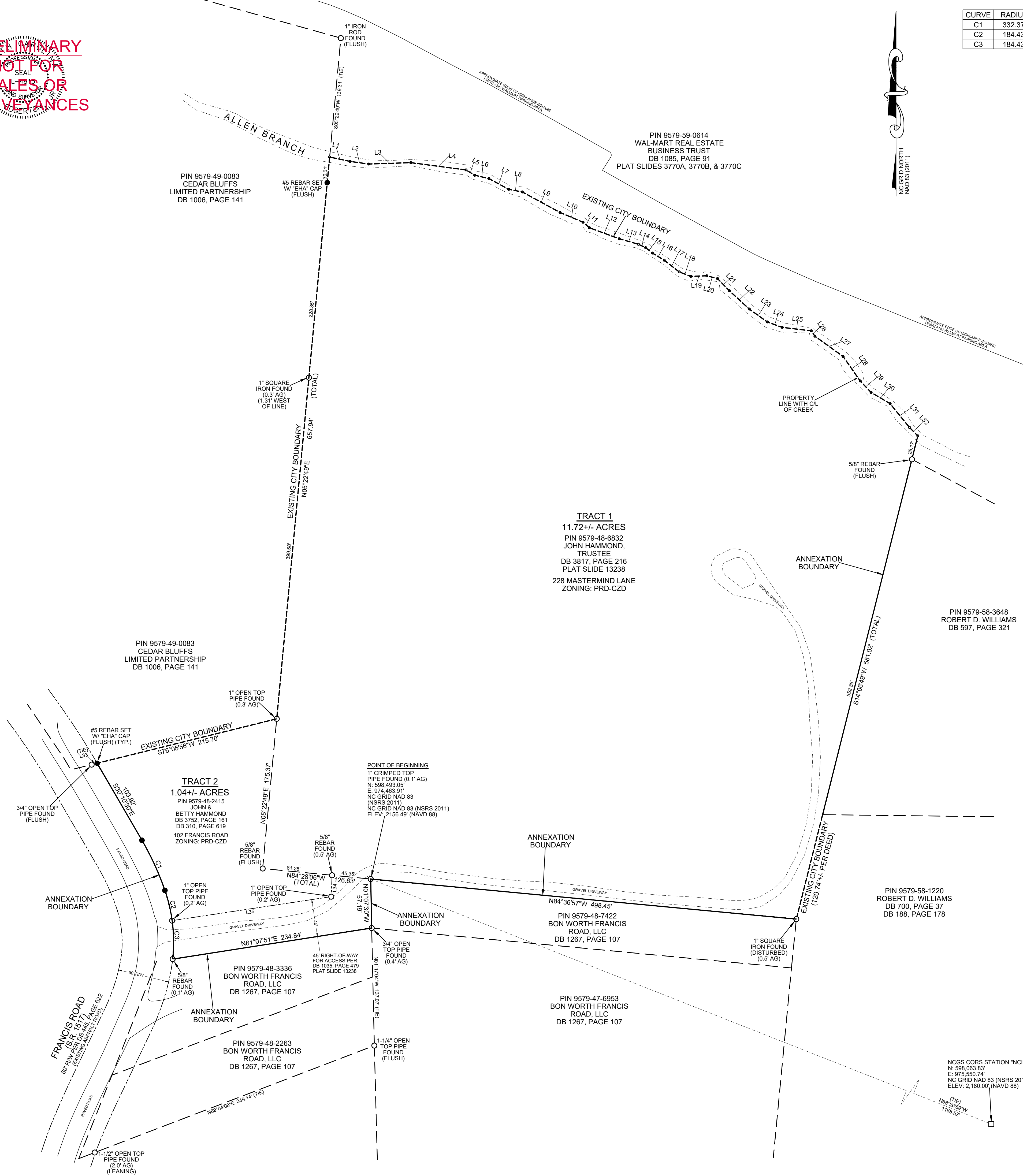
Thence leaving Francis Road with the existing City limits also being the southernmost line of Cedar Bluffs Limited Partnership (hereinafter "CBLP") as described in Deed Book 1006, Page 141 on a bearing of North 76°05'56" East 215.70 feet to a 1" open top pipe; thence continuing with the existing City limits also being the eastern CBLP line North 05°22'49" East (passing a 1" square iron at 359.58 feet, and passing a 5/8" rebar with "EHA" cap at 627.93 feet) a total distance of 657.94 feet to an unmarked point in the center of the creek known as Allen Branch, said point also lying on the southern line of Wal-Mart Real Estate Business Trust (hereinafter "Walmart") as described in Deed Book 1085, Page 91; thence leaving the CBLP line with the existing City limits also being the center of Allen Branch and the southern Walmart line, the following 32 (thirty two) calls:

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**Ed HOLMES & Associates**  
LAND SURVEYORS, P.A.

**PRELIMINARY**  
**NOT FOR**  
**SALES OR**  
**CONVEYANCES**



BOUNDARY CURVE CALLS				
CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	332.37'	64.35'	S24°37'42"E	64.25'
C2	184.43'	36.32'	S13°26'23"E	36.26'
C3	184.43'	44.97'	S00°48'44"E	44.86'

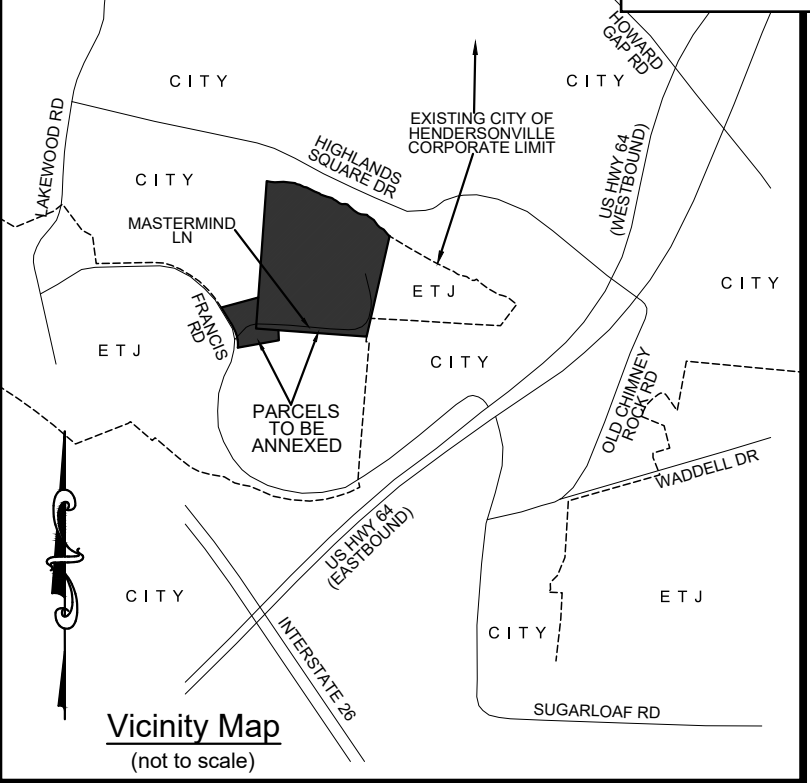
C/L OF CREEK BOUNDARY CALLS		
LINE	BEARING	DISTANCE
L1	S77°56'58"E	24.45'
L2	S82°02'13"E	21.98'
L3	N88°06'05"E	48.93'
L4	S82°28'37"E	64.97'
L5	S58°50'20"E	11.90'
L6	S76°43'27"E	16.65'
L7	S61°28'08"E	26.29'
L8	S79°03'33"E	16.10'
L9	S61°29'15"E	50.12'
L10	S66°59'05"E	29.12'
L11	S48°56'44"E	9.77'
L12	S69°45'29"E	37.15'
L13	S74°01'28"E	23.15'
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L16	S59°06'54"E	16.14'
L17	S51°54'17"E	22.27'
L18	S69°09'16"E	14.47'
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L20	S75°31'01"E	12.91'
L21	S44°16'47"E	19.76'
L22	S47°21'26"E	31.56'
L23	S54°24'42"E	25.85'
L24	S69°58'01"E	18.46'
L25	S83°11'00"E	34.15'
L26	S34°28'04"E	7.59'
L27	S54°16'23"E	40.45'
L28	S34°54'26"E	34.80'
L29	S43°34'08"E	18.45'
L30	S39°09'59"E	35.95'
L32	S44°44'37"E	13.66'

TIE LINE CALLS		
L33	N76°05'56"E	6.66'

LIMIT OF 45' RIGHT-OF-WAY CALLS		
L34	S01°58'48"W	24.95'
L35	S81°25'37"W	187.64'

**LEGEND:**  
● = CORNER FOUND (AS NOTED)  
○ = #5 REBAR SET WITH CAP  
□ = NCGS MONUMENT (AS NOTED)  
□ = CALCULATED POINT (UNMARKED)  
AG = ABOVE GROUND  
BG = BELOW GROUND  
--- = CONCRETE/ASPHALT  
- - - = EDGE OF GRAVEL  
- - - - - = SUBJECT PROPERTY BOUNDARY LINE (EXISTING CITY LIMITS)  
- - - - - = SUBJECT PROPERTY BOUNDARY LINE (PROPOSED ANNEXATION LIMITS)  
- - - - - = ADJOINER PROPERTY LINE  
- - - - - = WATER FEATURE (AS NOTED)  
- - - - - = LIMITS OF R/W

**CURRENT LISTED OWNERS AT DATE OF THIS SURVEY PER HENDERSON COUNTY GIS:**  
PIN 9579-48-2415:  
JOHN & BETTY HAMMOND  
8 STONEY NOB DRIVE  
HENDERSONVILLE, NC 28792  
PIN 9579-48-6832:  
JOHN HAMMOND, TRUSTEE  
8 STONEY NOB DRIVE  
HENDERSONVILLE, NC 28792



#### NOTES

\* This is an annexation plat of 2 existing parcels of land. Total acreage is of both parcels is 12.76+- acres.

\* All areas calculated by coordinate computation method.

\* All distances shown hereon are horizontal ground distances unless otherwise noted.

\* All grid coordinates shown are NC Grid Coordinates (NAD 83 (NSRS 2011) based on GPS)

## ANNEXATION PLAT FOR THE CITY OF HENDERSONVILLE AT 102 FRANCIS ROAD & 228 MASTERMIND LANE

#### REFERENCES

Being all of PIN 9579-48-2415 as described in Deed Book 3752, Page 161 &

Being all of PIN 9579-48-6832 as described in Deed Book 3817, Page 216 and shown in Plat Slide 13238

City of Hendersonville ETJ, Hendersonville Township,

Henderson County, North Carolina

Date: 01-17-2023 Drawn By: M. Edgerton  
Job#: 22028 Checked By: B. Brown

C. M. Edgerton, Jr., P.L.S.  
medgerton@edholmessurveying.com  
Ed Holmes & Associates Land Surveyors, PA  
200 Ridgefield Ct., Suite 208, Asheville, NC 28806  
828.225.6562 Company# C-2806

60' 0' 60' 120'  
SCALE 1" = 60'

DWG#: D22-101



## MASTERMIND ANNEXATION BOUNDARY

Being all of those certain parcels of land lying and being in the City of Hendersonville ETJ, Henderson County, North Carolina, being the same properties as described in Deed Book 3752, Page 161 and in Deed Book 3817, Page 216 and being more particularly described as follows:

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**Cottages at Mastermind**  
C23-02-ANX  
PINs: 9579-48-6832 & 9579-48-2415  
Acreage: 12.76  
**Contiguous Annexation Map**  
Community Development Department

 Hendersonville City Limits  
 Subject Property







CITY OF HENDERSONVILLE  
COMMUNITY DEVELOPMENT DEPARTMENT

100 N. King St. ~ Hendersonville, NC ~ 28792  
Phone (828) 697-3010 ~ Fax (828) 697-6185  
www.hendersonvillenc.gov

**PETITION REQUESTING ANNEXATION**

The following are required to constitute a complete application for voluntary annexation:

- ~This form including the property owner's signature
- ~A copy of the deed indicating ownership of the property.
- ~An annexation plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ~ A typed boundary description of the property

Date 12/22/2022

Location / Property Address 228 Mastermind Lane, Hendersonville NC

List 10 digit PIN or 7 digit PID number 9579-48-6832

Does this property adjoin the present City Limits?



YES



NO

Is the property within the ETJ?



YES



NO

Reason for annexation

Intention to connect to city utilities

Applicant Name DHIC, LLC

Address 2000 Aerial Center Parkway, Morrisville NC 27560

Phone 240-997-4816

Fax

Email tmartinson@drhorton.com

Property Owner: Name Hammond Family Trust; John Hammond Trustee

Address 8 Stoney Nob Drive, Hendersonville, NC 28792

Signature

*John Hammond Trustee*

Printed Name

*John Hammond*

Official Use:

DATE RECEIVED: \_\_\_\_\_ BY \_\_\_\_\_



COPY

ESTABLISHMENT OF  
THE HAMMOND FAMILY TRUST  
DATED April 6, 2021

**ARTICLE ONE**  
**Establishment of the Trust**

JOHN D. HAMMOND, of Henderson County, North Carolina, declares that:

**Section 1.01 Identity of the Trust**

The trust shall be known as "THE HAMMOND FAMILY TRUST DATED April 6, 2021"

To the extent practical, for the purposes of transferring property to the trust or identifying the trust in any beneficiary or pay on death designation, our trust should be identified as "The Hammond Family Trust dated April 6, 2021, and any amendments thereto."

**Section 1.02 Conveyance to Trust**

Any person may transfer property to our trust in any manner authorized by law.

This trust will be funded by a deed conveying real property to the Trust.

The corpus of this trust may be increased by conveyance to the Trustees named in this declaration.

**Section 1.03 Identity of Trustmaker.**

As used in this Declaration of Trust:

1. The term "Trustmaker" shall refer to John D. Hammond;
2. The term "Beneficiary" shall refer to anyone or any charitable organization herein identified as entitled to the proceeds of this trust upon distribution of the Trust assets.
6. The term "Trustee" shall also include and may be referred to as "the

fiduciary."

#### **Section 1.04 Designation of Trustee.**

1. John D. Hammond is hereby designated as Trustee of all Trusts created by or to be created pursuant to this Declaration of Trust.

2. Should John D. Hammond become unable because of death, incompetence or any other cause, to serve as a Trustee, Betty J. Hammond, shall thereafter serve as trustee of all Trusts created pursuant to this Declaration of Trust.

3. Any successor Trustee provided for in this Article, shall, immediately succeed to all title of the Trustee to the trust estate and to all powers, rights, discretions, obligations, and immunities of the Trustee under this Declaration with the same effect as though such successor were originally named as Trustee in this Declaration.

4. The term "Trustee" as used in this Declaration shall refer to the sole Trustee or the unanimous action of the Co-Trustees as the case may be.

5. No bond shall be required of any Trustee designated in this instrument.

#### **Section 1.05 Additions to Trust.**

The Trustmaker may from time to time add property acceptable to the Trustee to the Trust by conveyance, assignment, transfer, life insurance beneficiary designation, or Will. Such property when received and accepted by the Trustee shall become part of the Trust and be subject to all the terms and provisions of this Declaration of Trust.

#### **Section 1.06 Amendment and Revocation**

During the life of the Trustmaker this trust shall be fully revocable and subject to amendment by the Trustmaker except as limited by the other provisions of this trust.

### **ARTICLE 2**

#### **Provisions of the Trust**

### **Section 3.01 Distribution of Trust Property**

The primary purpose of this Trust is to hold real estate and to provide for the sale and distribution of sale proceeds for said real estate.:

**The real property located at Mastermind Lane in Henderson County North Carolina bearing PIN No. 9579486832** shall be held by the trust until a buyer for the property is found. The Trustee shall not agree to any sale of the property where the gross proceeds of the sale do not equal at least fifty thousand (\$50,000.00) per acre for the Trust Property.

John Demeritt Hammond shall retain a life estate in the aforementioned Trust property PIN No. 9579486832 that he may hold and/or convey separate and apart from any conveyance of Trust property by the Trustee of this Trust.

**The real property located dear Low Gap Road in Henderson County North Carolina PIN No. 0610341747** shall be held by the trust until such time as the beneficiaries of the trust agree, in writing, to sell the property or divide the property and distribute it from the trust.

Upon the sale of any of the aforementioned real property, the net proceeds of the sale shall be distributed as follows:

1/3 to John D. Hammond. If he dies prior to the sale or distribution, his share shall go to his heirs, successors, and assigns.

1/3 to Elizabeth Jean Hammond Holmstedt. If she dies prior to the sale or distribution, his share shall go to her heirs, successors, and assigns.

1/3 to Laura Jane Hammond Garnett. If she dies prior to the sale or distribution, his share shall go to her heirs, successors, and assigns.

## **ARTICLE 4**

### **Trustee Powers and Further Trust Provisions**

Except as modified by the preceding paragraphs, The Trustee is vested with the following powers with respect to the Trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

### **Section 4.01 Retain Original Property.**



To retain for such time as the fiduciary shall deem advisable any property, real or personal, which the fiduciary may receive, even though the retention of such property by reason of its character, amount, proportion to the total estate or otherwise, would not be appropriate for the fiduciary apart from this provision.

#### **Section 4.02 Sell and Exchange Property.**

To sell, exchange, give options upon, partition or otherwise dispose of at any time, or from time to time, with or without order of Court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary shall deem advisable, and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust; and the party dealing with the fiduciary shall not be under a duty to follow the proceeds or other consideration received by the fiduciary from such sale or exchange. Upon the death of either Trustor/initial Trustee, the surviving Trustor/Trustee shall not be entitled to encumber, mortgage, sell or otherwise convey or dispose of any real property owned by the Trust without the consent of the beneficiary who was to receive said real property under the provisions of Section 3.01.

#### **Section 4.03 Manage Real Property.**

1. To improve, manage, protect, and subdivide any real property;
2. To deal with any such property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with such property either in the same or in different ways from those specified in or elsewhere in this subdivision.

#### **Section 4.04 Pay Taxes and Expenses.**

To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust estate.

#### **Section 4.05 Receive Additional Property.**

To receive additional property from any source and administer such additional property as a portion of the appropriate trust or estate under the management of the fiduciary; provided the fiduciary shall not be required to receive such property without the fiduciary's consent.

#### **Section 4.06 Make Advances.**

To advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances with any interest the fiduciary shall have a lien on the assets of the trust or estate as against a beneficiary.

#### **Section 4.07 Exercise Options, Rights, and Privileges.**

To exercise all options, rights and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold such stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary shall deem advisable.

#### **Section 4.08 Insure.**

To carry such insurance coverage, including public liability for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary shall deem advisable.

#### **Section 4.09 Collect.**

To collect, receive, and receipt for rents, issues, profits, and income of an estate or trust.

#### **Section 4.10 Litigate, Compromise or Abandon.**

To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary shall deem advisable, and the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud, bad faith or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries of the estate of trust.

#### **Section 4.11 Employ and Compensate Agents, Etc.**

To employ and compensate, out of income or principal or both and in such proportion as the fiduciary shall deem advisable, in settlement of the estate or administration of any trust, including, but not limited to, agents, accountants, brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct, or default of such agent or representative provided he was selected and retained with due care on the part of the fiduciary.



#### **Section 4.12 Establish and Maintain Reserves.**

To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements, and general maintenance of buildings or other property out of rents, profits, or equalization of payments to or for beneficiaries; provided, however, that the provisions of this subdivision shall not affect the ultimate interest of beneficiaries in such reserves.

#### **Section 4.13 Distribute in Cash or Kind.**

To make distribution of capital assets of the estate of trust in kind or cash, or partially in kind and partially in cash, in divided or undivided interest, as the fiduciary finds to be most practicable and for the best interest of the beneficiaries and to determine the value of capital assets for the purpose of making distribution thereof if and when there be more than one beneficiary thereof, which determination shall be binding upon the beneficiaries unless clearly capricious, erroneous and inequitable; provided, however, that the fiduciary shall not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.

#### **Section 4.14 Pay to or for Minors or Incompetents.**

To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

1. Directly to such minor or incompetent;
2. To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital or other institutional care of such minor or incompetent;
3. To the legal or natural guardian of such minor or incompetent;
4. To any other person, whether or not appointed guardian of the person by any Court, who shall, in fact have the care and custody of the person of such minor or incompetent. The fiduciary shall not be under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including minor or incompetent, to whom such payments were made; and the receipt of such person shall be full acquittance to the fiduciary.

#### **Section 4.15 Make Contracts and Execute Instruments.**



To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of powers herein granted.

## **ARTICLE 5**

### **Administrative Provisions**

#### **Section 5.01 Spendthrift Provision.**

Except as otherwise expressly provided in this Declaration, no beneficiary of any trust provided for in this Declaration shall have any right, power, or authority to alienate, encumber, or hypothecate his or her interest in the principal or income of such trust in any manner, nor shall such interest of any beneficiary be subject to claims of his or her creditors or liable to attachment, execution, or other process of law.

#### **Section 5.02 Law for Construction of Trusts.**

This Declaration of trust and the validity of, construction of, and all rights under the trust provided for in this Declaration shall be governed by the laws of the State of North Carolina.

#### **Section 5.03 Invalidity of Any Provision.**

Should any provision of this Declaration be or become invalid or unenforceable, the remaining provision of this Declaration shall be and continue to be fully effective.

#### **Section 5.04 Payment of Trustee.**

The Trustmakers of this Trust shall not be entitled to any fee for acting as the initial Trustee(s) of this Trust. At the death of the second Trustmaker, the successor Trustee shall be entitled to collect a fee for services rendered in connection with administration and distribution of this Trust. The amount of the shall be the amount allowed under the provisions of the General Statutes of the State of North Carolina.

#### **Section 5.05 Gender and Number.**

As used in this Declaration, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

In witness whereof, we have hereunto set our hands and affixed our seals in full approval and acceptance of the trust provided for in this declaration and hereby acknowledge the signature of my spouse to this instrument.

This the April 6<sup>th</sup> of \_\_\_\_\_, 2021.

John D. Hammond (Seal)  
JOHN D. HAMMOND

Individually and as Trustmaker and Initial Trustee

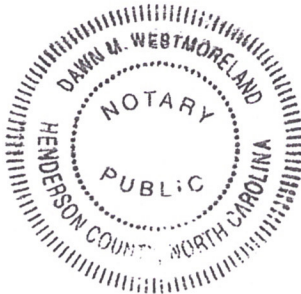
STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, Dawn M. Westmoreland, a Notary Public of said State and County, do hereby certify that John D. Hammond, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notorial Seal, this the 6<sup>th</sup> of April, 2021.

My commission expires: 10/02/2022



Dawn M. Westmoreland  
Notary Public





CITY OF HENDERSONVILLE  
COMMUNITY DEVELOPMENT DEPARTMENT

100 N. King St. ~ Hendersonville, NC ~ 28792  
Phone (828) 697-3010 ~ Fax (828) 697-6185  
www.hendersonvillenc.gov

**PETITION REQUESTING ANNEXATION**

The following are required to constitute a complete application for voluntary annexation:

- ~This form including the property owner's signature
- ~A copy of the deed indicating ownership of the property.
- ~An annexation plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ~ A typed boundary description of the property

Date 12/22/2022

Location / Property Address 102 Francis Road, Hendersonville NC

List 10 digit PIN or 7 digit PID number 9579-48-2415

Does this property adjoin the present City Limits?



YES



NO

Is the property within the ETJ?



YES



NO

Reason for annexation

Intention to connect to city utilities

Applicant Name DHIC, LLC

Address 2000 Aerial Center Parkway, Morrisville NC 27560

Phone 240-997-4816

Fax

Email

tmartinson@drhorton.com

Property Owner: Name John Hammond; Betty Hammond

Address 8 Stoney Nob Drive, Hendersonville, NC 28792

Signature

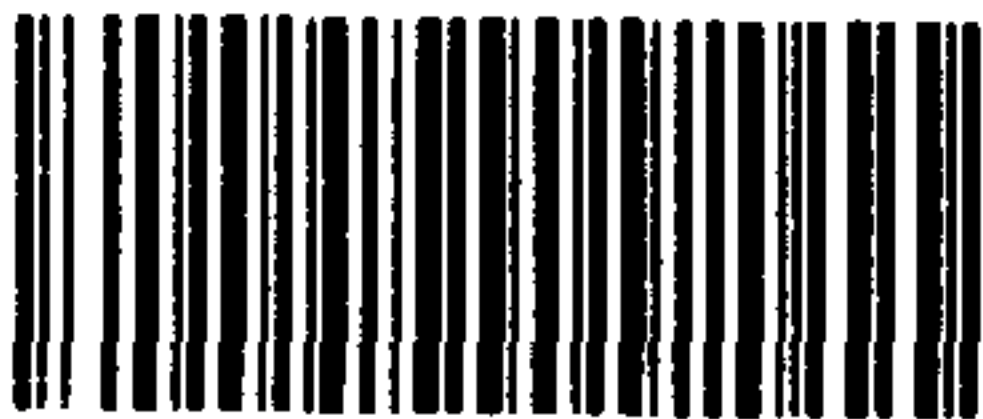
*John Hammond Betty Hammond*

Printed Name

*John Hammond Betty Hammond*

Official Use:

DATE RECEIVED: \_\_\_\_\_ BY \_\_\_\_\_



This document presented and filed:  
07/21/2021 12:55:30 PM

SRS

WILLIAM LEE KING, Henderson COUNTY, NC  
Transfer Tax: \$230.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise tax: \$230.00 (\$115,000.00)

Parcel Identifier No. 9579-48-2415

Mail after recording to: The Collie Law Firm, PLLC

This instrument was prepared by: Griffin & Schaefer, P.A. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds. No title examination performed by deed preparer.

THIS DEED is made this 19<sup>th</sup> day of July 2021, between

GRANTOR

GRANTEE

DEANA ROSS OWEN, Administrator of the  
Estate of Jerry Wayne Owen and  
DEANA ROSS OWEN, an unmarried  
widow

JOHN HAMMOND and wife,  
BETTY HAMMOND

Address: 447 Daniel Lane  
Waynesville, NC 28786

Address: 8 Stoney Knob Drive  
Hendersonville, NC 28792

If checked, this WAS a Grantor's Principal  
Residence (otherwise ignore):

The designations Grantor and Grantee shall include the parties, their respective heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

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



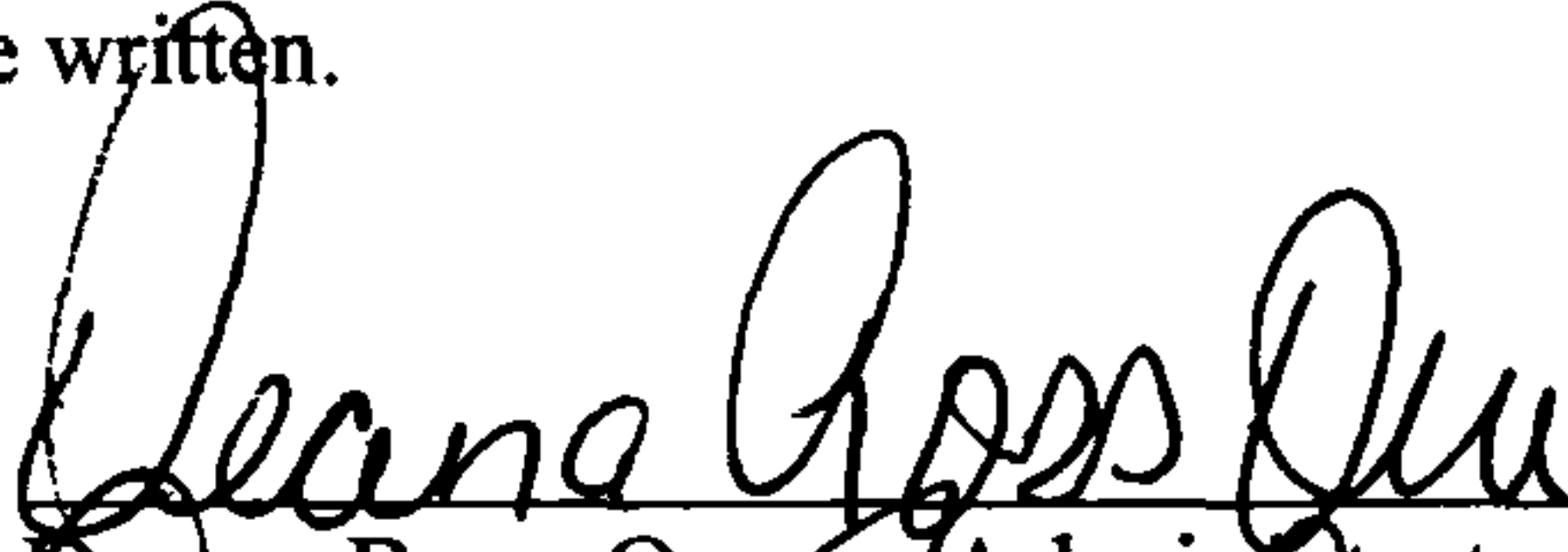
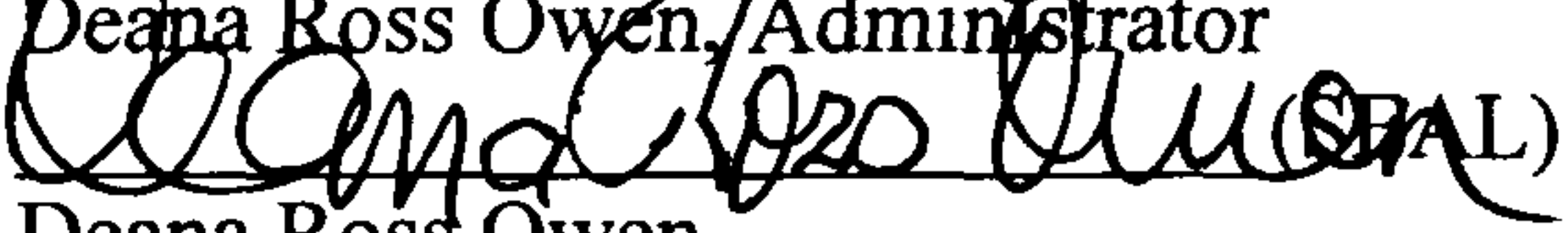
SEE ATTACHED EXHIBIT A INCORPORATED HEREIN FOR COMPLETE DESCRIPTION:

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

Easements, restrictions, rights of way of record, and 2021 ad valorem taxes.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

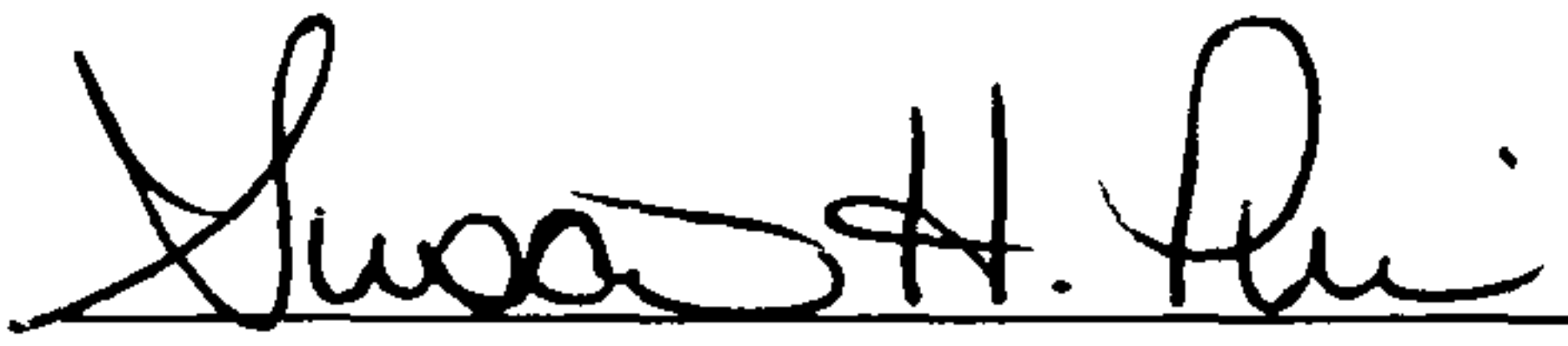
 (SEAL)  
Deana Ross Owen, Administrator  
 (SEAL)  
Deana Ross Owen

SEAL-STAMP

Haywood County, State: North Carolina

SUSAN H. PURVIS  
Notary Public, North Carolina  
Haywood County  
My Commission Expires  
January 20, 2022

I certify that the following persons personally appeared before me this day, each acknowledging to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Deana Ross Owen, Administrator of the Estate Jerry Wayne Owen and Deana Ross Owen, an unremarried widow.

7-19-2021  
Date  
  
Official Signature of Notary  
Notary Public  
Notary's printed or typed name:  
SUSAN H. PURVIS

My commission expires: 01-20-2022

**EXHIBIT A****LYING AND BEING IN HENDERSONVILLE TOWNSHIP,  
HENDERSON COUNTY, NORTH CAROLINA****TRACT I:**

**BEGINNING** at a stake in the Riley Stepp East line with a post oak marked as a pointer, said pointer standing South 80° East 4 feet from said stake and runs South 78° West 212 feet to a stake in East margin of road; thence with East margin of the said road, South 32° East 100 feet to a stake in the Stepp south line; thence South 84° East 142 feet to a stake in McKnight's line; thence North 6° East 196 feet to the point and place of **BEGINNING**, containing 1/2 acre more or less.

**TRACT II:**

**BEGINNING** at a stake on the east side of cross street which leads into Riley Stepp's residence, said stake being the northwest corner of Lot #15 as conveyed by Laurie A. Gossett and wife, Alma C. Gossett to Riley Stepp and running thence with the line of said lot, North 79° 30' East 254 feet to a stake in the old line, thence with said old line North 2° 30' East 57 feet to a stake, the northeast corner of the original tract; thence with the northern boundary line of said tract, North 84° 30' West 255 feet to an iron stake, the most northerly corner of said tract, thence South 7° East 91 feet to a stake, thence South 4° 30' West 38.7 feet to the point and place of **BEGINNING**, and **BEING** all of Lot #16 as shown on a Plat of Mt. View Subdivision on the Chimney Rock Road, recorded in Deed Book 310 at Page 619, Henderson County Registry.

**TOGETHER WITH and SUBJECT TO** easements, rights of way and all other such matters as shown on the above-referenced plat and further of record in the Henderson County Registry.

**AND BEING** that property conveyed to Jerry Wayne Owen, by deed recorded March 7, 2013, in Deed Book 1526, at Page 72, Henderson County Registry.

*Deana Ross Owen acquired sole ownership of the subject property upon the passing of Jerry Wayne Owen on May 20, 2020 in Haywood County, North Carolina, by the laws of intestacy as evidenced by Estate File 21 E 750, Henderson County Clerk of Courts Office.*



BK 3817 PG 216 - 218 (3)

DOC# 966915

This Document eRecorded:

11/08/2021 04:16:11 PM

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$0.00

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Parcel Identifier No: \_\_\_\_\_ Verified by \_\_\_\_\_ County on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

---

Mail/Box to: Lyda Law Firm -- 308 Martin Luther King Jr. Blvd -- Hendersonville, NC 28792

This instrument was prepared by: JACK A. LYDA (Deed Prep Only; No Title Search Performed)

Brief description for the Index:

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THIS DEED made this 8<sup>th</sup> day of November, 2021, by and between

GRANTOR	GRANTEE
<p><b>JOHN D. HAMMOND and wife, BETTY J. HAMMOND and ELIZABETH JEAN HAMMOND HOLMSTEDT, A Widowed and Un-remarried Woman and LAURA JANE HAMMOND GARNETT, A Widowed and Un-remarried Woman</b></p> <p>Address: _____</p>	<p><b>JOHN HAMMOND, as Trustee of THE HAMMOND FAMILY TRUST</b></p> <p>Address: 8 Stoney Nob Drive Hendersonville, NC 28792</p>

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

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

**BEING ALL OF THAT PROPERTY DESCRIBED IN THAT DEED RECORDED OCTOBER 31, 1960 IN BOOK 389, PAGE 93 IN THE HENDERSON COUNTY, NORTH CAROLINA REGISTER OF DEEDS OFFICE.**

The property being transferred by this Deed does \_\_\_\_ or does not X include the primary residence of either Grantor. (Per N.C.G.S. §105-317.2)

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3375, page 492, Henderson County, North Carolina Register of Deeds Office.

A map showing the above-described property is recorded in Plat Slide \_\_\_\_\_, Henderson County, North Carolina Register of Deeds Office.

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

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

Henderson County ad valorem taxes for 2022, and subsequent years, which are a lien, but not yet due and payable, easements, rights of way, zoning and land use, statutes, regulations and restrictions of record.

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

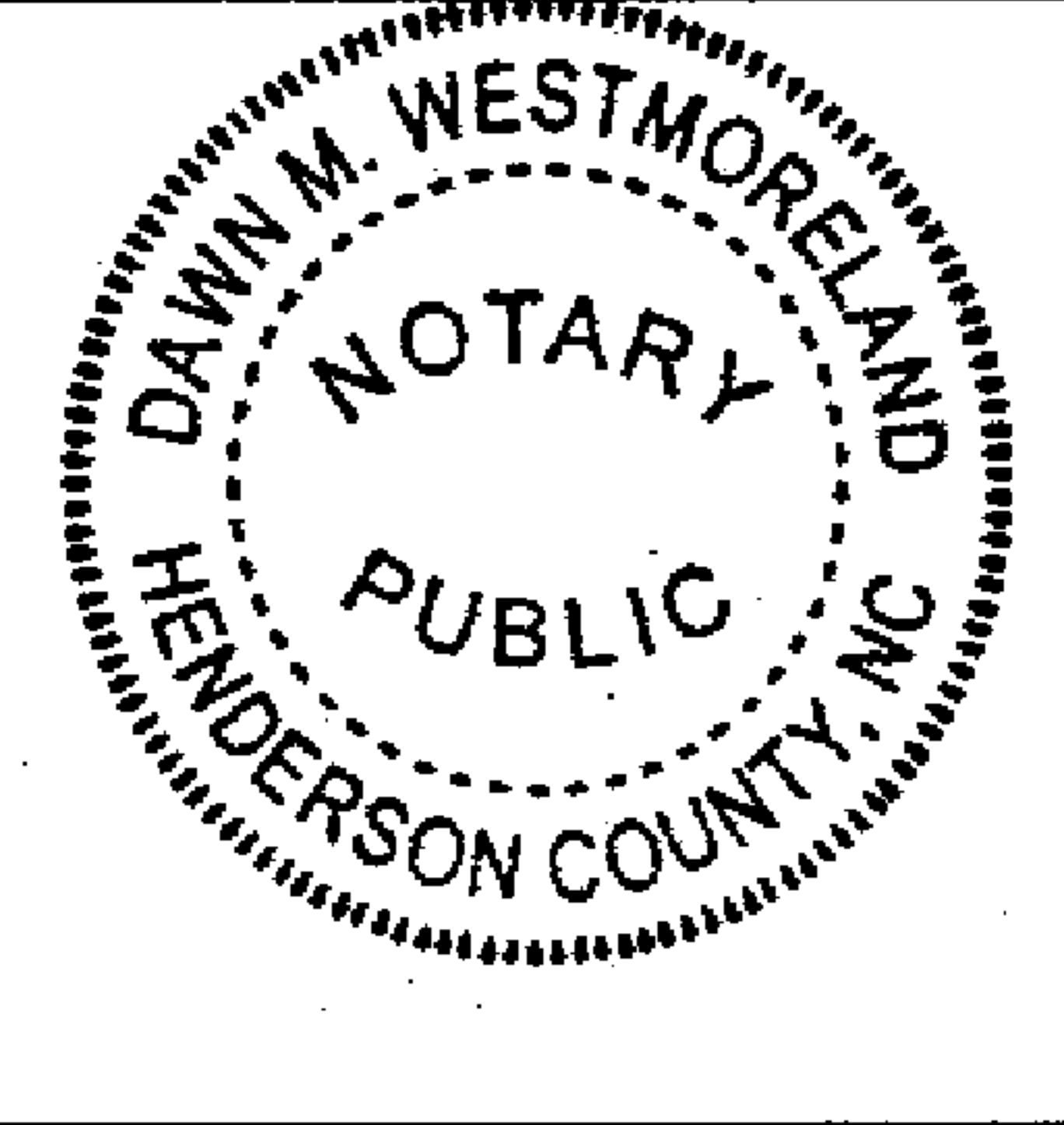
John D. Hammond (SEAL)  
JOHN D. HAMMOND

Betty J. Hammond (SEAL)  
BETTY J. HAMMOND

Elizabeth Jean Hammond Holmstedt  
by John DeMerritt Hammond (SEAL)  
ELIZABETH JEAN HAMMOND HOLMSTEDT by  
And through her POA, JOHN DeMERRITT HAMMOND

Laura Jane Hammond Garnett  
by John D. Hammond (SEAL)  
LAURA JANE HAMMOND GARNETT by and through  
Her AIF, JOHN D. HAMMOND

SEAL-STAMP



State of North Carolina – County of Henderson

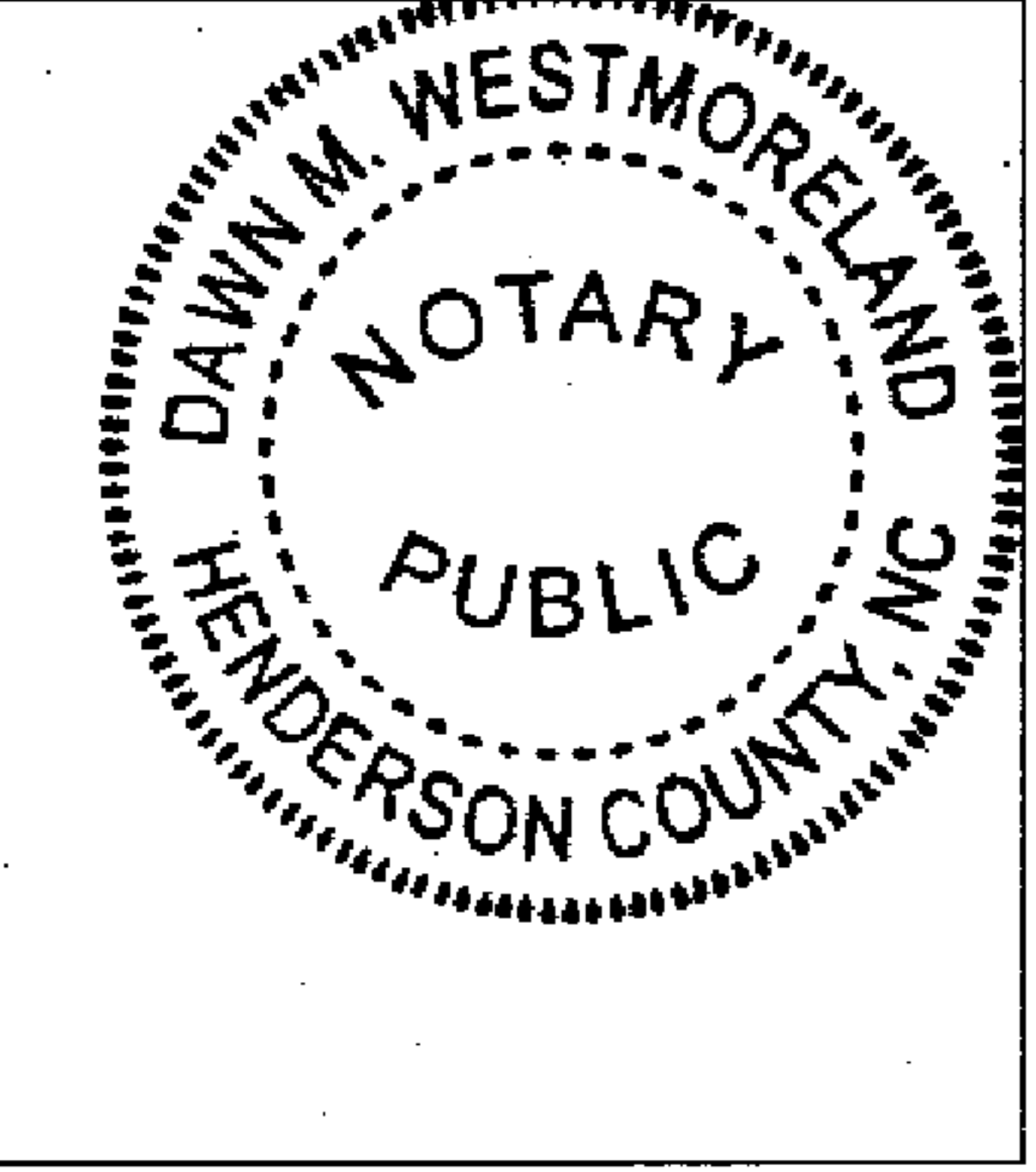
I, Dawn M. Westmoreland, the undersigned Notary Public of the County and State aforesaid, certify that **JOHN D. HAMMOND and BETTY J. HAMMOND**, Grantors, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial stamp or seal this 2<sup>nd</sup> day of November, 2021.

My Commission Expires: 10/02/2026

Dawn M Westmoreland  
Notary Public

SEAL-STAMP



State of North Carolina - County of Henderson

I, Dawn M. Westmoreland, the undersigned Notary Public of the County and State aforesaid, certify that **JOHN DeMERRITT HAMMOND** Power of Attorney for **ELIZABETH JEAN HAMMOND HOLMSTEDT** personally appeared before me this day and being by me duly sworn, says that he executed the foregoing and annexed instrument for and on behalf of **ELIZABETH JEAN HAMMOND HOLMSTEDT**, and that his authority to execute and acknowledge this instrument is contained in an instrument duly executed, acknowledged and recorded, in the office of the Register of Deeds in the County of Henderson, State of North Carolina, on the 7<sup>th</sup> day of July, 2021 in Book 3743, Page 371 and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney

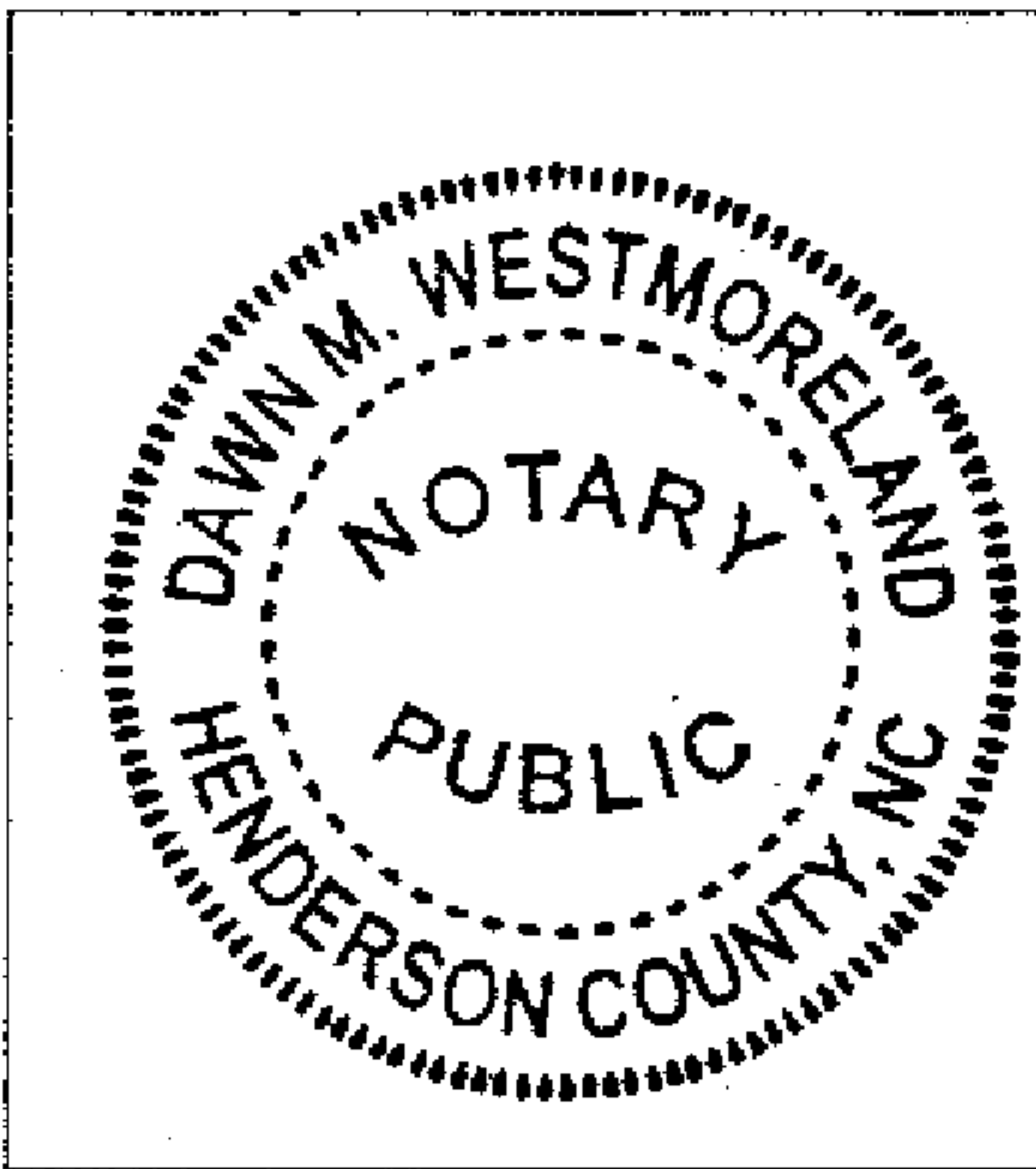
I do further certify that the said **JOHN DeMERRITT HAMMOND** acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said **ELIZABETH JEAN HAMMOND HOLMSTEDT**.

Witness my hand and Notarial stamp or seal this 2<sup>nd</sup> day of November, 2021.

My Commission Expires: 10/02/2026

Dawn M Westmoreland  
Notary Public

SEAL-STAMP



State of North Carolina - County of Henderson

I, Dawn M. Westmoreland, the undersigned Notary Public of the County and State aforesaid, certify that **JOHN D. HAMMOND**, Attorney-In-Fact for **LAURA JANE HAMMOND GARNETT**, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing and annexed instrument for and on behalf of **LAURA JANE HAMMOND GARNETT**, and that his authority to execute and acknowledge this instrument is contained in an instrument duly executed, acknowledged and recorded, in the office of the Register of Deeds in the County of Henderson, State of North Carolina, on the 7<sup>th</sup> day of July, 2021, in Book 3743, Page 370 and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney

I do further certify that the said **JOHN D. HAMMOND** acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said **LAURA JANE HAMMOND GARNETT**.

Witness my hand and Notarial stamp or seal this 2<sup>nd</sup> day of November, 2021.

My Commission Expires:  
10/02/2026

Dawn M Westmoreland  
Notary Public

The foregoing Certificate(s) of \_\_\_\_\_  
is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof. \_\_\_\_\_ Register of Deeds for \_\_\_\_\_ County  
By: \_\_\_\_\_ Deputy/Assistant - Register of Deeds



<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"><li>1. Resolution of Intent</li><li>2. Street Closure Plat</li><li>3. GIS Map</li><li>4. Legal Description</li><li>5. Street Closure Application</li><li>6. Deeds</li></ol>
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Resolution #\_\_-\_\_

**RESOLUTION OF INTENT TO CLOSE AN UNOPENED,  
UNIMPROVED PORTION OF LAWS AVENUE**

**WHEREAS**, NC General Statute (G.S.) 160A-299 authorizes the City Council to close public streets and alleys; and

**WHEREAS**, Danny Huggins, Sara Huggins and Katheryn Enloe Writesel have petitioned the City of Hendersonville City Council to close an unopened and unimproved portion of the street known as Laws Avenue, located between PINs 9568-18-1100, 9568-18-1372, 9568-18-3257 and 9568-18-3133; and

**WHEREAS**, NC General Statute 160A-299 requires that City Council conduct a public hearing for the purpose of giving consideration to the petition; and

**WHEREAS**, At the public hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual; and

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

1. City Council herewith calls a public hearing to be held at 5:45 p.m. (or as soon thereafter as it may be heard) on the 6<sup>th</sup> day of April, 2023, in the Assembly Room of the City Operations Center to consider closing an unopened and unimproved portion of the street known as Laws Avenue located between PINs 9568-18-1100, 9568-18-1372, 9568-18-3257 and 9568-18-3133. Persons shall be allowed to attend and comment in person or via Zoom at the following address:

<https://zoom.us/join>

Dial-in by phone: (646) 558-8656  
Meeting ID: 822 0104 2528  
Passcode: 1847

Digital public hearing comments may be submitted prior to the public hearing on the City's webpage at [www.hendersonvillenc.gov/public-comment](http://www.hendersonvillenc.gov/public-comment) or directly to the City Clerk, Jill Murray, [jmurray@hvlnc.gov](mailto:jmurray@hvlnc.gov), 160 6<sup>th</sup> Avenue East, Hendersonville, NC 28792.

2. The legal description for the portion of Laws Avenue proposed for closing is as follows:

Beginning on a 3/4" iron pipe, said iron pipe standing S 83°36'39" E 73.23' from the northwestern most corner of the Huggins property as described in Deed Book 838, Page 055, and continuing thence from said beginning point thus established, N 06°41'02" E 20.00' to a point, thence N 06°41'02" E 9.25' to a 3/4" iron pipe, said pipe marking the southwestern corner of the Enloe property as described in Deed Book 1388, Page 679, and continuing thence S 87°40'12" E 258.20' to a



point, thence S 02°29'48" E 20.98' to a 1/2" iron pipe, thence N 87°25'58" E 124.94' to a 3/4" iron pipe, thence N 87°25'58" E 10.47' to a 1/2" iron pipe set, thence S 04°16'22" 24.84' to a point, thence S 04°16'22" 20.00' to a 1/2" iron pipe, thence S 85°45'15", passing through a 1/2" iron pipe at 67.39', a total distance of 150.00' to a 1/2" iron pipe, thence N 65°55'09" W 35.00' to a 1/2" iron pipe, thence N 65°42'22" W 41.74' to a point, thence N 83°28'54" W 182.52' to the point and place of beginning. Containing 0.37 Acres (16213 SF) and being an unopened portion of "Laws Avenue" as shown on survey by Associated Land Surveyors & Planners, PC bearing job number S-22-753.

- 3. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
- 4. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
- 5. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be prominently posted in at least two along the portion of Laws Avenue proposed for closure as required by G.S. 160A-299.
- 6. The City Council herewith declares its intent to close the street as described above.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8<sup>th</sup> day of February, 2023.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney


*This Plat Represents A Street Or Alley To Be Closed By The City Of Hendersonville,  
North Carolina City Council Pursant To NCGS 160A-299, By Ordinance Duly  
Adopted (Order To Close \_\_\_\_\_). This \_\_\_\_\_ Day of \_\_\_\_\_, 2023.*

\_\_\_\_\_  
*Mayor City of Hendersonville*

Attest: \_\_\_\_\_  
*City Clerk*

---

*Review Officer*
*Date*


 I, Cameron S. Baker, certify that this plat was  
 drawn under my supervision from an actual survey under my  
 supervision, (deed description recorded in Book As Shown,  
 Page           ), that the ratio of precision as calculated by  
 adjusting all measurements does not exceed 1:10,000 and that  
 the same was prepared in accordance with G.S. 47-30 as amended.  
 Witness my original signature, license number and seal  
 this 12th day of January, 2023.

Professional Land Surveyor No. L-4920

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

Professional Land Surveyor No. L-4920

Broadway St.  
SR 1180, Asphalt  
Right of Way Not Found

*Wildwood Road*  
Public, Asphalt  
Right of Way Not Found

Toledo  
D.B. 1659, Pg. 31  
P.Cab. B, Slide 208

Approx. 16213 Sq. Ft.  
(Unopened Portion of  
Laws Avenue to Be Closed)

Westbrook Rd

SR 1182, Asphalt  
Right of Way Varies as per NCDOT

1. Property is subject to all easements, restrictions and right of ways of record.
2. The locations of underground utilities are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered.
3. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.
4. The certification of survey and plat was prepared for the entity named in the title block hereon and does not extend to any other entity, unless recertified by the professional land surveyor.
5. All miscellaneous survey related materials, including but not limited to, project plans, deed and ROW research, maps, field notes and data, survey reports, record title report, calculations, working drawings, estimates, and other materials acquired and/or prepared by the surveyor as instruments of service shall remain the property of the surveyor and assigns.
6. This drawing is not valid unless the original signature and stamp are attached. Any reproduction or variance to this survey by electronic or any other means are not to be considered issued by the professional surveyor.
7. Properties are currently zoned R-20 by the City of Hendersonville.

L9 - L13, L19-L20 Are Tie Lines  
L14-L18 Are The Centerline of the 40' Right of Way As Per Plat Slide 818  
L15-L18 Are The Centerline of the 40' Right of Way To Be Closed

Course	Bearing	Distance
L1	N 33°24'49" W	23.04'
L2	S 83°36'39" E	73.23'
L3	N 82°43'41" E	23.89'
L4	S 02°29'48" E	20.98'
L5	N 87°25'58" E	10.47'
L6	S 14°23'42" W	34.88'
L7	N 65°55'09" W	35.00'
L8	N 65°42'22" W	41.74'
L9	N 01°08'11" W	54.26'
L10	N 00°56'10" W	95.37'
L11	N 85°07'58" E	41.97'

Course	Bearing	Distance
L12	N 29°52'20" W	24.80'
L13	N 29°52'24" W	24.80'
L14	S 83°36'39" E	88.00'
L15	S 83°28'54" E	185.59'
L16	S 65°42'22" E	44.83'
L17	S 65°55'09" E	29.92'
L18	N 85°45'15" E	144.94'
L19	N 06°41'02" E	20.00'
L20	N 06°41'02" E	9.25'

**Legend:**  
 ECM = Existing Concrete Monument  
 EIP = Existing Iron Pipe  
 EIS = Existing Iron Stake  
 IPS = Iron Pipe Set  
 0 = Unmarked Point, Unless Otherwise Noted  
 ROW/MON = Right of Way Monument  
 ROW = Right of Way  
 RRS = Railroad Spike  
 CCP = Corrugated Concrete Pipe  
 CMP = Corrugated Metal Pipe  
 P/P = Power Pole  
 W/M = Water Meter  
 — x — = Fence

Map of Street Closure for  
The City of Hendersonville  
Of an Unopened Portion of  
Laws Avenue

Pin: As Shown

Hendersonville Township	Henderson County, NC
-------------------------	----------------------

ALS

ASSOCIATED LAND SURVEYORS

& PLANNERS PC.  
P.O. BOX 538 \* HORSE SHOE NC 28742

(828) 890-3507 NC BUSINESS LICENSE NO. C-277

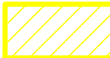
SCALE: 1 Inch = 30 Feet	DATE: November 14, 2022
-------------------------	-------------------------

JOB NO.: 3-22-755	DRAWN BY: JTB	INTERCAD
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**Portion of Laws Avenue**  
C23-01-SCL  
PINs: 9568-18-1100, -1372, -3257, -3133  
Acreage: 0.37  
**Street Closure Map**  
Community Development Department

 Area to be Closed





### **Legal Description for Right of Way Closure – Unopened Portion of Laws Avenue**

Beginning on a 3/4" iron pipe, said iron pipe standing S 83°36'39" E 73.23' from the northwestern most corner of the Huggins property as described in Deed Book 838, Page 055, and continuing thence from said beginning point thus established, N 06°41'02" E 20.00' to a point, thence N 06°41'02" E 9.25' to a 3/4" iron pipe, said pipe marking the southwestern corner of the Enloe property as described in Deed Book 1388, Page 679, and continuing thence S 87°40'12" E 258.20' to a point, thence S 02°29'48" E 20.98' to a 1/2" iron pipe, thence N 87°25'58" E 124.94' to a 3/4" iron pipe, thence N 87°25'58" E 10.47' to a 1/2" iron pipe set, thence S 04°16'22" 24.84' to a point, thence S 04°16'22" 20.00' to a 1/2" iron pipe, thence S 85°45'15", passing through a 1/2" iron pipe at 67.39', a total distance of 150.00' to a 1/2" iron pipe, thence N 65°55'09" W 35.00' to a 1/2" iron pipe, thence N 65°42'22" W 41.74' to a point, thence N 83°28'54" W 182.52' to the point and place of beginning. Containing 0.37 Acres (16213 SF) and being an unopened portion of "Laws Avenue" as shown on survey by Associated Land Surveyors & Planners, PC bearing job number S-22-753.

- PO Box 578 Horse Shoe NC 28742 • (828) 890 3507 •
- Fax (828) 890 3520 • [www.ALS88.com](http://www.ALS88.com) •



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

**Petition Requesting to Permanently Close a Street/Alley**

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

- ☒ 1. Completed Application Form
- ☒ 2. Appropriate Fee
- ☒ 3. A copy of the deed indicating ownership of the property.
- ☒ 4. A Survey Plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ☒ 5. A typed boundary description of the area to be closed, in digital format if possible.

**A. Property Information**

PIN(s): 105908, 106038, 9943505 & 9949866

Name of Alley/Street: Laws Avenue

Are you proposing to close a street or alley? ☒ Street ☐ Alley

Are you closing all or a portion of the street/ alley? ☒ Portion ☐ All

**B. Property Owner Contact Information**

Danny Huggins 12-19-22  
\* Printed Applicant Name Date

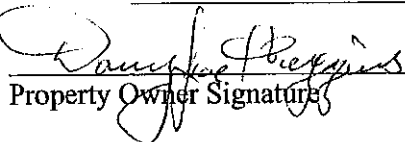
Printed Company Name (if applicable) \_\_\_\_\_

Office Use:  
Date Received: \_\_\_\_\_ By: \_\_\_\_\_



☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☐ Other: \_\_\_\_\_

  
Property Owner Signature

Property Owner Title (if applicable)

504 Broadway Street

Address of Property Owner

Hendersonville, NC 28739

City, State, and Zip Code

828-697-1760

Telephone

gosling\_atlas@yahoo.com

Email

**C. Additional Property Owner Contact Information (if needed)**

Katheryn Enloe Writesel

\* Printed Applicant Name

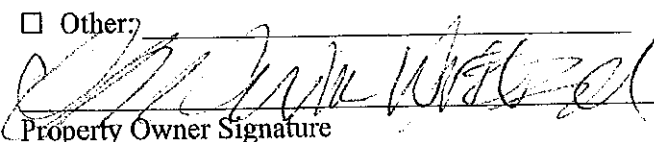
12-19-2022

Date

Printed Company Name (if applicable)

☐ Corporation      ☐ Limited Liability Company      ☐ Trust      ☐ Partnership

☐ Other: \_\_\_\_\_

  
Property Owner Signature

Property Owner Title (if applicable)

200 Wildwood Road

Address of Property Owner

Hendersonville, NC 28739

City, State, and Zip Code

828 - 230 - 4780

Telephone

ladykathryn111@gmail.com

Email

**D. Additional Property Owner Contact Information (if needed)**

Sara T Huggins

\* Printed Applicant Name

1/11/2023

Date

Printed Company Name (if applicable)

☐ Corporation

☐ Limited Liability Company

☐ Trust

☐ Partnership

☐ Other:

Sara T Huggins

Property Owner Signature

Property Owner Title (if applicable)

504 Broadway Street

Address of Property Owner

Hendersonville, NC 28739

City, State, and Zip Code

828 - 647 - 1760

Telephone

gosling-atlas@yahoo.com

Email

Filed and recorded in the Register of Deeds Office for  
Henderson County, N.C. this 29 day of JULY, 20 02  
at 2:25 o'clock P M. in Book 1107 at page 27

Nedra W. Moler  
Register of Deeds  
by: Willa Blair, Deputy

\$ 24.00 PAID 7-29-02  
Henderson Co., N.C., Register of Deeds

Excise Tax \$24.00

Tax Lot No.	Parcel Identifier No.
Verified by _____	County on the _____ day of _____, 19____
by _____	

Mail after recording to Veazey Law Firm, 210 N. Main St., Hendersonville, NC 28792  
This instrument was prepared by Lex H. Veazey

Brief Description for the Index	Lot 3 of G.C. Richardson, Jr. Estate Property
---------------------------------	--

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this the \_\_\_\_\_ day of July, 2002, by and between

GRANTOR	GRANTEE
PAMELA ANNE KARR, TRUSTEE under the Will of MARGARET CHAPMAN RICHARDSON HYSONG, also known as PEGGY C. HYSONG	DANNY J. HUGGINS and wife, SARA T. HUGGINS (Mailing Address: PO Box 2554 Hendersonville, NC 28793)

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g., corporation or partnership.

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

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

BEING all of Lot 3 containing 0.463 acre, as shown on a map of the G.C. Richardson, Jr., Estate property prepared by Steven L. Waggoner, RLS, of record in Slide 818 in the Office of the Register of Deeds for Henderson County, North Carolina, reference to which is hereby made and incorporated herein for a more specific description.

BEING that property conveyed to Peggy C. Richardson in Deed Book 771 at Page 570, Henderson County Registry. Peggy C. Richardson, also known Margaret Chapman Richardson Hysong, died Testate on March 22, 1993. Her Will, filed in Henderson County, NC, Estate File 93-E-247, willed her estate to Pamela Anne Karr, as Trustee for her children.

PAK

31107 P028

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

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

Title to the property hereinabove described is subject to the following exceptions:

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

MARGARET CHAPMAN RICHARDSON HYSONG  
TRUST

By: \_\_\_\_\_

ATTEST:

(Corporate Seal)

By: Pamela Anne Karr, Trustee (SEAL)  
PAMELA ANNE KARR, TRUSTEE under the Will of  
MARGARET CHAPMAN RICHARDSON HYSONG,  
also known as PEGGY C. HYSONG

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

NORTH CAROLINA, Davie COUNTY.

I, a Notary Public of the County and State aforesaid, certify that PAMELA ANNE KARR, TRUSTEE under the Will of MARGARET CHAPMAN RICHARDSON HYSONG, also known as PEGGY C. HYSONG, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 24<sup>th</sup> day of July, 2002.

NOTARY STAMP/SEAL TO THE RIGHT OF THIS LOCATION  
(must be no closer than 1/2" of right margin)

My commission expires: Nov. 4, 2002

Gloria C. Caudle  
Notary Public



NORTH CAROLINA, \_\_\_\_\_ County.

I, a Notary Public of the County and State aforesaid, certify that , personally came before me this day and acknowledged that he/she is \_\_\_\_\_ Secretary of , a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by him/her as its \_\_\_\_\_ Secretary. Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

NOTARY STAMP/ SEAL TO THE RIGHT OF THIS LOCATION  
(must be no closer than 1/2" of right margin)

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

The foregoing Certificate of GLORIA C CAUDLE, NOTARY PUBLIC is ~~not~~ certified to be correct. This instrument and this certificate are duly registered at the date and in the Book and Page shown on the first page hereof.

Nedra W. Moles REGISTER OF DEEDS FOR Henderson COUNTY  
By Willa Blair, Deputy Deputy/Assistant Register of Deeds.



FILED IN HENDERSON COUNTY REGISTER OF DEEDS  
OFFICE. NEDRA W. MOLES, REGISTER  
DATE: 12-31-08 TIME: 12:07 PM  
EXCISE TAX STAMP: \_\_\_\_\_  
BOOK: 1383 PAGE: 679

Prepared by: James J. Hugenschmidt, 137 Biltmore Avenue, Asheville, NC 28801  
Return to: James J. Hugenschmidt, 137 Biltmore Avenue, Asheville, NC 28801  
Brief description for the index: NO TITLE EXAMINATION

Tax Lot No: \_\_\_\_\_ Parcel Ident. No. \_\_\_\_\_  
Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_

NORTH CAROLINA SPECIAL WARRANTY DEED

THIS DEED, made this 16 day of December, 2008, between Coleman Enloe, Grantor, and Kathryn Enloe, Grantee, whose address is: 200 Wildwood Road, Hendersonville, NC, 28739.

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

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

See Exhibit A attached hereto.

This property is to be the separate property of the Grantee within the intent and meaning of N.C.G.S. 50-20 and other applicable law.

The property herein above described was acquired by Grantor by instrument recorded in Book 832 at Page 239-241

A map showing the above described property is recorded in Plat Book \_\_\_\_\_ Page \_\_\_\_\_.

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

AND THE GRANTOR covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated.  
Title to the property hereinabove described is subject to the following exceptions:

No title examination.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in the corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first-above written.


(Corporate Name)

By: \_\_\_\_\_

\_\_\_\_\_ President

ATTEST: \_\_\_\_\_

\_\_\_\_\_ Secretary (Corporate Seal)

  
Coleman Enloe


\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

NORTH CAROLINA, BUNCOMBE COUNTY



Seal/stamp

I, a Notary Public of the County and State aforesaid, certify that Coleman Enloe, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of December, 2008.  
My commission expires: 2-4-2011  
Jamie W. Wolfe  
Notary Public

NORTH CAROLINA, BUNCOMBE COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is \_\_\_\_\_ Secretary of \_\_\_\_\_, a North Carolina corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by \_\_\_\_\_ as its \_\_\_\_\_ Secretary. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.  
My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

The foregoing Certificate(s) of \_\_\_\_\_  
\_\_\_\_\_ is/are certified to be correct.  
This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.  
\_\_\_\_\_  
By \_\_\_\_\_ REGISTER OF DEEDS for \_\_\_\_\_ COUNTY  
Deputy/Assistant - Register of Deeds.



EXHIBIT A  
TO DEED FROM THOMAS JOSEPH FAZIO AND WIFE, SUSAN KOPP FAZIO TO  
COLEMAN KEITH ENLOE AND WIFE, KATHRYN TOLAND ENLOE

BEGINNING at an existing iron pin located at the southwestern corner of that property as described in Deed recorded in Deed Book 723, at Page 687, Henderson County Registry; said existing iron pin also being located at the intersection of the eastern margin of the right of way of Wildwood Road with the northern margin of the right of way of Laws Avenue; thence from said beginning point and with the eastern margin of the right of way of Wildwood Road, North 06 degrees 05 minutes 11 seconds East 102.28 feet to an existing iron pin; thence leaving said right of way and travelling with the southern boundaries of the Enevold Tract as described in Deed recorded in Deed Book 689, at Page 277, Henderson County Registry and the Echols Tract as described in Deed recorded in Deed Book 637, at Page 33, Henderson County Registry, North 72 degrees 43 minutes 29 seconds East 223.29 feet to an existing iron pin located in the southern boundary of the Meadows Tract as described in Deed recorded in Deed Book 680, at Page 621, Henderson County Registry; thence with the western boundaries of the Dalton Tract as described in Deed recorded in Deed Book 417, at Page 83 and Deed recorded in Deed Book 400, at Page 591, Henderson County Registry and the Clark Tract as described in Deed recorded in Deed Book 739, at Page 329, Henderson County Registry, South 02 degrees 56 minutes 38 seconds East 179.00 feet to a new iron pin located in the northern margin of the right of way of Laws Avenue; thence with the northern margin of same, North 88 degrees 20 minutes 44 seconds West 257.15 feet to THE POINT AND PLACE OF BEGINNING and being .81 acres, more or less, as shown on a survey prepared by David C. Huntley RLS, entitled "Survey for Coleman Keith Enloe and Kathryn Toland Enloe", dated October 25, 1993 and being Drawing Number H-1183, reference to which is hereby made and incorporated herein.

There is also conveyed to the Grantees herein, their heirs and assigns, a perpetual non-exclusive right of way for purposes of access and utilities, over that right of way known as Wildwood Road and that right of way known as Laws Avenue, said rights of way being shown on that plat of the W.A. Smith Cole Land Annex Park as shown on a plat thereof recorded in Plat Book 4, at Page 49 and re-indexed in Plat Cabinet B, at Slide 315, Henderson County Registry.

AND BEING all of Lots 10 and 11 and a portion of Lots 1, 2, and 9 of the W.A. Smith Cole Land Annex Park Subdivision as shown on plat thereof recorded in Plat Book 4, at Page 49 and re-indexed in Plat Cabinet B, at Slide 315, Henderson County Registry.

This property is conveyed subject to that Boundary Line Agreement as recorded in Deed Book 572, at Page 435, Henderson County Registry and that Perpetual Road Maintenance Agreement recorded in Deed Book 688, at Page 849, Henderson County Registry.

---



\$ 15.00 PAID 5-3-04  
Henderson Co., N.C., Register of Deeds

North Carolina, Henderson County The foregoing certificate(s) of  
James L. Goldsmith Jr.  
Notary Public (~~Notaries Public~~) is/are certified to be correct, this  
instrument presented for registration and recorded in this office  
this 3 day of May, 2004  
at 337 P. in book 1180, page 721

Jesse W. Miles  
Register of Deeds

(Assistant Deputy)

\$ 15.00  
Excise Tax

Tax Lot No. \_\_\_\_\_ Parcel Identifier No. \_\_\_\_\_

Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 2003  
by \_\_\_\_\_

Mail after recording to: Goldsmith Law Office, 212 S.Grove Street Hendersonville, NC 28792

This instrument prepared by: James L. Goldsmith, Jr.

Brief Description for the index Lots 1 and 2 of Wm. Laws, Sr Subdivision

## NORTH CAROLINA GENERAL WARRANTY DEED

*Deed Preparation Only  
No Title Search*

THIS DEED made this 3d. day of May 2004, by and between Grantor and Grantee:

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

**GRANTOR**  
**ROBERT S. CLARK and wife**  
**MARGARET L. CLARK**

**GRANTEE**  
**DANNY J. HUGGINS and wife**  
**SARA T. HUGGINS**

PO Box 2445  
Hendersonville, NC 28793

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

BEGINNING at the northwest intersection of Westbrook Street (SR 1182), formerly known as Huger Street and Laws Avenue, and running North 4 degrees West 100 feet to a point; thence South 86 degrees West 125 feet to a point; thence South 4 degrees East 100 feet to the north margin of Laws Avenue; thence with said north margin of Laws Avenue, North 86 degrees East 125 feet to the point and place of BEGINNING. Being Lots 1 and 2 of Wm. Laws, Sr. Subdivision on Westbrook Street as surveyed and platted by W.C. Jordan on August 10, 1923 and recorded in the Record of Plats for Henderson County. Having PIN # 00956818325755.

Being the identical property as described in Deed from Jesse Mabel Henderson, widow to Robert S. Clark and wife, Margaret L. Clark as recorded in Deed Book 739 at page 329, Henderson County Registry.



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

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

Title to the property hereinabove described is subject to the following exceptions:

Subject to rights of ways, restrictions, easements and zoning regulations, if any.

Subject to Henderson County Ad Valorem taxes.

**IN WITNESS WHEREOF**, the grantor has hereunto set his hand and seal, or has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

\_\_\_\_\_  
(Entity Name) Robert S. Clark (SEAL)  
Robert S. Clark

By: \_\_\_\_\_ (SEAL)  
~~Margaret L. Clark~~

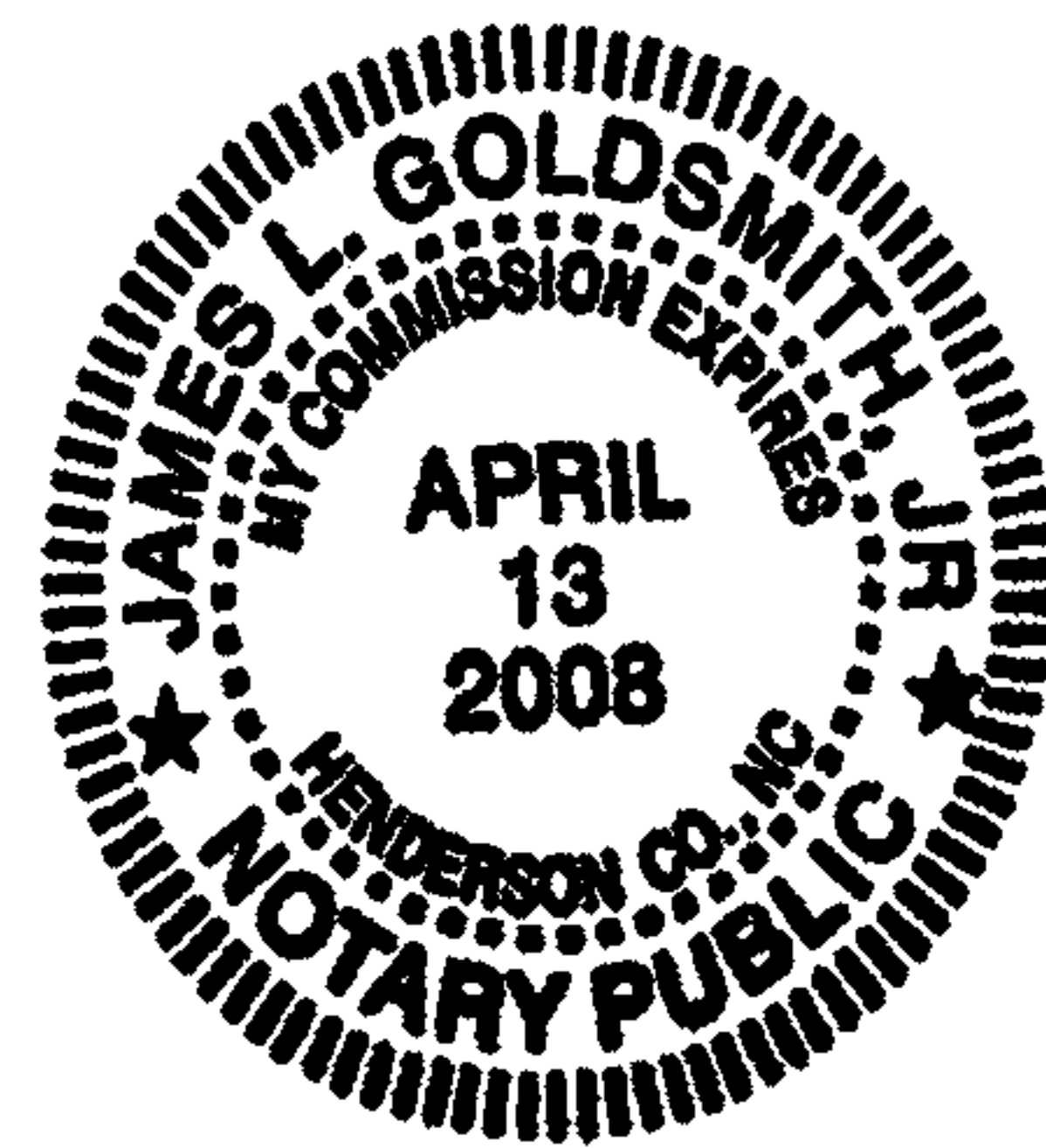
Title: \_\_\_\_\_ (SEAL)  
Margaret L. Clark  
Margaret L. Clark

NORTH CAROLINA  
HENDERSON COUNTY

I, James L. Goldsmith, Jr. a notary public of aforesaid County and State, certify that Robert S. Clark and Margaret L. Clark, Grantors, personally appeared before me this day and acknowledged the execution of the foregoing instrument.  
Witness my hand and official stamp or seal, This 3d day of May, 2004.

James L. Goldsmith, Jr.  
Notary Public

My commission expires: 4/13/08



1208.00

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STATE OF NORTH CAROLINA

EXECUTOR'S DEED

COUNTY OF HENDERSON

THIS DEED, made and entered into this 28th day of January, 1994, by and between B. B. MESSAGEE, III, Executor of the Estate of Margaret Chapman Richardson Hysong, Deceased (hereinafter referred to as the "party of the first part") and DANNY J. HUGGINS and wife, SARA T. HUGGINS (hereinafter referred to as the "party of the second part" and having a mailing address of P.O. Box 2554, Hendersonville, NC 28793);

WITNESSETH:

The said party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00) and Other Valuable Consideration to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do bargain, sell, and quitclaim unto said party of the second part, their heirs and assigns, a certain tract or parcel of land lying and being in Hendersonville Township, Henderson County, North Carolina, more particularly described as follows:

BEGINNING at a point in the eastern margin of the right-of-way of Broadway Street, said point being located North \_\_\_ deg. 30 min. 34 sec. West 194.07 feet from an iron pin located at the northernmost corner of Lot 2, Block C of Central Park Subdivision, shown on that plat recorded in Plat Cabinet B, Slide 280, Henderson County Registry, said Beginning Point also being located at the point of intersection of the eastern margin of the right-of-way of Broadway Street and the southern margin of the unopened road right-of-way of Laws Avenue, and running thence from said Beginning Point in a southerly direction with the eastern margin of the right-of-way of Broadway Street, South 22 deg. 43 min. 12 sec. East 298.59 feet and South 33 deg. 26 min. 26 sec. East 23.04 feet; thence leaving the margin of the right-of-way of Broadway Street and running in a northeasterly direction, North 70 deg. 11 min. 49 sec. East 110.03 feet; running thence, North 20 deg. 27 min. 29 sec. West 71.83 feet; running thence, South 87 deg. 36 min. 46 sec. East 77.08 feet; running thence, North 14 deg. 24 min. 00 sec. East 35.00 feet; running thence, North 00 deg. 03 min. 16 sec. West 113.43 feet to a point in the southern margin of the unopened right-of-way of Laws Avenue; running thence in a westerly direction with the southern margin of the unopened right-of-way of Laws Avenue, North 65 deg. 51 min. 12 sec. West 41.59 feet and North 83 deg. 30 min. 10 sec. West 255.74 feet to the point and place of BEGINNING.

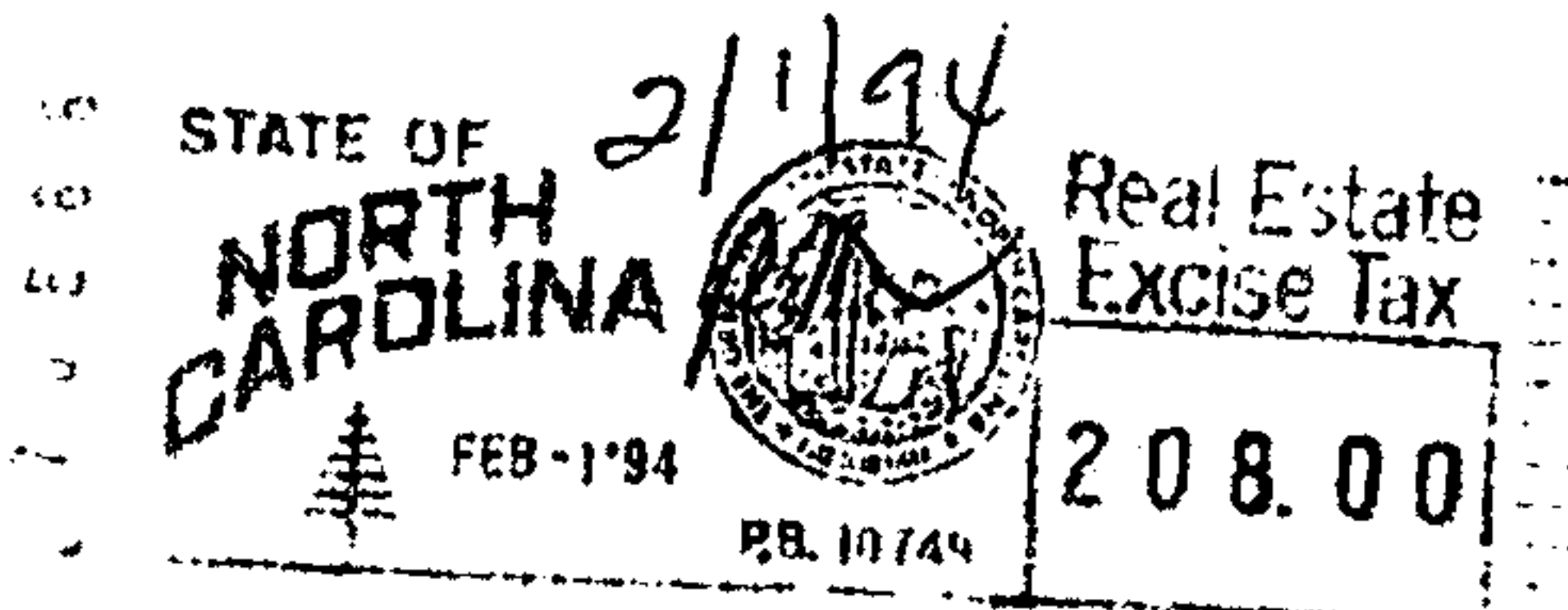
ALSO conveyed and quitclaimed is the party of the first part's right, title and interest (if any) to the non-exclusive use of the gravel drive extending in an easterly direction from the right-of-way of Broadway Street, immediately South of the subject property and then extending in a southeasterly direction to the right-of-way of Fifth Avenue West, for initial ingress, egress and regress.

TO HAVE AND TO HOLD the aforesaid tract or parcel of land, together with all privileges and appurtenances thereunto belonging to them, the said party of the second part and their heirs and assigns in fee simple forever.

And said party of the first part executes and delivers this deed solely in his capacity as Executor of the Estate of Margaret Chapman Richardson Hysong, Deceased. The party of the first part expressly makes no warranties, covenants, or representations to the party of the second part.

IN TESTIMONY WHEREOF, said party of the first part has hereunto set his hand and seal the day and year first above written.

B. B. Messagee, III, Executor of the Estate of Margaret Chapman Richardson Hysong (SEAL)



43 111 11/11/94

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that B. B. Massagee, III, Executor of the Estate of Margaret Chapman Richardson Hysong, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 28th day of February, 1994.

Carolyn P. Maheshie  
Notary Public  
My Commission Expires: June 3, 1994

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

The foregoing certificates of Carolyn P. Maheshie, Notary Public, is certified to be correct. This instrument being presented for registration and recorded in this office this 1 day of February, 1994, at 3:25 P m. in Deed Book 838, Page 55 and verified

Patricia A. Miller  
HENDERSON COUNTY REGISTER OF DEEDS

by: Derek H. Hensley, Deputy







Resolution #\_\_-\_\_\_\_

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL AMENDING  
THE CITY OF HENDERSONVILLE PERSONNEL POLICY**

**WHEREAS**, the City of Hendersonville maintains a Personnel Policy. The purpose of which is to establish a system of personnel administration for recruiting, selecting, employing, developing and maintaining an effective and responsible work force; and

**WHEREAS**, the City of Hendersonville wishes to amend Article III. Section 8 – Reassignments: by clarifying when an employee takes a reassignment, salary may be retained at the same level as long as their current salary falls within the pay range of the lower grade. If the employee retains their current salary, they will not be eligible for the 5% increase or probation completion level if they accept a position at a higher pay grade in the future unless the position they are promoted into is in a higher salary range than the position they moved from in the reassignment; exceptions will be on a case by case basis, authorized and approved by the City Manager; and

**WHEREAS**, the City of Hendersonville also wishes to amend Article VII. Section 8- Vacation Leave: Maximum Accumulation. Vacation leave may be accumulated without any applicable maximum until the last payroll in December. However, if the employee departs from service, payment for accumulated vacation leave shall not exceed 40 days prorated as shown in Section 16. Effective December 31<sup>st</sup>, any employee with more than 40 days of accumulated leave shall have the excess accumulation removed so that only 40 days are carried forward to January 1 of the next calendar year. Those hours, in excess of 40 days, shall be converted to the employee’s sick leave account. Employees are not eligible to receive pay for vacation time not taken.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation; and

**WHEREAS**, the change is being made due to the limitations in the current payroll system. The vacation to sick rollover time is calculating based on last payroll of the calendar year and is not taking into consideration absence time used through the end of December that falls into the first January payroll; and

**WHEREAS**, the City of Hendersonville also wishes to amend Article VII. Section 14- Transfer of Sick Leave from a Previous Employer by clarifying when sick leave from a previous employer covered by the State or Local Government Retirement System will be accepted. The City will accept sick leave balances when documented by a previous employer when the employee worked for a previous employer covered by the State or Local Government Retirement System and the employee did not withdraw accumulated contributions from that employer when leaving employment. The sick leave will be treated as though it were earned with the City of Hendersonville. The sick leave amount must be certified by the previous employer and it is the employee’s responsibility to provide

documentation from his or her previous employer within three (3) months of employment. Transferred sick leave will be credited to the employee upon their hire date; and

**WHEREAS**, The City currently allows sick leave from a previous employer covered by the State or Local Government Retirement System to be added to an employee’s accruals upon the completion of the probationary period. While the pandemic State of Emergency due to Covid was in effect, the City allowed sick leave to be added upon an employee’s hire date. We’ve found no abuse of sick leave when it was activated at this time and this could also be used as a recruitment strategy.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that from and after the effective date of this resolution, Article III. Section 8 and Article VII. Section 8 and Section 14 of the Personnel Policy attached to this resolution, is hereby adopted.

This policy will become effective as of the date of adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8th day of February 2023.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

**Article III. Section 8. Reassignments.**

A reassignment is defined as the voluntary movement to a position in a lower salary range. When an employee takes a reassignment, ~~the salary shall be set at the rate in the lower pay range which provides a salary commensurate with the employees' qualifications to perform the job and consistent with the placement of other employees within the same classification.~~ salary may be retained at the same level as long as their current salary falls within the pay range of the lower grade. If the employee retains their current salary, they will not be eligible for the 5% increase or probation completion level if they accept a position at a higher pay grade in the future unless the position they are promoted into is in a higher salary range than the position they moved from in the reassignment. Exceptions will be made on a case by case basis, authorized and approved by the City Manager. ~~when this option does not create internal inequities with other employees in the same or similar job.~~

## **Article VII. Section 8. Vacation Leave: Maximum Accumulation**

Vacation leave may be accumulated without any applicable maximum **until the last payroll in December.** ~~December 31 of each year.~~ However, if the employee departs from service, payment for accumulated vacation leave shall not exceed 40 days prorated as shown in Section 16. Effective December 31<sup>st</sup>, any employee with more than 40 days of accumulated leave shall have the excess accumulation removed so that only 40 days are carried forward to January 1 of the next calendar year. Those hours, in excess of 40 days, shall be converted to the employee's sick leave account. Employees are not eligible to receive pay for vacation time not taken.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation.

## **Section 14. Transfer of Sick Leave from Previous Employer**

The City will accept sick leave balances when documented by a previous employer when the employee worked for a previous employer covered by the State or Local Government Retirement System and the employee did not withdraw accumulated contributions from that employer when leaving employment. The sick leave will be treated as though it were earned with the City of Hendersonville. The sick leave amount must be certified by the previous employer and it is the employee's responsibility to provide documentation from his or her previous employer within three (3) months of employment. Transferred sick leave will be credited to the employee upon **their hire date.** ~~completion of the probationary period~~





CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Jenny Floyd

MEETING DATE:

02/08/2023

AGENDA SECTION:

CONSENT

DEPARTMENT:

Administration

TITLE OF ITEM:

Budget Amendments FY23 Vehicles and Equipment – *Jenny Floyd, Budget and Management Analyst*

**SUGGESTED MOTION(S):**

I move City Council adopt the capital project ordinance for the FY23 Vehicle and Equipment (#00023) project.

**SUMMARY:**  
At the mid-point in each fiscal year, the City regularly examines vehicle and equipment purchases for delayed delivery. This year, the City has one piece of equipment and six vehicles with delayed delivery that will carry over into the next fiscal year. Because of this a Capital Project Ordinance and partnering budget amendment was created.

**BUDGET IMPACT:** Fund 410: \$559,650 increase

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

**If no, describe how it will be funded.**

An amendment to budgeted expenditures at mid-year based on examinations of existing equipment and vehicles purchases compared to expected delivery dates. Purchases will be made using debt from a vehicle and equipment loan.

- ATTACHMENTS:**
1. Capital Project Ordinance #00023, FY23 Vehicles and Equipment Project

Ordinance # \_\_\_\_\_

**CAPITAL PROJECT ORDINANCE FOR  
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE  
FY23 VEHICLES AND EQUIPMENT PROJECT**

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

**Section 1:** The project authorized is a City project described as the FY23 Vehicles and Equipment Project (project #00023).

**Section 2:** The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
410	1502	554001	00023	Capital Outlay Equipment	\$258,260
410	1300	554002	00023	Capital Outlay- Vehicles 14-47	49,815
410	1300	554002	00023	Capital Outlay- Vehicles 14-48	49,815
410	1300	554002	00023	Capital Outlay- Vehicles 14-49	49,815
410	1300	554002	00023	Capital Outlay- Vehicles 14-52	49,815
410	1300	554002	00023	Capital Outlay- Vehicles x	51,065
410	1300	554002	00023	Capital Outlay- Vehicles x	51,065
Total Project Appropriation					\$559,650

**Section 3:** The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
410	0000	470010	00023	Debt Issuance	\$559,650
Total Project Appropriation					\$559,650

**Section 4:** The Finance Director is hereby directed to maintain within the General Fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the General Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 8<sup>th</sup> day of February 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney





TO: City Council

CC: John Connet, City Manager  
Brian Pahle, Assistant City Manager  
Department Heads

SUBJECT: Mid-Year Budget Report, FY23

DATE: January 30, 2023

FROM: Adam Murr, Budget Manager  
Jenny Floyd, Budget & Mgmt. Analyst

The following report provides information on the City of Hendersonville's fiscal year 2022-2023 (FY23) budget and the respective analysis for revenues and expenditures at mid-year, January 2023. The report will summarize high-level observations, provide an overview of recommended adjustments, and provide an amendment for accounts requiring Council approval.

The report is broken down by a governmental and enterprise section and reports on the City's seven (7) major operating funds: General, Main St. MSD, 7<sup>th</sup> Ave. MSD, Water & Sewer, Parking, Stormwater, and Environmental Services. This report will be submitted to City Council at the February 8<sup>th</sup>, 2023, meeting.

#### **Governmental Funds**

The three governmental funds covered in this report include the General Fund, Main St. MSD Fund, and 7<sup>th</sup> Avenue MSD Fund. The General Fund revised budget as of 01/03/2023 totals \$24,308,483 including a budgeted fund balance appropriation of \$1,959,090. The Main Street MSD Fund revised budget totals \$675,218 including a budgeted fund balance appropriation of \$115,933. The 7<sup>th</sup> Avenue MSD Fund revised budget totals \$185,863 including a budgeted fund balance appropriation of \$86,225.

Major highlights of these fund's mid-year performance and recommended adjustments are presented in the following sections.

#### *Ad Valorem Tax (Revenues)*

For the tax year 2022, the City continued an interlocal agreement with Henderson County to consolidate tax collection under the County. The County provides this service for a fee of 0.5% of the total collections. At mid-year, collections for the tax year 2021 (FY22) General Fund ad valorem taxes total approximately 48.40% (\$5.2m) of the total levy. Comparably, in 2022 (FY23) at mid-year, collections totaled 56.29%. We continue to anticipate total collections on the year of \$10,668,868, based on forecasting and property tax distribution expectations. The Main Street MSD fund property tax actuals total 38.11% of budget, to date. 7<sup>th</sup> Avenue MSD fund property tax actuals total 40.27% of the revised budget, to date.

Prior year collections have exceeded initial budget estimates in the General Fund and 7<sup>th</sup> Avenue MSD Fund. Our mid-year amendment includes adjustments considering the increased collection amounts.

Unrestricted Intergovernmental Taxes (Revenues)

Sales tax collections for FY23 have trended above initial budget estimates. We have received sales tax revenue from the State for four (4) of our twelve (12) collection cycles in FY23. Sales tax actuals total \$1,977,574 at mid-year – this reflects a \$339,256 collection over our adopted budget. The proposed mid-year amendments include adjustments for higher than budgeted sales tax collections (+\$287,000); however, we remain intentionally conservative with our adjustments. Erring on the side of conservative sales tax revenue adjustments is a best-practice budgetary strategy to provide the City flexibility in case there are future sales tax collection periods that do not meet or exceed budgetary targets. We speculate, due to the Fed's inflationary policy in late 2022 and early 2023, that consumer spending may slow as we progress further into FY23. Conservative consumer spending, coupled with the Fed's goal to increase the unemployment rate could result in a short-term contraction in sales tax revenue.

Debt Proceeds (Revenues)

The City commonly finances vehicles and other equipment purchases through debt proceeds (loans). The City is aware of capital items that will not be received prior to the end of the fiscal year (pothole patching machine, and police vehicles). These delays in delivery are due to long lead times from manufacturers. Due to the delay, there is a recommended \$567,700 decrease in debt proceeds within the General Fund, and a decrease to the capital expenditure accounts. Our mid-year amendments move the debt proceeds and corresponding expenditure budget to a capital project ordinance (CPO, #00023) to move forward with the purchase of equipment past June 30, 2023.

Other (Revenues)

Powell Bill distributions are a large, restricted source of revenue in the General Fund. According to North Carolina General Statute (NCGS) 136-41.3(a), funds must be used primarily for street resurfacing within corporate limits, with some allowance to maintain bridges, drains, curbs, and other necessary public transportation amenities. At mid-year FY23, there is no proposed adjustment to Powell Bill distribution revenues. The State has provided \$459,283, with the City collecting approximately \$3,600 in interest at mid-year. Our adopted Powell Bill Allocation budget is \$467,859.

Additional significant revenue amendments include a \$31,300 increase to Payment In Lieu of Sidewalk revenues, a \$53,000 increase to Market Adjustment revenues, a \$15,900 increase to Refund revenues, a \$27,150 increase to Insurance Proceed revenues, and a \$50,650 increase to Sale of Capital Asset revenues.

Summary (Revenues)

Overall, the proposed amendments result in a net decrease of \$105,037 in the General Fund. Our mid-year amendment does not include any adjustments to fund balance appropriations in the General Fund. The Main Street MSD Fund amendment increases revenues \$6,470, including a \$5,000 increase to special event revenues and no change to fund balance appropriated. Increased Main Street MSD revenues are being used to balance an unanticipated increase in overtime budget usage. – there is no change to the fund balance appropriation at mid-year. 7<sup>th</sup> Avenue MSD Fund revenues will increase \$2,023 with the proposed mid-year amendment. No changes to 7<sup>th</sup> Avenue's fund balance appropriated are recommended. The increase for 7<sup>th</sup> Avenue will also be used to adjust salaries and benefits accounts related to higher than anticipated overtime budget usage.

Salaries & Benefits (Expenditures)

City Council implemented a 75<sup>th</sup> percentile pay and classification structure upon budget adoption for FY23. Included in the mid-year budget amendment recommendations are increases for Fire, Police, and Public Works Department salaries and benefits (\$269,770). The largest portion of our adjustment is for an adjustment to the Police Department’s salaries and wages – regular account, which covers Officers earning higher grade standings within the department due to qualifications, following pay and classification implementation. For example, an Officer previously classified as a Grade 14/Officer I may have been moved to Grade 17/Officer IV following pay and classification adoption, which includes a budgetary impact.

Other Equipment, Supplies, & Services (Expenditures)

There is a long list of smaller proposed amendments to regular operating accounts to fix budget issues that have arisen in the first half of the fiscal year. These are typical amendments for repairs and other supplies. Of note, there are recommended increases to Liability & Property Insurance accounts throughout the General Fund, which total \$35,516. Other operating increases cover needed increases to fuel, contracted services, repair and maintenance, and training budgets.

Contingencies (Expenditures)

Finally, the General Fund’s contingency account had an adopted budget of \$50,000. At mid-year, this budget amount has decreased to \$4,359 to cover various overages across all departments within the General Fund. At this time, it is recommended we increase the contingency budget by \$45,000 to \$49,359 to provide the City Manager’s office financial flexibility to cover unforeseen challenges and opportunities through the remainder of the fiscal year.

The total recommended change in total budget for the governmental funds is presented, as follows.

Fund	\$ Change (Net)
General Fund (010)	Decrease \$60,037
Main Street MSD Fund (020)	Increase \$6,470
7 <sup>th</sup> Avenue MSD (021)	Increase \$2,023

The amendment detailing these changes is included with the agenda item.

## Enterprise Funds

The four enterprise funds covered in this report include the Water and Sewer Fund, Parking Fund, Stormwater Fund, and Environmental Services Fund. The Water and Sewer Fund revised budget as of 01/03/2023 totals \$22,882,286 including a budgeted fund balance appropriation of \$757,039. The Parking Fund revised budget totals \$1,488,666, including a \$682,603 fund balance appropriation. The Stormwater Fund revised budget totals \$1,490,476 including a budgeted fund balance appropriation of \$192,186. The Environmental Services Fund revised budget totals \$1,631,401 including a budgeted fund balance appropriation of \$108,301. Major highlights of these fund's mid-year performance and recommended adjustments is presented in the following sections.

### User Charges (Revenues)

User charges for the sale of utility services are the largest income source for the enterprise funds. Operating under a business-like structure, the City charges customers directly based on the amount of a service or resource consumed. The City has deliberated with rate experts and consultants to recommend rates to the City Council. Adherence to recommendations for the current fiscal year (FY21-22) and forward is an important consideration as we continually prioritize capital projects, analyze the health and longevity of our utility systems, and meet financial covenants set through our revenue bond (parity bond) and other borrowings.

As of 01/03/2023, the water sales account has collected \$6,299,002 (42.42%) of budgeted user charge revenue. This collection amount reflects approximately 20 cycles of revenue collection out of 48 total cycles. 28 major collection cycles remain this fiscal year. Compared to prior fiscal years at the same collection period, water sales revenues are higher. This increased actual water sale revenue trend can be attributed to a few factors including finance department efforts to improve utility bill collections and increased economic growth in greater Henderson County (with utility connections increasing over time). The sewer charges account has collected \$2,695,305 (43.47%) of budgeted revenues. The Parking Fund has not yet collected \$121,586 (22.82%) of budgeted monthly parking revenues, plus parking meter revenues. The Stormwater Fund has collected \$384,217 (33.21%) of budgeted stormwater fee revenue. The Environmental Services Fund has collected \$602,493 (39.62%) of budgeted user charge revenue (for both residential and commercial waste collection).

At a high level, staff recommends a \$210,000 increase to water sales revenues, and a \$125,000 increase to sewer charge revenues in the Water and Sewer Fund. It is recommended commercial waste disposal fees in the Environmental Services Fund increase by \$38,700. Other major revenue sources have no recommended change.

### Tap Fees (Revenues)

In addition to user charges, the Water and Sewer Fund tracks revenues collected from the connection of customers to our infrastructure. The tap fee revenue source is a good indicator of the local economy, providing insight to the rate of development in the City and Henderson County. Thus far, in FY23, we have collected \$177,773 (46.48%) of our \$382,500 budgeted water and sewer tap revenues. Based on current collections, staff recommend no change to budgeted revenues for water and sewer tap fees.

### Other (Revenues)

Various other minor revenue sources are accounted for in the enterprise funds. Some other sources of revenue include disconnect/reconnect fees, customer participation charges, investment earnings, sale of assets, and miscellaneous income. At mid-year, staff recommends Council approve the following adjustments to other revenues: \$400 increase to miscellaneous sales revenues, \$38,200 increase to



water and sewer inspection fees revenues, \$500 increase to disconnection fees, a \$15,300 increase to utility billing service charges, a \$21,000 increase to sewer surcharges, and a \$500 increase to interest income.

*Salary & Benefits (Expenditures)*

There are several needed increases to salaries lines, including adjustments for worker's comp. insurance claims, salaries & wages – regular, uniforms, and overtime budgets within the Water and Sewer Fund.

*Inventory (Expenditures)*

The largest, and most notable increases to the Water and Sewer Fund budget at mid-year are for inventory related items for \$287,000. For accounting purposes, we have created two (2) offsetting expenditure accounts to assist with the management of inventory – these accounts do not impact the day-to-day operations of our water and sewer teams. The newly created "Inventory Purchases" and "Contra Inventory Purchases" accounts are budgeted at + / - \$622,000.

*Other Equipment, Supplies, & Services (Expenditures)*

Other operating expenditure amendments include increases for fuel, training, repair and maintenance of vehicles and equipment, and non-capital equipment expenditures. Fuel budgets will also receive increased budget via the proposed amendment to cover for higher than anticipated usage and prices which have increased significantly since budget preparation and adoption last Spring and Summer. In the Environmental Services Fund, a \$253,013 fund balance appropriation is recommended to purchase a waste truck using loan proceeds collected in FY22, which were added to fund balance in FY23.

*Contingencies, Transfers, and Others (Expenditures)*

Contingencies in the Water and Sewer Fund have decreased from \$100,000 to \$79,351 at mid-year. There are no recommended adjustments to contingencies with our mid-year amendments, funds will be used for unforeseen opportunities and to supplant operating needs as we approach the end of FY23. There are no contingencies changes recommended for the Stormwater Fund or Environmental Services Fund.

The total recommended adjustment in total budget for the enterprise funds is presented, as follows.

<b>Fund</b>	<b>\$ Change (Net)</b>
Water & Sewer Fund (060)	Increase \$410,900
Parking Fund (064)	No change
Stormwater Fund (067)	Increase \$6,080
Environmental Services Fund (068)	Increase \$295,013

The amendment detailing these changes is included with the agenda item.

TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-01**BUDGET AMENDMENT****FUND 010**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-400102	Prior Years Ad Valorem Taxes	25,000	29,800	-	54,800
010-0000-400150	Tax - Interest	1,000	2,540	-	3,540
010-0000-410001	Local Sales & Use Tax	5,058,500	287,000	-	5,300,500
010-0000-410200	Court Fees - Police	2,500	105	-	2,605
010-0000-420050	Grant Revenue	-	3,860	-	3,860
010-0000-430007	Boyd Park Concessions	1,000	150	-	1,150
010-0000-440011	Demo Fees	100	20	-	120
010-0000-440012	Street Sidewalk Encroachment	250	1,500	-	1,750
010-0000-440015	Payment In Lieu Of Sidewalk	5,000	31,300	-	36,300
010-0000-450002	Powell Bill Interest	-	2,140	-	2,140
010-0000-450099	Market Adjustment	-	53,000	-	53,000
010-0000-460090	Contributions/Donations	-	2,548	-	2,548
010-0000-460120	Refunds	-	15,900	-	15,900
010-0000-470010	Debt Issued	1,088,700	-	567,700	888,700
010-0000-470030	Insurance proceeds	-	27,150	-	27,150
010-0000-470050	Sale Of Capital Assets	20,000	50,650	-	70,650
010-0000-534999	Contingency	4,359	45,000	-	49,359
010-1001-519200	Contract Services	20,000	-	10,000	10,000
010-1002-519200	Contract Services	165,000	15,000	-	180,000
010-1002-531215	Dues & Subscriptions	17,625	150	-	17,775
010-1002-531225	Training	32,500	2,000	-	34,500
010-1002-534000	Non-Capital Equipment	34,900	2,250	-	37,150
010-1002-551000	Capital Outlay - Land,Easements,Row	122,500	1,000	-	123,500
010-1005-502005	Group Med & Life Ins	7,581	1,000	-	8,581
010-1010-501001	Salaries - Regular	53,822	-	21,625	32,197
010-1010-502001	Fica Tax Expense	4,117	-	2,000	2,117
010-1010-502005	Group Med & Life Ins	5,333	-	3,000	2,333
010-1010-502050	Retirement Expense	6,534	-	4,000	2,534
010-1010-519200	Contract Services	210,000	26,625	-	236,625
010-1010-534000	Non-Capital Equipment	40,000	25,000	-	65,000
010-1014-524030	R & M - Trucks	1,000	1,500	-	2,500

010-1014-531700	Liab & Prop Ins & Bonds	2,500	305	-	2,805
010-1200-502091	Worker's Comp Ins	6,550	120	-	6,670
010-1200-524030	R & M - Trucks	2,200	650	-	2,850
010-1300-501001	Salaries - Regular	3,202,834	204,200	-	3,407,034
010-1300-501002	Salaries - Board/ Part Time/Temp/Aux	80,812	9,750	-	90,562
010-1300-501010	Salaries - Overtime	120,000	25,500	-	145,500
010-1300-501012	Salaries - Standby Pay	17,000	2,500	-	19,500
010-1300-501025	Salaries - Uniform/Taxab	12,000	3,250	-	15,250
010-1300-502001	Fica Tax Expense	259,795	21,250	-	281,045
010-1300-502091	Worker's Comp Ins	59,664	4,981	-	64,645
010-1300-519102	Prof Services-Legal	24,700	200	-	24,900
010-1300-524030	R & M - Trucks	108,500	2,997	-	111,497
010-1300-531210	Permits, License And Fees	92,930	3,050	-	95,980
010-1300-531215	Dues & Subscriptions	20,827	-	3,050	17,777
010-1300-531225	Training	73,965	-	10,000	63,965
010-1300-531700	Liab & Prop Ins & Bonds	88,125	875	-	89,000
010-1300-534000	Non-Capital Equipment	91,673	30,000	-	121,673
010-1300-554002	Capital Outlay - Vehicles	367,700	-	367,700	-
010-1400-501001	Salaries - Regular	2,211,178	5,000	-	2,216,178
010-1400-501002	Salaries - Board/ Part Time/Temp/Aux	40,000	2,000	-	42,000
010-1400-501010	Salaries - Overtime	115,000	2,000	-	117,000
010-1400-502001	Fica Tax Expense	183,670	1,700	-	185,370
010-1400-502091	Worker's Comp Ins	44,431	5,109	-	49,540
010-1400-531100	Fuel	45,000	3,904	-	48,904
010-1400-531215	Dues & Subscriptions	25,000	770	-	25,770
010-1400-531700	Liab & Prop Ins & Bonds	65,000	31,650	-	96,650
010-1400-554002	Capital Outlay - Vehicles	157,000	24,355	-	181,355
010-1502-501025	Salaries - Uniform/Taxab	405	170	-	575
010-1502-502005	Group Med & Life Ins	38,700	8,000	-	46,700
010-1502-502091	Worker's Comp Ins	3,191	90	-	3,281
010-1502-521001	Supplies & Materials	4,000	120	-	4,120
010-1502-531100	Fuel	4,500	2,000	-	6,500
010-1502-531210	Permits, License And Fees	13,600	680	-	14,280
010-1502-531700	Liab & Prop Ins & Bonds	3,261	290	-	3,551
010-1521-502005	Group Med & Life Ins	33,343	1,200	-	34,543
010-1521-502091	Worker's Comp Ins	5,767	818	-	6,585
010-1521-523003	Utilities - Telephone & Internet	1,200	1,000	-	2,200
010-1521-531700	Liab & Prop Ins & Bonds	2,865	660	-	3,525
010-1521-554001	Capital Outlay - Equipment	69,000	-	15,000	54,000
010-1523-502091	Worker's Comp Ins	3,534	1,450	-	4,984
010-1523-519200	Contract Services	150,960	22,500	-	173,460

010-1523-521001	Supplies & Materials	25,000	2,548	-	27,548
010-1523-524010	R & M - Bulidings	48,950	-	5,000	43,950
010-1525-502091	Worker's Comp Ins	7,408	250	-	7,658
010-1525-521001	Supplies & Materials	34,000	-	1,000	33,000
010-1525-531100	Fuel	20,750	1,000	-	21,750
010-1525-531700	Liab & Prop Ins & Bonds	8,323	590	-	8,913
010-1525-554001	Capital Outlay - Equipment	49,000	-	2,000	43,000
010-1555-501001	Salaries - Regular	479,510	15,000	-	494,510
010-1555-501025	Salaries - Uniform/Taxab	1,500	400	-	1,900
010-1555-502091	Worker's Comp Ins	4,011	385	-	4,396
010-1555-519104	Prof Services-Engring	11,520	300	-	11,820
010-1555-523003	Utilities - Telephone & Internet	900	1,200	-	2,100
010-1555-524030	R & M - Trucks	35,000	3,000	-	38,000
010-1555-531100	Fuel	25,750	1,000	-	26,750
010-1555-531225	Training	3,000	1,700	-	4,700
010-1555-531700	Liab & Prop Ins & Bonds	15,830	415	-	16,245
010-1555-554001	Capital Outlay - Equipment	331,100	-	200,000	131,100
010-1560-502091	Worker's Comp Ins	15,832	450	-	16,282
010-1560-521001	Supplies & Materials	45,000	9,385	-	54,385
010-1560-531100	Fuel	3,250	2,000	-	5,250
010-1560-531700	Liab & Prop Ins & Bonds	1,967	731	-	2,698
010-1560-554002	Capital Outlay - Vehicles	160,000	-	635	159,365
FUND 010	TOTAL REVENUES		507,663	567,700	
	TOTAL EXPENDITURES		584,973	645,010	

A mid-year budget amendment resulting in a net decrease of the General Fund (010) by \$60,037 to reflect higher than anticipated and/or forecasted revenues for FY23. The amendment is a net decrease to the fund due to purchases of equipment and vehicles being moved to the FY23 Vehicles and Equipment CPO (#00023). Without the adjustment to capital purchases, the amendment results in a net increase of \$507,663.

Increased revenues are proposed to be utilized to clean-up items within the General Fund. Notable expenditure increases include: corrections for contracted services, dues, and non-capital equipment; IT resources; embedded clinician funding; and salaries and benefits adjustments.

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved:

2/8/2023



TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-02**BUDGET AMENDMENT****FUND 020**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
020-0000-450099	Market Adjustment	1,040	-
020-0000-460040	Special Events- Nontaxable	5,000	-
020-0000-460120	Refunds	430	-
020-2102-501002	Salaries- Board/Part Time/Temp/Aux	120	-
020-2102-501010	Salaries- Overtime	3,200	-
020-2102-51012	Salaries- Standby	480	-
020-2102-501025	Salaries- Uniform/Taxabl	120	-
020-2102-502091	Salaries-Worker's Comp	100	-
020-2102-524010	R&M Buildings	230	-
020-2102-531205	Advertising	1,000	-
020-2102-531220	Travel	820	-
020-2102-531230	Tax Billing	400	-
FUND 020	TOTAL REVENUES	6,470	-
	TOTAL EXPENDITURES	6,470	-

A budget amendment in the Main St Fund to increase revenues and expenditure accounts where appropriate as the City approaches mid-year. Increased funds will be used for priortiy itmes within the Main St Fund including salaries, building repair, travel, and advertising.

\_\_\_\_\_  
City Manager\_\_\_\_\_  
Date\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved: 2/8/2023

TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-03**BUDGET AMENDMENT****FUND 021**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
021-0000-410010	Local Sales & Use Tax	1,000	-
021-0000-450001	Interest Income	23	-
021-0000-450099	Market Adjustment	1,000	-
021-2202-201002	Salaries- Board/Part Time/Temp/Aux	30	-
021-2202-501010	Salaries- Overtime	1,600	-
021-2202-501012	Salaries- Standby Pay	238	-
021-2202-501025	Salaries-Uniform/Taxab	30	-
021-2202-502091	Worker's Comp Ins.	125	-
FUND 021	TOTAL REVENUES	2,023	-
	TOTAL EXPENDITURES	2,023	-

A budget amendment in the 7th Ave Fund to increase revenues and expenditure accounts where appropriate as the City approaches mid-year. Increased funds will be used for priority items within the 7th Ave Fund including salaries and insurance.

\_\_\_\_\_  
City Manager\_\_\_\_\_  
Date\_\_\_\_\_  
City Clerk

Approved:

\_\_\_\_\_  
Date

2/8/2023

TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-04**BUDGET AMENDMENT****FUND 060**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
060-0000-430501	Water Sales - General	14,850,000	210,000	-	15,060,000
060-0000-430502	Water Sales - Miscellaneous	2,000	400	-	2,400
060-0000-430701	Sewer Charges	6,200,000	125,000	-	6,325,000
060-0000-444102	W&S Inspection Line Fees	10,000	38,200	-	48,200
060-0000-444202	Disconnect/Reconnect Admin Fee	70,000	500	-	70,500
060-0000-445201	Utility Billing Service Charges	51,000	15,300	-	66,300
060-0000-445202	Sewer Surcharges	60,850	21,000	-	81,850
060-0000-450001	Interest Income	8,000	500	-	8,500
060-0000-521950	Inventory Purchases	-	622,000	-	622,000
060-0000-521951	Contra Inventory Purchases	-	(622,000)	-	(622,000)
060-1008-502091	Worker's Comp Ins	1,530	50	-	1,580
060-1008-523003	Utilities - Telephone & Internet	750	1,500	-	2,250
060-1010-501001	Salaries - Regular	192,176	-	21,625	170,551
060-1010-502001	Fica Tax Expense	14,701	-	2,000	12,701
060-1010-502005	Group Med & Life Ins	19,282	-	3,000	16,282
060-1010-502050	Retirement Expense	23,330	-	4,000	19,330
060-1010-502091	Worker's Comp Ins	692	105	-	797
060-1010-519200	Contract Services	200,000	5,625	-	205,625
060-1010-531700	Liab & Prop Ins & Bonds	800	280	-	1,080
060-1010-534000	Non-Capital Equipment	30,000	25,000	-	55,000
060-1014-501010	Salaries - Overtime	3,000	2,000	-	5,000
060-1014-502091	Worker's Comp Ins	10,611	210	-	10,821
060-1014-519104	Prof Services-Engring	45,000	285	-	45,285
060-1014-531210	Permits, License And Fees	41,000	850	-	41,850
060-1521-502091	Worker's Comp Ins	3,501	95	-	3,596
060-7002-501010	Salaries - Overtime	3,750	4,000	-	7,750
060-7002-502091	Worker's Comp Ins	11,160	12,500	-	23,660
060-7002-502092	State Unemployment Insurance	2,750	12,400	-	15,150
060-7002-531225	Training	9,750	10,000	-	19,750
060-7002-534000	Non-Capital Equipment	27,500	2,075	-	29,575
060-7002-551000	Capital Outlay - Land,Easements,Row	117,500	1,000	-	118,500

060-7032-502091	Worker's Comp Ins	4,838	200	-	5,038
060-7032-531700	Liab & Prop Ins & Bonds	11,840	200	-	12,040
060-7032-554001	Capital Outlay - Equipment	80,000	750	-	80,750
060-7035-502091	Worker's Comp Ins	33,996	600	-	34,596
060-7035-519104	Prof Services-Engring	-	800	-	800
060-7035-522001	Chemicals	558,000	70,000	-	628,000
060-7035-524010	R & M - Bulidings	61,500	-	20,000	41,500
060-7050-501010	Salaries - Overtime	8,000	4,000	-	12,000
060-7050-502091	Worker's Comp Ins	326	200	-	526
060-7050-524030	R & M - Trucks	7,000	2,600	-	9,600
060-7055-502091	Worker's Comp Ins	1,680	900	-	2,580
060-7055-524060	R & M - Lines	180,000	140,000	-	320,000
060-7055-531100	Fuel	64,250	7,175	-	71,425
060-7055-531215	Dues & Subscriptions	8,000	1,200	-	9,200
060-7055-531700	Liab & Prop Ins & Bonds	50,400	4,600	-	55,000
060-7055-555002	C/O Lines	-	265,000	-	265,000
060-7132-501025	Salaries - Uniform/Taxab	500	500	-	1,000
060-7132-502091	Worker's Comp Ins	2,383	700	-	3,083
060-7132-531700	Liab & Prop Ins & Bonds	3,714	200	-	3,914
060-7135-502091	Worker's Comp Ins	29,265	400	-	29,665
060-7150-502091	Worker's Comp Ins	98	100	-	198
060-7155-501025	Salaries - Uniform/Taxab	1,850	500	-	2,350
060-7155-502091	Worker's Comp Ins	818	700	-	1,518
060-7155-524030	R & M - Trucks	10,000	2,700	-	12,700
060-7155-524060	R & M - Lines	200,000	-	140,000	60,000
060-7155-531100	Fuel	38,500	7,175	-	45,675
060-7155-531700	Liab & Prop Ins & Bonds	25,458	350	-	25,808
060-7155-555002	C/O Lines	-	12,000	-	12,000
FUND 060	TOTAL REVENUES		410,900	-	
	TOTAL EXPENDITURES		601,525	190,625	

A mid-year budget amendment resulting in a net increase of the Water and Sewer Fund (060) by \$410,900 to reflect higher than anticipated and/or forecasted revenues for FY23. Increased funding is proposed to be utilized to clean-up items within the Water and Sewer Fund. Notable expenditure increases include: I.T. department purchases; miscellaneous salaries, wages, and benefits clean-up; increases for water treatment chemicals; increases for inventory purchases for capital projects (e.g. line and meter replacements); and an addition of two offsetting financial accounts for inventory and "contra" inventory for audit purposes.

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date



City Clerk

Approved:

Date

2/8/2023

TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-05**BUDGET AMENDMENT****FUND 067**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
067-0000-447000	Stormwater Permit	2,980	-
067-0000-450001	Interest Income	100	-
067-0000-450099	Market Adjustment	3,000	-
067-7555-201002	Salaries- Board/Part Time/Temp/Aux	710	-
067-7555-501010	Salaries- Overtime	3,310	-
067-7555-201011	Salaries-Holiday Pay	460	-
067-7555-501012	Salaries- Standby Pay	1,500	-
067-7555-502091	Worker's Comp Ins.	100	-
FUND 067	TOTAL REVENUES	6,080	-
	TOTAL EXPENDITURES	6,080	-

A budget amendment in the Stormwater Fund to increase revenues and expenditure accounts where appropriate as the City approaches mid-year. Increased funds will be used for prioritized items within the Stormwater Fund including salaries, and insurance.

\_\_\_\_\_  
City Manager\_\_\_\_\_  
Date\_\_\_\_\_  
City Clerk

Approved:

\_\_\_\_\_  
Date

2/8/2023

TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-06**BUDGET AMENDMENT****FUND 068**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
068-0000-430802	Waste Disposal Fees- Commercial	38,700	-
068-0000-430803	Solid Waste Disposal Tax	3,010	-
068-0000-470900	Fund Balance Appropriation	253,013	
068-0000-460120	Refunds	290	-
068-7855-501001	Salaries-Regular	23,000	-
068-7855-501010	Salaries-Overtime	3,000	-
068-7855-502050	Retirement Expense	2,500	-
068-7855-502091	Worker's Comp Ins.	1,300	-
068-7855-531700	Liab & Prop Ins & Bonds	2,200	-
068-7855-531100	Fuel	10,000	-
068-7855-554001	Capital Outlay-Equipment Other than Vehicles	253,013	
FUND 068	TOTAL REVENUES	295,013	-
	TOTAL EXPENDITURES	295,013	-

A budget amendment in the Environmental Services Fund to increase revenues and expenditure accounts where appropriate as the City approaches mid-year. Increased funds will be used for priority items within the Environmental Services Fund including salaries, fuel, and insurance.

\_\_\_\_\_  
City Manager\_\_\_\_\_  
Date\_\_\_\_\_  
City Clerk

Approved:

\_\_\_\_\_  
Date

2/8/2023

TO MAYOR &amp; COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-07**BUDGET AMENDMENT****FUND 410**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470010-00023	Debt Issued	-	559,650	-	559,650
410-1502-554001-00023	Capital Outlay Equipment (Pothole Patcher)	-	258,260	-	258,260
410-1300-554002-00023	Capital Outlay - Vehicles	-	301,390	-	301,390
FUND 410	TOTAL REVENUES		559,650	-	
	TOTAL EXPENDITURES		559,650	-	
A budget amendment to reflect capital purchases approved in the FY23 General Fund CIP being moved to the Governmental Capital Project Fund (410) in order to adjust for longer than anticipated lead and delivery times past the end of FY23. The newly adopted capital project ordinance for the FY23 Vehicles and Equipment project is #00023.					

\_\_\_\_\_  
City Manager\_\_\_\_\_  
Date\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved: 2/8/2023

TO MAYOR & COUNCIL - February 08, 2023

FISCAL YEAR 2023  
Form Number - 02082023-08

**BUDGET AMENDMENT**

**FUND 460**

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
460-0000-470010-22011	Prior Years Ad Valorem Taxes	480,000	70,000	-	550,000
460-7155-554002-22011	Tax - Interest	480,000	70,000	-	550,000
FUND 460	TOTAL REVENUES		70,000	-	
	TOTAL EXPENDITURES		70,000	-	
A budget amendment to increase the Vactor Truck project (#22011) to reflect an anticipated 2023 Series Water & Sewer System Revenue Bond (debt issuance) and increase expenditures according to most recent equipment quotes.					

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
Date 2/8/2023





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

---

**SUBMITTER:** John Connet **MEETING DATE:** February 8, 2023  
**AGENDA SECTION:** CONSENT AGENDA **DEPARTMENT:** Police  
**TITLE OF ITEM:** Resolution Authorizing the Sale of Two Harley Davidson Motorcycles to the  
Two of Waynesville – *Blair Myhand, Chief of Police*

### **SUGGESTED MOTION(S):**

I move that the City Council adopt the resolution authorizing the sale of two Harley Davidson motorcycles to the Town of Waynesville.

---

### **SUMMARY:**

The Police Department has two motorcycles that are in need of repair and they no longer use as part of our motorcycle unit. The wish to sell the motorcycles to the Town of Waynesville for \$2,000 each. The sale is authorized under §160A-274.

**BUDGET IMPACT:** \$4,000

**Is this expenditure approved in the current fiscal year budget? New Revenue**

**If no, describe how it will be funded.**

### **ATTACHMENTS:**

Proposed Resolution

Resolution #\_\_-\_\_\_\_

**RESOLUTION BY THE HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE  
SALE OF TWO HARLEY DAVIDSON MOTORCYCLES TO THE TOWN OF  
WAYNESVILLE**

**WHEREAS**, the Hendersonville Police Department owns five Harley Davidson Police Motorcycles; and;

**WHEREAS**, two of the motorcycles are no longer used by the police department and are in need of repair; and

**WHEREAS**, the Town of Waynesville desires to purchase the two motorcycles to start a new motorcycle unit; and

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

**WHEREAS**, the Hendersonville Police Department wishes to sell the two motorcycles to the Waynesville Police Department at a value of \$2,000 each.

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

1. The 2012 and 2013 Harley Davidson Motorcycles identified by VIN 1HD1FMM12CB610390 and 1HD1FMM19DB634798 respectively are deemed surplus and approved to be sold.
2. The City Council Councils authorizes the sale of the two motorcycles to the Town of Waynesville in accordance with §160A-274 at a price of \$2,000 each.
3. The City Manager is authorized to execute the Bill of Sale with the Town of Waynesville.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8<sup>th</sup> day of February 2023.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

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



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Amanda Lofton **MEETING DATE:** 02/02/2023

**AGENDA SECTION:** CONSENT **DEPARTMENT:** Finance

**TITLE OF ITEM,  
Presenter Name, Title:** Henderson County Tax Adjustments -*Amanda Lofton, Deputy Tax Collector*

**SUGGESTED MOTION(S):** I move that City Council resolve to direct and authorize the tax releases submitted by Henderson County Tax Collector as presented and relieve the Henderson County Tax Collector and the Deputy Tax Collectors of the charges owed.

### SUMMARY:

The Deputy Tax Collector, Amanda Lofton, would like to submit for your approval the tax bill adjustments occurring between December 1, 2022 and December 31, 2022. These adjustments include all Discoveries, Releases, Refunds, and Forgiven Interest. These adjustments were provided by Henderson County Tax Department. Documentation is available in the Tax Office.

**BUDGET IMPACT:** \$ 0.00

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

EnterTextHere

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

### ATTACHMENTS:

Summary Total of Tax Adjustments

## ICPTS Pending Release/Refund Report. Thursday, January 6, 2022\*

TAX DISTRICT	OWNER	ABSTRACT	NOTE	VALUE CHANGE	ADJ. NUMBER	DISTRICT CODE	LEVY TYPE	BILLED	PAID	RELEASE
CITY OF HENDERSONVILLE	BATTISTE, DANA LYNN	0003097020-2020-2020-0000	PER DOCUMENTATION PROVIDED, PROPERTY WAS MOVED TO KENTUCKY JUNE 2019. DOCUMENTATION ON FILE	(\$4,550)	8035	JURSC10	TAX	\$22.30	\$0.00	\$22.30
							LATE LIST FEE	\$2.23	\$0.00	\$2.23
							TOTAL:			\$24.53
							ABSTRACT TOTAL:			\$24.53
		0003097020-2021-2021-0000	PER DOCUMENTATION PROVIDED, PROPERTY WAS MOVED TO KENTUCKY JUNE 2019. DOCUMENTATION ON FILE	(\$4,350)	8036	JURSC10	TAX	\$22.62	\$0.00	\$22.62
							LATE LIST FEE	\$2.26	\$0.00	\$2.26
							TOTAL:			\$24.88
							ABSTRACT TOTAL:			\$24.88
				\$0						\$49.41
							TAX	\$16,046.68	\$0.00	\$16,046.68
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$16,046.68
							ABSTRACT TOTAL:			\$16,046.68
		0000607657-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$3,085,900)	8022	JURSC10	TAX	\$2,043.60	\$0.00	\$2,043.60
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$2,043.60
							ABSTRACT TOTAL:			\$2,043.60
		0000607662-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$393,000)	8026	JURSC10	TAX	\$1,159.08	\$0.00	\$1,159.08
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$1,159.08
							ABSTRACT TOTAL:			\$1,159.08
		0002317469-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$222,900)	8024	JURSC10	TAX	\$1,876.68	\$0.00	\$1,876.68
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$1,876.68
							ABSTRACT TOTAL:			\$1,876.68
		0002317619-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$360,900)	8021	JURSC10	TAX	\$8,988.20	\$0.00	\$8,988.20
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$8,988.20
							ABSTRACT TOTAL:			\$8,988.20
		0002318138-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$1,728,500)	8023	JURSC10	TAX	\$1,876.68	\$0.00	\$1,876.68
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$1,876.68
							ABSTRACT TOTAL:			\$1,876.68

DISTRICT	OWNER	ABSTRACT	NOTE	VALUE CHANGE	ADJ. NUMBER	DISTRICT CODE	LEVY TYPE	BILLED	PAID	RELEASE
CITY OF HENDERSONVILLE	HENDERSONVILLE AFFORDABLE HOUSING CORPORATION	0002318138-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$1,728,500)	8023	JURSC10	TOTAL:			\$8,988.20
							TAX	\$14,712.36	\$0.00	\$14,712.36
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$14,712.36
							ABSTRACT TOTAL:			\$14,712.36
		0002740606-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$2,829,300)	8017	JURSC10	TAX	\$14,712.36	\$0.00	\$14,712.36
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$14,712.36
							ABSTRACT TOTAL:			\$14,712.36
		0002849992-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$910,600)	8033	JURSC10	TAX	\$4,735.12	\$0.00	\$4,735.12
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$4,735.12
							ABSTRACT TOTAL:			\$4,735.12
		0002853962-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$1,019,900)	8025	JURSC10	TAX	\$5,303.48	\$0.00	\$5,303.48
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$5,303.48
							ABSTRACT TOTAL:			\$5,303.48
		0002857909-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$503,100)	8020	JURSC10	TAX	\$2,616.12	\$0.00	\$2,616.12
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$2,616.12
							ABSTRACT TOTAL:			\$2,616.12
		0002857941-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$507,000)	8019	JURSC10	TAX	\$2,636.40	\$0.00	\$2,636.40
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$2,636.40
							ABSTRACT TOTAL:			\$2,636.40
		0002859692-2021-2021-0000	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$190,800)	8030	JURSC10	TAX	\$992.16	\$0.00	\$992.16
							LATE LIST FEE	\$0.00	\$0.00	\$0.00
							TOTAL:			\$992.16
							ABSTRACT TOTAL:			\$992.16



DISTRICT	OWNER	ABSTRACT	NOTE	VALUE CHANGE	ADJ. NUMBER	DISTRICT CODE	LEVY TYPE	BILLED	PAID	RELEASE
Y OF HENDERSONVILLE AFFORDABLE HOUSING CORPORATION										
0000	0002859693-2021-2021-	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$322,300)	8029	JURSC10	TAX	\$1,675.96	\$0.00	\$1,675.96	\$0.00
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$0.00
						TOTAL:				\$1,675.96
						ABSTRACT TOTAL:				\$1,675.96
0000	0002859694-2021-2021-	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$212,800)	8028	JURSC10	TAX	\$1,106.56	\$0.00	\$1,106.56	\$0.00
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$0.00
						TOTAL:				\$1,106.56
						ABSTRACT TOTAL:				\$1,106.56
0000	0002859695-2021-2021-	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$158,800)	8027	JURSC10	TAX	\$825.76	\$0.00	\$825.76	\$0.00
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$0.00
						TOTAL:				\$825.76
						ABSTRACT TOTAL:				\$825.76
0000	0002865876-2021-2021-	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$1,302,700)	8018	JURSC10	TAX	\$6,774.04	\$0.00	\$6,774.04	\$0.00
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$0.00
						TOTAL:				\$6,774.04
						ABSTRACT TOTAL:				\$6,774.04
0000	0003098269-2021-2021-	LOST EXEMPTION AFTER 2020 TRANSFER, FAILED TO PUT BACK ON FOR 2021. GOVERNMENT HAS OWNERSHIP INTEREST IN PROPERTY.	(\$3,439,300)	8032	JURSC10	TAX	\$17,884.36	\$0.00	\$17,884.36	\$0.00
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$0.00
						TOTAL:				\$17,884.36
						ABSTRACT TOTAL:				\$17,884.36
						OWNER TOTAL:				\$89,376.56
0000	0002130514-2015-2015-	VOID ABSTRACT 12/31/2014; TAXPAYER PROVIDED DOCUMENTATION AND A REQUEST FOR RELEASE/REFUND; TAXPAYER SOLD HIS WATERCRAFT; PER WILDLIFE, WATERCRAFT TRANSFERRED OWNERSHIP 05/28/2014	(\$3,290)	8059	JURSC10	TAX	\$0.00	\$0.00	\$0.00	\$15.13
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$1.51
						TOTAL:				\$16.64
						ABSTRACT TOTAL:				\$16.64
0000	0002130514-2016-2016-	VOID ABSTRACT 12/31/2015; TAXPAYER PROVIDED DOCUMENTATION AND A REQUEST FOR RELEASE/REFUND; TAXPAYER SOLD HIS WATERCRAFT; PER WILDLIFE, WATERCRAFT TRANSFERRED OWNERSHIP 05/28/2014	(\$4,120)	8060	JURSC10	TAX	\$0.00	\$0.00	\$0.00	\$18.95
						LATE LIST FEE	\$0.00	\$0.00	\$0.00	\$1.90
						TOTAL:				\$20.85
						ABSTRACT TOTAL:				\$20.85

DISTRICT	OWNER	ABSTRACT	NOTE	VALUE CHANGE	ADJ. NUMBER	DISTRICT CODE	LEVY TYPE	BILLED	PAID	RELEASE
CITY OF HENDERSONVILLE	NELL, SAMUEL D	0002130514-2017-2017-0000	VOID ABSTRACT. TAXPAYER PROVIDED DOCUMENTATION AND A REQUEST FOR RELEASE/REFUND. TAXPAYER SOLD HIS WATERCRAFT, PER WILDLIFE, WATERCRAFT TRANSFERRED OWNERSHIP 05/29/2014	(\$4,010)	8061	JURSC10	TAX LATE LIST FEE TOTAL:	 \$0.00 	\$0.00 \$0.00	\$18.85 \$1.88 \$20.73
OWNER TOTAL:				\$0						\$58.22
RTS AFFORDABLE HOUSING CORPORATION		0002319201-2021-2021-0000	EXEMPTION REMOVED IN ERROR. WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$736,200)	8064	JURSC10	TAX LATE LIST FEE TOTAL:	 \$3,828.24 \$0.00	\$0.00 \$0.00	\$3,828.24 \$0.00 \$3,828.24
OWNER TOTAL:				\$0						\$58.22
		0002319329-2021-2021-0000	EXEMPTION REMOVED IN ERROR. WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$404,800)	8065	JURSC10	TAX LATE LIST FEE TOTAL:	 \$2,104.96 \$0.00	\$0.00 \$0.00	\$2,104.96 \$0.00 \$2,104.96
OWNER TOTAL:				\$0						\$58.22
		0002852280-2021-2021-0000	EXEMPTION REMOVED IN ERROR. WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$46,300)	8069	JURSC10	TAX LATE LIST FEE TOTAL:	 \$240.76 \$0.00	\$0.00 \$0.00	\$240.76 \$0.00 \$240.76
OWNER TOTAL:				\$0						\$58.22
		0002861309-2021-2021-0000	EXEMPTION REMOVED IN ERROR. WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$43,600)	8068	JURSC10	TAX LATE LIST FEE TOTAL:	 \$226.72 \$0.00	\$0.00 \$0.00	\$226.72 \$0.00 \$226.72
OWNER TOTAL:				\$0						\$58.22
		0002863175-2021-2021-0000	EXEMPTION REMOVED IN ERROR. WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$31,200)	8066	JURSC10	TAX LATE LIST FEE TOTAL:	 \$162.24 \$0.00	\$0.00 \$0.00	\$162.24 \$0.00 \$162.24
OWNER TOTAL:				\$0						\$58.22
		0002869956-2021-2021-0000	EXEMPTION REMOVED IN ERROR. WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$32,800)	8067	JURSC10	TAX LATE LIST FEE TOTAL:	 \$170.56 \$0.00	\$0.00 \$0.00	\$170.56 \$0.00 \$170.56
OWNER TOTAL:				\$0						\$58.22

TX DISTRICT	OWNER	ABSTRACT	NOTE	VALUE CHANGE	ADJ. NUMBER	DISTRICT CODE	LEVY TYPE	BILLED	PAID	RELEASE
ITY OF ANDERSONVILLE	RTS AFFORDABLE HOUSING CORPORATION	0003098166-2021-2021- 0000	EXEMPTION REMOVED IN ERROR, WAS GOVERNMENT PROPERTY TO AN ENTITY THAT THE GOVERNMENT HAS SUBSTANTIAL INTEREST. EXEMPTION ADDED BACK AFTER ERROR FOUND.	(\$+31,400)	8070	JUNSC10	TAX LATE LIST FEE TOTAL:	\$2,243.28 \$0.00	\$0.00 \$0.00	\$2,243.28 \$0.00
OWNER TOTAL:				\$0					ABSTRACT TOTAL:	\$2,243.28
DISTRICT TOTAL:				(\$18,934,420)						\$98,460.95





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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**SUBMITTER:** John Buchanan

**MEETING DATE:** 2/8/23

**AGENDA SECTION:** Consent

**DEPARTMENT:** Finance

**TITLE OF ITEM:** Approval of General Fund Vehicle and Equipment Financing Agreement – *John Buchanan Finance Director*

### **SUGGESTED MOTION(S):**

I move that City Council adopt the *Resolution by the City Of Hendersonville City Council to Approve Financing Terms for the Purchase of Vehicles and Equipment for the General Fund* as presented.

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### **SUMMARY:**

As detailed in the Capital Improvement Plan, the City has or will purchase vehicles and equipment totaling approximately \$762,000 this fiscal year in the General Fund. Staff issued a Request for Proposals for financing of these purchases on January 9, 2023. One formal proposal was received from United Financial. The interest rate proposed was lower than anticipated and staff recommends accepting the proposal of United Financial at 3.65% for four years.

We submit the United Financial proposal for your approval.

**BUDGET IMPACT:** \$102,539

**Is this expenditure approved in the current fiscal year budget?** Yes, first payment June 2023

**If no, describe how it will be funded.**

### **ATTACHMENTS:**

United Financial Proposal

Resolution

Resolution #\_\_-\_\_

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

**WHEREAS**, The City of Hendersonville has previously determined to undertake a project for the financing of vehicles and equipment, and the Finance Director issued a request for proposals for the financing and;

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

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

1. The City of Hendersonville hereby determines to finance the purchase of vehicles and equipment through United Financial, in accordance with the proposal dated January 9, 2023. The amount financed shall not exceed \$762,000 with an annual interest rate of 3.65% for a term of 4 years.
2. All financing contracts and all related documents for the closing of the financing shall be consistent with the foregoing terms. City staff are hereby authorized to and directed to execute and deliver any financing documents, and to take all such action as they may consider necessary to carry out the financing as contemplated by the proposal and this resolution.

Adopted by the City Council of the City of Hendersonville, North Carolina on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney





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January 24, 2023

City of Hendersonville, NC  
160 Sixth Ave E  
Hendersonville, NC 28792

ATT: John Buchanan  
Finance Director

**Proposal for Acquisition & Finance of:** Rolling stock as presented in RFP dated January 9, 2023 in the amount of \$762,000.00.

Dear John,

As a follow-up to your recent request for a proposal regarding the above referenced transaction, United Financial is pleased to offer a finance proposal as follows:

**LESSOR:** United Financial, *A Division of HomeTrust Bank*

**LESSEE:** City of Hendersonville, NC

**COLLATERAL:** Equipment described above.

**AMOUNT:** Up to \$762,000.00

**START DATE:** Immediately upon funding

**TERM:** Four Years

**PAYMENTS:** Lease payments will consist of eight (8) semi-annual payments of \$102,538.39 comprised of principal and interest.

Terms will be held for six months from the date of the proposal (also subject to Expiration and Acceptance terms below). If the transaction is not fully funded within six months of the date of this proposal, terms will then be based upon market rates at that time (defined as the T-Bill associated to the amortized term of the transaction plus 1.0%), limited to a maximum increase in the interest rate of 3.0% for a period of 18 months from the date of the proposal. If the transaction is not fully funded within 18 months of the proposal date, the terms will be based on the T-Bill associated to the amortized term of the transaction plus 1.0% with no maximum rate guaranty.

**EXPIRATION:** Lease payment terms quoted herein are subject to transaction being documented by 03/24/2023.

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**Phone 828-684-5643**  
**Fax 828-684-5616**

**LEGAL TITLE:**

Legal Title to the Equipment during the Lease Term shall vest in the Lessor with Lessor perfecting a first security interest through Equipment Title, UCC other filing instruments as may be required by law.

Section 5, Item J.

**NET LEASE:**

The Lease will be a net lease, under which all cost and responsibility of maintenance, insurance, taxes and other items of a similar nature shall be for the account of Lessee.

**INSURANCE:**

Lessee shall provide evidence of insurance coverage at the time of delivery of the Equipment, in accordance with the provisions of the Lease.

**FINANCIALS:**

Lessee shall furnish Lessor with its last three, (3) fiscal years financial statements and its latest interim financial statements, plus such other pertinent information as Lessor may reasonably request.

**APPROVAL:**

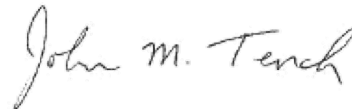
Closing of the transaction(s) described herein, and the implementation hereof is expressly conditioned upon approval of Lessor's Senior Loan Committee, the receipt, review and acceptance of properly executed documentation acceptable to Lessor, and the absence of any material adverse change in Lessee's financial condition prior to deliver and acceptance of the Equipment.

**ACCEPTANCE:**

Lessee acknowledges that the terms and conditions of this proposal are satisfactory and that upon execution hereof by Lessee this proposal shall constitute a valid and binding obligation of Lessee. As further condition to Lessor's approval hereof, Lessee must acknowledge its acceptance of this proposal by signing below in the space provided and returning it to the Lessor by 02/24/2023.

If you determine that this finance structure meet the needs of your organization, please have the appropriate officer indicate the chosen option, place their signature at the bottom of this page, and return it to us via fax, email or US Postal Service. Upon receipt of the signed proposal, we will be in touch with you to make provision for documenting the finance. Thank you for the opportunity to submit this proposal letter for your review and approval. Should you have any question or comments regarding the terms and conditions, or if we can be of any further assistance to you, please do not hesitate to call.

Sincerely,



John M. Tench  
Senior Vice President  
Director of Municipal Finance

**ACCEPTED BY:**

**SIGNATURE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



---

January 24, 2023

City of Hendersonville, NC  
160 Sixth Ave E  
Hendersonville, NC 28792

ATT: John Buchanan  
Finance Director

**Proposal for Acquisition & Finance of:** Rolling stock as presented in RFP dated January 9, 2023 in the amount of \$762,000.00.

Dear John,

As a follow-up to your recent request for a proposal regarding the above referenced transaction, United Financial is pleased to offer a finance proposal as follows:

**LESSOR:** United Financial, *A Division of HomeTrust Bank*

**LESSEE:** City of Hendersonville, NC

**COLLATERAL:** Equipment described above.

**AMOUNT:** Up to \$762,000.00

**START DATE:** Immediately upon funding

**TERM:** Four Years

**PAYMENTS:** Lease payments will consist of eight (8) semi-annual payments of \$102,538.39 comprised of principal and interest.

Terms will be held for six months from the date of the proposal (also subject to Expiration and Acceptance terms below). If the transaction is not fully funded within six months of the date of this proposal, terms will then be based upon market rates at that time (defined as the T-Bill associated to the amortized term of the transaction plus 1.0%), limited to a maximum increase in the interest rate of 3.0% for a period of 18 months from the date of the proposal. If the transaction is not fully funded within 18 months of the proposal date, the terms will be based on the T-Bill associated to the amortized term of the transaction plus 1.0% with no maximum rate guaranty.

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---

**Phone 828-684-5643**  
**Fax 828-684-5616**

**LEGAL TITLE:**

Legal Title to the Equipment during the Lease Term shall vest in the Lessor with Lessor perfecting a first security interest through Equipment Title, UCC other filing instruments as may be required by law.

Section 5, Item J.

**NET LEASE:**

The Lease will be a net lease, under which all cost and responsibility of maintenance, insurance, taxes and other items of a similar nature shall be for the account of Lessee.

**INSURANCE:**

Lessee shall provide evidence of insurance coverage at the time of delivery of the Equipment, in accordance with the provisions of the Lease.

**FINANCIALS:**

Lessee shall furnish Lessor with its last three, (3) fiscal years financial statements and its latest interim financial statements, plus such other pertinent information as Lessor may reasonably request.

**APPROVAL:**

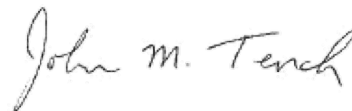
Closing of the transaction(s) described herein, and the implementation hereof is expressly conditioned upon approval of Lessor's Senior Loan Committee, the receipt, review and acceptance of properly executed documentation acceptable to Lessor, and the absence of any material adverse change in Lessee's financial condition prior to deliver and acceptance of the Equipment.

**ACCEPTANCE:**

Lessee acknowledges that the terms and conditions of this proposal are satisfactory and that upon execution hereof by Lessee this proposal shall constitute a valid and binding obligation of Lessee. As further condition to Lessor's approval hereof, Lessee must acknowledge its acceptance of this proposal by signing below in the space provided and returning it to the Lessor by 02/24/2023.

If you determine that this finance structure meet the needs of your organization, please have the appropriate officer indicate the chosen option, place their signature at the bottom of this page, and return it to us via fax, email or US Postal Service. Upon receipt of the signed proposal, we will be in touch with you to make provision for documenting the finance. Thank you for the opportunity to submit this proposal letter for your review and approval. Should you have any question or comments regarding the terms and conditions, or if we can be of any further assistance to you, please do not hesitate to call.

Sincerely,



John M. Tench  
Senior Vice President  
Director of Municipal Finance

**ACCEPTED BY:**

**SIGNATURE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## REPAYMENT SCHEDULE B

Compound Period: Semiannual

Nominal Annual Rate: 3.650%

Loan					
Origination	2/28/2023			Loan Amount	\$ 762,000.00
				Concluding	
	Date	Payment	Interest	Principal	Payment
1	6/20/2023	\$ 102,538.39	\$ 8,652.93	\$ 93,885.46	\$ 674,795.69
2	12/20/2023	\$ 102,538.39	\$ 12,193.09	\$ 90,345.30	\$ 583,546.93
3	6/20/2024	\$ 102,538.39	\$ 10,544.29	\$ 91,994.10	\$ 490,632.89
4	12/20/2024	\$ 102,538.39	\$ 8,865.40	\$ 93,672.99	\$ 396,023.17
5	6/20/2025	\$ 102,538.39	\$ 7,155.86	\$ 95,382.53	\$ 296,719.62
6	12/20/2025	\$ 102,538.39	\$ 5,415.13	\$ 97,123.26	\$ 199,596.36
7	6/20/2026	\$ 102,538.39	\$ 3,642.63	\$ 98,895.76	\$ 100,700.60
8	12/20/2026	\$ 102,538.39	\$ 1,837.79	\$ 100,700.60	\$ -
Grand Totals		\$ 820,307.12	\$ 58,307.12	\$ 762,000.00	





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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**SUBMITTER:** Brent Detwiler, City Engineer      **MEETING DATE:** February 8, 2023

**AGENDA SECTION:** CONSENT      **DEPARTMENT:** Engineering

**TITLE OF ITEM:** Resolution in Support of an Application by the City of Brevard for USDOT  
RAISE Grant Funding to Construct the Ecusta Trail in Transylvania County –  
*Brent Detwiler, City Engineer*

### **SUGGESTED MOTION(S):**

I move City Council to adopt the *Resolution in Support of an Application by the City of Brevard for USDOT RAISE Grant Funding to Construct the Ecusta Trail in Transylvania County* as presented.

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### **SUMMARY:**

The City of Brevard will be applying for a US Department of Transportation RAISE Grant to fund the design and construction of the Ecusta Trail in Transylvania County. This is a resolution in support of their application.

### **ATTACHMENTS:**

Resolution

Resolution #\_\_-\_\_\_\_

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL  
IN SUPPORT OF AN APPLICATION BY THE CITY OF BREVARD FOR  
USDOT RAISE GRANT FUNDING TO CONSTRUCT THE ECUSTA TRAIL IN  
TRANSYLVANIA COUNTY**

**WHEREAS**, the City Council of the City of Hendersonville considers bicycle and pedestrian transportation to be of utmost importance to the region by providing Western North Carolina with recreation and transportation opportunities as well as the possibilities of economic and community development; and

**WHEREAS**, the City Council of the City of Hendersonville adopted a resolution on April 5, 2012 supporting a regional recreational greenway along the Ecusta rail corridor linking Henderson and Transylvania counties; and

**WHEREAS**, the United States Department of Transportation has established a Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program that provides funding for surface transportation infrastructure projects that will have a significant local or regional impact; and

**WHEREAS**, the City of Brevard will be applying for a RAISE Grant to fund the design and construction of the Ecusta Trail in Transylvania County; and

**WHEREAS**, the City Council of the City of Hendersonville feels that it is in the best interest of the citizens of Hendersonville to support and endorse said grant application; and

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

1. The City hereby fully supports and endorses an application by the City of Brevard for USDOT RAISE grant funding to construct the Ecusta Trail in Transylvania County; and
2. The City hopes that Secretary Pete Buttigieg and the US Department of Transportation will recognize the significance of this project and award funding to enhance the safety and connectivity for residents and visitors to the region.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8th day of February 2023.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

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Angela S. Becker, City Attorney



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Lew Holloway, Community Development Director      **MEETING DATE:** February 8, 2023

**AGENDA SECTION:** CONSENT      **DEPARTMENT:** Community Development

**TITLE OF ITEM:** Ordinance to Amend and Correct CZD Ordinance #O-22-08 – *Lew Holloway, Community Development Director*

### **SUGGESTED MOTION(S):**

I move City Council to adopt the ***AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND AND CORRECT ORDINANCE #O-22-08 TO AMEND THE PERMITTED LIST OF USES FOR PARCEL 9578-24-9710 C-2 CZD SECONDARY BUSINESS CONDITIONAL ZONING DISTRICT***, as presented.

**SUMMARY:** On January 6th, 2022 the City adopted Ordinance #O-22-08, An Ordinance Amending the Official Zoning Map of the City of Hendersonville which rezoned Parcel Number 9578-24-9710 (previously, 9578-24-8681) from City of Hendersonville C-2 CZD, Secondary Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District. The application received for this rezoning from William A. Pace, Jr. (Applicant) and William A. Pace Jr. LLC (Property Owner) requested the addition of Automotive Paint & Body and certain permitted uses in the C-2 Secondary Business Zoning District to the approved list of uses for the Conditional Zoning District at the subject property. In reviewing this application the City Council considered the list of permitted uses in the C-2, Secondary Business Conditional Zoning District and, specifically the Special Use of Automotive Paint and Body and moved to adopt an ordinance the Official Zoning Map of the City of Hendersonville to include these uses; however the Ordinance, as drafted and adopted, mistakenly left Automotive Paint and Body off the list of permitted uses.

City Council is requested to adopt the attached ordinance to correct this omission.

**ATTACHMENTS:**  
Proposed Ordinance Amendment

Ordinance #23-00

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND  
AND CORRECT ORDINANCE #O-22-08 TO AMEND THE PERMITTED LIST OF USES  
FOR PARCEL 9578-24-9710 C-2 CZD SECONDARY BUSINESS CONDITIONAL ZONING  
DISTRICT**

**WHEREAS**, the City Council adopted Ordinance #18-070749, An Ordinance Amending the Official Zoning Map of the City of Hendersonville which rezoned Parcel Number 9578-24-9710 (previously, 9578-24-8681) from City of Hendersonville R-15 Medium Density Residential to C-3 CZD, Highway Business Conditional Zoning District; and

**WHEREAS**, the City adopted Ordinance #20-0427, An Ordinance Amending the Official Zoning Map of the City of Hendersonville which rezoned Parcel Number 9578-24-9710 9710 (previously, 9578-24-8681) from City of Hendersonville C-3 CZD Highway Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District; and

**WHEREAS**, on January 6th, 2022 the City adopted Ordinance #O-22-08, An Ordinance Amending the Official Zoning Map of the City of Hendersonville which rezoned Parcel Number 9578-24-9710 (previously, 9578-24-8681) from City of Hendersonville C-2 CZD, Secondary Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District; and

**WHEREAS**, the application from William A. Pace, Jr. (Applicant) and William A. Pace Jr. LLC (Property Owner) for rezoning the subject parcel, requested the addition of Automotive Paint & Body and certain permitted uses in the C-2 Secondary Business Zoning District to the approved list of uses for the Conditional Zoning District at the subject property, and

**WHEREAS**, in reviewing this application the City Council considered the list of permitted uses in the C-2 , Secondary Business Conditional Zoning District and, specifically the Special Use of Automotive Paint and Body and moved to adopt an ordinance the Official Zoning Map of the City of Hendersonville to include these uses; and

**WHEREAS**, the ordinance adopted mistakenly left Automotive Paint and Body off the list of permitted uses.

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

1. The list of permitted uses included in Ordinance #O-22-08 shall be amended, effective February 8<sup>th</sup>, 2023, as follows:



Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be based on the site plan submitted by the applicant and subject to the following:

a) Permitted Uses shall include:

- i. Accessory uses & structures
- ii. Animal hospitals & clinics so long as the use contains no outdoor kennels
- iii. Automobile car washes
- iv. Automobile sales & service establishments
- v. Banks and other financial institutions
- vi. Bed & breakfast facilities
- vii. Cultural arts buildings
- viii. Dance and fitness facilities
- ix. Dry cleaning and laundry establishments containing less than 6,000 ft<sup>2</sup> square feet of floor area
- x. Farm equipment sales & service
- xi. Funeral homes
- xii. Laundries, coin-operated
- xiii. Microbreweries, subject to special requirements Supplementary Standards contained in Section 16-4, below
- xiv. Mobile food vendors, subject to special requirements Supplementary Standards contained in Section 16-4, below
- xv. Music and art studios
- xvi. Neighborhood community centers
- xvii. Newspaper offices and printing establishments
- xviii. Offices, business, professional and public
- xix. Parking lots and parking garages
- xx. Parks
- xxi. Progressive care facilities subject to special requirements Supplementary Standards contained in Section 16-4, below
- xxii. Restaurants
- xxiii. Retail stores
- xxiv. Schools, post-secondary, business, technical and vocational
- xxv. Schools, primary & secondary
- xxvi. Signs, subject to the provisions of Article XIII
- xxvii. Theaters, indoor
- xxviii. Automotive Paint and Body

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8th day of February, 2023.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

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Angela S. Beeker, City Attorney



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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**SUBMITTER:** D. James Miller, Fire Chief      **MEETING DATE:** February 8, 2023

**AGENDA SECTION:** Presentation      **DEPARTMENT:** Fire Department

**TITLE OF ITEM:** Introduction of Deputy Fire Chief – D. James Miller, Fire Chief

**SUGGESTED MOTION(S):**

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**SUMMARY:** Introduction of new Deputy Fire Chief – Daniel C. Chavous

**ATTACHMENTS:**



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

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SUBMITTER:	Lu Ann Welter	MEETING DATE:	February 8, 2023
AGENDA SECTION:	Presentation Only	DEPARTMENT:	Human Resources
TITLE OF ITEM, Presenter Name, Title:	Quarterly MVP Recipients – <i>John Connet, City Manager</i>		
<b><u>SUGGESTED MOTION(S):</u></b>	None		

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**SUMMARY:**

The Service Excellence Design Team voted these employees as the MVPs for the October through December quarter of 2022.

**BUDGET IMPACT:**     \$

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

**If no, describe how it will be funded.**

<b>PROJECT NUMBER:</b> N/A	<b>PETITION NUMBER:</b> N/A
<b>ADDITIONAL PETITION NUMBER:</b> N/A	
<b>PETITIONER NAME:</b> N/A	
<b>ATTACHMENTS:</b>	
PowerPoint Presentation	



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Lu Ann Welter                      **MEETING DATE:** February 8, 2023

**AGENDA SECTION:** Presentation Only                      **DEPARTMENT:** Human Resources

**TITLE OF ITEM, Presenter Name, Title:** MVP of the Year – *John Connet, City Manager*

**SUGGESTED MOTION(S):** None

### SUMMARY:

In 2022, 186 employees were nominated for MVP and each quarter three were chosen as Quarterly MVPs. From these, the Service Excellence Design Team selected Paul Williams as the MVP of the Year for 2022.

Mr. Williams will receive \$500 and his name added to the MVP of the Year plaque.

**BUDGET IMPACT:**     \$

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

**If no, describe how it will be funded.**

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:** Word Document





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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**SUBMITTER:** Brendan Shanahan

**MEETING DATE:** February 8, 2023

**AGENDA SECTION:** PRESENTATIONS

**DEPARTMENT:** Engineering

**TITLE OF ITEM:** Understanding Flood Risk – *Brendan Shanahan, Projects Division Manager*

**SUGGESTED MOTION(S):**

N/A

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**SUMMARY:**

Staff continue to have discussions of how to best identify and assess flood risk to safety and property in our community.

**BUDGET IMPACT:** \$0

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

**If no, describe how it will be funded.**

**ATTACHMENTS:**

None - Presentation to be provided by B. Shanahan



# CITY OF HENDERSONVILLE

## AGENDA ITEM SUMMARY

### PLANNING DIVISION

<b>SUBMITTER:</b>	Matthew Manley	<b>MEETING DATE:</b>	January 5, 2023
<b>AGENDA SECTION:</b>	Public Hearing	<b>DEPARTMENT:</b>	Community Development
<b>TITLE OF ITEM:</b>	Zoning Text Amendment: Lightning Ordinance (P22-100-ZTA) – <i>Lew Holloway, Community Development Director</i>		

#### SUGGESTED MOTION(ZONING TEXT AMENDMENT):

<p><b><u>For Recommending Approval:</u></b></p> <p>I move City Council <b><u>adopt</u></b> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article VI. – General Provisions adding Section 6-19, revising Section 6-2. Nonconformities and Section 6-13. Nuisances and Article VII. Development Review and Article XII. Definition of Terms, based on the following:</p> <p><b>1. The petition is found to be <u>consistent</u> with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:</b></p> <p style="padding-left: 40px;">The petition aligns with the Comprehensive Plan’s goals to minimize the negative impacts of growth (Strategy LU-3.5) and to protect wildlife habitat (Strategy NR-1.2).</p> <p><b>2. We [find] this petition, in conjunction with the recommendations presented by staff, to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:</b></p> <ol style="list-style-type: none"> <li>1. The proposed text amendment establishes standards which allow for the sufficient and safe lighting of sites while reducing negative impacts on people, plants and animals.</li> <li>2. The proposed text amendment establishes standards which address light pollution, an issue of growing international, national and regional concern.</li> <li>3. The text amendment would ensure that both public lighting and private, nonresidential lighting would meet standards that minimize light pollution.</li> </ol>	<p><b><u>For Recommending Denial:</u></b></p> <p>I move City Council <b><u>deny</u></b> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article VI. – General Provisions adding Section 6-19, revising Section 6-2. Nonconformities and Section 6-13. Nuisances and Article VII. Development Review and Article XII. Definition of Terms based on the following:</p> <p><b>1. The petition is found to be <u>consistent</u> with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:</b></p> <p style="padding-left: 40px;">The petition aligns with Goal LU-10 of the Land Use and Development Chapter which calls for maintaining a highly urban, pedestrian-focused environment through building and streetscape design.</p> <p><b>2. We [do not find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:</b></p> <ol style="list-style-type: none"> <li>1. The text amendment would place an undue burden on new commercial and multi-family residential developments.</li> <li>2. The text amendment would place an undue burden on existing commercial and multi-family residential uses at the end of the amortization period.</li> </ol> <p style="text-align: center; margin-top: 20px;"><b>[DISCUSS &amp; VOTE]</b></p>
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[DISCUSS & VOTE]

This item will also require a second motion to adopt the Code of Ordinance Amendment to Chapter 46. The suggested motion for that action is:

**SUGGESTED MOTION (CODE OF ORDINANCES):**

I move that City Council adopt *An Ordinance of the City of Hendersonville City Council to Amend Chapter 46 – Streets, Sidewalks, and Other Public Places* adding Article VI – *Street Lights* to the Code of Ordinances as presented for the first reading.

***SUMMARY:** The City of Hendersonville initiated efforts related to this text amendment at the behest of City Council and the Planning Board in early 2021. Initial request revolved around the concept of “Dark Sky compliance”. Initial drafts of the ordinance were based on the Model Light Ordinance (MLO) provided by the International Dark Sky Association in conjunction with the Illuminating Engineering Society (IES). A local “Lighting Ordinance Subcommittee” as well as the Business Advisory Council reviewed these initial drafts in 2021. Ultimately it was determined that a simplified Lighting Ordinance would be preferred. The current draft is based on the efforts to create a simple but effective set of standards for exterior, commercial and multi-family lighting.*

*The proposed standards apply to non-residential and multi-family uses while single-family and two-family residential uses are exempt. The draft ordinance primarily addresses uplight on these properties and protects the stream buffer from light trespass. The proposal also addresses streetlighting with a provision in the City Code of Ordinances restricting lighting on local streets to ensure there is limited uplight.*

*Many of the basic standards of the proposed text amendment were provided by representatives of the Business Advisory Council / PEP. The proposed draft combines this input with the input from staff and elected and appointed officials. A version of the current draft was reviewed and supported by the Legislative Committee of the Planning Board in October 2022. At least one member of this committee also participated in the Lighting Ordinance Subcommittee which convened across 2021. The draft was also reviewed by the Business Advisory Council on December 5, 2022. The BAC was not in favor of the ordinance and provided specific feedback on proposed revisions outlined in the staff report. The Planning Board considered this item on December 12, 2022 and voted 4-3 in favor of the draft ordinance.*

**PROJECT/PETITIONER NUMBER:**

P22-100-ZTA

<b>PETITIONER NAME:</b>	City of Hendersonville
<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"> <li>1. Staff Report</li> <li>2. Planning Board Summary</li> <li>3. Draft Zoning Ordinance – Lighting Standards</li> <li>4. Draft Code of Ordinances – Street Light Standards</li> <li>5. Collaboration Exhibit of Draft Ordinance</li> <li>6. Draft Lighting Ordinance w/Clarifications</li> <li>7. Lighting Inventory and Estimated Replacement Cost</li> </ol>

## Staff Memo:

### Lighting Ordinance (P22-100-ZTA) - January to February City Council Ordinance Changes

AMENDMENTS: Amendments and additions highlighted below.

#### **Article VI. – General Provisions**

##### **6-19-3. Site Lighting Standards**

- b) The maximum light level using maintained lumens shall be no more than 0.5 1.0 foot candles for a non-residential to residential/multi-family residential use interface at the ground level of the property line.
- c) The maximum light level using maintained lumens shall be no more than 0.5 1.0 foot candles for a multi-family residential-to-residential use interface at the ground level of the property line.

#### **Article XII. – Definition of Terms**

Ornamental Lighting – Lighting fixtures designed to adorn a building or structure and have stand-alone aesthetic appeal. The fixtures themselves are decorative in nature and provide ornamentation in addition to their function as a light source.

Architectural Lighting – Lighting designed to illuminate building design and form for the purpose of decoration, ornamentation, creation of visual hierarchy, sense of liveliness or other purpose unrelated to safety, business operation, or essential lighting function.



ZONING TEXT AMENDMENT: LIGHTING STANDARDS &  
CITY CODE OF ORDINANCES AMENDMENT: STREET LIGHTING  
(P22-100-ZTA)

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT ..... 10



PROJECT SUMMARY

- Project Name & Case #:
  - Lighting Ordinance
  - P22-100-ZTA
- Applicant:
  - City of Hendersonville
- Zoning Code Articles Amended:
  - Article VI. General Provisions
    - Addition of Sec. 6-19
    - Amendment to Sec. 6-2
    - Amendment to Sec. 6-13
  - Article VII. Development Review
    - Amendment to 7-3-4.3 Contents of Final Site Plan
  - Article XII. Definition of Terms
- City Code of Ordinances Amended:
  - Chapter 46 – Streets, Sidewalks, and Other Public
    - Article VI – Street Lights
- Planning Board - Legislative Committee Meeting
  - October 18, 2022
- Business Advisory Board
  - December 5, 2022
- Summary Basics:
  - The petition proposes to set lighting standards for Non-residential and Multi-Family uses
  - Standards do not apply to Single & Two-Family Residential uses.
  - Proposes: Zero Uplight; IES standards; CCT limit 4,000K; CRI limit 70; prohibition of unshielded floodlights and wall packs; max footcandles at property lines; protection of stream buffer

*Summary of Amendment Petition:*

*The City of Hendersonville initiated efforts related to this text amendment at the behest of City Council and the Planning Board in early 2021. Initial request revolved around the concept of “Dark Sky compliance”. Initial drafts of the ordinance were based on the Model Light Ordinance (MLO) provided by the International Dark Sky Association in conjunction with the Illuminating Engineering Society (IES). A local “Lighting Ordinance Subcommittee” as well as the Business Advisory Council reviewed these initial drafts in 2021. Ultimately it was determined that a simplified Lighting Ordinance would be preferred. The current draft is based on the efforts to create a simple but effective set of standards for exterior, commercial and multi-family lighting.*

*Many of the basic standards of the proposed text amendment were provided by representatives of the Business Advisory Council. The proposed draft combines this input with the input from staff and elected and appointed officials. A version of the current draft was reviewed by the Legislative Committee of the Planning Board in October 2022. At least one member of this committee also participated in the Lighting Ordinance Subcommittee which convened across 2021.*

*The proposed standards apply to non-residential and multi-family uses while single-family and two-family residential uses are exempt. The proposal also addresses streetlighting with a provision in the City Code of Ordinances restricting lighting on local streets to ensure there is limited uplight.*

## AMMENDMENT ANALYSIS – AMENDMENT OVERVIEW

The effort to establish a Lighting Ordinance for the City of Hendersonville has been underway for over two years. Advocacy efforts to address local light pollution were initiated by the concept of becoming “dark sky compliant”. Over the course of many conversations with elected and appointed officials, stakeholders and local advocates, the details of how to address concerns related to light pollution were illuminated.

Over the two years that this topic has been researched and discussed, numerous rounds of meetings have been held and many of hours of staff time have been devoted to it. Initial efforts to draft the ordinance were done by staff in conjunction with an appointed Lighting Ordinance / Dark Sky Committee. This committee was comprised by members of the Planning Board, the Historic Preservation Commission, Dark Sky advocates and local lighting experts. The initial “Model Light Ordinance” based draft was supported by this committee. The Business Advisory Committee also reviewed the MLO-based draft and expressed concerns with some of the proposed standards. After multiple meetings with the BAC, Planning staff put the ordinance on hiatus while efforts were made to collaborate with local lighting experts from GE, representatives appointed by the BAC and Duke Energy. This collaboration led to the restructured ordinance that is presented in this staff report.

Current language in the Zoning Code regarding exterior lighting is found in one sentence in Section 6-13. Nuisances. This nuisance standard lacks measurable outcomes and does not set clear goals for development/redevelopment nor does it reflect the desired outcomes of the community when it comes to the cumulative effect of exterior lighting – i.e. light trespass, sky glow, impact on natural environment, and energy consumption.

The current language in the Zoning Code reads as follows:

Section 6-13-4 - Lighting.

Lighting facilities, if provided, shall be aimed, directed, shielded or arranged so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights-of-way.

The proposed draft Lighting Ordinance is based on an effort to establish standards which:

- 1) Are easily understood and achievable
- 2) Can be reviewed and enforced by City staff
- 3) Addresses both publicly-owned and privately-owned lighting facilities
- 4) Meets the “intent” stated in Section 6-19 below.

The proposed Lighting Ordinance reads as follows:

## ZONING TEXT AMENDMENT – OUTDOOR LIGHTING STANDARDS

### Article VI. - General Provisions

#### **Section 6-19. Lighting.**

Intent. The purpose of these standards is as follows:

- a) Minimize adverse offsite impacts of lighting such as light trespass and obtrusive light.
- b) Curtail light pollution, reduce skyglow and improve the nighttime environment.
- c) Help protect the natural environment from the adverse effects of artificial lighting at night.
- d) Conserve energy and resources to the greatest extent possible.

**6-19.1. General Standards of Applicability.** The lighting standards of this section shall be applicable as follows:

- a) Non-residential uses shall be subject to these standards. For the purposes of these standards non-residential shall include, but not be limited to, commercial, institutional, educational, industrial, etc.
- b) Multi-family residential uses shall be subject to these standards. For the purposes of these standards multi-family residential shall include all residential uses with three or more attached dwelling units.
- c) Residential uses shall be exempted from these standards. For the purposes of these standards, residential uses shall include all single family & two-family residences.
- d) Street and roadway lighting shall be exempt from these standards. Street and roadway lighting are subject to the standards of the City of Hendersonville Code of Ordinances (Chapter 46, Article VI).
- e) For the purposes of these standards the term “stream buffer” shall refer to the term as defined in Section 17-3 of this ordinance.

#### **6-19.2. Standards**

All new exterior lighting installed, after the effective date of this Ordinance and within the zoning jurisdiction of the City of Hendersonville, shall comply with the following standards:

- a) Lighting levels and placement shall be designed in accordance with applicable Illuminating Engineering Society (IES) recommended practices.
- b) Lighting shall be designed to an Uplight ratio of zero (0) and designed to limit Backlight trespass.
  - a. Exceptions. Lighting for flagpoles, sports facilities, temporary construction sites, correctional facilities, lighting used solely for signage (see sign regulations), lighting as needed under emergency conditions, low voltage landscape lighting, temporary seasonal lighting, and ornamental and architectural lighting of bridges, public monuments, statuary and public buildings.
- c) The nominal CCT limit shall be ≤ 4,000K

- d) The CRI limit shall be  $\geq 70$ .
- e) New floodlights shall be prohibited. Replacement area lighting shall be shielded to prevent uplight and to prevent front, side, and/or back light depending on the implications on surrounding properties.
- f) All wall pack lights shall be full cutoff and shielded.
- g) The maximum light level using maintained lumens shall be no more than 0.5 foot candles for a non-residential to residential/multi-family residential use interface.
- h) The maximum light level using maintained lumens shall be no more than 0.25 foot candles for a multi-family residential-to-residential interface.
- i) The maximum light level using maintained lumens shall be no more than 0.0 foot candles for a non-residential/multifamily residential to Stream Buffer interface.
- j) No lights shall be installed within a Stream Buffer except as described below. Lighting may be permitted within a Stream Buffer only where facilities exempted under Section 17-3-5 are located and shall be oriented to minimize light intrusion within the Stream Buffer.

### **6-19-3. Existing Exterior Lighting.**

Non-compliant lighting installed prior to the effective date of this ordinance shall be considered non-conforming and may continue to be used in accordance with the non-conforming standards found in Section 6-2-5 with the following exception:

- a) Amortization. On or before [INSERT 10 YEARS FROM EFFECTIVE DATE], all exterior lighting shall comply with this Code.

## **Section 6-2. - Nonconformities**

### **6-2-5 Nonconforming Exterior Lighting.**

The following applies to existing non-compliant lighting installed prior to [adoption date of ordinance].

#### **6-2-5.1 Thresholds for compliance.**

Full compliance with the lighting requirements in Section 6-19 shall be required under the following circumstances:

- a) When repairing 50% or more of total existing exterior lighting fixtures on a site within any 12-month period.
- b) When expanding, moving, or altering 50% or more of an existing parking or lighted area.
- c) When structures on a site with non-conforming lighting are renovated and the total cost of renovations exceeds 50% of the assessed value of the building according to Henderson County tax records

## **Section 6-13. - Nuisances**

### **6-13-4 Lighting.**

Lighting facilities, if provided, shall be aimed, directed, shielded or arranged so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights-of-way to mitigate off-site lighting trespass to surrounding properties.



## Article VII Development Review

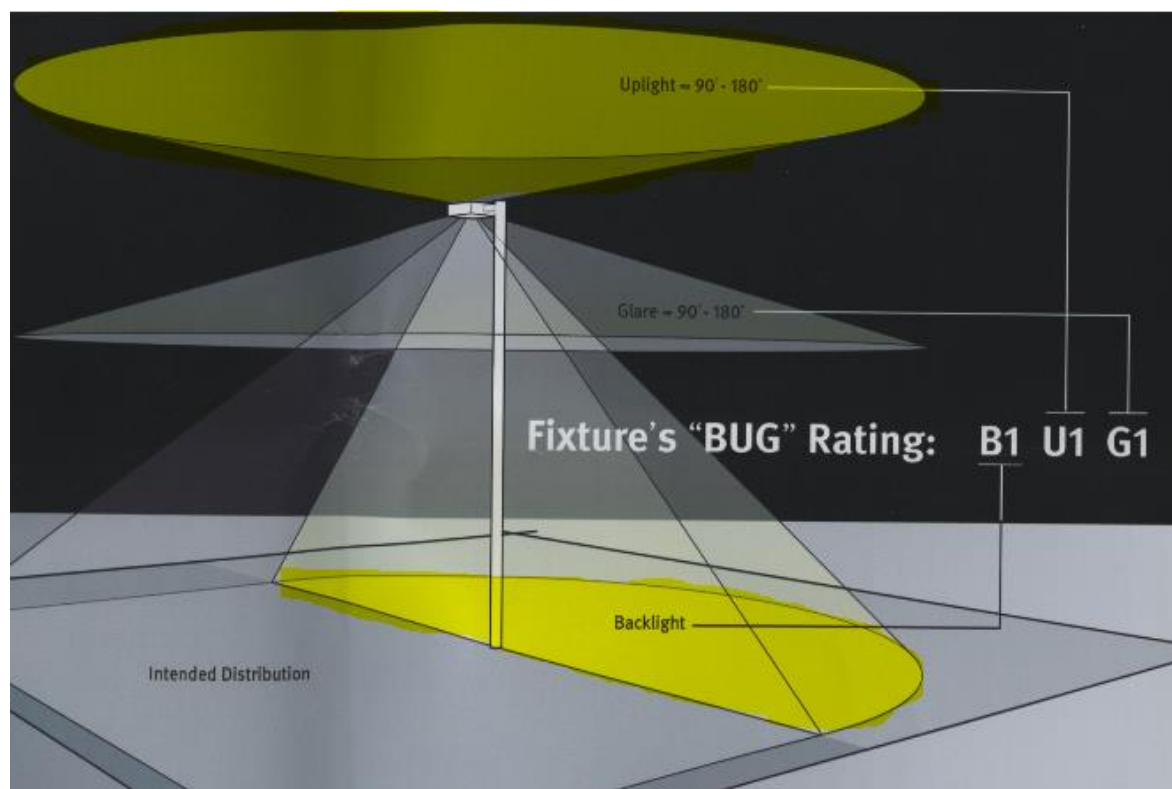
### 7-3-4.3 Contents of Final Site Plan.

r) Site Lighting Plan conforming with the standards established in Section 6-19 and Section 6-2-5. Such plan shall include proposed fixture list, location and orientation of fixtures, footcandle map, property lines and stream buffers at a minimum.

## Article XII. – Definition of Terms

Uplight – For an exterior light fixture, light output emitted into the hemisphere above the horizontal plane of the light emitting light opening (i.e. above 90° from straight down) (see Figure 1)

Backlight – For an exterior light fixture, light output emitted into the lower rear quarter sphere behind the fixture and opposite the intended aiming direction of the fixture. For a light fixture with a symmetric light output pattern, the backlight is the same as the forward light. (see Figure 1)



*Figure 1 (provided by International Dark Sky Association & Illuminating Engineering Society)*

Lumen - The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from “watt,” a measure of power consumption).

Footcandle (FC) - A unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot

Correlated Color Temperature (CCT) - A description of the color appearance of a light source in terms of warmth (lower temperatures) or coolness (higher temperatures), as measured on the Kelvin (K) scale (i.e. High Pressure Sodium 2200K, Metal Halide 3000-4200K, moonlight 4100K)

Color Rendering Index (CRI) - A method to describe the effect a light source (from 0 poor to 100 best) has on the observer's ability to differentiate the true color of objects being illuminated (High Pressure Sodium 27, Metal Halide 65-80, LED 70-90, sunlight 100)

## CODE OF ORDINANCES AMENDMENT – STREET LIGHT STANDARDS

### **Chapter 46 – Streets, Sidewalks, and Other Public Places**

#### **Article VI – Street Lights**

##### **Sec. 46-184. – Definitions**

Whenever and wherever used in this article the following words and names shall have the following meanings:

Roadway or Highway Lighting shall mean lighting provided for freeways, expressways, limited access roadways, and roads on which pedestrians, cyclists, and parked vehicles are generally not present. The primary purpose of roadway or highway lighting is to help the motorist remain on the roadway and help with the detection of obstacles within and beyond the range of the vehicle's headlights.

Street Lighting shall mean lighting provided for boulevards, major & minor thoroughfares, and local roads where pedestrians and cyclists are generally present. The primary purpose of street lighting is to help the motorist identify obstacles, provide adequate visibility of pedestrians and cyclists, and assist in visual search tasks, both on and adjacent to the roadway.

Ornamental Street Lighting shall mean a luminaire intended for illuminating streets that serves a decorative function in addition to providing optics that effectively deliver street lighting. It has a historical period appearance or decorative appearance, and has the following design characteristics:

- Designed to mount on a pole using an arm, pendant, or vertical tenon;
- Opaque or translucent top and/or sides;
- An optical aperture that is either open or enclosed with a flat, sag or drop lens;
- Mounted in a fixed position.

##### **Sec. 46-185. – Applicability**

All street lighting not governed by regulations of federal, state or other superseding jurisdiction.

##### **Sec. 46-186. - Light Shielding and Distribution**

All street lighting shall have no light emitted above 90 degrees with the following exception:

- a) Ornamental street lighting for specific districts or projects shall be permitted.

## PUBLIC INPUT / RECOMMENDATION

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### Legislative Committee of the Planning Board – October 18, 2022

The Legislative Committee reviews all text amendments prior to consideration by the Planning Board. Given the number of iterations and the level of review this topic has received over a two-year period, members of this committee were fairly familiar with the proposed standards as well as the modifications that occurred between the initial MLO-based draft and the current draft. Members of the committee preferred this simplified version and express support for its straightforward applicability for both developers and staff.

### Business Advisory Committee – December 5, 2022

The Business Advisory Committee convenes quarterly to review policy decisions and to provide perspective on potential impacts on the business community. The initial MLO-based draft of the Lighting Ord was presented to the BAC in 2021 on multiple occasions. The Business Advisory Committee employed assistance from Partnership for Economic Prosperity (PEP) to advocate for many of the changes that are part of the current draft. Based on their feedback, the Ordinance was significantly simplified.

At their special-called meeting on December 5<sup>th</sup>, The BAC reviewed the current draft of the lightning ordinance and provided further criticism and reservations about the policies therein. There was a general sense that there was no need for the Lightning Ordinance, that this would create an undue burden, specifically, on the business community, that the measures would limit lighting for businesses and create safety issues. More specifically, their concerns centered on a few primary considerations, with some secondary concerns as well. Primary concerns/recommendations included:

**1) Expand the Footcandle restriction at property lines where commercial uses transition to residential uses from .5 Footcandles to 1 Footcandle.**

BAC Rationale: Original proposal by PEP was for 1 FC and it was reduced to .5 FC based on recommendation from Duke Energy.

**2) Eliminate the Amortization date or, at a minimum, expand it to 15 years.**

BAC Rationale: The use of amortization is rarely used, why use it in this case? The enforcement after the 10-year period will be very costly for the City and for taxpayers. The enforcement of footcandles at property lines is difficult to measure. And natural attrition of outdated lights will be sufficient.

**3) Clarify the implications of the word “altering” under 6-2-5.1 b) - nonconformity triggers.**

BAC Rationale: Altering could mean different things to different administrators. Does it include resurfacing an existing asphalt parking lot? Does it include paving a gravel parking lot? Etc.

Other secondary concerns included, the impact the measures would have on 24 hours businesses, concerns with the limitations in the stream buffer, and general concerns with the city’s ability to enforce footcandles.

## AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Land Use & Development	<i>Strategy LU-3.5 Minimize negative impacts from growth and land use changes on existing land uses...</i>
	<p><i>Strategy LU-3.6. - Update the Zoning Code to ensure conformance with the Comprehensive Plan. The Zoning Code is the City's primary regulatory tool in implementing the Comprehensive Plan. Amendments to the Zoning Code and Map will be necessary to reflect Comprehensive Plan recommendations and ensure orderly growth and development. [CONSISTENT]</i></p> <p><i>Action LU-3.6.1 Conduct a comprehensive review of the Zoning Code and Map to identify and prioritize necessary changes, including but not limited to:</i></p> <ul style="list-style-type: none"> <li>- <i>Landscaping and urban design guidelines and standards</i></li> </ul>
	<i>Section 8.2 Issues and Opportunities, Urban Design - There is strong support among Hendersonville citizens for green building and site development practices that maximize energy and water efficiency and respect the natural features on a site.</i>
Population & Housing	<b>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</b>
Natural & Environmental Resources	<p><i>Chapter 3 Natural Resources provides specific support for "additional guidelines and provisions for low-impact building and site design."</i></p> <p><i>Strategy NR-1.2: Protect land adjacent to streams in order to protect water quality, reduce erosion, and protect wildlife habitat.</i></p> <p><i>Action NR-1.2.2 Continue to enforce and improve upon the City Stream Buffer Protection Standards...additional guidelines and provisions for low-impact building and site design.</i></p> <p><i>Action NR-1.2.1 Encourage protection of streams and wetlands and land adjacent to them.</i></p>
Cultural & Historic Resources	<b>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</b>
Community Facilities	<b>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</b>
Water Resources	<b>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</b>
Transportation & Circulation	<b>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</b>

## GENERAL REZONING STANDARDS

Compatibility	<b>Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property –</b>
	<i>The proposed text amendment allows for the sufficient and safe lighting of sites while reducing negative impacts.</i>
Changed Conditions	<b>Whether and the extent to which there are changed conditions, trends or facts that require an amendment –</b>
	<i>Increases in light pollution, a regional as well as international issue, has brought greater attention to site lighting. Advancements by lighting industry leaders and improvements in lighting technology have provided solutions to mitigate the impacts of site lighting. Many solutions to light pollution are being implemented by the lighting industry without regulatory requirements.</i>
Public Interest	<b>Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare –</b>
	<i>The proposed text amendment allows for the sufficient and safe lighting of sites while reducing negative impacts of light pollution, i.e. sky glow, glare, light trespass, etc. A notable negative impact of light pollution on humans is sleep deprivation while flora and fauna are also disrupted by artificial light during hours of natural darkness.</i>
Public Facilities	<b>Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment</b>
	<i>Lighting for city-owned public facilities as well as public streetlighting were evaluated as part of this process. It is estimated that approximately \$20K would be needed to bring the City's lights into conformance with the proposed amendment.</i>
Effect on Natural Environment	<b>Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife –</b>
	<i>Studies have indicated that a range of flora and fauna are disrupted by artificial light during normal / natural dark hours. The proposed text amendment aims to protect stream buffers. Riparian corridors are locations of high levels of species richness. Additionally, reduced light pollution reduces energy waste and allows for more sustainable site development.</i>



DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

*The petition aligns with the Comprehensive Plan's goals to minimize the negative impacts of growth (Strategy LU-3.5) and to protect wildlife habitat (Strategy NR-1.2).*

We [find] this city-initiated petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

*DRAFT [Rationale for Approval]*

- The proposed text amendment establishes standards which allow for the sufficient and safe lighting of sites while reducing negative impacts on people, plants and animals.*
- The proposed text amendment establishes standards which address light pollution, an issue of growing international, national and regional concern.*
- The text amendment would ensure that both public lighting and private, nonresidential lighting would meet standards that minimize light pollution.*

*DRAFT [Rational for Denial]*

- The text amendment would place an undue burden on new commercial and multi-family residential developments.*
- The text amendment would place an undue burden on existing commercial and multi-family residential uses at the end of the amortization period.*

PLANNING BOARD RECOMMENDATIONProject #: P22-100-ZTAMeeting Date: December 12, 2022

PETITION REQUEST: Zoning Text Amendment – Lighting Ordinance

APPLICANT/PETITIONER: City of Hendersonville

**PLANNING BOARD ACTION SUMMARY:**

Staff gave a presentation on the proposed draft ordinance including feedback from the committee level including the recommendation from the Business Advisory Council. Staff reviewed the guidance from the Comprehensive Plan and the criteria for considering a zoning text amendment. A Planning Board member presented photos of local parking lot lighting. The Planning Board considered this item for just over two hours.

Members of the public asked questions and expressed their opinions on the matter at hand. Those opposed to aspects of the ordinance included the following:

1. Susan Frady, Partners for Economic Progress – voiced the following concerns about the ordinance: burden to limit to .5 footcandles instead of a 1 footcandle limit, City's ability to enforce the ordinance, cost to the City, using amortization vs non-conforming triggers, and the exemption for ornamental lights gives the City a pass.
2. Ken Gordon, Norm's Minit Mart - voiced the following concerns about the ordinance: amortization is burden for current businesses and not cost-effective for City to enforce, opposed to stream buffer limitations, and nuisance-based enforcement is not practical nor fair.
3. Ken Fitch, 1046 Patton St – voiced the following concerns about the ordinance: concerned about impact to churches, definition of stream buffer, and reflective light.

Those in favor of the ordinance included:

1. Lynne Williams, Chadwick Ave – supportive of Dark Sky efforts, finds the ordinance forward-thinking, and relieved that action is being taken after the issue has been discussed at the board level for years.

The Planning Board discussed and reflected varying opinions on various aspects of the draft ordinance. Some members who were opposed had the following concerns: the ordinance is too hard to understand, there needs to be a definition for 'repair', enforcement at end of amortization too difficult, there are no exceptions for certain non-residential uses such as churches and hospitals and concern over impacts to small businesses.

Those Planning Board members in support of the ordinance expressed the following: the proposed language does not restrict light levels on a site, it just requires that it be shielded; they pointed out the number of local jurisdictions in the region that have lighting ordinances with amortization dates; and enumerated the concessions that have been made between the MLO version and the current draft ordinance, and one of the members supported the amortization as a small business owner.

MOTION:  
Mr. Brown made a motion to approve the petition. The motion passed 4-3 with the following language:

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:  
The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

*The petition aligns with the Comprehensive Plan’s goals to minimize the negative impacts of growth (Strategy LU-3.5) and to protect wildlife habitat (Strategy NR-1.2).*

REASONABLENESS STATEMENT  
We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

- [Rationale for Approval]
- 1. The proposed text amendment establishes standards which allow for the sufficient and safe lighting of sites while reducing negative impacts on people, plants and animals.*
  - 2. The proposed text amendment establishes standards which address light pollution, an issue of growing international, national and regional concern.*
  - 3. The text amendment would ensure that both public lighting and private, nonresidential and multi-family lighting would meet standards that minimize light pollution.*

- BOARD ACTION
- **Motion/Second:** Brown / Glassman
  - **Yeas:** Brown, Martin, Cromar, Glassman
  - **Nays:** Robertson, Blatt, Hanley
  - **Absent:** Peacock, Flores
  - **Recused:** N/A

Ordinance # \_\_\_\_ - \_\_\_\_

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE CITY OF HENDERSONVILLE ZONING ORDINANCE, ARTICLE VI – GENERAL PROVISIONS ADDING SECTION 6-19 AND REVISING SECTION 6-2.**

**NONCONFORMITIES AND SECTION 6-13. NUISANCES AND ARTICLE VII DEVELOPMENT REVIEW REVISING SECTION 7-3 AND ARTICLE XII – DEFINITION OF TERMS TO REGULATE THE INSTALLATION ON-SITE LIGHTING FOR CERTAIN LAND USES WITHIN THE CITY OF HENDERSONVILLE.**

**WHEREAS**, the City of Hendersonville’s Planning Board has reviewed and recommended for adoption a zoning text amendment to establish Lighting Standards for non-residential and multi-family land uses within the City of Hendersonville’s zoning jurisdiction; and

**WHEREAS**, the proposed amendment is intended to encourage compatible redevelopment and infill development by reducing the potential negative impacts of these projects on existing development and on natural resources; and

**WHEREAS**, City Council desires to minimize adverse offsite impacts of lighting such as light trespass and obtrusive light, curtail light pollution, reduce skyglow, improve the nighttime environment, help protect the natural environment from the adverse effects of artificial lighting at night and conserve energy and resources to the greatest extent possible.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina that Article VI. – General Provisions, Article VII. Development Review and Article XII. Definition of Terms of the Zoning Ordinance of the City of Hendersonville be amended to add the following:

**Article VI. - General Provisions**

**Section 6-19. Lighting.**

Intent. The purpose of these standards is as follows:

- a) Minimize adverse offsite impacts of lighting such as light trespass and obtrusive light.
- b) Curtail light pollution, reduce skyglow and improve the nighttime environment.
- c) Help protect the natural environment from the adverse effects of artificial lighting at night.
- d) Conserve energy and resources to the greatest extent possible.

**6-19-1. General Standards of Applicability.** The lighting standards of this section shall be applicable as follows:

- a) Non-residential uses shall be subject to these standards. For the purposes of these standards non-residential shall include, but not be limited to, commercial, institutional, educational, industrial, etc.

- b) Multi-family residential uses shall be subject to these standards. For the purposes of these standards multi-family residential shall include all residential uses with three or more attached dwelling units.
- c) Residential uses shall be exempted from these standards. For the purposes of these standards, residential uses shall include all single family & two-family residences.
- d) Street and roadway lighting shall be exempt from these standards. Street and roadway lighting are subject to the standards of the City of Hendersonville Code of Ordinances (Chapter 46, Article VI).
- e) For the purposes of these standards the term “stream buffer” shall refer to the term as defined in Section 17-3 of this ordinance.
- f) All new exterior lighting fixtures and site lighting installed, after the effective date of this Ordinance and within the zoning jurisdiction of the City of Hendersonville, shall comply with the standards established in Sections 6-19.2., 6-19.3. and 6-19.4. unless exempted.

### **6-19-2. Lighting Fixture Standards**

- a) Lighting fixtures shall be designed with an uplight rating of U0 per IES TM-15 and designed to limit Backlight trespass.
- b) New floodlights shall be prohibited. Replacement area lighting shall be shielded to prevent uplight and to prevent front, side, and/or back light depending on the implications on surrounding properties.
- c) All wall pack lights shall be full cutoff and shielded.
- d) The following applications are exempted from 6-19-2 (a), (b) & (c); all other standards of Section 6-19 shall apply:
  - i. flagpoles
  - ii. sports facilities
  - iii. temporary construction sites
  - iv. correctional facilities
  - v. lighting used solely for signage (see sign regulations)
  - vi. temporary lighting as needed under emergency conditions
  - vii. low voltage landscape lighting
  - viii. temporary holiday lighting
  - ix. ornamental and architectural lighting of/for:
    - 1. bridges
    - 2. public monuments
    - 3. statuary
    - 4. church; spires, belfries, cupolas and domes not intended for human occupancy
    - 5. structures individually listed on the National Register of Historic Buildings or considered contributing within a National Register Historic District
    - 6. public buildings
- e) The nominal CCT of lighting fixtures shall be  $\leq 4,000K$
- f) The CRI of lighting fixtures shall be  $\geq 70$ .



### **6-19-3. Site Lighting Standards**

- a) Lighting levels and placement shall be designed in accordance with applicable 2020 Illuminating Engineers Society (IES) Lighting Library Standards Collection recommended practices.
- b) The maximum light level using maintained lumens shall be no more than 1.0 foot candles for a non-residential to residential/multi-family residential use interface at the ground level of the property line.
- c) The maximum light level using maintained lumens shall be no more than 1.0 foot candles for a multi-family residential-to-residential use interface at the ground level of the property line.
- d) The maximum light level using maintained lumens shall be no more than 0.0 foot candles for a non-residential/multifamily residential to stream buffer interface at the ground level of the edge of the stream buffer.
- e) No lights shall be installed within a Stream Buffer except as described below. Lighting may be permitted within a Stream Buffer only where facilities exempted under Section 17-3-5 are located and shall be oriented to minimize light intrusion within the Stream Buffer.
- f) For the purposes of this section maintained lumens shall mean L80 or 80% of initial lumens.
- g) Sites with compliant lighting plans shall be deemed compliant with these standards when the fixtures are installed as shown on an approved lighting plan as to type, orientation, location, height, shielding and rating of fixtures.
- h) A lighting plan is not required to take into account lighting sources external to the site.

### **6-19-4. Existing Exterior Lighting.**

Non-compliant lighting installed prior to the effective date of this ordinance shall be considered non-conforming and may continue to be used in accordance with the non-conforming standards found in Section 6-2-5 with the following exception:

- a) Amortization. On or before [INSERT 10 YEARS FROM EFFECTIVE DATE], all exterior lighting shall comply with this Code.

## **Section 6-2. - Nonconformities**

### **6-2-5 Nonconforming Exterior Lighting.**

The following applies to existing non-compliant lighting installed prior to [adoption date of ordinance].

Full compliance with the lighting requirements in Section 6-19 shall be required under the following circumstances:

- a) When repairing or replacing 50% or more of total existing exterior lighting fixtures on a site within any 12-month period; provided however any replacement of a floodlight shall be required to meet the standards of section 6-19-2(b).
- b) When expanding or improving 50% or more of an existing parking or lighted area. Examples of activities that would trigger compliance under 6-2-5(b) include; paving an unpaved parking lot, adding 20 additional parking spaces to an existing 40 space lot or adding bio-retention facilities

to 12 spaces in a 20 space lot. Examples of activities that would not trigger compliance include: repaving an existing paved lot, reorganizing spots within an existing lot or adding 10 spaces to an existing 25 space lot.

- c) When structures on a site with non-conforming lighting are renovated and the total cost of renovations exceeds 50% of the assessed value of the building according to Henderson County tax records.

## **Section 6-13. - Nuisances**

### **6-13-4 Lighting.**

Lighting facilities, if provided, shall be aimed, directed, shielded or arranged ~~so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights-of-way~~ to mitigate off-site lighting trespass to surrounding properties.

## **Article VII Development Review**

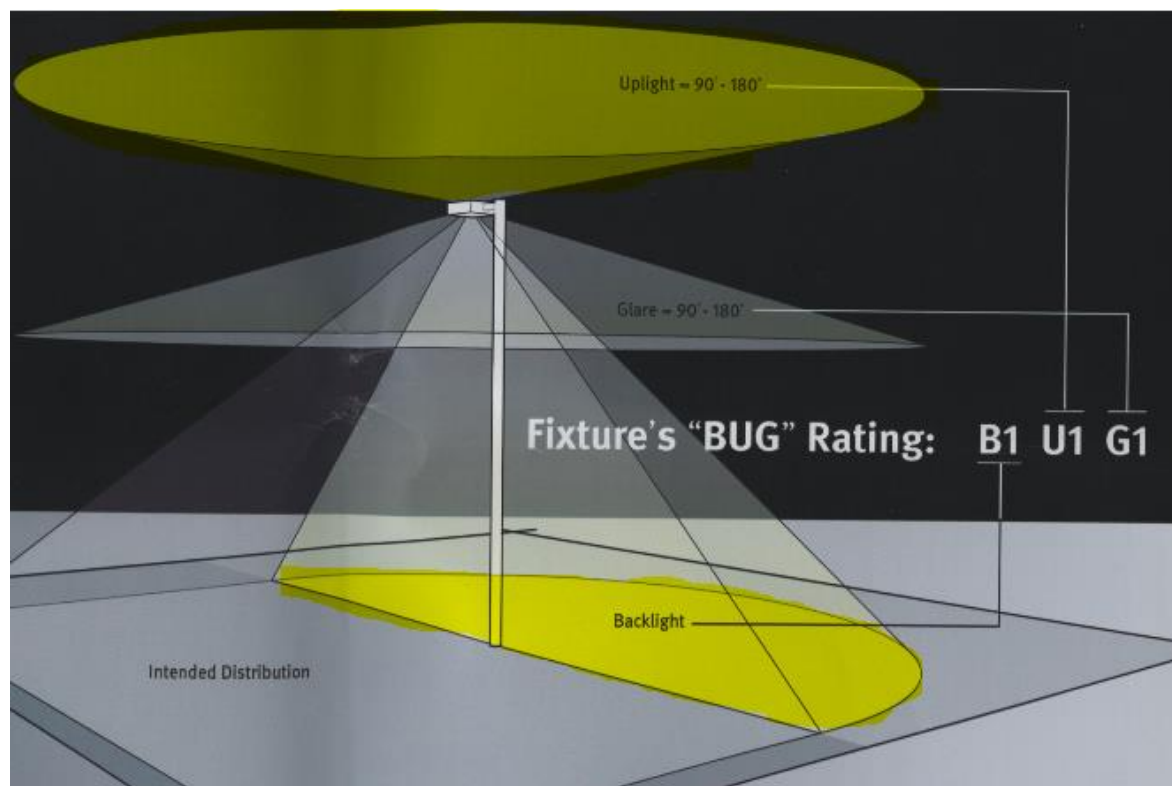
### **7-3-4.3 Contents of Final Site Plan.**

- r) Site Lighting Plan conforming with the standards established in Section 6-19. Such plan shall include proposed fixture list including type, orientation, location, height, shielding and rating of fixtures, footcandle map, property lines and stream buffers at a minimum.

## **Article XII. – Definition of Terms**

Uplight – For an exterior light fixture, light output emitted into the hemisphere above the horizontal plane of the light emitting light opening (i.e. above 90 from straight down) (see Figure 1)

Backlight – For an exterior light fixture, light output emitted into the lower rear quarter sphere behind the fixture and opposite the intended aiming direction of the fixture. For a light fixture with a symmetric light output pattern, the backlight is the same as the forward light. (see Figure 1)



*Figure 1 (provided by International Dark Sky Association & Illuminating Engineering Society)*

Lumen - The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from "watt," a measure of power consumption).

Maintained Lumens - The lumen output remaining, at a selected operating time, expressed as a percentage of the initial lumen output of a fixture.

Footcandle (FC) - A unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot

Correlated Color Temperature (CCT) - A description of the color appearance of a light source in terms of warmth (lower temperatures) or coolness (higher temperatures), as measured on the Kelvin (K) scale (i.e. High Pressure Sodium 2200K, Metal Halide 3000-4200K, moonlight 4100K)

Color Rendering Index (CRI) - A method to describe the effect a light source (from 0 poor to 100 best) has on the observer's ability to differentiate the true color of objects being illuminated (High Pressure Sodium 27, Metal Halide 65-80, LED 70-90, sunlight 100)

Illuminating Engineering Society (IES) – Established in 1906, the IES is the recognized technical and educational authority on illumination. Their mission is to improve the lighted environment by bringing together those with lighting knowledge and by translating that knowledge into actions that benefit the public.

Ornamental Lighting – Lighting fixtures designed to adorn a building or structure and have stand-alone aesthetic appeal. The fixtures themselves are decorative in nature and provide ornamentation in addition to their function as a light source.

Architectural Lighting – Lighting designed to illuminate building design and form for the purpose of decoration, ornamentation, creation of visual hierarchy, sense of liveliness or other purpose unrelated to safety, business operation, or essential lighting function.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8<sup>th</sup> day of February 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Ordinance # \_\_\_\_ - \_\_\_\_

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND  
CHAPTER 46 – STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES ADDING  
ARTICLE VI – STREET LIGHTS TO THE CODE OF ORDINANCES.**

**WHEREAS**, the City of Hendersonville’s Planning Board has reviewed and recommended for adoption an amendment establishing Lighting Standards for public streets and sidewalks within the City of Hendersonville’s zoning jurisdiction; and

**WHEREAS**, the proposed amendment is intended to reduce the potential negative impacts of public street lighting on city maintained streets on existing development and on natural resources; and

**WHEREAS**, City Council desires to minimize adverse offsite impacts of lighting such as light trespass and obtrusive light, curtail light pollution, reduce skyglow, improve the nighttime environment, help protect the natural environment from the adverse effects of artificial lighting at night and conserve energy and resources to the greatest extent possible.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina that Chapter 46 – Streets, Sidewalks, and Other Public Places be amended to add the following:

**Chapter 46 – Streets, Sidewalks, and Other Public Places**

**Article VI – Street Lights**

**Sec. 46-184. – Definitions**

Whenever and wherever used in this article the following words and names shall have the following meanings:

*Public Roadway or Highway and Sidewalk Lighting* shall mean lighting provided for freeways, expressways, limited access roadways, and roads on which pedestrians, cyclists, and parked vehicles are generally not present. The primary purpose of roadway or highway lighting is to help the motorist remain on the roadway and help with the detection of obstacles within and beyond the range of the vehicle's headlights.

*Public Street and Sidewalk Lighting* shall mean lighting provided for boulevards, major & minor thoroughfares, and local roads where pedestrians and cyclists are generally present. The primary purpose of street lighting is to help the motorist identify obstacles, provide adequate visibility of pedestrians and cyclists, and assist in visual search tasks, both on and adjacent to the roadway.

*Public Ornamental Street and Sidewalk Lighting* shall mean a luminaire intended for illuminating streets that serves a decorative function in addition to providing optics that effectively deliver street lighting. It has a historical period appearance or decorative appearance, and has the following design characteristics:



- Designed to mount on a pole using an arm, pendant, or vertical tenon;
- The top shall be capped or opaque, while the sides shall be translucent;
- An optical aperture that is either open or enclosed with a flat, sag or drop lens;
- Mounted in a fixed position.

**Sec. 46-185. – Applicability**

The provisions of this article shall apply to all public streets and sidewalks except where pre-empted by federal, state or other superseding jurisdiction.

**Sec. 46-186. - Light Shielding and Distribution**

All street lighting shall have no light emitted above 90 degrees with the following exception:

- a) Ornamental street lighting shall be permitted on all public streets and sidewalks.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 8<sup>th</sup> day of February 2023.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

## LIGHTING ORDINANCE – ZONING TEXT AMENDMENT

## Collaboration Exhibit

All newly proposed language has been highlighted. Language proposed by the PEP team is highlighted in Yellow while the language added by Community Development staff is highlighted in Green. Changes proposed by Duke Energy are highlighted in Blue. Existing language is not highlighted.

## Article VI. - General Provisions

Section 6-19. Lighting.

Intent. The purpose of these standards is as follows:

- a) Minimize adverse offsite impacts of lighting such as light trespass and obtrusive light.
- b) Curtail light pollution, reduce skyglow and improve the nighttime environment.
- c) Help protect the natural environment from the adverse effects of artificial lighting at night.
- d) Conserve energy and resources to the greatest extent possible.

6-19.1 General Standards of Applicability. The lighting standards of this section shall be applicable as follows:

- a) Non-residential uses shall be subject to these standards. For the purposes of these standards non-residential shall include, but not be limited to, commercial, institutional, educational, industrial, etc.
- b) Multi-family residential uses shall be subject to these standards. For the purposes of these standards multi-family residential shall include all residential uses with three or more attached dwelling units.
- c) Residential uses shall be exempted from these standards. For the purposes of these standards, residential uses shall include all single family & two-family residences.
- d) Street and roadway lighting shall be exempt from these standards. Street and roadway lighting are subject to the standards of the City of Hendersonville Code of Ordinances (Chapter 46, Article VI)
- e) For the purposes of these standards the term “stream buffer” shall refer to the term as defined in Section 17-3 of this ordinance.

6-19.2. Standards.

All new exterior lighting installed, after the effective date of this Ordinance and within the zoning jurisdiction of the City of Hendersonville, shall comply with the following standards:

- a) Lighting levels and placement shall be designed in accordance with applicable Illuminating Engineering Society (IES) recommended practices.
- b) Lighting shall be designed to an Uplight ratio of zero (0) and designed to limit Backlight trespass.
  - a. Exceptions. Lighting for flagpoles, sports facilities, temporary construction sites, correctional facilities, lighting used solely for signage (see sign regulations), lighting as needed under emergency conditions, low voltage landscape lighting, temporary seasonal lighting, and ornamental and architectural lighting of bridges, public monuments, statuary and public buildings.
- c) The CCT limit shall be 4,000K
- d) The CRI limit shall be  $\geq 70$ .
- e) New floodlights shall be prohibited. Replacement area lighting shall be shielded to prevent uplight and to prevent front, side, and/or back light depending on the implications on surrounding properties.
- f) All wall pack lights shall be full cutoff and shielded.
- g) The maximum light level using maintained lumens shall be no more than 0.5 foot candles for a non-residential to residential/multi-family residential use interface.
- h) The maximum light level using maintained lumens shall be no more than 0.25 foot candles for a multi-family residential-to-residential interface.
- i) The maximum light level using maintained lumens shall be no more than 0.0 foot candles for a non-residential/multifamily residential to Stream Buffer interface.
- j) No lights shall be installed within a Stream Buffer except as described below. Lighting may be permitted within a Stream Buffer only where facilities exempted under Section 17-3-5 are located and shall be oriented to minimize light intrusion within the Stream Buffer.

6-19-3. Existing Exterior Lighting. Non-compliant lighting installed prior to the effective date of this ordinance shall be considered non-conforming and may continue to be used in accordance with the non-conforming standards found in Section 6-2-5 with the following exception:

- a) Amortization. On or before [INSERT 10 YEARS FROM EFFECTIVE DATE], all exterior lighting shall comply with this Code.

## Section 6-2. - Nonconformities

### 6-2-5 Nonconforming Exterior Lighting.

The following applies to existing non-compliant lighting installed prior to [adoption date of ordinance].

#### 6-2-5.1 Thresholds for compliance.

Full compliance with the lighting requirements in Section 6-19 shall be required under the following circumstances:

- a) When repairing 50% or more of total existing exterior lighting fixtures on a site within any 12-month period.
- b) When expanding, moving, or altering 50% or more of an existing parking or lighted area.
- c) When structures on a site with non-conforming lighting are renovated and the total cost of renovations exceeds 50% of the assessed value of the building according to Henderson County tax records

## Section 6-13. - Nuisances

### 6-13-4 Lighting.

Lighting facilities, if provided, shall be aimed, directed, shielded or arranged so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights-of-way to mitigate off-site lighting trespass to surrounding properties.

## Article VII Development Review

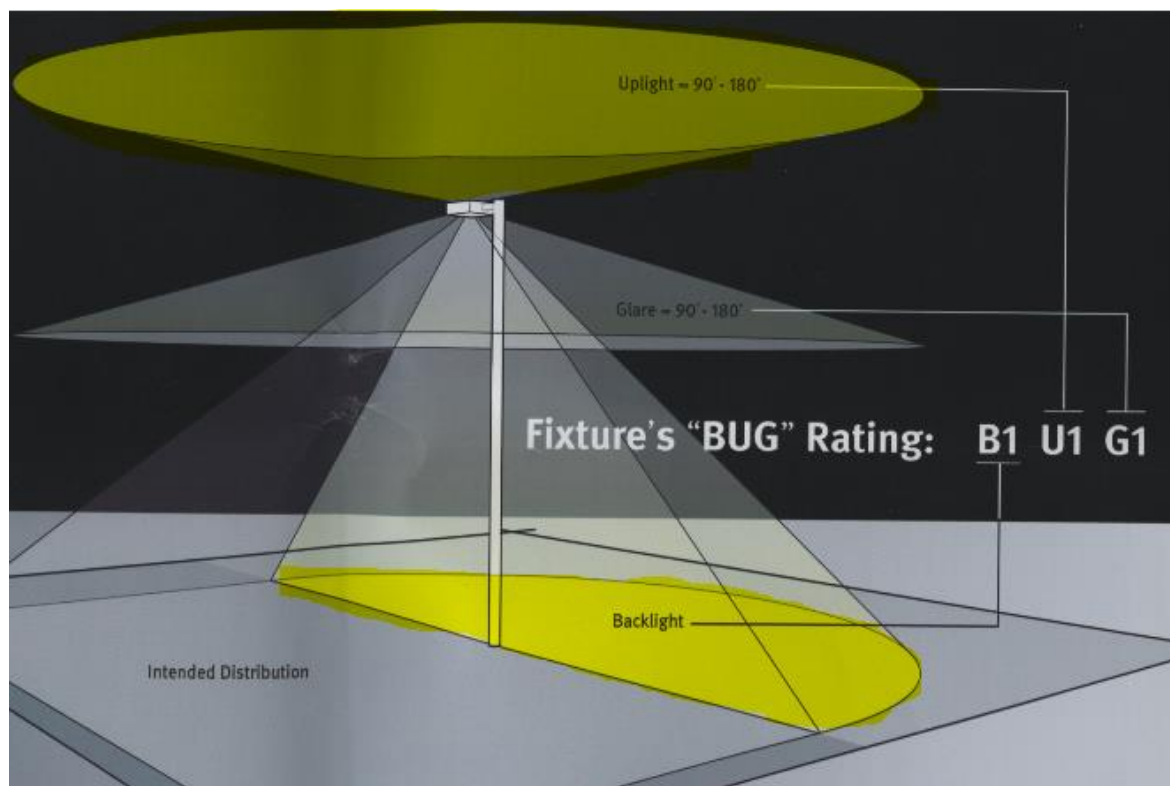
### 7-3-4.3 Contents of Final Site Plan.

- r) Site Lighting Plan conforming with the standards established in Section 6-19 and Section 6-2-5. Such plan shall include proposed fixture list, location and orientation of fixtures, footcandle map, property lines and stream buffers at a minimum.

## Article XII. – Definition of Terms

**Uplight** – For an exterior light fixture, light output emitted into the hemisphere above the horizontal plane of the light emitting light opening (i.e. above 90 from straight down) (see Figure 1)

**Backlight** – For an exterior light fixture, light output emitted into the lower rear quarter sphere behind the fixture and opposite the intended aiming direction of the fixture. For a light fixture with a symmetric light output pattern, the backlight is the same as the forward light. (see Figure 1)



*Figure 1 (provided by International Dark Sky Association & Illuminating Engineering Society)*

**Lumen** - The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from “watt,” a measure of power consumption).

**Footcandle (FC)** - A unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot

**Correlated Color Temperature (CCT)** - A description of the color appearance of a light source in terms of warmth (lower temperatures) or coolness (higher temperatures), as measured on the Kelvin (K) scale (i.e. High Pressure Sodium 2200K, Metal Halide 3000-4200K, moonlight 4100K)

**Color Rendering Index (CRI)** - A method to describe the effect a light source (from 0 poor to 100 best) has on the observer's ability to differentiate the true color of objects being illuminated (High Pressure Sodium 27, Metal Halide 65-80, LED 70-90, sunlight 100)

## **PUBLIC LIGHTING**

Code of Ordinances

Chapter 46 – Streets, Sidewalks, and Other Public Places

**Article VI – Street Lights**



Sec. 46-184. – Definitions

Whenever and wherever used in this article the following words and names shall have the following meanings:

Roadway or Highway Lighting shall mean lighting provided for freeways, expressways, limited access roadways, and roads on which pedestrians, cyclists, and parked vehicles are generally not present. The primary purpose of roadway or highway lighting is to help the motorist remain on the roadway and help with the detection of obstacles within and beyond the range of the vehicle's headlights.

Street Lighting shall mean lighting provided for boulevards, major & minor thoroughfares, and local roads where pedestrians and cyclists are generally present. The primary purpose of street lighting is to help the motorist identify obstacles, provide adequate visibility of pedestrians and cyclists, and assist in visual search tasks, both on and adjacent to the roadway.

Ornamental Street Lighting shall mean a luminaire intended for illuminating streets that serves a decorative function in addition to providing optics that effectively deliver street lighting. It has a historical period appearance or decorative appearance, and has the following design characteristics:

·Designed to mount on a pole using an arm, pendant, or vertical tenon;

·Opaque or translucent top and/or sides;

·An optical aperture that is either open or enclosed with a flat, sag or drop lens;

·Mounted in a fixed position.

Sec. 46-185. – Applicability

All street lighting not governed by regulations of federal, state or other superseding jurisdiction.

Sec. 46-186. - Light Shielding and Distribution

All street lighting shall have no light emitted above 90 degrees with the following exception:

- a) Ornamental street lighting for specific districts or projects shall be permitted.

This document has been reformatted and the technical clarifications recommended by staff and included in the final version of the proposed draft ordinances (both the Zoning Ordinance & Code of Ordinance) have been **highlighted**. Clarifications are intended to better align the proposed amendments with the intent as discussed during review by stakeholders and committees and do not change the standards of the amendment.

## ZONING TEXT AMENDMENT – OUTDOOR LIGHTING STANDARDS

### Article VI. - General Provisions

#### **Section 6-19. Lighting.**

Intent. The purpose of these standards is as follows:

- a) Minimize adverse offsite impacts of lighting such as light trespass and obtrusive light.
- b) Curtail light pollution, reduce skyglow and improve the nighttime environment.
- c) Help protect the natural environment from the adverse effects of artificial lighting at night.
- d) Conserve energy and resources to the greatest extent possible.

**6-19-1. General Standards of Applicability.** The lighting standards of this section shall be applicable as follows:

- a) Non-residential uses shall be subject to these standards. For the purposes of these standards non-residential shall include, but not be limited to, commercial, institutional, educational, industrial, etc.
- b) Multi-family residential uses shall be subject to these standards. For the purposes of these standards multi-family residential shall include all residential uses with three or more attached dwelling units.
- c) Residential uses shall be exempted from these standards. For the purposes of these standards, residential uses shall include all single family & two-family residences.
- d) Street and roadway lighting shall be exempt from these standards. Street and roadway lighting are subject to the standards of the City of Hendersonville Code of Ordinances (Chapter 46, Article VI).
- e) For the purposes of these standards the term “stream buffer” shall refer to the term as defined in Section 17-3 of this ordinance.
- f) All new exterior lighting fixtures and site lighting installed, after the effective date of this Ordinance and within the zoning jurisdiction of the City of Hendersonville, shall comply with the standards established in Sections 6-19.2., 6-19.3. and 6-19.4. unless exempted.

### **6-19-2. Lighting Fixture Standards**

- a) Lighting fixtures shall be designed with an uplight rating of U0 per IES TM-15 and designed to limit Backlight trespass.
- b) New floodlights shall be prohibited. Replacement area lighting shall be shielded to prevent uplight and to prevent front, side, and/or back light depending on the implications on surrounding properties.
- c) All wall pack lights shall be full cutoff and shielded.
- d) The following applications are exempted from 6-19-2 (a), (b) & (c), all other standards of Section 6-19 shall apply:
  - i. flagpoles
  - ii. sports facilities
  - iii. temporary construction sites
  - iv. correctional facilities
  - v. lighting used solely for signage (see sign regulations)
  - vi. temporary lighting as needed under emergency conditions
  - vii. low voltage landscape lighting
  - viii. temporary holiday lighting
  - ix. ornamental and architectural lighting of/for:
    - 1. bridges
    - 2. public monuments
    - 3. statuary
    - 4. church spires, belfries, cupolas and domes not intended for human occupancy
    - 5. structures individually listed or within a National Register Historic District
    - 6. public buildings
- e) The nominal CCT of lighting fixtures shall be  $\leq 4,000\text{K}$
- f) The CRI of lighting fixtures shall be  $\geq 70$ .

### **6-19-3. Site Lighting Standards**

- a) Lighting levels and placement shall be designed in accordance with applicable 2020 Illuminating Engineers Society (IES) Lighting Library Standards Collection recommended practices.
- b) The maximum light level using maintained lumens shall be no more than 0.5 foot candles for a non-residential to residential/multi-family residential use interface at ground level of the property line.
- c) The maximum light level using maintained lumens shall be no more than 0.25 foot candles for a multi-family residential-to-residential use interface at ground level of the property line.

- d) The maximum light level using maintained lumens shall be no more than 0.0 foot candles for a non-residential/multifamily residential to stream buffer interface at ground level of the edge of the stream buffer.
- e) No lights shall be installed within a Stream Buffer except as described below. Lighting may be permitted within a Stream Buffer only where facilities exempted under Section 17-3-5 are located and shall be oriented to minimize light intrusion within the Stream Buffer.
- f) For the purposes of this section maintained lumens shall mean L80 or 80% of initial lumens.
- g) Sites with compliant lighting plans shall be deemed compliant with these standards when the fixtures are installed as shown on an approved lighting plan as to type, orientation, location, height, shielding and rating of fixtures.
- h) A lighting plan is not required to take into account lighting sources external to the site.

#### **6-19-4. Existing Exterior Lighting.**

Non-compliant lighting installed prior to the effective date of this ordinance shall be considered non-conforming and may continue to be used in accordance with the non-conforming standards found in Section 6-2-5 with the following exception:

- a) Amortization. On or before [INSERT 10 YEARS FROM EFFECTIVE DATE], all exterior lighting shall comply with this Code.

### **Section 6-2. - Nonconformities**

#### **6-2-5 Nonconforming Exterior Lighting.**

The following applies to existing non-compliant lighting installed prior to [adoption date of ordinance].

Full compliance with the lighting requirements in Section 6-19 shall be required under the following circumstances:

- a) When repairing or replacing 50% or more of total existing exterior lighting fixtures on a site within any 12-month period; provided however any replacement of a floodlight shall be required to meet the standards of section 6-19-2(b).
- b) When expanding or improving 50% or more of an existing parking or lighted area. Examples of activities that would trigger compliance under 6-2-5(b) include; paving an unpaved parking lot, adding 20 additional parking spaces to an existing 40 space lot or adding bio-retention facilities to 12 spaces in a 20 space lot. Examples of activities that would not trigger compliance include; repaving an existing paved lot, reorganizing spots within an existing lot or adding 10 spaces to an existing 25 space lot.
- c) When structures on a site with non-conforming lighting are renovated and the total cost of renovations exceeds 50% of the assessed value of the building according to Henderson County tax records.

## Section 6-13. - Nuisances

### 6-13-4 Lighting.

Lighting facilities, if provided, shall be aimed, directed, shielded or arranged ~~so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights of way~~ to mitigate off-site lighting trespass to surrounding properties.

## Article VII Development Review

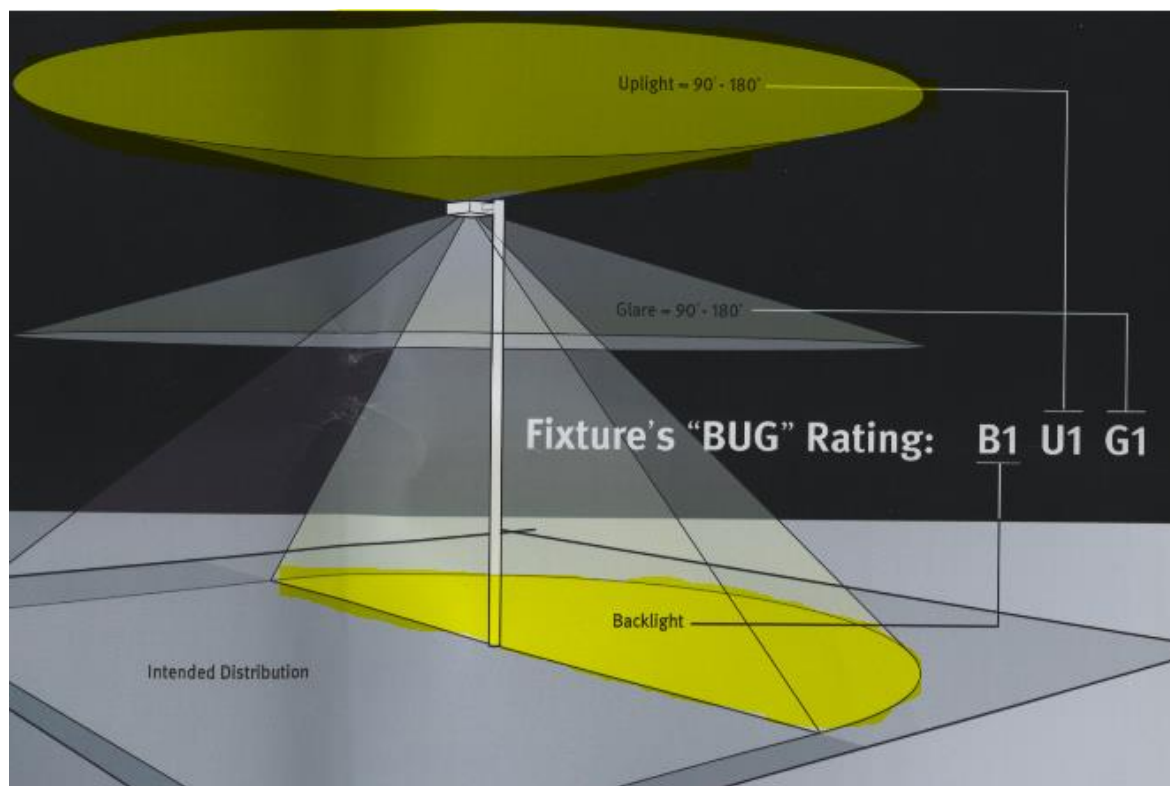
### 7-3-4.3 Contents of Final Site Plan.

r) Site Lighting Plan conforming with the standards established in Section 6-19. Such plan shall include proposed fixture list including type, orientation, location, height, shielding and rating of fixtures, footcandle map, property lines and stream buffers at a minimum.

## Article XII. – Definition of Terms

Uplight – For an exterior light fixture, light output emitted into the hemisphere above the horizontal plane of the light emitting light opening (i.e. above 90 from straight down) (see Figure 1)

Backlight – For an exterior light fixture, light output emitted into the lower rear quarter sphere behind the fixture and opposite the intended aiming direction of the fixture. For a light fixture with a symmetric light output pattern, the backlight is the same as the forward light. (see Figure 1)



*Figure 1 (provided by International Dark Sky Association & Illuminating Engineering Society)*

Lumen - The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from “watt,” a measure of power consumption).

Maintained Lumens - The lumen output remaining, at a selected operating time, expressed as a percentage of the initial lumen output of a fixture.

Footcandle (FC) - A unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot

Correlated Color Temperature (CCT) - A description of the color appearance of a light source in terms of warmth (lower temperatures) or coolness (higher temperatures), as measured on the Kelvin (K) scale (i.e. High Pressure Sodium 2200K, Metal Halide 3000-4200K, moonlight 4100K)

Color Rendering Index (CRI) - A method to describe the effect a light source (from 0 poor to 100 best) has on the observer's ability to differentiate the true color of objects being illuminated (High Pressure Sodium 27, Metal Halide 65-80, LED 70-90, sunlight 100)

Illuminating Engineering Society (IES) – Established in 1906, the IES is the recognized technical and educational authority on illumination. Their mission is to improve the lighted environment by bringing together those with lighting knowledge and by translating that knowledge into actions that benefit the public.



## Chapter 46 – Streets, Sidewalks, and Other Public Places

### Article VI – Street Lights

#### **Sec. 46-184. – Definitions**

Whenever and wherever used in this article the following words and names shall have the following meanings:

**Public Roadway or Highway and Sidewalk Lighting** shall mean lighting provided for freeways, expressways, limited access roadways, and roads on which pedestrians, cyclists, and parked vehicles are generally not present. The primary purpose of roadway or highway lighting is to help the motorist remain on the roadway and help with the detection of obstacles within and beyond the range of the vehicle's headlights.

**Public Street and Sidewalk Lighting** shall mean lighting provided for boulevards, major & minor thoroughfares, and local roads where pedestrians and cyclists are generally present. The primary purpose of street lighting is to help the motorist identify obstacles, provide adequate visibility of pedestrians and cyclists, and assist in visual search tasks, both on and adjacent to the roadway.

**Public Ornamental Street and Sidewalk Lighting** shall mean a luminaire intended for illuminating streets that serves a decorative function in addition to providing optics that effectively deliver street lighting. It has a historical period appearance or decorative appearance, and has the following design characteristics:

- Designed to mount on a pole using an arm, pendant, or vertical tenon;
- The top shall be capped or opaque, while the sides shall be translucent;
- An optical aperture that is either open or enclosed with a flat, sag or drop lens;
- Mounted in a fixed position.

#### **Sec. 46-185. – Applicability**

The provisions of this article shall apply to all public streets and sidewalks except where pre-empted by federal, state or other superseding jurisdiction.

#### **Sec. 46-186. - Light Shielding and Distribution**

All street lighting shall have no light emitted above 90 degrees with the following exception:

- a) Ornamental street lighting shall be permitted on all public streets and sidewalks.

City of Hendersonville Existing Public Lighting							
LOCATION		NOTES	LOCATION		NOTES	LOCATION	NOTES
<b>City Hall</b>			<b>7th Avenue</b>			<b>Rotary Park</b>	
Uncapped Blk Ornamental Ped Lights	12	Running during day light hours	Uncapped Ornamental Ped Lights	25		Floodlight	1
Other lights							
Wall Packs (full cutoff)			<b>Maple Street</b>			<b>Sullivan Park</b>	
Cobra streetlight facing building	1	King St side	Capped Ornamental Ped Lights	10		Floodlight	1 on b'ball structure
Flag Pole Light	1	Uplight - Exempt					
			<b>4th Avenue</b>			<b>MLK Park</b>	
<b>City Operations</b>			Capped Ornamental Ped Lights	18		Uncapped Ornamental Ped Lights	5
PW Overflow Parking Lot		Running during day light hours					
Floodlights	4		<b>Patton Park</b>			<b>Oklawaha Greenway Trailhead (Berkley Rd)</b>	
Cobra Streetlights	2		Parking Lot			Cobra Streetlights	2 Solar powered
PW Garage Lot			Cobra Streetlights	10			
Floodlights	9		Floodlights	2	In stream buffer	<b>7th Ave Depot</b>	
City Ops Main Parking			Picnic Shelter			Ornamental	4 Under cover
Cobra Streetlights	5		Floodlight	1		Barn light	1 small
Building illuminating lights	6	Uplight - Exempt	Tennis Courts			Exposed bulb fixture	6 Under cover
Other lights			Floodlights	14	45 degree angle	Wallpacks	2 shielded
Wall Packs (full cutoff)			Pool Area				
			Capped Ornamentals	11		<b>Police Station</b>	
<b>Azalea Lot</b>			Greenway			Capped Ornamentals	13
Capped Ornamental Ped Lights	11		Cobra Pedestrian Lights	22		Wall Packs	6 Full cutoff
Other Lights			Soccer Field			Modern Wall Packs	29 Fully shielded
Floodlight	1	Facing Partnership on King St	Floodlights	24		Flag Pole	2 Uplights - Exempt
			Softball			Sign illumination	2
<b>Maple Lot</b>			Floodlight	1	Facing trees / n'hboring prop		
Capped Ornamental Ped Lights	5		PW Building			<b>Fire Station 1</b>	
Other Lights			Wallpacks	4	Full cutoff	Cobra Streetlights	8
Old Cobra Streetlight	1	Along Edwards Alley				Wallpacks	7 shielded
			<b>Boyd Park</b>			Flag Pole Lights	2 Uplight - Exempt
<b>Apple Lot</b>			Putt Putt				
Uncapped (Black) Ornamental	12		Floodlights	12	45 degree	<b>Fire Station 2 / Public Works Warehouse</b>	
			Ornamental Globe Ped Light	1		Cobra Streetlights	6
<b>Dogwood Lot</b>			Tennis Courts			Flag Pole	4 uplight*
LED Cobrahead Streetlights	10		Floodlights	9	45 degree	Wall Packs	10 not shielded
						Sconces	5
<b>Main Street</b>			<b>Toms Park/Whitemire Center</b>			Warehouse Wall Packs	6 shielded
Capped Ornamental Ped Lights	106		Capped Ornamental Ped Lights	11		Floodlights	3
						Sign illumination	2 Uplight

\* Flag Pole lights are uplight but are proposed to be exempted

Total Needing Attention (Red)	155	Includes numbers shown in orange
Total Presumed Compliant (Green)	333	
Could be exempted or retrofited	122	Some of these will be replaced as part of planned upcoming projects
Total Lights	488	
Total needing attention if those in orange are replaced / exempted / retrofited	33	

City of Hendersonville Streetlights			
Type	Count	Unit Cost	Total Cost
LEDS (at least 450 are 3000K)	1182		
Mercury Vapor (MV)	58	\$36	\$ 2,088
High Pressure Sodium (HPS)	225	\$36	\$ 8,100
Metal Halide (MH)	39	\$36	\$ 1,404
<b>TOTAL</b>	<b>1612</b>		<b>\$ 11,592</b>
City of Hendersonville Floodlights			
Cost by Type	Count	Unit Cost	Total Cost
Unshielded LED to Shielded LED	55	\$101	\$ 5,555
HPS Floods to Shielded LED	35	\$101	\$ 3,535
MH Floods to Shielded LED	1	\$101	\$ 101
<b>TOTAL</b>	<b>91</b>		<b>\$ 9,191</b>

Needing Attention (Red)
Presumed Compliant (Green)



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** John Connet **MEETING DATE:** 2/8/2023

**AGENDA SECTION:** NEW BUSINESS **DEPARTMENT:** Administration

**TITLE OF ITEM:** Designation of Limited Parking Zone on Oakland Street – *John Connet, City Manager*

### **SUGGESTED MOTION(S):**

I move that the City Council adopt the ordinance establishing a limited parking zone on Oakland Street near the main office of Hendersonville High School.

### **SUMMARY:**

Hendersonville High School has requested two fifteen-minute parking spaces and one law enforcement parking spaces on Oakland Street to assist with visitor parking. City staff has evaluated the on-street parking along Oakland Street and would propose the designation of three parking spaces for this purpose near the Hendersonville High School main office.

**BUDGET IMPACT:** \$ TBD

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

**If no, describe how it will be funded.** NA

### **ATTACHMENTS:**

Proposed Ordinance

Ordinance #O-XX-XX

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO DIRECT THE PUBLIC WORKS DIRECTOR TO DESIGNATE A LIMITED PARKING ZONING ON OAKLAND STREET IN ACCORDANCE WITH SECTION 50-247 – PARKING IN A LIMITED PARKING ZONE OF THE CODE OF ORDINANCES**

**WHEREAS**, Hendersonville High School has requested three limited parking spaces on Oakland Street to assist with parent pickup and drop off; and

**WHEREAS**, Section 50-247 of the Code of Ordinances authorizes the City to designate limited parking zones to establish the time or condition under which a vehicle may park in such zone through street; and

**WHEREAS**, Section 50-181 of the Code of Ordinances authorizes the Public Works Director to layoff and indicate, with the approval of the city council: limited parking zones and reserved parking zones.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina that the Public Works Director shall be directed to designate a limited parking zone on Oakland Street as follows:

1. Two fifteen (15) minute parking spaces shall be designated on Oakland Street near the Hendersonville High School main office entrance.
2. One reserved parking space shall be established on Oakland Street near the Hendersonville High School main office entrance for law enforcement vehicles.
3. The appropriate signs and markings shall be installed to clearly mark these limited parking zones.
4. The official traffic map shall be amended to show these limited parking zones.

Adopted by the City Council of the City of Hendersonville, North Carolina on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Attest:

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

\_\_\_\_\_  
Jill Murray, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney





City Manager Appropriation Target \$2,000,000							Council Recommendations				
Organization	ARP Funding Request	Staff Reviewed Funding	City Manager Funding	Total Score	Staff Rank	Council Appropriation	Debbie Roundtree	Lyndsey Simpson	Barbara Volk	Jennifer Hensley	Jerry Smith
	\$ 7,542,383	\$ 4,748,192	\$ 2,000,000			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Joseph's Outreach Ministries - Connections Center	1,500,000	1,500,000	800,000	95.80	1	-	-	-	-	-	-
Interfaith Assistance Ministry	393,784	393,784	-	92.00	2	-	-	-	-	-	-
Housing Assistance Corporation - Home Repair	250,000	250,000	360,000	90.20	3	-	-	-	-	-	-
Blue Ridge Community Health	330,093	330,093	-	89.00	4	-	-	-	-	-	-
Housing Assistance Corporation - Apple Ridge	1,674,315	1,674,315	-	88.00	5	-	-	-	-	-	-
Children and Family Resource Center	260,000	260,000	-	86.20	6	-	-	-	-	-	-
Safelight - Training	20,000	20,000	20,000	83.40	7	-	-	-	-	-	-
Pisgah Legal Services	320,000	320,000	320,000	80.80	8	-	-	-	-	-	-
Safelight - Phoenix Project (SANE)	100,000	-	-	78.60	9	-	-	-	-	-	-
Blue Ride Literacy Council	38,000	-	-	74.00	10	-	-	-	-	-	-
Safelight - New Facility	1,306,015	-	-	70.60	11	-	-	-	-	-	-
True Ridge	50,000	-	-	65.60	12	-	-	-	-	-	-
Latino Advocacy Coalition - El Centro	500,000	-	-	62.00	13	-	-	-	-	-	-
Mills River Partnership	90,000	-	-	57.60	14	-	-	-	-	-	-
Team ECCO	67,580	-	-	51.60	15	-	-	-	-	-	-
Hendersonville Theatre	112,596	-	-	48.60	16	-	-	-	-	-	-
Flat Rock Playhouse	500,000	-	-	45.40	17	-	-	-	-	-	-
WNC Air Museum	30,000	-	-	27.60	18	-	-	-	-	-	-
City of Hendersonville Crisis Response Staff	-	-	500,000	-	-	-	-	-	-	-	-

City Manager Appropriation Target \$2,000,000							Council Recommendations				
Organization	ARP Funding Request	Staff Reviewed Funding	City Manager Funding	Total Score	Staff Rank	Council Appropriation	Debbie Roundtree	Lyndsey Simpson	Barbara Volk	Jennifer Hensley	Jerry Smith
	\$ 7,542,383	\$ 4,748,192	\$ 2,000,000			\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000
Joseph's Outreach Ministries - Connections Center	1,500,000	1,500,000	800,000	95.80	1	800,000	800,000	800,000	800,000	800,000	800,000
Interfaith Assistance Ministry	393,784	393,784	-	92.00	2	100,000	-	100,000	100,000	-	100,000
Housing Assistance Corporation - Home Repair	250,000	250,000	360,000	90.20	3	330,000	360,000	330,000	360,000	360,000	360,000
Blue Ridge Community Health	330,093	330,093	-	89.00	4	-	-	-	-	-	-
Housing Assistance Corporation - Apple Ridge	1,674,315	1,674,315	-	88.00	5	-	-	-	-	-	-
Children and Family Resource Center	260,000	260,000	-	86.20	6	100,000	-	100,000	-	-	100,000
Safelight - Training	20,000	20,000	20,000	83.40	7	-	20,000	-	20,000	20,000	20,000
Pisgah Legal Services	320,000	320,000	320,000	80.80	8	320,000	320,000	320,000	320,000	320,000	320,000
Safelight - Phoenix Project (SANE)	100,000	-	-	78.60	9	50,000	-	50,000	-	-	-
Blue Ride Literacy Council	38,000	-	-	74.00	10	-	-	-	-	-	-
Safelight - New Facility	1,306,015	-	-	70.60	11	-	-	-	-	-	-
True Ridge	50,000	-	-	65.60	12	50,000	-	50,000	-	-	50,000
Latino Advocacy Coalition - El Centro	500,000	-	-	62.00	13	-	-	-	-	-	-
Mills River Partnership	90,000	-	-	57.60	14	-	-	-	-	-	-
Team ECCO	67,580	-	-	51.60	15	-	-	-	-	-	-
Hendersonville Theatre	112,596	-	-	48.60	16	-	-	-	-	-	-
Flat Rock Playhouse	500,000	-	-	45.40	17	-	-	-	-	-	-
WNC Air Museum	30,000	-	-	27.60	18	-	-	-	-	-	-
City of Hendersonville Crisis Response	-	-	500,000	-	-	250,000	500,000	250,000	400,000	500,000	250,000





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Daniel Heyman, Staff Attorney      **MEETING DATE:** February 8, 2023

**AGENDA SECTION:** NEW BUSINESS      **DEPARTMENT:** Legal

**TITLE OF ITEM:** Amendments to City Code to Conform with SB 300 – *Daniel Heyman, Staff Attorney*

### **SUGGESTED MOTION(S):**

I move City Council to adopt *An Ordinance of the City of Hendersonville City Council to Amend Certain Provisions of the Code of Ordinances Related to Criminal Enforcement* as presented for its first reading.

**SUMMARY:** In 2021, the NC Legislature adopted SL 2021-138, otherwise more commonly known as Senate Bill 300, to decriminalize City Ordinances as a whole. Prior to this, as a matter of law, violation of any local ordinance was a misdemeanor pursuant to NCGS § 14-4. Senate Bill 300 changed this by:

1. Amending the City's enforcement statute, NCGS § 160A-175, to provide that violation of a city ordinance may be a misdemeanor or an infraction *only if the city specifies such in the ordinance*;
2. Determining that no ordinance of the following type may impose a criminal penalty:
  - a. Any ordinance adopted under NCGS Chapter 160D, except those related to unsafe buildings;
  - b. Any ordinance adopted under NCGS 160A-193.1, stream clearing programs
  - c. Any ordinance adopted under NCGS 160A-194, regulating and licensing businesses, trades, etc.;
  - d. Any ordinance regulating outdoor advertising (ref NCGS 160D-912);
  - e. Any ordinance regulating solar collectors, rain cisterns and barrels, taxis, building setback lines, curb cut regulations, or any ordinance regulating trees.

SB 300 also amended NCGS 14-4, the statute providing that violations of a local ordinance are a misdemeanor [if specified in the ordinances themselves] to add defenses to an ordinance violation. It provides that a person may *not* be found guilty of an ordinance violation if, when tried, the person produces proof of compliance with the ordinance by any of the following:

1. No new alleged violations of the ordinance within 30 days of the initial alleged violation; or
2. The person provides proof of a good faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.

Staff has been through the City's code and has prepared a draft ordinance for consideration by City Council that designates which of the violations will be a misdemeanor. Adoption will require two readings.

**ATTACHMENTS:**

**PROPOSED ORDINANCE**

Excerpts from SB300

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO  
AMEND CERTAIN PROVISIONS OF THE CODE OF ORDINANCES RELATED TO  
CRIMINAL ENFORCEMENT**

WHEREAS, Session Law 2021-138, otherwise known as Senate Bill 300, broadly decriminalized municipal ordinances, requiring municipalities to specifically state which ordinances may be enforced with criminal penalties; and

WHEREAS, while the City of Hendersonville typically pursues civil remedies such as civil penalties or injunctions in order to achieve compliance with City ordinances, there are circumstances in which the City must resort to criminal enforcement options, such as violations that pose an immediate danger to the community, or otherwise require prompt action; and

WHEREAS, until the passage of Session Law 2021-138, almost all violations of City ordinances were able to be enforced with criminal penalties as written; and

WHEREAS, amendments to the Code are required in order to continue enforcing certain violations of the Code criminally; and

WHEREAS, the amendments to the Code providing criminal penalties in specific circumstances will alert violators to the importance of compliance with the Code.

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

**SECTION 1.** This Ordinance shall be known as “An Ordinance Addressing Criminal Enforcement of City Ordinances to Comply with Senate Bill 300.”

**SECTION 2.** Chapter 1 – General Provisions of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 1-6. General penalty for violation of Code; continuing violations, criminal and injunctive relief; civil penalties.**

- (a) Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense ~~or a misdemeanor~~ or whenever in such Code or ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, ~~where no specific penalty is provided therefor unless this code provides otherwise~~, the violation of any such provision shall subject the offender to ~~one or more of the following:~~
  - ~~(a) — A class 3 misdemeanor, punishable by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 30 days; or~~
  - ~~(b) — A~~ civil penalty in the amount of \$50.00 per violation to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within 45 days after the citation for violation of the ordinance or this Code.
  - (b) Whenever in this Code or in any ordinance of the City any act is declared to be a misdemeanor, or the doing of any act is required and the failure to do such act is declared to be a misdemeanor, unless this Code provides otherwise, the violation



of any such provision shall be punishable by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 30 days, or both.

- (c) Whenever in this Code or in any ordinance of the City any act is declared to be an infraction, or the doing of any act is required and the failure to do such act is declared to be an infraction, unless this Code provides otherwise, the violation of any such provision shall be punishable by a fine not exceeding \$100.00.
- (d) Each day that any violation of this Code or of any ordinance shall continue shall constitute a separate offense.
- (e) The ordinances contained in this Code and other ordinances of the city may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.
- (f) A violation of this Code of any ordinance may be enforced through a combination of one or more of the enforcement methods provided in this section 1-6.

**SECTION 3.** Chapter 6 – Alcoholic Beverages of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 6-1. State statutes applicable.**

It shall be unlawful for any person to offer for sale, disposal, display or otherwise use or offer for use or consumption, any beer, wine or other alcoholic beverage within the confines of the city except that such offer, use, sale, disposal, display or consumption shall be in conformance with the requirements of the General Statutes of North Carolina, applying.

As provided in N.C.G.S. Chapter 18B, violation of this section is a misdemeanor.

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**Sec. 6-3. Possession of alcoholic beverages in or near city recreational facilities.**

It shall be unlawful for any person to carry upon or within 50 feet of the boundaries of, either by vehicle or as a pedestrian, any park, swimming pool, playing field, playground or other recreational facility of any kind whatsoever owned and operated by the city, any alcoholic beverage, as defined in G.S. 18B-101(4), in any bottle, jar, glass, cup, decanter or other container, whether such transportation be for purpose of consumption or any other use.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 6-4. Drinking in city recreational facilities.**

It shall be unlawful for any person to consume or drink any alcoholic beverage, as defined in G.S. 18B-101(4), on the premises of any park, swimming pool, playing field, playground or other recreational facility of any kind whatsoever owned and operated by the city. Notwithstanding the foregoing, a person who is not an occupant of a motor

vehicle and who is of the age permitted by North Carolina Statute may consume or possess malt beverages and/or unfortified wine in any city-owned or -operated park at a community event or festival, if the city council has adopted a resolution making provisions for the possession and consumption of malt beverages or unfortified wine or both at such festival, to the extent permitted by such resolution.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 6-5. Possession of open container in public places prohibited; exceptions.**

(a) It shall be unlawful for any person to have in his possession in any public ~~place or thoroughfare, street, public alley, public parking lots, or any other property owned, occupied, or controlled by the city, public building, whether as a pedestrian or driver in any type or mode of vehicle, public or private~~ who is not an occupant of a motor vehicle, any container of ~~alcoholic malt~~ beverage or unfortified wine, as defined in G.S. 18B-101(4). For purposes of this section, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container, which shall have had any seal, cap, tap, stopper, cork or other device intended to seal the container, broken, removed or otherwise moved from its original position so as to make the contents available for consumption. Such public areas shall be construed to mean, and include, any drive, driveway, road, roadway, street, sidewalk, alley, parking area or other space open for the purpose of vehicular traffic or operation upon the grounds or premises of any service station, car wash, supermarket, store, restaurant, amusement center, lounge, shopping center or office building, or any other business or municipal establishment, or groups of such establishments providing parking spaces for customers, patrons, employees or the general public.

(b) This section shall not apply to nor serve to prohibit the sale and dispensing of alcoholic beverages in any public retail outlet or restaurant lawfully licensed and empowered to make such sales and dispensation.

(c) The enforcement of this section is not applicable to passengers in a motor vehicle who are in possession of nonspirituous alcoholic beverages and/or malt beverages.

(d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 4.** Chapter 8 – Amusements and Entertainments, Article II – Pool Rooms of the Code of Ordinances for the City of Hendersonville is amended as follows:

**Sec. 8-39. Gambling.**

It shall be unlawful for any owner, manager or employee of any pool room, billiard hall, discotheque and/or dancehall or amusement center within the city to allow or permit any form of gambling to be carried on or engaged in within the premises thereof.

As provided in N.C.G.S. 14-292, violation of this section is a misdemeanor.

**Sec. 8-40. Disorderly conduct.**

It shall be unlawful for the owner, manager or employee of any pool room, billiard hall, discotheque and/or dancehall or amusement center within the city to allow or permit any form of disorderly conduct to be carried on or engaged in within the premises thereof.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 8-41. Display of amusement devices; gambling devices prohibited.**

Any device shall at all times be kept and placed in plain view of any person who may frequent or be in any place of business where such devices are kept or used. Nothing in this article shall be construed to authorize, permit or license any gambling device of any nature whatsoever.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**~~Sec. 8-44. Penalty for violation of article.~~**

~~Any person violating any provision of this article shall be punished in accordance with section 1-6.~~

**SECTION 5.** Chapter 14 – Businesses, Article IV – Massage Therapy of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 14-164. Massage of private parts for hire.**

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 14-165. Patronage of massage businesses by minor; employment of minors.**

- (a) No massage therapist or massage therapy establishment shall massage or treat any person under the age of 18 years or permit or condone such treatment, except when the parent or legal guardian of the person under 18 accompanies the person under the age of 18 during the massage treatment or upon written order of a licensed physician, osteopath, chiropractor, podiatrist or registered physical therapist, such order being dated and in the possession of the person giving the massage or treatment.
- (b) No person licensed pursuant to this article shall employ any person under the age of 18 years in the operation of the massage business.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**~~Sec. 14-166. Penalty for violation of article.~~**

~~Any person convicted of violating any provision of this article shall be guilty of a misdemeanor, punishable in accordance with section 1-6.~~

**SECTION 6.** Chapter 14 - Businesses, Article V – Massage Therapy of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 14-226. Peddling hours restricted.**

It shall be unlawful for any peddlers, hawkers, itinerant merchants or transient vendors of merchandise to go in or upon any property between the hours of 8:00 p.m. and 8:00 a.m., or, during such periods that daylight saving time is in effect between the hours of 9:00 p.m. and 8:00 a.m., in areas zoned for residential purposes within the corporate limits, not having been requested or invited so to do by the owner or occupant thereof, for the purpose of disposing of or peddling or hawking goods or services; provided, however, that nothing in this section shall apply to the sale of his own products by a farmer or the sale by an individual of the products of his own labor.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 14-227. Sale of merchandise on streets or sidewalks.**

No person shall sell, barter, trade or auction merchandise of any description on any street or sidewalk except in accordance with division 3 of this article.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 14-251. Required.**

It shall be unlawful for any person to engage in business as a peddler within the city without first having applied for and obtained a permit so to do from the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 14-258. Penalty Reserved.**

~~Any person violating any provision of this article shall, upon conviction, be punished in accordance with section 1-6.~~

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**Sec. 14-283. - ~~Penalty for violation of division~~Reserved.**

~~Any person violating any provision of this division shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-6.~~

**Sec. 14-284. Required.**

- (a) It shall be unlawful for any person to sell or to offer for sale, any food, beverage or merchandise on foot or from any vending stand on any right-of-way, street, sidewalk or public property within the city without first obtaining a permit pursuant to this article.
- (b) Any permit issued under this article shall be temporary in nature and applicable for one special event approved by the city pursuant to section 46-84. Such permit shall be effective only for the duration of the special event specified.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 14-287. Prohibited conduct.**

It shall be unlawful for a street vendor to:

- (1) Violate any federal, state, county or city law or regulation that pertains to food, beverages or the selling thereof or that pertains to the operation of the vendor's business in the downtown historic district.
- (2) Fail to permit any lawfully requested inspection by health officials or to comply with any lawful request of a police officer.
- (3) Fail to carry and display at all times of operation the permit issued under this division.
- (4) Have a vending stand that is not in compliance with the review regulations or any additional special restrictions or conditions stated in the permit.
- (5) Vend without insurance if such is a condition of the vendor's permit.
- (6) Sell food or beverages for immediate consumption, unless the vendor has available for public use a litter receptacle not more than ten feet distant from the vendor's stand.
- (7) Leave his designated location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor.
- (8) Allow any item relating to the operation of the vending business to be placed anywhere other than in, on or under the vending stand.
- (9) Offer to sell any goods other than those permitted by the permit.

- (10) Sound or permit the sounding of any device which produces a loud and raucous noise or engage in any hawking or harassment for the purpose of attracting the attention of the public to the vending stand.
- (11) Have any advertising, except the posting of prices, the name of the products, and the name of the vendor.
- (12) Solicit or conduct business with persons in motor vehicles.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 7.** Chapter 18 – Cemeteries of the Code of Ordinances for the City of Hendersonville shall be amended as follows :

**Sec. 18-3. Unlawful entry.**

It shall be unlawful for any person, other than duly authorized officers, officials or employees of the city, to enter into or be upon the grounds of a public cemetery during the time after sunset and before sunrise of any day without first obtaining the permission of the public works director or his designee. It shall further be unlawful at all times for any person to enter or leave the grounds other than by the established and open entrances or gateways.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 18-4. Trespass and loitering; exceptions.**

It shall be unlawful for any person to loiter or trespass upon lots and graves of the public cemeteries or for the parent or guardian of any child under the age of 16 to permit such child to be within a public cemetery grounds unless accompanied by an adult person; provided, however, that nothing in this section shall be construed to prohibit any person having lawful business in a public cemetery in connection with improvement thereof or in connection with the lawful interment or disinterment of human remains or cremains, or to prevent persons visiting the graves of relatives or friends from being in the cemetery in accordance with the rules and this chapter.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 18-5. Speed of vehicles.**

It shall be unlawful for any person to drive any vehicle in a public cemetery faster than five miles per hour.

In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

**Sec. 18-6. Operation of vehicles and parking.**

No person shall drive or move any vehicle within a public cemetery except over a roadway open for vehicular traffic, except as permitted by the rules. No person shall obstruct any path or driveway within a public cemetery open to vehicular traffic. No



person shall use public cemetery grounds or any driveway therein as a public thoroughfare.

In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

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#### **Sec. 18-8. Rubbish; debris.**

It shall be unlawful for any person to dispose of any rubbish, trash, waste materials, litter or debris of any kind in public cemeteries or to place any permanent materials on a lot which would prevent the perpetual maintenance, including mowing, of a public cemetery.

In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

#### **Sec. 18-9. Property damage.**

No person shall remove, molest, injure, mar, deface, throw down or destroy any headstone, monument, permanent marker, survey marker, temporary marker, corner marker, tomb, vault or mausoleum, or decoration on any lot, or open, disturb or molest any grave or place of burial within a public cemetery. This shall not prohibit acts by public cemetery officers and employees or public officials in carrying out their duties.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

#### **Sec. 18-10. Trees, shrubs and flowers.**

(a) It shall be unlawful for any person to plant any tree, shrub or other plant in a public cemetery except those planted or caused to be planted by the public works director or his designee.

(b) It shall be unlawful for any unauthorized person to cut down, injure, break or destroy any tree, shrub or other plant growing in a public cemetery or to pick, pluck or cut any flower or decorative plant, except as authorized by the rules. In addition to any other remedy available, violation of this section subsection (b) is also a misdemeanor as provided in Section 1-6.

#### **Sec. 18-11. Interment of human remains.**

- (a) No person shall inter a human corpse or the remains remaining from the cremation of a human corpse at any place or location within the city limits other than in a recognized and established cemetery or other area regularly dedicated for this purpose.
- (b) No person or entity shall inter, or cause to be interred, human remains or cremains within a public cemetery without having first secured an interment permit from the public works director or his designee, and having paid the permit fee associated with the issuance of such a permit. The issuance of an interment permit shall be in accordance with the rules governing public cemeteries in the City of

Hendersonville. Such interment permit shall, at a minimum, contain the name, date of birth, date of death of the deceased, the date and time of the proposed interment, the grave address/designation in which the interment will occur, and the name and address of the persons in responsible charge if different from the applicant. It shall be unlawful to inter or to cause the interment of human remains or cremains other than the named deceased within the designated grave. The persons in responsible charge shall be jointly and severally liable and responsible for compliance with all terms of this ordinance and the rules governing public cemeteries in the City of Hendersonville related to the interment, the funeral, gravesite services, placement of the temporary marker, and all other ordinance provisions and rules related to any of the foregoing.

- (c) Interment permits must be secured at least 48 hours in advance, with the following exceptions:
  - (1) If the interment will occur on a Monday, the interment permit must be secured no later than 11:00 a.m. on the preceding city business day.
  - (2) If the interment will occur on a weekend, the interment permit must be secured no later than 11:00 am of the preceding Thursday.
  - (3) If the interment will occur on a city holiday, the interment permit must be secured not later than 11:00 a.m. of the preceding city business day that will provide at least 48 hours notice to the city.
- (d) No person shall cause to be built, installed or created any aboveground curbing, borders or fencing around any lot or grave, or multiple grave sites.
- (e) Nothing may be placed in, on, or around a grave or lot other than flowers, monuments and markers that are specifically allowed by this chapter. By way of example, and not limitation, benches, flag poles, solar lights, and any other item not specifically allowed, are prohibited.
- (f) No headstones, level stones or any other type of grave marker shall be wider than the width of two adjacent grave sites, or spaces.
- (g) All interment shall be accomplished with the use of an approved container and, for human remains, an approved vault.
- (h) All licenses obtained after July 1, 2021, shall be limited to the interment of (1) one human remains and one human cremains, or (2) two human cremains per grave. Notwithstanding the foregoing, prior commitments documented in city records for limits that exceed those contained in this paragraph shall be honored.
- (i) The lids of all vaults used for interments shall have affixed thereto by means of permanent attachment a metal tag, composed of non-corrosive metal, bearing the name, birth date, and date of death of the deceased within the vault.
- (j) After interment is completed, the top of any concrete box or vault used in such interment shall not be less than 24 inches below the ground level, and the grave and concrete box or vault shall be completely filled and covered with 24 inches of compacted soil.

- (k) Prices, fees, charges and assessments for a license, interment permit, the opening and closing of graves, and any other services rendered by the city incidental to, or relative to, the use of a public cemetery shall be determined by resolution of the city council, and a fee schedule listing the amount and nature of such fees shall be filed in the office of the city clerk.
- (l) Within 24 hours after interment the person in responsible charge shall place, or cause to be placed, at an appropriate place on the interment site a temporary marker designating at least the identity of the person interred. The temporary marker must remain (and be replaced if removed) until the placement of a permanent marker or permanent monument. A permanent marker must be placed within six months of the date of interment, and no later.
- (m) Within 48 hours after the burial the person in responsible charge shall provide the city with a certification that interment was completed in the designated grave and the required temporary marker has been placed.
- (n) In addition to any other remedy available, violation of subsections (a), (b), (g), (h), and (i) above is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 18-15. Procedures and fees for disinterment.**

- (a) Except as may be otherwise authorized by city council, no human remains shall be disinterred from a public cemetery without the prior delivery to the city manager of a disinterment permit lawfully issued by the Henderson County Director of Public Health or by other lawful authority, or by a valid court order. Upon receipt, the city manager may conduct such investigation as deemed necessary to verify the disinterment permit or court order, and shall forward a copy to the public works director. The public works director or his designee shall update the public cemetery records to indicate the date of disinterment and the name, and new location of the burial of the deceased.
- (b) The disinterment permit holder shall coordinate the disinterment with the public works director or his designee.
- (c) An administrative fee set by the city council will be charged to review and coordinate each disinterment request received by the city, and payment is due at the time of request for disinterment.
- (d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

#### **Sec. 18-16. Violations of this chapter.**

- (a) The city may debar any funeral home from being eligible to apply for an interment permit, or to otherwise inter or cause the interment of human remains or human cremains within any public cemetery for repeated violations of this article.

- (b) In addition to section 18-16(a) above and any other remedy specifically provided, section 1-6 of the Code shall apply to violations of this chapter.

**SECTION 8.** Chapter 22 – Fire Prevention and Protection, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 22-1. Interference at scene of fire.**

No person shall stand or be in any street, alley or other place where a fire is in progress in such a way as to interfere with the duties of the fire department.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 22-2. Unauthorized persons using fire apparatus.**

No person other than a bona fide member of the fire department shall mount any fire engine or other apparatus before it leaves the station or while on its way to or from a fire, or at any other time, unless by permission of the driver or officer in command of such fire engine or apparatus.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 22-3. False fire alarms.**

No person shall give or cause to be given any false fire alarm.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 22-4. Prohibited acts.**

The activities noted in this section are prohibited within the limits of the city's primary fire district, as established pursuant to G.S. 160A-435. The prohibited activities are as follows:

- (1) The storage of explosives and blasting agents;
- (2) The storage of flammable liquids in outside aboveground tanks;
- (3) New bulk plants for flammable or combustible liquids;
- (4) The bulk storage of liquefied petroleum gas; and
- (5) The storage of other hazardous materials as determined by the fire official.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 9.** Chapter 24 - Floods, Article III – Stormwater Ordinance of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 24-160. General enforcement and violations.**

- (a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his or her designee, or any authorized agent of the city.

Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of the city.

- (b) *Violation unlawful.* Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this article, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article. ~~and is~~ Violation of this article is subject to the same ~~civil or criminal penalties~~ remedies as other City Code (see section 1-6 of this Code) violations, with each day that a violation continues constituting a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (c) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, owner of an interest, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

- (1) *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.
- (2) *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any owner of an interest, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

#### **Sec. 24-161. - Remedies and penalties.**

The remedies and penalties provided for violations of this article, ~~whether civil or criminal~~, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

- (a) Remedies.

- (1) Withholding of certificate of occupancy. The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the owner, an owner of an interest, or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) Disapproval of subsequent permits and development approvals. As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.
- (3) Injunction, abatements, etc. The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- (4) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the stormwater administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (b) Civil penalties. Violation of this article may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. civil penalties may be assessed up to the full amount of penalty to which the city is subject for violations of its phase II stormwater permit, or if no phase II stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

~~(c) — Criminal penalties. Violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.~~

**SECTION 10.** Chapter 36 – Offenses and Miscellaneous Provisions, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-1. Blocking or impeding street and sidewalk access.**

- (a) *Purpose and intent.* The city has the general authority and control over all public streets, sidewalks, and other ways of public passage within its corporate limits, except those ways of public passage that are owned or maintained by the State of North Carolina. The city has the duty to keep such streets, sidewalks, and other ways of public passage open for travel and free from unnecessary obstructions. G.S. 160A-296. This ordinance prohibits actions that block or impede the safe passage of pedestrians and vehicles on public sidewalks and streets.



- (b) *Definitions.* The following words, terms, and phrases when used in this section shall have the meanings set forth in this subsection, unless the context of their usage clearly indicates another meaning:
- (1) *Block* means to unreasonably obstruct passage on a sidewalk or entrance or exit to a building.
  - (2) *Impede* means to render the use of a street unreasonably difficult or dangerous, including the following actions:
    - i. Weaving or darting through, around, and in between multiple occupied vehicles, whether the vehicle is stopped or in travel, for a purpose other than passage to a sidewalk. This subsection (i) is meant to prohibit walking through a street parallel to the sidewalk but not meant to prohibit crossing lanes of a street to reach occupied vehicles when a stop light is red.
    - ii. Placing or throwing a tangible thing on or inside an occupied vehicle that is on the street, except if an occupant requests that the acting individual deliver the tangible thing to an occupant or consents to such exchange.
    - iii. Standing, sitting, or lying down on the portion of a traffic island that is less than six feet wide, except where using the traffic island to cross the street or during an emergency.
  - (3) *Sidewalk* means the part of a street improved for pedestrian traffic.
  - (4) *Street* means the entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purpose of vehicular traffic. For purposes of this section the terms street and highway are synonymous.
  - (5) *Traffic island* means a raised portion of the street in between lanes of traffic intended to separate lines of traffic or guide traffic, not to hold people or provide pedestrian refuge. A traffic island may be commonly called a median. For the purpose of this section, a traffic island is any raised part of the street meant to separate lanes of traffic that is less than six feet in width. Width is measured as the length of the traffic in the direction of pedestrian travel if the pedestrian is traveling perpendicular to the street.
  - (6) *Vehicle* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes, of this chapter bicycles shall be deemed vehicles.
- (c) It shall be unlawful for an individual to impede the use of a street or highway.
- (d) It shall be unlawful for an individual to block a sidewalk.

- (e) It shall be unlawful for an individual to block the entrance or exit to a building served by a sidewalk or street unless otherwise granted permission by the owner or tenant. Permission granted by the owner may be evidenced by oral or written confirmation of permission from the owner or tenant.
- (f) Nothing in this subsection shall be interpreted to prohibit the exchanging of objects into and out of vehicles where the vehicle is stopped or parked according to traffic laws and no blocking or impeding of a street or sidewalk occurs. Where an individual is engaged in lawful activity on the sidewalk and such activity evokes a response by a third party that is in violation of this section or any other ordinance or state law, the individual engaged in lawful activity shall not be in violation of this section.
- (g) This section shall not apply to actions taken by first responders; or to actions taken in response to an emergency or to prevent an accident.
- (h) This section shall not apply to persons or entities granted a permit by the city for purposes, including, but not limited to, under section 46-85 and following of this Code.
- (i) No action punishable under G.S. 20-174.1 shall be punishable under this section. This section shall only apply to public streets, sidewalks, and other ways of public passage within the city's corporate limits for which authority and control is not vested in the North Carolina Board of Transportation.
- (j) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 36-4. Harassment in public spaces prohibited.**

- (a) Purpose and intent.
  - (1) The city is empowered, pursuant to G.S. 160A-174, to protect the health, safety and welfare of its citizens and to ensure the peace and dignity of the city. It is the intent of council in enacting this ordinance to recognize the rights of all citizens while at the same time protecting the coexistent rights for all citizens to enjoy safe and convenient travel in public spaces free from harassment. In the course of public hearings and debates regarding solicitation and safety in public spaces in Hendersonville, the city recognizes that the dangerous effects of harassment may occur in the commission of or completely separate from an act of solicitation, where such conduct occurs in public spaces and includes following a person or cornering a person for the purpose of intimidating that person.
  - (2) The current state laws on stalking and harassment do not protect individuals who are harassed in public spaces where such harassment is confined to a single occasion but is also dangerous or intimidating. Such

harassment causes intimidation and fear and may result in an interaction with dangerous or violent consequences. Free and safe passage on city sidewalks and streets is necessary. Therefore, the following ordinance intends to address harassment on sidewalks and streets by penalizing the following conduct.

- (b) Definitions. The following definitions apply in this section:
  - (1) Public space means streets, sidewalks, alleys, and other public property, as well as city-owned and city-controlled property.
  - (2) Reasonable person means a reasonable person in the same or similar circumstances.
- (c) Offense. A person is guilty of harassment in a public space if the person:
  - (1) Knowingly and intentionally performs either of the following with no legitimate purpose:
    - i. Following an individual in or about a public space with the intent of threatening, intimidating, or causing fear for personal safety; or
    - ii. Surrounding an individual or intentionally and physically directing the individual's movement through or in a public space with the intent of threatening, intimidating, or causing fear for personal safety. This subsection includes crowding or cornering an individual with the intent of threatening, intimidating, or causing fear for personal safety and without that individual's consent as the individual is actively engaging or attempting to use an automated teller machine or parking meter and the individual must stand within the public space to access the automated teller machine or parking meter;
  - (2) The conduct described in subsection (c)(1)(i) or (ii) is directed at an individual in the individual's presence; and
  - (3) The person continues the conduct described in subsection (c)(1)(i) or (ii) after the individual to whom the conduct is directed has made a negative oral response or taken action that a reasonable person would understand as a negative response.

(d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 11.** Chapter 36 – Offenses and Miscellaneous Provisions, Article II – Offenses Against Public Peace of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-41. Trespass.**

- (a) *Prohibited generally.* It shall be unlawful for any person to commit a trespass within this municipality upon either public or private property.

- (b) *Specifically enumerated trespasses.* Without constituting any limitation upon the provisions of subsection (a) of this section, any of the following acts by any person shall be deemed included among those that constitute trespasses in violation of the provisions of subsection (a) of this section, and appropriate action may be taken under this section at any time, or from time to time, to prevent or punish any violations of this section. The enumerated acts shall include:
- (1) An entry upon the premises, or any part thereof, of another, including any public property or property of the city, in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach or entry, or in violation of any notice, warning or protest, given orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
  - (2) The pursuit of a course of conduct or action incidental to the making of an entry upon the land or property of another, including public property or the property of the city, in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach or entry, or in violation of any notice, warning or protest, given orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
  - (3) A failure or refusal to depart from the premises of another, or from public property, or the property of the city, in case of being requested, either orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
- (c) *Penalty for violation of section.* ~~Any person violating any of the provisions of this section shall, upon conviction, be punished in accordance with section 1-6. In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.~~

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### **Sec. 36-43. Disturbing public meetings.**

It shall be unlawful for any person, not authorized by law, rule, regulation or order to do so, to disrupt wilfully by shouts, calls, noisemaking or other disturbance any meeting of any public body, whether elected or appointed, to the extent that the body is unable because of such disruption to continue its meeting in due order, or to wilfully obstruct the means of entrance to and exit from such meetings.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-44. Unlawful assembly.**

It shall be unlawful for any two or more persons within the city, to assemble together for any unlawful purpose; or being assembled, to act in concert to do any unlawful act with force and violence against the property of the city, or to the person or property of another, or against the peace or to the terror of citizens or other persons or who shall make any movement or preparation therefor. No person shall knowingly suffer or permit any assemblage for the purpose of committing any unlawful act or breach of the peace or any riotous, offensive or disorderly conduct in or upon the premises owned by him or under his control within the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

[Footnote: State law reference – Riot, G.S. 14-288.2]

**Sec. 36-45. Fighting.**

It shall be unlawful for any person to knowingly start a fight, or to fight, or to commit any assault or battery in any public place or in any public building in the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-46. Disturbing lawful assemblages.**

It shall be unlawful for any person, not authorized by law, rule, regulation or order to do so, to disrupt wilfully by shouts, calls, noise making or other disturbance any lawfully conducted school class, act of commerce, assemblage or parade, to the extent that the class, commerce, public assemblage or parade is unable because of such disruption to continue in due order, or to wilfully obstruct the means of entrance thereto and exit therefrom.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 12.** Chapter 36 – Offenses and Miscellaneous Provisions, Article III – Offenses Against Public Safety of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-81. Projectiles.**

- (a) No person shall shoot or project any stone, rock, shot or other hard substance within the city by means of a slingshot, bean shooter, shot shooter, air rifle, pop gun, bow or other similar contrivance; provided, however, that archery shooting may be engaged in on such grounds as may be set aside and approved therefor by the city council.
- (b) It shall be unlawful to cast, throw or propel any missile on any public street, alley or any public building in the city.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-82. Discharge of firearms.**

It shall be unlawful for any person to fire a gun, rifle, pistol or other firearm within the city except in case of necessary defense of person or property; provided, however, that this section shall not apply to an officer lawfully discharging his duty; provided further, that nothing in this section shall be construed to prohibit licensed shooting galleries.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

[Footnote: State Law Reference – Authority to regulate discharge of firearms, G.S. 160A-189]

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**Sec. 36-84. Unauthorized use of police whistles and fire signals.**

No person without special authority from the police department or fire department shall carry or use any whistle, bell, horn or siren similar in appearance or sound to the whistles, horns or sirens used by the police department or fire department.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-85. Abandoned iceboxes; similar receptacles.**

- (a) Prohibited acts. It shall be unlawful for any person to discard, abandon, leave or allow to remain in any place, any icebox, refrigerator or other container, device or equipment of any kind with an interior storage area of more than 1½ cubic feet of clear space which is airtight, without first removing the doors or hinges from such icebox, refrigerator, container or equipment.
- (b) Applicability. This section shall not apply to any icebox, refrigerator, container, device or equipment which is being used for the purpose for which it was originally designed, or is being used for display purposes by any retail or wholesale merchant, or is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment thereof.

(c) As provided in N.C.G.C. 14-318.1, violation of this section is a misdemeanor.

**Sec. 36-86. - Possession of firearms by convicted felons.**

- ~~(a) — Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

~~Felony means a crime punishable by potential sentence of two years or more imprisonment by the courts of this state, or any crime defined as a felony in any other state or of the United States without regard to date of conviction, discharge from prison or termination of probation, parole or suspended sentence or type of crime.~~



~~Firearm means, by way of illustration, but not limitation, any gun, pistol, rifle, shotgun, machine gun, revolver, derringer or weapon of like kind in operable condition or which may be made to operate, whether loaded or unloaded including, but not limited to, any item defined in USC 821(J).~~

- ~~(b) Prohibited acts. It shall be unlawful for any person who has previously been convicted of any felony to have in his possession while on the public streets, sidewalks, alleys, other public property and any facility open to the public in the city any firearm.~~
- ~~(c) Penalty for violation of section. Any person found in violation of subsection (b) of this section shall be guilty of a misdemeanor and shall be punished as set forth in G.S. 14-4(a).~~
- ~~(d) Firearms of felon declared contraband. Any firearm found in the possession of any person previously convicted of a felony is hereby declared to be contraband. Such firearm shall be retained by the chief of police until no longer needed as evidence, but no less than 180 days. After the firearm is no longer needed as evidence:
 
  - ~~(1) It shall be returned to the owner if determined to be previously stolen.~~
  - ~~(2) It may be disposed of according to the terms of an order entered by any court of lawful jurisdiction.~~
  - ~~(3) If neither subsection (d)(1) or (d)(2) of this section is applicable, the firearm shall be destroyed.~~
  - ~~(4) Under no circumstances, shall the firearm be returned to any person for the use of any convicted felon.~~~~

[Deleted. Preempted by North Carolina law.]

### **Sec. 36-87. Weapons on city-owned or city-maintained property.**

- (a) Carry of certain weapons prohibited.
  - (1) Prohibited acts. Except as provided in subsection (b) of this section, all persons are prohibited from possessing firearms as defined in G.S. 14-415.10 in city government buildings and their appurtenant premises.
  - (2) Where posted, the carrying of a concealed handgun on city government recreational facilities identified specifically as follows is hereby prohibited:
    - ~~a. Berkeley Park Baseball Field including any appurtenant facilities such as restrooms, during an organized athletic event, if the field has been scheduled for use with the Hendersonville Department of Public Works;~~
    - ab. Patton Park Athletic Fields including any appurtenant facilities such as restrooms, during an organized athletic event, if the fields have been scheduled for use with the Hendersonville Department of Public Works;

- be. Patton Park Swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool;
  - cd. Boyd Park and Patton Park Tennis Courts during organized athletic events, if the courts have been scheduled for use with the Hendersonville Department of Public Works;
  - de. William H. King Park Baseball Field including any appurtenant facilities such as restrooms, during an organized athletic event, if the field has been scheduled for use with the Hendersonville Department of Public Works;
  - ef. Sullivan Park Basketball Facility including appurtenant facilities such as restrooms, during an organized athletic event, if the facility has been scheduled for use with the Hendersonville Department of Public Works;
  - fg. Whitmire Activity Center Shuffleboard Courts including appurtenant facilities such as restrooms, during an organized athletic event, if the courts have been scheduled for use with the Hendersonville Department of Public Works.
- (b) Exceptions. This prohibition of subsection (a) of this section shall not apply to the following persons:
- (1) Officers and enlisted personnel of the armed forces of the United States when discharging their official duties as such and acting under orders requiring them to carry arms and weapons;
  - (2) Civil officers of the United States while in the discharge of their official duties;
  - (3) Officers and soldiers of the national guard when called into actual service;
  - (4) Sworn law enforcement officers;
  - (5) County animal control officers while in the discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
  - (6) Employees of the city, a utility company, or a contractor to the city, may possess tools approved by their employer so long as such tools are not used as a weapon; and
  - (7) Persons possessing a written permit from the chief of police to possess weapons for ceremonial purposes or funerals.
  - (8) City employees with a valid North Carolina Concealed Carry Permit and prior approval which may be granted by the city manager in consultation with the chief of police in such places and under such circumstances as the city manager may from time to time designate. The city manager is hereby authorized and directed to draw up and keep current from time to time such policies for the carrying of concealed weapons as the city manager,

in consultation with the chief of police, may determine is in the interest of the health, safety and welfare of the city.

(c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 13.** Chapter 36 – Offenses and Miscellaneous Provisions, Article IV – Offenses Against Public Morals of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-121. Indecent exposure or behavior.**

~~It shall be unlawful for any person to indecently expose his or her person, or to behave in a boisterous or indecent manner in or on any street, house or public building or elsewhere in the city.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 36-122. Displaying obscene pictures.**

~~No person shall display on any street or alley, or in any store, shop or public place in the city, any obscene pictures, marks, words or representations.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 36-124. Prostitution—Solicitation.**

~~It shall be unlawful for any person to solicit any man or woman for sexual intercourse within the city.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 36-125. Same—Selling or renting houses for use as house of prostitution.**

No person shall knowingly sell or rent any house within the city to be used as a house of prostitution or ill fame.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-126. Bawdy houses.**

No person shall keep any house within the city where men are received for the purpose of engaging in illicit sexual intercourse.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-127. Assignment houses.**

No person shall keep any assignment house or knowingly receive into any house within the city or allow to stay therein any man or woman for the purpose of engaging in illicit sexual intercourse.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-128. Staying in bawdy house.**

No person shall stay or reside in any bawdy house within the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-129. Disorderly houses.**

~~It shall be unlawful to keep or rent a disorderly house, or to allow within any house lascivious or loose conduct.~~

[Deleted. Preempted by North Carolina law.]

**SECTION 14.** Chapter 36 – Offenses and Miscellaneous Provisions, Article V - Curfew of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-213. ~~Penalty for violation of division.~~Reserved.**

~~The punishment for violation of this division shall be according to the provisions of section 1-6.~~

**Sec. 36-214. Establishment of curfew; enforcement.**

A curfew applicable to minors is established and shall be enforced as follows:

- (1) *Time limits.* It is unlawful for any minor to be or remain upon any public place as defined in this section in the city between midnight Friday and 5:00 a.m. on Saturday, or between midnight Saturday and 5:00 a.m. on Sunday, or between the hours of 11:00 p.m. and 5:00 a.m. of the following morning on Sunday, Monday, Tuesday, Wednesday or Thursday.
- (2) *Exceptions.* The restrictions provided by subsection (1) of this section shall not apply to any minor who is accompanied by a guardian, parent or other person charged with the care and custody of such minor, or other responsible person over 18 years of age, nor shall the restriction apply to any minor who is traveling between any two of the following: his home, place of employment, place of worship, any government building or any school-sanctioned function, if the minor is attending or has attended such function.
- (3) *Responsibility of minor.* It is unlawful for any minor to be in or upon, or remain in or upon a public place within the city within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (4) *Responsibility of adults.* It is unlawful for any parent, guardian or other person charged with the care and custody of any minor to allow or permit such minor to be in or upon, or remain in or upon, a public place within the city within the

curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.

- (5) *Responsibility of business establishments.* It is unlawful for any person operating a place of business or amusement to allow or permit any minor to be in or upon, or to remain in or upon, any place of business or amusement operated by them within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (6) *Enforcement.* Enforcement of this division shall be according to the following procedures:
  - a. When a minor is found to be in violation of this division, the officer will, by telephone or radio, check with the communications center of the city police department to determine if the juvenile is a first offender. If the juvenile is a first offender, he will be issued a written warning and taken to the residence of his parent or guardian. In addition to this action, a written warning will be given to that adult and an incident report taken by the officer to include the name of the juvenile and adult, and the time, date and location of the offense. This shall apply in all cases where a written warning is issued. This report will be turned in to the clerk and entered into the police department's computer system. A copy of the report will be maintained in the records division of the police department.
  - b. If upon checking with the communications center the juvenile is found to be a repeat offender, he will be taken to the residence of his parent or guardian and will be subject to having a juvenile petition filed against him for the violation. In addition, the adult (parent or guardian) will be subject to a criminal citation, pursuant to subsection (8) of this section. A report will be turned in to the communications center and entered into the police department computer system. A copy of the report will be maintained in the records division of the police department.
  - c. If the juvenile is, in the opinion of the apprehending officer, an abused, neglected or dependent juvenile as those terms are defined in G.S. 7A-517 then the apprehending officer shall make an immediate report of the same to the county department of social services.
- (7) *Violation of curfew by minor.* It shall be a violation of this division for any minor to act in violation of subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (8) *Aiding and abetting by adult, guardian or parent.* It shall be a violation of this division for an adult, guardian or parent to allow, permit, encourage, aid or abet a minor in the violation of subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (9) *Refusal of guardian or parent to take custody of a minor.* If any guardian or parent refuses to take custody of his minor child found in violation of this division, the officers with custody of the minor shall contact the county department of social services and release the minor to that agency pending further

investigation by the police department and the department of social services. The adult will be subject to a criminal citation, pursuant to subsection (8) of this section.

- (10) *Emergency curfew.* Under the authority of G.S. 14-288-12, whenever the mayor of the city deems that an emergency exists, and there is a clear and present danger to the preservation of the public peace, health, life or safety, or to public or private property in the city necessitating expansion of the curfew provisions set forth in subsection (1) of this section, the mayor may effect such expansion, effective for the period of the emergency, by proclamation. The proclamation shall contain a statement of the reasons for such necessity and the period of the expanded curfew, and shall provide that no minor under the age of 16 shall be upon or about, or remain upon or about, public places in the city between the hours of 8:00 p.m. and 5:00 a.m. on the following morning, unless accompanied by his parent, guardian or responsible adult. Such proclamation may further provide that no parent or guardian of any minor under the age of 16 shall allow the child to be upon or about, or remain upon or about, any public place in the city between the hours of 8:00 p.m. and 5:00 a.m. of the following morning, unless the child is under direction or protection of some adult person with authority and consent of such parent or guardian for his being there. Such proclamation shall become effective 30 minutes after being publicly announced by the mayor for such period, or until rescinded by the mayor or repealed by the city council in the manner in which ordinances are repealed. As soon as is reasonably possible, the proclamation shall be published and reported in the local media and posted conspicuously about the city.

(11) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 15.** Chapter 36 – Offenses and Miscellaneous Provisions, Article VI – Abandoned, Nuisance, and Junked Motor Vehicles of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-261. Unlawful removal of impounded vehicle.**

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the city any vehicle which has been impounded pursuant to the provisions of this article unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 16.** Chapter 38 – Parks and Recreation, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 38-3. Prohibited conduct.**

No person shall, while in any public park:

Drive any nongovernment vehicle on any area except the paved park roads or designated parking areas, or such other areas as may on occasion be specifically designated as



temporary parking areas by the city, except that bicycles shall be permitted on all trails unless specifically prohibited.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 17.** Chapter 38 – Parks and Recreation, Article II – Public Skate Park Facilities of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 38-12. Public skate park designated; use regulations.**

The city may designate, maintain and/or operate a skate park facility, which shall be open to the public for the purpose of riding skateboards, in-line skates, and/or roller skates. Any designated public skate park may or may not be supervised and shall be for use by persons using skateboards, in-line skates, and/or roller skates only. All other uses are prohibited.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 38-13. Required riding equipment in public skate parks.**

It is unlawful for a person to ride or use a skateboard, in-line skates, or roller skates, in a designated public skate park facility unless a person is wearing a helmet, elbow pads and knee pads.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 38-15. Skate park sign posting.**

The city public works department shall cause a sign or signs to be posted at designated public skate park facilities providing reasonable notice of the requirements of this article and stating that any person failing to comply ~~will be guilty of an infraction and subject to citation~~ may be charged with a misdemeanor. Such signs shall at least afford reasonable notice of the following:

- (1) Park hours of operation.
- (2) Skateboarding, roller-skating, and in-line skating are hazardous activities. Skate at your own risk.
- (3) Skateboards, roller-skates, and in-line skates only.
- (4) Failure to wear helmets, kneepads and elbow pads will subject persons to citation and/or ejection from the facility.

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**Sec. 38-17. ~~Violations.~~Reserved.**

~~Violations of the provisions of this article may constitute a misdemeanor, punishable by a fine. The city reserves the right to revoke the use of the skatepark to individuals who violate the rules and regulations of the skatepark.~~

**Sec. 38-18. City skate park rules.**

In addition to any other available remedy, violation of the rules in this Section 38-18 is also a misdemeanor as provided in Section 1-6.

Notice to all skaters.

This is an unsupervised skatepark. Skating is permitted during park hours from dawn to dusk. Any use of this facility is at your own risk. Use of this facility may result in serious injury.

IN THE CASE OF SERIOUS INJURY, DO NOT MOVE THE INJURED PERSON.  
ALL SKATING SHALL CEASE IMMEDIATELY. DIAL 911 - YOU ARE IN  
PATTON PARK AT 103 E. Clairmont Drive.

The following rules and regulations have been established for use of the skatepark to ensure participant safety. Please read and obey the following rules.

- (1) This is an unsupervised skate park and its use is free of charge. Avoid skating when the surface is wet from rain, etc.
- (2) Skating and skateboarding only are allowed in the skatepark.
- (3) Every person riding a skateboard at this facility, skateboard in the facility must wear a helmet, elbow pads, and kneepads. ~~Any person failing to do so will be subject to citation under [this article] under subdivision (1) of this subsection (b) of G.S. 99E-23.~~
- (4) Motorized vehicles are not allowed. Only skateboards, roller skates, in-line skates are allowed on ramps.
- (5) Call 911 for emergencies.
- (6) Drugs, alcohol, glass containers, tobacco products, profanity, fighting, horseplay, destroying or defacing public property are prohibited. Vandalism, including graffiti, stickers and tagging is illegal. If this occurs it may require the park to be closed temporarily. Violators will be prosecuted.
- (7) Food or beverages are not allowed on the skate area. Glass containers are prohibited in or near the skating surface.
- (8) No one under the age of eight is allowed without adult supervision.
- (9) No spectators are allowed on the skate area.

- (10) The city reserves the right to revoke the use of the skatepark to individuals who violate the rules and regulations of the skatepark.
- (11) Help keep the skatepark clean! Put trash in the receptacles, even if it is not yours!
- (12) Be courteous and respectful of others.
- (13) Events, lessons and other organized activities require written permission from the director of public works or his/her designee.
- (14) No other park items such as benches, tables, etc. may be used as ramps or jumps in the skatepark.
- (15) Firearms are prohibited in the skatepark.

Under North Carolina law, no governmental entity or public employee who has complied with G.S. 99E-23 shall be liable to any person who voluntarily participates in hazardous recreation activities for any damage or injury to property or persons that arises out of a person's participation in the activity and that takes place in an area designated for the activity.

For additional information, contact the City of Hendersonville at 828-697-3000.

**SECTION 18.** Chapter 42 – Secondhand Goods, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 42-1. Purchases from minors.**

~~No person engaging in business as a junk dealer or a secondhand dealer within the city shall purchase or receive from any minor of 17 years of age or less any article of merchandise or personal property, unless such minor is accompanied by a parent and the parent's consent obtained.~~

[Deleted. Preempted by North Carolina law.]

**SECTION 19.** Chapter 42 – Secondhand Goods, Article II – Pawnbrokers of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

[Footnote: State Law reference—~~Pawnbrokers Modernization Act of 1989~~ Pawnbrokers and Cash Converters Modernization Act, G.S. ~~91A-1 et seq.~~ Ch. 66, Art. 45, Part 1.]

**Sec. 42-36. Adoption of state provisions.**

The city adopts the provisions of G.S. ~~91A-1 et seq.~~ Ch. 66, Art. 45, Part 1, the ~~Pawnbrokers Modernization Act of 1989~~ Pawnbrokers and Cash Converters Modernization Act.

**SECTION 20** Chapter 42 – Secondhand Goods, Article II – Electronic Record-Keeping and Transmittal Requirements for Certain Businesses of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 42-37. Definitions.**

Cash converter shall have the same meaning as defined in Chapter ~~91A-66~~ of the North Carolina General Statutes or any successor statute.

Pawnbroker shall have the same meaning as defined in Chapter ~~91A~~66 of the North Carolina General Statutes or any successor statute.

Pawnshop shall have the same meaning as defined in Chapter ~~91A~~66 of the North Carolina General Statutes or any successor statute.

Precious metals dealer shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

Secondary metals recycler shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

**Sec. 42-38. Electronic record keeping.**

Every owner or operator of a cash converter business, pawnbroker, pawnshop, precious metals dealer or secondary metals recycler subject to this article shall maintain an electronic inventory tracking system that is capable of delivery and transmission of all information required by G.S. ~~91A-766-391~~ or ~~91A-7-166-392~~ (in the case of cash converters, pawnbrokers and pawnshops) or G.S. 66-~~169~~410 (in the case of precious metals dealers) or G.S. 66-~~11~~421 (in the case of secondary metals dealers) by computer to the entity designated by the city police department.

**Sec. 42-39. Electronic transmittal of required records.**

Every owner or operator of a cash converter business, pawnbroker, pawnshop, precious metals dealer or secondary metals recycler subject to this article is required to upload the information required by G.S. ~~91A-766-391~~ or ~~91A-7-166-392~~ to the entity designated by the city police department within one business day of receipt of the goods purchased or pawned.

**SECTION 21.** Chapter 44 – Environmental Services, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 44-3. ~~Reserved. Penalty for violation of chapter.~~**

~~Any violation of the provisions of this chapter is punishable in accordance with section 1-6.~~

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**Sec. 44-5. Littering prohibited—Generally.**

It shall be unlawful for any person to throw, drop, cast or deposit upon any street, alley, sidewalk or any yard or premises, public or private, any filth of any kind, or cans, paper, trash, paper containers, rubbish, bottles, wood shavings, brush, tree trimmings, grass clippings, leaves, or any other form of litter or waste matter, except as described in this article.

In addition to any other available remedy, violation of this section shall be punished in accordance with N.C.G.S. 14-399.

**SECTION 22.** Chapter 44 – Environmental Services, Article II – Collection and Disposal of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 44-41. Container specifications and handling requirements.**

- (a) Residential collection. All occupants of residences, whether single-family or multifamily, subdivision, planned unit developments, condominiums, apartment buildings, duplexes or any other arrangement of ownership, shall use city-provided mobile containers, which shall be placed adjacent to the street for collection. Rollout containers shall be emptied one time per week by the city sanitation department on days designated by the director of public works.
  - (1) Placement. Rollout containers shall be placed adjacent to the street for collection on days designated by the director of public works for pickup. The mobile containers shall be placed within five feet of the curb or street edge or in an accessible location approved by the director of public works, but shall not be placed in the street or on the sidewalk.
  - (2) Time requirements. The mobile containers shall be placed in the required location for collection no earlier than 7:00 p.m. on the day preceding a designated pickup day and shall be removed from the curbside location no later than 7:00 p.m. on the designated pickup day. Except during these hours, the containers shall be kept in a location no closer to the street than the front line of the residence. Containers must be curbside no later than 7:00 a.m. on collection day.
  - ~~(3) Ownership and responsibility. The mobile containers shall be furnished by the city and shall remain the property of the city. Mobile containers that are damaged, destroyed or stolen through abuse, neglect or improper use of occupant or user shall be replaced by the city at the expense of the occupant or user or resident owner. Mobile containers that are damaged in the course of normal and reasonable usage or that are damaged through no neglect or improper use of the occupant or user shall be replaced by the city at no expense to the occupant or user or resident owner. The director of public works shall determine whether the mobile container was damaged through abuse, neglect or improper use of occupant or user. Any determination made by the director of public works pursuant to this section shall be appealable to the city council if written notice of appeal is given by the occupant or user or resident owner to the city council within ten days after the director's decision. The mobile cart shall not be damaged, destroyed or defaced by any person. Markings or identification devices on containers, except as placed or specifically permitted by the director of public works, are expressly prohibited and shall be regarded as damage to the containers.~~
- (b) Multifamily dwelling collection. Multifamily dwellings with four or more units may utilize mobile carts or bulk containers on an individual resident or user basis;

provided, however, that such multifamily dwellings must maintain and require the use of a central and common collection and pickup area, the location of which has been approved and accepted by the city director of public works.

- (c) Location of containers. Those provisions set forth in sections 44-2, 44-4, 44-6, 44-7 and subsection (a) of this section shall apply to occupants of multifamily dwellings utilizing mobile containers.
- (d) Commercial and industrial collection. Commercial and industrial collection shall be as follows:
  - (1) Provisions for containers. Each establishment disposing of the equivalent of less than four cubic yards weekly shall provide rollout containers leased from the city, to remain the property of the city, and sufficient in number to contain the volume of refuse based on a once-per-week pickup. Each establishment disposing of more than four cubic yards weekly shall provide bulk containers of adequate size necessary to contain the volume of refuse based on once-per-week pickup. Establishments disposing of more than 16 cubic yards weekly shall provide bulk containers of eight cubic yards minimum capacity. Where feasible, low volume disposers may choose to combine their refuse with adjoining business, provided written permission is obtained from the business owner. Other low volume disposers may choose alternative disposal methods as approved by the director of public works.
- (e) Location of containers. Containers must be located in a position approved by the director of public works, easily accessible by the sanitation collection equipment.
- (f) Ownership and responsibility. All containers furnished by the city, including mobile containers and rollout containers as referenced herein, shall remain the property of the city. Containers that are damaged, destroyed or stolen through abuse, neglect or improper use of occupant or user shall be replaced by the city at the expense of the occupant or user or resident owner. Containers that are damaged in the course of normal and reasonable usage or that are damaged through no neglect or improper use of the occupant or user shall be replaced by the city at no expense to the occupant or user or resident owner. The director of public works shall determine whether the container was damaged through abuse, neglect or improper use of occupant or user. Any determination made by the director of public works pursuant to this section shall be appealable to the city council if written notice of appeal is given by the occupant or user or resident owner to the city council within ten days after the director's decision.
  - (1) Containers shall not be intentionally damaged, destroyed or defaced by any person. Markings or identification devices on containers, except as placed or specifically permitted by the director of public works, are expressly prohibited and shall be regarded as damage to the containers. In addition to any other remedy available, violation of this subsection (f)(1) is also a misdemeanor as provided in Section 1-6.



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**Sec. 44-48. Hazardous wastes.**

No person shall place or cause to be placed any hazardous wastes or any other dangerous materials of any kind with material to be collected by the city. The city will not be responsible for the collection or disposal of such materials. Procedures for transporting and disposing of such materials may be obtained through the department of sanitation and/or the county public health department.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 23.** Chapter 46 – Streets, Sidewalks and Other Public Places, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 46-2. Playing in streets.**

No person shall play baseball, football or other games of similar nature on any public street in the city, except when such street has been declared a play street.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 46-3. Injury to paving under construction.**

No person shall cut, break, tear down or remove the stakes or ropes which are placed in, on, along or across any street in the city which are placed for the purpose of preventing persons from walking, riding or driving on newly laid paving. It shall also be unlawful for any person to walk, ride or drive over such paving until the paving shall have been duly opened to the public; employees of the city in performance of their duties excepted.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 24.** Chapter 46 – Streets, Sidewalks and Other Public Places, Article II - Excavations of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 46-41. Permit required.**

No person or any agent, employee, servant, contractor or subcontractor of any person shall dig, cut into or through the streets, highways or alleyways within the city for the purpose of installing, repairing or making connection with water lines, sewer lines, gas lines, telephone lines, power lines or for any other purpose, without having first obtained written permission to do so from the department of public works of the city, and in conformance with the procedures and methods set forth or provided for in this article.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 25.** Chapter 46 – Streets, Sidewalks and Other Public Places, Article III – Obstructions and Encroachments of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 46-81. Obstructions.**

- (a) *Generally.* G.S. 160A-296 imposes upon cities the duty to keep public streets and sidewalks free from unnecessary obstructions. This section applies to all obstructions of whatever nature, whether temporary or permanent. Section 46-82 applies only to encroachments, which are defined as structural improvements on city rights-of-way. Not all obstructions are encroachments, but all encroachments are obstructions and may be regulated under both sections.
- (b) *Obstructions and their removal.* Obstructions shall be removed as follows:
  - (1) *Deemed nuisance; abatement; costs.* It shall be unlawful for any person to erect, locate or permit to remain in any street or sidewalk of the city any obstruction that will interfere with the use of the street or sidewalk by the public. Any obstruction which shall remain in any street or sidewalk after notice or demand for its removal by the city shall be deemed a public nuisance, and it shall be the duty of the director of public works or chief of police to abate such nuisance by the summary removal of the obstruction, and to charge the cost thereof to the person responsible for its existence.
  - (2) *Fine.* If any person, after having been notified by the city to remove any obstruction from any street or sidewalk shall refuse or fail to remove it, such person shall forfeit and pay to the city the sum of \$50.00 for each day the obstruction shall remain unremoved. For the purpose of this section, each day shall constitute a separate cause of action, and notice to any agent or servant of any person shall be deemed notice to the principal.
  - (3) *Exceptions to section provisions.* The provisions of this section shall not apply in the following circumstances:
    - a. Loading, unloading, moving or transporting materials;
    - b. Standard covered garbage cans, at the time and place designated by order of the director of public works;
    - c. In the case of a written permit for construction, maintenance, advertising, and such other purposes as are provided by ordinance; and
    - d. Signs, public benches and any other item placed by the city.
- (c) *Displaying goods or wares.* Except as otherwise provided in this section or in conjunction with special event permits, it shall be unlawful for any person to obstruct entirely or in part any right-of-way, street or sidewalk of the city, by displaying, offering for sale or selling, at auction or otherwise, any goods, wares or merchandise thereon.
- (d) *Permission for placing material in streets.* It shall be unlawful to place any brick, stone, lumber, sand or other building material upon any of the streets or sidewalks

of the city without first having obtained from the city manager, or his designee, permission in writing therefor, and then only under such reasonable restrictions as may be prescribed by him for the public safety.

- (e) *Use of sidewalks by merchants.* Notwithstanding the provisions of subsection (c) of this section, in those circumstances where the building in which a business is located is contiguous with a public sidewalk, merchants doing business in such building may make limited use of the sidewalk in accordance with this subsection. In such circumstances, merchants may use the adjacent sidewalk for decoration, the display of wares, and/or a portable sign advertising the business so long as they leave at least a continuous five-foot width of unobstructed sidewalk. In any event, the width of the sidewalk used by a merchant under this subsection shall not exceed 36 inches except during the Apple Festival, merchants may use 48 inches of sidewalk for the display of merchandise. It is the intent of this subsection that such use shall be temporary in nature and items placed on sidewalks shall not be permitted to remain overnight.

(f) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 46-83. Picketing.**

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Picket* or *picketing* means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

*Sidewalk* means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights-of-way.

*Street* means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right, for the purposes of vehicular traffic, including that portion that is known as the shoulder of the roadway and the curb. The terms "highway" and "street" and their cognates are synonymous as used herein.

- (b) *Notice of intent to picket.*

- (1) Notification required. The organizer of a picket that the organizer knows, or should reasonably know will be by a group of 50 or more individuals shall give notice of intent to picket to the chief of police or designee at least 48 hours before the beginning of the picket. The notice of intent to picket shall include the following information:
    - a. The name, address and contact telephone number for the organizer of the picket;
    - b. The name, address and contact telephone number of the person giving notice of intent to picket if different from the organizer;
    - c. The name of the organization or group sponsoring the picket;
    - d. The location where the picket is to take place;
    - e. The date and time the picket will begin and end; and
    - f. The anticipated number of participants, and the basis on which this estimate is made.
  - (2) Receipt of notification. Upon notice of intent to picket given in accordance with subsection (1), the chief of police or designee shall immediately issue a receipt of notice. The receipt shall contain all information stated in the notice. The organizer of a picket shall be responsible for maintaining the receipt, and shall present it when so requested by a law enforcement officer or other city official.
  - (3) It shall be unlawful for any person to violate any provision of this section.
- (c) *Picketing regulations.*
- (1) Picketing may be conducted on public sidewalks, at the city hall lawn and steps, any city-controlled park, or other city-owned areas normally used or reserved for pedestrian movement, including easements and rights-of-way. This list is not intended to be exclusive of other areas that may be deemed a public forum.
  - (2) Notwithstanding subsection (a), picketing may not be conducted at a location directed, focused, or targeted at a particular private residence.
  - (3) Picketing shall not disrupt, block, obstruct or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance, or other access to buildings, which abut the public sidewalks.
  - (4) Written or printed placards or signs, flags, or banners carried by individuals engaged in picketing shall be of such a size and/or carried on the sidewalks or other city-owned areas, as to allow safe and unobstructed passage of pedestrian or vehicular traffic. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood, and shall not exceed 40 inches in length and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be

no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.

- (5) If more than one group of picketers desire to picket at the same time at or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to picket in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of picketers arrived first, or in the case where at least one of the groups received a receipt of notification as provided herein, the group that first gave notice as provided herein.
- (6) Spectators of pickets shall not physically interfere with individuals engaged in picketing. Picketers and spectators of pickets shall not speak fighting words or threats that would tend cause physical injury or to provoke a reasonable person to a breach of the peace.
- (7) Picketers and picketing shall be subject to all applicable local, state and federal laws including, but not limited to:
  - a. The city's noise ordinance;
  - b. N.C.G.S. § 14-225.1 (obstructing justice);
  - c. N.C.G.S. § 14-277.2 (weapons);
  - d. N.C.G.S. § 14-277.4 (health care facilities); and
  - e. N.C.G.S. § 14-288.4 (disorderly conduct).
- (8) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with N.C.G.S. § 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.
- (9) It shall be unlawful for any person to violate any provision of this section. In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 46-87. Street entertainers.**

- (a) "Street entertainers" or "Entertainers" as used herein shall mean persons and groups of persons providing entertainment intended for the benefit of pedestrians on sidewalks, which entertainers in the course of their entertainment remain substantially stationary in areas adjoining or within 25 feet of Main Street in downtown Hendersonville between Sixth Avenue and First Avenue. This ordinance shall apply equally to all persons regardless of whether such persons are requesting or accepting reward associated with the entertainment. The terms as used herein shall not apply to substantially mobile pedestrians regardless of

whether such pedestrians are attempting to entertain or communicate with other pedestrians.

- (b) Street entertainers shall be subject to the following requirements while on sidewalks adjoining or within 25 feet of Main Street between Sixth Avenue and First Avenue.
- (1) Entertainers while preparing for, engaging in, or disengaging from entertaining shall remain within areas designated by the city for entertainment purposes at the ends of most Main Street blocks.
  - (2) Entertainers, whether one or more engaging in a particular entertainment, shall not occupy an entertainment area already occupied by another entertainer.
  - (3) The sale or attempted sale of any goods by an entertainer shall be subject to applicable law, including ordinances regulating business licensing of such sales.
  - (4) Entertainers shall not obstruct pedestrian or vehicular traffic and shall yield to disabled persons reasonably requiring temporary use of the entertaining area.
  - (5) Entertainers shall not perform on sidewalks adjacent to or within 25 feet of Main Street during special events hours unless designated as part of the special event by the event's promoter or organizer.
  - (6) Entertainers shall not be exempt in any respect from applicable law relating to the propagation of noise, or to criminal trespass on private property.
  - (7) Entertainers shall not enter the streets while entertaining except for the purposes of loading or unloading objects from vehicles.

(c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 26.** Chapter 50 - Traffic, Article I – In General of the Code of Ordinances for the City of Hendersonville is amended as follows:

**Sec. 50-2. ~~Reserved. Compliance with chapter.~~**

~~It shall be a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.~~

**Sec. 50-3. Obedience to police.**

~~No person shall wilfully fail or refuse to comply with any lawful order or direction given by a police officer in the performance of his duties or the exercise of powers prescribed by this chapter.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-12. Entering or riding vehicles without permission.**

No person shall enter, jump on or ride any automobile or other vehicle without the consent of the owner or driver.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 50-15. Placing glass, tacks, wire, bottles, nails or other such articles in streets.**

It shall be unlawful for any person to place upon any part of a public street, highway, land, road, street or alley, any tacks, bottles, wire, glass, nails or any other articles which may damage or injure any person, vehicle or animal traveling along or upon such public street or way.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 50-16. Mufflers.**

- (a) ~~Required. No person shall drive a motor vehicle on any street in the city unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke.~~
- (b) ~~Cutouts. It shall be unlawful for any person to use a muffler cutout on any motor vehicle operated within the city.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-17. Riding motorcycles generally.**

~~A person operating or riding a motorcycle shall at all times while so operating such vehicle wear a crash helmet and ride only upon the permanent and regular seat attached thereto. Such operator shall not carry any other person, nor shall any other person ride on a motorcycle unless such motorcycle is equipped with a seat designed for two persons, and has footrests for the operator and the passenger.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-22. Solicitation in public rights-of-way prohibited.**

- (a) Definitions.
  - (1) The following words and phrases, whenever used in this section, shall be construed as defined in this subsection:

Business means any type of products, goods, service performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

Employment means services, industry or labor performed by a person for wages or other compensation or under any contract of hire, written or oral, express or implied.

Public right-of-way means land which is dedicated to the public use for sidewalk, street and highway purposes, or other transportation purposes.

Solicit means making any oral or written request, offer or enticement, or taking any action which indicates the availability of a person for employment or availability to provide services for compensation or which seeks to purchase or secure services or goods; the purchase or sale of goods; or a request for money or other property; or a contribution of money or other property. A solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place.

- (b) It is unlawful for any person, while standing in any portion of the public right-of-way, including but not limited to public streets, highways, median strips, sidewalks and driveways, to solicit, or attempt to solicit, employment, business, or contributions of money or other property from, or to distribute or attempt to distribute any material thing to, any person traveling in a motor vehicle along a public right-of-way, including, but not limited to public streets, highways or driveways. This provision does not apply to services rendered in connection with emergency repairs requested by the operator or passenger of a motor vehicle.

(c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 28.** Chapter 50 – Traffic, Article II – Procedures Upon Arrest of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-59. Failure to obey citation.**

~~It shall be unlawful for any person to violate his written promise to appear given to an officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which such citation was originally issued.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-62. Issuance of warrant.**

~~If any person fails to comply with a traffic citation (excluding parking violations) given to such person fails to make appearance in court pursuant to instructions stated on the citation, the clerk of the court shall secure and issue an order for his arrest upon being instructed to do so by the presiding district court judge.~~

~~[Deleted. Preempted by North Carolina law.]~~

**SECTION 27.** Chapter 50 - Traffic, Article III – Operation of Vehicles of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-96. Duty to drive on right half of street—Generally.**

~~Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:~~

- ~~(1) —When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;~~
- ~~(2) —When an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;~~
- ~~(3) —Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or~~
- ~~(4) —Upon a roadway designated and signposted for one way traffic.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-97. Same—Crossing intersection or railroad.**

~~In crossing an intersection of streets or the intersection of a street by a railroad right of way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the street, unless such right half is obstructed or impassable.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-98. Meeting of vehicles.**

~~Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the main traveled portion of the roadway as nearly as possible.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-99. Driving on roadways laned for traffic.**

~~All vehicles operated on any roadway which has been clearly marked with lanes for traffic shall be driven, as nearly as practical, entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-100. Passing vehicle proceeding in same direction—Generally.**

- (a) ~~—The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the street or highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of section 50-101.~~
- (b) ~~—The driver of a vehicle shall not drive to the left side of the center of a street or highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.~~
- (c) ~~—The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the street or highway where the driver's view is obstructed within a distance of 500 feet.~~
- (d) ~~—The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection, unless permitted so to do by a traffic or police officer.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-101. Same—When permitted on right.**

~~The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:~~

- (1) ~~—When the vehicle overtaken is in a lane designated for left turns;~~
- (2) ~~—Upon a street or highway with unobstructed pavement of sufficient width which has been marked for two or more lanes of moving vehicles in each direction and which are not occupied by parked vehicles;~~
- (3) ~~—Upon a one-way street, or upon a highway on which traffic is restricted to one direction of movement when such street or highway is free from obstructions and is of sufficient width and is marked for two or more lanes of moving vehicles which are not occupied by parked vehicles; or~~
- (4) ~~—When driving in a lane designating a right turn on a red traffic signal light.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-102. Same—Duty of driver of overtaken vehicle.**

~~The driver of a vehicle about to be overtaken and passed by another vehicle approaching from the rear shall, unless the overtaking and passing is being made upon the right as permitted in section 50-101, give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle. In any event, the driver of the overtaken vehicle shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-103. Right-of-way generally.**

- ~~(a) — When two vehicles approach or enter an intersection or junction at approximately the same time, except at arterial highways, stop streets or through streets, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise provided in this chapter.~~
- ~~(b) — The driver of a vehicle approaching, but not having entered an intersection or junction, shall yield the right of way to a vehicle already within such intersection or junction whether the vehicle in the junction is proceeding straight ahead or turning in either direction; provided, however, that this subsection shall not be interpreted as giving the right of way to a vehicle already in an intersection or junction when such vehicle is turning either to the right or left unless the driver of such vehicle has given a plainly visible signal of intention to turn as required by section 50-107.~~
- ~~(c) — The driver of any vehicle upon a street within a business or residence district shall yield the right of way to a pedestrian crossing such street within any clearly marked crosswalk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-104. Exceptions to the right-of-way rule.**

- ~~(a) — The driver of a vehicle entering a public street or highway from a private road or drive shall yield the right of way to all vehicles approaching on such public street or highway.~~
- ~~(b) — The driver of a vehicle upon a street or highway shall yield the right of way to police and fire department vehicles and public and private ambulances when the latter are operated upon official business and the drivers thereof sound an audible signal by bell, siren or exhaust whistle. This section shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance from the duty to drive with due regard for the safety of all persons using the street or highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right of way.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-105. Method of turning at intersections.**

- ~~(a) — Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the righthand side of the street and, in turning, shall keep as closely as practicable to the righthand curb or edge of the street. When intending to turn to the left, the driver shall approach such intersection in the lane for traffic~~

~~to the right of and nearest to the center of the street and, in turning, shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. When a vehicle is being operated on a three-lane street, the driver thereof intending to turn to the left at an intersection shall approach the intersection in the lane nearest to the center of the street and designated for use by vehicles traveling in the same direction as the vehicle about to turn.~~

- ~~(b) — For the purpose of this section, the center of the intersection shall mean the meeting point of the medial lines of the streets intersecting one another.~~
- ~~(c) — The city council may modify the method of turning at intersections described in subsection (a) of this section by clearly indicating, by buttons, markers or other direction signs within an intersection installed or erected in accordance with the provisions of section 50-181, the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in accord with such indications.~~

[Deleted. Preempted by North Carolina law.]

#### **Sec. 50-106. Signals on starting, stopping or turning—Required.**

~~The driver of any vehicle upon a street or highway, before starting, stopping or turning from a direct line, shall first see that such movement can be made in safety and, if any pedestrian may be affected by such movement, shall give a clearly audible signal by sounding the horn. Whenever the operation of any other vehicle may be affected by such movement, the driver shall give a signal as required in section 50-107, plainly visible to the driver of such other vehicle, of the intention to make such movement.~~

[Deleted. Preempted by North Carolina law.]

#### **Sec. 50-107. Same—Manner of giving.**

- ~~(a) — The signal required by section 50-106 shall be given by means of the hand and arm in the manner specified in this section, or by any mechanical or electrical signal device approved by the department of motor vehicles of the state, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by such department.~~
- ~~(b) — Whenever the signal is given, the driver shall indicate his intention to start, stop or turn by extending the hand and arm from and beyond the left side of the vehicle as set forth in this subsection:~~

~~Left turn, hand and arm horizontal, forefinger pointing;~~

~~Right turn, hand and arm pointed upward; and~~

~~Stop, hand and arm pointed downward.~~

- ~~(c) — All hand and arm signals shall be given from the left side of the vehicle, and all signals shall be maintained or given continuously for the least 100 feet traveled prior to stopping or making a turn.~~



[Deleted. Preempted by North Carolina law.]

**Sec. 50-108. Duty of drivers of vehicles upon approach of authorized emergency vehicles.**

~~Upon the approach of any police or fire department vehicle, or other authorized emergency vehicle, giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the righthand edge of the curb, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer, until the police or fire department vehicle, or other emergency vehicle, shall have passed.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-109. Following fire apparatus or driving near scene of fire.**

~~It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into within one block where fire apparatus has stopped in answer to a fire alarm.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-110. Driving over fire hose or blocking fire apparatus.**

~~It shall be unlawful for any person to drive a vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a firefighting apparatus or any other equipment from its source of supply, regardless of its distance from the fire.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-111. Backing.**

~~The driver of a vehicle shall not back the vehicle into any intersection or over a crosswalk and shall not, in any event or at any place, back a vehicle unless such movement can be made in safety. He shall have given ample warning to those who may be behind by hand and horn or other signal.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-112. Entering intersections and marked crosswalks.**

~~No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-113. Driving vehicles on sidewalks.**

~~The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-116. Following too closely.**

~~The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-117. Driving overloaded or overcrowded vehicle.**

~~No person shall operate upon a street or highway a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the street or highway, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-141. Reasonable and prudent limitation.**

~~No person shall drive a vehicle on a highway or on any parking lot, drive, driveway, road, roadway, street or alley; upon the grounds and premises of any public or private hospital, college, university, benevolent institution, school, orphanage, church, or any of the institutions maintained and supported by the state or any of its subdivisions; or upon the grounds and premises of any service station, drive in theater, supermarket, store, restaurant or office building; or any other business or municipal establishment, providing parking space for customers, patrons or the public at a speed greater than is reasonable and prudent under the conditions then existing.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-142. General district limitations.**

Except as otherwise provided in this chapter, it shall be unlawful for any person to operate a vehicle in excess of the following speeds:

- (1) Twenty miles per hour in any business district;
- (2) Thirty-five miles per hour in any residential district;
- (3) Forty-five miles per hour in places other than those named in subsections (1) and (2) of this section for:
  - a. All vehicles other than passenger cars, regular passenger vehicles, pickup trucks of less than one-ton capacity, and school buses loaded with children; and
  - b. All vehicles, of whatever kind, which are engaged in towing, drawing or pushing another vehicle; provided, however, that this subsection (3)b shall

not apply to vehicles engaged in towing, drawing or pushing trailers with a gross weight of not more than 3,000 pounds; and

- (4) Fifty-five miles per hour in places other than those named in subsections (1) and (2) of this section for passenger cars, regular passenger carrying vehicles and pickup trucks of less than one-ton capacity.

In addition to any other available remedy, violation of this section is also an infraction as provided in Section 1-6.

#### **Sec. 50-143. Duty to decrease.**

~~The fact that the speed of a vehicle is lower than the limits established by this division shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, or when special hazards exist with respect to pedestrians or other traffic or by reasons of weather or street conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the street or highway, and to avoid causing injury to any person or property either on or off the street or highway, in compliance with legal requirements and the duty of all persons to use due care.~~

[Deleted. Preempted by North Carolina law.]

#### **Sec. 50-144. Variation of maximum speed limits.**

The city council may alter the maximum speed limit as established in this division on any street or portion thereof which is not a part of the state highway system and which is not maintained by the state highway commission in accordance with the provisions of G.S. 20-141(f1). No such alteration of the speed limits shall become or remain effective unless signs have been conspicuously placed giving notice of such speed limit for such street.

- (a) The speed limit on Chadwick Avenue between Greenville Highway (NC 225) and Spartanburg Highway (US 176) shall be 25 miles per hour.

In addition to any other available remedy, violation of this section is also an infraction as provided in Section 1-6.

#### **Sec. 50-145. School zones.**

- (a) ~~It shall be unlawful for any person to operate or drive any vehicle at a speed greater than 20 miles per hour in any school zone during a period of time of 60 minutes prior to and 30 minutes following the times when such school begins and ends its daily schedule.~~
- (b) ~~For the purposes of this section, a school zone shall be deemed to be that portion of any street abutting any school property for a distance not to exceed 500 feet on either side of such school property.~~

[Deleted. Preempted by North Carolina law.]

**SECTION 28.** Chapter 50 - Traffic, Article IV – Traffic Control Devices of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-182. Obedience to devices.**

~~It shall be unlawful for any person to drive, operate or use a vehicle upon the streets of the city contrary to any signs, signals or other traffic control devices that are placed upon the streets for the purpose of directing traffic, except upon direction of a police officer and except as otherwise provided in this chapter.~~

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-184. Moving or damaging devices.**

It shall be unlawful for any person to move, deface or otherwise damage any sign, signal or other traffic control device placed upon the streets of the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 50-188. Stop intersections.**

~~When stop signs are placed, erected or installed upon streets intersecting a through street or stop intersection designated as provided in section 50-181, every driver of a vehicle shall stop in obedience to such signs before entering the intersection and shall not proceed into or across such intersection until he has first determined that no conflict with traffic will be involved.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-189. Yield intersections.**

~~Whenever main traveled or through streets are designated by erecting, at the entrance thereto from intersecting streets, signs notifying drivers of vehicles to yield the right of way to drivers of vehicles approaching the intersection on the main traveled or through street, pursuant to section 50-181, it shall be unlawful for the driver of any vehicle to enter or cross such main traveled or through street, unless he shall first slow down and yield the right of way to any vehicle in movement on the main traveled or through street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main traveled or through street. No failure to so yield the right of way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right of way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-190. Driving on one-way streets.**

Upon those streets and parts of streets designated as one-way streets in accord with section 50-181, vehicular traffic shall move only in the indicated direction, when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

In addition to any other remedy available, violation of this section shall also be an infraction as provided in Section 1-6.

**Sec. 50-191. - Limitations on turning around.**

No driver shall turn any vehicle so as to proceed in the opposite direction in the business district, except at street intersections. No vehicle shall make such a turn, even at street intersections, in the streets, or portions of streets, designated and signposted pursuant to section 50-181.

In addition to any other remedy available in the Code, violation of this section shall also be an infraction as provided in Section 1-6.

[Footnote: State law reference – Authority to modify turning at intersections, G.S. 20-153]

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**Sec. 50-193. Driving through safety zone.**

~~The driver of a vehicle shall not at any time drive through or over a safety zone marked, signed and designated pursuant to section 50-181.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-194. ~~Driving in school zones~~Reserved.**

~~Whenever authorized signs are placed designating any street or part thereof as a school zone pursuant to section 50-181, drivers of vehicles using such street shall exercise the greatest care for the protection of children.~~

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**Sec. 50-196. Driving on play streets.**

Whenever authorized signs are placed designating any street, or part thereof, as a play street pursuant to section 50-181, no person shall drive a vehicle upon any such designated street, except persons who have business or who reside within the designated area ~~and all such persons shall exercise the greatest care when driving upon any play street.~~

**SECTION 29.** Chapter 50 – Traffic, Article VI – Pedestrians of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-376. - Application of article.**

~~Pedestrians shall be subject to traffic control signals at intersections, as provided in this chapter, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-377. Right-of-way at crosswalks.**

- ~~(a) — Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this article.~~
- ~~(b) — Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-378. Crossing at other than crosswalk.**

- ~~(a) — Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.~~
- ~~(b) — Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.~~
- ~~(c) — Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-379. Walking on traveled portion of street.**

~~It shall be unlawful for pedestrians to walk along the traveled portion of any street or highway unless sidewalks are not provided; in which event, such pedestrians shall walk on the extreme lefthand side of such street, and such pedestrians shall yield the right of way to approaching traffic.~~

~~[Deleted. Preempted by North Carolina law.]~~

**Sec. 50-380. Soliciting rides.**

~~No person shall stand in the traveled portion of a street or highway for the purpose of soliciting a ride from the driver of any private vehicle.~~

~~[Deleted. Preempted by North Carolina law.]~~



**Sec. 50-381. Special provisions relative to blind pedestrians.**

- (a) ~~At any street, road or highway crossing or intersection, where the movement of traffic is not regulated by a traffic officer or by traffic control signals, any blind or partially blind pedestrian shall be entitled to the right of way at such crossing or intersection, if such blind or partially blind pedestrian shall extend before him, at arm's length, a cane white in color or white tipped with red, or if such person is accompanied by a guide dog. Upon receiving such a signal, all vehicles at or approaching such intersection or crossing shall come to a full stop, leaving a clear lane through which such pedestrian may pass, and such vehicle shall remain stationary until such blind or partially blind pedestrian has completed the passage of such crossing or intersection. At any street, road or highway crossing or intersection, where the movement of traffic is regulated by traffic control signals, blind or partially blind pedestrians shall be entitled to the right of way if such person having such cane or accompanied by a guide dog shall be partly across such crossing or intersection at the time the traffic control signals change, and all vehicles shall stop and remain stationary until such pedestrian has completed passage across the intersection or crossing.~~
- (b) ~~Nothing contained in this section shall be construed to deprive any blind or partially blind person not carrying a cane white in color or white tipped with red, or being accompanied by a guide dog, of any of the rights and privileges conferred by law upon pedestrians crossing streets and highways, nor shall the failure of such blind or partially blind person to carry a cane white in color or white tipped with red, or to be accompanied by a guide dog, upon the streets, roads, highways or sidewalks be held to constitute or be evidence of contributory negligence by virtue of this section.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-382. Unlawful use of white cane.**

~~It shall be unlawful for any person, except one who is wholly or partially blind, to carry or use on any street or highway, or in any other public place, a cane or walking stick which is white in color or white tipped with red.~~

[Deleted. Preempted by North Carolina law.]

**Sec. 50-383. Duty of drivers.**

~~Notwithstanding the provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precautions upon observing any child or any confused or incapacitated person upon a roadway.~~

[Deleted. Preempted by North Carolina law.]

**SECTION 30.** Chapter 50 - Traffic, Article VII – Parades and Processions of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-417. Permit required for parades.**

- (a) No parade is permitted unless a permit has been first obtained from the chief of police allowing the parade pursuant to this article.
- (b) A person seeking to obtain a parade shall file an application with the chief of police on forms provided by such official.
- (c) A person seeking to obtain a parade permit which requires a street closing or otherwise requires police officers to stop or reroute vehicular traffic upon any street because the participants will not comply with normal traffic regulations or controls shall file an application with the chief of police at least ten days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter timeframes from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.
- (d) A person seeking to obtain a parade permit for Main Street which requires the closing of Main Street for greater than three hours shall file an application with the chief of police at least 45 days before the time for which the parade is proposed to commence. The chief of police shall notified downtown merchants via the Downtown Advisory Committee or successor committees at least 30 days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter time-frames from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.
- (e) The application for a parade permit shall include the following:
  - (1) The name, address, telephone number, and email address of the person seeking to conduct the parade, and the name, address, telephone number and email address, if available, of the organization with which the person is affiliated or on whose behalf the person is applying to conduct the parade or public assembly (collectively "applicant");
  - (2) The name, address, telephone number and email address, if available, for an individual who shall be designated as the "responsible planner and on-site manager" of the parade;
  - (3) The requested date, time, place, and route (from starting point to ending point) of the parade including the location where and time when the parade will assemble and disband, and any requested sidewalk or street closings;
  - (4) The anticipated number of persons, vehicles, and things that will constitute the parade or (including the basis on which this estimate is made), and a description of the vehicles and things that will be part of the parade;

- (5) A general description of any recording equipment and sound amplification equipment, along with a general description of the size and composition of any banners, signs, flags, or other attention-getting devices to be used in connection with the parade;
- (6) Arrangements for additional police protection and additional emergency medical services, if required under subsection 50-418(b);
- (f) A parade/assembly permit issued under this article shall include the information set out in paragraph (d) of this section, which information shall constitute conditions of the permit to the extent such information sets out the time, place, and manner of the parade or public assembly.

(g) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 50-425. Prohibitions.**

The following prohibitions shall apply to all parades:

- (1) It shall be unlawful for any person to stage, present, or conduct any parade without first having obtained a permit under this article.
- (2) It shall be unlawful for any person to participate in a parade for which the person knows a permit has not been granted.
- (3) It shall be unlawful for any participant in a parade to knowingly fail to comply with any conditions of the parade.
- (4) It shall be unlawful for any person participating in any parade to carry or possess any staff or pole, except for purposes of displaying any sign, poster, flag or banner, unless the staff or pole (i) is made of corrugated material, plastic, or wood (and not made of metal or metal alloy); (ii) is less than 40 inches in length; (iii) is one-fourth inch or less in thickness and two inches or less in width, or if not generally rectangular in shape, does not exceed three-fourths inch in its thickest dimension; and (iv) is blunt at both ends.
- (5) It shall be unlawful for any person participating in any parade to carry or possess any sign, poster, flag, banner unless such sign, poster, flag, banner is constructed or made of a cloth, paper, cardboard, rubber, or plastic material.
- (6) It shall be unlawful to assign or sell any parade permit granted under this article.
- (7) All participants in any parade shall be subject to all other applicable local, state and federal laws.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 50-426. Weapons.**

With the exception of law enforcement officers acting within the scope of their duties, no firearms, or dangerous weapons of any kind, as defined by federal, state and local laws, may be possessed by an participant in a parade.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 50-427. Public conduct during parades.**

- (a) No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or with any person, vehicle, animal, or thing participating or used in a parade.
- (b) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade. The chief of police shall post signs to that effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation of such signs.

(c) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 50-429. - Penalties.**

In addition to any remedy specifically provided, A-violation of any section or subsection of this article shall be subject to a civil penalty of \$500.00 to be recovered in the nature of a debt as allowed in section 1-6 of this Code ~~or by a misdemeanor punishable by up to a \$500.00 fine as provided in G.S. 14-4.~~

**Sec. 50-430. Vehicle processions.**

- (a) *Definition.* For the purpose of this section, the term "*vehicle procession*" shall be deemed to mean:
  - (1) A group of motor vehicles;
  - (2) Preceded by a vehicle of a law enforcement agency with blue warning light activated;
  - (3) Traveling in single file with headlamps illuminated and emergency four-way flashers activated; and
  - (4) The lead vehicle shall bear a distinctive flag or marker.
- (b) *Right-of-way; penalty for violation of section.* The operator of any motor vehicle traveling upon, along or through any public street or highway, or entering upon or leaving such street or highway, shall yield the right-of-way to a vehicle procession. A vehicle procession shall be accorded the right-of-way at any intersection, regardless of the method of traffic control at such intersection or

whether or not the same shall be activated. Any operator of any motor vehicle who shall fail to yield the right-of-way to any vehicle procession shall be liable for an infraction and shall be assessed a penalty of \$35.00 and court costs for each such failure.

- (c) *Driving through vehicle procession.* No vehicle not a portion of a vehicle procession shall be driven through any such procession, and the operator of any vehicle violating this subsection shall be guilty of an infraction and a fine of \$35.00 and court costs for each such violation. This subsection shall not apply to emergency vehicles as defined in G.S. 20-156 and G.S. 20-157, when operated in conformance with the provisions of G.S. 20-156 and G.S. 20-157.
- (d) *Speed of vehicle procession.* A vehicle procession may proceed at a speed not in excess of 20 miles per hour and shall be driven at a rate less than the maximum stated in this section if caution and circumspection shall dictate such reduced speed. In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

**SECTION 31.** Chapter 50 - Traffic, Article VIII - Railroads of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-487. Obedience to warning device.**

~~Whenever any person driving a vehicle approaches a railroad track crossing with any street, alley or other public way in the city and a clearly visible and positive signal gives warning of the immediate approach of a railroad train, car or other similar equipment, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing.~~

[Deleted. Preempted by North Carolina law.]

**SECTION 32.** Chapter 52 - Utilities, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 52-4. Pollution of water.**

No person shall place within the reservoir connected with the waterworks, or the dams connected therewith, or the streams running into such reservoir, any non-potable substance would make the water impure or unsafe. No owner or occupier of lands shall place, or have placed, or permit any of such substances to be placed, upon the grounds from which waters may flow into the streams that feed the reservoir.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-7. Unauthorized use of water.**

No person having arrangements to use water from the city waterworks shall allow others to use the water without paying therefore. If a person or persons is found to be using

water illegally, said person or persons shall be subject to penalties or fines, as prescribed and approved by city council.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-8. Use of fire hydrants.**

- (a) Fire hydrants shall be provided for the sole purpose of protecting life and property against fire and shall be operated and maintained only by the water and fire departments or such persons as may be given authority by the utilities director of the water and sewer department, or authorized representative.
- (b) It shall be unlawful for any person to remove, or have removed, water from fire hydrants without authorization from the utilities director of the water and sewer department, or authorized representative, or to place upon or about any fire hydrant, gate valve, curb cock, meter, meter box, any object, material, debris or structure of any kind so as to prevent immediate access to the same.

(c) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-13. Tampering with utility connections or appurtenances.**

It shall be unlawful for any person to purposely block, cut on, cut off, tamper with or damage any meter, meter box, utility connection or appurtenance or to interfere with any meter, meter box, utility connection or appurtenance owned by the city, unless otherwise authorized, in writing, by the city manager or his assignee prior to accessing said utility connections or appurtenances.

Violation of this section shall be punished in accordance with N.C.G.S. 14-151.

**SECTION 33.** Chapter 52 - Utilities, Article IV – Connection to Water and Sewer Lines of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 52-128. Approval of application.**

No connection shall be made to any sewer or water lateral except after the written application therefor has been approved by the water and sewer department.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-129. To be made only by city.**

The construction of laterals for the connection of the sewer or water pipes on any lot with sewer or water pipes in any street or deeded easement, and the necessary excavation therefore, shall be done only by the city or by a state-licensed utility contractor(s) approved by the city.



In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 34.** Chapter 52 - Utilities, Article V – Wastewater Use, Collection and Treatment of the Code of Ordinances for the City of Hendersonville shall be amended as follows

**Sec. 52-216. Discharges generally.**

It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, and/or to the POTW any wastewater except as authorized in accordance with the provisions of this article.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-217. Direct discharges.**

It shall be unlawful to discharge into the waters of the state without first obtaining the approval of the city and then obtaining an NPDES permit in accordance with G.S. 143-215.1.

In addition to any other available remedy, violation of this section shall be punished in accordance with N.C.G.S.143-215.6B.

**Sec. 52-218. Indirect discharges.**

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining permission of the city.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-219. Wastewater generally.**

All domestic, commercial and industrial wastewater discharges shall be contained within the POTW collection system. Stormwater, roof and gutter drains, and surface drainage shall not be admitted to the POTW.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-220. - Stormwater generally.**

Stormwater, roof and gutter drains, and surface drainage shall be admitted to only such conduits as are specifically designated as storm drains. Noncontact process and cooling waters may, upon written application and approval by the POTW director, be discharged to storm drains.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-222. Protection of system, equipment and materials.**

It shall be unlawful for any person to maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any facility, equipment or materials belonging to the city. No person shall pour, throw or discharge any substance, either solid or liquid, into any public sewer line at any manhole or at any opening therein. This protection against damage shall apply to any part of the POTW. Any person violating this section shall be subject to immediate arrest and prosecution.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-246. General discharge prohibitions.**

No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. This general prohibition applies to all users of the POTW whether or not the user is subject to any national, state or local pretreatment standards or requirements.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-247. Specific discharge prohibitions.**

- (a) No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any of the following pollutants, substances or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the POTW including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city, the state or EPA considers a fire hazard or a hazard to the system.
  - (2) Solid or viscous substances in amounts which will cause obstruction of flow or interference in the POTW. Prohibited materials include, but are not limited to, solids greater than one-half of an inch in any dimension, grease, garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, mud, spent lime, stone or marble dust, metal, glass or glass grinding or polishing wastes, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, or plastics.

- (3) Petroleum oils, tar, asphalt residues, residues from refining or processing of fuel or lubricating oils, nonbiodegradable cutting oil or products of mineral oil origin in amounts that may cause interference or pass through.
- (4) Any wastewater having a pH less than 5.0 or more than 11.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
- (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW.
- (6) Any wastewater having a temperature greater than 150 degrees Fahrenheit (66 degrees Celsius), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).
- (7) Any pollutants which result in the presence of toxic gases, vapors or fumes, either singly or by interaction with other pollutants, that may cause acute worker health and safety problems.
- (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW director in accordance with section 52-255 of this division.
- (9) Any noxious or malodorous liquids, gases or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.
- (11) Any wastewater which imparts color which cannot be removed by the treatment process including, but not limited to, dye wastes and vegetable tanning solutions which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW director in compliance with applicable state or federal regulations.

- (13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW director.
  - (14) Fats, oils or greases of animal or vegetable origin in amounts which in the discretion of the POTW director, may cause interference, pass through or obstruction to the POTW collection system.
  - (15) Any sludges, screenings or other residues from the pretreatment of industrial or nondomestic wastes.
  - (16) Any medical wastes, except as specifically authorized by the POTW director in a wastewater discharge permit.
  - (17) Any material containing ammonia, ammonia salts or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
  - (18) Any material that would be identified as hazardous waste according to 40 CFR 261 if not disposed of in a sewer except as may be specifically authorized by the POTW director.
  - (19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200.
  - (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
  - (21) Recognizable portions of the human or animal anatomy.
  - (22) Any wastes containing detergents, surface active agents or other substances which may cause excessive foaming in the POTW system or the receiving stream in other than trace amounts.
  - (23) At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.
- (b) Pollutants, substances, wastewater or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
- (c) When the POTW director determines that a user is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW director shall:
- (1) Advise the user of the potential impact of the contribution on the POTW in accordance with division 8 of this article; and

- (2) Take appropriate actions in accordance with division 5 of this article for such user to protect the POTW from interference or pass through.

(d) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-249. General discharge limitations (local limits).**

- (a) To implement the general and specific discharge prohibitions listed in this article, and to ensure that the POTW's maximum allowable headworks loading is not exceeded for particular pollutants of concern, local limits are required. An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following.
- (b) Unless otherwise authorized by a permit issued under this article, no user shall contribute or cause to be contributed, directly or indirectly, any waters or wastes containing pollutants at levels which exceed the pollutant levels associated with normal domestic strength wastewater or which exceeds given volume limitations (each as determined on a daily average basis).
- (1) *Strength limitations.* For the following pollutants of concern, exceeding domestic strength levels shall mean in excess of:

250	mg/l BOD
250	mg/l TSS
25	mg/l NH <sub>3</sub>
0.003	mg/l arsenic
0.003	mg/l cadmium
0.061	mg/l copper
0.015	mg/l cyanide
0.049	mg/l lead
0.0003	mg/l mercury
0.021	mg/l nickel
0.005	mg/l silver
0.05	mg/l total chromium
0.175	mg/l zinc

- (2) *Volume limitations.* Exceeding the volume limitations shall mean volumes greater than:
- Ten thousand gallons a day if tributary to a sewage lift station; or
  - Twenty-five thousand gallons a day if tributary to the main gravity system.

- (c) Domestic strength wastewater levels for pollutants not listed in this section shall be determined as necessary by the POTW director and shall be based on either actually measured local domestic strength wastewater levels or literature values.
- (d) High strength user-specific local limits for appropriate pollutants of concern shall be included in wastewater permits, when necessary to ensure that the POTW's maximum allowable headworks loading will not be exceeded for pollutants of concern, and are considered pretreatment standards.
- (e) The POTW director may impose mass limits in addition to, or in place of, the concentration-based limits.
- (f) When the director determines that a user is contributing to the POTW any of the above-enumerated substances in such amounts which exceed the limitations established in this section, the POTW director shall:
  - (1) Advise the user of the contribution to the POTW;
  - (2) Advise the user of the permit requirements of this article for such discharges; and
  - (3) Take the appropriate actions necessary for correction of the violation.

(g) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-252. Dilution.**

No user shall ever increase the use of water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-254. Accidental discharge/slug control plans.**

- (a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in the definitions. All SIUs must be evaluated within one year of being designated an SIU. The POTW director may require any user to develop, submit for approval and implement such a plan. Alternatively, the POTW director may develop such a plan for any user.



- (b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge or a slug load. Also see sections 52-320 and 52-321 of this article.

Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the city for review and shall be approved by the city before construction of the facilities may begin. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense.

- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
- (1) Description of discharge practices, including nonroutine batch discharges;
  - (2) Description of stored chemicals;
  - (3) Procedures for immediately notifying the POTW director of any accidental or slug discharge, as required by section 52-321 of this article; and
  - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- (d) Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this article.
- (e) In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.
- (f) Within five days following an accidental discharge, the user shall submit to the POTW director a written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills or any other damage to persons or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this article or any other applicable law.
- (g) A notice shall be permanently posted on the users bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer

such a dangerous discharge to occur are advised of the emergency notification procedure.

(h) In addition to any other available remedy, violation of subsections (e), (f), and (g) of this sections is also a misdemeanor as provided in Section 1-6.

**Sec. 52-255. Hauled waste.**

- (a) Septic tank waste may be introduced into the POTW only at locations designated by the POTW director, and at such times as are established by the POTW director. Such waste shall not violate division 4 of this article or any other requirements established by the city. The POTW director may require septic tank waste haulers to obtain wastewater discharge permits.
- (b) The POTW director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.
- (c) Industrial waste haulers may discharge loads only at locations and times designated by the POTW director. No load may be discharged without prior consent of the POTW director. The POTW may collect samples of each hauled load to ensure compliance with applicable standards. The POTW director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste and volume and characteristics of waste. The form shall identify the type of industry known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(e) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-276. Nondomestic and/or high strength discharge without permit.**

It shall be unlawful for any person to connect or discharge nondomestic and/or high strength wastewater to the POTW without first obtaining the permission of the POTW director. When requested by the POTW director, a user must submit information on the nature and characteristics of its wastewater prior to action on the request. The POTW director is authorized to prepare a form for this purpose and may periodically require users to update this information.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-277. Wastewater discharge permits.**

- (a) The POTW director is authorized to allow connection or discharge to the POTW of wastewater which exceeds the limitations set forth in section 52-249 of this article by issuance of a wastewater discharge permit for nondomestic and/or high strength users.
- (b) The POTW director is authorized to make the determination between domestic and nondomestic users, between domestic strength and high strength users, and is further authorized to make the determination between nonsignificant and significant industrial users.
- (c) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-324. Notification of the discharge of hazardous waste.**

- (a) The city prohibits the discharge of any hazardous wastes without notification and approval of the POTW director. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month and an estimation of the mass and concentration of such constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section 52-320 of this division. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 52-316, 52-318 and 52-319 of this division.
- (b) Dischargers are exempt from the requirements of subsection (a) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous

wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which time the user discharges more than such quantities of any hazardous waste do not require additional notification.

- (c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This section does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued under this article, or any applicable federal or state law.

(f) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-328. Recordkeeping.**

Users subject to the reporting requirements of this division shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling, and the name of the persons taking the samples; the dates the analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the POTW director.

In addition to any other available remedy, wilfull destruction of records in violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 35.** Chapter 52 – Utilities, Article VI – Water Shortage Response and Conservation of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

#### **Sec. 52-437. Penalty for violation of article.**

- (a) Any violation of the provisions of this article ~~shall constitute a misdemeanor punishable, upon conviction, in accordance with section 1-6 of this Code, and in~~

~~addition thereto such violation~~ may be enjoined and restrained as provided in G.S. 160A-175.

- (b) Application, violation, enforcement, penalties. This section applies to all persons using city water, inside and outside the city limits, regardless of whether they have a contract for water service with the city, provided mandatory schedules or limits shall not apply to any public or volunteer fire department while fighting a fire. A customer of the city shall be responsible for all violations that occur associated with water that passes through the meter for which the customer is billed by the city. Any person who uses water in violation of a restriction, schedule or ban imposed on the use of water during mandatory or emergency stages of drought, or in violation of a water rationing policy, or who otherwise violates the provisions of this section, or who impedes or interferes with any action undertaken or ordered pursuant to this section and policies adopted hereunder, shall be subject to the penalties listed below:
- (1) Enforcement by law enforcement. Upon the declaration of mandatory stage (A or B), declaration of emergency stage, or during any period of rationing, the manager, every police officer of the city and all others so authorized by the city may enforce any restrictions or bans imposed on the use of city water.
  - (2) Suspicion of violation. Whenever the city has reasonable cause to believe that a person is violating any of the provisions of this section or any policy or declaration or action plan adopted hereunder, the city shall immediately notify that person of the violation by affixing a written notice of violation (NOV) to the property where the violation occurred and/or personally delivering or mailing such notice to the customer of record and to any other person known to the city who is responsible for the violation or its correction. Such notice shall describe the violation, order that it be corrected, cured or abated immediately or within such specified time as the manager determines is reasonable under the circumstances, and warn that more severe measures, such as civil penalties, criminal charges or termination of water service may be brought, assessed or imposed. If the order is not complied with within the allotted time period, the manager may undertake enforcement action as follows.
  - (3) Enforcement action. Any person who, after being given notice of violation, does not comply with this section or policy adopted hereunder within the time period specified shall, at the option of the city, be subject to any of the following: civil penalties, criminal penalties where specifically indicated, termination of water service, injunctive relief or any appropriate equitable remedy issuing from a court of competent jurisdiction.
    - a. ~~Criminal penalties. Any person may be charged with violation of this section or policy adopted hereunder and prosecuted in district court. Any person so charged and found guilty of violating this section or policy shall be guilty of a misdemeanor. Each day's~~

~~violation shall constitute a separate offense. The penalty for violation shall be a maximum fine of \$50.00 per occurrence. The imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.~~

- b. Civil penalties. In addition to ~~or in lieu of criminal prosecution~~any other remedy specifically provided, violation of this section or any policy adopted hereunder may subject the violator or customer to a civil penalty as set forth in the city budget fee schedule per violation per day for so long as the violation exists. Each day on which a violation occurs or continues shall constitute a separate and distinct violation. In determining the amount of the civil penalty, the manager shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, efforts to correct the violation, the compliance history of the person against whom the violation is assessed, the cost of enforcement to the city, whether the violation was willful or intentional and any other factor as justice requires. The city shall serve a written citation on the violator, and the customer, if different, by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty is collectible in a civil action in the nature of debt. The imposition of one or more penalties for a violation shall not excuse any violation or permit it to continue.

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#### **Sec. 52-446. Compliance.**

- (a) In the event the manager issues the notice described in this article, it shall be unlawful for any person to use or permit the use of water from the water system of the city's for any of the purposes hereinafter set forth until such time as this article is amended or repealed, or until the manager has declared such provisions no longer in effect. In exercising this authority, considerations shall be given to the following criteria: flow rate of the river(s), capabilities of the water production and distribution system, drawdown rates, outlook for precipitation, daily water use patterns, seasonal and long-term weather patterns and availability of water from other sources.
- (b) Hospitals, nursing homes and health care facilities shall comply with all restrictions imposed on residential and nonresidential water customers as may be applicable to each individual institution to the extent compliance will not endanger the health of the patients or residents of the institution.



- (c) Each hospital, nursing home or health care facility shall survey its water usage patterns and requirements and implement such additional conservation measures as may be possible without endangering the health of its patients or residents to achieve a further reduction in the institution's water usage.
- (d) The following shall apply at all times to the outdoor sprinkling of lawns, shrubbery, trees, flowers, gardens, and other outside irrigation systems.
  - (1) By June 1, 2009, all irrigation systems equipped with a timer shall be equipped with rain sensors as approved by the city water and sewer department. Rain sensors shall be activated to prevent the system from operating after one-fourth inch of rain has fallen.
  - (2) It shall be unlawful to operate any irrigation system during times of rain or to operate an irrigation system, at any time, so as to disperse water on an impervious surface.
- (e) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-448. Landscaping water use permitted—Designated hours.**

Beginning on May 1 and ending on September 30 each year, it shall be unlawful to use water for the spray irrigation of turf, gardens, trees, shrubbery or other vegetation between the hours of 9:00 am and 7:00 pm, unless otherwise exempted by city ordinance.

In addition to any other remedy available, violation of this section shall also be a misdemeanor as provided in Section 1-6.

**SECTION 36.** Chapter 52 - Utilities, Article VII – Construction or Alteration of Drinking Water Systems of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 52-482. Approval.**

- (a) No person or unit of local government shall begin construction or alteration of a public water distribution system or award a contract for construction or alteration of a public water distribution system operating or being situate in whole or in any part, as of the time of commencement of construction or alteration, within the city limits or extraterritorial jurisdiction of the city unless:
  - (1) The plans for construction or alteration have been prepared by an engineer licensed by this state;
  - (2) The city has determined that the distribution system, as constructed or altered, will be capable of compliance with the drinking water rules;

- (3) The city has determined that the distribution system is capable of interconnection at an appropriate time with an expanding municipal system;
- (4) The city has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water distribution system; and
- (5) The city has approved the plans and specifications.

**~~Sec. 52-483. Penalty for violation of article.~~**

**(b) Penalty for violation:**

- (~~1a~~) A person who violates a provision of this ~~article~~ section shall be guilty of a misdemeanor. If the violator is a business entity, any individual who is an officer, manager, general partner, director or other responsible principal of such entity and who had knowledge of such violation before it was discovered by the city and who failed to report such violation to the engineer before such discovery shall be deemed to be a violator under this section.
- (~~2b~~) A person convicted under this section shall be sentenced to a term of imprisonment of not more than two years and assessed a fine of not more than \$500.00 for each violation hereof. For purposes of the time to be imposed, each day on which any violation occurs shall constitute a separate violation hereunder and under section 52-485.
- (~~3e~~) Notwithstanding or any contrary provision of law, a person imprisoned for violation of this article shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the district court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the state health director, in consultation with the local health director of the person's county of residence, have made recommendations to the court.

**SECTION 37.** Chapter 52 - Utilities, Article VIII – Cross-Connection and Backflow Prevention of the Code of Ordinances for the City of Hendersonville shall be amended as follows

**Sec. 52-505. New unprotected cross-connections prohibited, existing cross-connections to be protected.**

No contamination or pollution of public water system shall be allowed. All customers and any other person or entity receiving water from the city's public water system shall be in violation of this article if they fail to comply with any of the following:

- (a) New water service connections. No new residential water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved dual check valve or approved equal. No new nonresidential and irrigation water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved backflow prevention assembly, unless otherwise approved by the city

prior to installation. The BPA shall be tested and properly functioning as prescribed herein prior to the issuance of a certificate of occupancy (CO) for any building. All new nonresidential construction plans and specifications shall be made available to the city for review to determine the health hazard and level (health or non-health) to the city's public water system.

- (b) Existing water service connections. An approved backflow prevention assembly shall be installed on all existing cross-connections to the city's public water system upon notification of the need for installation by the city resulting from circumstances such as, but not limited to, change of use, change or ownership or modifications to facilities, etc. Upon determining that a backflow prevention assembly (BPA) is required to be installed on an existing irrigation or nonresidential water service connection the city will notify the customer in writing of:
- (1) The requirement for installation;
  - (2) The health hazard level ("high hazard" or "moderate hazard" or "non-health hazard") which has been established for that customer by the city based upon the use of their premises;
  - (3) The type of approved backflow prevention assembly required;
  - (4) The date by which it must be installed and tested. The customer will have the following time periods within which to install and test the specified backflow prevention assembly and submit test results to the city.
    - a. High hazard: Within 14 calendar days of date of notice, unless specified otherwise by city;
    - b. Moderate hazard: Within 30 calendar days of notice;
    - c. Non-health hazard: Within 60 calendar days of date of notice.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-507. No cross-connections.**

No private water system may be connected to any private well, or to any spring, or to any other water source not approved by the state as a public water supply and commissioned by the city as a public water supply source, or to any other private source of water, or to any plumbing located on private property which may be connected to any of the above. Any such connection must be terminated upon the effective date of this article. It shall also be unlawful to have plumbing cross-connected or so installed that water from the city's public water system and water from or in any private water system may in any way become intermingled.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-508. Compliance.**

No private water system shall be connected in any manner to the city's public water system nor may any service connection be made or maintained to the city's public water system unless the requirements of this article have been satisfied.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-511. Protection of the public water system during bulk water sales.**

No bulk water may be taken except as a sale from a city owned and operated bulk sales facilities. It shall be unlawful to connect any truck, tank, or receiving vessel either directly or indirectly connected to any pipe, hose or outlet to the city's public water system, unless so authorized by the city, in writing.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-515. Penalties.**

In addition to any other remedy specifically provided, The following penalties shall be applicable for a violation of this local law (see city's schedule of rates and fees currently in force for the penalty amounts):

- (a) Failure to install the appropriate backflow prevention assembly within a prescribed time frame after first notice.
- (b) Failure to install the appropriate backflow prevention assembly within the prescribed time frames after second notice.
- (c) Failure to install the appropriate backflow prevention assembly within the prescribed time frames after third notice - termination of service.
- (d) Failure to at least annually test the backflow prevention assembly - specified penalty and/or termination of water service.
- (e) Failure to replace or repair a backflow prevention assembly as required - specified penalty and/or termination of water service.
- (f) Falsifying records that are required to be submitted by this article - specified penalty per violation. If a certified backflow prevention assembly technician submits falsified records to the city, the city shall reserve the right to permanently

revoke that certified backflow prevention assembly technician's right to test BPAs within the city's public water system.

The city may increase any civil penalty assessed by 50 percent of the maximum civil penalty associated with the violation for a second violation of the same provision within a two-year period. The city may increase any civil penalty by doubling the amount of the penalty for a third violation of the same provision within a two-year period. Water service may be terminated after a third violation of the same provision within a two-year period.

Any person violating any provision of this article shall pay to the city all expenses incurred by the city in repairing any damage to the public water system caused in whole or in part by such violation and any expense incurred by the city in investigating such violation plus ten percent. All such expenses are deemed to be a part of the civil penalty assessed with the violation.

**SECTION 38.** If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

**SECTION 39.** This Ordinance shall be effective upon its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this \_\_\_\_ day of \_\_\_\_\_, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Jill Murray, CMC, NCCMC,  
City Clerk

MEETING DATE:

February 8, 2023

AGENDA SECTION:

BOARDS/COMMISSIONS/  
COMMITTEE APPOINTMENTS

DEPARTMENT:

Administration

TITLE OF ITEM:

Appointments to Tree Board, Planning Board & Environmental Sustainability Board – Jill Murray, City Clerk

SUGGESTED MOTION(S):

I move that City Council nominate Laura Redfern to the Tree Board to finish out the term of Mark Madsen ending December, 2024.

I move that City Council nominate Yolanda Robinson to the Planning Board for a three year term ending in December, 2025.

I move that City Council nominate Marcia Shaffer to the Environmental Sustainability Board to finish the term of Anthony Baltiero ending June, 2024.

SUMMARY:

Tree Board

At the January 5<sup>th</sup> City Council Meeting, there were three vacant seats and City Council nominated three members to the Board. I later received a phone call telling me that Mark Madsen no longer wishes to serve. I contacted Laura Redfern and she would like to serve on the Tree Board. If nominated, Ms. Redfern will serve out the term of Mr. Madsen ending December, 2024.

Planning Board

At the January 5<sup>th</sup> City Council Meeting, City Council reappointed Laura Flores to a three-year term. I was contacted by Ms. Flores after the meeting stating that her schedule changed and she would not be able to make the meetings now. I contacted Yolanda Robinson and she would like to serve on the Planning Board. If nominated, Ms. Robinson will serve a three-year term ending December, 2025.

Environmental Sustainability Board

Anthony Baltiero has given his resignation effective January 25, 2023. I had an application on file from Marcia Shaffer who lives in the City limits and is willing to serve. If appointed, she will finish out the term of Anthony Baltiero ending June, 2024.

BUDGET IMPACT:

\$0



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

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

**ATTACHMENTS:**

NONE

Date of Application

9/26/2022

Select Board/Commission/Committee

Tree Board

Name

Lauren Redfern

yes

Do you reside within  
Hendersonville's City  
limits?

Yes

Street Address

627 5th Ave West, Hendersonville, North Carolina 28739

Mailing Address (If Different)

627 5th Ave West,  
Hendersonville, North Carolina  
28739

Phone

(828) 676-9125

Email

l\_redfern@webmail.blueridge.edu

Please list any other appointed board positions you presently hold in any capacity. This includes advisory boards, quasi-judicial boards, committees, non-profits ect.

None at this time

Please list educational background, special qualifications, i.e., civic memberships, related work experience, etc.

20+ years in administrative assistance positions. My work with the Hendersonville Rescue Mission. My heavy involvement in churches in our community. Community service work. I am currently enrolled in Blue Ridge Community College majoring in human services concentration in substance abuse and recovery

Based on your qualifications and experience, briefly describe why your services on these boards/commissions would be beneficial to the City of Hendersonville.

Hendersonville would benefit from having me involved because I am passionate about serving my community. Through Christ I can do all things. Using my gift God gave me including, communication, people skills, positive outlook on life and ability to add empathy.

For reporting purposes, please select how you identify.

Female

Race: For purposes of diversity and inclusion please identify your race.

Slavic

The City Council adopted a Code of Ethics for Advisory Boards/Commissions/Committees as well a Handbook. All persons appointed to City advisory boards must sign acknowledgement of this document. [You may view the Handbook and Code of Ethics Resolution and other information here.](#)

[The training video is available here.](#)

Signature- I hereby affirm that, to the best of my knowledge, the information provided on this application is true and accurate. I also acknowledge upon appointment to an advisory board I will view the Advisory Board Training Video, Handbook & Code of Ethics on the City's website and agree to abide by its tenants.



Date of Application

10/5/2022

Select Board/Commission/Committee

Planning Board

Name

Yolanda Robinson

Do you reside within  
Hendersonville's City  
limits?

Yes

Street Address

1205 Pinebrook Circle, Hendersonville, North Carolina 28739

Mailing Address (If Different)

Phone

(856) 217-3942

Email

yolandamrobinson@gmail.com

Please list any other appointed board positions you presently hold in any capacity. This includes advisory boards, quasi-judicial boards, committees, non-profits ect.

TDAC-not for profit board member

Please list educational background, special qualifications, i.e., civic memberships, related work experience, etc.

Doctorate in Clinical Social Work, Masters in Clinical Social Work, researcher for Knox HMIS, research for Department of Defense

Based on your qualifications and experience, briefly describe why your services on these boards/commissions would be beneficial to the City of Hendersonville.

I am dedicated to continuing the city of Hendersonville's strong growth into the future. This means assuring that planning is approached with a strong strategic eye toward maintaining the family values of the town while still encouraging healthy business development.

For reporting purposes, please select how you identify.

Female

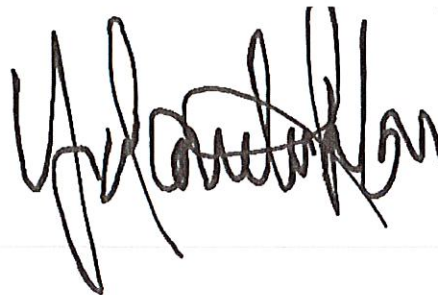
Race: For purposes of diversity and inclusion please identify your race.

White

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[The training video is available here.](#)

Signature- I hereby affirm that, to the best of my knowledge, the information provided on this application is true and accurate. I also acknowledge upon appointment to an advisory board I will view the Advisory Board Training Video, Handbook & Code of Ethics on the City's website and agree to abide by its tenants.



\*\*\*\*In order for City Council to consider vacancies at their June 2023 meeting, applications are due Friday, May 5, 2023 at 5:00 p.m.\*\*\*\*

**Date of Application**

8/14/2022

**Select Board/Commission/Committee**

Environmental Sustainability Board

**Name**

Marcia Shaffer

**Do you reside within  
Hendersonville's City  
limits?**

Yes

**Street Address**

101 Meadow Park, Apt A, Hendersonville, North Carolina 28792

**Mailing Address (If Different)**

**Phone**

(704) 351-5007

**Email**

ms111getoutdoors@gmail.com

All appointments to the Environmental Sustainability Board shall be made by the City of Hendersonville City Council. The Board shall consist of nine (9) members from the following membership categories:

(5) Residents of the City of Hendersonville.

(4) At-Large Members

(1) City Council Liaison – Non-voting.

At-large members are defined as persons owning property or residing within the City of Hendersonville or Henderson County, or business owners whose business is located within the City of Hendersonville or Henderson County.

Please list any other appointed board positions you presently hold in any capacity. This includes advisory boards, quasi-judicial boards, committees, non-proffits ect.

Friends of Carl Sandburg

Please list educational background, special qualifications, i.e., civic memberships, related work experience, etc.

BFA - Design, Masters - Education

Volunteer: Carolina Raptor Center, Daniel Stowe Botanical Gardens, Rural Hill Historic Farm, Friends of Carl Sandburg, Art on Main, Gardeners of Flat Rock Playhouse

Based on your qualifications and experience, briefly describe why your services on these boards/commissions would be beneficial to the City of Hendersonville.

I care! I also work hard at the grassroots level and am experienced at planning, marketing, and producing events.

For reporting purposes, please select how you identify.

Female

Race: For purposes of diversity and inclusion please identify your race.

White

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[The training video is available here.](#)

Signature- I hereby affirm that, to the best of my knowledge, the information provided on this application is true and accurate. I also acknowledge upon appointment to an advisory board I will view the Advisory Board Training Video, Handbook & Code of Ethics on the City's website and agree to abide by its tenants.

Section 9, Item A.

*Marcia Shaffer*





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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**SUBMITTER:** John Connet **MEETING DATE:** 2/8/2023  
**AGENDA SECTION:** Boards and Commissions **DEPARTMENT:** Administration  
**TITLE OF ITEM:** Appointment of Recreation Master Plan Steering Committee Member – *Jennifer Hensley, Council Member*

**SUGGESTED MOTION(S):**

I move that City Council appoint \_\_\_\_\_ to the Recreation Master Plan Steering Committee.

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**SUMMARY:**

Hunter Marks has decided not to serve on the steering committee because of potential conflicts of interest. Therefore, Council Member Hensley will make another appointment.

**BUDGET IMPACT:** \$ NA

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

**If no, describe how it will be funded.** NA

**ATTACHMENTS:** None





CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Connet

MEETING DATE:

09/28/2022

AGENDA SECTION:

CLOSED SESSION

DEPARTMENT:

Administration

TITLE OF ITEM:

Closed Session – *John Connet, City Manager*

**SUGGESTED MOTION(S):**

I move that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) (3) and (5) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, to consult with an attorney employed or retrained by the public body in order to preserve the attorney-client privilege between the attorney and the public body and to discuss the case of O’Neill v. City of Hendersonville, 22 CVS 1738, to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

**SUMMARY:**

City staff is requesting a closed session to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consult with an attorney employed or retrained by the public body in order to preserve the attorney-client privilege between the attorney and to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

**BUDGET IMPACT:**     \$ TBD

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

**If no, describe how it will be funded.** NA

**ATTACHMENTS:**

None