CITY OF HENDERSONVILLE CITY COUNCIL REGULAR MEETING

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792 Thursday, October 05, 2023 – 5:45 PM

AGENDA

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

September 7, 2023 Regular Monthly Meeting

September 27, 2023, Second Monthly Meeting

- <u>B.</u> Approval of Resolution Committing to the Implementation of Phase II of the Lower Mud Creek Floodplain Restoration Project *Mike Huffman, Stormwater Division Manager*
- C. Consider Negotiated Offer to Purchase North Edwards Street lot, Parcel B1, Plat Book 2023 page 14832, Henderson County registry *Daniel Heyman, Staff Attorney*
- D. October 2023 Budget Amendments Adam Murr, Budget Manager

6. PRESENTATIONS

- A. Oath of Office Colby Thomas Torbett PD Barbara Volk, Mayor
- B. Proclamation Children's Environmental Health Day Barbara Volk, Mayor
- C. Proclamation Grease Busters Day October 26, 2023 Barbara Volk, Mayor
- D. Proclamation Fire Prevention 2023 Barbara Volk, Mayor
- E. Proclamation Filipino American History Month Barbara Volk, Mayor
- F. Recognition of Michael Huffman, 2023 North Carolina Stormwater Professional of the Year *Brent Detwiler, Public Services Director*

7. PUBLIC HEARINGS

- A. Annexation: Public Hearing- Living Savior Evangelical Lutheran Church (C23-65-ANX)– *Tyler Morrow, Planner II*
- B. Zoning Text Amendment: Mobile Food Vendor Updates (P23-50-ZTA) Tyler Morrow, Planner II
- C. Zoning Text Amendment: Transportation Standards in CHMU (P23-51-ZTA) *Matthew Manley, AICP Strategic Projects Manager*
- D. Public Hearing to Consider Amending the City Charter to Provide for the Plurality Method of Electing City Council Members– *Angela S. Beeker, City Attorney*

8. UNFINISHED BUSINESS

9. NEW BUSINESS

- A. Request to Eliminate Two-Hour Parking on Oakland Street John Connet, City Manager
- B. Purchase of +/- 40 Acre Parcel and +/- 0.84 Acre Parcel on Long John Mountain, Together with Associated Easements, for the Construction of a Water Tank *Brent Detwiler, Public Services Director*
- C. Update regarding Unhoused (Homeless) Population in Hendersonville Various Staff

10. BOARDS/COMMITTEES/COMMISSION

A. Consideration of Vacancy Appointment to the Environmental Sustainability Board - *Jill Murray*, *City Clerk*

11. CITY MANAGER REPORT

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

12. CITY COUNCIL COMMENTS

13. CLOSED SESSION

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

14. ADJOURN

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



MINUTES

September 7, 2023

REGULAR MEETING OF THE CITY COUNCIL CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 5:45 p.m.

<u>Present:</u> Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members:

Dr. Jennifer Hensley, Jerry Smith and Debbie O'Neal-Roundtree

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle City Attorney Angela

Beeker, Communications Manager Allison Justus, Budget Manager Adam Murr, and

others

Absent: City Clerk Jill Murray

1. CALL TO ORDER

Mayor Volk called the meeting to order at 5:45 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.

Tom Appleby spoke against paid parking and the kiosks on Main Street.

Chris Walter spoke regarding history of diversity and inclusion and thinks we all have prejudices and we all tend to favor people that are like us.

Leonard Surprenant spoke regarding a housing issue at Magnolia Place and the increased costs that the new owners are imposing.

Marilyn Oertle spoke regarding the housing issue at Magnolia Place and said a lease was dropped on her front door to be signed by October 1st with a 41% increase in rent. This is wrong and someone needs to help.

Jeff Groh spoke against DEI and asked that the City disband the committee. He asked the city to sponsor a class that teaches the constitution and wants it offered to the public.

Tom Green spoke regarding the kudzu around his property and Shepherd Park and said that it is killing countless trees which are falling into the creek. He asked that the City help take care of getting rid of the kudzu around his property.

Lynn Williams spoke via Zoom electronic software regarding 1202 Greenville Highway and protecting the tree canopy and wildlife. She also spoke about lead in the water but sees that the city is looking into that. She still thinks that two of the council members should be voted in by citizens before city council votes on the Comp Plan. Lastly, she supports the DEI plan.

Ken Fitch spoke via Zoom electronic software regarding golf carts and speeding on local streets.

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.

4. CONSENT AGENDA

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

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

August 9, 2023 Regular Monthly Meeting August 23, 2023 Second Monthly Meeting

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

Resolution #23-93

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

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

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

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

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

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

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

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

Re: Petition for Satellite Annexation

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

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

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

/s/Barbara G. Volk, Mayor Attest: /s/Jill Murray, City Clerk

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

C. Contract Award Fleetwood Water Improvements Project – Adam Steurer, Utilities

Resolution #R-23-94

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

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

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

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

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

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

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

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

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

/s/Barbara G. Volk, Mayor Attest: /s/Jill Murray, City Clerk

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

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

TO MAYOR & COUNCIL APPROVAL: September 07	, 2023				FISCAL YEAR 2024 RM: 09072023-01
	BUD	GET AMENDMEN	IT		
		FUND 459 460			
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
459-0000-470090	Fund Balance Appropriated	-	386,000	-	386,00
459-0000-598901	Transfer Out (to 460, #19014)	-	386,000	-	386,00
	TOTAL REVENUES	-	386,000	-	386,00
FUND 459	TOTAL EXPENDITURES	-	386,000	-	386,00
460-0000-470010-19014	Debt Proceeds ('23 Rev. Bond)	636,000	-	-	636,0
460-0000-470100-19014	Transfer In (from 459)	-	386,000		386,0
460-7055-550103-19014	Capital Outlay CIP	636,000	386,000	-	1,022,00
FLIND 460	TOTAL REVENUES	636,000	386,000	-	1,022,00
FUND 460	TOTAL EXPENDITURES	636,000	386,000	-	1,022,00
A budget amendment to increa Capital Reserve Fund (459).	ise the Church St. Sewer Project (#19014)	for a total budget of \$1	1,022,000 using a \$386,0	000 transfer in from th	

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

TO MAYOR & COUNCIL APPROVAL: September 07	7. 2023				FISCAL YEAR 2024 RM: 09072023-02
		GET AMENDMENT	•		
		FUND 410			
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470100-21042	Transfer In (from 010, FY23)	53,401	-	53,401	
410-0000-470010-21042	Debt Proceeds	-	53,401	-	53,40
410-1014-550102-21042	Capital Outlay- Fees and Services	53,401	-	-	53,40
FUND 440 (PL-1)	TOTAL REVENUES	53,401	53,401	53,401	53,40
FUND 410 (Blythe)	TOTAL EXPENDITURES	53,401	-	-	53,40
410-0000-470100-21043	Transfer In (from 010, FY23)	54,700	-	54,700	
410-0000-470010-21043	Debt Proceeds	-	54,700	-	54,70
410-1014-550102-21043	Capital Outlay- Fees and Services	54,700	-	-	54,70
51 MID 440 (0)	TOTAL REVENUES	54,700	54,700	54,700	54,70
FUND 410 (Grove)	TOTAL EXPENDITURES	54,700	-	-	54,700

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

TO MAYOR & COUNCIL APPROVAL: September 07, 2023 FISCAL YEAR 2024 FORM: 09072023-03

BUDGET AMENDMENT

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

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDG
010-0000-534999	Contingency	146,211	-	76,240	6
010-1002-502056	COH Retirement Match (401k)	-	9,205	-	
010-1005-502056	COH Retirement Match (401k)	-	2,730	-	
010-1008-502056	COH Retirement Match (401k)	-	4,265	-	
010-1010-502056	COH Retirement Match (401k)	-	885	-	
010-1014-502056	COH Retirement Match (401k)	-	3,500	-	
010-1200-502056	COH Retirement Match (401k)	_	6,100	_	
010-1300-502056	COH Retirement Match (401k)		7,175	_	
010-1400-502056	COH Retirement Match (401k)	_	24,775	_	2
010-1502-502056	COH Retirement Match (401k)	_	4,000	_	
010-1521-502056	COH Retirement Match (401k)	_	2,550	_	
010-1523-502056	COH Retirement Match (401k)	_	3,000	_	
010-1525-502056	COH Retirement Match (401k)		1,625	_	
010-1525-502056	COH Retirement Match (401k)	-		-	
			5,450	-	
010-1560-502056	COH Retirement Match (401k)		870		
010-7855-502056	COH Retirement Match (401k)		110	-	
FUND 010	TOTAL REVENUES	-		-	
	TOTAL EXPENDITURES	-	76,240	76,240	
020-0000-534999	Contingency	7,600	-	2,365	
020-1502-502056	COH Retirement Match (401k)	-	70	-	
020-1523-502056	COH Retirement Match (401k)	-	160	-	
020-1525-502056	COH Retirement Match (401k)	-	95	-	
020-1560-502056	COH Retirement Match (401k)	-	45	-	
020-2102-502056	COH Retirement Match (401k)	-	1,860	-	
020-7855-502056	COH Retirement Match (401k)	-	135	-	
FUND 020	TOTAL REVENUES	-	-	-	
FOIND 020	TOTAL EXPENDITURES	-	2,365	2,365	
	I				
021-0000-534999	Contingency	750	-	690	
021-1502-502056	COH Retirement Match (401k)	-	20	-	
021-1521-502056	COH Retirement Match (401k)	-	40	-	
021-1525-502056	COH Retirement Match (401k)	-	25	-	
021-1556-502056	COH Retirement Match (401k)	-	20	-	
021-2202-502056	COH Retirement Match (401k)	-	555	-	
021-7855-502056	COH Retirement Match (401k)	-	30	-	
FUND 021	TOTAL REVENUES	-	-	-	
10140 021	TOTAL EXPENDITURES	-	690	690	
060-0000-534999	Contingency	214,297	-	81,603	13
060-1002-502056	COH Retirement Match (401k)	-	5,176	-	
060-1005-502056	COH Retirement Match (401k)	-	2,727	-	
060-1008-502056	COH Retirement Match (401k)	-	9,075	-	!
060-1010-502056	COH Retirement Match (401k)	-	2,879	-	
060-1014-502056	COH Retirement Match (401k)	-	8,766	-	
		<u>'</u>	•		
050 4500 500055	COURT De Martin Canalia	1 1			
060-1502-502056 060-1521-502056	COH Retirement Match (401k) COH Retirement Match (401k)	-	380 1,543	-	1
060-1523-502056	COH Retirement Match (401k)	-	2,972	-	2
060-7002-502056	COH Retirement Match (401k)	-	15,318	-	15
060-7032-502056	COH Retirement Match (401k)	-	4,997	-	4
060-7035-502056 060-7050-502056	COH Retirement Match (401k) COH Retirement Match (401k)	-	5,244 3,072	-	5
060-7055-502056	COH Retirement Match (401k)	-	8,535	-	
060-7132-502056	COH Retirement Match (401k)	-	2,461	-	2
060-7135-502056	COH Retirement Match (401k)	-	2,475	-	2
060-7150-502056 060-7155-502056	COH Retirement Match (401k) COH Retirement Match (401k)	-	1,778 4,205	-	1 4
000 /100-002036		-	4,205	-	4
FUND 060	TOTAL REVENU	E3			

53
54
55
56
57
58

68						
69	064-7455-534999	Contracted Services	5,000	•	155	4,845
70	064-1560-502056	COH Retirement Match (401k)	-	155	_	155
71	FLINID OG 4	TOTAL REVENUES			-	-
72	FUND 064	TOTAL EXPENDITURES		155	155	-
73	067-0000-534999	Contingency	5,600		5,300	300
74	067-1008-502056	COH Retirement Match (401k)		325		325
75	067-1014-502056	COH Retirement Match (401k)		150		150
76	067-1502-502056	COH Retirement Match (401k)		325		325
77	067-1525-502056	COH Retirement Match (401k)		600		600
78	067-1555-502056	COH Retirement Match (401k)		1,300		1,300
79	067-7555-502056	COH Retirement Match (401k)		2,600		2,600
80	FLIND OF7	TOTAL REVENUES		-	-	-
81	FUND 067	TOTAL EXPENDITURES		5,300	5,300	-
82	068-0000-534999	Contingency	29,600	•	5,910	23,690
83	068-1502-502056	COH Retirement Match (401k)		850		850
84	068-1521-502056	COH Retirement Match (401k)	-	460		460
85	068-7855-502056	COH Retirement Match (401k)	-	4,600		4,600
86	FUND OCO	TOTAL REVENUES	-	-	-	-
87	FUND 068	TOTAL EXPENDITURES	-	5,910	5,910	-
	A hudget amendment to mo	ve hudgeted funds from Contingency accoun	ets across various funds	to appropriately hudg	et for a Council-adonte	d 401k match

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

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

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023 FORM: 09072023-04

BUDGET AMENDMENT

FUND 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
060-7002-534000	Non-Capital Equipment	172,175	-	2,500	169,675
060-7002-551000	C/O - Land/Easement/ROW	118,500	2,500	-	121,000
FUND OCO	TOTAL REVENUES	-	-	-	-
FUND 060	TOTAL EXPENDITURES	-	2,500	2,500	-
As EV22 hudget amondment soleted to the City Operating appropriate against the amondment allocator EV22 funds for the appropriate against the city operating appropriate against the amondment allocator EV22 funds for the appropriate against the city operating appropriate against the amondment allocator EV22 funds for the appropriate against the city operating against the					

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

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

TO MAYOR & COUNCIL APPROVAL: September 07, 2023 FISCAL YEAR 2023 FORM: 09072023-05

BUDGET AMENDMENT

FUND 010 | 060 | 080

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-1002-534000	Non-Capital Equipment	96,120	-	18,000	78,120
010-1002-539005	Health & Welfare Expenditures	179,785	18,000	-	197,785
FUND 010	TOTAL REVENUES	-	-	-	-
FOND 010	TOTAL EXPENDITURES	-	18,000	18,000	-
060-7002-534000	Non-Capital Equipment	169,675		60,000	109,675
060-7002-539005	Health & Welfare Expenditures	132,241	60,000	-	192,241
FUND 060	TOTAL REVENUES	-	-	-	-
FUND 060	TOTAL EXPENDITURES	-	60,000	60,000	-
080-0000-435001	H&W Charges	312,026	78,000		390,026
080-3101-519200	Contracted Services	93,526	-	23,400	70,126
080-3101-539006	MERP Claims - General Fund	110,400	32,200		142,600
080-3101-539007	MERP Claims - Water & Sewer Fund	75,500	69,200	-	144,700
FLIND 000	TOTAL REVENUES	-	78,000	1	-
FUND 080	TOTAL EXPENDITURES	-	101,400	23,400	-

An FY23 budget amendment to cover higher than anticipated MERP claims using resources from the General Fund and Water and Sewer Fund.

TO MAYOR & COUNCIL APPROVAL: September 07, 2023 FISCAL YEAR 2023 FORM: 09072023-06

BUDGET AMENDMENT

FUND 010 | 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-470025	Lease & Sub. Debt GASB 87+96	176,054	293,035	-	469,089
010-0000-470010	Debt Proceeds	521,000	396,130	-	917,130
010-1010-557001	Lease & Sub.GASB 87+96	67,522	129,610	-	197,132
010-1300-557001	Lease & Sub.GASB 87+96	-	163,425	-	163,425
010-0900-560011	Debt Prin. GASB 87+96	-	101,790	-	101,790
010-0900-560511	Debt Int. GASB 87+96	-	1,660	-	1,660
010-1010-531210	Permits, Licenses, and Fees	236,000	-	69,010	166,990
010-1300-554001	C/O - Equipment	127,000	396,130	34,440	488,690
51115 040	TOTAL REVENUES	-	689,165	-	-
FUND 010	TOTAL EXPENDITURES	-	792,615	103,450	-
060-0000-470025	Lease & Sub. Debt GASB 87+96	67,522	552,080	-	619,602
060-1010-557001	Lease & Sub.GASB 87+96	67,522	552,080	-	619,602
060-0900-560011	Debt Prin. GASB 87+96	-	118,700	-	118,700
060-0900-560511	Debt Int. GASB 87+96	-	1,655	-	1,655
060-1010-531210	Permits, Licenses, and Fees	432,000	-	120,355	311,645
FUND 060	TOTAL REVENUES	-	552,080	-	-
FUND 060	TOTAL EXPENDITURES	-	672,435	120,355	-

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

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

TO MAYOR & COUNCIL FISCAL YEAR 2023
APPROVAL: September 07, 2023 FORM: 09072023-07

BUDGET AMENDMENT

FUND 010 | 020 | 060

ebt Principal ion-Capital Equipment ontracted Services ontracted Services on-Capital Equipment alaries Regular	1,501,267 71,000 240,000 54,450 135,014	59,000 - - -	12,000 97,000 24,000	1,560,267 59,000 143,000 30,450
ontracted Services ontracted Services on-Capital Equipment	240,000 54,450		97,000 24,000	143,000
ontracted Services on-Capital Equipment	54,450		24,000	
on-Capital Equipment		-		30,450
	135,014	_		
slaries Regular		- 1	23,000	112,014
alattes negatar	2,290,678	46,700	-	2,337,378
alaries Overtime	147,000	35,900	-	182,900
alaries-Holiday	86,453	-	24,290	62,163
alaries Halftime	78,756	2,780	-	81,536
ICA	195,070	7,000	-	202,070
roup Med & Life	412,265	9,000	-	421,265
etirement	299,271	21,000	-	320,27
Vorker's Comp Ins	53,040	600	-	53,640
alaries Regular	308,173	4,200	-	312,37
&M Equipmemt	11,000	-	10,000	1,000
alaries-Board/Part Time/Temp/Aux	20,000	-	10,000	10,000
alaries Regular	505,860	12,600	-	518,460
&M Streets and Sidewalks	600,000	28,000	-	628,000
alaries Regular	140,624	-	20,000	120,624
&M Equipmemt	17,000	-	6,490	10,510
TOTAL REVENUES		-	-	
TOTAL EXPENDITURES		226,780	226,780	
ebt Interest	14,366	326	-	14,692
rof Servicees- Engring	2,000	-	326	1,674
TOTAL REVENUES		-	-	
TOTAL EXPENDITURES		326	326	
2 2 2 2 2 2 2	laries Halftime CA roup Med & Life ettrement forker's Comp Ins slaries Regular &M Equipmemt slaries-Board/Part Time/Temp/Aux slaries Regular &M Streets and Sidewalks slaries Regular &M Equipmemt TOTAL REVENUES TOTAL EXPENDITURES ebt Interest of Servicees- Engring TOTAL REVENUES	Section Sect	A	A

Salaries Regular

Capital Outlay-Line

Contract Services

Capital Outlay- Other Than Vehicles

060-7155-501001

060-7155-554001

060-7155-555002

060-7002-519200

FUND 060

TOTAL REVENUES

TOTAL EXPENDITURES

E. Resolution to Apply for Funding for Lead Service Line Investigation and Replacement Project – Gracie Erwin, Environmental Compliance Coordinator

542,115

12,140

6,890

5,660

1,250

Resolution #R-23-95

41,980

549,005

5,660

13,390

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

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

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

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

- 1. That City of Hendersonville, the Applicant, will arrange financing for all remaining costs of the project, if approved for a State loan and/or grant award.
- 2. That the Applicant will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.
- 3. That the governing body of the Applicant agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Hendersonville to make scheduled repayment of the loan, to withhold from the City of Hendersonville any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.
- 4. That the Applicant will provide for efficient operation and maintenance of the project on completion of construction thereof.

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

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

5. That John Connet, City Manager, the Authorized Official, and successors so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a loan and/or grant to aid in the study of or construction of the project described above.

- 6. That the Authorized Official, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
- 7. That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

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

/s/Barbara G. Volk, Mayor Attest: /s/Jill Murray, City Clerk

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

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

Resolution #R-23-96

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

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

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

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

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

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

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

/s/Barbara G. Volk, Mayor Attest: /s/Jill Murray, City Clerk

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

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

Resolution # R-23-97

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

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

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

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

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

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

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

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

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

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

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

H. Purchase of Chlorine – Ricky Levi

Resolution #R-23-98

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

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

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

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

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

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

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

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

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

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

6. PRESENTATIONS

A. Proclamation-Childhood Cancer Awareness – Barbara G. Volk, Mayor

No one showed up to accept the Proclamation, therefore the Clerk will be sure to mail the signed proclamation.

Proclamation

Childhood Cancer Awareness Month

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

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

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

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

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

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

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

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

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

"Childhood Cancer Awareness Month"

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

PROCLAIMED this 7th day of September, 2023.

7. PUBLIC HEARINGS

A. Annexation: Public Hearing-2203 and 2205 N. Stoney View Court (Bullets Contracting, LLC) (C23-61-ANX) – Tyler Morrow, Planner II

Tyler Morrow explained that the City of Hendersonville has received a petition from Chris Miller, Manager of Bullets Contracting LLC for contiguous annexation of PINs 9569-47-1183 and 9569-47-2203 located on N. Stoney View Court that is approximately 0.64 acres.

On August 9th, 2023, City Council accepted the City Clerk's Certificate of Sufficiency for the petition submitted by Bullets Contracting LLC and set September 7, 2023, as the date for the public hearing.

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

The public hearing was opened at 6:15 p.m.

The public hearing was closed at 6:15 p.m.

Council Member Jerry Smith moved that City Council adopt an ordinance of the City of Hendersonville to extend the Corporate Limits of the City as a contiguous annexation, to annex that property owned by Bullets Contracting, LLC, identified as PINs 9569-47-1183 and 9569-47-2203, finding that the standards established by North Carolina General Statute 160A-31 have been satisfied and that the annexation is in the best interest of the City. A unanimous vote of the Council followed. Motion carried.

Ordinance #O-23-52

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

IN RE: Petition for Contiguous Annexation
Parcel Number: 9569-47-1183 and 9569-47-2203.

2203 and 2205 N. Stoney View Court (File# C23-61-ANX)

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

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

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

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

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

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

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

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

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

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

Beginning at a point on the northwestern right of way line of North Stone View Court at the common corner of Lots 4 & 5 of the aforementioned subdivision; thence along the common line between Lots 4 & 5 running North 74°31'01" West for 141.80 feet to a point on the southeastern limits of the City of Hendersonville; thence along the southeastern limits of the City of Hendersonville the following three (3) course to wit: (1) North 15°23'02" East for 74.40 feet; (2) North 14°50''43" East for 24.81 feet; (3) North 14°50'43" East for 99.55 feet to a point at common corner of Lots 2 & 3 of the aforementioned subdivision; thence leaving the limits of the City of Hendersonville and along the common line between Lots 2 & 3 running South 74°39'12" East for 141.09 feet to a point on the Northwestern right of way line of North Stone View Court; thence along the northwestern right of way line of North Stone View Court the following two (2) courses to wit: (1) South 14°53'55" W for 99.55 feet; (2) South 14°53'55" W for 99.55 feet to the Point of Beginning. Containing 0.64 acres (28,074 square feet), more or less.

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

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

/s/Barbara G. Volk, Mayor Attest: /s/Jill Murray, City Clerk

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

B. Annexation: Public Hearing-Townes at Martha Kate (C23-62-ANX) – Tyler Morrow, Planner II

Tyler Morrow explained that the City of Hendersonville has received a petition from Rick Moore, Manager of the Townes at Martha Kate LLC. for satellite annexation of PIN 9569-75-0342 located on Queen Street that is approximately 14.20 acres.

On August 9th, 2023, City Council accepted the City Clerk's Certificate of Sufficiency for the petition submitted by Rick Moore, Manager of the Townes at Martha Kate LLC. and set September 7, 2023, as the date for the public hearing.

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

The public hearing was opened at 6:18 p.m.

The public hearing was closed at 6:18 p.m.

Council Member Jennifer Hensley moved that City Council adopt an ordinance of the City of Hendersonville to annex noncontiguous property owned by Townes at Martha Kate LLC, identified as PIN 9569-75-0342, finding that the standards established by North Carolina General Statute 160A-58.1 have been satisfied and that the annexation is in the best interest of the City. A unanimous vote of the Council followed. Motion carried.

Ordinance #O-23-53

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

Re: Petition for Satellite Annexation

Petitioners: Townes at Martha Kate LLC (Rick Moore, Manager)

File No. C23-62-ANX

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

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

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

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

- a. All of the proposed satellite corporate limits are less than three miles from the primary corporate limits of Hendersonville. The map distance is approximately 6.5 feet.
- b. No point on the proposed satellite corporate limit is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
- c. The area described is so situated that the City of Hendersonville will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- d. The area proposed for annexation is subject to subdivision regulation as described N.C.G.S. § 160D-802 and all of the subdivision is included in the petition.
- e. The area within the proposed satellite corporate limits, when added to the areas within all other satellite corporate limits does not exceed 10 percent (10%) of the area within the primary corporate limits of the City of Hendersonville.

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

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

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

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

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

Tract 1

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

Possible Overlap Area

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

Tract 2

2023.

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

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

Adopted by the City Council of the City of Hendersonville, North Carolina on this 7th day of September,

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

C. Zoning Text Amendment: Small Scale Multi-Family in the MIC (P23-49-ZTA) – *Matthew Manley, AICP Strategic Projects Manager*

The City of Hendersonville is in receipt of an application to amend the list of Permitted Uses in the MIC (Medical, Institutional, & Cultural) Zoning District to include "Residential, Multifamily" as a permitted use.

To facilitate the inclusion of "Small-Scale" multi-family in the MIC district, staff has developed additional dimensional and design standards that aim to achieve compatibility with the existing

neighborhood as part of this proposed text amendment. These proposed standards include a reduction in minimum setbacks, architectural design standards, site design standards, screening of parking, and pedestrian connectivity requirements, to name a few. While there is no proposed maximum density, the maximum height, maximum footprint, minimum setbacks, minimum common space, parking requirements, and landscaping standards will all work in combination to limit the overall scale of any development.

A definition for Small-Scale Multi-Family will also be added to Article 12 - Definitions.

The Planning Board voted 8-1 in favor of the proposed text amendment.

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

The public hearing was opened at 6:55 p.m.

Ken Fitch spoke via Zoom electronic software in favor of the rezoning however is concerned about existing trees and hopefully the tree ordinance will help with that. The other is the parking issue which will hopefully be discussed during comp plan discussions.

Lynne Williams spoke via Zoom electronic software regarding incentivizing impervious concrete and is worried about the tree canopy. She asked if we can we turn one of the vacant lots into a park or greenspace.

The public hearing was closed at 7:04 p.m.

Council Member Jerry Smith moved that City Council <u>adopt</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-10. 'Medical, Institutional and Cultural Zoning District Classification (MIC)' and Article XII. – 'Definition of Terms' and Article XVI. – 'Supplementary Standards for Certain Uses', based on the following:

1. The petition is found to be <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:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for minimal front setbacks and recommends multi-family as a secondary use for properties within the Urban Institutional Future Land Use Designation. Goal PH-3 of the Population & Housing Chapter further supports the proposed Supplementary Standards for Small-Scale Multi-Family.

- 2. We [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:
 - 1. The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.
 - 2. The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services.
 - 3. The addition of multi-family residential as a permitted use will allow for a mixture of housing types at different price points. We also amend the proposed amendment such that it states that 42 feet and three stories, or less, and any chain link fencing in the back or side of the yard must also have a vegetative buffer on the outside of the fence.

A unanimous vote of the Council followed. Motion carried.

Ordinance #O-23-54

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND ARTICLE V. – 'ZONING DISTRICT CLASSIFICATIONS', SECTION 5-10 'MEDICAL, INSTITUTIONAL AND CULTURAL ZONING DISTRICT CLASSIFICATION (MIC)' AND ARTICLE XII. – 'DEFINITION OF TERMS' AND ARTICLE XVI. – 'SUPPLEMENTARY STANDARDS FOR CERTAIN USES' TO INCLUDE SMALL-SCALE MULTI-FAMILY RESIDENTIAL USES WITH SUPPLEMENTARY STANDARDS IN THE MIC ZONING DISTRICT

WHEREAS, the Planning Board reviewed this petition for a zoning text amendment at its regular meeting on August 10, 2023; voting 8-1 to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, and

WHEREAS, City Council took up this application at its regular meeting on September 7, 2023, and

WHEREAS, City Council has found that this zoning text amendment is consistent with the City's Comprehensive Plan, and that it is reasonable and in the public interest for the reasons stated, and

WHEREAS, City Council has conducted a public hearing as required by the North Carolina General Statutes on September 7, 2023,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville to amend Article V. – 'Zoning District Classifications', Section 5-10 'Medical, Institutional and Cultural Zoning District Classification (MIC)' and Article XII. – 'Definition Of Terms' and Article XVI. – 'Supplementary Standards for Certain Uses' to include small-scale multi-family residential uses with supplementary standards in the MIC Zoning District.

ARTICLE V. - ZONING DISTRICT CLASSIFICATIONS

Section 5-10. - Medical, Institutional and Cultural Zoning District Classification (MIC).

5-10-1. Permitted uses.

The following uses are permitted by right in the MIC Medical Institutional Cultural Zoning District Classification, provided they meet all requirements of this section and all other requirements established in this appendix:

Accessory dwelling units subject to supplementary standards contained in section 16-4 below

Accessory uses and structures

Adult care centers registered with the NC Department of Health and Human Services (DHSS)

Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling

Banks and other financial institutions

Child care centers subject to supplementary standards contained in section 16-4, below

Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling

Congregate care facilities subject to supplementary standards contained in section 16-4, below

Home occupations

Hospitals

Laundries, coin-operated

Music and art studios

Neighborhood community centers

Nursing homes subject to supplementary standards contained in section 16-4, below

Offices, business, professional and public

Parking lots and parking garages

Parks

Personal services consistent with the purposes of this classification, such as barber and beauty shops, medical and dental labs and clinics, opticians and optical services and prosthetics & orthopedics

Planned residential developments (minor)

Progressive care facilities subject to supplementary standards contained in section 16-4, below

Public and semi-public buildings

Religious institutions

Residential care facilities subject to supplementary standards contained in section 16-4, below

Residential dwellings, single-family

Residential dwellings, two-family

Residential dwellings, small-scale multi-family subject to supplementary standards contained in section 16-4, below

Rest homes subject to supplementary standards contained in section 16-4, below

Retail stores consistent within the purposes of this classification, such as gift shops, florist shops and pharmacies

Schools, post-secondary, business, technical and vocational

Signs, subject to the provisions of article XIII

Telecommunications antennas, subject to supplementary standards contained in section 16-4, below

5-10-3. Dimensional requirements.

Minimum lot area in square feet:	8,000
Lot area per dwelling unit in square feet:	10,000 for the first; 5,000 square feet for each additional dwelling unit in one building.
Minimum lot width at building line in feet:	7 <u>5</u> 0
Minimum yard requirements in feet:	Front: 30 10
	Side: 20 total for lot; with minimum of 5; on any side
	Rear: 20
Accessory Structure Minimum Setbacks	Front: Shall be located to the side or rear of principal
	structure
	Side & Rear: 5
Maximum height in feet:	50

ARTICLE XVI. - SUPPLEMENTARY STANDARDS FOR CERTAIN USES

16-4-31 - Residential Dwellings, Small-scale multi-family

- a) For the purposes of these standards, small-scale multi-family shall include all developments not subject to the N.C. Residential Code for One- and Two-Family Dwellings including triplexes, quadplexes, and other small apartment buildings. The standards below may be implemented voluntarily for single-family attached (townhomes) constructed subject to N.C. Residential Code for One- and Two-Family Dwellings.
- b) Maximum Height for any structure shall be 42'.
- c) Maximum footprint for any principal structure shall be 4,000 square feet.
- d) All street-facing sides of a corner lot are considered fronts
- e) Building Placement
 - a. Buildings shall be situated as close to the minimum front setback as practicable.
 - b. Buildings shall be situated to provide off-street parking to the rear and/or side of the building(s).
 - c. <u>Buildings shall be situated to protect and accentuate important mountain vistas and views of significant historic sites.</u>
 - d. <u>Buildings shall be situated to provide well-defined, street-facing entrance(s) with a connecting walkway with a direct, safe, pedestrian connection to the street.</u>
 - i. For buildings on corner lots, an entrance may be placed at the corner, thereby eliminating the need for side entrances.
 - Buildings shall offset front-loading garages and carports, if provided, behind the front façade by a minimum of 10'.
 - i. Front-loading garages and carports shall be visually designed to form a secondary building volume.
 - ii. The width of an attached garage shall not exceed 50 percent of the total building façade.
 - f. Canopies, awnings, cornices, balconies, front-facing covered porches and stoops and similar architectural accents are permitted to extend from the building up to five feet (5') into a required minimum setback and/or required Common Open Space.
- f) Architectural Design Standards
 - a. The following standards apply to all facades (front, rear and side) of buildings:
 - i. No wall shall exceed 16 feet in length without an offset. A building façade which is less than 16 feet in length shall not require an offset.
 - ii. Offsets shall have a minimum depth or projection of one and one half feet (1.5').



- iii. Each façade shall use fenestration and do so in a manner which is proportional to the overall scale of the building.
- iv. All building facades shall contain at least two building materials which shall contrast in color and texture.
- v. When multiple wall materials are combined on one façade, the designer is encouraged to place the heavier material(s) below

- vi. Building materials shall be used consistently on the exterior of the building. The following building materials are prohibited for exterior façade application:
 - 1) Plain concrete block (with or without paint);
 - 2) Reflective glass;
 - 3) More than 50 percent glass on any façade;
 - 4) Vinyl siding; and
 - 5) Any other materials not customarily used in conventional construction.
- vii. Exposed foundations shall consist of stone, stucco, brick or decorative block. If crawlspaces of porches are enclosed, they shall be enclosed with similar materials or lattice or any combination thereof.
- viii. Windows, Windows shall either be (1) recessed a minimum of three inches (3") from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.
- b. The following standards apply to all street-facing facades (fronts) of buildings:
 - i. <u>Detailed design shall be provided by using at least two (2) of the following architectural features on all elevations.</u>
 - i. Dormers
 - ii. Gables
 - iii. Recessed entries
 - iv. <u>Cupolas or towers</u>
 - v. <u>Pillars, columns or posts</u>
 - vi. Corbels
 - vii. <u>Bay windows</u>
 - viii. Balconies
 - ix. Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation)
 - x. Parapets / Decorative cornices and roof lines (required for buildings with flat roofs)
 - xi. Wood siding with two and a half inch to four and a half inch reveal (2.5"-4.5")
- c. Pitched roofs on residential buildings shall have a pitch between 5:12 and 12:12. Eaves (with a minimum twelve-inch (12") projection) shall be provided with a pitched roof.
- d. <u>Useable porches and/or stoops</u>, at least eight feet (8') in width and six feet (6') in depth, shall be located on the front and/or side of the home. Porches and stoops may encroach into front setback up to five feet (5').
- e. Accessory buildings with a floor area greater than 150 square feet shall be clad in materials similar in appearance to the principal structure and with similar roof pitch.
- f. Walls and fences located in the front yard shall be no more than four feet (4') above grade. The use of chain link fencing is prohibited in front yards. For corner lots, both street-facing sides shall be considered fronts. Rear yard and side yard fences are not subject to these standards.
- g) On-street parking. On-street parking is encouraged for all local streets and thoroughfares.
 - a. On-street parking abutting the development parcel shall count toward meeting the off-street parking requirements for the district.
 - b. On-street parking may take the form of parallel or angle parking and shall be built according to city or state standards as applicable in order to count towards minimum parking requirements.
- h) Off-street parking.
 - a. All off-street parking lots shall be provided at the side or rear of buildings or the interior of a block of buildings and not closer to the street than the edge profile of the structures.
 - b. Off-street parking shall not be adjacent to street intersections.

ARTICLE XII. - DEFINITION OF TERMS

Sec. 12-2. - Definition of commonly used terms and words.

Dwelling, small-scale multi-family: A building with eight (8) or fewer dwelling units

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

8. <u>UNFINISHED BUSINESS</u>

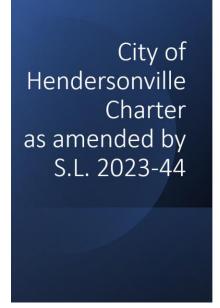
A. Consideration of City Council Primary Election – Angie Beeker, City Attorney

Attorney Beeker showed a PowerPoint presentation explaining the city's charter and how it relates to elections.



- Local Bills
 - City Charter
 - SL 2023 44
- General Statutes
 - Chapter 163 of the General Statutes, Articles 23 and 24 apply to municipal elections.

NOT ALL OF CHAPTER 163 OF THE GENERAL STATUTES APPLY



Article IV – Election Procedures

- Sec. 4.1. Regular Municipal Elections. Regular municipal elections shall be held at the time of the general election in each even-numbered year. The Mayor and Council Members shall serve until their successors are elected and qualified.
- Sec. 4.2. Regular Municipal Primaries. The Mayor and Council Members shall be elected on a nonpartisan basis and results determined by the primary method as provided in G.S. 163-294.
- Sec. 4.4. Regulation of Elections. All municipal elections shall be conducted in accordance with the uniform municipal election laws in Chapter 163 of the General Statutes, except as otherwise provided by this act.

Nonpartisan Primary Method NCGS § 163-294 Goal: 2 candidates on ballot per open seat

• If 1 seat open, 1 or 2 candidates file – no primary

- If 1 seat open, 3 or more candidates file primary, top 2 vote getters put on ballot.
- If 2 seats open, 4 candidates file no primary
- If 2 seats open, 5 or more candidates file, primary, top 4 vote getters put on ballot.
- Election top vote getters for number of seats open win
 - If 1 seat open, 2 candidates on ballot, top vote getter wins.
 - If 2 seats open, 4 candidates on ballot, top 2 vote getters win.
- No districts
- All qualified voters in the City get to vote for all seats in both primary and general election.

Articles 23 and 24 of Chapter 163 of the North Carolina General Statutes Article 23, NCGS 163-279, Time of Primaries and General Elections [for municipal elections]

- Election 1st Tuesday after 1st Monday in November;
- Primary 4th Tuesday before the election.
- Article 24, NCGS 163-294.2(c) Filing Period [for municipal elections]
 - Noon on first Friday in July, until noon on third Friday in July preceding election.

Under the current law, choice of election method does not affect either of these.

Plurality Method NCGS § 163-292

- No primary
- Election top vote getters for number of seats open win
 - If 1 seat open, 2 or more candidates on ballot, top vote getter wins.
 - If 2 seats open, 3 or more candidates on ballot, top 2 vote getters win.
- No districts
- All qualified voters in the City get to vote for all seats in general election.

Steps to Change Method of Election

- Adopt Resolution of Intent
 - State intent
 - Call public hearing (no more than 45 days out)
- Publish Notice of Public Hearing
 - Summarize Resolution
 - Publish at least 10 days prior to PH
- Hold Public Hearing
- Adopt Ordinance at Next (or subsequent) Regular Meeting after Public Hearing (but not more than 60 days later)
- Publish Notice of Adoption within 10 days
- Must be adopted at least 90 days before 1st election held under new ordinance.

NCGS § 163-199(c)

- Can adopt resolution asking that candidates names be rotated on the ballots.
 - Must adopt no later than 60 days before primary or election for which it is effective.

Council Member Jerry Smith moved that the City Council adopt a Resolution of Intent to Amend the City Charter for the City of Hendersonville to use the Plurality Method of Elections. A unanimous vote of the Council followed. Motion carried.

9. <u>NEW BUSINESS</u>

A. Consideration of Allowing Golf Carts on Public Street – Council Member Hensley & City Manager John Connet.

City Manager Connet said that he and Council Member Hensley have had a lot of conversations regarding golf carts on public street and has requested that staff investigate the development of an policy or ordinance to allow golf carts to be driven on public streets. Prior to asking staff to work on this project, I would like to ensure there is support from the majority of City Council to develop this policy or ordinance.

Council members Jerry Smith, Debbie O'Neal-Roundtree and Mayor Barbara Volk all said no. Council Member Simpson did not say anything, nor did Council member Hensley, as the vote was already 3-2.

B. Rescheduling of November Workshop Meeting – John Connet, City Manager

City Manager John Connet explained that the November workshop meeting is scheduled for Wednesday, November 23, 2023, which is the night before Thanksgiving. The Community Development Team would like hold a "Joint Workshop" meeting between the Planning Board and City Council to discuss the Comprehensive Plan. Therefore, we are proposing to move your workshop meeting to Monday November 20, 2023 at 4:00 PM.

Council Member Lyndsey Simpson moved that City Council schedule their November workshop meeting on Monday, November 20, 2023. A unanimous vote of the Council followed. Motion carried.

C. Nonconsensual Towing Ordinance – Angela S. Beeker, City Attorney

City Attorney Beeker explained an ordinance that is before Council for non-consensual towing and booting and showed a PowerPoint presentation explaining it in further detail.

Findings:

The City Council for the City of Hendersonville makes the following findings:

- (a) The City Council of the City of Hendersonville has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.
- (b) G.S. 160A-174 allows a municipality by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the municipality.
- (c) Some practices related to the non-consensual towing or booting of motor vehicles from private parking lots have exposed the public or members of the towing industry to harm. Non-consensual towing or booting can leave unknowing drivers without means of transportation and can lead to altercations between vehicle owners and towing personnel.
- (d) Inadequate notification of parking restrictions and fees for private parking lots can lead to inadvertent unauthorized parking on the lot and nonconsensual towing or booting of vehicles.
- (e) The Hendersonville City Council desires to minimize the harmful and adverse effects resulting from the non-consensual towing of motor vehicles from private parking lots, while also protecting the lot owners' and lessees' property rights, by enacting an ordinance that will assist in making sure that:
 - i. Parking is available to those lawfully present on the private parking lots.
 - ii. The public is aware that their vehicle may be towed or booted if they park in a private parking lot without permission, or without paying applicable fees.
 - iii. If a vehicle parked on a private parking lot is subject to nonconsensual towing or booting, the vehicle owner or operator has a reasonable means of securing the return of the personal property within the motor vehicle and the motor vehicle itself, without being subjected to coercive practices.



Private Parking Lots

Other Posting Requirements (Size & Location):

All Private Lots (Post to tow)

- 18x24 min, 6 sq.ft max
 - Each access into the lot & at least 1 other location on the lot (or enough to be visible from every space) OR
 - · At each restricted parking space
- Combination of signs (adjacent) can be used.
- Existing signs can be "added to"; exempt from lettering size (updates must comply)

Commercial Parking Lots (Post to Charge)

- 18x24 min, 6 sq.ft max
 - At least 1 sign must be visible from every space) AND
 - A minimum of 2 signs on the lot
- Combination of signs (adjacent) can be used.
- Existing signs can be "added to"; exempt from lettering size (updates must comply)



SAMPLE SIGNS:





Requirements for Towers*



- Only tow from properly posted private parking lots
- · Accept cash, debit and 2 major credit cards
- Only tow to storage lots that:
 - Within 15 miles from point of tow
 - Secured, signed and lighted
 - Accept cash, debit and 2 major credit cards
- Respond to calls within 15 minutes, 24/7; make vehicle available within 30 minutes of response; no more than 45 minutes from call.
- Report tows to HPD

- Place bright orange notice on wind shields if boot
- Get permit from HPD and provide information to be kept on file at HPD
- · Carry liability insurance
- Have fee schedule (posted and on file with HPD)
- Give itemized receipts with tower's name and reason for tow/boot
- Release for the posted fee if owner returns before tow or boot complete
- Allow retrieval of personal property from vehicle.

*Note: Any person who causes or permits a tow from private lot is also held to posting standard, i.e. owners and operators of lot.

Requirements for Owners and Operators of Private Lots



- Only allow/call for tow if lot is properly posted (Post to tow)
- If a commercial lot (Post to charge):
 - · Post all fees charged
 - Accept debit and 2 major credit cards for payment.
 - Post telephone number; respond M-F during normal business hours.
 - Provide method of customer to contest fees.

Exceptions to Notice Requirements for Private Parking Lots



- Tow is made pursuant to Chapter 36, Article VI of City Code: Abandoned and Junked Vehicles
- Towing is authorized by NC General Statutes (e.g. repossession)
- Tow is court ordered
- Tow is pursuant to order of a law enforcement officer

Penalties

- Enforced by HPD, including unsworn employee if designated by Chief
- Civil Penalties:
 - \$300 first offense
 - \$600 if 2nd offense in 1 year period
 - \$1200 if 3rd or more offense in 1 year period
- Permit revocation if 3 or more offenses in 1 year period (90 days, must reapply)
- Equitable remedies
- Not criminal

Other Points:

- Proposed Effective Date: November 1, 2023
- Only applies to tows from private lots, as defined in the Ordinance
- Can't use words that would tend to deceive the public into thinking that fees/invoice/lot are the City's.

Council Member Jennifer Hensley moved that City Council to adopt an Ordinance of the City of Hendersonville City Council Adopting Certain Provisions Regarding the Nonconsensual Towing of Motor Vehicles from Privately Owned Lots, as presented. A unanimous vote of the Council followed. Motion carried.

- 10. <u>CITY MANAGER REPORT</u> John F. Connet, City Manager
 - A. August 2023 Contingency Report John Connet, City Manager

City Manager Connet said your contingency report is included in your packet for your review in accordance with State Statute 159-13(b) it is required that all expenditures resulting from a

contingency appropriation budget be reported to the governing board at its next regular meeting and recorded in the minutes.

The following contingency appropriations were made due to an insufficient budget for IT Permits, Licenses, and Fee costs:

- 1. Decrease Fund 010 contingencies by \$20,000 for IT Permits, Licenses, and Fees
 - a. Increase 010-1010-531210 by \$20,000
- 2. Decrease Fund 010 contingencies by \$12,000 for IT Permits, Licenses, and Fees
 - a. Increase 010-1010-531210 by \$12,000
- 3. Decrease Fund 010 contingencies by \$16,000 for NC Association of Police Chiefs
 - a. Increase 010-1300-519200 by \$16,000

He added that he would like to thank City staff for a great Labor Day weekend with the apple festival. We had a great weekend and you couldn't ask for better weather.

12. CITY COUNCIL COMMENTS

Council Member Jerry Smith asked does the DEI Committee cost money? They don't have a budget right? We have staff time. City Manager said no, they don't have a budget, they're not spending any money. Not anything out of the ordinary that we do for others boards and commissions.

Council member Lyndsey Simpson said the Tree Ordinance Board has had two meetings and they were very productive and our next meeting is October 3rd. Daniel has been crushing it with all of the changes that we talk about in the meetings. I'm hopeful that we'll be able to get something together for everyone to see very soon but there are some major things that we may need to have longer discussions on.

Council member O'Neal-Roundtree thanked Gen H for attending Back to School Fest.

Mayor Volk thanked all of staff for their help during Labor Day weekend and Apple Fest.

13. CLOSED SESSION

Council Member Lyndsey Simpson moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, And the public body and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

14. ADJOURN

of the Counci	,	s adjourned at 8.48 p.m. upon unammous assem
ATTECT.		Barbara G. Volk, Mayor
ATTEST:	Jill Murray, City Clerk	





MINUTES

September 27, 2023

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

<u>Present:</u> Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members:

Debbie O'Neal-Roundtree and Jerry A. Smith Jr., J.D.

<u>Staff Present:</u> City Manager John F. Connet, Assistant City Manager Brian Pahle, City Clerk Jill Murray,

Communications Manager Allison Justus, Budget Manager Adam Murr and others.

Absent: Dr. Jennifer Hensley, Council Member

<u>Via Zoom:</u> Angela Beeker, City Attorney

1. CALL TO ORDER

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

2. CONSIDERATION OF AGENDA

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

3. CONSENT AGENDA

- A. Henderson County Tax Adjustments Amanda Lofton, Deputy Tax Collector
- **B.** Special Event Application Harvest Festival Jamie Carpenter, Downtown Manager
- C. Waiving Competition Network Infrastructure Jay Heatherly, IT Manager

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

4. PRESENTATIONS

A. K-9 Program Assessment Report – Thurman Whisnant, Hickory Police Chief (Ret.) and Blair Myhand, Police Chief

Both Chief Myhand and Chief Whisnant presented the PowerPoint presentation that reviewed the process they used and the conclusions they came too. Council thanked them for their time and effort in preparing such a detailed report to help bring us to higher standards.

Hendersonville Police Department

K9 Program Assessment and Council Presentation

North Carolina Association of Chiefs of Police

September 27, 2023





Incident

- On 8/2/2020, a police animal attacked a male neighbor causing significant injuries.
- The incident resulted in the city being sued by the plantiff.
- The city, through its insurer, settled with the victim for \$1.75m.

Why this assessment?

- Accountability
- Transparency
- Continuous improvement
- Professionalism
- Public trust

Assessors

- Conducted by NCACP
 - ➤ Chief (ret.) Thurman Whisnant, Hickory Police Department
 - Chief Whisnant recently retired after 30 years with Hickory PD. During his career, he led numerous internal investigations, oversaw a robust K9 program, and served as Chief of Police from 2017-2023. Thurman is a graduate of the FBI National Academy.
 - ➤ Commander (ret.) Chris Williams, El Monte, CA Police Department
 - Commander Williams recently retired after 30 years law enforcement service in California.
 He was a K9 handler, trainer, and commander of field operations. Chris is a graduate of the
 FBI National Academy and now resides in Hendersonville.
 - ➤ Officer David Green, Raleigh Police Department
 - Officer Green currently works for the Raleigh Police Department. He is a certified K9 trainer for the department with over 20 years' experience training police dogs and handlers. He is a USPCA Master Trainer.

Assessment

- The assessment focused on three things primarily:
 - 1. The August 2, 2020, incident.
 - 2. K9 deployments for five years proceeding the 8/2/2020 incident.
 - 3. A general overview of the HPD K9 program to date.
- The assessment was <u>not</u> an investigation to place blame on any individual.
- It set out to identify deficiencies and offer recommendations to improve K9 operations.

Assessment cont...

- The assessment took more than three months to conduct.
- Assessors interviewed the O'Neills, their neighbors, five HPD employees, two former HPD employees, and other subject matter experts.
- Assessors reviewed more than 1,000 pages of information relevant to this incident.
- Assessors submitted a 120-page final report.

Findings

- Multiple failures were identified in the 8/2/2020 incident.
- The scope and severity of the incident was not shared with City leaders outside the department.
- There was a systemic pattern of mismanagement of the K9 program preceding the 8/2/2020 incident.
- Documentation, accountability, and/or support was absent leading up to the 8/2/2020 incident.
- The environment within the department was ripe for an incident of this magnitude to occur.

Recommendations

- Adopt industry best practices in the development of a K9 policy.
- All K9s must be property of the City of Hendersonville.
- A rigorous handler selection is necessary.
- Regular training must be an agency priority.
- Accountability for deficiencies is necessary.
- All K9 operations must be the responsibility of one member of the PD executive team reporting directly to the Chief of Police.

Improvements

- Even prior to the assessment, the City Manager and Chief of Police put protocols in place to reduce risk.
- The O'Neills expressed appreciation for the actions the city is taking following the filing of the lawsuit.
- HPD staff are encouraged by the direction the department is headed under Chief Myhand's leadership.
- The city is being open and responsive to the recommendations documented in the report.

Departmental Response

- K9 program was suspended indefinitely September 2022.
- HCSO conducts all K9 operations for HPD thru mutual aid.
- Policy and procedures are in place to ensure the department's response to a negative incident does not mirror the 8/2/2020 incident.
- HPD has implemented performance management software to document employee performance.
- Any future K9 program will be highly structured and monitored by my office.

Departmental Response cont.

- HPD is working to be the most transparent police agency in western NC.
- · We regularly reinforce an improvement mindset to staff.
- · We are accredited through the NCLM Risk Reduction Review.
- We are enrolled in the accreditation processes through CALEA and NCLEA.
- CALEA Accreditation is expected in fall 2024.
- We will maintain excellence and accountability moving forward.

Departmental Response cont.

- Personal and agency accountability is a requirement.
- Robust leadership training plans will be implemented.
- · Performance management is our highest priority.
- Achieving and maintaining accreditation is critical for future risk management.
- · Making sure we do not repeat history is essential.

5. <u>CLOSED SESSION</u>

At 4:33 p.m., Council Member Jerry Smith moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

6. ADJOURN

There being no further business, the meeting wa	s adjourned at 5:42 p.m.	upon unanimous assent of
the Council.		

ATTEST:	Barbara G. Volk, Mayor



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Michael Huffman **MEETING DATE:** October 5th, 2023

AGENDA SECTION: CONSENT DEPARTMENT: Engineering -

Stormwater

TITLE OF ITEM: Approval of Resolution Committing to the Implementation of Phase II of the

Lower Mud Creek Floodplain Restoration Project

SUGGESTED MOTION(S):

I move City Council approve the resolution Committing to the Implementation of Phase II of the Lower Mud Creek Floodplain Restoration Project

SUMMARY:

The City of Hendersonville has been awarded \$250,000 from the Golden LEAF Foundation Flood Mitigation program to begin engineering and design work for Phase II of the Lower Mud Creek Floodplain Restoration project. The implementation of Phase II and the use of funds from Golden LEAF are contingent upon the acquisition of flood prone properties that have been identified in the project application.

BUDGET IMPACT: \$250,000

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

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

ATTACHMENTS:

Daga	14: 4	
Keso	lution#	-

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL COMMITTING TO THE IMPLEMENTATION OF PHASE II OF THE LOWER MUD CREEK FLOODPLAIN RESTORATION PROJECT (23006)

WHEREAS, the City of Hendersonville recognizes the importance of floodplain restoration and mitigation to protect our community and environment;

WHEREAS, the Lower Mud Creek Floodplain Restoration Project has been identified as a critical initiative to address flood risks, protect natural habitats, and enhance the overall resilience of our city;

WHEREAS, the Golden LEAF Foundation has generously awarded the City of Hendersonville a grant in the amount of \$250,000 to support the implementation of Phase II of the Lower Mud Creek Floodplain Restoration Project;

WHEREAS, the successful implementation of this project will contribute to the long-term safety and well-being of our citizens, improve water quality, and enhance the quality of life in our community;

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

- 1. The City of Hendersonville hereby commits to the implementation of Phase II of the Lower Mud Creek Floodplain Restoration Project, using the \$250,000 grant funds provided by the Golden LEAF Foundation.
- 2. The implementation of Phase II of the Lower Mud Creek Floodplain restoration is contingent upon the acquisition of the properties outlined in the grant application that was submitted to Golden LEAF foundation in May of 2023.

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

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



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Daniel Heyman **MEETING DATE:** October 5, 2023

AGENDA SECTION: CONSENT DEPARTMENT: Legal

TITLE OF ITEM: Consider Negotiated Offer to Purchase North Edwards Street lot, Parcel B1, Plat

Book 2023 page 14832, Henderson County registry.

SUGGESTED MOTION(S):

I move City Council to adopt the Resolution By The City of Hendersonville City Council of Proposed Acceptance of Negotiated Offer as presented.

SUMMARY: The City has received an Offer to Purchase certain property off of North Edwards Street more particularly described as Parcel B1, containing 2,227 sq. ft., as shown on that Plat recorded in Plat Book 2023 at page 14832, Henderson County registry, from WNH Investments, LLC. A copy of the Offer is attached to this Agenda item. This parcel, owned by the City, is a small parking area adjacent to City Hall, that due to elevation and circulation is not practical for use by visitors to or employees at City Hall. The Property is accessed from the North Edwards Street alley. The Offer is \$30,000.00.

Pursuant to N.C.G.S. § 160A-269, this Offer must be advertised for upset bid before it can be finally accepted by the City Council. Following the procedure outlined in § 160A-269, the Staff Attorney has prepared the attached Resolution for consideration by City Council. If approved the Resolution will issue proposed (not final) acceptance, and authorize the Offer to be advertised for upset bid. An ad will be then be placed in the newspaper, inviting upset bids. Any upset bid received will then be advertised for further upset bids, until a period of 10 days passes without the receipt of upset bids. The highest bid received will be presented back to City Council for consideration. The Council may at that time issue a final acceptance of the highest bid received, or may reject it.

ATTACHMENTS:

Proposed Resolution Signed Offer to Purchase Map

Resolution # -

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL OF PROPOSED ACCEPTANCE OF NEGOTIATED OFFER

WHEREAS, the City of Hendersonville owns certain property off of North Edwards Street adjacent to City Hall, and identified as Parcel B1, containing 2,227 sq. ft., as shown on that Plat recorded in Plat Book 2023 at page 14832, in the Office of the Register of Deeds for Henderson County, being a portion of the property with a tax parcel ID of 9568880780, and having been acquired by the City of Hendersonville in Deed Book 399 at Page 565 of the Henderson County Register of Deeds Office ("Property"); and

WHEREAS, North Carolina General Statute Section 160A-269 permits the City to sell property by upset bid after receiving and offer to purchase; and

WHEREAS, the City has received a NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269 ("Offer"), a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to the Offer, WNH Investments, LLC, ("Buyer"), is offering to purchase the Property for the sum of \$30,000, subject to the terms and conditions contained within the Offer; and

WHEREAS, subject to the terms below, the Hendersonville City Council wishes to issue a proposed acceptance of the Offer.

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Hendersonville resolves that:

- 1. The Council declares the Property surplus, and proposes to accept the Offer pursuant to the procedures of 160A-269.
- 2. The Buyer is required to deposit with the City Clerk a sum equal to 5 % of the offer, or \$1,500.00. The Clerk will cause a notice to be published in a newspaper of record advising that upset bids will be accepted within 10 days of the date of publication, which bid shall increase the proposed sales price by at least an amount equal to 10% of the first \$1,000.00 of the purchase price and 5% of the excess. Such upset bids shall be made to the City Clerk and accompanied by a deposit equal to 5% of the new purchase price, at which time the Clerk shall then publish a new notice advising that further upset bids, increased in the same minimum amount may be accepted within 10 days from the date of publication.

- 3. Each bidder submitting an upset bid shall be bound by the same terms and conditions as contained in the Offer. Each bidder shall therefore be required to sign an offer in the form of the Offer attached hereto as Exhibit A, with the only differences being (1) a revised purchase price; and (2) modification of the terms of the upset bid procedure described in the Offer to reflect the terms of this Resolution.
- 4. When there are no further bidders, the high bid shall be reported to the Council by the Clerk.
- 5. Following a final acceptance by the Council, the closing shall occur within 30 days of the conclusion of the due diligence period.
- 6. The City reserves the right to withdraw the property from sale at any time before the issuance of a final acceptance and the right at any time to reject all bids.

Adopted by the City Council of the City of, 20	ty of Hendersonville, North Carolina on this day
Attest:	Barbara G. Volk, Mayor, City of Hendersonville
Jill Murray, City Clerk	
Approved as to form:	
Angela S. Beeker, City Attorney	

STATE OF NORTH CAROLINA COUNTY OF HENDERSON

NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269 ("Offer")

NOW COMES WNH INVESTMENTS, LLC, a North Carolina limited liability company, ("Buyer") and offers to purchase from the CITY OF HENDERSONVILLE, a North Carolina municipal corporation ("CITY") that property more particularly described in paragraph below entitled "PROPERTY", attached hereto and incorporated by reference, on the terms and conditions hereinafter set forth:

PROPERTY: Lying and Being in HENDERSON County, being all of that real property identified as Parcel B1, containing 2,227 sq. ft., as shown on that Plat recorded in Plat Book 2023 at page 14832, Henderson County registry. The Property is a portion of a tax parcel ID of 9568880780. The property was acquired by the CITY in Deed Book 399 at Page 565 of the Henderson County Register of Deeds Office.

OFFER: Buyer offers to pay to CITY the sum of \$30,000.00.

ADDITIONAL TERMS AND CONDITIONS: Those additional terms and conditions as specified in Exhibit A, attached hereto and incorporated by reference, shall be deemed part of this Offer as if fully set forth herein.

UPSET BID PROCEDURE TO GOVERN: It is acknowledged that the sale of the Property, if any, will be governed by the procedures of North Carolina General Statute § 160A-269 (the "Statute"). This Offer will be presented to the Hendersonville City Council for consideration of whether to issue a proposed acceptance of the Offer. "Proposed Acceptance" shall mean the adoption of a Resolution by the Hendersonville City Council at a duly held meeting, proposing to accept this Offer, and directing that this Offer be advertised for upset bid. If Hendersonville's City Council issues a Proposed Acceptance, the Buyer shall deposit with the CITY Clerk a sum equal to five (5%) percent of this Offer. The CITY shall then cause to be published in a newspaper of record a notice that it proposes to accept this Offer, generally describing the Property and the terms of this Offer, and advise that anyone may make an upset bid within ten days of the publication of the notice in an amount prescribed by the Statute. If there is an upset bid, then upon the maker of the upset bid making the deposit with the CITY Clerk as is required by the Statute, the deposit made hereunder shall be refunded, and this Offer shall be deemed null and void. If there is no upset bid received, this Offer will again be presented to the Hendersonville City Council for Final Acceptance. "Final Acceptance" shall mean the adoption of a Resolution by the City Council, adopted at a duly called meeting, stating that this Offer has been finally accepted.

DUE DILIGENCE PERIOD: If the City Council issues Final Acceptance of this Offer, then there shall be a due diligence period of 30 days, beginning on the date of the Final Acceptance, during which period Buyer may terminate the Agreement, formed by the Final Acceptance of this Offer, for any reason or for no reason at all. Said period shall be referred to as the "Due Diligence Period." At the commencement of the Due Diligence Period, the CITY agrees to provide Buyer with any information and reports that it or its consultants have regarding the Property, including title and survey information, soils reports and environmental assessments. During the Due Diligence Period, Buyer shall be permitted to make such investigations of the Property, at Buyer's sole expense, and shall be permitted to make applications for any and all developmental approval of Buyer's plans for the Property. Buyer shall repair and return to the condition as of the date of this Offer any damage caused by all investigations of the Property performed by or on behalf of the Buyer.

At least ten days prior to the expiration of the Due Diligence Period, the Buyer may request in writing, an extension the Due Diligence Period for an additional 30 days. Extensions shall be at the sole and absolute discretion of the CITY.

CLOSING: If the City Council issues Final Acceptance of this Offer, then closing shall occur within 30 days after the conclusion of the Due Diligence Period at CITY offices in Hendersonville, or such other place as is mutually agreeable to the parties. At closing, CITY shall deliver the title as described hereinbelow to the Property, and Buyer shall pay to CITY the balance of the purchase price in certified funds.

TITLE: CITY shall deliver a fee simple title to the Property by a Special Warranty Deed, subject to Permitted Exceptions as provided hereinbelow.

PERMITTED EXCEPTIONS: Title to the Property shall be subject to valid and enforceable restrictions of record and easements and rights of way affecting the Property, any applicable zoning or other land use laws and ordinances, and the lien for ad valorem taxes, if any.

The CITY will reserve easements for the placement, construction, replacement, and repair of utility lines on the Property.

COSTS: CITY shall be responsible for preparing the deed conveying title, and any documentary stamps that it is not exempt from paying. Buyer shall be responsible for all other costs. Each party will be responsible for its own attorney's fees.

OFFER AND ACCEPTANCE. This instrument shall constitute a binding offer by Buyer to the CITY and shall remain open for acceptance by the CITY until such time as (1) an upset bid has been received, and the bid deposit has been received by the CITY for such upset bid; (2) the CITY rejects this Offer, or (3) the CITY issues a Final Acceptance

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EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS

1. **DISCLAIMER OF WARRANTIES:** BUYER ACKNOWLEDGES AND AGREES THAT THE CITY DOES NOT, BY THE ISSUANCE OF A PROPOSED ACCEPTANCE OR FINAL ACCEPTANCE, OR BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH THE SALE OF THE PROPERTY, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CITY MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO MATTERS OF TITLE (OTHER THAN THE CITY'S LIMITED WARRANTY OF TITLE SET FORTH IN THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING), SUCH MATTERS AS AN ACCURATE SURVEY WOULD REVEAL, VALUE & MARKETABILITY OF THE PROPERTY, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED SUBSTANCE), VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (HEREINAFTER COLLECTIVELY CALLED THE "DISCLAIMED MATTERS"). BUYER AGREES THAT, WITH RESPECT TO THE PROPERTY, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF THE CITY. IF THE CITY ISSUES A FINAL ACCEPTANCE FOR THE PROPERTY, THE CITY SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY THE CITY OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS PARAGRAPH, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST THE CITY WITH RESPECT TO (i) THE DISCLAIMED MATTERS, (ii) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, (iii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY ENVIRONMENTAL PROTECTION. POLLUTION CONTROL OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REOUIREMENTS, INCLUDING, WITHOUT LIMITATION, CERCLA, AND (iv) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CONSUMMATION OF THE PURCHASE AND SALE OF THE PROPERTY ON THE CLOSING DATE, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE

Exhibit A Page 1

PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVI

2. **Form of Deposit.** Buyer's five percent deposit shall be made in cash, cashier's check, or money order. Any interest earned on the deposit while held by the CITY shall accrue to the benefit of the CITY, whether or not the Hendersonville City Council issues a Final Acceptance of this Offer and whether or not the purchase and sale of the Property contemplated hereby is consummated in accordance with the terms and provisions of this Offer.

3. Other Payments at Closing.

- a. **Taxes.** Buyer will be responsible for ad valorem taxes accruing after the date of sale, it being acknowledged that the Property has been exempt from taxation during the period The CITY has owned the Property. In the event Closing occurs in 2024, taxes will be prorated between the CITY and the Buyer over the 2024 calendar year.
- b. **Dues, Assessments, Common Area Maintenance**. All dues, assessments and common area maintenance charges, and similar impositions imposed upon or assessed against the Property (herein called the "CAM Fees"), for the year in which Closing occurs shall be prorated as of the Closing Date on a calendar year basis.
- c. Other. Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, the CITY shall deliver to Buyer the bills therefor promptly upon receipt thereof and Buyer shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent.

4. <u>Possession at Closing</u>. The CITY shall surrender possession of the Property to Buyer on the Closing Date, subject to the Permitted Exceptions.

5. Remedies.

(a) If the Hendersonville City Council issues a Final Acceptance of this Offer, and if the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Offer due to circumstances or conditions which constitute a default by Buyer under this Offer, the bid deposit shall retained by the CITY as the CITY's full liquidated damages for such default. The parties acknowledge that the CITY's actual damages in the event of a default by Buyer will be difficult to ascertain, that such liquidated damages represent the parties' best estimate of such damages, and that the CITY and Buyer believe such liquidated damages are a reasonable estimate of such damages. The parties expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages, in the event of a

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default. Such liquidated damages shall be the sole and exclusive remedy of the CITY by section 5, It a default by Buyer, and the CITY hereby waives and releases any right to sue Buyer for specific performance of this Offer or to prove that the CITY's actual damages exceed the amount which is herein provided to the CITY as full liquidated damages.

(b) If the Hendersonville City Council issues a Final Acceptance of this Offer, and if the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Offer due to circumstances or conditions which constitute a default by the CITY under this Offer, the Earnest Money shall be refunded to Buyer promptly upon request, and Buyer, as its sole and exclusive remedy, shall have the right to terminate this Offer, in which event all rights and obligations of the parties under this Offer shall expire, and this Offer shall become null and void, and the CITY shall have no other liability to Buyer under this Offer.

6. General Provisions.

- a. **Brokers.** There are no real estate brokers, agents or consultants involved in the making of this Offer, or in any Proposed Acceptance or Final Acceptance issued by the CITY, and the parties hereto shall indemnify and hold each other harmless from any fee or brokerage claims arising out of this transaction.
- b. **Divestment Act.** The Buyer is not listed on the Final Divestment List ("Divestment List") created by the North Carolina State Treasurer pursuant of Article 6E, N.C.G.S. § 147-86.55, et seq, ("Iran Divestment Act of 2015"). The Buyer shall not utilize in the performance of its obligations hereunder any agent, contractor or subcontractor listed on the Divestment List.
- c. **E-Verify.** The Buyer shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina. Further, if the Buyer utilizes an agent, contractor or subcontractor, Buyer shall require them to comply with the requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina.
- d. **Notice.** Whenever any notice, demand or request is required or permitted under this Offer, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier (UPS, FedEx, etc.) for next business day delivery, to the addresses set forth below.

To the Buyer: WNH INVESTMENTS, LLC

Attn: Harry B. Iler III

521 N Main St

Hendersonville NC 28792

To the CITY: CITY OF HENDERSONVILLE

Attn: John Connet, City Manager

160 6th Avenue East

Hendersonville NC 28792

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With copy to: Angela Beeker, City Attorney

160 6th Avenue East Hendersonville NC 28792

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be. Notices may be sent by email or facsimile for convenience, but must be followed up by one of the means above, which will be the official notice.

- e. **Assignment.** This Offer may not be assigned by the Buyer.
- f. **Headings**. The use of headings, captions and numbers in this Offer is solely for the convenience of identifying and indexing the various provisions in this Offer and shall in no event be considered otherwise in construing or interpreting any provision in this Offer.
- g. Applicable Law, Venue. This Offer shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina. The sole venue for any suit, claim or action shall be in a state or federal court sitting in HENDERSON County, North Carolina. Nothing herein shall be deemed to confer jurisdiction upon the federal courts, except as may be otherwise provided by law.
- h. Entire Offer; Modification. This Offer supersedes all prior discussions and agreements among the CITY and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Offer contains the sole and entire understanding among the CITY and Buyer with respect thereto. This Offer shall not be modified or amended except by an instrument in writing executed by or on behalf of the CITY and Buyer.
- i. Attorney's Fees. In the event of any litigation between Buyer and the CITY arising under or in connection with this Offer, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, expenses and disbursements) incurred by the prevailing party.
- j. Authority. Each party hereto warrants and represents that such party has full and complete authority to enter into this Offer and each person executing this Offer on behalf of a party

Exhibit A Page 4

Section 5, Item C.

warrants and represents that he has been fully authorized to execute this Offer of such party and that such party is bound by the signature of such representative.

- k. **Counsel**. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Offer and has had ample opportunity to read, review, and understand the provisions of this Offer.
- 1. **No Construction Against Preparer**. No provision of this Offer shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
- m. **No Lien**. This Offer is not and shall not be deemed or considered to convey or be an interest in or lien against the Property.
- n. **No Recording**. In no event shall this Offer or any memorandum hereof be recorded by Buyer in any public records, and any such recordation or attempted recordation shall constitute a breach of this Offer by Buyer.
- o. Time of Essence; Dates. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically to be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date," if any, shall be deemed to refer to the date the CITY issues a Final Acceptance of this Offer.

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
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of this Offer, whichever occurs first. In the event the CITY receives an upset bid and the bid deposit for such upset bid is received by the CITY, or in the event the CITY rejects this Offer, then this Offer shall be deemed terminated, and neither party hereto shall have any obligation, duty, or liability to the other party. In the event the CITY issues a Final Acceptance of this Offer, this Offer shall become a binding Agreement between the parties hereto and shall be interpreted as an Agreement between the parties hereto in spite of the many references to this document as an "Offer."

REJECTION OF OFFER: It is understood and agreed by the Buyer that at any time prior to the issuance of a Final Acceptance of this Offer, the CITY may (1) reject any and all offers (including this Offer) and/or upset bids received, and/or (2) withdraw the Property from sale, as allowed by North Carolina General Statute § 160A-269.

EXECUTION OF THIS OFFER: The Buyer represents and warrants that this Offer has been duly authorized, and that the person signing has the authority to sign this Offer on behalf of the Buyer.

Date of Final Acceptance by the CITY:



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CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Murr **MEETING DATE:** 10/05/2023

AGENDA SECTION: CONSENT DEPARTMENT: Administration

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

SUGGESTED MOTION(S):

I move City Council adopt the budget amendments 10052023-01, 10052023-02, 10052023-03, 10052023-04, and 10052023-05 as presented.

SUMMARY:

- 10052023-01: \$20,000 increase to the Grant Fund (301) for the Governor's Highway Safety Program/Overtime Grant (G2302) for Police Dept. Traffic Enforcement Overtime.
- 10052023-02: \$250,000 increase to the Stormwater Capital Project Fund (467) following the receipt of a GoldenLeaf grant to fund the Lower Mud Creek Stormwater Project (G2306).
- 10052023-03: \$6,000 increase to the Health and Welfare Fund (080) to budget for the purchase and sale of additional Turkey Trot shirts.
- 10052023-04: \$1,137 increase to the 7th Ave MSD Fund (021) to fund the organic garden project in FY24.
- 10052023-05: Amendment moving 2023 Installment Financing funds from the City Hall and Operations Renovation Project (21017) to the City Hall Exterior Project (19140) as indicated in the financing closing book.

BUDGET IMPACT: Detailed Above.

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

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

ATTACHMENTS:

FY24 Budget Amendments 10052023-01 through 10052023-05.

TO MAYOR & COUNCIL APPROVAL: October 05, 2023

FISCAL YEAR 2024 FORM: 10052023-01

BUDGET AMENDMENT

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ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
301-0000-420050-G2302	Grant Revenue (GHSP)	25,000	20,000	i	45,000
301-1300-501010-G2302	Overtime	20,720	16,576	-	37,296
301-1300-502001-G2302	FICA Tax Expense	1,579	1,264	1	2,843
301-1300-502050-G2302	Retirement Expense	2,701	2,160	•	4,861
FUND 301 (GHSP-O/T)	TOTAL REVENUES	25,000	20,000	-	45,000
FUND 301 (GHSP-0/1)	TOTAL EXPENDITURES	25,000	20,000	-	45,000
					-

An amendment increasing the Governor's Highway Safety Program Traffic Enforcement Overtime (GHSP-O/T) Grant, #G2302 by \$20,000 to reflect a grant award in September 2023. The grant funds are appropriated for use in paying overtime, FICA, and retirement expenditures related to the City's traffic safety and enforcement initiatives.

The City Manager and City Clerk certify budget ordinance amendment 10052023-01 was approved by City	Council on October 05, 2023.
City Manager	Date
City Clerk	Date

TO MAYOR & COUNCIL APPROVAL: October 05, 2023

FISCAL YEAR 2024 FORM: 10052023-02

BUDGET AMENDMENT

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ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
Transfer in (from 067, FY24)	109,300	-	-	109,300
Grant Revenue (NCLWF)	1,120,929	-	-	1,120,929
Grant Revenue (NCDWI)	1,897,236	-	-	1,897,236
Contribution (GoldenLEAF)	-	250,000	-	250,000
Capital Outlay - Land/Easement/ROW	609,000	-	-	609,000
Capital Outlay - CIP	2,518,465	250,000	-	2,768,465
TOTAL REVENUES	3,127,465	250,000	-	3,377,465
TOTAL EXPENDITURES	3,127,465	250,000	-	3,377,465
	Transfer in (from 067, FY24) Grant Revenue (NCLWF) Grant Revenue (NCDWI) Contribution (GoldenLEAF) Capital Outlay - Land/Easement/ROW Capital Outlay - CIP TOTAL REVENUES	Transfer in (from 067, FY24) Grant Revenue (NCLWF) Grant Revenue (NCDWI) Contribution (GoldenLEAF) Capital Outlay - Land/Easement/ROW Capital Outlay - CIP TOTAL REVENUES 1,120,929 1,897,236 609,000 2,518,465	Transfer in (from 067, FY24) 109,300 - Grant Revenue (NCLWF) 1,120,929 - Grant Revenue (NCDWI) 1,897,236 - Contribution (GoldenLEAF) - 250,000 Capital Outlay - Land/Easement/ROW 609,000 - Capital Outlay - CIP 2,518,465 250,000 TOTAL REVENUES 3,127,465 250,000	Transfer in (from 067, FY24) 109,300 - - Grant Revenue (NCLWF) 1,120,929 - - Grant Revenue (NCDWI) 1,897,236 - - Contribution (GoldenLEAF) - 250,000 - Capital Outlay - Land/Easement/ROW 609,000 - - Capital Outlay - CIP 2,518,465 250,000 - TOTAL REVENUES 3,127,465 250,000 -

An amendment increasing the Lower Mud Creek Stormwater Project (G2306) following the receipt of a \$250,000 contribution from the GoldenLEAF foundation.

The City Manager and City Clerk certify budget ordinance amendment 10052023-02 was ap	proved by City Council on October 05, 2023.
City Manager	Dat
City Clerk	 Dat

Section 5, Item D.

TO MAYOR & COUNCIL APPROVAL: October 05, 2023

FISCAL YEAR 2024 FORM: 10052023-03

BUDGET AMENDMENT

FUND 080

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
080-0000-460001	Misc. Income (Shirt/Packet Sales)	13,000	6,000	-	19,000
080-3101-519200	Contracted Services	64,125	6,000	-	70,125
FUND 080	TOTAL REVENUES	-	6,000	-	-
FUND 080	TOTAL EXPENDITURES	-	6,000	-	-

A budget amendment increasing turkey trot revenues and correlating expenditures for more turkey trot shirt purchases.

The City Manager and City Clerk certify budget ordinance amendment 10052023-03 was approved by City Council on October 05, 2023.	
City Manager	Date
City Clerk	Date

Section 5, Item D.

TO MAYOR & COUNCIL APPROVAL: October 05, 2023

FISCAL YEAR 2024 FORM: 10052023-04

BUDGET AMENDMENT

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ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
021-0000-470900	Fund Balance Appropriated	63,443	1,137	-	64,580
021-2202-532299	Misc. Program Expenditure	-	1,137	-	1,137
FUND 021	TOTAL REVENUES	-	1,137	-	-
FOND 021	TOTAL EXPENDITURES	-	1,137	ı	-

An amendment appropriating 7th Avenue MSD fund balance for expenditures related to the organic garden project.

The City Manager and City Clerk certify budget ordinance amendment 10052023-04 was approved by City Council on October 05, 2023.	
City Manager	Date
City Clerk	Date

TO MAYOR & COUNCIL APPROVAL: October 05, 2023

FISCAL YEAR 2024 FORM: 10052023-05

BUDGET AMENDMENT

FUND 410 460 467					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470010-21017	Debt Proceeds (2023 IFC)	6,425,000	-	4,909,250	1,515,750
410-1002-550103-21017	Capital Outlay - CIP	6,425,000	-	4,935,000	1,490,000
410-1002-560900-21017	Cost of Issuance	-	25,750	-	25,750
460-0000-470010-21017	Debt Proceeds (2023 IFC)	-	3,499,750	-	3,499,750
460-1002-550103-21017	Capital Outlay - CIP	-	3,450,000	-	3,450,000
460-1002-560900-21017	Cost of Issuance	-	49,750	-	49,750
467-0000-470010-21017	Debt Proceeds (2023 IFC)	-	377,000	-	377,000
467-1002-550103-21017	Capital Outlay - CIP	-	372,500	-	372,500
467-1002-560900-21017	Cost of Issuance	-	4,500	-	4,500
FUND 410, 460, & 467	TOTAL REVENUES	6,425,000	3,876,750	4,909,250	5,392,500
#21017	TOTAL EXPENDITURES	6,425,000	3,902,500	4,935,000	5,392,500
410-0000-470010-19140	Debt Proceeds (2023 IFC)	-	516,250	-	516,250
410-0000-470100-19140	Transfer In (from 010)	254,696	-	-	254,696
410-1002-550102-19140	Capital Outlay - Services and Fees	22,500	-	-	22,500
410-1002-550103-19140	Capital Outlay - CIP	232,196	516,250	-	748,446
460-0000-470010-19140	Debt Proceeds (2023 IFC)	-	516,250	-	516,250
460-0000-470100-19140	Transfer In (from 060)	140,545	-	-	140,545
460-0000-470900-19140	Fund Balance Appropriated	50,789	-	-	50,789
460-0000-598901-19140	Transfer Out	63,362	-	-	63,362
460-1002-550102-19140	Capital Outlay - Services and Fees	22,500	-	-	22,500
460-1002-550103-19140	Capital Outlay - CIP	105,472	516,250	-	621,722
FUND 410 & 460	TOTAL REVENUES	446,030	1,032,500		1,478,530
#19140	TOTAL EXPENDITURES	446,030	1,032,500	-	1,478,530

Section 5, Item D.

2023 Installment Financing Subtotal	6,425,000
Other Financing Sources Subtotal	446,030
Total Project Revenues (21017 and 19140)	6,871,030
Total Project Appropriation (21017 and 19140)	6,871,030
An amendment placing the 2023 Installment Financing Budget needed for the City Hall Exterior Impli- Hall and Operations Renovations).	rovements Project in project code 19140 rather than project 21017 (City
The City Manager and City Clerk certify budget ordinance amendment 10052023-05 was approved by	y City Council on October 05, 2023.
City Manager	Date
City Clerk	Date



Gath of Office

Police Officer

I, Colby Thomas Torbett, do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of the State of North Carolina; that I will not be influenced in any matter on account of personal bias or prejudice; that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith; and that I will faithfully and impartially discharge and execute the duties of Police Officer of the City of Hendersonville according to the best of my skill, abilities, and judgement; so help me, God."

	October 5, 2023
Name	Date
On October 5, 2023, Colby Thomas Torbett, person Oath of Law Enforcement Officers and signed the a	
Seal	Barbara Volk, Mayor

Proclamation

Children's Environmental Health Day

WHEREAS, the aim of Children's Environmental Health (CEH) Day is to raise awareness about the importance of clean air and water, safe food and consumer products, and healthy environments to children's health and development; and

WHEREAS, CEH Day was created by the Children's Environmental Health Network and celebrated for the first time on October 13, 2016; and

WHEREAS, CEH Day is observed on the second Thursday in October as a means to celebrate progress of the children's environmental health movement and create a strong network of child health advocates; and

WHEREAS, CEH Day is a national effort supported by individuals, non-profit organizations, and government agencies; and

WHEREAS, CEH Day encourages individuals and organizations to raise awareness and understanding of children's environmental health issues, seek improved protections for all children, and to perform acts of sustainability or environmental health wellness; and

WHEREAS, together, we can safeguard the health, safety and wellbeing of our most precious resource: children;

THEREFORE I, Barbara Volk, Mayor of the City of Hendersonville, do hereby proclaim Thursday, October 12, 2023 as:

CHILDREN'S ENVIRONMENTAL HEALTH (CEH) DAY

in Hendersonville and urge all citizens to observe this day with awareness-raising and environmental health and stewardship activities to create a healthier environment for our children.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Hendersonville to be affixed this 5th day of October, 2023.

Justara Wolk

Mayor, City of Hendersonville

Attest:

Seal

Environmenta lealth Day

Mayoral Proclamation

GreaseBusters Day 2023

Fighting Hendersonville's Most Wanted- Fats, Oils, Grease, and Wipes!





October 26, 2023

WHEREAS, clean water is our most valuable natural resource; and

WHEREAS, Fats, oils, and grease (FOG) pollution discharge poses a serious risk to the integrity of our water systems, interferes with the ability to properly clean polluted waters; and

WHEREAS, proper treatment of polluted waters is essential for public health and welfare as well as a healthy natural environment; and

WHEREAS, the hard work performed by the entire water sector, surveying and repairing buried pipes, operators ensuring the safety and protection of the natural environment in which we all live, and ensuring compliance with pollution control requirements; and

WHEREAS, FOG buildup in a collection system is a significant cause of sanitary sewer overflows; and

WHEREAS, we are all stewards of the water infrastructure upon which current and future generations depend; and

WHEREAS, the citizens of our city are called upon to help protect our critical water infrastructure by limiting the amount of FOG discharged into our water systems

NOW, THEREFORE, I, Barbara Volk, Mayor of the City of Hendersonville, do hereby proclaim October 26, 2023 to be GreaseBusters Day within the City of Hendersonville.

PROCLAIMED this 5th day of October, 2023.

Seal



Barbara G. Volk, Mayor City of Hendersonville

ttest:

PROCLAMATION

City of Hendersonville, Fire Prevention 2023

WHEREAS, the city of Hendersonville, North Carolina is committed to ensuring the safety and security of all those living in and visiting Hendersonville; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires caused 2,840 civilian deaths in the United States in 2021, according to the National Fire Protection Association® (NFPA®), and fire departments in the United States responded to 353,500 home fires; and

WHEREAS, smoke alarms sense smoke well before you can, alerting you to danger in the event of fire in which you may have as little as 2 minutes to escape safely; and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires in half; and

WHEREAS, the city of Hendersonville residents should be sure everyone in the home understands the sounds of the smoke alarms and knows how to respond; and

WHEREAS, the city of Hendersonville residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, the city of Hendersonville residents will make sure their smoke and carbon monoxide (CO) alarms meet the needs of all their family members, including those with sensory or physical disabilities; and

WHEREAS, the city of Hendersonville first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, the city of Hendersonville residents that are responsive to public education measures are better able to take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, the 2023 Fire Prevention WeekTM theme, "Cooking safety starts with YOU. Pay attention to fire preventionTM' effectively serves to remind the city of Hendersonville it is important to have a home fire escape plan.

THEREFORE, I Barbara G. Volk, Mayor of Hendersonville, NC, do hereby proclaim October 8-14, 2023, as Fire Prevention Week throughout this city, and I urge all the people of Hendersonville to plan and practice a home fire escape for Fire Prevention Week 2023 and to support the many public safety activities and efforts of the city of Hendersonville's fire and emergency services.

PROCLAIMED this 5th day of October, 2023.

Seal

Barbara G. Volk, Mayor City of Hendersonville

Proclamation

Filipino American History Month 2023 Observance

WHEREAS, October is designated Filipino American History Month to commemorate the arrival of Filipinos in America on October 18, 1587, landing in Moro Bay, off the coast of California as part of the Manila Galleon trade from Manila to Acapulco that began in 1565; and

WHERAS, *Filipino American History Month* honors the history and experiences of Filipinos in the United States. In October, 2009, the US congress recognized October as Filipino American History Month. Various states, counties and cities have established proclamations and resolutions declaring observance of Filipino American History Month including the state of Georgia in 2021; and

WHEREAS, Filipino Americans have made significant contributions in the areas of civil rights, education, politics, entertainment, the armed forces and in many other endeavors. The Filipino American community is the second largest Asian American group in the nation; and

WHEREAS, the numbers of Filipino Americans have been historically large on the west coast, there are growing communities of Filipino Americans in North and South Carolina, Virginia, and Georgia. There are growing numbers of Filipinos in Hendersonville; and

WHERAS, there is a rich Filipino American history that is being discovered. We encourage people to learn more about this growing community by visiting the website of the Filipino American National Historical Society at www.fanhs-national.org.

NOW, THEREFORE, I, Barbara G. Volk, Mayor of the City of Hendersonville, North Carolina, proclaim that October be declared

FILIPINO AMERICAN HISTORY MONTH

in the City of Hendersonville, North Carolina.

PROCLAIMED this 5th day of October, 2023.

Seal

Barbara G. Volk, Mayor City of Hendersonville

test: _______

Jill Murray, City Clerk



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brent Detwiler **MEETING DATE:** October 5, 2023

AGENDA SECTION: PRESENTATION DEPARTMENT: Engineering

TITLE OF ITEM: Recognition of Michael Huffman, 2023 North Carolina Stormwater Professional

of the Year - Brent Detwiler, Public Services Director

SUGGESTED MOTION(S):

N/A

SUMMARY:

Michael Huffman was recognized on September 19, 2023, at the APWA Stormwater Management Division Annual Conference in Charlotte and presented with the 2023 H. Rooney Malcom Award for Stormwater Professional of the Year. The award is presented annually to an individual who stands out among their peers for exceptional leadership, innovation, agency service, customer service, community service, and contribution to their profession related to the stormwater field. We are so proud of everything that Mike has accomplished to improve the City of Hendersonville and our greater community and would like to recognize him for this incredible achievement.

BUDGET IMPACT: N/A

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

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:

Nomination and Narrative

Award Presentation Introduction and Photo

AMERICAN PUBLIC WORKS ASSOCIATION



H. ROONEY MALCOM AWARD STORMWATER PROFESSIONAL OF THE YEAR

One of the highlights of the Stormwater Management Division Annual Conference is the recognition of a stormwater professional that stands out among their peers for exceptional leadership, innovation, agency service, customer service, community service, and contribution to their profession related to the stormwater field.



2022 recipient of the Stormwater Professional of the Year, **Daryl Hammock**

The Stormwater Management Division Board is now accepting nominees from the North Carolina stormwater community for individuals who fit this description.

Please use the enclosed application form to nominate someone that you believe is deserving of this recognition.

The recipient will receive a commemorative plaque and will be honored at this year's Stormwater Management Division Conference.

Previous Winners

2017-John Cox (City of Durham) 2018-Doug Jewell (Jewell LJB) 2019-Annette Lucas (NCDEQ) 2020-Mark Senior (WK Dickson) 2021-Dr. Bill Hunt (NCSU) 2022-Daryl Hammock (City of Charlotte)







H. ROONEY MALCOM AWARD STORMWATER PROFESSIONAL OF THE YEAR

Nomination Form

Nominee Information

Name: Michael Huffman

Job Title: Stormwater Division Manager

Organization and Department: City of Hendersonville, Engineering Department

Address: 305 Williams Street

City (North Carolina): Hendersonville

Daytime Phone Number: 8286973013

Email Address: mhuffman@hvlnc.gov

Nominated By

Name: Brent Detwiler, PE

Job Title: City Engineer

Organization and Department: City of Hendersonville, Engineering Department

Date: 7/5/23

Daytime Phone Number: 8286973060

Email Address: bdetwiler@hvlnc.gov

A brief narrative description (limited to 2 pages, single spaced, 12 point font, 1" margins) must be included with each nomination form describing why the person is being nominated using any of the following criteria: leadership, innovation, agency service, customer service, community service, and contribution to their profession.

Please submit form and narrative to: kelsie.burgess@highpointnc.gov by July 14, 2023

QUESTIONS

Contact:

Kelsie Burgess City of High Point (336) 883-3819



Michael Huffman, Stormwater Division Manager for the City of Hendersonville, has shown all the qualities and characteristics of the 2023 H. Rooney Malcom Award Stormwater Professional of the Year, including leadership, innovation, service, and contribution to his profession. Mr. Huffman began his career with the City in early 2016, and as the City's various stormwater challenges have evolved over the years, so have his responsibilities and duties. Mike became the City's Stormwater Administrator over five years ago, and then Stormwater Division Manager last year.

Mike has become a leader within the organization and in the community when it comes to stormwater. He was instrumental in moving stormwater to the forefront of the Hendersonville City Council's attention, and as a result, addressing stormwater concerns has been prioritized for our elected officials. With his professional and engaging personality, Mike often presents very technical information to others in a way that is easily understood and enlightening. He managed the growth of the City's stormwater program into a full-fledged utility in less than five years. The City implemented a commercial stormwater fee structure based on equivalent residential units, and Mike spent several years and led many formal and informal work sessions with Council, business groups, and citizen groups to gain trust in the new rate structure and expanded utility. He has taken ownership of the City's National Pollutant Discharge Elimination System (NPDES) Phase 2 Stormwater permit and program. Mike constantly improves workflows, using technology to implement efficient measures, and builds relationships with the public and civic organizations to improve water quality in the region. The work Mike has put into the NPDES Phase 2 Stormwater program was acknowledged during an audit by North Carolina Department of Water Quality personnel and led to a Notice of Compliance for the City of Hendersonville.

Mike is an innovative stormwater professional, and he is always striving to improve the ability to enhance stormwater quality utilizing a variety of methods. Mike has applied for and received many grants totaling over \$4 million from the Division of Water Infrastructure, North Carolina Land and Water Fund, and NC319 over the last seven years. The grants have been used to construct green infrastructure throughout the City, including bioretention swales, rainwater cisterns, rain gardens, and permeable parking areas. Recently, Mike received grant funding to restore Brooklyn Creek within Sullivan Park, a direct investment in an underserved section of the community and an opportunity to work with local stakeholders to improve their neighborhood park. Additionally, in February 2023, Mike was awarded over \$3 million in grant funding for a large floodplain restoration/flood mitigation project. He manages the City's rain barrel program and other initiatives like storm drain stamping. Mike managed the installation of four flood sensors throughout the community, working with others in the organization to better track and prepare for extreme weather events. One of Mike's major contributions to improving area water quality has been the implementation of the "Trash Trout" - a public/private partnership that has removed over 10,000 pounds of trash from Mud Creek, Hendersonville's primary watershed. This was the first of its kind in western North Carolina, and there are now over twenty similar installations throughout the region based on Hendersonville's success.

Mike has developed partnerships with many regional agencies and entities. He has frequently collaborated with the North Carolina State University Stormwater Engineering Group staff to

complete training sessions and build community projects. These have included backyard streambank stabilization workshops, as well as the construction of a rainwater cistern at a local free clinic which allows staff and patients to use the water for their community garden. Mike has worked with the US Army Corps of Engineers and the North Carolina Department of Environmental Quality to reduce streambank erosion areas throughout the community. He has developed a partnership with Henderson County Public Schools and has educated students on the importance of water quality during their Summer Enrichment Program. Mike also annually participates in the Henderson County Soil and Water Conservation's "Kids in the Creek" program, looking for aquatic life with students in area streams.

Stormwater management is an important aspect of environmental sustainability. By helping manage stormwater runoff and reducing pollution, Mike has sought to protect the environment, conserve natural resources, and promote sustainable development in our community. Hendersonville's Environmental Sustainability Board recently selected Mike to receive the first ever Hendersonville Sustainability Hero Award, recognizing him for championing sustainability practices in Hendersonville and the surrounding community. Mike always provides the highest levels of customer and community service. He often engages with residents and business owners through public meetings and community forums. Mike often surveys the public and obtained feedback from stakeholders on stormwater issues and concerns. He created and branded the City's 'Stormwater Stroll' as a tool to educate the community on stormwater treatment best practices. Whenever interacting with the community or collaborating organizations, Mike builds relationships and creates positive experiences with lasting impact. Mike has mentored 2 Girl Scouts on their Gold and Silver Awards and 2 Boy Scouts on their Eagle Scout projects, resulting in the installation of a rain garden at an elementary school, educational murals along the City's greenway, a new kayak launch along Mud Creek, and a new Trash Trout Jr. He has also partnered with Asheville Greenworks on their Youth Environmental Leadership Program (YELP), Journeymen Asheville, and the Boys & Girls Club of Henderson County.

Mike consistently contributes to the stormwater profession and helps his regional colleagues in their efforts to meet local challenges. He has provided guidance and recommendations on stormwater program management to stormwater professionals in the Town of Laurel Park, Town of Waynesville, Town of Pembroke, City of Shelby, City of Hickory, and the Land of Sky Regional Council. In 2021 Mike participated in several local government panels detailing his experiences as Hendersonville's Stormwater Administrator for the NC American Public Works Association Stormwater Management Division Conference and the UNC School of Government Stormwater Financing Workshop. In addition, he is active in the Storm Water Association of North Carolina, which informs and shares stormwater best practices across the state.

Mike Huffman is a dedicated leader in the stormwater profession who is always looking for innovative and effective ways to engage and educate the community on the importance of water quality. Mike's passionate dedication to improving stormwater quality has led to all the accomplishments detailed above, and for that reason, Mike deserves to be the 2023 H. Rooney Malcom Award Stormwater Professional of the Year.

Good afternoon,

Today, we're recognizing an exceptional individual who embodies the very essence of excellence in stormwater management. From the inception of his journey with the City of Hendersonville in early 2016, Michael Huffman has consistently demonstrated unparalleled dedication, exemplary leadership, and a remarkable passion for stormwater management. His tireless efforts and innovative initiatives have propelled him into the spotlight, making him a trailblazer in our community and beyond.

Over the years, Mike's dedication has seen the City's stormwater program evolve into a comprehensive utility. He spearheaded the implementation of a stormwater fee structure and navigated its acceptance through extensive engagements with stakeholders.

Mike's innovative spirit is truly noteworthy. He has successfully secured grants amounting to over \$4 million, facilitating the implementation of green infrastructure projects throughout the City. These endeavors, such as bioretention swales, rain gardens, permeable parking areas and a large flood mitigation project (currently under design), are significantly improving water quality in our region.

Notably, Mike initiated the "Trash Trout" project, a pioneering public-private partnership that has removed over 10,000 pounds of trash from Mud Creek. This impactful initiative has been replicated in various regions, emphasizing Mike's influence and the magnitude of his contributions.

In addition to his professional accomplishments, Mike is deeply committed to community engagement and education. He has consistently sought opportunities to inspire the next generation by mentoring and participating in educational programs. His involvement with various organizations and the public school system underscores his passion for fostering environmental consciousness and sustainability within the community.

In recognition of his outstanding dedication and contributions to the stormwater profession, Mike Huffman richly deserves the 2023 H. Rooney Malcom Award for Stormwater Professional of the Year. His unwavering commitment to improving stormwater quality and enhancing the well-being of our community truly sets him apart.

Please join me in congratulating Mr. Michael Huffman for this well-deserved honor. Thank you.





CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Tyler Morrow **MEETING DATE:** October 5th 2023

AGENDA SECTION: Public Hearings DEPARTMENT: Community

Development

TITLE OF ITEM: Annexation: Public Hearing- Living Savior Evangelical Lutheran Church (C23-

65-ANX)- Tyler Morrow, Planner II

SUGGESTED MOTION(S):

For Approval:

I move City Council adopt an ordinance of the City of Hendersonville to annex noncontiguous property owned by the Living Savior Evangelical Lutheran Church, identified as PIN 9578-90-1278, finding that the standards established by North Carolina General Statute 160A-58.1 have been satisfied and that the annexation is in the best interest of the City.

For Denial:

I move that City Council deny the petition received from the Living Savior Evangelical Lutheran Church, requesting the annexation of that property having PIN 9578-90-1278.

SUMMARY: File # C23-65-ANX

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

On September 7th, 2023, City Council accepted the City Clerk's Certificate of Sufficiency for the petition submitted by the Living Savior Evangelical Lutheran Church and set October 5th, 2023, as the date for the public hearing.

PROJECT/PETITIONER NUMBER:	•	C23-65-ANX
PETITIONER NAME:	•	Jon Vannice, Vice President and Secretary of the Living Savior Evangelical Lutheran Church

	1. Ordinance
ATTACHMENTS:	2. Signed Certificate of Sufficiency
	3. Signed Resolution setting public hearing
	4. Annexation Plat
	5. Typed legal description
	6. GIS map
	7. Deed
	8. Annexation Application
	9. Published Notice Proof

Ordinance #	_
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AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO EXTEND THE CORPORATE LIMITS OF THE CITY AS A SATELLITE ANNEXATION

Re: Petition for Satellite Annexation

Petitioners: Living Savior Evangelical Lutheran Church (Jon Vannice, Vice President and Secretary)

File No. C23-65-ANX

WHEREAS, The City of Hendersonville has been petitioned by the Living Savior Evangelical Lutheran Church pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein below; and,

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

WHEREAS, a public hearing on the question of this annexation was held at the City Operations Center at 305 Williams Street, Hendersonville, NC at 5:45 pm, on the 5th day of October 2023, after due notice by publication as provided by law on September 24, 2023; and

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

- a. All of the proposed satellite corporate limits are less than three miles from the primary corporate limits of Hendersonville. The map distance is approximately 2,446 feet.
- b. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
- c. The area described is so situated that the City of Hendersonville will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

- d. The area proposed for annexation is not subject to subdivision regulation as described N.C.G.S. § 160D-802
- e. The area within the proposed satellite corporate limits, when added to the areas within all other satellite corporate limits does not exceed 10 percent (10%) of the area within the primary corporate limits of the City of Hendersonville.

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

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

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

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

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

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

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

Adopted by the City Council of the City of, 20	ity of Hendersonville, North Carolina on this day
Attest:	Barbara G. Volk, Mayor, City of Hendersonville
Jill Murray, City Clerk	
Approved as to form:	
Angela S. Beeker, City Attorney	

STATE OF NORTH CAROLINA, COUN	ITY OF HENDERSON	
I,, a Notar hereby certify that <u>Barbara G. Volk</u> in har capacity of <u>City Clerk</u> personular due execution of the foregoing instrument	ner capacity of <u>Mayor of</u> sonally appeared before m	the City of Hendersonville; Jill
Witness my hand and notarial seal, this My commission expires:	day of	, 20
——————————————————————————————————————		

CERTIFICATE OF SUFFICIENCY

Re: Petition for Satellite Annexation

Petitioner: Living Savior Evangelical Lutheran Church (Jon Vannice, Vice President and

Secretary)

File No. C23-65-ANX

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

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

Based upon this investigation, I find that

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

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

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

(City Seal)



Jill Murray, City Clerk

EXHIBIT A LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

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

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

Re: Petition for Satellite Annexation

Petitioner: Living Savior Evangelical Lutheran Church (Jon Vannice, Vice President and

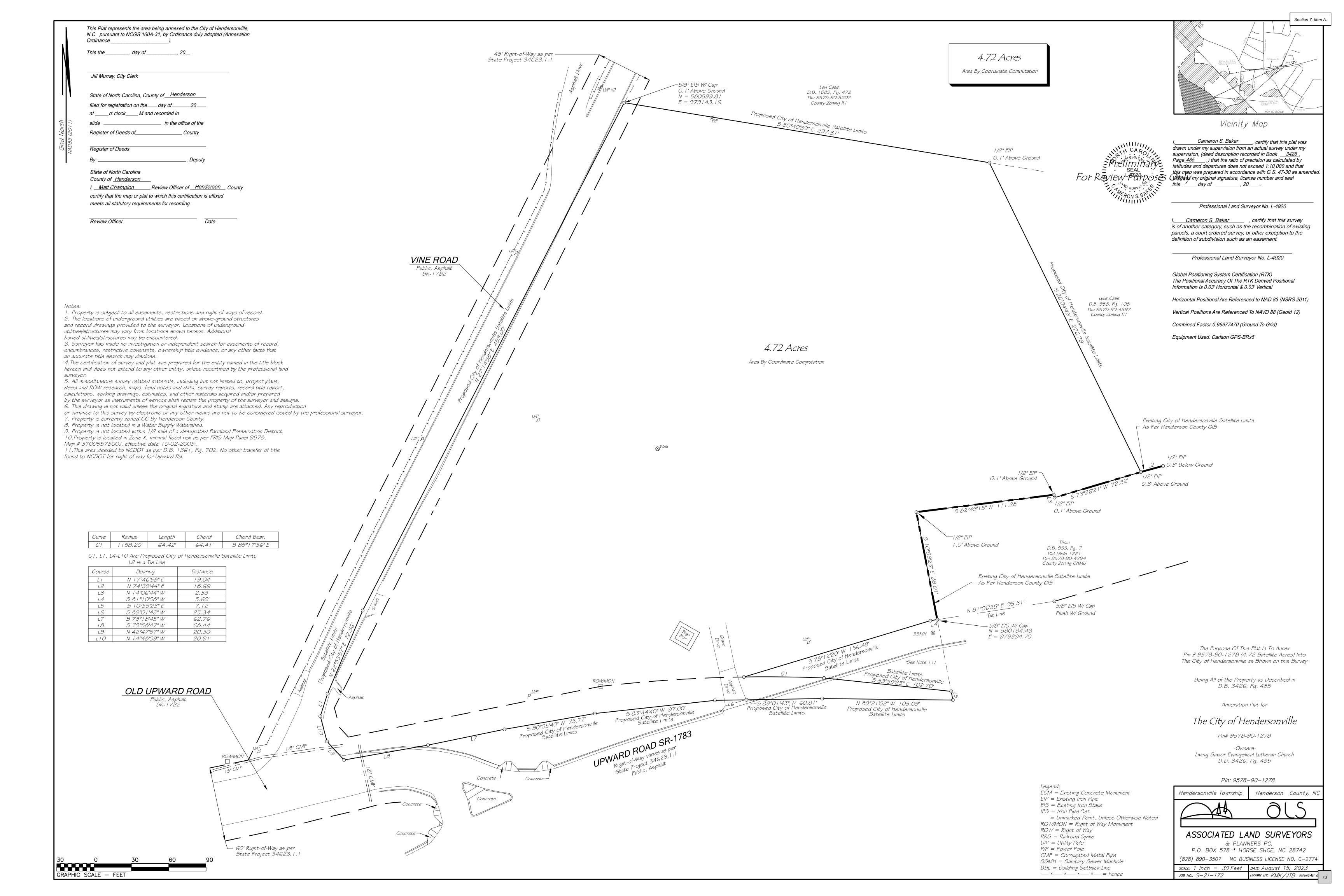
Secretary)

File No. C23-65-ANX

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

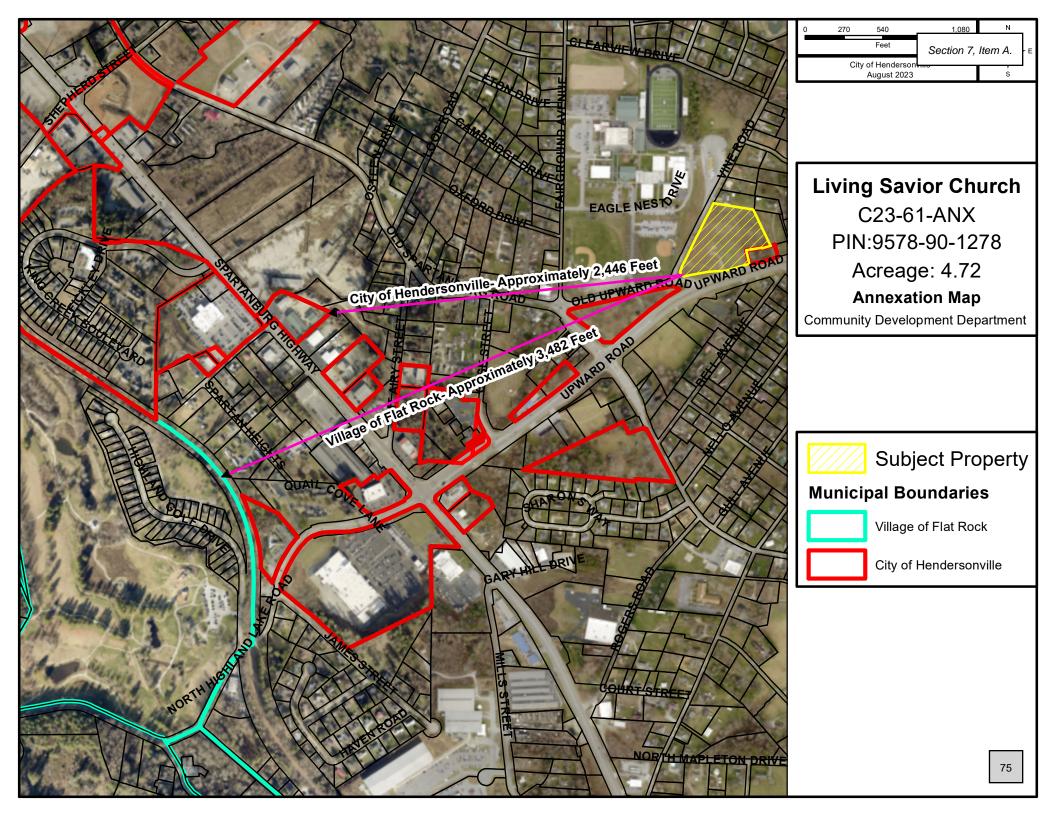
Adopted by the City Council of the City of Hendersonville, North Carolina on this 7th day of September, 2023.

Attest:	Barbara G. Volk, Mayor, City of Hendersonville		
Daniel Heyman, Deputy City Clerk			
Approved as to form:			
Angela S. Beeker, City Attorney	<u>)</u>		



Legal Description, PIN 9578-90-1278

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Section 7, Item A.

BK 3426 PG 485 - 494 (10)

This Document eRecorded:

DOC# 916396

12/13/2019 09:22:16 AM

Fee: \$26.00

Excise Tax: \$1.340.00

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

NORTH CAROLINA GENERAL WARRANTY DEED

Parcel Identifier No. <u>9960819</u> Verified by <u>Henderson</u> County on the By:	day of
Mail/Box to: PETER KANIPE, McGUIRE, WOOD & BISSETTE, This instrument was prepared by: TIKKUN A.S. GOTTSCHALK, Delinquent taxes, if any, to be paid by the closing attorney to the co Brief description for the Index:	a N.C. licensed attorney, DEUTSCH & GOTTSCHALK, P.A.
11.16	, 2019 by and between
GRANTOR TOMMY R. KING and wife, SHARON KING, GARY E. KING and wife, ELAINE KING, MELBA K. BALLARD and husband, LARRY W. BALLARD, PAULA J. KING,	GRANTEE LIVING SAVIOR EVANGELICAL LUTHERAN CHURCH, a North Carolina nonprofit and corporation 301 Overlook Road
unmarried, KEVIN P. KING and wife, AMBER KING, KYLA N. JOHNSON and husband, DAVID JOHNSON, JEREMY J. KING and wife, KELLI KING, being all the heirs and spouses of heirs of MARY FRANCES KING, deceased	Asheville, NC 28803
328 Blackwell Drive Hendersonville, NC 28792	

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

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

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

{12390380}NC Bar Association Form No. 3 © 1976, Revised © 1/1/2010 Printed by Agreement with the NC Bar Association

Submitted electronically by "McGuire, Wood & Bissette" in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Henderson County Register of Deeds.

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

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

NOW, THEREFORE, THIS CONVEYANCE:

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

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

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

The property hereinabove described was acquired by Grantor by instrument recorded in Book, page
All or a portion of the property herein conveyed includes or X does not include the primary residence of a Grantor.
A map showing the above described property is recorded in Plat Book, page
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.
And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same

in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title

against the lawful claims of all persons whomsoever, other than the following exceptions:

PG 485 - 494 (10) BK 3426 DOC# 916396

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

(Seal)

TOMMY R. KING

SHARON KING

Henderson Buncombe County, North Carolina

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

Date: |2-1/-19|

Notary Public Henderson THE PARTY CAROLINA

Printed Name, Notary Public

My Commission expires: 02-04-2024

BK 3426 PG 485 - 494 (10) DOC# 916396

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

SADY EXING (Seal)

ELAINE KING (Seal)

Hereleyson Buneembe County, North Carolina

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

Date: $\frac{12-11-19}{}$.

Notary Public Henderson County

County

A CAROLITIES

HILLIAN A CA

Printed Name, Notary Public

My Commission expires: 02-04-2024

BK 3426 PG 485 - 494 (10) DOC# 916396

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

Delho H Balland MELBA K. BALLARD

(Seal)

Henderson
Buncombe County, North Carolina

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

Date: 12-10-19

SIMMICHAELA Notary Public Henderson THE TOP THE CARU

Printed Name, Notary Public

My Commission expires: <u>02-04-2024</u>

BK 3426 PG 485 - 494 (10)

DOC# 916396

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

PAULA J. KING, unmarried (Seal)

Henderson Buncombe County, North Carolina

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

Date: 12-10-19

Notary Public Henderson County

COUNTY

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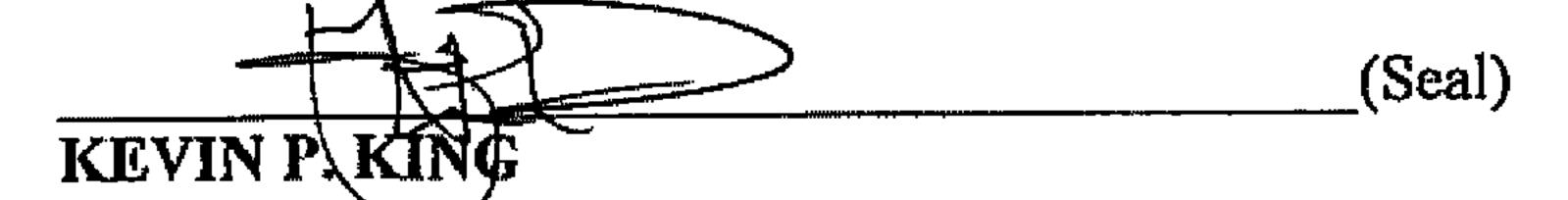
Michaela D. Hill Printed Name, Notary Public

My Commission expires: 02-04-2029

BK 3426 PG 485 - 494 (10)

DOC# 916396

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



MBER KING (Seal)

Heviderson Buncombe County, North Carolina

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

Date: 12-10-19

Notary Public Henderson County

CAROLITIES

OF THE CAROLITIES

OF THE

Michaela D. 1-111

Printed Name, Notary Public

My Commission expires: 02-04-2034

PG 485 - 494 (10) DOC# 916396 BK 3426

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

(Seal) KYLA N. JOHNSON

(Seal)

DAVID JOHNSON

Henderson Buncombe County, North Carolina

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

Date: 12-11-19

Notary Public Henderson

Printed Name, Notary Public

My Commission expires: <u>02-04-20</u>24

BK 3426 PG 485 - 494 (10) DOC# 916396

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

JEREMY J. KING

KELLI KING (Seal)

Henderson

Buncombe County, North Carolina

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

Date: 12-11-2019

Printed Name, Notary Public

My Commission expires: May 3 2020

BRIDGET D SWING

Notaty Public North Carcata

Panderson Co. 11.

Way Commission Co. 11.

May 03, 2020

EXHIBIT A

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

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

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

4838-0473-1817, v. 1



CITY OF HENDERSONVILLE COMMUNITY DEVELOPMENT DEPARTMENT

100 N. King Street, Hendersonville, NC 28792 Phone (828) 697-3010|Fax (828) 698-6185 www.hendersonvillenc.gov

Petition Requesting Annexation

The fo	ollowing are the <u>required</u> submittals for a complete application for a Voluntary
Annex	cation. Staff will not review applications until each item has been submitted and
detern	nined complete. By placing a check mark by each of the following items, you are certifying
that yo	ou have performed that task.
\checkmark	1. Completed Application Form

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

A. Property Information		
PIN(s): 9578901278		
Address(es) / Location of Property: 200 Upward I	Road	
Does this property adjoin the present City Limits?	Yes	X No
Is the property within the ETJ?	Yes	X No
Reason for Annexation:		
Property Owner would like to tie to City Owned Sani Water Main across Upward Road.	tary Sewer M	ain and potentially the

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

C. Additional Property Owner Contact Information
Jon Vannice 8/17/23
* Printed Applicant Name Date
Living Savior Evange lical Lutheran Chuich Printed Company Name (if applicable)
Corporation
□ Other:
Property Owner Signature
VP+ Gerelog, Living Sound Example Ved Letheran Church
Property Owner Title (if applicable)
161 4 GOLSOMS BLUE
Address of Property Owner
Hendersmule No 28 192
City, State, and Zip Code
828 274 1542
Telephone
Email Vannice C ampafional. com



Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	City Of Hendersonville
Contact Phone:	8286973003
Contact Email:	
PO Number:	

Date:	09/20/2023
Order Number:	9305052
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	109.0000
Height in Inches:	0.0000

Print			
Product	#Insertions	Start - End	Category
HEN Times-News	2	09/24/2023 - 10/01/2023	Govt Public Notices
HEN blueridgenow.com	2	09/24/2023 - 10/01/2023	Govt Public Notices

Ad Preview

Section 7, Item A.

PUBLIC HEARING NOTICE

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

- I. Zoning Text Amendment
 Transportation Standards
 for CHMU (P23-051-ZTA) City Staff initiated Zoning
 Text Amendment to supplement the standards of the
 Commercial Highway Mixed
 Use (CHMU) Zoning
 District.
- II. Zoning Text Amendment

 Mobile Food Vendors
 (P23-050-ZTA) City Staff
 initiated Zoning Text Amendment proposing to amend the
 supplementary standards for
 mobile food vendors.

III. Annexation Petition –
Living Savior Evangelical
Lutheran Church (C23-065ANX) - Application from Jon
Secretory of the Living
Savior Evangelical Lutheran
Church for satellite annexation of 1 porcel identified as
to a porcel \$758-90-1278
located on Upward Road and
Vine Road.

Diatalwritten <u>public</u> hearins <u>comments</u> must be received twenty-four hours prior to the meeting (<u>by 5:45</u> ber <u>Am. on Wednesday October 4th 2023)</u> to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

on the City's website.

Public hearing comments will also be accepted during the meeting from those otherding in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen shoring with which the screen screen

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

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

The City of Hendersonville is committed to providing cocessible facilities, programs, and services for lipeople in compliance with the American March Class with the City Class with the City Clerk on Jets of the City Clerk on J



Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	City Of Hendersonville
Contact Phone:	8286973003
Contact Email:	
PO Number:	

Date:	09/20/2023
Order Number:	9305052
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	109.0000
Height in Inches:	0.0000

Print			
Product	#Insertions	Start - End	Category
HEN Times-News	2	09/24/2023 - 10/01/2023	Govt Public Notices
HEN blueridgenow.com	2	09/24/2023 - 10/01/2023	Govt Public Notices

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 Mobile Food Vendors
 (P23-050-ZTA) City Staff
 initiated Zoning Text Amendment proposing to amend the
 supplementary standards for
 mobile food vendors.

III. Annexation Petition –
Living Savior Evangelical
Lutheran Church (C23-065ANX) - Application from Jon
Secretory of the Living
Savior Evangelical Lutheran
Church for satellite annexation of 1 porcel identified as
to a porcel \$758-90-1278
located on Upward Road and
Vine Road.

Diatalwritten <u>public</u> hearins <u>comments</u> must be received twenty-four hours prior to the meeting (<u>by 5:45</u> ber <u>Am. on Wednesday October 4th 2023)</u> to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

on the City's website.

Public hearing comments will also be accepted during the meeting from those otherding in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen shoring with which the screen screen

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

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

The City of Hendersonville is committed to providing cocessible facilities, programs, and services for lipeople in compliance with the American March Class with the City Class with the City Clerk on Jets of the City Clerk on J



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Tyler Morrow **MEETING DATE:** October 5th 2023

AGENDA SECTION: Public Hearings DEPARTMENT: Community

Development

TITLE OF ITEM: Zoning Text Amendment: Mobile Food Vendor Updates (P23-50-ZTA) – Tyler

Morrow, Planner II

SUGGESTED MOTION(S):

For Approval:

I move City Council <u>adopt</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Section 16-4-17 Mobile food vendor, Section 8-1-1 Exceptions to setback regulations, Section 13-1-10-Supplementary standards for mobile food vendors, and Section 13-1- 11- Noncommercial messages, based on the following:

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:

The petition aligns with the Comprehensive Plan's Strategy LU-3.5. of minimizing negative impacts from growth and land use changes on existing land uses by reflecting current and ongoing trends in the community concerning mobile food vendors.

- 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:
 - 1. The proposed text amendment creates flexibility for property owners and mobile food vendor operators while still limiting potential impacts to the greater community.
 - The proposed text amendment reflects real world conditions and potentially allows nonconforming mobile food vendors to come into compliance.

For Denial:

I move City Council <u>deny</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Section 16-4-17 Mobile food vendor, Section 8-1-1 Exceptions to setback regulations, Section 13-1-10-Supplementary standards for mobile food vendors, and Section 13-1- 11- Noncommercial messages, based on the following:

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:

The petition aligns with the Comprehensive Plan's Strategy LU-3.5. of minimizing negative impacts from growth and land use changes on existing land uses by reflecting current and ongoing trends in the community concerning mobile food vendors.

- 2. We [do not find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:
 - 1. The proposed text amendment would reduce the distance required between mobile food vendors and permanent structures.
 - The proposed text amendment eliminates the requirements for landscaping associated with mobile food vendors.
 - 3. The proposed text amendment removes setback requirements for mobile food vendors.

3. The proposed text amendment reduces duplicated standards and focuses primarily on zoning/site specific requirements.

[DISCUSS & VOTE]

[DISCUSS & VOTE]

SUMMARY: "Mobile Food Vendors" were added to the City Zoning Ordinance as a permitted use on April 5, 2018. The amendment in 2018 was an applicant driven text amendment petitioned by Mark Searcy to allow a mobile food vendor at 2745 Chimney Rock Road. Mobile food vendors are currently permitted in the following districts with supplementary standards: C-2, C-3, CMU, I-1, HMU. There have been no amendments to the mobile food vendor ordinance since its adoption in 2018.

Since 2018, staff have worked with and applied the supplementary standards for any permitted mobile food vendor operating in the City of Hendersonville. Through this work, staff has found that the current ordinance has some problematic aspects to it. It has been found problematic to apply the standards to real world requests, as well as the enforcement of current standards. There are few sites in the City that meet the requirements outlined in the ordinance and staff has found that our ordinance duplicates requirements that are enforced by other outside agencies.

For these reasons, staff is proposing the changes that are before you. Staff believe that these changes will make the supplementary standards enforceable and follows the trends that are currently happening in our community.

PROJECT/PETITIONER NUMBER:	P23-50-ZTA
PETITIONER NAME:	City of Hendersonville
	1. Staff Report
ATTACHMENTS:	2. Planning Board Summary Report
	3. Recorded Ordinance
	4. Draft Ordinance Changes
	5. Draft Ordinance Changes (Clean Version)
	6. Henderson County Department of Health Food
	Truck Regulations
	7. National Fire Protection Agency Food Truck
	Regulations.

ZONING TEXT AMENDMENT: MOBILE FOOD VENDOR UPDATES (P23-50-ZTA)

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

PROJECT SUMMARY	
AMMENDMENT ANALYSIS – AMENDMENT OVERVIEW	
ZONING TEXT AMENDMENT – MOBILE FOOD VENDORS	
PUBLIC INPUT / RECOMMENDATION	
AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)	7
DRAFT COMPREHENSIVE PLAN CONSISTENCY AND TEXT AMENDMENT REASONABLENESS	
STATEMENT	8



- Project Name & Case #:
 - Mobile Food Vendor Updates
 - P23-50-ZTA
- Applicant:
 - City of Hendersonville
- Zoning Ordinance Articles Amended:
 - o 16-4-17 Mobile food vendor
 - 8-1-1 Exceptions to setback regulations.
 - 13-1-10- Supplementary standards for mobile food vendors.
 - 13-1- 11- Noncommercial messages
- Planning Board Legislative Committee Meeting
 - August 15th, 2023
- Summary Basics:
 - The City is proposing to amend the supplementary standards for mobile food vendors to address trends and problems that have arisen since the original ordinance was adopted in 2018.
 - Staff have found out through practice that our current ordinance is very restrictive and that few mobile food vendors in the City meet the requirements of the ordinance. It was also discovered that our ordinance is redundant and covers aspects that are outside the scope of zoning and that are being covered by other outside entities (Health Department, Water and Sewer, Fire, etc.)



Summary of Amendment Petition:

"Mobile Food Vendors" were added to the City Zoning Ordinance as a permitted use on April 5, 2018. The amendment in 2018 was an applicant driven text amendment petitioned by Mark Searcy to allow a mobile food vendor at 2745 Chimney Rock Road. Mobile food vendors are currently permitted in the following districts with supplementary standards: C-2, C-3, CMU, I-1, HMU. There have been no amendments to the mobile food vendor ordinance since its adoption in 2018.

Since 2018, staff have worked with and applied the supplementary standards for any permitted mobile food vendor operating in the City of Hendersonville. Through this work, staff has found that the current ordinance has some problematic aspects to it. It has been found problematic to apply the standards to real world requests, as well as the enforcement of current standards. There are few sites in the City that meet the requirements outlined in the ordinance and staff has found that our ordinance duplicates requirements that are enforced by other outside agencies.

For these reasons, staff is proposing the changes that are before you. Staff believe that these changes will make the supplementary standards enforceable and follows the trends that are currently happening in our community.

Staff is proposing a new approach to the permitting of mobile food vendors. Our current ordinance requires that all operators obtain a zoning compliance permit. This would require that a mobile food vendor obtain a new permit each time they change locations. For example, if a mobile food vendor sets up on a vacant lot on Asheville Highway, they would be required to obtain a permit for that location. If they then decide to move to a brewery across town, they would be required to obtain a new permit showing that they meet the requirements of the ordinance for the new location. Staff is proposing to change this approach. Staff proposes that the permit be location based, instead of vendor based. For example, if a brewery wants to add a mobile food vendor as an accessory use and it is permitted by the zoning ordinance, the brewery owner would just need to identify an area on their site where a food truck could be located. Once this location receives a zoning compliance permit, then any mobile food vendor could use that location on the site without the need to obtain additional zoning compliance permits each time the vendor changes. This would make enforcement and permit tracking easier for staff as well as the property owner.

Furthermore, staff is proposing that the City eliminate elements of the ordinance that are enforced by other agencies. The ordinance as written includes language and requirements that are outside the normal responsibilities of zoning. Our ordinance currently states that "Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the health department." This language is a direct reflection of the information provided to anyone who wants to start a mobile food vendor operation by the Henderson County Health Department and enforcement of these requirements is handled by the Henderson County Health Department. A copy of the Health Department's rules for mobile food vendors is in your packet.

Additional language referencing other agencies' requirements include "No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces" These requirements for food trucks are enforced through the Environmental Compliance arm of the Water and Sewer Department as well as the City's Stormwater Division. The Stormwater Division investigates illicit discharges into storm drains and streams.

Finally, staff are proposing changes to the placement and configuration of mobile food vendors. Minimum setbacks for applicable districts have not rendered a better result than non setback districts. As such staff propose simply that mobile food vendors shall remain on private property and not encroach on sidewalks, drive aisles or be located in any required parking.

Staff are also proposing to eliminate the 250' requirement from the nearest restaurant because staff have also found out that locations where a mobile food vendor could go are severely limited by this standard. Moreover, the existence of food trucks does not appear to have had an overly detrimental impact on the traditional brick and mortar restaurants, certainly not one influenced by proximity. Both dining options appear to provide separate dining experiences.

ZONING TEXT AMENDMENT - MOBILE FOOD VENDORS

The proposed Mobile Food Vendor Language Changes reads as follows:

Additions to the Ordinance

Deletions from the Ordinance

16-4-17 Mobile food vendor.

- a) Zoning compliance permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one year, and shall be renewed annually. shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.
 - I) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.
- b) Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the health department. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the application. No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces.
- b) c) There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.
- c) d) Mobile food vendors shall follow the dimensional requirements of the zoning district classification in which they are located. If there are no dimensional requirements in zoning district classification, at a minimum, food vendors shall be situated at least ten feet from all property lines and any road right-of-way. Mobile food vendors shall:
 - 1) Not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. Additionally, mobile food vendors must be:
 - 2) 1) Be located on property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way.
 - 3) 2) Be situated at least 10 feet away from buildings, structures, vehicles, and any combustible materials. Situated at least 25 feet from any permanent structure. The community development director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.
 - 4) 3) Not located within 250 feet from any restaurant, and Nnot be located within 100 feet from any residential structure or residential zoning district lot line, unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.
 - 5) 4) Be set back a minimum of ten feet in all directions from fire hydrants.
 - 6) 5) Be situated at least 10 20 feet from one another.
- e) Mobile food vendors on vacant sites shall adhere to article XV, buffering, screening, and landscaping general requirements, including any overlay district landscaping requirements.

- f) Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.
- g) Vendors must vacate the site each day unless the vendor owns the site.
- h) Each food truck shall supply at least one waste receptacle which must be removed and emptied at the end of each day, city trash receptacles shall not be used for food truck waste.
- i) Mobile food vendors shall be limited to the following signage: One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet and one small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer to display daily specials, menus, or other similar information. Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

8-1-1 Exceptions to setback regulations.

The following features shall not be subject to the required minimum setbacks:

Bridges

Doghouses

Driveways, walks and parking areas

Fences and walls not exceeding nine feet in height

Landscape features such as entrance piers, columns, gates, planters and gardens

Mobile food vendors

Playhouses, not exceeding 64 square feet in floor area

Required building entry ramps

Retaining walls

Stormwater management facilities such as head walls and culverts

13-1-10- Supplementary standards for mobile food vendors.

Mobile food vendors shall be limited to the following signage:

- a) One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet. Any sign illumination shall be downward facing.
- b) One small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer.
- c) Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

13-1-10 11- Noncommercial messages.

Any sign, display, or device allowed under this article and which complies with size, lighting, and spacing requirements of this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale.

PUBLIC INPUT / RECOMMENDATION

Legislative Committee of the Planning Board -August 15th, 2023

The Legislative Committee reviews all text amendments prior to consideration by the Planning Board. The committee members in attendance were:

- Jim Robertson
- Neil Brown
- Peter Hanley

Committee members discussed the proposed changes and the reasoning behind the changes. The committee proposed the following changes to the ordinance.

- I. Exempting mobile food vendors that are associated with a special event. We do not currently have language exempting mobile food vendors that are associated with special events, which means that they should be following all the supplementary standards. Since meeting the supplementary standards could prove difficult for a mobile food vendor associated with a special event, staff and the legislative committee are proposing adding this proposed exemption.
 - a. Zoning compliance permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one year, and shall be renewed annually. shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.
 - I) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.
- 2. The Committee as well as staff had an interest in reducing the distance that mobile food vendors could be from permanent structures. The current requirement is 25' from all permanent structures unless exempted by the Fire Department. Upon speaking with the Fire Marshal, staff found out the minimum distance permitted by fire standards is 10' and not 25'. Staff are proposing that our ordinance be reduced in accordance with a distance approved by the Fire Marshal and allow a minimum setback of 10'. The City Fire Marshal was in favor of the proposed language.
 - a. Be situated at least 10 feet away from buildings, structures, vehicles, and any combustible materials. Situated at least 25 feet from any permanent structure. The community development director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.
- 3. The Committee was also interested in looking at the requirements for when a mobile food vendor is near residential. Our current ordinance does not allow mobile food vendors to operate within 100' of any residential zoning district or structure. Staff proposed that we allow mobile food vendors to operate within 100' of a residential zoning district or structure with some additional buffering requirements. Upon discussing with the committee, staff and the committee decided that it would be hard to figure out when and where the additional landscaping requirements would trigger. Instead of landscaping, the committee decided to add a

hours of operation stipulation for any mobile food vendor operating within 100' of any residential zoning district or structure. The hours of operation rule do not apply to mobile food vendors outside of the 100'.

- a. 4) 3) Not located within 250 feet from any restaurant, and Nnot be located within 100 feet from any residential structure or residential zoning district lot line, unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.
- 4. Committee member Brown wanted to add a stipulation to the sign section of the ordinance. The requirement would be that any illumination to the mobile food vendor's sign would be required to be downward facing. This requirement is in alignment with recent lighting efforts and reforms throughout the City.
 - a. One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet. Any sign illumination shall be downward facing.

AMENDMENT ANALYSIS - COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Land Use & Development	Strategy LU-3.5. Minimize negative impacts from growth and land use changes on existing land uses.
Population & Housing	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Natural & Environmental Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Cultural & Historic Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Community Facilities	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Water Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Transportation & Circulation	There are no Goals, Strategies, or Actions that are directly applicable to this petition.

GENERAL REZONING STANDARDS	
Compatibility	Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property -
	The proposed text amendment allows mobile food vendors and property owners more flexibility in how they use their land and business. The text amendment reflects real world conditions of mobile food vendors. The changes mirror the way in which mobile food vendors are already operating within the City.
Changed Conditions	Whether and the extent to which there are changed conditions, trends or facts that require an amendment -
	Mobile Food Vendors were a new use when originally written into the ordinance. Their impact and prevalence were unknown at that time. Through time and practice staff have been able to see which items did or did not have an impact on the community.
Public Interest	Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -
	The proposed text amendment aligns real world conditions with the ordinance. Staff receives few compliance complaints from citizens concerning mobile food vendors. This leads staff to believe that citizens are generally comfortable with how mobile food vendors largely operate. Staff is proposing to make these realities reflective in our ordinance.
Public Facilities	Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment
	The proposed text amendment does not have a large impact on public facilities. The water and sewer and fire departments will still review mobile food vendors in accordance with their standards.
Effect on Natural Environment	Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -

Section 7, Item B.

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND TEXT AMENDMENT 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 Strategy LU-3.5. of minimizing negative impacts from growth and land use changes on existing land uses by reflecting current and ongoing trends in the community concerning mobile food vendors.

We [find] this proposed zoning text amendment 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 creates flexibility for property owners and mobile food vendor operators while still limiting potential impacts to the greater community.
- The proposed text amendment reflects real world conditions and potentially allows non-conforming mobile food vendors to come into compliance.
- The proposed text amendment reduces duplicated standards and focuses primarily on zoning/site specific requirements.

DRAFT [Rational for Denial]

- The proposed text amendment would reduce the distance required between mobile food vendors and permanent structures.
- The proposed text amendment eliminates the requirements for landscaping associated with mobile food vendors.
- The proposed text amendment removes setback requirements for mobile food vendors.

PLANNING BOARD RECOMMENDATE



Project #: P23-50-ZTA

Meeting Date: September 14th, 2023

PETITION REQUEST: Zoning Text Amendment - Mobile Food Vendor Updates

APPLICANT/PETITIONER: City of Hendersonville

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the request providing an analysis of existing conditions and staff's recommended text revisions. Additionally, staff presented the feedback from the Legislative Committee level and reviewed the guidance from the Comprehensive Plan and the criteria for considering a Zoning Text Amendment. Planning Board considered this item for approximately 26 minutes.

Noone from the public spoke on the proposed changes.

The Planning Board discussed and showed support for the provisions presented by staff.

The Planning Board's main points of discussion were:

- I. Ms. Flores asked what would happen if ownership of the property changed. Staff stated that the zoning permit would be in place even if the ownership were to change. Staff would review the site again only if there was a change of use requested.
- 2. Mr. Brown asked about the hours of operation placed on food trucks located within 100' of residential and if those limits are used elsewhere. The Chair stated that the City has used this timeframe before and that the animated sign ordnance has time limits. Staff also stated that the time frames align with the noise ordinance.
- 3. Discussion was made on the distance from combustible materials. Staff stated this requirement aligns with fire requirements and is meant to distance the mobile food vendors from outside flammable materials such as a propane tank for a building.

MOTION:

Mr. Brown made a motion to approve the petition. The motion passed 7-0 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 Strategy LU-3.5. of minimizing negative impacts from growth and land use changes on existing land uses by reflecting current and ongoing trends in the community concerning mobile food vendors

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 creates flexibility for property owners and mobile food vendor operators while still limiting potential impacts to the greater community.
- 2. The proposed text amendment reflects real world conditions and potentially allows non-conforming mobile food vendors to come into compliance.
- 3. The proposed text amendment reduces duplicated standards and focuses primarily on zoning/site specific requirements.

BOARD ACTION

Motion/Second: Brown/ Hanley

• Yeas: Hanley, Robertson, Robinson, Martin, Brown, Flores, Waters

• **Nays**: N/A

• **Absent**: Cromar, Peacock

• Recused: N/A

Ordinance	# -

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE CITY OF HENDERSONVILLE ZONING ORDINANCE, SECTION 16-4-17 MOBILE FOOD VENDOR, SECTION 8-1-1 EXCEPTIONS TO SETBACK REGULATIONS, SECTION 13-1-10 SUPPLEMENTARY STANDARDS FOR MOBILE FOOD VENDORS, AND SECTION 13-1-11 NONCOMMERCIAL MESSAGES IN THE CITY OF HENDERSONVILLE.

WHEREAS, the City of Hendersonville's Planning Board has reviewed and recommended for adoption a zoning text amendment to the requirements for mobile food vendors within the City of Hendersonville's jurisdiction; and

WHEREAS, the proposed amendment is intended to not duplicate regulations enforced by other agencies and to keep the requirements up to date and reflective of current trends; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Section 16-4-17 Mobile Food Vendor, Section 8-1-1 Exceptions to Setback Regulations, Section 13-1-10 Supplementary Standards for Mobile Food Vendors, and Section 13-1-11 Noncommercial Messages of the Zoning Ordinance of the City of Hendersonville be amended as follows:

16-4-17 Mobile food vendor.

- a) Zoning compliance permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one year, and shall be renewed annually. shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.
 - 1) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.
- b) Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the health department. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the application. No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces.
- b) e) There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.
- c) d) Mobile food vendors shall follow the dimensional requirements of the zoning district classification in which they are located. If there are no dimensional requirements in zoning district classification, at a minimum, food vendors shall be situated at least ten feet from all property lines and any road right of way. Mobile food vendors shall:
 - 1) Not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. Additionally, mobile food vendors must be:
 - 2) 1) Be located on property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way.

- 3) 2) Be situated at least 10 feet away from buildings, structures, vehicles, and any combustible materials. Situated at least 25 feet from any permanent structure. The community development director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.
- 4) 3) Not located within 250 feet from any restaurant, and Nnot be located within 100 feet from any residential structure or residential zoning district lot line-unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.
- 5) 4) Be set back a minimum of ten feet in all directions from fire hydrants.
- 6) $\frac{5}{9}$ Be situated at least 10 $\frac{20}{9}$ feet from one another.
- e) Mobile food vendors on vacant sites shall adhere to article XV, buffering, screening, and landscaping general requirements, including any overlay district landscaping requirements.
- f) Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.
- g) Vendors must vacate the site each day unless the vendor owns the site.
- h) Each food truck shall supply at least one waste receptacle which must be removed and emptied at the end of each day, city trash receptacles shall not be used for food truck waste.
- i) Mobile food vendors shall be limited to the following signage: One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet and one small A frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer to display daily specials, menus, or other similar information. Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

8-1-1 Exceptions to setback regulations.

The following features shall not be subject to the required minimum setbacks:

Bridges

Doghouses

Driveways, walks and parking areas

Fences and walls not exceeding nine feet in height

Landscape features such as entrance piers, columns, gates, planters and gardens

Mobile food vendors

Playhouses, not exceeding 64 square feet in floor area

Required building entry ramps

Retaining walls

Stormwater management facilities such as head walls and culverts

13-1-10- Supplementary standards for mobile food vendors.

Mobile food vendors shall be limited to the following signage:

a) One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no

- larger than 32 square feet. Any sign illumination shall be downward facing.
- b) One small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer.
- c) Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

13-1-10 11- Noncommercial messages.

Angela S. Beeker, City Attorney

Any sign, display, or device allowed under this article and which complies with size, lighting, and spacing requirements of this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of October 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Additions to the Ordinance

Deletions from the Ordinance

16-4-17 Mobile food vendor.

- a) Zoning compliance permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one year, and shall be renewed annually. shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.
 - I) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.
- b) Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the health department. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the application. No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces.
- b) c) There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.
- c) d) Mobile food vendors shall follow the dimensional requirements of the zoning district classification in which they are located. If there are no dimensional requirements in zoning district classification, at a minimum, food vendors shall be situated at least ten feet from all property lines and any road right-of-way. Mobile food vendors shall:
 - I) Not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. Additionally, mobile food vendors must be:
 - 2) 1) Be located on property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way.
 - 3) 2) Be situated at least 10 feet away from buildings, structures, vehicles, and any combustible materials. Situated at least 25 feet from any permanent structure. The community development director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.
 - 4) 3) Not located within 250 feet from any restaurant, and Nnot be located within 100 feet from any residential structure or residential zoning district lot line. unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.
 - 5) 4) Be set back a minimum of ten feet in all directions from fire hydrants.

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- 6) 5) Be situated at least 10 20 feet from one another.
- e) Mobile food vendors on vacant sites shall adhere to article XV, buffering, screening, and landscaping general requirements, including any overlay district landscaping requirements.
- f) Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.
- g) Vendors must vacate the site each day unless the vendor owns the site.
- h) Each food truck shall supply at least one waste receptacle which must be removed and emptied at the end of each day, city trash receptacles shall not be used for food truck waste.
- Mobile food vendors shall be limited to the following signage: One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet and one small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer to display daily specials, menus, or other similar information. Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

8-1-1 Exceptions to setback regulations.

The following features shall not be subject to the required minimum setbacks:

Bridges

Doghouses

Driveways, walks and parking areas

Fences and walls not exceeding nine feet in height

Landscape features such as entrance piers, columns, gates, planters and gardens

Mobile food vendors

Playhouses, not exceeding 64 square feet in floor area

Required building entry ramps

Retaining walls

Stormwater management facilities such as head walls and culverts

13-1-10- Supplementary standards for mobile food vendors.

Mobile food vendors shall be limited to the following signage:

- a) One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet. Any sign illumination shall be downward facing.
- b) One small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer.
- c) Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

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13-1-10 11- Noncommercial messages.

Any sign, display, or device allowed under this article and which complies with size, lighting, and spacing requirements of this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale.

Proposed "Clean Version" with deletions removed

Additions

16-4-17 Mobile food vendor.

- a) Zoning compliance permits for mobile food vendor sites shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.
 - I) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.
- b) There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.
- c) Mobile food vendors shall:
 - 1) Not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space.
 - 2) Be located on property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way.
 - 3) Be situated at least 10 feet away from buildings, structures, vehicles, and any combustible materials.
 - 4) Not be located within 100 feet from any residential structure or residential zoning district lot line unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.
 - 5) Be set back a minimum of ten feet in all directions from fire hydrants.
 - 6) Be situated at least 10 feet from one another.

8-1-1 Exceptions to setback regulations.

The following features shall not be subject to the required minimum setbacks:

Bridges

Doghouses

Driveways, walks and parking areas

Fences and walls not exceeding nine feet in height

Landscape features such as entrance piers, columns, gates, planters and gardens

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Created: 2022-09-15 09:27:21 [EST]

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13-1-11- Noncommercial messages.

Any sign, display, or device allowed under this article and which complies with size, lighting, and spacing requirements of this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale.

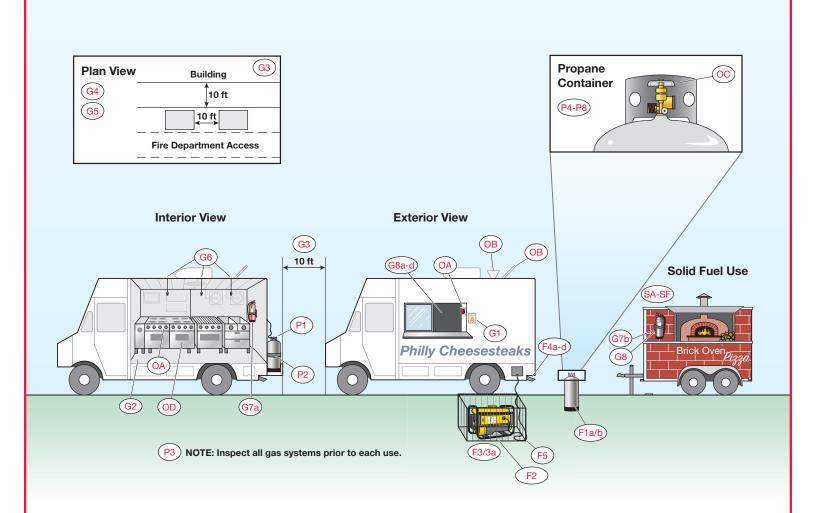
THINGS YOU NEED TO KNOW TO OBTAIN APPROVAL AND PERMIT FOR OPERATING A MOBILE FOOD UNIT IN HENDERSON COUNTY NC

- A mobile food unit must be operated in conjunction with a permitted restaurant or food stand, therefore you must have a permitted restaurant or food stand of your own or enter into an agreement with a permitted restaurant or foodstand (from here on out referred to as the commissary). This agreement must be supplied in writing and signed by the owner of the commissary. The commissary does not have to be in the same county where you operate your mobile food unit, but bear in mind that the unit is REQUIRED to report to the commissary EVERY day that it is used and this should be a consideration in your choice of commissary location and operation location.
- The county where your commissary is located will issue the permit for your unit and you must go through the approval process with that county health department even if you will operate in another county.
- You must report to your commissary every day you use your unit for cleaning, supplies, and servicing. All of your food and supplies must be stored in the unit and in the commissary and all food preparation must take place in the unit and in the commissary. All potable water for each days operation must be obtained at the commissary and all wastewater must be disposed of at the commissary after each days operation. The unit must have a potable water tank and a separate wastewater tank that is at least 15 percent larger than the potable water tank. The inlet for the potable water tank must be above and a different size than the outlet for the wastewater tank.
- A mobile food unit may be something that moves under its own power such as a van or RV type vehicle or a trailer type unit that is meant to be pulled behind another vehicle.
- Do not purchase a unit, equipped or unequipped without first getting approval from the health department. Do not purchase any equipment for the unit without first getting approval from the health department.
- Plans and equipment specifications for the unit will need to be submitted to the health department for review and approval along with a menu, an application for a permit, and the current plan review fee. This applies to pre equipped units as well as a unit you plan on designing and equipping yourself. Again, DO NOT purchase anything until you have gained an approval for your plan or pre built unit from the health department.

- Hot and cold running water under pressure are required on a mobile food unit. Therefore an onboard water heater is required. In addition you will need a sink for handwashing and a SEPARATE sink for cleaning utensils. The utensil cleaning sink must have integral drainboards on each side and an integral backsplash (in other words, one piece construction, no bolts or welds). Depending on the amount of food prep taking place on the unit itself, another sink(s) may be required.
- The other equipment required will be determined by the menu but would normally include such things as: refrigerators, freezers, cooking equipment, hot holding equipment, hood, beverage machines, etc or any other types of equipment necessary to the safe and adequate operation of the unit.
- All equipment on the unit (except for microwaves, mixers, toasters, water heaters, and hoods) must meet ANSI sanitation standards. Basically this means that the equipment must be commercial grade restaurant equipment, not residential or home use type equipment. Again, gain approval for any equipment you wish to use for the unit prior to purchase. A list of all equipment proposed for the unit along with the equipment specification, or "cut" sheets, is required for proper plan review and approval.
- Once you have submitted all the required items for review, your proposal will be reviewed and you will be notified of any changes or additions needed. If no revisions are required (or once you make them if any are needed) then you will be given an approval to proceed. When you are finished with the unit and have it ready for use you will need to present it to the health department fully operational so that all equipment may be checked for proper operation and to see that it meets all of the requirements set forth for mobile food units in the rules. You should also at this time, if you have not already, give the health department a list of places and times of operation for your unit. If the unit meets all the requirements and you have demonstrated satisfactory performance of the unit then a permit to operate will be issued and you may begin using the unit.
- The health department will periodically do unannounced inspections of the unit in operation to ensure compliance with the rules and with the permit conditions. The health department will also periodically check with the commissary to ensure the unit is returning as required.
- A mobile food unit may be used at an organized festival provided the unit returns to its commissary each evening of the festival. If this is impractical and you wish to leave the unit set up at the festival location for its duration, then you must apply for and receive a Temporary Food Establishment permit for each festival you attend and pay the current fee for this permit in advance.



FOOD TRUCK SAFETY

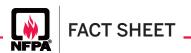


NFPA code references are provided at the end of each item. The red keys correspond to the NFPA food truck safety diagram. For more detailed information, see NFPA 1 and Chapter 17 in NFPA 96.

General Safety Checklist

- Obtain license or permits from the local authorities. [1:1.12.8(a)] G1
- ☐ Ensure there is no public seating within the mobile food truck. [1:50.8.3.2] G2
- Check that there is a clearance of at least 10 ft away from buildings, structures, vehicles, and any combustible materials. [96:17.2] G3
- □ Verify fire department vehicular access is provided for fire lanes and access roads. [1:18.2.4] G4
- ☐ Ensure clearance is provided for the fire department to access fire hydrants and access fire department connections. [1:13.1.4; 1:13.1.5] G5
- ☐ Check that appliances using combustible media are protected by an approved fire extinguishing system. [96:10.1.2] G6

- ☐ Verify portable fire extinguishers have been selected and installed in kitchen cooking areas in accordance with NFPA 10. [96:10.9] G7a
- ☐ Where cooking appliances that use solid fuel, such as charcoal or wood, produce grease-laden vapors, make sure the appliances are protected by listed fire-extinguishing equipment. [96:15.7.1] G7b
- ☐ Ensure that workers are trained in the following: [96:17.10]: G8
 - ☐ Proper use of portable fire extinguishers and extinguishing systems [96:17.10.1(1)] G8a
 - ☐ Proper method of shutting off fuel sources [96:17.10.1(2)] G8b
 - ☐ Proper procedure for notifying the local fire department [96:17.10.1(1)] G8c
 - □ Proper procedure for how to perform simple leak test on gas connections [96:17.10.1(5)] G8d



FOOD TRUCK SAFETY CONTINUED

Fuel & Power Sources Checklist

- □ Verify that fuel tanks are filled to the capacity needed for uninterrupted operation during normal operating hours. [1:10.14.11.1 for carnivals only] F1a
- ☐ Ensure that refueling is conducted only during non-operating hours.

 [96:17.8.3] F1b
- Check that any engine-driven source of power is separated from the public by barriers, such as physical guards, fencing, or enclosures. [96:17.5.2.2] F2
- ☐ Ensure that any engine-driven source of power is shut down prior to refueling from a portable container. [1:10.15.4] F3
- ☐ Check that surfaces of engine-driven source of power are cool to the touch prior to refueling from a portable container. F3a
- Make sure that exhaust from engine-driven source of power complies with the following: F4
 - □ At least 12 ft in all directions from openings and air intakes [96:17.5.2.3(1)] F4a
 - ☐ At least 12 ft from every means of egress [96:B.13] F4b
 - □ Directed away from all buildings [96:17.5.2.3(2)] F4c
 - □ Directed away from all other cooking vehicles and operations [96:17.5.2.3(3)] F4d
- Ensure that all electrical appliances, fixtures, equipment, and wiring complies with the NFPA 70*[96:17.8.1] F5

Propane System Integrity Checklist

- ☐ Check that the main shutoff valve on all gas containers is readily accessible. [58:6.26.4.1(3)] P1
- ☐ Ensure that portable gas containers are in the upright position and secured to prevent tipping over. [58:6.26.3.4] P2
- ☐ Inspect gas systems prior to each use. [96:17.7.2.3] P3
- Perform leak testing on all new gas connections of the gas system. [58:6.16;
 58:6.17] P4
- ☐ Perform leak testing on all gas connections affected by replacement of an exchangeable container. [58:6.16; 58:6.17] P5
- □ Document leak testing and make documentation available for review by the authorized official. [58:6.26.5.1(M)] P6
- □ Ensure that on gas system piping, a flexible connector is installed between the regulator outlet and the fixed piping system. [58:6.26.5.1(B)] P7
- ☐ Where a gas detection system is installed, ensure that it is tested monthly. [96:17.7.2.2] P8

Operational Safety Checklist

☐ Do not leave cooking equipment unattended while it is still hot. (This is the leading cause of home structure fires and home fire injuries.) ○A

- Operate cooking equipment only when all windows, service hatches, and ventilation sources are fully opened. [96:12.1.1] OB
- ☐ Close gas supply piping valves and gas container valves when equipment is not in use. [58:6.26.8.3] OC
- ☐ Keep cooking equipment, including the cooking ventilation system, clean by regularly removing grease. [96:12.4] OD

Solid Fuel Safety Checklist (Where Wood, Charcoal, Or Other Solid Fuel Is Used)

- ☐ Fuel is not stored above any heat-producing appliance or vent. [96:15.9.2.2] SA
- ☐ Fuel is not stored closer than 3 ft to any cooking appliance. [96:15.9.2.2] SB
- ☐ Fuel is not stored near any combustible flammable liquids, ignition sources, chemicals, and food supplies and packaged goods. [96:15.9.2.7] SC
- □ Fuel is not stored in the path of the ash removal or near removed ashes. [96:15.9.2.4] SD
- □ Ash, cinders, and other fire debris should be removed from the firebox at regular intervals and at least once a day. [96:15.9.3.6.1] SE
- Removed ashes, cinders, and other removed fire debris should be placed in a closed, metal container. [96:15.9.3.8.1] SF

Learn More

- Get free digital access to NFPA codes and standards at: nfpa.org/docinfo
- ► Read the latest news and updates at: nfpa.org/foodtrucksafety
- ► Review the following and other NFPA resources at: nfpa.org
 - NFPA 1, Fire Code, 2021 Edition
 - NFPA 1 Fire Code Handbook, 2021 Edition
 - NFPA 10, Standard for Portable Fire Extinguishers, 2018 Edition
 - NFPA 58, Liquefied Petroleum Gas Code, 2020 Edition
 - LP-Gas Code Handbook, 2020 Edition
 - NFPA 70°, National Electrical Code®, 2020 Edition
 - National Electrical Code® Handbook, 2020 Edition
 - NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2021 Edition
 - NFPA 96: Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations Handbook, 2017 Edition





Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	City Of Hendersonville
Contact Phone:	8286973003
Contact Email:	
PO Number:	

Date:	09/20/2023
Order Number:	9305052
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	109.0000
Height in Inches:	0.0000

Print			
Product	#Insertions	Start - End	Category
HEN Times-News	2	09/24/2023 - 10/01/2023	Govt Public Notices
HEN blueridgenow.com	2	09/24/2023 - 10/01/2023	Govt Public Notices

Ad Preview

Section 7, Item B.

PUBLIC HEARING NOTICE

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

- I. Zoning Text Amendment
 Transportation Standards
 for CHMU (P23-051-ZTA) City Staff initiated Zoning
 Text Amendment to supplement the standards of the
 Commercial Highway Mixed
 Use (CHMU) Zoning
 District.
- II. Zoning Text Amendment

 Mobile Food Vendors
 (P23-050-ZTA) City Staff
 initiated Zoning Text Amendment proposing to amend the
 supplementary standards for
 mobile food vendors.
- III. Annexation Petition –
 Living Savior Evangelical
 Lutheran Church (C23-065ANX) Application from Jon
 Secretory of the Living
 Savior Evangelical Lutheran
 Church for satellite annexation of 1 porcel identified as
 to a porcel \$758-90-1278
 located on Upward Road and
 Vine Road.

Diatalwritten <u>public</u> hearins <u>comments</u> must be received twenty-four hours prior to the meeting (<u>by 5:45</u> ber <u>Am. on Wednesday October 4th 2023)</u> to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

on the City's website.

Public hearing comments will also be accepted during the meeting from those otherding in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen shoring with which the screen screen

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

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

The City of Hendersonville is committed to providing cocessible facilities, programs, and services for lipeople in compliance with the American Marchael Constitution of the City Clerk on Jerosa Commodition for this meeting please contact the City Clerk no later than 24 hours in advance. Sept 24, Oct 1, 2023 #9305052



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Matthew Manley **MEETING DATE:** October 5, 2023

AGENDA SECTION: Public Hearing DEPARTMENT: Community

Development

TITLE OF ITEM: Zoning Text Amendment: Transportation Standards in CHMU (P23-51-ZTA)

- Matthew Manley, AICP - Strategic Projects Manager

SUGGESTED MOTION(S):

For Recommending Approval:

I move City Council <u>adopt</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-27 CHMU Commercial Highway Mixed Use Zoning District, based on the recommendations presented by staff and based on the following:

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:

The petition aligns with Goal TC-3 of the Transportation and Circulation Chapter of the Comprehensive Plan which calls for providing a safe and efficient roadway system that meets adequate vehicular level-of-service requirements in order to support business activity and residential quality of life.

- 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:
 - The text amendment would help address access management, congestion management and transportation circulation in the Upward Rd corridor.
 - 2. The text amendment will impact a rapidly growing area of the City.

[DISCUSS & VOTE]

For Recommending Denial:

I move City Council <u>deny</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-27 CHMU Commercial Highway Mixed Use Zoning District, based on the following:

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:

The petition aligns with Goal TC-3 of the Transportation and Circulation Chapter of the Comprehensive Plan which calls for providing a safe and efficient roadway system that meets adequate vehicular level-of-service requirements in order to support business activity and residential quality of life.

- 2. We <u>[do not find]</u> this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:
 - 1. The text amendment would place a burden on private development.

[DISCUSS & VOTE]

SUMMARY: The City of Hendersonville is initiating a zoning code text amendment to supplement the standards of the Commercial Highway Mixed Use (CHMU) Zoning District. This zoning district was established to address development along the Upward Road corridor.

In January 2011, the City established the Upward Road Planning Area to help plan for and direct sewer expansion in this southern portion of the City's surroundings. Given that the City's ETJ was not expanded to this area, the land in this area does not have City zoning, but rather is zoned by Henderson County. In anticipation of properties in the Upward Road Planning Area requesting annexation and connection to sewer service, the City established the CHMU to foster orderly development along this corridor.

One key attribute of orderly development along major thoroughfares are zoning regulations which address congestion management. A study performed in 2005 for the US64 East corridor helped to establish such standards in the Highway Mixed Use (HMU) zoning district - the zoning district established for US64 East/Chimney Rock Rd. Staff is proposing to expand these standards to the CHMU zoning district. Applying these same transportation-related standards from the HMU zoning district will help shape growth along the quickly developing Upward Road corridor.

Planning Board voted unanimously to recommend approval of this text amendment.

PROJECT/PETITIONER NUMBER:	P23-51-ZTA
PETITIONER NAME:	The City of Hendersonville
ATTACHMENTS:	 Staff Report Planning Board Summary Draft Ordinance US 64 East Transportation Plan

ZONING TEXT AMENDMENT: TRANSPORTATION STANDARDS IN CHMU (P23-51-ZTA) CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT	. 13



- Project Name & Case #:
 - Transportation Standards in CHMU
 - o P23-51-ZTA
- Applicant:
 - City of Hendersonville
- Articles Amended:
 - Section 5-27. CHMU Commercial Highway Mixed Use Zoning District
- Applicable Zoning District(s):
 - o CHMU
- Future Land Use Designation
 - o Regional Activity Center
 - Neighborhood Activity Center
 - High Intensity Neighborhood
- Planning Board Legislative Committee Meeting
 - o June 20, 2023
- Summary Basics:
 - The petition proposes to supplement the existing CHMU standards with requirements related to transportation (multimodal circulation, access management, cross access easements, etc.)
 - The proposed standards are based on those found in the HMU Zoning District and are based on the analysis found in the US Highway 64 East Transportation Plan (2005).



Summary of Amendment Petition:

The City of Hendersonville is initiating a zoning code text amendment to supplement the standards of the Commercial Highway Mixed Use (CHMU) Zoning District. This zoning district was established to address development along the Upward Road corridor.

In January 2011, the City established the Upward Road Planning Area to help plan for and direct sewer expansion in this southern portion of the City's surroundings. Given that the City's ETJ was not expanded to this area, the land in this area does not have City zoning, but rather is zoned by Henderson County. In anticipation of properties in the Upward Road Planning Area requesting annexation and connection to sewer service, the City established the CHMU to foster orderly development along this corridor.

One key attribute of orderly development along major thoroughfares are zoning regulations which address congestion management. A study performed in 2005 for the US64 East corridor helped to establish such standards in the Highway Mixed Use (HMU) zoning district - the zoning district established for US64 East/Chimney Rock Rd. Staff is proposing to expand these standards to the CHMU zoning district. Applying these same transportation-related standards from the HMU zoning district will help shape growth along the quickly-developing Upward Road corridor.

AMMENDMENT ANALYSIS - AMENDMENT OVERVIEW

Upward Road is a corridor experiencing significant growth. In the last three years, there have been no less than 9 development requests/approvals in the Upward Rd area alone. In addition to those development applications, there have been other development inquiries, some of which have been significant in scale. While other areas of Hendersonville are experiencing growth, no other specific area of town has seen this scale of development requests in recent years, especially when it comes to requests for commercial development.

Designated as a Boulevard in the City's 2030 Comprehensive Plan, Upward Rd features one of Hendersonville's primary interchanges with I-26. For these reasons, there are obvious comparisons between the Upward Road corridor and the Four Seasons Blvd/Chimney Rock Rd corridor (US 64 East). A Transportation Plan for the US 64 East corridor was drafted and ultimately adopted in February 2005. Aspects of the Transportation Plan's recommendations were included in the Highway Mixed Use (HMU) Zoning District - which was established to guide development along US 64 East. Similarly, the CHMU Zoning District was designed to shape development along Upward Rd. However, the CHMU Zoning District does not include standards for transportation circulation. Given the similarities between these two highway corridors, staff is proposing to take the standards for transportation circulation from the HMU Zoning District and apply them to the CHMU Zoning District. Given the growth that is occurring and is expected to continue along Upward Rd, the opportunity to mitigate vehicular congestion, plan for pedestrian and bicycle circulation, and create cross connections between developments is now.

LEGISLATIVE COMMITTEE RECOMMENDATION

The Legislative Committee of the Planning Board first met to discuss this petition at their recurring meeting on Tuesday, June 20, 2023. The members of the committee that were present were Jim Robertson and Neil Brown. In general, the Committee members were supportive of the proposed text revisions. Some items that were discussed included making clarifications to the text, consider strengthening some of the requirements and making sure the standards were in a coherent order.

PROPOSED STANDARDS

After additional review and consideration by the Staff and the Legislative Committee the following revisions to the zoning code are recommended:

Sec. 5-27. CHMU Commercial Highway Mixed Use Zoning District Classification.

5-27-4 Design standards.

NOTE: "Building design element" sub-sections below are not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

These standards are intended to apply to all development and redevelopment within the CHMU Commercial Highway Mixed Use Zoning District Classification. Applicants for authorization to undertake development or redevelopment within such zoning district shall demonstrate compliance with these standards or shall undergo alternative design review as provided for in article XVIII, below.

- **5-27-4.1 Standards of general applicability**. The following standards shall apply to all development in the CHMU Commercial Highway Mixed Use Zoning District Classification regardless of use or building type.
 - **5-27-4.1.1 General site development.** Site development shall not result in the removal of lateral support for adjoining properties. Furthermore, development shall not create hazardous or dangerous conditions or result in the creation of a nuisance as specified in section 6-13, below.
 - **5-27-4.1.2 Physical integration of uses.** Residential and commercial uses may be located within the same or adjoining structures provided appropriate health and safety regulations are followed.
 - **5-27-4.1.3 Building orientation.** Primary façades, which may or may not contain an entrance to the building, shall face primary vehicular access or significant public space. A main entrance shall face a connecting walkway with a direct, safe, pedestrian connection to the street.
 - **5-27-4.1.4 Common space.** NOTE: Section 5-27-4.1.4 is not required for one- and two-family dwellings; property-owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects. Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces.

Unless interior common space is approved by the reviewing authority, common space shall be out-of-doors. Common space design shall comply with the following:

- a) **Size.** At least ten percent of the acreage of a site shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.
- b) **Trees.** One tree shall be planted for each 1,000 square feet of common space. Trees shall have a minimum caliper of three to three and one-half inches measured six inches above ground at the time of planting.
- c) Utilities. All utilities service lines and connections shall be underground.
- d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.
- e) Amenities. Common space for a development shall contain adequate amenities to animate and enliven the environment and to make it conducive for social interaction. Following is a list of such amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, awnings, canopies, informational kiosks, and similar structures. This list is not intended to be exhaustive.
 - **5-27-4.1.5** Architectural details. NOTE: Section 5-27-4.1.5 is not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

The appearance of all street side façades is important and shall be addressed in development design. Architectural elements like openings, sill details, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant shall provide distinctive architectural elements at the corner of buildings facing the intersection. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned.

All buildings shall provide detailed design along all façades which are visible from a street or common space. Detailed design shall be provided by using at least three of the following architectural features:

Dormers.

Gables.

Recessed entries.

Covered porch, entries.

Cupolas or towers.

Pillars or posts.

Eaves (minimum 6-inch projection).

Off-sets in building face or roof.

Window trim (minimum nominal four inches wide).

Bay windows.

Balconies.

Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation).

Decorative cornices and roof lines (for flat roofs).

5-27-4.1.6 Building façades. NOTE: Section 5-27-4.1.6 is not required for one- and two-family dwellings; property-owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Front, rear and side façades of buildings shall contain at least two building materials which shall contrast in color and texture. At least 15 percent of the façade, exclusive of windows, doors and trim, shall consist of stone, brick, decorative concrete or decorative block.

5-27-4.1.7 Windows. NOTE: Section 5-27-4.1.7 is not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Windows shall either be (1) recessed a minimum of three inches from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.

5-27-4.1.8 Building scale. NOTE: Section 5-27-4.1.8 is not required for one- and two-family dwellings; property-owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

The scale of a building is a function of the size of the individual pieces of a building and their relationship to each other. The scale of a building is important in order to contribute to the overall diversity of building types, to give visual interest, and to maintain compatibility between buildings. These design standards regulate scale by means of offsets, that is, protrusions or breaks in the plane of façades.

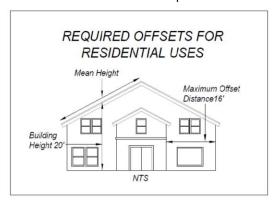
- a) **Scale, buildings containing nonresidential uses**. The following requirements apply to any building containing nonresidential uses, regardless whether the building also contains residential uses:
 - 1) The distance between required offsets is related to the height of the building wall on a two-to-one basis. A building façade which is less than or equal to the height of the building shall not require an offset.





- 2) The height of any particular façade shall be measured from the average ground level to the mean height level between the eaves and ridge of a gable, hip or gambrel roof, or for flat roofs, to the top of the parapet.
- 3) The depth or projection of the offset shall be 1/10th the length of the longest adjacent wall panel; provided, however, the minimum offset depth shall be one foot. By means of illustration, a building with a 20-foot wall panel

- shall have a two-foot offset adjacent to such wall panel.
- 4) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.
- b) Scale, buildings containing only residential uses. The following requirements apply to any building containing only residential uses:
 - 1) The distance between required offsets shall be related to the height of the building on a one-to-one basis; provided, however, no wall shall exceed 30 feet in length without an offset. A building façade which is less than or equal to the height of the building shall not require an offset. Provided, however, the provisions of this paragraph shall not be construed to require an offset for that portion of a façade containing a two-car garage.





- 2) The height of any particular façade shall be measured from the average ground level to the mean height level between the eaves and ridge of a gable, hip or gambrel roof, or, for flat roofs, to the top of the parapet.
- 3) Offsets shall have a minimum depth or projection of two feet regardless of the length of adjacent wall façades.
- 4) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.

5-27-4.1.9 Streets and sidewalks. Streets and sidewalks shall comply with the circulation and access requirements contained <u>in</u> section 5-27-5 and section 18-6-4.6, below.

5-27-4.1.10 Building materials. NOTE: Section 5-27-4.1.10 is not required for one- and two-family dwellings; property-owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Building materials shall be used consistently on the exterior of the building and shall comply with the lists of prohibited materials contained herein.

Prohibited building materials. Unless authorized through alternative design compliance, the following building materials shall be prohibited within the CHMU Commercial Highway Mixed Use Zoning District Classification: plain concrete block (with or without paint); corrugated or ribbed metal siding; reflective glass; more than 50 percent glass on any façade; roll roofing; roll siding; plain unfinished concrete (painting does not constitute a finish); aluminum; unpainted metal; exposed plain pipe columns; metal wall siding; vinyl siding and any other materials not customarily used in conventional construction.

5-27-4.2 General standards for residential developments. NOTE: Section 5-27-4.2 is not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

The following standards shall apply to developments containing only residential uses with the exception that multi-family buildings must comply with the general standards contained in section 5-27-5.3, below.

5-27-4.2.1 General appearance. Residential development shall contain a variation of façades and materials so that there shall not be a row or strip housing appearance. Means to accomplish this goal may include the use of dormers, gables, recessed entries, covered porch entries, bay windows, cupolas or towers, and a variation in the depth and height of walls, among others.

5-27-4.2.2 Architectural.

a) Useable porches and/or stoops, at least eight feet in width, shall be located on the front and/or side of the home.

- b) Front-loading garages and carports shall be offset from the front façade of the house and visually designed to form a secondary building volume. Developers are encouraged to turn garages and carports so the openings or doors are not visible from the street. At no time shall the width of an attached garage exceed 50 percent of the total building façade.
- c) Accessory buildings with a floor area greater than 150 square feet shall be clad in materials similar in appearance to the principal structure.
- d) Walls and fences located in the front yard shall be decorative and limited in height to no more than four feet above grade. Front-yard walls shall be of brick, stone or stucco. Front yard fences shall be wood, wrought iron or materials similar in appearance and durability. Side and rear yard fences may be chain link, wood, wrought iron, or similar material.

5-27-4.2.3 Configurations.

- a) Main roofs on residential buildings shall be gables, hips or clerestory with a pitch between 5:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to a wall of the main building.
- b) Foundation walls (except those under porches) shall be finished with brick, stucco or stone. If crawlspaces of porches are enclosed, they shall be enclosed with brick, stone, and lattice or any combination thereof.
- **5-27-4.3 General standards for nonresidential and multi-family buildings.** The following standards shall apply to all buildings containing nonresidential uses and multi-family dwellings:
 - **5-27-4.3.1 Storage, utility & service areas**. Areas devoted to storage, garbage, recycling collection and utilities shall be enclosed and screened around their perimeter, and constructed of materials consistent with the principal building. Gas meters, electric meters, ground-mounted mechanical units, and any other similar structures shall be hidden from public view or screened with approved construction materials. Fences designed for screening shall be constructed of brick, stone, architectural stucco, concrete, wood or iron. Roof vents, mechanical units, utility equipment and telecommunication receiving devices located on the roof shall be screened from view. Solar technology components including solar panels and solar thermal collectors are exempt from this provision.
 - **5-27-4.3.2 Parking and vehicular access.** All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of public right-of-way and shall be screened from view from such rights-of-way in accordance with article XV, below.
 - **5-27-4.3.3** Encroachments. Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.
 - **5-27-4.3.4 Roofs**. Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

5-27-4.4 Specific standards for single-family and two-family detached dwellings.

Minimum setbacks:	Front: 15 feet	
	Sides: 20% of lot width. The entire setback may be allocated to one side.	
	Rear: 10 feet	
Minimum lot width:	50 feet	
Maximum height:	2½ stories.	
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet.	
Accessory structures:	Side: 3 feet	
	Rear: 3 feet	

5-27-4.5 Specific standards for townhouses. The townhouse is a building with two or more residential units that are located side-by-side. When an entrance is provided at-grade, the townhouse may be used as a live-work unit.

Minimum setbacks:	Front: 8 feet
	Sides: 0 feet (Corner 8 feet). Buildings within a development must be separated by a minimum of 15 feet
	Rear: 15 feet from centerline of alley, if applicable.
Minimum lot width:	16 feet
Maximum height:	3 stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the city.
Accessory structures	Side: 3 feet
	Rear: 3 feet
Maximum footprint:	400 square feet
Maximum no. of structures:	1

5-27-4.6 Specific standards for multi-family dwellings. Multi-family dwelling consists of three or more dwelling units vertically and/or horizontally arranged. The ground floor may be available for commercial uses.

Minimum setbacks:	Front: 10 feet	
	Sides: 15 feet plus 5 feet for each floor above 2	
	Rear: 15 feet plus 5 feet for each floor above 2	
Parking:	Off-street parking shall be located in the rear or side yard only and shall be screened from view from public roadways. On-street parking is encouraged for private streets and drives.	
Vehicular access:	Primary vehicular access from public roads shall be accomplished by means of a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except for vehicular access to rear parking. These limitations shall not apply to parcels or buildings where primary vehicular access is by means of a private street or drive.	
Maximum height:	4 stories.	
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the city.	
Accessory structures	Side: 0 feet	
	Rear: 0 feet	
Maximum footprint:	400 square feet	

5-27-4.7 Specific standards for commercial and institutional buildings. Commercial buildings are structures which can accommodate a variety of uses mixed either horizontally (shopping center) or vertically (dwelling unit over a store). Office buildings, hotels and inns can be placed in commercial buildings. Buildings containing both commercial and residential uses shall be classified as commercial buildings for the purposes of this section. Institutional buildings are specialized public or semi-public buildings intended to serve as public gathering places. Such uses include governmental offices, churches or other places of worship, schools, hospitals, post offices, and nonprofit or charitable clubs and organizations. Note there are exceptions from the maximum height restrictions for steeples, cupolas and similar structures. These are contained in section 8-2, below.

Minimum height:	14 feet to the top of the parapet for buildings with flat roofs. There is no minimum height requirement for other buildings.
Maximum Height:	4 stories
Minimum setbacks:	Front: 10 feet
	Sides: 15 feet plus 5 feet for each floor above 2.
	Rear: 15 feet plus 5 feet for each floor above 2.
Minimum lot width:	None.
Encroachments:	Balconies, stoops, chimneys, roof overhangs and bay windows are permitted to encroach into any setback up to 5 feet.
Accessory structures	Side: 3 feet
	Rear: 3 feet

THE FOLLOWING SECTION IS PROPOSED TO BE ADDED TO CHMU. THE LANGUAGE IS IDENTITCAL TO THAT FOUND IN HMU WITH THE EXCEPTION OF THE RED/GREEN MARK-UPS PROVIDED BELOW. AS THIS WILL BE ALL NEW LANGUAGE FOR THE CHMU, THE FINAL RECOMMENDED MARK-UP, AS SHOWN IN THE ATTACHED ORDINANCE, WILL APPEAR IN GREEN. FOR NOW, THE RED VS GREEN IS BEING USED TO DISTINGUISH BETWEEN THE CURRENT LANGUAGE FOUND IN HMU VS THE LANGUAGE THAT IS BEING PROPOSED FOR CHMU AS PART OF THIS ZTA.

5-273-5 Transportation.

The section is intended to put in place regulations which will provide for a multi-modal transportation environment conducive to a pedestrian-friendly mixed-use community.

5-273-5.1 Corridor circulation plan. If a corridor circulation plan has been adopted for the <u>CHMU zoning district</u>, all new development and redevelopment must demonstrate consistency with that plan.

5-273-5.2 Transportation plan submittals. In addition to other submittal requirements for development review, applicants for development authorization within the <u>CHMU zoning district shall submit the following documents:</u>

- a) Pedestrian circulation plan to include type of infrastructure (for example, sidewalk, multi-use path), and connections to adjacent pedestrian facilities.
- b) Vehicular circulation plan to include parking, loading, stubs to adjacent properties, and any cross-access easements.
- c) When required, a traffic impact <u>analysis</u> study (TI<u>A</u>S) <u>shall be</u> <u>performed in accordance with Section 6-18</u> by a registered engineer in accordance with NCDOT standards for all developments that generate 100 peak hour trips or 1,000 daily trips in accordance with the Institute of Traffic Engineers current Trip Generation Manual. The community development director may also require a TI<u>A</u>S without regard to the expected trip generation of the development due to the existence of special circumstances including, without limitation, existing level-of-service deficiencies in the area of the proposed development or when available accident data and/or operational and geometric factors indicate safety concerns.
- **5-273-5.1 Pedestrian accommodations.** Pedestrian accommodations, which may be sidewalks, multi-purpose paths, or other approved alternatives, shall be provided as a part of a development on both each sides of all public roadways and of all private roadways which the development directly abuts unless site constraints or proposed uses make it impractical or unnecessary. Pedestrian access and circulation shall be consistent with any and all adopted corridor circulation plans.
 - **5-273-5.2 Vehicular access.** It is the intent of these regulations to **encourage create** interconnectivity between development parcels in order to provide alternative transportation routes to existing thoroughfares. Accordingly, when development parcels have potential to provide access **to between major arterial roadways and** adjoining parcels, developers are encouraged to utilize public streets, rather than private streets or driveways, for access to major arterial roadways. The regulations contained in this section shall apply to all new development and redevelopment within the district.
 - **5-273-5.2.1 Driveways.** Where permitted, driveways shall comply with the requirements of this section and, if applicable, the regulations of the North Carolina Department of Transportation.
 - a) The number of driveways permitted for new development shall relate to the amount of linear frontage for the proposed development as depicted below:

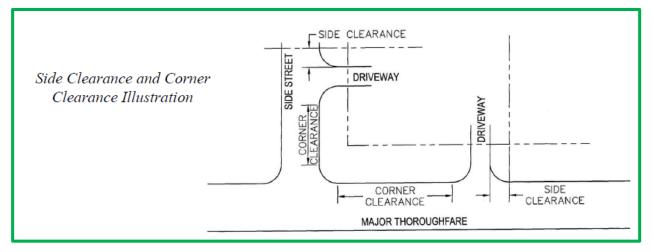
LINEAR FRONTAGE	NUMBER OF PERMITTED
Less than 350 feet	1
Greater than 350 feet	2
Greater than 1,000 feet	31

With approval of the city after demonstration of need in the required TIAS.

b) All driveway approaches for both mid-block and corner lots along major thoroughfares shall have both minimum corner and side clearances as below:

CLEARANCE TYPE	ALONG MAJOR THOROUGHFARE	ALONG SIDE STREET
Corner clearance ²	250 feet	100 feet
Side clearance ³	30 feet	10 feet

- ² Corner clearance shall be measured from the point of tangency of the radius curvature of the intersection streets.
- ³ Side clearance shall represent the distance from the driveway to the side property line.



- c) No driveways shall be allowed along a major thoroughfare within 250 feet of any intersection, as measured from the intersection of the projected right-of-way lines, except for properties which cannot meet this restriction due to limited frontage within the desired corner clearance.
- d) One-way driveways are not considered full-movement driveways therefore, two, one-way driveways may be considered as a single driveway provided that:
 - 1) The minimum spacing between the two driveway segments is 60 feet.
 - 2) The driveway segments are clearly signed and marked as one-way driveways, using pavement arrows and directional signs.
 - 3) The maximum combined pavement width of both driveway segments at the right-of-way line is 40 feet and the minimum width of a single segment is 14 feet.
 - **5-273-5.2.2 Outparcels.** Access to development outparcels shall be oriented to the interior of the development site, not to the roadway.
 - **5-273-5.2.3 Cross-access easements.** Cross-access easements between parking areas on adjacent developments are an effective way to improve corridor circulation and to reduce vehicle trips. For each adjoining property with accessible parking areas, applicants for development authorization shall provide either (1) a cross-access easement or (2) confirmation that the applicant has attempted to negotiate a cross-access easement with that property owner and has not been able to reach agreement thereon.
 - **5-273-5.2.4** Street-Connectivity. In an effort to improve and promote overall street connectivity, public streets and <u>private drives</u> constructed within the <u>CHMU</u> zoning district shall provide connections to existing adjacent public streets and <u>adjacent parcels</u>. Primary access from major arterials should be provided by public streets.

When no off-site street stub-<u>outs</u> are present, the following connections shall be provided to <u>undeveloped</u> <u>adjacent</u> properties at the appropriate rate indicated below.

a) All new development with fewer than 100 dwelling units are required to provide at least one stub-out street to extend and connect with future streets or drives. In the event that adjacent land is already developed with stub-outs present, the developer shall build streets to connect to the existing stub-out(s).

- b) Residential developments containing 100 or more dwelling units shall include street connections or stub-<u>out</u>s at a ratio of one stub-<u>out</u>/connection per 100 dwelling units. In the event adjacent land is already developed with <u>streets_stub-outs present</u>, the developer shall connect to the existing stub-out(s). Required collector street connections are included in this calculation.
- c) Non-residential developments shall provide one stub<u>-out</u> to each adjoining parcel where, considering topography, land use compatibility and future development or redevelopment potential, it is deemed feasible and appropriate.

5-27-56 CHMUCZD Commercial Highway Mixed Use Conditional Zoning District Classification.

The purpose, requirements and standards of this classification are identical to the CHMU Commercial Highway Mixed Use Zoning District Classification except that a rezoning to CHMU Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the CHMU Commercial Highway Mixed Use Conditional Zoning District Classification upon rezoning to CHMUCZD, regardless of the square footage or number of residential units for the use:

Telecommunications towers, subject to supplementary standards contained in section 16-4, below.

Permitted uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in section 5-27-1, above.

Special uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in section 5-27-1, above.

COMPREHENSIVE PLAN CONSISTENCY			
Future Land Use	Goal LU-7 - High Intensity Neighborhood: Encourage low-maintenance, high density housing that supports Neighborhood & Regional Activity Centers and downtown and provides a transition between commercial and single-family development. Promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods. [CONSISTENT] Strategy LU-7.4. Development guidelines: • Encouragement of walkable neighborhood design, as described under Goal PH-3 in		
	Chapter 2 [CONSISTENT] Goal LU-9 Regional Activity Center: Meet the large-scale retail needs of Hendersonville residents while encouraging mixed-use, walkable design through redevelopment and infill projects. [CONSISTENT]		
	Strategy LU-9.4. Development guidelines: • Provision of pedestrian connections to parking and other buildings and properties [CONSISTENT] Activity Nodes: Improved pedestrian connections to surrounding neighborhoods [CONSISTENT]		
Land Use & Development	Strategy LU-3.4 Promote fiscal responsibility for the City with the expansion of infrastructure and services. Action LU-3.5.1 Continue to require adequate public facilities for new development projects. Require developers to offset increased public costs when existing public infrastructure is inadequate. [CONSISTENT] 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		
Population & Housing	Strategy PH-3.2 - Encourage mixed land use patterns that place residents within		
Natural & Environmental Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.		
Cultural & Historic Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.		
Community Facilities	There are no Goals, Strategies, or Actions that are directly applicable to this petition.		
Water Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.		
Transportation & Circulation	Strategy TC-1.1. Encourage mixed-use, pedestrian-friendly development that reduces the need to drive between land uses. Strategy TC-1.2. Identify and prioritize needed pedestrian connections within the community.		

Strategy TC-1.3. Incorporate Complete Streets concepts into future roadway improvements in order to create multi-modal streets.

Strategy TC-1.4. Encourage pedestrian connections between dead end streets and adjacent neighborhoods.

Goal TC-3. Provide a safe and efficient roadway system that meets adequate vehicular level-of-service requirements in order to support business activity and residential quality of life.

Strategy TC-3.1. Continue to develop and require a connected street grid.

Action TC-3.1.1. Require stub streets and connections to existing stubs in new subdivisions.

Strategy TC-3.3. Implement local policies and practices that complement and expand upon the State's access management standards.

Action TC-3.3.1. Adopt local access management regulations and roadway classifications that mirror the State standards

Action TC-3.3.2. Incorporate zoning regulations that encourage shared parking and cross-access easements.

Action TC-3.3.3. Encourage the use of shared service drives to consolidate access points.

Action TC-3.3.4. Utilize redevelopment projects as opportunities to correct access management problems.

GENERAL REZONING STANDARDS			
Compatibility	Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property -		
	The management of congestion and planning for circulation and access are critical considerations for a commercial corridor.		
	Whether and the extent to which there are changed conditions, trends or facts that require an amendment -		
Changed Conditions	Upward Road is a corridor experiencing significant growth. In the last three years, there have been no less than 9 development requests/approvals in the Upward Rd area alone. In addition to those development applications, there have been other development inquiries, some of which have been significant in scale. While other areas of Hendersonville are experiencing growth, no other specific area of town has seen this scale of development requests in recent years, especially when it comes to requests for commercial development.		
Public Interest	Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -		
	The proposed amendment will help to mitigate vehicular congestion and plan for pedestrian and bicycle circulation.		
Public Facilities	Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment		
	The CHMU Zoning District is in an urban location that is well served by public facilities.		
Effect on Natural Environment	Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -		
	Reduction in vehicular congestion and improvements in pedestrian and bicycle facilities can have a net positive impact on the natural environment in comparison to current conditions.		

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 Goal TC-3 of the Transportation and Circulation Chapter of the Comprehensive Plan which calls for providing a safe and efficient roadway system that meets adequate vehicular level-of-service requirements in order to support business activity and residential quality of life.

In conjunction with the recommendations from Staff, we [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- The text amendment would help address access management, congestion management and transportation circulation in the Upward Rd corridor.
- The text amendment will impact a rapidly growing area of the City.

DRAFT [Rational for Denial]

• The text amendment would place a burden on private development

PLANNING BOARD RECOMMENDATE



Project #: P23-51-ZTA

Meeting Date: September 14, 2023

PETITION REQUEST: Zoning Text Amendment - Transportation Standards in CHMU

APPLICANT/PETITIONER: City of Hendersonville

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the proposal providing an analysis of existing conditions and staff's recommended text revisions. Additionally, staff presented the feedback from the Legislative Committee level and reviewed the guidance from the Comprehensive Plan and the criteria for considering a Zoning Text Amendment. Planning Board considered this item for approximately 18 Minutes.

No members of the public spoke in regard to the proposal.

The Planning Board had no questions. Some supportive comments were made.

MOTION:

Ms. Flores made a motion to approve the petition. The motion passed 8-1 with the following language:

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The petition aligns with Goal TC-3 of the Transportation and Circulation Chapter of the Comprehensive Plan which calls for providing a safe and efficient roadway system that meets adequate vehicular level-of-service requirements in order to support business activity and residential quality of life.

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 text amendment would help address access management, congestion management and transportation circulation in the Upward Road corridor.
- 2. The text amendment will impact a rapidly growing area of the City.

BOARD ACTION

Motion/Second: Flores / Hanley

Yeas: Hanley, Brown, Martin, Robinson, B. Robertson, Waters,

J. Robertson,

Nays: N/A

• **Absent**: Cromar, Peacock

Ordinance #

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND ARTICLE V. – ZONING DISTRICT CLASSIFICATIONS, SECTION 5-27 CHMU COMMERCIAL HIGHWAY MIXED USE ZONING DISTRICT TO PROVIDE STANDARDS FOR TRANSPORTATION AND CIRCULATION

WHEREAS, the Planning Board reviewed this petition for a zoning text amendment at its regular meeting on September 14, 2023; voting 7-0 to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, and

WHEREAS, City Council took up this application at its regular meeting on October 5, 2023, and

WHEREAS, City Council has found that this zoning text amendment is consistent with the City's comprehensive plan, and that it is reasonable and in the public interest for the reasons stated, and

WHEREAS, City Council has conducted a public hearing as required by the North Carolina General Statutes on October 5, 2023,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville to amend Article V. – 'Zoning District Classifications', Section 5-27 'CHMU Commercial Highway Mixed Use Zoning District' to provide standards for transportation and circulation.

Sec. 5-27. CHMU Commercial Highway Mixed Use Zoning District Classification.

5-27-4 Design standards.

NOTE: "Building design element" sub-sections below are not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

These standards are intended to apply to all development and redevelopment within the CHMU Commercial Highway Mixed Use Zoning District Classification. Applicants for authorization to undertake development or redevelopment within such zoning district shall demonstrate compliance with these standards or shall undergo alternative design review as provided for in article XVIII, below.

- **5-27-4.1 Standards of general applicability**. The following standards shall apply to all development in the CHMU Commercial Highway Mixed Use Zoning District Classification regardless of use or building type.
 - **5-27-4.1.1 General site development.** Site development shall not result in the removal of lateral support for adjoining properties. Furthermore, development shall not create hazardous or dangerous conditions or result in the creation of a nuisance as specified in section 6-13, below.
 - **5-27-4.1.2 Physical integration of uses.** Residential and commercial uses may be located within the same or adjoining structures provided appropriate health and safety regulations are followed.
 - **5-27-4.1.3 Building orientation.** Primary façades, which may or may not contain an entrance to the building, shall face primary vehicular access or significant public space. A main entrance shall face a connecting walkway with a direct, safe, pedestrian connection to the street.

5-27-4.1.4 Common space. NOTE: Section 5-27-4.1.4 is not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects. Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces.

Unless interior common space is approved by the reviewing authority, common space shall be out-of-doors. Common space design shall comply with the following:

- a) **Size.** At least ten percent of the acreage of a site shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.
- b) **Trees.** One tree shall be planted for each 1,000 square feet of common space. Trees shall have a minimum caliper of three to three and one-half inches measured six inches above ground at the time of planting.
- c) **Utilities.** All utilities service lines and connections shall be underground.
- d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.
- e) Amenities. Common space for a development shall contain adequate amenities to animate and enliven the environment and to make it conducive for social interaction. Following is a list of such amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, awnings, canopies, informational kiosks, and similar structures. This list is not intended to be exhaustive.

5-27-4.1.5 Architectural details. NOTE: Section 5-27-4.1.5 is not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

The appearance of all street side façades is important and shall be addressed in development design. Architectural elements like openings, sill details, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant shall provide distinctive architectural elements at the corner of buildings facing the intersection. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned.

All buildings shall provide detailed design along all façades which are visible from a street or common space. Detailed design shall be provided by using at least three of the following architectural features:

Dormers.

Gables.

Recessed entries.

Covered porch, entries.

Cupolas or towers.

Pillars or posts.

Eaves (minimum 6-inch projection).

Off-sets in building face or roof.

Window trim (minimum nominal four inches wide).

Bay windows.

Balconies.

Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation).

Decorative cornices and roof lines (for flat roofs).

5-27-4.1.6 Building façades. NOTE: Section 5-27-4.1.6 is not required for one and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Front, rear and side façades of buildings shall contain at least two building materials which shall contrast in color and texture. At least 15 percent of the façade, exclusive of windows, doors and trim, shall consist of stone, brick, decorative concrete or decorative block.

5-27-4.1.7 Windows. NOTE: Section 5-27-4.1.7 is not required for one- and two family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

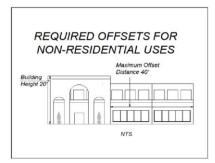
Windows shall either be (1) recessed a minimum of three inches from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.

5-27-4.1.8 Building scale. NOTE: Section 5-27-4.1.8 is not required for one and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

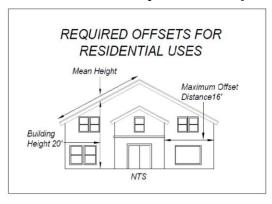
The scale of a building is a function of the size of the individual pieces of a building and their relationship to each other. The scale of a building is important in order to contribute to the overall diversity of building types, to give visual interest, and to maintain compatibility between buildings. These design standards regulate scale by means of offsets, that is, protrusions or breaks in the plane of façades.

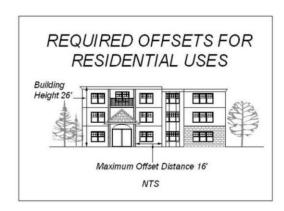
- a) **Scale, buildings containing nonresidential uses**. The following requirements apply to any building containing nonresidential uses, regardless whether the building also contains residential uses:
 - 1) The distance between required offsets is related to the height of the building wall on a two-to-one basis. A building façade which is less than or equal to the height of the building shall not require an offset.





- roofs, to the top of the parapet.
- 3) The depth or projection of the offset shall be 1/10th the length of the longest adjacent wall panel; provided, however, the minimum offset depth shall be one foot. By means of illustration, a building with a 20-foot wall panel shall have a two-foot offset adjacent to such wall panel.
- 4) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.
- b) Scale, buildings containing only residential uses. The following requirements apply to any building containing only residential uses:
- 1) The distance between required offsets shall be related to the height of the building on a one-to-one basis; provided, however, no wall shall exceed 30 feet in length without an offset. A building façade which is less than or equal to the height of the building shall not require an offset. Provided, however, the provisions of this paragraph shall not be construed to require an offset for that portion of a façade containing a two-car garage.





- 2) The height of any particular façade shall be measured from the average ground level to the mean height level between the eaves and ridge of a gable, hip or gambrel roof, or, for flat roofs, to the top of the parapet.
- 3) Offsets shall have a minimum depth or projection of two feet regardless of the length of adjacent wall façades.
- 4) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.

5-27-4.1.9 Streets and sidewalks. Streets and sidewalks shall comply with the circulation and access requirements contained in section 5-27-5 and section 18-6-4.6, below.

5-27-4.1.10 Building materials. NOTE: Section 5-27-4.1.10 is not required for one- and two-family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

Building materials shall be used consistently on the exterior of the building and shall comply with the lists of prohibited materials contained herein.

Prohibited building materials. Unless authorized through alternative design compliance, the following building materials shall be prohibited within the CHMU Commercial Highway Mixed Use Zoning District Classification: plain concrete block (with or without paint); corrugated or ribbed metal siding; reflective glass; more than 50 percent glass on any façade; roll roofing; roll siding; plain unfinished concrete (painting does not constitute a finish); aluminum; unpainted metal; exposed plain pipe columns; metal wall siding; vinyl siding and any other materials not customarily used in conventional construction.

5-27-4.2 General standards for residential developments. NOTE: Section 5-27-4.2 is not required for one and two family dwellings; property owners/developers may voluntarily consent to these standards per G.S. 160D-702(b).

The following standards shall apply to developments containing only residential uses with the exception that multi-family buildings must comply with the general standards contained in section 5-27-5.3, below.

5-27-4.2.1 General appearance. Residential development shall contain a variation of façades and materials so that there shall not be a row or strip housing appearance. Means to accomplish this goal may include the use of dormers, gables, recessed entries, covered porch entries, bay windows, cupolas or towers, and a variation in the depth and height of walls, among others.

5-27-4.2.2 Architectural.

- a) Useable porches and/or stoops, at least eight feet in width, shall be located on the front and/or side of the home.
- b) Front-loading garages and carports shall be offset from the front façade of the house and visually designed to form a secondary building volume. Developers are encouraged to turn garages and carports so the openings or doors are not visible from the street. At no time shall the width of an attached garage exceed 50 percent of the total building façade.
- c) Accessory buildings with a floor area greater than 150 square feet shall be clad in materials similar in appearance to the principal structure.
- d) Walls and fences located in the front yard shall be decorative and limited in height to no more than four feet above grade. Front-yard walls shall be of brick, stone or stucco. Front yard fences shall be wood, wrought iron or materials similar in appearance and durability. Side and rear yard fences may be chain link, wood, wrought iron, or similar material.

5-27-4.2.3 Configurations.

- a) Main roofs on residential buildings shall be gables, hips or clerestory with a pitch between 5:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to a wall of the main building.
- b) Foundation walls (except those under porches) shall be finished with brick, stucco or stone. If crawlspaces of porches are enclosed, they shall be enclosed with brick, stone, and lattice or any combination thereof.
- **5-27-4.3 General standards for nonresidential and multi-family buildings.** The following standards shall apply to all buildings containing nonresidential uses and multi-family dwellings:
 - **5-27-4.3.1 Storage, utility & service areas**. Areas devoted to storage, garbage, recycling collection and utilities shall be enclosed and screened around their perimeter, and constructed of materials consistent with the principal building. Gas meters, electric meters, ground-mounted mechanical units, and any other similar structures shall be hidden from public view or screened with approved construction materials. Fences designed for screening shall be constructed of brick, stone, architectural stucco, concrete, wood or iron. Roof vents, mechanical units, utility equipment and telecommunication receiving devices located on the roof shall be screened from view. Solar technology components including solar panels and solar thermal collectors are exempt from this provision.

- **5-27-4.3.2 Parking and vehicular access.** All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of public right-of-way and shall be screened from view from such rights-of-way in accordance with article XV, below.
- **5-27-4.3.3 Encroachments**. Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.
- **5-27-4.3.4 Roofs**. Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

5-27-4.4 Specific standards for single-family and two-family detached dwellings.

Minimum setbacks:	Front: 15 feet
	Sides: 20% of lot width. The entire setback may be allocated to one side.
	Rear: 10 feet
Minimum lot width:	50 feet
Maximum height:	2½ stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet.
Accessory structures:	Side: 3 feet
	Rear: 3 feet

5-27-4.5 Specific standards for townhouses. The townhouse is a building with two or more residential units that are located side-by-side. When an entrance is provided at-grade, the townhouse may be used as a live-work unit.

Minimum setbacks:	Front: 8 feet
	Sides: 0 feet (Corner 8 feet). Buildings within a development must be separated by a minimum of 15 feet
	Rear: 15 feet from centerline of alley, if applicable.
Minimum lot width:	16 feet
Maximum height:	3 stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the city.
Accessory structures	Side: 3 feet
	Rear: 3 feet
Maximum footprint:	400 square feet
Maximum no. of structures:	1

5-27-4.6 Specific standards for multi-family dwellings. Multi-family dwelling consists of three or more dwelling units vertically and/or horizontally arranged. The ground floor may be available for commercial uses.

Minimum setbacks:	Front: 10 feet
	Sides: 15 feet plus 5 feet for each floor above 2
	Rear: 15 feet plus 5 feet for each floor above 2
Parking:	Off-street parking shall be located in the rear or side yard only and shall be screened from view from public roadways. On-street parking is encouraged for private streets and drives.
Vehicular access:	Primary vehicular access from public roads shall be accomplished by means of a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except for vehicular access to rear parking. These limitations shall not apply to parcels or buildings where primary vehicular access is by means of a private street or drive.
Maximum height:	4 stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the city.
Accessory structures	Side: 0 feet
	Rear: 0 feet
Maximum footprint:	400 square feet

5-27-4.7 Specific standards for commercial and institutional buildings. Commercial buildings are structures which can accommodate a variety of uses mixed either horizontally (shopping center) or vertically (dwelling unit over a store). Office buildings, hotels and inns can be placed in commercial buildings. Buildings containing both commercial and residential uses shall be classified as commercial buildings for the purposes of this section. Institutional buildings are specialized public or semi-public buildings intended to serve as public gathering places. Such uses include governmental offices, churches or other places of worship, schools, hospitals, post offices, and nonprofit or charitable clubs and organizations. Note there are exceptions from the maximum height restrictions for steeples, cupolas and similar structures. These are contained in section 8-2, below.

Minimum height:	14 feet to the top of the parapet for buildings with flat roofs. There is no minimum height requirement for other buildings.
Maximum Height:	4 stories
Minimum setbacks:	Front: 10 feet
	Sides: 15 feet plus 5 feet for each floor above 2.
	Rear: 15 feet plus 5 feet for each floor above 2.
Minimum lot width:	None.
Encroachments:	Balconies, stoops, chimneys, roof overhangs and bay windows are permitted to encroach into any setback up to 5 feet.
Accessory structures	Side: 3 feet
	Rear: 3 feet

5-27-5 Transportation.

The section is intended to put in place regulations which will provide for a multi-modal transportation environment conducive to a pedestrian-friendly mixed-use community.

5-27-5.1 Pedestrian accommodations. Pedestrian accommodations, which may be sidewalks, multipurpose paths, or other approved alternatives, shall be provided as a part of a development on each side-of all public roadways and of all private roadways which the development directly abuts unless site constraints or proposed uses make it impractical or unnecessary. Pedestrian access and circulation shall be consistent with any and all adopted corridor circulation plans.

<u>5-27-5.2 Vehicular access.</u> It is the intent of these regulations to create interconnectivity between development parcels in order to provide alternative transportation routes to existing thoroughfares. Accordingly, when development parcels have potential to provide access between major arterial roadways and adjoining parcels, developers are encouraged to utilize public streets, rather than

private streets or driveways. The regulations contained in this section shall apply to all new development and redevelopment within the district.

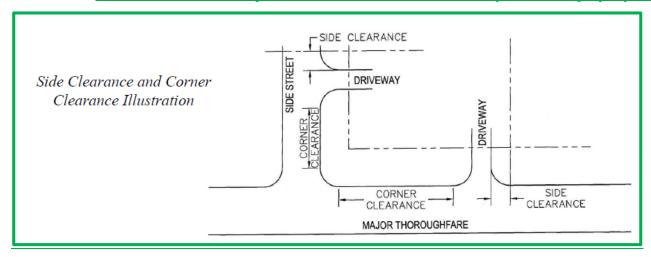
- <u>5-27-5.2.1 Driveways.</u> Where permitted, driveways shall comply with the requirements of this section and, if applicable, the regulations of the North Carolina Department of <u>Transportation.</u>
- a) The number of driveways permitted for new development shall relate to the amount of linear frontage for the proposed development as depicted below:

LINEAR FRONTAGE	NUMBER OF PERMITTED
Less than 350 feet	1
Greater than 350 feet	2
Greater than 1,000 feet	31

- With approval of the city after demonstration of need in the required TIA.
- b) All driveway approaches for both mid-block and corner lots along major thoroughfares shall have both minimum corner and side clearances as below:

CLEARANCE TYPE	ALONG MAJOR THOROUGHFARE	ALONG SIDE STREET
Corner clearance ²	<u>250 feet</u>	<u>100 feet</u>
Side clearance ³	<u>30 feet</u>	<u>10 feet</u>

- ² Corner clearance shall be measured from the point of tangency of the radius curvature of the intersection streets.
- ³ Side clearance shall represent the distance from the driveway to the side property line.



- c) No driveways shall be allowed along a major thoroughfare within 250 feet of any intersection, as measured from the intersection of the projected right-of-way lines, except for properties which cannot meet this restriction due to limited frontage within the desired corner clearance.
- d) One-way driveways are not considered full-movement driveways therefore, two, one-way driveways may be considered as a single driveway provided that:
 - 1) The minimum spacing between the two driveway segments is 60 feet.
 - 2) The driveway segments are clearly signed and marked as one-way driveways, using pavement arrows and directional signs.

- 3) The maximum combined pavement width of both driveway segments at the right-of-way line is 40 feet and the minimum width of a single segment is 14 feet.
- <u>5-27-5.2.2 Outparcels.</u> Access to development outparcels shall be oriented to the interior of the development site, not to the roadway.
- 5-27-5.2.3 Cross-access easements. Cross-access easements between parking areas on adjacent developments are an effective way to improve corridor circulation and to reduce vehicle trips. For each adjoining property with accessible parking areas, applicants for development authorization shall provide either (1) a cross-access easement or (2) confirmation that the applicant has attempted to negotiate a cross-access easement with that property owner and has not been able to reach agreement thereon.
- 5-27-5.2.4 Connectivity. In an effort to improve and promote overall street connectivity, public streets and private drives constructed within the CHMU zoning district shall provide connections to existing adjacent public streets and adjacent parcels. Primary access from major arterials should be provided by public streets.

When no off-site stub-outs are present, the following connections shall be provided to adjacent properties at the appropriate rate indicated below.

- a) All new development with fewer than 100 dwelling units are required to provide at least one stub-out to extend and connect with future streets or drives. In the event that adjacent land is already developed with stub-outs present, the developer shall connect to the existing stub-out(s).
- b) Residential developments containing 100 or more dwelling units shall include street connections or stub-outs at a ratio of one stub-out/connection per 100 dwelling units. In the event adjacent land is already developed with stub-outs present, the developer shall connect to the existing stub-out(s). Required collector street connections are included in this calculation.
- c) Non-residential developments shall provide one stub-out to each adjoining parcel where, considering topography, land use compatibility and future development or redevelopment potential, it is deemed feasible and appropriate.

5-27-56 CHMUCZD Commercial Highway Mixed Use Conditional Zoning District Classification.

The purpose, requirements and standards of this classification are identical to the CHMU Commercial Highway Mixed Use Zoning District Classification except that a rezoning to CHMU Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the CHMU Commercial Highway Mixed Use Conditional Zoning District Classification upon rezoning to CHMUCZD, regardless of the square footage or number of residential units for the use:

Telecommunications towers, subject to supplementary standards contained in section 16-4, below.

Permitted uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in section 5-27-1, above.

Special uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in section 5-27-1, above.

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



US Highway 64 East TRANSPORTATION PLAN

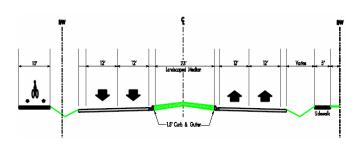
Prepared for: City of Hendersonville Planning Department

Adopted: February 3,2005









CONNECTIONS

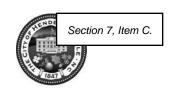
CHOICES

CONVENIENCE

COMMUNITY







The following report was prepared for the exclusive use of the City of Hendersonville, North Carolina as well as its designated agents, using information collected by Kimley-Horn and Associates, Inc, the City of Hendersonville Planning Department, Henderson County, and the North Carolina Department of Transportation.

The methodology used to complete the evaluation is believed to be consistent with current engineering practices and land use practices. The recommendations presented herein are based on a comprehensive review and analysis of the available data, direct observations, and application of engineering judgment.

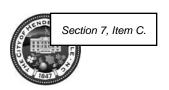
This document remains the property of Kimley-Horn and Associates, Inc., and the City of Hendersonville. Comments and questions about this study can be addressed to:



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Hendersonville, North Carolina 28793

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Acknowledgements

The US Highway 64 East Corridor Plan was developed by the City of Hendersonville and the Mixed-Use Design Committee. The project participants and primary authors include:

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Bruce Lowe
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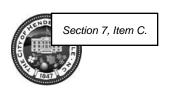
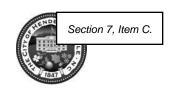


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BACKGROUND

US Highway 64 East (herein referred to as Highway 64) exists as an urban principal arterial on the Statewide Functional Classification System. The roadway is also designated as a major thoroughfare on the adopted Thoroughfare Plan of French Broad River Metropolitan Planning Organization (of which the City of Hendersonville is a member). Highway 64 was widened to a five-lane roadway between Fruitland Road and Howard Gap Road in 1999 by the North Carolina Department of Transportation (NCDOT).

With the widening of Highway 64, the City of Hendersonville took a proactive approach to address anticipated development by expanding the extraterritorial jurisdiction in February 1999. The expanded extraterritorial jurisdiction (ETJ) includes the area between Fruitland Road and Interstate 26. This section of roadway, recently widened by NCDOT, is more likely to develop, given the increased capacity of the roadway, ease of access, and availability of developable land. The ETJ includes the area between Clear Creek and Highway 64 to the north and Highway 64 and an estimated 300 to 1,300 feet to the south.

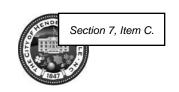
Like many other communities, Hendersonville is beginning to feel the effects of a sprawling suburban development pattern, which has increased congestion. The availability of developable land and ample roadway capacity has encouraged development on the peripheries of the community.

At the direction of the City Council, the Hendersonville Planning Department was instructed to initiate a study addressing development concerns in the expanded ETJ area of Highway 64, specifically the area between Interstate 26 and Fruitland Road. This area is referred to as the Highway 64 Corridor. The inherent relationship between transportation and land-use required the project to consider these topics simultaneously while promoting an interconnected development pattern with its own center.

In May of 2002, the City Council adopted the Highway 64 Corridor Plan (Corridor Plan). The adopted Corridor Plan outlined the physical characteristics of the highway including soil types, topography and its proximity to the Clear Creek Floodplain. An evaluation of the existing zoning by type and amount also was included in the Corridor Plan accompanied by an evaluation of existing infrastructure, including water/sewer and available transportation facilities. The Corridor Plan also outlined changes to the existing zoning that would discourage strip-type development similar to that along Highway 64 closer to town.

Perhaps the most significant component of the Corridor Plan was the establishment of a clear vision for the corridor that includes a synergistic mix of residential, commercial, and office development. The Corridor Plan outlined a strategy for implementing this vision via a new mixed-use zoning classification.





This new classification would encourage a balance of land uses along the corridor and allow for the development of residential, retail, and office development similar to a town center.

A proposed HMU zoning district classification is currently under review and is discussed in subsequent sections of this report.

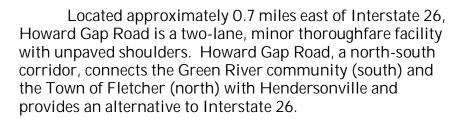
The Corridor Plan also identified the need for a supportive transportation network and recommended "The City should investigate the feasibility and encourage the development of a new road south of Highway 64 which will enable an interconnected system of streets, allow for local pedestrian and vehicular movement independent of the highway, and concentrate connections to the highway at controlled access points." With this in mind, the City of Hendersonville has requested the development of a transportation plan for the Highway 64 Corridor. The resulting recommendations and strategies described within this Transportation Plan represent the collaborative work of the Mixed Use Design Committee, City Planning Staff, and consultant team members.



STUDY AREA & EXISTING CONDITIONS

The study area includes the section of Highway 64 west of Interstate 26 between Howard Gap Road and Fruitland Road. The total length of the corridor is approximately one mile. The bounding properties include a variety of land uses including commercial, residential and institutional. The primary land use is commercial.

Highway 64 connects to smaller communities (such as Bat Cave and Edneyville) and is classified as a major thoroughfare on the adopted thoroughfare plan. The roadway has a posted speed limit of 45 mph and facilitates significant traffic volumes as one of three facilities with interchanges to Interstate 26. In 2002 the North Carolina Department of Transportation recorded an average daily traffic count of 29,000+ vehicles per day near the intersection with Howard Gap Road and 9,000+ vehicles per day near Fruitland Road. In addition, the corridor serves as a commercial corridor and functions as one of the major transportation spines for the community. Sidewalks are present only on the south side of Highway 64. Figure 1 indicates the study area, existing development, and traffic counts.



Fruitland Road serves as the eastern boundary of the Fruitland Road at study area and is considered a rural road with a two-lane cross-section. Near the intersection of Highway 64 and adjacent to North Henderson High School, Fruitland Road becomes a three-lane section with a center bi-direction continuous turn lane and one through lane in each direction.

A portion of the Highway 64 study area is situated in the 100-year floodplain of the Clear Creek, the northern boundary for the study area. The floodplain width varies from 150 feet to 1,300 feet from the centerline of the creek. The floodplain is approximately 130 feet in width at the point of intersection between Highway 64 and Wolfpen Creek, a tributary of Clear Creek.



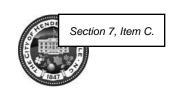
Existing Highway 64



Existing Howard Gap Road

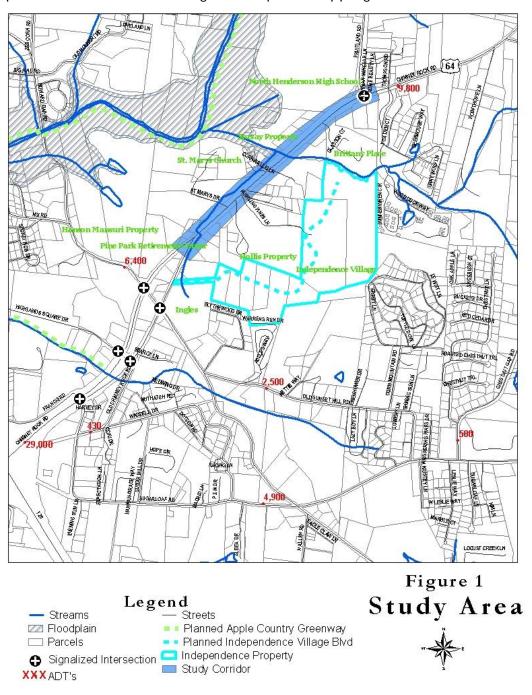




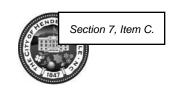


This significantly impacts the potential development pattern on the north side of Highway 64.

The Highway 64 corridor represents an area that is in transition from low-density residential and agricultural land uses to medium density residential and commercial land uses including new developments such as Brittany Place and Wolfpen Creek, as well as the Highland Square shopping center.







HIGHWAY MIXED-USE ZONING

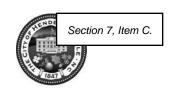
The zoning of property is a means to implement planning strategies. One method of implementing the Corridor Plan is the establishment of a new, Highway Mixed-Use (HMU) zoning district classification. The HMU district is intended to promote an integrated development pattern including improved transportation connectivity and accommodations for alternate modes. Ideally, this zoning district will encourage a mix of land uses that consist of medium density housing intermingled with appropriately scaled commercial development. This commercial development will include retail sales, services and professional offices. The medium density housing will likely include condominiums, apartments, and single-family homes on smaller lots.

The presence of large contiguous undeveloped parcels presents great development opportunities. These opportunities, as discussed in the Corridor Plan, are well suited for quality, master planned, mixed-use developments. A mix of well-integrated land uses interconnected through common access, parking, signage, lighting and landscaping is recommended. The Highway Mixed-Use zoning, as proposed, allows developers the flexibility to present appropriate development standards and lists of permitted uses in order to successfully develop a diverse and integrated site. This may include a symbiotic arrangement of land uses appropriately mixing commercial, office, service, recreational and residential land uses. The benefits of a successful mixed-use development include reduced trip generation and internal capture, lessening the impact on the external street network, a well-managed vehicular access plan which takes advantage of shared driveways and parking facilities where feasible. Continuity of architectural themes and environmentally responsible development strategies also are a by-product of the development pattern.



Example of a coordinated mixeduse development courtesy, The Lawrence Group





The HMU district also requires consistency with an established Circulation Plan. Working with the Mixed-Use Design Committee and planning staff, Kimley-Horn developed a circulation plan which addressed transportation mobility in the context of the entire study corridor. The HMU district regulations also require that a circulation plan be prepared for individual developments to demonstrate consistency with the overall plan and to indicate accommodations for bicycle/pedestrian access and vehicular circulation, parking, and loading. A comprehensive evaluation of the corridor resulted in a series of recommended transportation requirements. These recommended transportation policies are intended as a means to insure that development occurs in a manner which is coordinated and consistent with community goals. Figure 2 depicts the Highway 64 Corridor Circulation Plan (Circulation Plan).

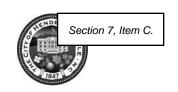
HMU Zoning Advantages:

- Mixture of land use encourages multiple trips within one destination
- o Circulation Plan insures adequate site circulation and promotes connectivity (improves transportation mobility for all modes)
- o Reduced dependence on the arterial street network
- Allows for shared parking opportunities
- o Provides opportunities for transit and shuttle service
- Walkable design increases pedestrian activity

Recommended HMU Transportation Policies:

- 1. Require all new development and redevelopment to be consistent with the Highway 64 Corridor Circulation Plan (see Figure 2).
- 2. Require the development of a circulation plan for all new projects. The circulation plan should be submitted as an element of the development application and should depict the following:
 - o Pedestrian access and circulation, type of infrastructure (sidewalk vs. multi-use path), connections to adjacent pedestrian facilities
 - Vehicular Circulation Plan. Indicate parking, loading, and stubs to adjacent properties and any required cross-access easement.
- 3. Require that a Traffic Impact Study (TIS) be performed by a registered engineer in accordance with NCDOT standards for all developments that generate at least 100 peak hour trips or 1,000 daily trips in accordance with the Institute of Traffic Engineers current Trip Generation manual. The City may also require a TIS without regard for the expected trip generation of the development when special circumstances exist. Factors that would warrant such a requirement include, without limitation, the





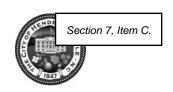
following: a) there are existing level-of-service deficiencies (as defined by the Highway Capacity Manual—Transportation Research Board) in the area of the proposed development; and b) available accident data and/or operational and geometric factors indicate safety concerns.

- 4. Discourage the use of private streets and driveways as primary access from major arterials (including Highway 64) and promote the construction and dedication of public streets.
- 5. In an effort to improve and promote overall street connectivity, public streets constructed within the HMU district should provide connections to existing adjacent public streets. When no offsite streets stubs are present, the following connections should be provided to undeveloped properties at the following rate:
 - o All new development with fewer than 100 dwelling units should be required to provide at least one stub-out street to extend and connect with future streets. In the event that adjacent land is already developed with stub-out requirements, the City should require the new development to build the street connections.
 - o The City should require all new developments with 100 or more dwelling units to include street connections or stubs at a ratio of one stub/connection per 100 dwelling units. In the event that adjacent land is already developed with street stubs, the City should require the new development to connect to these existing street stubs. Required collector street connections are included in this calculation.
 - o Non-residential, a minimum of one stub to adjoining parcels where deemed feasible and appropriate: considerations include: topography, land use compatibility, and future development or redevelopment potential.

Note: The public streets should also be consistent with connections identified on the established Highway 64 Corridor Circulation Plan.

- 6. Pedestrian accommodations should be provided as a part of development along all public and private roadways. Pedestrian access and circulation should be consistent with any/all adopted local land use/small area/corridor plans. Pedestrian facilities shall be installed along both sides of all public streets.
- 7. Access to development outparcels should be oriented to the interior of the development site.
- 8. Cross-Access easements should be required to connect the parking areas of adjacent parking where appropriate. The intent is to improve corridor circulation and to reduce vehicle trips on the primary roadway for short trips between parcels and developments.





Recommended HMU Driveway Policy:

1. The number of driveways permitted for new development shall relate to the amount of linear frontage on Highway 64 for the proposed development as depicted below:

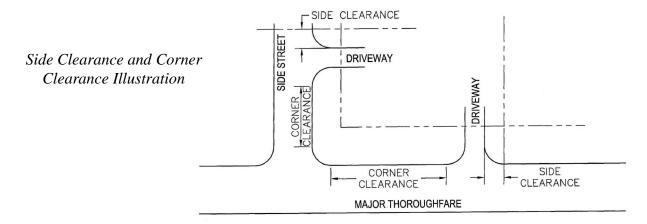
Linear Frontage	Number of Permitted Driveways
Less than 350 feet	1
Greater than 350 feet	2
Greater than 1,000 feet	3*

^{*}with approval of the City and demonstration of need in the required TIS

2. All driveway approaches for both mid-block and corner lots along major thoroughfares shall have both minimum corner and side clearances as below:

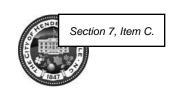
	Along Major Thoroughfare	Along Side Street
Corner Clearance*	250′	100′
Side Clearance**	30′	10′

- * Corner Clearance shall be measured from the point of tangency of the radius curvature of the intersecting streets.
- ** Side Clearance shall represent the distance from the driveway to the side property line



3. No driveways shall be allowed along a major thoroughfare within 250 feet of any intersection, as measured from the intersection of the projected right-of-





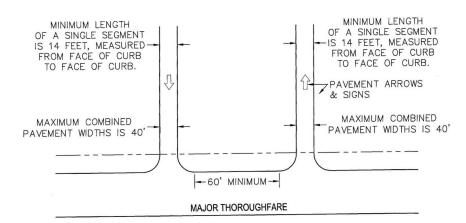
way lines, except for properties which cannot meet this restriction due to limited frontage within the desired corner clearance.

- 4. One-way driveways* are not considered full-movement driveways; therefore, two, one-way driveways may be considered as a single driveway provided that:
 - (a) The minimum spacing between the two driveway segments is sixty feet;
 - (b) The driveway segments are clearly signed and marked as one-way driveways, using pavement arrows and directional signs;
 - (c) The maximum combined pavement width of both driveway segments at the right-of-way line is forty feet and the minimum width of a single segment is fifteen feet.

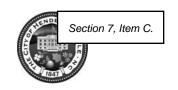
*Full movement median divided driveways are not considered one-way driveways.

NOTE: Vehicular access taken from existing or new state-system streets shall conform with the NCDOT driveway as described in the 2003 NCDOT Policy on Street and Driveway Access to North Carolina Highways.

One-Way Driveway
Illustration







PROPOSED CIRCULATION PLAN

The *Highway 64 Corridor Plan* discusses the need for improved circulation and connectivity of streets within the vicinity. For this reason, a corridor circulation plan (Circulation Plan) was developed in order to identify and communicate strategic transportation connections within the vicinity. The Circulation Plan evaluated a variety of transportation modes, including motor vehicles, pedestrian and bicycle access.

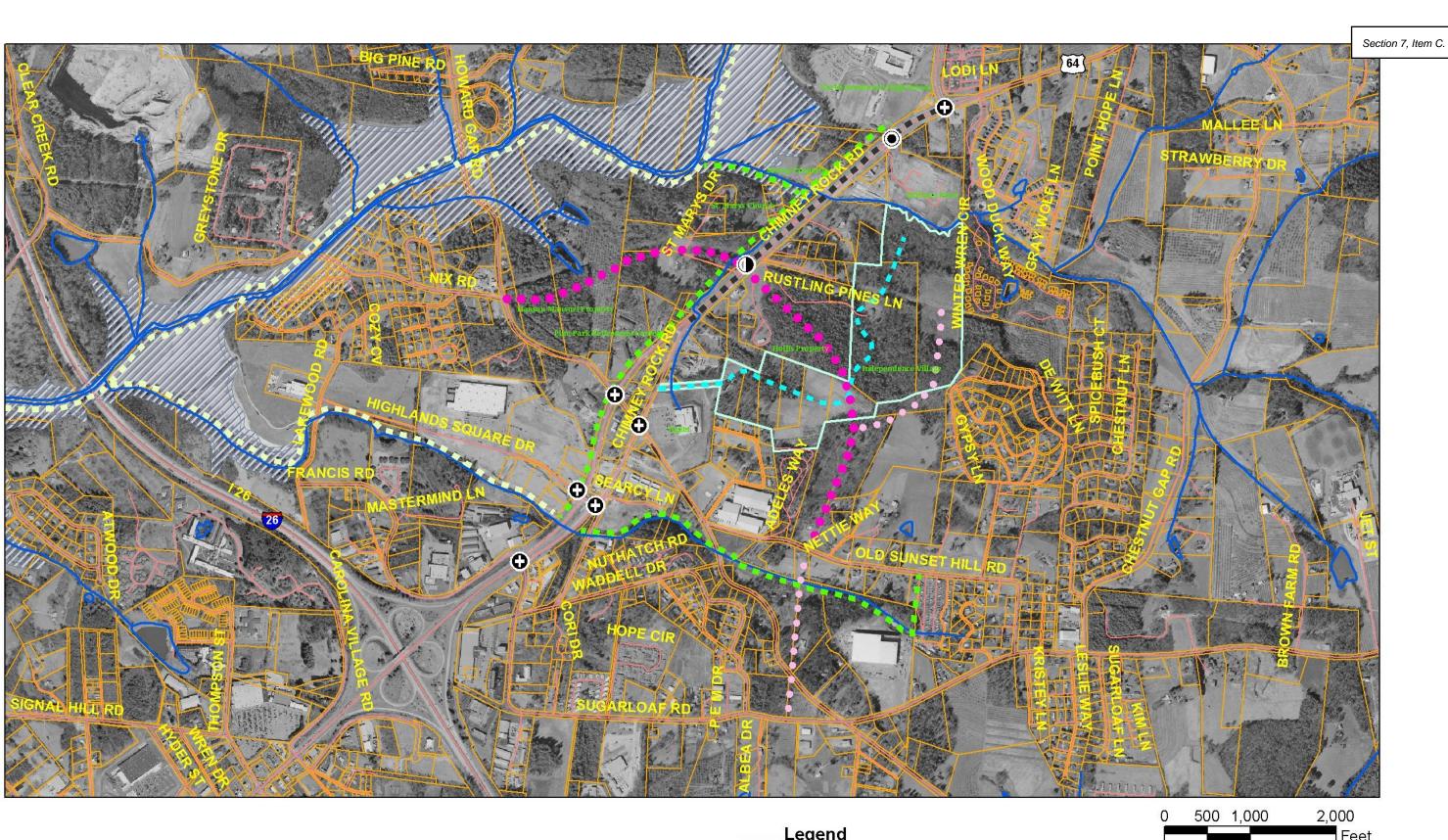
The Circulation Plan communicates the location of a needed connection between Howard Gap Road and Highway 64 from the north and the continuation of the connector south to an intersection with Howard Gap Road. This roadway has been referred to as the "Howard Gap Connector." Other noteworthy elements of the Circulation Plan include pedestrian and bicycle improvements such as the planned development of a multi-purpose trail on the north side of Highway 64, connecting North Henderson High School to a greenway in front of Wal-Mart to the west. The design of this multi-purpose trail should accommodate pedestrians and bicyclists. The Circulation Plan also recommends a connection from the multipurpose trail to Clear Creek greenway on approved master plan and the installation of a median in place of the center two-way left turn lane.

Figure 2 depicts the proposed Highway 64 Circulation Plan.





Existing sidewalk along the south side of the highway





City of Hendersonville Highway 64 Circulation Plan

Howard Gap Connector Potential Connector Planned Apple Country Greenway Future Greenway Connector Future Median Planned Independence Village Blvd Legend

Independence Property Streams

Floodplain

Parcels

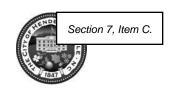
Future Signalized Intersection

Median Opening

Signalized Intersection

Kimley-Horn and Associates, Inc.





Median Installation

The Highway 64 Corridor Plan identifies a preference for a median on Highway 64 from Fruitland Road to the split at Howard Gap Road to the west. The Corridor Plan recommended the installation of a median for safety and beautification purposes. In addition to these stated goals, the proposed median may have the added benefit of preserving and enhancing roadway capacity.

The NCDOT widened Highway 64 in 1999 to its current five-lane section with two travel lanes to the east and west and a center bi-directional turn lane. While this roadway configuration increases roadway capacity, it does not effectively manage access. The resulting absence of access controls creates conflict points throughout the corridor.

The installation of a median on Highway 64 will likely require some widening (most within the existing right-of-way). The cross-section proposed includes the construction of a 23-foot median in place of the 12-foot center turn lane. The resulting installation will require a five and a half-foot offset for both sides. The median is set at this width to allow the creation of appropriate leftturn lanes and resulting concrete islands at specified median openings. Travel lane widths will remain 12 feet. Curb and gutter is not recommended on the outside of the travel lanes due to the increased cost and environmental considerations. The slope of the improved roadway will shed collected water without ponding. Sloped or transition curb and gutter is recommended on the interior travel lane adjacent to the median. This will create a clean edge, prevent debris from entering the travel way, and allow for a raised planted median. The installation of a multi-use path on the north side of the roadway is also recommended and may occur incrementally as development occurs. Figure 3 communicates the recommended typical cross-section for Highway 64. Figure 4 depicts a conceptual design for the roadway with the median installation.

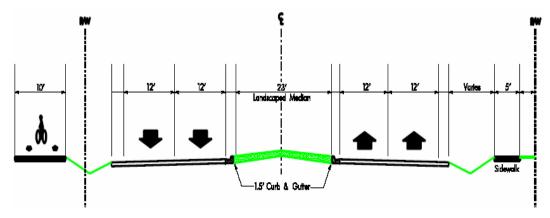
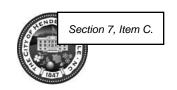


Figure 3: US Highway 64 East Recommended Typical Section

US 64 4-Lane Median Divided Section





This Circulation Plan also communicates a preferred location for a future traffic signal at the proposed Howard Gap Connector and Highway 64 intersection. The location depicted on the Plan is approximately 2,000 feet from the nearest traffic signal (location), an acceptable spacing according to NCDOT standards. One additional median opening should be considered at the entrance to the Brittany Place Apartments. Given its proximity to the signal at Fruitland Road and Highway 64, the location is not a likely candidate for a traffic signal. Further study is required to determine whether the median divided section should terminate at this location or be designed to accommodate the proposed median opening.

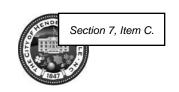
Howard Gap Connector

The *Highway 64 Corridor Plan* identified the need for a connection between Highway 64 south to Howard Gap Road. An alignment was not determined in the Corridor Plan. Therefore, existing environmental features such as flood plains, perennial streams, steep slopes and soil types were considered when developing the alignment that is depicted on the Highway 64 Circulation Plan (see Figure 2). This new alignment referred to as the Howard Gap Connector provides for a continuous roadway from Nix Road to Highway 64 and ultimately south to Old Sunset Hill Road. A future extension to Sugarloaf Road has also been identified. While this new transportation corridor provides increased access to properties a more important accomplishment is the establishment of an alternate route which reduces local dependence on Highway 64. By extending the connection to the north to form the fourth leg of the intersection at Howard Gap Road and Nix Road, a parallel facility is created. This facility provides additional mobility choices for the motorist and improves intersection capacity at Howard Gap Road and Highway 64 by attracting traffic onto the proposed Howard Gap Connector.

It is likely that the majority of this roadway will be constructed as a component of future development that occurs within the study area. For this reason, it is the intent of this Plan to remain flexible with regard to ultimate roadway alignment and cross-section. The follow represents a set of guiding principles that should be maintained as decisions regarding the roadway are considered:

- Any proposed alignment deviations should demonstrate the ability to maintain a feasible connection from Nix Road to Old Sunset Road.
- The intersection with Hwy 64 East should occur at a location that is acceptable for future signal installation (the optimum location is depicted on Figure 2: Circulation Plan). This location must be agreed upon by NCDOT and the City of Hendersonville.





- The roadway section should maintain a clearly defined pedestrian and vehicular realm and should compliment the planned bicycle network for the area. (illustrative sections are depicted in Figure 5 below)
- A transition between different roadway sections should only occur
 at logical locations. While a continuous section is preferred
 transitions may be appropriate where one or a combination of the
 following are present: change in speed limit or roadway capacity,
 intersections, natural features such as stream crossings, and where
 changes in land use or development character occur.

A walkable, multimodal transportation corridor is envisioned for the Howard Gap Connector. Proposed cross-sections should include at a minimum, two travel lanes with curb and gutter as well as accommodations for pedestrians and bicyclists. Travel lanes that do not exceed 11 feet in width are preferred (except when used as a wide outside lane for bicyclist). In addition, all sidewalks should be a minimum five-foot in width and should comply with all applicable ADA (Americans with Disabilities Act) standards. A multi-use path may be considered in lieu of sidewalks and bike lanes when approved by the City Planning Staff. The combination of narrow travel lanes and bike lanes will allow larger vehicles to maneuver without damaging infrastructure. The perceived scale of the roadway may be influenced by the presence of a median and bike lanes having a positive impact on vehicular speeds. The ultimate sizing of the road may be influenced by future traffic studies prepared for development in the vicinity. Figure 5 represents a set of illustrative street sections for the Howard Gap Connector.



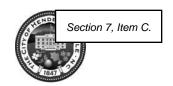
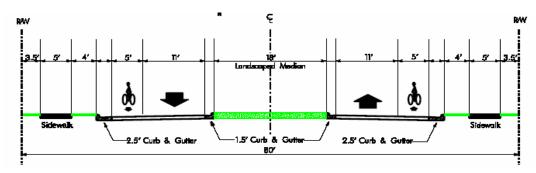
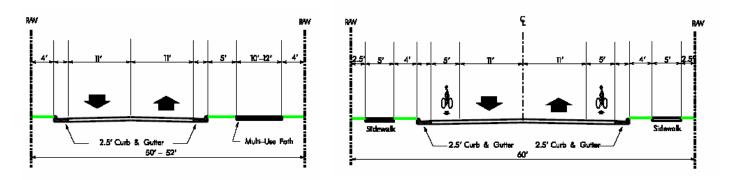


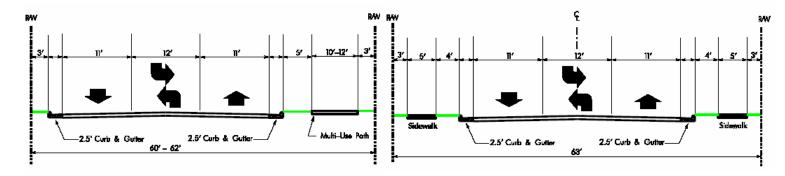
Figure 5: Recommended Howard Gap Connecter Typical Sections



Two- Lane Divided Section

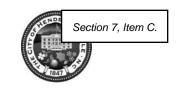


Two-Lane Undivided Sections



Three-Lane Sections





Alternative Modes of Transportation

Providing a well-connected system of pedestrian and bicycle facilities is essential for a successful mixed-use development. The proposed Howard Gap Connector, which will be the spine of such development, provides for both alternate modes of transportation. Sidewalks at a minimum width of five feet are proposed on both sides of the Connector. The sidewalks are to be separated by a four-foot verge or planting strip. The separation between the sidewalk and the back of curb creates a safer pedestrian environment.

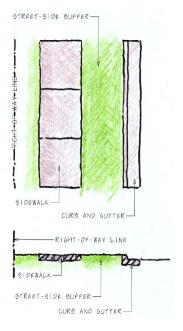
To encourage bicycle travel, five-foot bicycle lanes are proposed on Howard Gap Connector. Current NCDOT design standards call for bike lanes to be five feet in width. Bike lanes at a width smaller than five feet will create an uncomfortable environment for the bicyclist. This uneasy feeling will cause bicyclists to gravitate to the sidewalk or the vehicle travel lanes. The dedicated five-foot bike lane, in addition to the two-foot gutter pan, combines to create a seven-foot wide bike lane. At this combined width, riders of all skill levels should feel comfortable using the facilities.

Because of the nature and purpose of Highway 64 (to move traffic at a higher rate of speed), bike lanes are not recommended. Instead of bike lanes, a ten-foot multi-purpose trail is proposed for the north side of Highway 64. This trail is to be designed to accommodate pedestrian and bicycle travel. The offset of the trail from the highway is not defined, but should vary (minimum ten-foot separation). This will allow the trail to meander and thereby avoid any potential conflicts (i.e. trees, utility poles). The completion of the multi-purpose trail will provide a much needed pedestrian connection between North Henderson High School and points westward.

Access Management

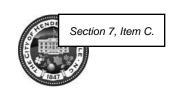
The City of Hendersonville, like most small communities in North Carolina, has historically relied on NCDOT to be concerned with managing access point (driveway) location and spacing throughout major urban corridors. The result of this practice is a deferment of decision-making to standards outlined in the 2003 NCDOT Driveway Ordinance. This ordinance entitled, *Policy on Street and Driveway Access to North Carolina Highways*, is not designed to preserve capacity but rather to balance the access rights of private property owners against accepted safety measures. In recent years, NCDOT has made a concerted effort

Basic sidewalk anatomy









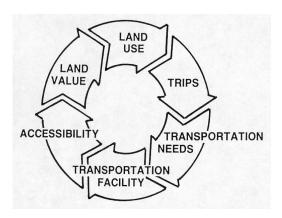
to preserve capacity along arterials by restricting access to specified median openings. Currently, this practice is being implemented only on new construction facilities. Also, in the absence of strong local government preference, cross-sections for road improvements have typically been selected based on the expected (rather than planned) land use. The result has been an abundance of thoroughfares constructed as five-lane sections without center medians, similar to the Highway 64 corridor. This practice has contributed to a continued strip development pattern that occurs in response to the ease of access afforded by the lack of a median. Interestingly, this pattern of development is counter productive to the goal of providing a seamless, integrated transportation system, as it tends to preclude viable pedestrian and transit elements. Safety, aesthetics, streetscape, and capacity have been compromised as well.

The Highway Research Board (a national think tank of transportation professionals supported by Federal Highway Administration), describes a "Cycle of Functional Obsolescence" that tends to compromise investments in traditional surface transportation dollars. Simply stated, as the roadway is improved, accessibility to adjoining property is thereby enhanced, raising the property value and encouraging the intensification of the land use in the improved corridor. It is not uncommon for improved roadways to experience significant peak hour congestion soon after widening due to speculative land development and inadequate access management.

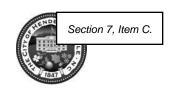
The development occurring along the Highway 64 corridor is anticipated to continue, with properties expanding and redeveloping. Further pressure will be placed upon Highway 64 as development continues to move eastward. Therefore, it is recommended that a policy of both general and specific access management guidelines should be developed for the Highway 64 corridor and other identified thoroughfares throughout the Hendersonville planning area. Consideration should be given to a variety of resources during the development of these criteria, including the City of Hendersonville Zoning Ordinance, NCDOT

Driveway Manual, as well as Transportation Research Board and Center for Urban Transportation Research (University of South Florida) publications that describe and compare policies across the nation. The following represent preliminary recommendations that also should be considered during the development of a corridor access management policy.

"Cycle of Functional Obsolescence"



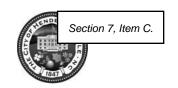




Recommendations:

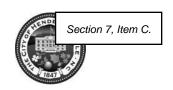
- New non-residential developments located adjacent to each other should be encouraged to provide cross-access so that parking lots and driveways are connected and shared.
 - Encouraged cross-access between adjacent developments reduces the number of vehicles that are required to re-enter the major roadway. Keeping additional turning traffic off the major roadway enhances efficient and safe operation.
- o Minimum lot frontages should be considered for non-residential developments along the major roads (Highway 64).
 - Typical access management standards for similar corridors would ideally recommend a minimum of 300 foot spacing between non-residential driveways. In order to feasibly enforce this spacing, adjacent commercial properties would need to have well over 200 feet of frontage. Encouraging minimum frontage prevents driveways from being too closely spaced.
- o Larger developments, such as shopping centers, should be required to provide internal access to outparcels.
 - Providing access to outparcels is another facet of cross-access that encourages internal traffic circulation and keeps unnecessary turning traffic off the major roadways.
- o Implement right-turn deceleration lanes for developments generating significant peak hour traffic as determined through development/traffic impact study process.
 - Right-turn deceleration lanes minimize the effect of slowing traffic exiting the traffic stream on the major roadway. This improves safety and allows the major roadway to operate at more desirable speeds. Where deemed necessary by a traffic impact study (TIS), deceleration lanes should be constructed within the property of the proposed development.
- Right-in/right-out only driveways should be encouraged as secondary access on major roadways for non-residential developments.
 - If appropriate, when a new development requests more than one driveway, the feasibility of a right-in/right-out driveway as a secondary access should be evaluated and encouraged.





- o For new developments that front both a major and a side street, primary access via the side street should be encouraged.
 - Restricting major road access to service entrances or right-in/right-out driveways (where side street access is available) reduces the impact of turning movements on the major road. It also may reduce or eliminate the cost to a developer when associated with constructing a deceleration lane on the major road.





ACTION PLAN

The Highway 64 Corridor is a dynamic area with opportunities to implement and foster the City of Hendersonville's vision. The preceding report documents the transportation policies and recommendation necessary to support the envisioned HMU zoning district.

The following recommendations are offered in an effort to assist the City in outlining and inventorying necessary steps to achieve the desired outcomes associated with the continued development of the study area:

o 70NING

Establish the highway mixed-use zoning throughout the Highway 64 Corridor and discourage continued strip development along the corrdior. Encourage quality, master planned, mixed-use developments on larger parcels ensuring appropriate site integration, including shared access, internal site integration, common signage, landscaping, lighting, architecture, and parking (where feasible).

MEDIAN TREATMENT

Further evaluate the potential of a median on Highway 64 from the bifurcated section near the intersection of Howard Gap Road to Fruitland Road. Gain consensus on the design issues related to said installation and develop an implementation strategy necessary to achieve success. This will likely include participation of the City, NCDOT and the development community.

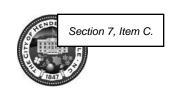
ACCESS MANAGEMENT

Adopt and enforce an access management policy for Highway 64 and other major corridors within the City. The policy should focus on specific strategies intended to mange the number and placement of vehicular access points for new development. The access management policy should be used in conjunction with the Highway 64 Circulation Plan, which dictates access locations, shared access, and median openings. In addition, a successful policy would provide the City with the authority to implement a successful circulation pattern using service roads, median installation, and traffic control devices. Appropriate access management techniques as outlined in this report also should be considered.

CONNECTOR ROADS

Future development of the study area south of Highway 64 will necessitate the construction of the Howard Gap Connector (and other secondary roads). Given the potential for future signalization, as well as median installation, this connector will provide accessibility to undeveloped parcels and full-movement turning capabilities on Highway 64. The city should require





development plans to be consistent with the Circulation Plan including the incremental construction of the Howard Gap Connector. The City should initiate the development of a functional roadway design in order to guide the orderly development of this transportation facility. This design should refine the typical section, roadway alignment, and identify critical alignment windows such as intersections.

TRAFFIC STUDIES

Identify a process to secure traffic data for large traffic generators (Traffic Impact Studies). The data provided through these efforts will provide the City staff and policy makers with the data necessary to make decisions related to the development site plans, site circulation, and proposed improvements intended to mitigate the traffic impacts of new developments.



Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	City Of Hendersonville
Contact Phone:	8286973003
Contact Email:	
PO Number:	

Date:	09/20/2023
Order Number:	9305052
Prepayment Amount:	\$ 0.00

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Height in Inches:	0.0000

Print			
Product	#Insertions	Start - End	Category
HEN Times-News	2	09/24/2023 - 10/01/2023	Govt Public Notices
HEN blueridgenow.com	2	09/24/2023 - 10/01/2023	Govt Public Notices

Ad Preview

Section 7, Item C.

PUBLIC HEARING NOTICE

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

- I. Zoning Text Amendment
 Transportation Standards
 for CHMU (P23-051-ZTA) City Staff initiated Zoning
 Text Amendment to supplement the standards of the
 Commercial Highway Mixed
 Use (CHMU) Zoning
 District.
- II. Zoning Text Amendment

 Mobile Food Vendors
 (P23-050-ZTA) City Staff
 initiated Zoning Text Amendment proposing to amend the
 supplementary standards for
 mobile food vendors.

III. Annexation Petition –
Living Savior Evangelical
Lutheran Church (C23-065ANX) - Application from Jon
Secretory of the Living
Savior Evangelical Lutheran
Church for satellite annexation of 1 porcel identified as
to a porcel \$758-90-1278
located on Upward Road and
Vine Road.

Diatalwritten <u>public</u> hearins <u>comments</u> must be received twenty-four hours prior to the meeting (<u>by 5:45</u> ber <u>Am. on Wednesday October 4th 2023)</u> to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

on the City's website.

Public hearing comments will also be accepted during the meeting from those otherding in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen shoring with which the screen screen

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

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

The City of Hendersonville is committed to providing cocessible facilities, programs, and services for lipeople in compliance with the American Marchael Constitution of the City Clerk on Jerosa Commodition for this meeting please contact the City Clerk no later than 24 hours in advance. Sept 24, Oct 1, 2023 #9305052



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** October 5, 2023

AGENDA SECTION: PUBLIC HEARING DEPARTMENT: Legal Department

TITLE OF ITEM: Public Hearing to Consider Amending the City Charter to Provide for the

Plurality Method of Electing City Council Members- Angela S. Beeker, City

Attorney

SUGGESTED MOTION(S):

[No action should be taken at this meeting. Cannot be adopted before November 2, 2023.]

SUMMARY:

This public hearing is being held pursuant to N.C.G.S. § 160A-102 to consider an amendment to the City Charter to provide for using the plurality method to elect City Council members. A draft ordinance to amend the City Charter is attached for purposes of the public hearing; however *this may not be adopted until the November 2, 2023 if City Council wishes to approve it.*

ATTACHMENTS:

Resolution of Intent adopted September 7, 2023

Notice of Public Hearing

Draft Ordinance to Amend the Charter

RESOLUTION OF INTENT TO AMEND THE CITY CHARTER FOR THE CITY OF HENDERSONVILLE TO USE THE PLURALITY METHOD OF ELECTIONS

WHEREAS, municipal elections for City Council members are currently conducted pursuant to the nonpartisan primary method as outlined in N.C.G.S. § 163-294; and

WHEREAS, the City Council may adopt an ordinance to amend the City of Hendersonville City Charter (the "Charter") to provide for a different method of election for City Council members pursuant to N.C.G.S. § 160A-101, et seq; and

WHEREAS, the City Council wishes to amend the Charter by providing that the municipal elections for City Council members for the City of Hendersonville will be conducted using the nonpartisan plurality method pursuant to N.C.G.S. § 163-292;

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

- 1. That the City Council intends to consider an ordinance amending the provisions of the Charter, as allowed by N.C.G.S. 160A-101, to select the nonpartisan plurality method for the City's municipal elections for City Council members pursuant to N.C.G.S. § 163-292, using the procedure outlined by N.C.G.S. § 160A-102.
- 2. That a public hearing be held on the proposed charter amendment on October 5, 2023, at 5:45 p.m., at the City Operations Center, 305 Williams Street, Hendersonville, NC, or as soon thereafter as it may be heard.
- 3. That a notice of public hearing, summarizing the proposed Charter amendment, shall be published at least once not less than 10 days before October 5, 2023.

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

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Daniel Heyman, Deputy City Clerk

Approved as to Form:

Angela S. Beeker, City Attorney



Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	City Of Hendersonville
Contact Phone:	8286973003
Contact Email:	
PO Number:	NOPH 10.5.23

Date:	09/12/2023
Order Number:	9276759
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
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Print			
Product	#Insertions	Start - End	Category
HEN Times-News	1	09/17/2023 - 09/17/2023	Govt Public Notices
HEN blueridgenow.com	1	09/17/2023 - 09/17/2023	Govt Public Notices

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City Council for the City of Hendersonville will hold a public hearing on Thursday, October 5, 2023, at 5:45 p.m., or as soon thereafter as it may be heard, to consider an amendment to the Charter for the City of Hendersonville, in particular Article Election IV, Procedures, that, if adopted, would provide that municipal elections for City council members shall be elected on a nonpartisan plurality basis pursuant to North Carolina General Statutes § 163-292. The public hearing will be held at the City Operations 305 Building, Williams Street, Hendersonville, NC. The public is invited to attend and comment.

Jill Murray City Clerk 9/17/23

Section 7, Item D.

- Not to be voted on before November 2, 2023

Ordinance	:# -

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE CITY CHARTER FOR THE CITY OF HENDERSONVILLE FOR PROVIDE FOR ELECTION OF CITY COUNCIL MEMBERS BY THE PLURALITY METHOD PURSUANT TO NORTH CAROLINA GENERAL STATUTE § 163-292

WHEREAS, City Council members are currently elected using the nonpartisan primary method as provided in N.C.G.S. § 163-294; and

WHEREAS, N.C.G.S. § 160A-102 authorizes the City Council to amend the Charter for the City of Hendersonville to provide for a different method of election after adopting a Resolution of Intent, calling a public hearing, publishing a notice of public hearing at least 10 days prior to the public hearing, holding the public hearing within 45 days of the adoption of the Resolution of Intent, and adopting an ordinance within 60 days of the public hearing, but no earlier than the next regular meeting following the public hearing; and

WHEREAS, on September 7, 2023, City Council adopted a RESOLUTION OF INTENT TO AMEND THE CITY CHARTER FOR THE CITY OF HENDERSONVILLE TO USE THE PLURALITY METHOD OF ELECTIONS, and called a public hearing for October 5, 2023; and

WHEREAS, on October 5, 2023, City Council held a public hearing to consider amending the City Charter to provide for the plurality method of election for City Council members; and

WHEREAS, City Council desires to adopt an ordinance to amend the City Charter to provide for the plurality method of election for City Council members at this, the November 2, 2023 meeting, which is within 60 days of the public hearing held October 5, 2023;

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

- 1. The City Charter for the City of Hendersonville, as previously amended by Section 1.3(a) of Session Law 2023-44, is hereby amended as follows:
 - Sec. 4.1. Regular Municipal Elections. Regular municipal elections shall be held at the time of the general election in each even-numbered year. The Mayor and Council Members shall serve until their successors are elected and qualified.
 - Section 4.2. Regular Municipal Primaries <u>Plurality Election Method</u>. The Mayor and Council Members shall be elected on a nonpartisan basis and results determined by the primary method as provided in G.S. 163-294 plurality method as provided in G.S. 163-292.
 - Section 4.3. Voting Terms of Office. The Council Members shall be elected for staggered terms of four years. The mayor shall be elected for a term of four years.

Section 7, Item D.

- Not to be voted on before November 2, 2023

Section 4.4 Regulation of Elections. All municipal elections shall be conducted in accordance with the uniform municipal election laws in Chapter 163 of the General Statutes, except as otherwise provided by this act.

- 2. This Ordinance shall be effective upon its adoption.
- 3. The City Clerk shall file a certified copy of this Ordinance with the Secretary of State and the North Carolina Legislative Library.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2nd day of November, 2023.

Attest:	Barbara G. Volk, Ma	yor, City of Hendersonville
Jill Murray, City Clerk		
Approved as to form:		
Angela S. Reeker City Attorney		



SUBMITTER: John Connet **MEETING DATE:** 10/5/2023

AGENDA SECTION: NEW BUSINESS DEPARTMENT: Administration

TITLE OF ITEM: Request to Eliminate Two-Hour Parking on Oakland Street – *John Connet, City*

Manager

SUGGESTED MOTION(S):

I move that City Council direct staff to prepare a resolution or ordinance eliminating the two-hour parking on Oakland Street between Bearcat Boulevard and U.S. 64 West.

SUMMARY:

St Gerard House has requested the elimination of the two-hour parking limits on Oakland Street between Bearcat Boulevard and 64 West. Staff has notified all businesses and residents along this section of Oakland Street to allow them to provide input regarding this request.

BUDGET IMPACT: \$ NA

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

If no, describe how it will be funded. NA

ATTACHMENTS:

St. Gerard Request

Letter to Businesses and Residents

Connet, John

From: Tyler Martin <tyler.martin@stgerardhouse.org>

Sent: Monday, September 18, 2023 8:16 AM

To: Connet, John

Subject: Parking on Oakland St.

Follow Up Flag: Follow up Flag Status: Flagged

Be Advised: This email originated from outside of the Hendersonville network. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: John Connet

From: Tyler Martin, Chief Operating Officer, St. Gerard House

September 18, 2023

I write to request the immediate removal of time-limited parking on Oakland St. between Bearcat Blvd and 6th Ave.

St. Gerard House operates two clinics for children and a day program for adults with autism on this block. We have about sixty staff members, some of whom are able to use the Immaculata Catholic School parking lot, some of whom are able to park on-site at our administrative office, but we do not have access to as many off-street parking spaces as we have staff.

There was a period, not long ago, where parking was not monitored. This period lasted for over a year and during that time our staff members parked on the street. This felt appropriate. In the time I have been at St. Gerard House, I have not seen demand for the parking spaces on Oakland St. that exceeds the block's capacity

I ask for either the removal of these signs. They do not appear to serve a purpose besides pulling our staff members out of medically necessary sessions with the folks we serve to move their cars. Our staff that serve the community and its children are currently accumulating what I believe to be needless tickets.

I look forward to further discussion,

Tyler Martin

Tyler.martin@stgerardhouse.org

Tyler Martin (he/him/his)
Chief Operating Officer
St. Gerard House
727 Oakland Street
Hendersonville, NC 28791
(828) 693.4223 ext 1019 (office)
(202) 930.5397 (cell)

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CITY COUNCIL:
BARBARA G. VOLK
Mayor
LYNDSEY SIMPSON
Mayor Pro Tem
DR. JENNIFER HENSLEY
DEBBIE O'NEAL-ROUNDTREE
JERRY A. SMITH JR., J.D.

CITY OF HENDERSONVILLE

The City of Four Seasons

Office of City Manager

JOHN F. CONNET
City Manager
ANGELA S. BEEKER
City Attorney
JILL MURRAY
City Clerk

Section 9, Item A.

September 25, 2023

Oakland Street Businesses and Residents

The City of Hendersonville has received a request from St. Gerard House to eliminate the two-hour parking restriction along Oakland Street between Bearcat Boulevard and U.S. 64 West. The elimination of the two-hour restriction will allow vehicles to park on the street for an unlimited amount of time. This request will be considered by the Hendersonville City Council on Thursday, October 5, 2023 at 5:45 PM. If you wish to provide input regarding this request you may do so by attending the meeting or by submitting a public comment at the following link: https://www.hendersonvillenc.gov/public-comment.

Thank you. If you have any questions or need additional information, please feel free to reach out to me at (828) 233-3201.

Sincerely,

John Connet City Manager



SUBMITTER: Daniel Heyman **MEETING DATE:** October 5, 2023

AGENDA SECTION: NEW BUSINESS DEPARTMENT: Legal

TITLE OF ITEM: Purchase of +/- 40 Acre Parcel and +/- 0.84 Acre Parcel on Long John Mountain,

Together with Associated Easements, for the Construction of a Water Tank –

Brent Detwiler, Public Services Director

SUGGESTED MOTION(S):

I move City Council to adopt the *Resolution By The City of Hendersonville City Council to Authorize* the City Manager to Enter into a Contract for the Purchase of a +/-40 Acre Parcel and a +/-0.84 Acre Parcel on Long John Mountain as presented.

SUMMARY:

City Council is requested to approve the attached Contract for Purchase and Sale of Real Property for (1) a +/- 40 acre parcel on Long John Mountain, shown as Tract B on the attached Preliminary Survey, and having a of PIN 9559-73-4839, and (2) a +/- 0.84 acre parcel on Long John Mountain, shown as Tract A on the attached Preliminary Survey, and having a PIN of 9559-83-2386, together with associated easements, for the construction of a water tank.

The construction of a water tank in this area is recommended in the City's Water System Master Plan. As a condition of the purchase, the City will agree to work with Conserving Carolina to place a conservation easement over the parcel.

Brent Detwiler, Public Services Director, will give a brief presentation on the proposed project and the proposed conservation easement.

ATTACHMENTS:

Proposed Resolution Contract for Purchase and Sale of Real Property Preliminary Survey

Resolution # -

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE PURCHASE OF A +/- 40 ACRE PARCEL AND A +/- 0.84 ACRE PARCEL ON LONG JOHN MOUNTAIN

WHEREAS, the City of Hendersonville is desirous of purchasing a +/- 40 acre parcel of land located on Long John Mountain, being that real property described in that deed recorded in Deed Book 708 at Page 335 of the Henderson County Registry, having a tax PIN of 9559-73-4839, together with associated easements (the "Subject Property"); and

WHEREAS, the City of Hendersonville also is desirous of purchasing a +/- 0.84 acre tract of land, being that real property described in Deed Book 1117 at Page 165 of the Henderson County Registry, also being shown as Tract A on that plat recorded in Plat Cabinet C at Page 278A of the Henderson County Registry, having a tax PIN of 9559-83-2386 (the "Small Bennett Tract"); and

WHEREAS, the City has offered to pay NINE HUNDRED TWENTY-TWO THOUSAND AND NO/100S DOLLARS (\$973,300.00) as consideration for the Subject Property and the Small Bennet Tract, and the Property Owners are in agreement; and

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Hendersonville resolves that:

- 1. The Contract for Purchase and Sale of Real Property between the City of Hendersonville, Glenn N. Bennett, and wife, Deborah S. Bennett, and Martha Bennett Rogers for the Subject Property and the Small Bennett Tract, having as the sale price the total sum of \$973,300.00 is hereby approved as presented.
- 2. The City Manager is authorized to enter execute the contract, with such changes as he deems appropriate, in consultation with the City Attorney, provided such changes do not place any financial obligation on the City beyond that contemplated by the terms of the Contract as presented.
- 3. The Mayor, City Manager, City Attorney, and City Clerk are authorized to execute such other contracts, and deeds and any and all other documents, and to take any and all actions, reasonably necessary to carry out the terms of the approved Contract, including but not limited to making conveyances and reasonable expenditures for costs and expenses, including reasonable closing costs and reasonable due diligence costs, for the purposes stated herein.

Adopted by the City Council of the City of, 20	ty of Hendersonville, North Carolina on this day
Attest:	Barbara G. Volk, Mayor, City of Hendersonville
Jill Murray, City Clerk	
Approved as to form:	
Angela S. Beeker, City Attorney	

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS CONTRACT to sell and purchase rea	al property (the "Contract") is made and entered
into as of theday of	, 2023, by and between Glenn N. Bennett,
and wife, Deborah S. Bennett, of 1341 Valmont	Drive, Hendersonville, NC, hereinafter
sometimes collectively the "Bennetts," and Mar	tha Bennett Rogers, of 113 Acadia Avenue,
Piedmont, SC 29673, sometimes referred to as	"Rogers", the Bennetts and Rogers collectively
hereinafter referred to as the "Sellers," and the C	City of Hendersonville, a North Carolina
Municipal Corporation (hereafter "City" or "Bu	yer").

WITNESSETH

WHEREAS, Sellers are the owners of a +/- 40 acre parcel of land located on Long John Mountain, being that real property described in that deed recorded in Deed Book 708 at Page 335 of the Henderson County Registry, having a tax PIN of 9559-73-4839 (the "Subject Property"); and

WHEREAS, the Bennetts and Rogers are the owners of a +/- 0.84 acre tract of land, being that real property described in Deed Book 1117 at Page 165 of the Henderson County Registry, also being shown as Tract A on that plat recorded in Plat Cabinet C at Page 278A of the Henderson County Registry, having a tax PIN of 9559-83-2386 (the "Small Bennett Tract"); and

WHEREAS, the Bennetts are the owners of a +/- 19.30 acre parcel of land, being that 19.30 acre parcel shown on that plat recorded in Plat Book 2011 at Page 8330 of the Henderson County Registry, and consisting of those parcels described in Deed Book 1117 at Page 156 and Deed Book 5700at Page 711 of the Henderson County Registry, said 19.30 acre parcel having a tax PIN of 9559-93-3355 (the "Large Bennett Tract"); and

WHEREAS, Mountain Acres, LLC, a North Carolina limited liability company, owns that property shown as Area 1, Area 2, Area 3, and Area 4 on the plat recorded in plat book 2013 at Slide 9125 of the Henderson County Registry, said Areas 1-4 collectively having a tax PIN of 9559-55-3329 (the "Mountain Acres Property"); and

WHEREAS, Areas 1-3 of the Mountain Acres Property is subject to a conservation easement granted in favor of Carolina Mountain Land Conservancy, a North Carolina nonprofit corporation, said conservation easement being recorded in Deed Book 1557 at Page 184 of the Henderson County Registry; and

WHEREAS, the City wishes to construct a water tank on the Mountain Acres Property, and purchase of the Subject Property is necessary to facilitate the construction of said water tank;

WHEREAS, the City has requested and the Bennetts and Rogers have agreed to sell the Subject Property to the City upon the terms and conditions hereinafter set forth; and

WHEREAS, the City has requested and the Bennetts and Rogers have agreed to sell the Small Bennett Tract to the City upon the terms and conditions hereinafter set forth; and

WHEREAS, the City has requested and the Bennetts have agreed to convey an easement across the Large Bennett Tract to the City, said easement to be appurtenant to the Subject Property, upon the terms and conditions hereinafter set forth; and

WHEREAS, Larry Wayne Rogers, husband of Martha Bennett Rogers, is joining in this Contract to convey any marital interest that he may have in the Subject Property;

AGREEMENT

For the considerations hereafter set forth, Sellers agree to sell and City agrees to buy the Subject Property on the following terms and conditions:

- **1. SUBJECT PROPERTY.** As used herein, "Subject Property" refers to that +/- 40 acre parcel of land located on Long John Mountain, being that real property described in that deed recorded in Deed Book 708 at Page 335 of the Henderson County Registry, having a tax PIN of 9559-73-4839. The City agrees to purchase and the Bennetts and Rogers agree to sell and convey fee simple marketable title to the Subject Property to the City.
 - a. The City agrees to place a conservation easement in favor of Conserving Carolina, a North Carolina nonprofit corporation, on the Subject Property to maintain the Subject Property in its natural state, without improvement, except that the following specific activities shall be permitted.
 - i. Development of a passive recreation park.
 - ii. Construction/installation, maintenance, repair and replacement of waterlines and other City owned utilities, including but not limited to City water system infrastructure, City sewer system infrastructure and City stormwater infrastructure, including all on site activities reasonably required for all of the foregoing; activities reasonably required for the construction, maintenance, repair and replacement of a water tower and its appurtenant infrastructure (including water lines) on the Mountain Acres Property; and installation of electrical service as required.
 - iii. Construction of a paved vehicular access road from the Easement crossing the Large Bennett Tract, through the Subject Property, to the Mountain Acres Property, in sufficient width to allow the City to carry out its authorized activities on the Subject Property and the Mountain Acres Property, said vehicular access road through the Subject Property hereinafter referred to as the "Bennett Trail Extension." It is understood and agreed that the Bennett Trail Extension may be used to provide vehicular access to and through the Mountain Acres Property to other

- properties adjacent to the Mountain Acres Property owned by the City or Conserving Carolina. No other vehicular access roads will be constructed on the Subject Property without the consent of Conserving Carolina.
- iv. Construction of hiking trails
- v. Construction of a parking area.
- vi. Construction of a small restroom facility
- b. Removal of trees on the Subject Property shall be only as is reasonably necessary for the performance of the permitted activities on the Subject Property.
- c. It is agreed that the conservation easement shall be put in place no later than the date that the water tank constructed on the Mountain Acres property is operational; provided however, that nothing herein shall obligate the City to construct said water tank.
- 2. LARGE BENNETT TRACT. As used herein, "Large Bennett Tract" refers to that +/19.30 acre parcel shown on that plat recorded in Plat Book 2011 at Page 8330 of the Henderson
 County Registry, and consisting of those parcels described in Deed Book 1117 at Page 156 and
 Deed Book 570 at Page 711 of the Henderson County Registry, said 19.30 acre parcel having a
 tax PIN of 9559-93-3355. As part of the purchase price for the Subject Property, the Bennetts
 agree to convey to the City a thirty foot (30') wide permanent easement and a construction
 easement twenty foot (20') wide running along and with the 30' wide permanent easement
 (collectively referred to as the "Easement") across the Large Bennett Tract. The Easement
 granted shall contain the following terms and conditions:
 - a. The Easement shall be used to provide ingress and egress to the Subject Property to the City, the City's successor and assigns, and invitees, for all purposes, including but not limited to all authorized activities on Subject Property and the Mountain Acres Property. The Easement will be appurtenant to and run with the Subject Property and the Mountain Acres Property.
 - b. It is understood and agreed that the Subject Property and/or the Mountain Acres Property may be developed into a public, passive recreation park, and that therefore the Easement will also be used as a public access in and to the Subject Parcel and the Mountain Acres Property during the operating hours of the park. It is also understood and agreed that the Easement may be used to provide vehicular access to and through the Mountain Acres Property to other properties adjacent to the Mountain Acres Property owned by the City, Conserving Carolina or Mountain Acres, LLC.
 - c. The location of the Easement shall be subject to the mutual agreement of both the City and the Bennetts.

- d. The access road within the easement shall be constructed and maintained at the sole cost and expense of the City. Construction of the access road shall include, at a minimum, paving with at least 2" of asphalt over a 6" aggregate base course.
- e. The City shall cause to be prepared a survey, to be recorded, showing the location of the agreed upon proposed Easement. In the event the City and the Bennetts are unable to agree on the location for the Easement, the City or the Bennetts may terminate this Agreement by giving written notice to all other parties.
- f. The access road within the Easement shall be gated, provided however that the gate will be open during the operating hours of any park operated on the Subject Property and/or the Mountain Acres Property, during construction or maintenance activities on the Subject Property or the Mountain Acres Property, and when the Subject Property and/or the Mountain Acres Property is being accessed by the City, or the City's agents and invitees. The Bennett's shall be provided access through the gate so that they may access their property at all times.
- g. The access road in the Easement will be named "Bennett Trail."
- h. The City will construct and landscape a buffer area separating the Easement from balance of the Large Bennett Tract in the event the Subject Property and/or the Mountain Acres Property are developed into a park such that the access road within the Easement becomes available for passage by the public. Once constructed, maintenance of the buffer area shall be the responsibility of the City. The location and size of the buffer area shall be determined by agreement of the parties and shall be shown on the survey of the Easement (reference subparagraph 2(e) above). Sellers shall grant a maintenance easement to the City across the buffer area.
- i. The 20'wide portion of the Easement that is a construction easement shall be effective during such times as the construction, installation, maintenance, repair and/or replacement of the water/sewer/stormwater infrastructure is occurring on the Subject Property, or , installation, maintenance, repair and/or replacement of the water tank and its appurtenant infrastructure and waterlines is occurring on the Mountain Acres Property, including a reasonable period of time before and after authorized activities for set up and clean up. At the City's election, the 20' construction easement shall be flexible dependent upon reasonable construction requirements, such that it may be located on either side, or split and located both sides, of the 30' permanent easement, or any combination thereof, at different points along the permanent easement, provided that the total width of the construction easement and the permanent easement may not exceed 50'.
- **3. SMALL BENNETT TRACT.** As used herein, "Small Bennett Tract" refers to that +/- 0.84 acre tract of land, being that real property described in Deed Book 1117 at Page 165 of the Henderson County Registry, also being shown as Tract A on that plat recorded in Plat Cabinet C

at Page 278A of the Henderson County Registry, having a tax PIN of 9559-83-2386. The City agrees to purchase and the Bennetts and Rogers agree to sell and convey fee simple marketable title to the Small Bennett Tract to the City.

4. PURCHASE PRICE OF SUBJECT PROPERTY TOGETHER WITH EASEMENT ACROSS THE LARGE BENNETT TRACT, SECURITY DEPOSIT AND EXAMINATION PERIOD FEE.

- a. <u>Purchase Price.</u> The total purchase price for the Subject Property, including the Easement across the Large Bennett Tract described in paragraph 2 above, shall be NINE HUNDRED TWENTY-TWO THOUSAND AND NO/100S DOLLARS (\$922,000.00).
- b. Earnest Money Deposit and Examination Period Fee. The City shall pay to the Escrow Agent the sum of \$10,000 as an earnest money deposit and Examination Period fee (reference paragraph 9 below) for the Subject Property. In the event the City elects to terminate this Agreement during the Examination Period, the Sellers shall be entitled to retain \$5,000 as compensation for the Examination Period, and the City shall be entitled to a reimbursement of the remaining \$5,000 deposited. In the event the City elects to terminate this Agreement outside of the Examination Period, or otherwise elects not to purchase the Subject Property outside of the Examination Period, the Sellers shall be entitled to retain the entire \$10,000 earnest money deposit and Examination Period fee as their sole and exclusive remedy under this Agreement. No other remedy shall be available at law or in equity to the Sellers for any failure to close by the City. In the event the City closes on the purchase of the Subject Tract, the entire \$10,000 shall be credited against the Purchase Price at closing.

5. PURCHASE PRICE OF THE SMALL BENNETT TRACT, SECURITY DEPOSIT AND EXAMINATION PERIOD FEE.

- a. <u>Purchase Price</u>. The total purchase price for the Small Bennett Tract FIFTY-ONE THOUSAND THREE HUNDRED AND NO/100S DOLLARS (\$51,300.00).
- b. <u>Earnest Money Deposit and Examination Period Fee.</u> The City shall pay to the Escrow Agent the sum of \$5,000 as an earnest money deposit and Examination Period fee (reference paragraph 9 below) for the Small Bennett Tract. In the event the City elects to terminate this Agreement during the Examination Period, the Sellers shall be entitled to retain \$2,500 as compensation for the Examination Period, and the City shall be entitled to a reimbursement of the remaining \$2,500 deposited. In the event the City elects to terminate this Agreement outside of the

Examination Period, or otherwise elects not to purchase the Subject Property outside of the Examination Period, the Sellers shall be entitled to retain the entire \$5,000 earnest money deposit and Examination Period fee as their sole and exclusive remedy under this Agreement. No other remedy shall be available at law or in equity to the Sellers for any failure to close by the City. In the event the City closes on the purchase of the Small Bennett Tract, the entire \$5,000 shall be credited against the Purchase Price at closing.

- **6. EFFECTIVE DATE.** The Effective Date of this Contract shall be the date of signing by the last party to sign this Contract.
- **7. CLOSING DATE.** Closing of the transfer of the Subject Property shall occur on or before sixty (60) days after the expiration of the Examination Period at such place and in such manner as may be mutually acceptable to the parties.

8. TRANSFER OF TITLE TO SUBJECT PROPERTY AND SMALL BENNETT

- **TRACT.** At closing, Sellers shall deliver to Buyer a General Warranty Deed conveying fee simple marketable title to the Subject Property and the Small Bennett Tract. Bennetts shall also deliver an Easement Deed, in form acceptable to the City, containing terms consistent with the terms of this Agreement. Larry Wayne Rogers shall also sign the general warranty deed at closing, conveying his marital interest in and to the Subject Property and the Small Bennett Tract to the City.
- 9. EXAMINATION PERIOD. As used in this Contract, "Examination Period" shall mean that period of time after the Effective Date to a date which is sixty (60) days after the Effective Date. Sellers hereby grant permission to the City and the City's agents to enter the Subject Property, the Large Bennett Tract, and the Small Bennett Tract, for purposes of conducting such due diligence examination and testing as deemed necessary by the City to determine the suitability of the properties for use by the City. Such right of examination includes, but is not limited to, the right to conduct surveys, studies, environmental testing and soil boring samples, and other geotechnical exploration, provided that at the conclusion of such testing the City shall restore the Subject Property, the Large Bennett Tract and the Small Bennett Tract, to as near to their pretesting condition as is reasonable. The City may terminate this Agreement during the Examination Period at the City's sole and absolute discretion for any reason or for no reason.
- **10. TITLE EXAMINATION.** After the Effective Date, City may, at its expense, cause a title examination to be made of the Subject Property before the end of the Examination Period. In the event such title examination shall reveal that Seller's title is not fee simple marketable and insurable at regular rates, subject only the Permitted Exceptions, then City shall have the right to terminate this Contract.

- **11. POSSESSION.** Exclusive Possession of the property shall be delivered by the Sellers at Closing. The City shall be entitled to exclusive possession of the entirety of the Subject Property upon closing. This paragraph shall survive closing.
- 12. SUBJECT PROPERTY CONVEYED "AS IS." Except as otherwise provided herein, the Subject Property and improvements, if any, are conveyed and accepted "as is" with all faults existing as of the date of the expiration of the Examination Period. Sellers make no representations or warranties as to the condition of the Subject Property, or suitability for any purpose. However, in the event that (1) the Subject Property and/or the Small Bennett Tract is not in the same condition at closing as it is on the expiration of the Examination Period; (2) the Large Bennett tract is no longer in a suitable condition for the construction of the Easement; or (3) a title defect arises affecting the Subject Property, the Small Bennett Tract, or the Large Bennett Tract, rendering the title to any of them unmarketable, or rendering any of their use for the City's intended purposes impractical, then upon the occurrence of event(s) numbered (1), (2) or (3), the City shall have no obligation to close on the purchase of either parcel, the City shall have no further obligations under this Agreement, and the City shall be entitled to a refund of \$5,000 of its security deposit and due diligence fee for the Large Bennett Tract, and a refund of \$2,500 of its security deposit and due diligence fee for the Small Bennett Tract.
- **13. RISK OF LOSS.** Prior to closing, risk of loss shall be upon the Sellers.
- **14. CLOSING COSTS.** Buyer shall pay the following closing costs: recording fees, costs of title search, title insurance, survey, and any inspection costs. Seller shall pay deed preparation costs, and excise taxes due on the sale. Each party shall pay its own attorney's and consultant's fees.
- **15. PRO-RATIONS.** Ad Valorem taxes for current year (2023) for the Subject Property shall be pro-rated between the parties on a calendar year basis as of the Closing Date. If the Seller's share for that year has not been paid, the Seller's share will be withheld from the Purchase Price and paid by the Buyer. If the taxes have been paid, Buyer shall reimburse Seller for Buyer's share at closing. If the then current year's taxes have not been determined, pro-rations shall be estimated based on the prior year's taxes (or other best available information as to value), withheld from Seller and paid by Buyer. Unpaid taxes for prior years, if any, shall be withheld from Sellers' proceeds at closing.
- **16. BROKERAGE COMMISSION.** Both Buyer and Sellers represent to each other that there have been no brokers involved in this transaction. Each party agrees to indemnify and hold harmless the other parties from and against any and all claims, demands and costs arising out of alleged brokerage commissions, if any.
- **17. DEFAULT.** If Seller should default City may pursue any remedies it has in law or equity, including specific performance.

18. NOTICES. Unless otherwise provided herein, all notices and communications required to be given shall be in writing and be deemed given by (i) personally delivered with written acknowledgment of receipt, (ii) deposit in the United States mail, postage prepaid, certified or register mail, return receipt requested, or (iii) sent by a nationally recognized overnight courier, to the following address (provided that either party may change its notice address by notice to the other):

IF TO BUYER: City of Hendersonville

Attn: John Connet, City Manager

160 6th Avenue East

Hendersonville, North Carolina 28792

IF TO THE Glenn and Deborah Bennett

BENNETTS: 1341 Valmont Drive

Hendersonville, NC 28791

IF TO Martha Rogers

ROGERS: 113 Acadia Avenue

Piedmont, SC 29673

- **19. APPLICABLE LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina. The sole and exclusive venue for any litigation hereunder shall be a State or Federal court having jurisdiction in Henderson County, North Carolina.
- **20. ENTIRE AGREEMENT.** This Contract contains the entire understanding and agreement between the parties, and supersedes all prior oral or written agreements between the parties. No amendment to this Contract shall be effective unless the same is in writing and signed by the parties hereto.
- **21. BINDING EFFECT.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.
- **22. TIME OF THE ESSENCE.** Time is of the essence with respect to all time periods and dates for performance of this Contract.
- **23. COUNTERPARTS.** This contract may be executed in one or more counterparts. Signed facsimiles shall constitute originals.
- **24. AUTHORITY.** Seller and Buyer represent to each other that each is authorized to enter into and perform its obligations under this Contract.

25. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective as of the date set forth above.

	GLENN N. BENNETT, SELLER	
Dated Signed:	(Seal)	
	DEBORAH S. BENNETT, SELLER	
Dated Signed:	(Seal)	
	MARTHA BENNETT ROGERS, SELLER	
Dated Signed:	(Seal)	
	LARRY WAYNE ROGERS, as to his marital interest	
Dated Signed:	(Seal)	
ATTEST:	CITY OF HENDERSONVILLE	
	By:	
Jill Murray, City Clerk	John F. Connet, City Manager	
(SEAL)	Date Signed:	

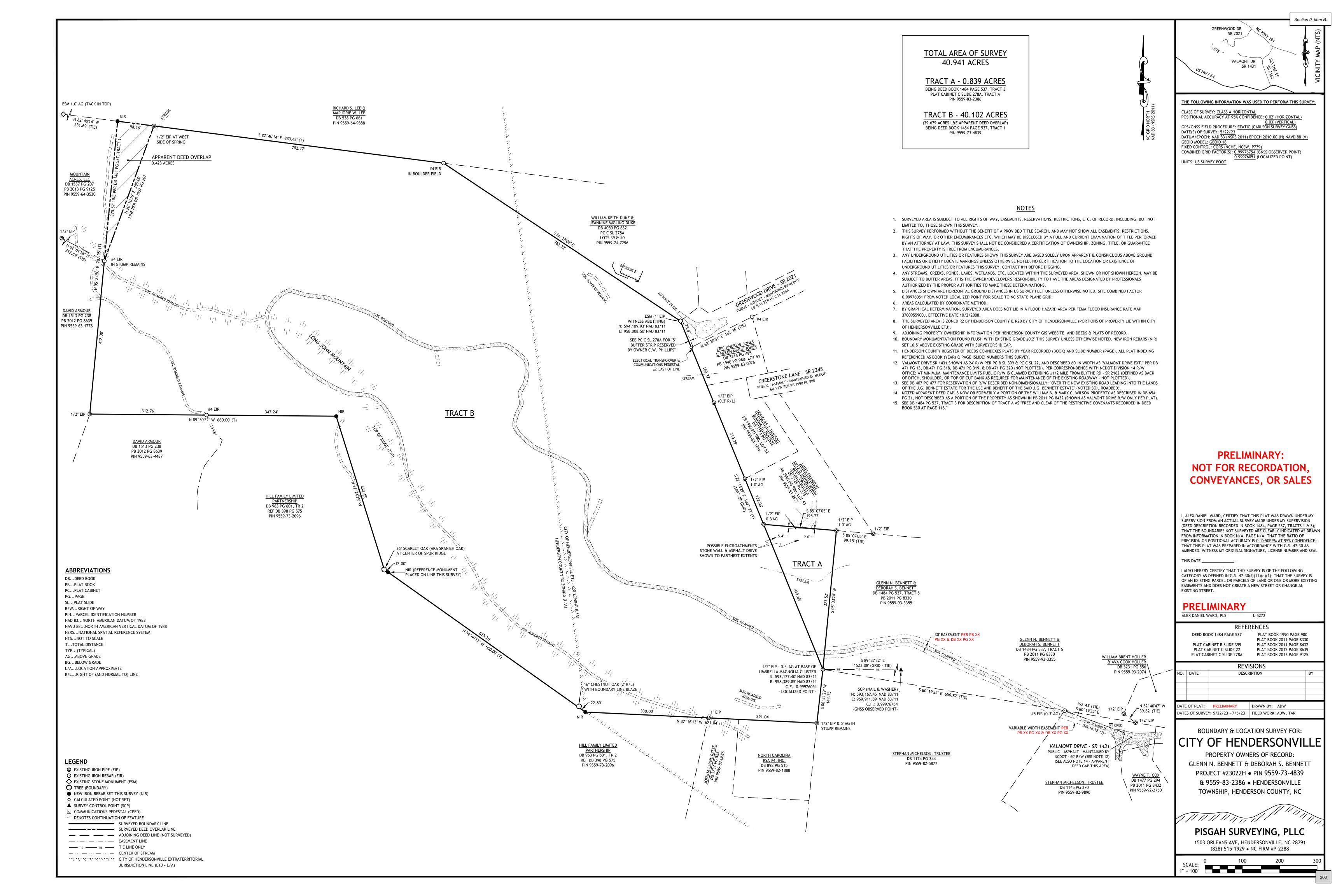
APPROVED AS TO FORM:

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT:

Angela Beeker, City Attorney

John Buchanan, Finance Director







SUBMITTER: John Connet **MEETING DATE:** 10/5/2023

AGENDA SECTION: New Business **DEPARTMENT:** Administration

TITLE OF ITEM: Update regarding Unhoused (Homeless) Population in Hendersonville – *Various*

Staff

SUGGESTED MOTION(S):

I move that City Council direct staff to take the following action _____.

SUMMARY:

City staff will provide an update regarding interaction with unhoused (homeless) population in Hendersonville and request policy guidance from the City Council.

BUDGET IMPACT: \$ 100,000 +/-

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

If no, describe how it will be funded. NA

ATTACHMENTS:

City Ordinances

Sec. 36-1. - Blocking or impeding street and sidewalk access.

Section 9. Item C.

- (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 section 9, Item C. 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.

(Ord. No. 19-0651, § 1, 6-6-19; Ord. No. <u>23-13</u>, § 10, 3-2-23)

Sec. 36-2. - Urinating or defecating in public.

- (a) It shall be unlawful for any person to urinate or defecate on any public place, sidewalk, street, alleyway or right-of-way, or in any public building except in designated water closets or toilet facilities, or on any private property. Having the written permission of the owner or person in lawful possession shall constitute an affirmative defense to the charge or urinating or defecating on private property.
- (b) Penalty. A violation of this section by any person subjects the offender to a fine of up to \$200.00 and any other punishment authorized by law for a class 3 misdemeanor.

(Ord. No. 19-0651, § 1, 6-6-19)

Section 9. Item C.

Sec. 36-3. - Solicitation and distribution of items in public parking garages and public parking lots prohibited.

- (a) *Solicitation permitted.* Solicitation, where not otherwise prohibited herein or by state law, is allowed in the public spaces of Hendersonville.
- (b) *Purpose and intent.* It is the purpose of this section to provide for the health, safety and welfare of the residents of the city through the proper management of the city's municipally owned parking garages and parking lots. The city is authorized to operate a parking enterprise to furnish parking services to the city and its citizens.
 - (1) The city council finds that municipal owned or operated parking garages and parking lots are not traditional public forums for First Amendment purposes and that the city may regulate conduct and use of the parking garages and parking lots through adequate and reasonable rules. The statutory authority is found in G.S. 160A-174 and 160A-312.
 - (2) The city finds it necessary to restrict certain activities, including solicitation and distribution within public parking garages and parking lots because of the increased potential for accidents in parking garages and parking lots, limited space for individuals walking to vehicles and engaging in transactions associated with solicitation and distribution, and due to the potential for individuals accessing their cars to feel a heightened level of intimidation when approached by a solicitor or distributor.
- (c) *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) Public parking garage and parking lot mean lots, garages, or portions of lots or garages, owned or operated by the City of Hendersonville which have the sole purpose of providing vehicular parking. On-street parking, including diagonal on-street parking, is not considered a garages or lot. The word "deck" has the same meaning as the word "garage."
 - (2) Enter or entry. For the purpose of this section, entry into a parking garage or parking lot shall mean entry onto the paved parking portion whose sole intended purpose is the parking of vehicles.
- (d) Offense. It shall be unlawful to:
 - (1) Enter a public parking garage or parking lot for the purpose of soliciting for or distributing within the parking garage or parking lot any of the following: money, contributions, signatures, leaflets, or pamphlets for any purpose or use; and
 - (2) Engage in the intended solicitation or distribution.

(e)

Exemption for sidewalks and landscaped areas through and adjacent to parking garages and pa Section 9, Item C.

The prohibition under this subsection does not restrict solicitation or distributions on public sidewalks or landscaped areas that run through or immediately adjacent to a public parking garage or lot where such sidewalk or landscaped area is a path for movement other than for the purpose of getting to and from a vehicle in the parking garage. However, any solicitation along such sidewalk or landscaped area shall be confined to the sidewalk or landscaped area, and no solicitor or distributor shall follow physically an individual off the sidewalk or landscaped area and through the publicly owned parking garage or parking lot where the individual has declined the solicitation or distribution.

- (f) Other solicitation prohibited by state law. This section shall not apply to any type of solicitation or distribution regulated, prohibited, or punishable under other applicable state law.
- (g) Exceptions. This section shall not apply to any parking garage or parking lot adjacent to or used as the designed parking for a polling place during the time when city owned property is used by the Henderson County Board of Election as a polling place. This section also shall not apply when an event is taking place within the public parking garage or parking lot due to a permit granted by the city.

(Ord. No. 19-0651, § 1, 6-6-15)

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 controlled property.

Section 9, Item C.

- (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 <u>section 1-6</u>.

(Ord. No. 19-0651, § 1, 6-6-15; Ord. No. <u>23-13</u>, § 10, 3-2-23)

Sec. 36-41. - Trespass.

Section 9. Item C.

- (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.* In addition to any other remedy available, violation of this section is also a misdemeanor as provided in <u>section 1-6</u>.

(Code 1971, § 19-16; Ord. No. <u>23-13</u>, § 11, 3-2-23)

Sec. 36-42. - Disturbing the peace.

Any person who shall be guilty of any loud and boisterous cursing and swearing, or loud and vulgar language, or who otherwise may be found disturbing the peace of the city in any street, house or lot elsewhere in the city shall be deemed guilty of a misdemeanor.

(Code 1971, § 19-18)

Sec. 36-45. - Fighting.

Section 9, Item C.

It shall be unlawful for any person to knowingly start a fight, or to fight, or to commit any assabattery 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.

(Code 1971, § 19-22; Ord. No. <u>23-13</u>, § 11, 3-2-23)

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.

(Ord. No. 09-0105, § 1, 1-8-09; Ord. No. <u>23-13</u>, § 26, 3-2-23)



SUBMITTER: Jill Murray, City Clerk **MEETING DATE:** 10/05/2023

AGENDA SECTION: BOARDS/COMMITTEES DEPARTMENT: Administration

TITLE OF ITEM: Consideration of Vacancy Appointment to the Environmental Sustainability

Board

SUGGESTED MOTION(S):

I move that the City Council appoint Logan Secord to the vacant spot on the Environmental Sustainability Board.

SUMMARY:

There is a vacancy on the Environmental Sustainability Board for a "city" resident. Logan Secord has applied and his application is attached for your review.

BUDGET IMPACT: \$ TBD

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

If no, describe how it will be funded. NA

ATTACHMENTS:

Application

Section 10. Item A.

Entry #: 363 - 9/26/2023

Status: Submitted

Submitted: 9/26/2023 10:26 AM

****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

Select Board/Commission/Committee

9/26/2023

Environmental Sustainability Board

Name

Logan G Secord

Hendersonville's City

Do you reside within Street Address

1018 Mountain View St, Hendersonville, North Carolina 28379

Mailing Address (If Different)

limits? Yes

Phone

Email

(919) 714-2093

logan.secord@gmail.com

<u>All appointments to the Environmental Sustainability Board shall be made by the City of Hendersonville City Council</u>. 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.

<u>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.</u>

Please list any other appointed board positions you presently hold in any capacity. This includes advisory boards, quasi-judicial boards, committees, non-proffits ect.

I do not hold any other board positions with the city of Hendersonville.

Please list educational background, special qualifications, i.e., civic memberships, related work experience, etc.

I am a senior project manager for Pine Gate Renewables, a large utility scale solar company based in Asheville. I currently manage development of over 2,000MW of solar projects across the southeastern US. This role has led to significant experience in community engagement and local permitting such as zoning. Due to personal interest, I also have a strong understanding of various aspects of sustainability in a community.

Lalso have a Masters of Business Administration from the University of Florida.

Based on your qualifications and experience, briefly describe why your services on these boards/commissions would

atives. I

also will be able to help quide the process.

For reporting purposes, please select how you identify.

Race: For purposes of diversity and inclusion please identify your race.

White

tenants.

Section 10, Item A.

Male

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





SUBMITTER: Jennifer Floyd **MEETING DATE:** 10/05/2023

AGENDA SECTION: City Manager Report DEPARTMENT: Administration

TITLE OF ITEM: September 2023 Contingency Report – *John Connet, City Manager*

SUGGESTED MOTION(S):

N/A – Presentation Only.

SUMMARY:

In accordance with State Statute 159-13(b) it is required that all expenditures resulting from a contingency appropriation budget be reported to the governing board at its next regular meeting and recorded in the minutes.

The following contingency appropriation was made due to legal fees invoiced by the NCLM:

1. Decrease Fund 010 contingencies by \$2,031 for Professional Services- Legal

a. Increase 010-1535-519102 by \$2,031

BUDGET IMPACT: Detailed Above

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

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

ATTACHMENTS:

N/A



SUBMITTER: John Connet **MEETING DATE:** 10/05/2023

AGENDA CLOSED SESSION DEPARTMENT: Administration

SECTION:

TITLE OF ITEM: Closed Session – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

SUMMARY:

City staff is requesting a closed session to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

BUDGET IMPACT: \$ TBD

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

If no, describe how it will be funded. NA

ATTACHMENTS:

None