



# MINUTES

March 2, 2023

## REGULAR MEETING OF THE CITY COUNCIL

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

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

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

### 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.*

Melinda Lowrance addressed City Council regarding parking issues on Oak Street and asked if City Council would consider changing the No Parking signs to No Parking or Dropping Off during the hours of 7a.m. to 9a.m. and 2p.m. to 4p.m. at the corner of 9<sup>th</sup> Avenue and Oak Street, Oak and Conner Avenue up to Oak and 7<sup>th</sup> Avenue West so that residents on Oak Street will not be subject to hardship. The Mayor said they would refer it to staff to look into.

Clifford Meek addressed City Council for support of the railroad depot and perhaps having a rail service come through Hendersonville for the 4<sup>th</sup> of July. He gave his proposal to Council members.

Crystal Cauley of 702 Carolina Avenue, founder of the Black History Collective of Hendersonville County, North Carolina, spoke via Zoom electronic software and thanked the City and Allison Justus for the Black History landmark post on the City's Facebook page during the month of February, 2023. She thanked them for preserving history and for recognizing the achievements and contributions that black citizens of Hendersonville have made and hope it continues each year.

### 4. CONSIDERATION OF AGENDA

City Manager John Connet asked that item 5G Memorandum of Understanding with Henderson County for Construction Related Activities Along Edwards Park and VFW Site under the Consent Agenda, as well as, item 6A Proclamation-March for Meals under Presentations, be removed from the agenda.

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

### 5. CONSENT AGENDA

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

**B. Amendments to City Code to Conform with SB300** – Daniel Heyman, Staff Attorney

Ordinance #23-13

## AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND CERTAIN PROVISIONS OF THE CODE OF ORDINANCES RELATED TO CRIMINAL ENFORCEMENT

WHEREAS, Session Law 2021-138, otherwise known as Senate Bill 300, broadly decriminalized municipal ordinances, requiring municipalities to specifically state which ordinances may be enforced with criminal penalties; and

WHEREAS, while the City of Hendersonville typically pursues civil remedies such as civil penalties or injunctions in order to achieve compliance with City ordinances, there are circumstances in which the City must resort to criminal enforcement options, such as violations that pose an immediate danger to the community, or otherwise require prompt action; and

WHEREAS, until the passage of Session Law 2021-138, almost all violations of City ordinances were able to be enforced with criminal penalties as written; and

WHEREAS, amendments to the Code are required in order to continue enforcing certain violations of the Code criminally; and

WHEREAS, the amendments to the Code providing criminal penalties in specific circumstances will alert violators to the importance of compliance with the Code.

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

**SECTION 1.** This Ordinance shall be known as “An Ordinance Addressing Criminal Enforcement of City Ordinances to Comply with Senate Bill 300.”

**SECTION 2.** Chapter 1 – General Provisions of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 1-6. General penalty for violation of Code; continuing violations, criminal and injunctive relief; civil penalties.**

- (a) Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or whenever in such Code or ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, unless this code provides otherwise, the violation of any such provision shall subject the offender to a civil penalty in the amount of \$50.00 per violation to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within 45 days after the citation for violation of the ordinance or this Code.
- (b) Whenever in this Code or in any ordinance of the City any act is declared to be a misdemeanor, or the doing of any act is required and the failure to do such act is declared to be a misdemeanor, unless this Code provides otherwise, the violation of any such provision shall be punishable by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 30 days, or both.
- (c) Whenever in this Code or in any ordinance of the City any act is declared to be an infraction, or the doing of any act is required and the failure to do such act is declared to be an infraction, unless this Code provides otherwise, the violation of any such provision shall be punishable by a fine not exceeding \$100.00.
- (d) Each day that any violation of this Code or of any ordinance shall continue shall constitute a separate offense.
- (e) The ordinances contained in this Code and other ordinances of the city may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.
- (f) A violation of this Code of any ordinance may be enforced through a combination of one or more of the enforcement methods provided in this section 1-6.

**SECTION 3.** Chapter 6 – Alcoholic Beverages of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 6-1. State statutes applicable.**

It shall be unlawful for any person to offer for sale, disposal, display or otherwise use or offer for use or consumption, any beer, wine or other alcoholic beverage within the confines of the city except that such offer, use, sale, disposal, display or consumption shall be in conformance with the requirements of the General Statutes of North Carolina, applying.

As provided in N.C.G.S. Chapter 18B, violation of this section is a misdemeanor.

**Sec. 6-3. Possession of alcoholic beverages in or near city recreational facilities.**

It shall be unlawful for any person to carry upon or within 50 feet of the boundaries of, either by vehicle or as a pedestrian, any park, swimming pool, playing field, playground or other recreational facility of any kind whatsoever owned and operated by the city, any alcoholic beverage, as defined in G.S. 18B-101(4), in any bottle, jar, glass, cup, decanter or other container, whether such transportation be for purpose of consumption or any other use.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 6-4. Drinking in city recreational facilities.**

It shall be unlawful for any person to consume or drink any alcoholic beverage, as defined in G.S. 18B-101(4), on the premises of any park, swimming pool, playing field, playground or other recreational facility of any kind whatsoever owned and operated by the city. Notwithstanding the foregoing, a person who is not an occupant of a motor vehicle and who is of the age permitted by North Carolina Statute may consume or possess malt beverages and/or unfortified wine in any city-owned or -operated park at a community event or festival, if the city council has adopted a resolution making provisions for the possession and consumption of malt beverages or unfortified wine or both at such festival, to the extent permitted by such resolution.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 6-5. Possession of open container in public places prohibited; exceptions.**

(a) It shall be unlawful for any person to have in his possession in any public street, public alley, public parking lots, or any other property owned, occupied, or controlled by the city, who is not an occupant of a motor vehicle, any container of malt beverage or unfortified wine, as defined in G.S. 18B-101. For purposes of this section, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container. =

(b) This section shall not apply to nor serve to prohibit the sale and dispensing of alcoholic beverages in any public retail outlet or restaurant lawfully licensed and empowered to make such sales and dispensation.

(c) The enforcement of this section is not applicable to passengers in a motor vehicle who are in possession of nonspirituous alcoholic beverages and/or malt beverages.

(d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 4.** Chapter 8 – Amusements and Entertainments, Article II – Pool Rooms of the Code of Ordinances for the City of Hendersonville is amended as follows:

**Sec. 8-39. Gambling.**

It shall be unlawful for any owner, manager or employee of any pool room, billiard hall, discotheque and/or dancehall or amusement center within the city to allow or permit any form of gambling to be carried on or engaged in within the premises thereof.

As provided in N.C.G.S. 14-292, violation of this section is a misdemeanor.

**Sec. 8-40. Disorderly conduct.**

It shall be unlawful for the owner, manager or employee of any pool room, billiard hall, discotheque and/or dancehall or amusement center within the city to allow or permit any form of disorderly conduct to be carried on or engaged in within the premises thereof.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 8-41. Display of amusement devices; gambling devices prohibited.**

Any device shall at all times be kept and placed in plain view of any person who may frequent or be in any place of business where such devices are kept or used. Nothing in

this article shall be construed to authorize, permit or license any gambling device of any nature whatsoever.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**SECTION 5.** Chapter 14 – Businesses, Article IV – Massage Therapy of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 14-164. Massage of private parts for hire.**

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 14-165. Patronage of massage businesses by minor; employment of minors.**

- (a) No massage therapist or massage therapy establishment shall massage or treat any person under the age of 18 years or permit or condone such treatment, except when the parent or legal guardian of the person under 18 accompanies the person under the age of 18 during the massage treatment or upon written order of a licensed physician, osteopath, chiropractor, podiatrist or registered physical therapist, such order being dated and in the possession of the person giving the massage or treatment.
- (b) No person licensed pursuant to this article shall employ any person under the age of 18 years in the operation of the massage business.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 6.** Chapter 14 - Businesses, Article V – Massage Therapy of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 14-226. Peddling hours restricted.**

It shall be unlawful for any peddlers, hawkers, itinerant merchants or transient vendors of merchandise to go in or upon any property between the hours of 8:00 p.m. and 8:00 a.m., or, during such periods that daylight saving time is in effect between the hours of 9:00 p.m. and 8:00 a.m., in areas zoned for residential purposes within the corporate limits, not having been requested or invited so to do by the owner or occupant thereof, for the purpose of disposing of or peddling or hawking goods or services; provided, however, that nothing in this section shall apply to the sale of his own products by a farmer or the sale by an individual of the products of his own labor.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 14-227. Sale of merchandise on streets or sidewalks.**

No person shall sell, barter, trade or auction merchandise of any description on any street or sidewalk except in accordance with division 3 of this article.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 14-251. Required.**

It shall be unlawful for any person to engage in business as a peddler within the city without first having applied for and obtained a permit so to do from the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 14-258. Reserved.**

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**Sec. 14-283. - Reserved.**

**Sec. 14-284. Required.**

- (a) It shall be unlawful for any person to sell or to offer for sale, any food, beverage or merchandise on foot or from any vending stand on any right-of-way, street, sidewalk or public property within the city without first obtaining a permit pursuant to this article.
- (b) Any permit issued under this article shall be temporary in nature and applicable for one special event approved by the city pursuant to section 46-84. Such permit shall be effective only for the duration of the special event specified.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 14-287. Prohibited conduct.**

It shall be unlawful for a street vendor to:

- (1) Violate any federal, state, county or city law or regulation that pertains to food, beverages or the selling thereof or that pertains to the operation of the vendor's business in the downtown historic district.
- (2) Fail to permit any lawfully requested inspection by health officials or to comply with any lawful request of a police officer.
- (3) Fail to carry and display at all times of operation the permit issued under this division.
- (4) Have a vending stand that is not in compliance with the review regulations or any additional special restrictions or conditions stated in the permit.
- (5) Vend without insurance if such is a condition of the vendor's permit.
- (6) Sell food or beverages for immediate consumption, unless the vendor has available for public use a litter receptacle not more than ten feet distant from the vendor's stand.
- (7) Leave his designated location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor.
- (8) Allow any item relating to the operation of the vending business to be placed anywhere other than in, on or under the vending stand.
- (9) Offer to sell any goods other than those permitted by the permit.
- (10) Sound or permit the sounding of any device which produces a loud and raucous noise or engage in any hawking or harassment for the purpose of attracting the attention of the public to the vending stand.
- (11) Have any advertising, except the posting of prices, the name of the products, and the name of the vendor.
- (12) Solicit or conduct business with persons in motor vehicles.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 7.** Chapter 18 – Cemeteries of the Code of Ordinances for the City of Hendersonville shall be amended as follows :

**Sec. 18-3. Unlawful entry.**

It shall be unlawful for any person, other than duly authorized officers, officials or employees of the city, to enter into or be upon the grounds of a public cemetery during the time after sunset and before sunrise of any day without first obtaining the permission of the public works director or his designee. It shall further be unlawful at all times for any person to enter or leave the grounds other than by the established and open entrances or gateways.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 18-4. Trespass and loitering; exceptions.**

It shall be unlawful for any person to loiter or trespass upon lots and graves of the public cemeteries or for the parent or guardian of any child under the age of 16 to permit such child to be within a public cemetery grounds unless accompanied by an adult person; provided, however, that nothing in this section shall be construed to prohibit any person having lawful business in a public cemetery in connection with improvement thereof or in connection with the lawful interment or disinterment of human remains or cremains, or to prevent persons visiting the graves of relatives or friends from being in the cemetery in accordance with the rules and this chapter.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 18-5. Speed of vehicles.**

It shall be unlawful for any person to drive any vehicle in a public cemetery faster than five miles per hour.

In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

**Sec. 18-6. Operation of vehicles and parking.**

No person shall drive or move any vehicle within a public cemetery except over a roadway open for vehicular traffic, except as permitted by the rules. No person shall obstruct any path or driveway within a public cemetery open to vehicular traffic. No person shall use public cemetery grounds or any driveway therein as a public thoroughfare.

In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

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**Sec. 18-8. Rubbish; debris.**

It shall be unlawful for any person to dispose of any rubbish, trash, waste materials, litter or debris of any kind in public cemeteries or to place any permanent materials on a lot which would prevent the perpetual maintenance, including mowing, of a public cemetery.

In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

**Sec. 18-9. Property damage.**

No person shall remove, molest, injure, mar, deface, throw down or destroy any headstone, monument, permanent marker, survey marker, temporary marker, corner marker, tomb, vault or mausoleum, or decoration on any lot, or open, disturb or molest any grave or place of burial within a public cemetery. This shall not prohibit acts by public cemetery officers and employees or public officials in carrying out their duties.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 18-10. Trees, shrubs and flowers.**

- (a) It shall be unlawful for any person to plant any tree, shrub or other plant in a public cemetery except those planted or caused to be planted by the public works director or his designee.
- (b) It shall be unlawful for any unauthorized person to cut down, injure, break or destroy any tree, shrub or other plant growing in a public cemetery or to pick, pluck or cut any flower or decorative plant, except as authorized by the rules. In addition to any other remedy available, violation of this section subsection (b) is also a misdemeanor as provided in Section 1-6.

**Sec. 18-11. Interment of human remains.**

- (a) No person shall inter a human corpse or the remains remaining from the cremation of a human corpse at any place or location within the city limits other than in a recognized and established cemetery or other area regularly dedicated for this purpose.
- (b) No person or entity shall inter, or cause to be interred, human remains or cremains within a public cemetery without having first secured an interment permit from the public works director or his designee, and having paid the permit fee associated with the issuance of such a permit. The issuance of an interment permit shall be in accordance with the rules governing public cemeteries in the City of Hendersonville. Such interment permit shall, at a minimum, contain the name, date of birth, date of death of the deceased, the date and time of the proposed interment, the grave address/designation in which the interment will occur, and the name and address of the persons in responsible charge if different from the applicant. It shall be unlawful to inter or to cause the interment of human remains or cremains other than the named deceased within the designated grave. The persons in responsible charge shall be jointly and severally liable and responsible for compliance with all terms of this ordinance and the rules governing public cemeteries in the City of Hendersonville related to the interment, the funeral, gravesite services, placement of the temporary marker, and all other ordinance provisions and rules related to any of the foregoing.
- (c) Interment permits must be secured at least 48 hours in advance, with the following exceptions:
  - (1) If the interment will occur on a Monday, the interment permit must be secured no later than 11:00 a.m. on the preceding city business day.
  - (2) If the interment will occur on a weekend, the interment permit must be secured no later than 11:00 am of the preceding Thursday.
  - (3) If the interment will occur on a city holiday, the interment permit must be secured not later than 11:00 a.m. of the preceding city business day that will provide at least 48 hours' notice to the city.
- (d) No person shall cause to be built, installed or created any aboveground curbing, borders or fencing around any lot or grave, or multiple grave sites.
- (e) Nothing may be placed in, on, or around a grave or lot other than flowers, monuments and markers that are specifically allowed by this chapter. By way of example, and not limitation, benches, flag poles, solar lights, and any other item not specifically allowed, are prohibited.
- (f) No headstones, level stones or any other type of grave marker shall be wider than the width of two adjacent grave sites, or spaces.
- (g) All interment shall be accomplished with the use of an approved container and, for human remains, an approved vault.
- (h) All licenses obtained after July 1, 2021, shall be limited to the interment of (1) one human remains and one human cremains, or (2) two human cremains per grave. Notwithstanding the foregoing, prior commitments documented in city records for limits that exceed those contained in this paragraph shall be honored.

- (i) The lids of all vaults used for interments shall have affixed thereto by means of permanent attachment a metal tag, composed of non-corrosive metal, bearing the name, birth date, and date of death of the deceased within the vault.
- (j) After interment is completed, the top of any concrete box or vault used in such interment shall not be less than 24 inches below the ground level, and the grave and concrete box or vault shall be completely filled and covered with 24 inches of compacted soil.
- (k) Prices, fees, charges and assessments for a license, interment permit, the opening and closing of graves, and any other services rendered by the city incidental to, or relative to, the use of a public cemetery shall be determined by resolution of the city council, and a fee schedule listing the amount and nature of such fees shall be filed in the office of the city clerk.
- (l) Within 24 hours after interment the person in responsible charge shall place, or cause to be placed, at an appropriate place on the interment site a temporary marker designating at least the identity of the person interred. The temporary marker must remain (and be replaced if removed) until the placement of a permanent marker or permanent monument. A permanent marker must be placed within six months of the date of interment, and no later.
- (m) Within 48 hours after the burial the person in responsible charge shall provide the city with a certification that interment was completed in the designated grave and the required temporary marker has been placed.
- (n) In addition to any other remedy available, violation of subsections (a), (b), (g), (h), and (i) above is also a misdemeanor as provided in Section 1-6.

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**Sec. 18-15. Procedures and fees for disinterment.**

- (a) Except as may be otherwise authorized by city council, no human remains shall be disinterred from a public cemetery without the prior delivery to the city manager of a disinterment permit lawfully issued by the Henderson County Director of Public Health or by other lawful authority, or by a valid court order. Upon receipt, the city manager may conduct such investigation as deemed necessary to verify the disinterment permit or court order, and shall forward a copy to the public works director. The public works director or his designee shall update the public cemetery records to indicate the date of disinterment and the name, and new location of the burial of the deceased.
- (b) The disinterment permit holder shall coordinate the disinterment with the public works director or his designee.
- (c) An administrative fee set by the city council will be charged to review and coordinate each disinterment request received by the city, and payment is due at the time of request for disinterment.
- (d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 18-16. Violations of this chapter.**

- (a) The city may debar any funeral home from being eligible to apply for an interment permit, or to otherwise inter or cause the interment of human remains or human cremains within any public cemetery for repeated violations of this article.
- (b) In addition to section 18-16(a) above and any other remedy specifically provided, section 1-6 of the Code shall apply to violations of this chapter.

**SECTION 8.** Chapter 22 – Fire Prevention and Protection, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:



**Sec. 22-1. Interference at scene of fire.**

No person shall stand or be in any street, alley or other place where a fire is in progress in such a way as to interfere with the duties of the fire department.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 22-2. Unauthorized persons using fire apparatus.**

No person other than a bona fide member of the fire department shall mount any fire engine or other apparatus before it leaves the station or while on its way to or from a fire, or at any other time, unless by permission of the driver or officer in command of such fire engine or apparatus.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 22-3. False fire alarms.**

No person shall give or cause to be given any false fire alarm.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 22-4. Prohibited acts.**

The activities noted in this section are prohibited within the limits of the city's primary fire district, as established pursuant to G.S. 160A-435. The prohibited activities are as follows:

- (1) The storage of explosives and blasting agents;
- (2) The storage of flammable liquids in outside aboveground tanks;
- (3) New bulk plants for flammable or combustible liquids;
- (4) The bulk storage of liquefied petroleum gas; and
- (5) The storage of other hazardous materials as determined by the fire official.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 9.** Chapter 24 - Floods, Article III – Stormwater Ordinance of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 24-160. General enforcement and violations.**

- (a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his or her designee, or any authorized agent of the city. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of the city.
- (b) *Violation unlawful.* Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this article, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article. Violation of this article is subject to the same remedies as other City Code (see section 1-6 of this Code) violations, with each day that a violation continues constituting a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (c) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or

fails to take appropriate action, so that a violation of this article results or persists; or an owner, owner of an interest, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

- (1) *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.
- (2) *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any owner of an interest, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

#### **Sec. 24-161. - Remedies and penalties.**

The remedies and penalties provided for violations of this article shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(a) Remedies.

- (1) Withholding of certificate of occupancy. The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the owner, an owner of an interest, or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) Disapproval of subsequent permits and development approvals. As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.
- (3) Injunction, abatements, etc. The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- (4) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the stormwater administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

- (b) Civil penalties. Violation of this article may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. civil penalties may be assessed up to the full amount of penalty to which the city is subject for violations of its phase II stormwater permit, or if no phase II stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

**SECTION 10.** Chapter 36 – Offenses and Miscellaneous Provisions, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-1. Blocking or impeding street and sidewalk access.**

- (a) *Purpose and intent.* The city has the general authority and control over all public streets, sidewalks, and other ways of public passage within its corporate limits, except those ways of public passage that are owned or maintained by the State of North Carolina. The city has the duty to keep such streets, sidewalks, and other ways of public passage open for travel and free from unnecessary obstructions. G.S. 160A-296. This ordinance prohibits actions that block or impede the safe passage of pedestrians and vehicles on public sidewalks and streets.
- (b) *Definitions.* The following words, terms, and phrases when used in this section shall have the meanings set forth in this subsection, unless the context of their usage clearly indicates another meaning:
  - (1) *Block* means to unreasonably obstruct passage on a sidewalk or entrance or exit to a building.
  - (2) *Impede* means to render the use of a street unreasonably difficult or dangerous, including the following actions:
    - i. Weaving or darting through, around, and in between multiple occupied vehicles, whether the vehicle is stopped or in travel, for a purpose other than passage to a sidewalk. This subsection (i) is meant to prohibit walking through a street parallel to the sidewalk but not meant to prohibit crossing lanes of a street to reach occupied vehicles when a stop light is red.
    - ii. Placing or throwing a tangible thing on or inside an occupied vehicle that is on the street, except if an occupant requests that the acting individual deliver the tangible thing to an occupant or consents to such exchange.
    - iii. Standing, sitting, or lying down on the portion of a traffic island that is less than six feet wide, except where using the traffic island to cross the street or during an emergency.
  - (3) *Sidewalk* means the part of a street improved for pedestrian traffic.
  - (4) *Street* means the entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purpose of vehicular traffic. For purposes of this section the terms street and highway are synonymous.
  - (5) *Traffic island* means a raised portion of the street in between lanes of traffic intended to separate lines of traffic or guide traffic, not to hold people or provide pedestrian refuge. A traffic island may be commonly called a median. For the purpose of this section, a traffic island is any raised part of the street meant to separate lanes of traffic that is less than six feet in width. Width is measured as the length of the traffic in the direction of pedestrian travel if the pedestrian is traveling perpendicular to the street.
  - (6) *Vehicle* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes, of this chapter bicycles shall be deemed vehicles.
- (c) It shall be unlawful for an individual to impede the use of a street or highway.
- (d) It shall be unlawful for an individual to block a sidewalk.
- (e) It shall be unlawful for an individual to block the entrance or exit to a building served by a sidewalk or street unless otherwise granted permission by the owner or tenant. Permission granted by the owner may be evidenced by oral or written confirmation of permission from the owner or tenant.
- (f) Nothing in this subsection shall be interpreted to prohibit the exchanging of objects into and out of vehicles where the vehicle is stopped or parked according to traffic laws and no blocking or impeding of a street or sidewalk occurs. Where an individual is engaged in lawful activity on the sidewalk and such activity

evokes a response by a third party that is in violation of this section or any other ordinance or state law, the individual engaged in lawful activity shall not be in violation of this section.

- (g) This section shall not apply to actions taken by first responders; or to actions taken in response to an emergency or to prevent an accident.
- (h) This section shall not apply to persons or entities granted a permit by the city for purposes, including, but not limited to, under section 46-85 and following of this Code.
- (i) No action punishable under G.S. 20-174.1 shall be punishable under this section. This section shall only apply to public streets, sidewalks, and other ways of public passage within the city's corporate limits for which authority and control is not vested in the North Carolina Board of Transportation.
- (j) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 36-4. Harassment in public spaces prohibited.**

- (a) Purpose and intent.
  - (1) The city is empowered, pursuant to G.S. 160A-174, to protect the health, safety and welfare of its citizens and to ensure the peace and dignity of the city. It is the intent of council in enacting this ordinance to recognize the rights of all citizens while at the same time protecting the coexistent rights for all citizens to enjoy safe and convenient travel in public spaces free from harassment. In the course of public hearings and debates regarding solicitation and safety in public spaces in Hendersonville, the city recognizes that the dangerous effects of harassment may occur in the commission of or completely separate from an act of solicitation, where such conduct occurs in public spaces and includes following a person or cornering a person for the purpose of intimidating that person.
  - (2) The current state laws on stalking and harassment do not protect individuals who are harassed in public spaces where such harassment is confined to a single occasion but is also dangerous or intimidating. Such harassment causes intimidation and fear and may result in an interaction with dangerous or violent consequences. Free and safe passage on city sidewalks and streets is necessary. Therefore, the following ordinance intends to address harassment on sidewalks and streets by penalizing the following conduct.
- (b) Definitions. The following definitions apply in this section:
  - (1) Public space means streets, sidewalks, alleys, and other public property, as well as city-owned and city-controlled property.
  - (2) Reasonable person means a reasonable person in the same or similar circumstances.
- (c) Offense. A person is guilty of harassment in a public space if the person:
  - (1) Knowingly and intentionally performs either of the following with no legitimate purpose:
    - i. Following an individual in or about a public space with the intent of threatening, intimidating, or causing fear for personal safety; or
    - ii. Surrounding an individual or intentionally and physically directing the individual's movement through or in a public space with the intent of threatening, intimidating, or causing fear for personal safety. This subsection includes crowding or cornering an individual with the intent of threatening, intimidating, or causing fear for personal safety and without that individual's consent as the

individual is actively engaging or attempting to use an automated teller machine or parking meter and the individual must stand within the public space to access the automated teller machine or parking meter;

- (2) The conduct described in subsection (c)(1)(i) or (ii) is directed at an individual in the individual's presence; and
  - (3) The person continues the conduct described in subsection (c)(1)(i) or (ii) after the individual to whom the conduct is directed has made a negative oral response or taken action that a reasonable person would understand as a negative response.
- (d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 11.** Chapter 36 – Offenses and Miscellaneous Provisions, Article II – Offenses Against Public Peace of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-41. Trespass.**

- (a) *Prohibited generally.* It shall be unlawful for any person to commit a trespass within this municipality upon either public or private property.
- (b) *Specifically enumerated trespasses.* Without constituting any limitation upon the provisions of subsection (a) of this section, any of the following acts by any person shall be deemed included among those that constitute trespasses in violation of the provisions of subsection (a) of this section, and appropriate action may be taken under this section at any time, or from time to time, to prevent or punish any violations of this section. The enumerated acts shall include:
  - (1) An entry upon the premises, or any part thereof, of another, including any public property or property of the city, in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach or entry, or in violation of any notice, warning or protest, given orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
  - (2) The pursuit of a course of conduct or action incidental to the making of an entry upon the land or property of another, including public property or the property of the city, in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach or entry, or in violation of any notice, warning or protest, given orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
  - (3) A failure or refusal to depart from the premises of another, or from public property, or the property of the city, in case of being requested, either orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
- (c) *Penalty for violation of section.* In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 36-43. Disturbing public meetings.**

It shall be unlawful for any person, not authorized by law, rule, regulation or order to do so, to disrupt wilfully by shouts, calls, noisemaking or other disturbance any meeting of any public body, whether elected or appointed, to the extent that the body is unable because of such disruption to continue its meeting in due order, or to willfully obstruct the means of entrance to and exit from such meetings.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-44. Unlawful assembly.**

It shall be unlawful for any two or more persons within the city, to assemble together for any unlawful purpose; or being assembled, to act in concert to do any unlawful act with force and violence against the property of the city, or to the person or property of another, or against the peace or to the terror of citizens or other persons or who shall make any movement or preparation therefor. No person shall knowingly suffer or permit any assemblage for the purpose of committing any unlawful act or breach of the peace or any riotous, offensive or disorderly conduct in or upon the premises owned by him or under his control within the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

[Footnote: State law reference – Riot, G.S. 14-288.2]

**Sec. 36-45. Fighting.**

It shall be unlawful for any person to knowingly start a fight, or to fight, or to commit any assault or battery in any public place or in any public building in the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-46. Disturbing lawful assemblages.**

It shall be unlawful for any person, not authorized by law, rule, regulation or order to do so, to disrupt willfully by shouts, calls, noise making or other disturbance any lawfully conducted school class, act of commerce, assemblage or parade, to the extent that the class, commerce, public assemblage or parade is unable because of such disruption to continue in due order, or to willfully obstruct the means of entrance thereto and exit therefrom.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 12.** Chapter 36 – Offenses and Miscellaneous Provisions, Article III – Offenses Against Public Safety of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-81. Projectiles.**

- (a) No person shall shoot or project any stone, rock, shot or other hard substance within the city by means of a slingshot, bean shooter, shot shooter, air rifle, pop gun, bow or other similar contrivance; provided, however, that archery shooting may be engaged in on such grounds as may be set aside and approved therefor by the city council.
- (b) It shall be unlawful to cast, throw or propel any missile on any public street, alley or any public building in the city.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-82. Discharge of firearms.**

It shall be unlawful for any person to fire a gun, rifle, pistol or other firearm within the city except in case of necessary defense of person or property; provided, however, that this section shall not apply to an officer lawfully discharging his duty; provided further, that nothing in this section shall be construed to prohibit licensed shooting galleries.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

[Footnote: State Law Reference – Authority to regulate discharge of firearms, G.S. 160A-189]

**Sec. 36-84. Unauthorized use of police whistles and fire signals.**

No person without special authority from the police department or fire department shall carry or use any whistle, bell, horn or siren similar in appearance or sound to the whistles, horns or sirens used by the police department or fire department.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-85. Abandoned iceboxes; similar receptacles.**

- (a) Prohibited acts. It shall be unlawful for any person to discard, abandon, leave or allow to remain in any place, any icebox, refrigerator or other container, device or equipment of any kind with an interior storage area of more than 1½ cubic feet of clear space which is airtight, without first removing the doors or hinges from such icebox, refrigerator, container or equipment.
- (b) Applicability. This section shall not apply to any icebox, refrigerator, container, device or equipment which is being used for the purpose for which it was originally designed, or is being used for display purposes by any retail or wholesale merchant, or is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment thereof.
- (c) As provided in N.C.G.C. 14-318.1, violation of this section is a misdemeanor.

**Sec. 36-86. - Possession of firearms by convicted felons.**

[Deleted. Preempted by North Carolina law.]

**Sec. 36-87. Weapons on city-owned or city-maintained property.**

- (a) Carry of certain weapons prohibited.
  - (1) Prohibited acts. Except as provided in subsection (b) of this section, all persons are prohibited from possessing firearms as defined in G.S. 14-415.10 in city government buildings and their appurtenant premises.
  - (2) Where posted, the carrying of a concealed handgun on city government recreational facilities identified specifically as follows is hereby prohibited:
    - a. Patton Park Athletic Fields including any appurtenant facilities such as restrooms, during an organized athletic event, if the fields have been scheduled for use with the Hendersonville Department of Public Works;
    - b. Patton Park Swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool;
    - c. Boyd Park and Patton Park Tennis Courts during organized athletic events, if the courts have been scheduled for use with the Hendersonville Department of Public Works;
    - d. William H. King Park Baseball Field including any appurtenant facilities such as restrooms, during an organized athletic event, if the field has been scheduled for use with the Hendersonville Department of Public Works;
    - e. Sullivan Park Basketball Facility including appurtenant facilities such as restrooms, during an organized athletic event, if the facility has been scheduled for use with the Hendersonville Department of Public Works;
    - f. Whitmire Activity Center Shuffleboard Courts including appurtenant facilities such as restrooms, during an organized athletic event, if the courts have been scheduled for use with the Hendersonville Department of Public Works.

- (b) Exceptions. This prohibition of subsection (a) of this section shall not apply to the following persons:
- (1) Officers and enlisted personnel of the armed forces of the United States when discharging their official duties as such and acting under orders requiring them to carry arms and weapons;
  - (2) Civil officers of the United States while in the discharge of their official duties;
  - (3) Officers and soldiers of the national guard when called into actual service;
  - (4) Sworn law enforcement officers;
  - (5) County animal control officers while in the discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
  - (6) Employees of the city, a utility company, or a contractor to the city, may possess tools approved by their employer so long as such tools are not used as a weapon; and
  - (7) Persons possessing a written permit from the chief of police to possess weapons for ceremonial purposes or funerals.
  - (8) City employees with a valid North Carolina Concealed Carry Permit and prior approval which may be granted by the city manager in consultation with the chief of police in such places and under such circumstances as the city manager may from time to time designate. The city manager is hereby authorized and directed to draw up and keep current from time to time such policies for the carrying of concealed weapons as the city manager, in consultation with the chief of police, may determine is in the interest of the health, safety and welfare of the city.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 13.** Chapter 36 – Offenses and Miscellaneous Provisions, Article IV – Offenses Against Public Morals of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-121. Indecent exposure or behavior.**

[Deleted. Preempted by North Carolina law.]

**Sec. 36-122. Displaying obscene pictures.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 36-124. Prostitution—Solicitation.**

[Deleted. Preempted by North Carolina law.]

**Sec. 36-125. Same—Selling or renting houses for use as house of prostitution.**

No person shall knowingly sell or rent any house within the city to be used as a house of prostitution or ill fame.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-126. Bawdy houses.**

No person shall keep any house within the city where men are received for the purpose of engaging in illicit sexual intercourse.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.



**Sec. 36-127. Assignment houses.**

No person shall keep any assignment house or knowingly receive into any house within the city or allow to stay therein any man or woman for the purpose of engaging in illicit sexual intercourse.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-128. Staying in bawdy house.**

No person shall stay or reside in any bawdy house within the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 36-129. Disorderly houses.**

[Deleted. Preempted by North Carolina law.]

**SECTION 14.** Chapter 36 – Offenses and Miscellaneous Provisions, Article V - Curfew of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-213. Reserved.**

**Sec. 36-214. Establishment of curfew; enforcement.**

A curfew applicable to minors is established and shall be enforced as follows:

- (1) *Time limits.* It is unlawful for any minor to be or remain upon any public place as defined in this section in the city between midnight Friday and 5:00 a.m. on Saturday, or between midnight Saturday and 5:00 a.m. on Sunday, or between the hours of 11:00 p.m. and 5:00 a.m. of the following morning on Sunday, Monday, Tuesday, Wednesday or Thursday.
- (2) *Exceptions.* The restrictions provided by subsection (1) of this section shall not apply to any minor who is accompanied by a guardian, parent or other person charged with the care and custody of such minor, or other responsible person over 18 years of age, nor shall the restriction apply to any minor who is traveling between any two of the following: his home, place of employment, place of worship, any government building or any school-sanctioned function, if the minor is attending or has attended such function.
- (3) *Responsibility of minor.* It is unlawful for any minor to be in or upon, or remain in or upon a public place within the city within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (4) *Responsibility of adults.* It is unlawful for any parent, guardian or other person charged with the care and custody of any minor to allow or permit such minor to be in or upon, or remain in or upon, a public place within the city within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (5) *Responsibility of business establishments.* It is unlawful for any person operating a place of business or amusement to allow or permit any minor to be in or upon, or to remain in or upon, any place of business or amusement operated by them within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (6) *Enforcement.* Enforcement of this division shall be according to the following procedures:
  - a. When a minor is found to be in violation of this division, the officer will, by telephone or radio, check with the communications center of the city police department to determine if the juvenile is a first offender. If the juvenile is a first offender, he will be issued a written warning and taken to the residence of his parent or guardian. In addition to this action, a written warning will be given to that adult and an incident report taken by the officer to include the name of the juvenile and adult, and the time, date and location of the offense. This shall apply in all cases where a written warning is issued. This report will be turned in to the clerk and entered

- into the police department's computer system. A copy of the report will be maintained in the records division of the police department.
- b. If upon checking with the communications center the juvenile is found to be a repeat offender, he will be taken to the residence of his parent or guardian and will be subject to having a juvenile petition filed against him for the violation. In addition, the adult (parent or guardian) will be subject to a criminal citation, pursuant to subsection (8) of this section. A report will be turned in to the communications center and entered into the police department computer system. A copy of the report will be maintained in the records division of the police department.
  - c. If the juvenile is, in the opinion of the apprehending officer, an abused, neglected or dependent juvenile as those terms are defined in G.S. 7A-517 then the apprehending officer shall make an immediate report of the same to the county department of social services.
- (7) *Violation of curfew by minor.* It shall be a violation of this division for any minor to act in violation of subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
  - (8) *Aiding and abetting by adult, guardian or parent.* It shall be a violation of this division for an adult, guardian or parent to allow, permit, encourage, aid or abet a minor in the violation of subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
  - (9) *Refusal of guardian or parent to take custody of a minor.* If any guardian or parent refuses to take custody of his minor child found in violation of this division, the officers with custody of the minor shall contact the county department of social services and release the minor to that agency pending further investigation by the police department and the department of social services. The adult will be subject to a criminal citation, pursuant to subsection (8) of this section.
  - (10) *Emergency curfew.* Under the authority of G.S. 14-288-12, whenever the mayor of the city deems that an emergency exists, and there is a clear and present danger to the preservation of the public peace, health, life or safety, or to public or private property in the city necessitating expansion of the curfew provisions set forth in subsection (1) of this section, the mayor may effect such expansion, effective for the period of the emergency, by proclamation. The proclamation shall contain a statement of the reasons for such necessity and the period of the expanded curfew, and shall provide that no minor under the age of 16 shall be upon or about, or remain upon or about, public places in the city between the hours of 8:00 p.m. and 5:00 a.m. on the following morning, unless accompanied by his parent, guardian or responsible adult. Such proclamation may further provide that no parent or guardian of any minor under the age of 16 shall allow the child to be upon or about, or remain upon or about, any public place in the city between the hours of 8:00 p.m. and 5:00 a.m. of the following morning, unless the child is under direction or protection of some adult person with authority and consent of such parent or guardian for his being there. Such proclamation shall become effective 30 minutes after being publicly announced by the mayor for such period, or until rescinded by the mayor or repealed by the city council in the manner in which ordinances are repealed. As soon as is reasonably possible, the proclamation shall be published and reported in the local media and posted conspicuously about the city.
  - (11) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 15.** Chapter 36 – Offenses and Miscellaneous Provisions, Article VI – Abandoned, Nuisance, and Junked Motor Vehicles of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 36-261. Unlawful removal of impounded vehicle.**

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the city any vehicle which has been impounded pursuant to the

provisions of this article unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 16.** Chapter 38 – Parks and Recreation, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 38-3. Prohibited conduct.**

No person shall, while in any public park:

Drive any nongovernment vehicle on any area except the paved park roads or designated parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the city, except that bicycles shall be permitted on all trails unless specifically prohibited.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 17.** Chapter 38 – Parks and Recreation, Article II – Public Skate Park Facilities of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 38-12. Public skate park designated; use regulations.**

The city may designate, maintain and/or operate a skate park facility, which shall be open to the public for the purpose of riding skateboards, in-line skates, and/or roller skates. Any designated public skate park may or may not be supervised and shall be for use by persons using skateboards, in-line skates, and/or roller skates only. All other uses are prohibited.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 38-13. Required riding equipment in public skate parks.**

It is unlawful for a person to ride or use a skateboard, in-line skates, or roller skates, in a designated public skate park facility unless a person is wearing a helmet, elbow pads and knee pads.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 38-15. Skate park sign posting.**

The city public works department shall cause a sign or signs to be posted at designated public skate park facilities providing reasonable notice of the requirements of this article and stating that any person failing to comply may be charged with a misdemeanor. Such signs shall at least afford reasonable notice of the following:

- (1) Park hours of operation.
- (2) Skateboarding, roller-skating, and in-line skating are hazardous activities. Skate at your own risk.
- (3) Skateboards, roller-skates, and in-line skates only.
- (4) Failure to wear helmets, kneepads and elbow pads will subject persons to citation and/or ejection from the facility.

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**Sec. 38-17. Reserved.**

**Sec. 38-18. City skate park rules.**

In addition to any other available remedy, violation of the rules in this Section 38-18 is also a misdemeanor as provided in Section 1-6.

Notice to all skaters.

This is an unsupervised skatepark. Skating is permitted during park hours from dawn to dusk. Any use of this facility is at your own risk. Use of this facility may result in serious injury.

IN THE CASE OF SERIOUS INJURY, DO NOT MOVE THE INJURED PERSON.  
ALL SKATING SHALL CEASE IMMEDIATELY. DIAL 911 - YOU ARE IN  
PATTON PARK AT 103 E. Clairmont Drive.

The following rules and regulations have been established for use of the skatepark to ensure participant safety. Please read and obey the following rules.

- (1) This is an unsupervised skate park and its use is free of charge. Avoid skating when the surface is wet from rain, etc.
- (2) Skating and skateboarding only are allowed in the skatepark.
- (3) Every person riding a skateboard at this facility, skateboard in the facility must wear a helmet, elbow pads, and kneepads.
- (4) Motorized vehicles are not allowed. Only skateboards, roller skates, in-line skates are allowed on ramps.
- (5) Call 911 for emergencies.
- (6) Drugs, alcohol, glass containers, tobacco products, profanity, fighting, horseplay, destroying or defacing public property are prohibited. Vandalism, including graffiti, stickers and tagging is illegal. If this occurs it may require the park to be closed temporarily. Violators will be prosecuted.
- (7) Food or beverages are not allowed on the skate area. Glass containers are prohibited in or near the skating surface.
- (8) No one under the age of eight is allowed without adult supervision.
- (9) No spectators are allowed on the skate area.
- (10) The city reserves the right to revoke the use of the skatepark to individuals who violate the rules and regulations of the skatepark.
- (11) Help keep the skatepark clean! Put trash in the receptacles, even if it is not yours!
- (12) Be courteous and respectful of others.
- (13) Events, lessons and other organized activities require written permission from the director of public works or his/her designee.
- (14) No other park items such as benches, tables, etc. may be used as ramps or jumps in the skatepark.
- (15) Firearms are prohibited in the skatepark.

Under North Carolina law, no governmental entity or public employee who has complied with G.S. 99E-23 shall be liable to any person who voluntarily participates in hazardous recreation activities for any damage or injury to property or persons that arises out of a person's participation in the activity and that takes place in an area designated for the activity.

For additional information, contact the City of Hendersonville at 828-697-3000.

**SECTION 18.** Chapter 42 – Secondhand Goods, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 42-1. Purchases from minors.**

[Deleted. Preempted by North Carolina law.]

**SECTION 19.** Chapter 42 – Secondhand Goods, Article II – Pawnbrokers of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

[Footnote: State Law reference— Pawnbrokers and Cash Converters Modernization Act, G.S.Ch. 66, Art. 45, Part 1.]

**Sec. 42-36. Adoption of state provisions.**

The city adopts the provisions of G.S. Ch. 66, Art. 45, Part 1, the Pawnbrokers and Cash Converters Modernization Act.

**SECTION 20** Chapter 42 – Secondhand Goods, Article II – Electronic Record-Keeping and Transmittal Requirements for Certain Businesses of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 42-37. Definitions.**

Cash converter shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

Pawnbroker shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

Pawnshop shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

Precious metals dealer shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

Secondary metals recycler shall have the same meaning as defined in Chapter 66 of the North Carolina General Statutes or any successor statute.

**Sec. 42-38. Electronic record keeping.**

Every owner or operator of a cash converter business, pawnbroker, pawnshop, precious metals dealer or secondary metals recycler subject to this article shall maintain an electronic inventory tracking system that is capable of delivery and transmission of all information required by G.S. 66-391 or 66-392 (in the case of cash converters, pawnbrokers and pawnshops) or G.S. 66-410 (in the case of precious metals dealers) or G.S. 66-421 (in the case of secondary metals dealers) by computer to the entity designated by the city police department.

**Sec. 42-39. Electronic transmittal of required records.**

Every owner or operator of a cash converter business, pawnbroker, pawnshop, precious metals dealer or secondary metals recycler subject to this article is required to upload the information required by G.S. 66-391 or 66-392 to the entity designated by the city police department within one business day of receipt of the goods purchased or pawned.

**SECTION 21.** Chapter 44 – Environmental Services, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 44-3. Reserved.**

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**Sec. 44-5. Littering prohibited—Generally.**

It shall be unlawful for any person to throw, drop, cast or deposit upon any street, alley, sidewalk or any yard or premises, public or private, any filth of any kind, or cans, paper, trash, paper containers, rubbish, bottles, wood shavings, brush, tree trimmings, grass clippings, leaves, or any other form of litter or waste matter, except as described in this article.

In addition to any other available remedy, violation of this section shall be punished in accordance with N.C.G.S. 14-399.

**SECTION 22.** Chapter 44 – Environmental Services, Article II – Collection and Disposal of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 44-41. Container specifications and handling requirements.**

- (a) Residential collection. All occupants of residences, whether single-family or multifamily, subdivision, planned unit developments, condominiums, apartment buildings, duplexes or any other arrangement of ownership, shall use city-provided mobile containers, which shall be placed adjacent to the street for collection. Rollout containers shall be emptied one time per week by the city sanitation department on days designated by the director of public works.
  - (1) Placement. Rollout containers shall be placed adjacent to the street for collection on days designated by the director of public works for pickup. The mobile containers shall be placed within five feet of the curb or street edge or in an accessible location approved by the director of public works, but shall not be placed in the street or on the sidewalk.
  - (2) Time requirements. The mobile containers shall be placed in the required location for collection no earlier than 7:00 p.m. on the day preceding a designated pickup day and shall be removed from the curbside location no later than 7:00 p.m. on the designated pickup day. Except during these hours, the containers shall be kept in a location no closer to the street than the front line of the residence. Containers must be curbside no later than 7:00 a.m. on collection day.
- (b) Multifamily dwelling collection. Multifamily dwellings with four or more units may utilize mobile carts or bulk containers on an individual resident or user basis; provided, however, that such multifamily dwellings must maintain and require the use of a central and common collection and pickup area, the location of which has been approved and accepted by the city director of public works.
- (c) Location of containers. Those provisions set forth in sections 44-2, 44-4, 44-6, 44-7 and subsection (a) of this section shall apply to occupants of multifamily dwellings utilizing mobile containers.
- (d) Commercial and industrial collection. Commercial and industrial collection shall be as follows:
  - (1) Provisions for containers. Each establishment disposing of the equivalent of less than four cubic yards weekly shall provide rollout containers leased from the city, to remain the property of the city, and sufficient in number to contain the volume of refuse based on a once-per-week pickup. Each establishment disposing of more than four cubic yards weekly shall provide bulk containers of adequate size necessary to contain the volume of refuse based on once-per-week pickup. Establishments disposing of more than 16 cubic yards weekly shall provide bulk containers of eight cubic yards minimum capacity. Where feasible, low volume disposers may choose to combine their refuse with adjoining business, provided written permission is obtained from the business owner. Other low volume disposers may choose alternative disposal methods as approved by the director of public works.
- (e) Location of containers. Containers must be located in a position approved by the director of public works, easily accessible by the sanitation collection equipment.
- (f) Ownership and responsibility. All containers furnished by the city, including mobile containers and rollout containers as referenced herein, shall remain the property of the city. Containers that are damaged, destroyed or stolen through abuse, neglect or improper use of occupant or user shall be replaced by the city at the expense of the occupant or user or resident owner. Containers that are damaged in the course of normal and reasonable usage or that are damaged through no neglect or improper use of the occupant or user shall be replaced by the city at no expense to the occupant or user or resident owner. The director of public works shall determine whether the container was damaged through abuse, neglect or improper use of occupant or user. Any determination made by the

director of public works pursuant to this section shall be appealable to the city council if written notice of appeal is given by the occupant or user or resident owner to the city council within ten days after the director's decision.

- (1) Containers shall not be intentionally damaged, destroyed or defaced by any person. Markings or identification devices on containers, except as placed or specifically permitted by the director of public works, are expressly prohibited and shall be regarded as damage to the containers. In addition to any other remedy available, violation of this subsection (f)(1) is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 44-48. Hazardous wastes.**

No person shall place or cause to be placed any hazardous wastes or any other dangerous materials of any kind with material to be collected by the city. The city will not be responsible for the collection or disposal of such materials. Procedures for transporting and disposing of such materials may be obtained through the department of sanitation and/or the county public health department.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 23.** Chapter 46 – Streets, Sidewalks and Other Public Places, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

#### **Sec. 46-2. Playing in streets.**

No person shall play baseball, football or other games of similar nature on any public street in the city, except when such street has been declared a play street.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

#### **Sec. 46-3. Injury to paving under construction.**

No person shall cut, break, tear down or remove the stakes or ropes which are placed in, on, along or across any street in the city which are placed for the purpose of preventing persons from walking, riding or driving on newly laid paving. It shall also be unlawful for any person to walk, ride or drive over such paving until the paving shall have been duly opened to the public; employees of the city in performance of their duties excepted.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 24.** Chapter 46 – Streets, Sidewalks and Other Public Places, Article II - Excavations of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

#### **Sec. 46-41. Permit required.**

No person or any agent, employee, servant, contractor or subcontractor of any person shall dig, cut into or through the streets, highways or alleyways within the city for the purpose of installing, repairing or making connection with water lines, sewer lines, gas lines, telephone lines, power lines or for any other purpose, without having first obtained written permission to do so from the department of public works of the city, and in conformance with the procedures and methods set forth or provided for in this article.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 25.** Chapter 46 – Streets, Sidewalks and Other Public Places, Article III – Obstructions and Encroachments of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

#### **Sec. 46-81. Obstructions.**

- (a) *Generally.* G.S. 160A-296 imposes upon cities the duty to keep public streets and sidewalks free from unnecessary obstructions. This section applies to all

obstructions of whatever nature, whether temporary or permanent. Section 46-82 applies only to encroachments, which are defined as structural improvements on city rights-of-way. Not all obstructions are encroachments, but all encroachments are obstructions and may be regulated under both sections.

- (b) *Obstructions and their removal.* Obstructions shall be removed as follows:
- (1) *Deemed nuisance; abatement; costs.* It shall be unlawful for any person to erect, locate or permit to remain in any street or sidewalk of the city any obstruction that will interfere with the use of the street or sidewalk by the public. Any obstruction which shall remain in any street or sidewalk after notice or demand for its removal by the city shall be deemed a public nuisance, and it shall be the duty of the director of public works or chief of police to abate such nuisance by the summary removal of the obstruction, and to charge the cost thereof to the person responsible for its existence.
  - (2) *Fine.* If any person, after having been notified by the city to remove any obstruction from any street or sidewalk shall refuse or fail to remove it, such person shall forfeit and pay to the city the sum of \$50.00 for each day the obstruction shall remain unremoved. For the purpose of this section, each day shall constitute a separate cause of action, and notice to any agent or servant of any person shall be deemed notice to the principal.
  - (3) *Exceptions to section provisions.* The provisions of this section shall not apply in the following circumstances:
    - a. Loading, unloading, moving or transporting materials;
    - b. Standard covered garbage cans, at the time and place designated by order of the director of public works;
    - c. In the case of a written permit for construction, maintenance, advertising, and such other purposes as are provided by ordinance; and
    - d. Signs, public benches and any other item placed by the city.
- (c) *Displaying goods or wares.* Except as otherwise provided in this section or in conjunction with special event permits, it shall be unlawful for any person to obstruct entirely or in part any right-of-way, street or sidewalk of the city, by displaying, offering for sale or selling, at auction or otherwise, any goods, wares or merchandise thereon.
- (d) *Permission for placing material in streets.* It shall be unlawful to place any brick, stone, lumber, sand or other building material upon any of the streets or sidewalks of the city without first having obtained from the city manager, or his designee, permission in writing therefor, and then only under such reasonable restrictions as may be prescribed by him for the public safety.
- (e) *Use of sidewalks by merchants.* Notwithstanding the provisions of subsection (c) of this section, in those circumstances where the building in which a business is located is contiguous with a public sidewalk, merchants doing business in such building may make limited use of the sidewalk in accordance with this subsection. In such circumstances, merchants may use the adjacent sidewalk for decoration, the display of wares, and/or a portable sign advertising the business so long as they leave at least a continuous five-foot width of unobstructed sidewalk. In any event, the width of the sidewalk used by a merchant under this subsection shall not exceed 36 inches except during the Apple Festival, merchants may use 48 inches of sidewalk for the display of merchandise. It is the intent of this subsection that such use shall be temporary in nature and items placed on sidewalks shall not be permitted to remain overnight.
- (f) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 46-83. Picketing.**

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Picket* or *picketing* means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

*Sidewalk* means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights-of-way.

*Street* means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right, for the purposes of vehicular traffic, including that portion that is known as the shoulder of the roadway and the curb. The terms "highway" and "street" and their cognates are synonymous as used herein.

- (b) *Notice of intent to picket.*

- (1) Notification required. The organizer of a picket that the organizer knows, or should reasonably know will be by a group of 50 or more individuals shall give notice of intent to picket to the chief of police or designee at least 48 hours before the beginning of the picket. The notice of intent to picket shall include the following information:
  - a. The name, address and contact telephone number for the organizer of the picket;
  - b. The name, address and contact telephone number of the person giving notice of intent to picket if different from the organizer;
  - c. The name of the organization or group sponsoring the picket;
  - d. The location where the picket is to take place;
  - e. The date and time the picket will begin and end; and
  - f. The anticipated number of participants, and the basis on which this estimate is made.
- (2) Receipt of notification. Upon notice of intent to picket given in accordance with subsection (1), the chief of police or designee shall immediately issue a receipt of notice. The receipt shall contain all information stated in the notice. The organizer of a picket shall be responsible for maintaining the receipt, and shall present it when so requested by a law enforcement officer or other city official.
- (3) It shall be unlawful for any person to violate any provision of this section.

- (c) *Picketing regulations.*

- (1) Picketing may be conducted on public sidewalks, at the city hall lawn and steps, any city-controlled park, or other city-owned areas normally used or reserved for pedestrian movement, including easements and rights-of-way. This list is not intended to be exclusive of other areas that may be deemed a public forum.
- (2) Notwithstanding subsection (a), picketing may not be conducted at a location directed, focused, or targeted at a particular private residence.
- (3) Picketing shall not disrupt, block, obstruct or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance, or other access to buildings, which abut the public sidewalks.

- (4) Written or printed placards or signs, flags, or banners carried by individuals engaged in picketing shall be of such a size and/or carried on the sidewalks or other city-owned areas, as to allow safe and unobstructed passage of pedestrian or vehicular traffic. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood, and shall not exceed 40 inches in length and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.
- (5) If more than one group of picketers desire to picket at the same time at or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to picket in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of picketers arrived first, or in the case where at least one of the groups received a receipt of notification as provided herein, the group that first gave notice as provided herein.
- (6) Spectators of pickets shall not physically interfere with individuals engaged in picketing. Picketers and spectators of pickets shall not speak fighting words or threats that would tend cause physical injury or to provoke a reasonable person to a breach of the peace.
- (7) Picketers and picketing shall be subject to all applicable local, state and federal laws including, but not limited to:
  - a. The city's noise ordinance;
  - b. N.C.G.S. § 14-225.1 (obstructing justice);
  - c. N.C.G.S. § 14-277.2 (weapons);
  - d. N.C.G.S. § 14-277.4 (health care facilities); and
  - e. N.C.G.S. § 14-288.4 (disorderly conduct).
- (8) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with N.C.G.S. § 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.
- (9) It shall be unlawful for any person to violate any provision of this section. In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 46-87. Street entertainers.**

- (a) "Street entertainers" or "Entertainers" as used herein shall mean persons and groups of persons providing entertainment intended for the benefit of pedestrians on sidewalks, which entertainers in the course of their entertainment remain substantially stationary in areas adjoining or within 25 feet of Main Street in downtown Hendersonville between Sixth Avenue and First Avenue. This ordinance shall apply equally to all persons regardless of whether such persons are requesting or accepting reward associated with the entertainment. The terms as used herein shall not apply to substantially mobile pedestrians regardless of whether such pedestrians are attempting to entertain or communicate with other pedestrians.
- (b) Street entertainers shall be subject to the following requirements while on sidewalks adjoining or within 25 feet of Main Street between Sixth Avenue and First Avenue.
  - (1) Entertainers while preparing for, engaging in, or disengaging from entertaining shall remain within areas designated by the city for entertainment purposes at the ends of most Main Street blocks.

- (2) Entertainers, whether one or more engaging in a particular entertainment, shall not occupy an entertainment area already occupied by another entertainer.
- (3) The sale or attempted sale of any goods by an entertainer shall be subject to applicable law, including ordinances regulating business licensing of such sales.
- (4) Entertainers shall not obstruct pedestrian or vehicular traffic and shall yield to disabled persons reasonably requiring temporary use of the entertaining area.
- (5) Entertainers shall not perform on sidewalks adjacent to or within 25 feet of Main Street during special events hours unless designated as part of the special event by the event's promoter or organizer.
- (6) Entertainers shall not be exempt in any respect from applicable law relating to the propagation of noise, or to criminal trespass on private property.
- (7) Entertainers shall not enter the streets while entertaining except for the purposes of loading or unloading objects from vehicles.

(c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6. **SECTION 26.** Chapter 50 - Traffic, Article I – In General of the Code of Ordinances for the City of Hendersonville is amended as follows:

**Sec. 50-2. Reserved.**

**Sec. 50-3. Obedience to police.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-12. Entering or riding vehicles without permission.**

No person shall enter, jump on or ride any automobile or other vehicle without the consent of the owner or driver.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 50-15. Placing glass, tacks, wire, bottles, nails or other such articles in streets.**

It shall be unlawful for any person to place upon any part of a public street, highway, land, road, street or alley, any tacks, bottles, wire, glass, nails or any other articles which may damage or injure any person, vehicle or animal traveling along or upon such public street or way.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 50-16. Mufflers.**

(a)

[Deleted. Preempted by North Carolina law.]

**Sec. 50-17. Riding motorcycles generally.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-22. Solicitation in public rights-of-way prohibited.****(a) Definitions.**

- (1) The following words and phrases, whenever used in this section, shall be construed as defined in this subsection:

Business means any type of products, goods, service performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

Employment means services, industry or labor performed by a person for wages or other compensation or under any contract of hire, written or oral, express or implied.

Public right-of-way means land which is dedicated to the public use for sidewalk, street and highway purposes, or other transportation purposes.

Solicit means making any oral or written request, offer or enticement, or taking any action which indicates the availability of a person for employment or availability to provide services for compensation or which seeks to purchase or secure services or goods; the purchase or sale of goods; or a request for money or other property; or a contribution of money or other property. A solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place.

- (b) It is unlawful for any person, while standing in any portion of the public right-of-way, including but not limited to public streets, highways, median strips, sidewalks and driveways, to solicit, or attempt to solicit, employment, business, or contributions of money or other property from, or to distribute or attempt to distribute any material thing to, any person traveling in a motor vehicle along a public right-of-way, including, but not limited to public streets, highways or driveways. This provision does not apply to services rendered in connection with emergency repairs requested by the operator or passenger of a motor vehicle.
- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 28.** Chapter 50 – Traffic, Article II – Procedures Upon Arrest of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-59. Failure to obey citation.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-62. Issuance of warrant.**

[Deleted. Preempted by North Carolina law.]

**SECTION 27.** Chapter 50 - Traffic, Article III – Operation of Vehicles of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-96. Duty to drive on right half of street—Generally.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-97. Same—Crossing intersection or railroad.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-98. Meeting of vehicles.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-99. Driving on roadways laned for traffic.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-100. Passing vehicle proceeding in same direction—Generally.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-101. Same—When permitted on right.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-102. Same—Duty of driver of overtaken vehicle.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-103. Right-of-way generally.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-104. Exceptions to the right-of-way rule.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-105. Method of turning at intersections.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-106. Signals on starting, stopping or turning—Required.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-107. Same—Manner of giving.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-108. Duty of drivers of vehicles upon approach of authorized emergency vehicles.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-109. Following fire apparatus or driving near scene of fire.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-110. Driving over fire hose or blocking fire apparatus.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-111. Backing.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-112. Entering intersections and marked crosswalks.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-113. Driving vehicles on sidewalks.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-116. Following too closely.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-117. Driving overloaded or overcrowded vehicle.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-141. Reasonable and prudent limitation.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-142. General district limitations.**

Except as otherwise provided in this chapter, it shall be unlawful for any person to operate a vehicle in excess of the following speeds:

- (1) Twenty miles per hour in any business district;
- (2) Thirty-five miles per hour in any residential district;
- (3) Forty-five miles per hour in places other than those named in subsections (1) and (2) of this section for:
  - a. All vehicles other than passenger cars, regular passenger vehicles, pickup trucks of less than one-ton capacity, and school buses loaded with children; and
  - b. All vehicles, of whatever kind, which are engaged in towing, drawing or pushing another vehicle; provided, however, that this subsection (3)b shall not apply to vehicles engaged in towing, drawing or pushing trailers with a gross weight of not more than 3,000 pounds; and
- (4) Fifty-five miles per hour in places other than those named in subsections (1) and (2) of this section for passenger cars, regular passenger carrying vehicles and pickup trucks of less than one-ton capacity.

In addition to any other available remedy, violation of this section is also an infraction as provided in Section 1-6.

**Sec. 50-143. Duty to decrease.**

[Deleted. Preempted by North Carolina law.] **Sec. 50-144. Variation of maximum speed limits.**

The city council may alter the maximum speed limit as established in this division on any street or portion thereof which is not a part of the state highway system and which is not maintained by the state highway commission in accordance with the provisions of G.S. 20-141(f1). No such alteration of the speed limits shall become or remain effective unless signs have been conspicuously placed giving notice of such speed limit for such street.

- (a) The speed limit on Chadwick Avenue between Greenville Highway (NC 225) and Spartanburg Highway (US 176) shall be 25 miles per hour.

In addition to any other available remedy, violation of this section is also an infraction as provided in Section 1-6.

**Sec. 50-145. School zones.**

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[Deleted. Preempted by North Carolina law.]

**SECTION 28.** Chapter 50 - Traffic, Article IV – Traffic Control Devices of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-182. Obedience to devices.**

[Deleted. Preempted by North Carolina law.]

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**Sec. 50-184. Moving or damaging devices.**

It shall be unlawful for any person to move, deface or otherwise damage any sign, signal or other traffic control device placed upon the streets of the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 50-188. Stop intersections.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-189. Yield intersections.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-190. Driving on one-way streets.**

Upon those streets and parts of streets designated as one-way streets in accord with section 50-181, vehicular traffic shall move only in the indicated direction, when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

In addition to any other remedy available, violation of this section shall also be an infraction as provided in Section 1-6.

**Sec. 50-191. - Limitations on turning around.**

No driver shall turn any vehicle so as to proceed in the opposite direction in the business district, except at street intersections. No vehicle shall make such a turn, even at street intersections, in the streets, or portions of streets, designated and signposted pursuant to section 50-181.

In addition to any other remedy available in the Code, violation of this section shall also be an infraction as provided in Section 1-6.

[Footnote: State law reference – Authority to modify turning at intersections, G.S. 20-153

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**Sec. 50-193. Driving through safety zone.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-194. Reserved.**

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**Sec. 50-196. Driving on play streets.**

Whenever authorized signs are placed designating any street, or part thereof, as a play street pursuant to section 50-181, no person shall drive a vehicle upon any such designated street, except persons who have business or who reside within the designated area.

**SECTION 29.** Chapter 50 – Traffic, Article VI – Pedestrians of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-376. - Application of article.**

[Deleted. Preempted by North Carolina law.]**Sec. 50-377. Right-of-way at crosswalks.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-378. Crossing at other than crosswalk.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-379. Walking on traveled portion of street.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-380. Soliciting rides.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-381. Special provisions relative to blind pedestrians.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-382. Unlawful use of white cane.**

[Deleted. Preempted by North Carolina law.]

**Sec. 50-383. Duty of drivers.**

[Deleted. Preempted by North Carolina law.]

**SECTION 30.** Chapter 50 - Traffic, Article VII – Parades and Processions of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-417. Permit required for parades.**

- (a) No parade is permitted unless a permit has been first obtained from the chief of police allowing the parade pursuant to this article.
- (b) A person seeking to obtain a parade shall file an application with the chief of police on forms provided by such official.
- (c) A person seeking to obtain a parade permit which requires a street closing or otherwise requires police officers to stop or reroute vehicular traffic upon any street because the participants will not comply with normal traffic regulations or controls shall file an application with the chief of police at least ten days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter timeframes from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.
- (d) A person seeking to obtain a parade permit for Main Street which requires the closing of Main Street for greater than three hours shall file an application with the chief of police at least 45 days before the time for which the parade is proposed to commence. The chief of police shall notified downtown merchants via the Downtown Advisory Committee or successor committees at least 30 days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter time-frames from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.
- (e) The application for a parade permit shall include the following:
  - (1) The name, address, telephone number, and email address of the person seeking to conduct the parade, and the name, address, telephone number and email address, if available, of the organization with which the person is affiliated or on whose behalf the person is applying to conduct the parade or public assembly (collectively "applicant");



- (2) The name, address, telephone number and email address, if available, for an individual who shall be designated as the "responsible planner and on-site manager" of the parade;
  - (3) The requested date, time, place, and route (from starting point to ending point) of the parade including the location where and time when the parade will assemble and disband, and any requested sidewalk or street closings;
  - (4) The anticipated number of persons, vehicles, and things that will constitute the parade or (including the basis on which this estimate is made), and a description of the vehicles and things that will be part of the parade;
  - (5) A general description of any recording equipment and sound amplification equipment, along with a general description of the size and composition of any banners, signs, flags, or other attention-getting devices to be used in connection with the parade;
  - (6) Arrangements for additional police protection and additional emergency medical services, if required under subsection 50-418(b);
- (f) A parade/assembly permit issued under this article shall include the information set out in paragraph (d) of this section, which information shall constitute conditions of the permit to the extent such information sets out the time, place, and manner of the parade or public assembly.
- (g) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 50-425. Prohibitions.**

The following prohibitions shall apply to all parades:

- (1) It shall be unlawful for any person to stage, present, or conduct any parade without first having obtained a permit under this article.
- (2) It shall be unlawful for any person to participate in a parade for which the person knows a permit has not been granted.
- (3) It shall be unlawful for any participant in a parade to knowingly fail to comply with any conditions of the parade.
- (4) It shall be unlawful for any person participating in any parade to carry or possess any staff or pole, except for purposes of displaying any sign, poster, flag or banner, unless the staff or pole (i) is made of corrugated material, plastic, or wood (and not made of metal or metal alloy); (ii) is less than 40 inches in length; (iii) is one-fourth inch or less in thickness and two inches or less in width, or if not generally rectangular in shape, does not exceed three-fourths inch in its thickest dimension; and (iv) is blunt at both ends.
- (5) It shall be unlawful for any person participating in any parade to carry or possess any sign, poster, flag, banner unless such sign, poster, flag, banner is constructed or made of a cloth, paper, cardboard, rubber, or plastic material.
- (6) It shall be unlawful to assign or sell any parade permit granted under this article.
- (7) All participants in any parade shall be subject to all other applicable local, state and federal laws.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6. **Sec. 50-426. Weapons.**

With the exception of law enforcement officers acting within the scope of their duties, no firearms, or dangerous weapons of any kind, as defined by federal, state and local laws, may be possessed by a participant in a parade.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6. **Sec. 50-427. Public conduct during parades.**

- (a) No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or with any person, vehicle, animal, or thing participating or used in a parade.
- (b) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade. The chief of police shall post signs to that effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation of such signs.
- (c) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 50-429. - Penalties.**

In addition to any remedy specifically provided, violation of any section or subsection of this article shall be subject to a civil penalty of \$500.00 to be recovered in the nature of a debt as allowed in section 1-6 of this Code.

**Sec. 50-430. Vehicle processions.**

- (a) *Definition.* For the purpose of this section, the term "*vehicle procession*" shall be deemed to mean:
  - (1) A group of motor vehicles;
  - (2) Preceded by a vehicle of a law enforcement agency with blue warning light activated;
  - (3) Traveling in single file with headlamps illuminated and emergency four-way flashers activated; and
  - (4) The lead vehicle shall bear a distinctive flag or marker.
- (b) *Right-of-way; penalty for violation of section.* The operator of any motor vehicle traveling upon, along or through any public street or highway, or entering upon or leaving such street or highway, shall yield the right-of-way to a vehicle procession. A vehicle procession shall be accorded the right-of-way at any intersection, regardless of the method of traffic control at such intersection or whether or not the same shall be activated. Any operator of any motor vehicle who shall fail to yield the right-of-way to any vehicle procession shall be liable for an infraction and shall be assessed a penalty of \$35.00 and court costs for each such failure.
- (c) *Driving through vehicle procession.* No vehicle not a portion of a vehicle procession shall be driven through any such procession, and the operator of any vehicle violating this subsection shall be guilty of an infraction and a fine of \$35.00 and court costs for each such violation. This subsection shall not apply to emergency vehicles as defined in G.S. 20-156 and G.S. 20-157, when operated in conformance with the provisions of G.S. 20-156 and G.S. 20-157.
- (d) *Speed of vehicle procession.* A vehicle procession may proceed at a speed not in excess of 20 miles per hour and shall be driven at a rate less than the maximum stated in this section if caution and circumspection shall dictate such reduced speed. In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

**SECTION 31.** Chapter 50 - Traffic, Article VIII - Railroads of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 50-487. Obedience to warning device.**

[Deleted. Preempted by North Carolina law.]

**SECTION 32.** Chapter 52 - Utilities, Article I – In General of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 52-4. Pollution of water.**

No person shall place within the reservoir connected with the waterworks, or the dams connected therewith, or the streams running into such reservoir, any non-potable substance would make the water impure or unsafe. No owner or occupier of lands shall place, or have placed, or permit any of such substances to be placed, upon the grounds from which waters may flow into the streams that feed the reservoir.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-7. Unauthorized use of water.**

No person having arrangements to use water from the city waterworks shall allow others to use the water without paying therefore. If a person or persons is found to be using water illegally, said person or persons shall be subject to penalties or fines, as prescribed and approved by city council.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-8. Use of fire hydrants.**

- (a) Fire hydrants shall be provided for the sole purpose of protecting life and property against fire and shall be operated and maintained only by the water and fire departments or such persons as may be given authority by the utilities director of the water and sewer department, or authorized representative.
- (b) It shall be unlawful for any person to remove, or have removed, water from fire hydrants without authorization from the utilities director of the water and sewer department, or authorized representative, or to place upon or about any fire hydrant, gate valve, curb cock, meter, meter box, any object, material, debris or structure of any kind so as to prevent immediate access to the same.
- (c) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-13. Tampering with utility connections or appurtenances.**

It shall be unlawful for any person to purposely block, cut on, cut off, tamper with or damage any meter, meter box, utility connection or appurtenance or to interfere with any meter, meter box, utility connection or appurtenance owned by the city, unless otherwise authorized, in writing, by the city manager or his assignee prior to accessing said utility connections or appurtenances.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 33.** Chapter 52 - Utilities, Article IV – Connection to Water and Sewer Lines of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 52-128. Approval of application.**

No connection shall be made to any sewer or water lateral except after the written application therefor has been approved by the water and sewer department.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-129. To be made only by city.**

The construction of laterals for the connection of the sewer or water pipes on any lot with sewer or water pipes in any street or deeded easement, and the necessary excavation therefore, shall be done only by the city or by a state-licensed utility contractor(s) approved by the city.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 34.** Chapter 52 - Utilities, Article V – Wastewater Use, Collection and Treatment of the Code of Ordinances for the City of Hendersonville shall be amended as follows

**Sec. 52-216. Discharges generally.**

It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, and/or to the POTW any wastewater except as authorized in accordance with the provisions of this article.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-217. Direct discharges.**

It shall be unlawful to discharge into the waters of the state without first obtaining the approval of the city and then obtaining an NPDES permit in accordance with G.S. 143-215.1.

In addition to any other available remedy, violation of this section shall be punished in accordance with N.C.G.S.143-215.6B.

**Sec. 52-218. Indirect discharges.**

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining permission of the city.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-219. Wastewater generally.**

All domestic, commercial and industrial wastewater discharges shall be contained within the POTW collection system. Stormwater, roof and gutter drains, and surface drainage shall not be admitted to the POTW.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-220. - Stormwater generally.**

Stormwater, roof and gutter drains, and surface drainage shall be admitted to only such conduits as are specifically designated as storm drains. Noncontact process and cooling waters may, upon written application and approval by the POTW director, be discharged to storm drains.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-222. Protection of system, equipment and materials.**

It shall be unlawful for any person to maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any facility, equipment or materials belonging to the city. No person shall pour, throw or discharge any substance, either solid or liquid, into any public sewer line at any manhole or at any opening therein. This protection against damage shall apply to any part of the POTW. Any person violating this section shall be subject to immediate arrest and prosecution.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-246. General discharge prohibitions.**

No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. This general prohibition applies to all users of the POTW whether or not the user is subject to any national, state or local pretreatment standards or requirements.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-247. Specific discharge prohibitions.**

- (a) No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any of the following pollutants, substances or wastewater:
- (1) Pollutants which create a fire or explosive hazard in the POTW including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city, the state or EPA considers a fire hazard or a hazard to the system.
  - (2) Solid or viscous substances in amounts which will cause obstruction of flow or interference in the POTW. Prohibited materials include, but are not limited to, solids greater than one-half of an inch in any dimension, grease, garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, mud, spent lime, stone or marble dust, metal, glass or glass grinding or polishing wastes, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, or plastics.
  - (3) Petroleum oils, tar, asphalt residues, residues from refining or processing of fuel or lubricating oils, nonbiodegradable cutting oil or products of mineral oil origin in amounts that may cause interference or pass through.
  - (4) Any wastewater having a pH less than 5.0 or more than 11.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
  - (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW.
  - (6) Any wastewater having a temperature greater than 150 degrees Fahrenheit (66 degrees Celsius), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).
  - (7) Any pollutants which result in the presence of toxic gases, vapors or fumes, either singly or by interaction with other pollutants, that may cause acute worker health and safety problems.
  - (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW director in accordance with section 52-255 of this division.
  - (9) Any noxious or malodorous liquids, gases or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

- (10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.
  - (11) Any wastewater which imparts color which cannot be removed by the treatment process including, but not limited to, dye wastes and vegetable tanning solutions which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
  - (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW director in compliance with applicable state or federal regulations.
  - (13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW director.
  - (14) Fats, oils or greases of animal or vegetable origin in amounts which in the discretion of the POTW director, may cause interference, pass through or obstruction to the POTW collection system.
  - (15) Any sludges, screenings or other residues from the pretreatment of industrial or nondomestic wastes.
  - (16) Any medical wastes, except as specifically authorized by the POTW director in a wastewater discharge permit.
  - (17) Any material containing ammonia, ammonia salts or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
  - (18) Any material that would be identified as hazardous waste according to 40 CFR 261 if not disposed of in a sewer except as may be specifically authorized by the POTW director.
  - (19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200.
  - (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
  - (21) Recognizable portions of the human or animal anatomy.
  - (22) Any wastes containing detergents, surface active agents or other substances which may cause excessive foaming in the POTW system or the receiving stream in other than trace amounts.
  - (23) At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.
- (b) Pollutants, substances, wastewater or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
- (c) When the POTW director determines that a user is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or

contribute to interference of POTW operation or pass through, the POTW director shall:

- (1)

Advise the user of the potential impact of the contribution on the POTW in accordance with division 8 of this article; and
- (2)

Take appropriate actions in accordance with division 5 of this article for such user to protect the POTW from interference or pass through.
- (d)

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-249. General discharge limitations (local limits).**

- (a)

To implement the general and specific discharge prohibitions listed in this article, and to ensure that the POTW's maximum allowable headworks loading is not exceeded for particular pollutants of concern, local limits are required. An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following.
- (b)

Unless otherwise authorized by a permit issued under this article, no user shall contribute or cause to be contributed, directly or indirectly, any waters or wastes containing pollutants at levels which exceed the pollutant levels associated with normal domestic strength wastewater or which exceeds given volume limitations (each as determined on a daily average basis).
- (1)

*Strength limitations.* For the following pollutants of concern, exceeding domestic strength levels shall mean in excess of:

250	mg/l BOD
250	mg/l TSS
25	mg/l NH3
0.003	mg/l arsenic
0.003	mg/l cadmium
0.061	mg/l copper
0.015	mg/l cyanide
0.049	mg/l lead
0.0003	mg/l mercury
0.021	mg/l nickel
0.005	mg/l silver
0.05	mg/l total chromium
0.175	mg/l zinc

- (2)

*Volume limitations.* Exceeding the volume limitations shall mean volumes greater than:

a.

Ten thousand gallons a day if tributary to a sewage lift station; or

b.

Twenty-five thousand gallons a day if tributary to the main gravity system.
- (c)

Domestic strength wastewater levels for pollutants not listed in this section shall be determined as necessary by the POTW director and shall be based on either actually measured local domestic strength wastewater levels or literature values.
- (d)

High strength user-specific local limits for appropriate pollutants of concern shall be included in wastewater permits, when necessary to ensure that the POTW's maximum allowable headworks loading will not be exceeded for pollutants of concern, and are considered pretreatment standards.
- (e)

The POTW director may impose mass limits in addition to, or in place of, the concentration-based limits.

- (f) When the director determines that a user is contributing to the POTW any of the above-enumerated substances in such amounts which exceed the limitations established in this section, the POTW director shall:
  - (1) Advise the user of the contribution to the POTW;
  - (2) Advise the user of the permit requirements of this article for such discharges; and
  - (3) Take the appropriate actions necessary for correction of the violation.
- (g) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-252. Dilution.**

No user shall ever increase the use of water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-254. Accidental discharge/slug control plans.**

- (a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in the definitions. All SIUs must be evaluated within one year of being designated an SIU. The POTW director may require any user to develop, submit for approval and implement such a plan. Alternatively, the POTW director may develop such a plan for any user.
- (b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge or a slug load. Also see sections 52-320 and 52-321 of this article.

Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the city for review and shall be approved by the city before construction of the facilities may begin. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense.

- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
  - (1) Description of discharge practices, including nonroutine batch discharges;
  - (2) Description of stored chemicals;
  - (3) Procedures for immediately notifying the POTW director of any accidental or slug discharge, as required by section 52-321 of this article; and
  - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing



toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

- (d) Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this article.
- (e) In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.
- (f) Within five days following an accidental discharge, the user shall submit to the POTW director a written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills or any other damage to persons or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this article or any other applicable law.
- (g) A notice shall be permanently posted on the users bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.
- (h) In addition to any other available remedy, violation of subsections (e), (f), and (g) of this sections is also a misdemeanor as provided in Section 1-6.

**Sec. 52-255. Hauled waste.**

- (a) Septic tank waste may be introduced into the POTW only at locations designated by the POTW director, and at such times as are established by the POTW director. Such waste shall not violate division 4 of this article or any other requirements established by the city. The POTW director may require septic tank waste haulers to obtain wastewater discharge permits.
- (b) The POTW director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.
- (c) Industrial waste haulers may discharge loads only at locations and times designated by the POTW director. No load may be discharged without prior consent of the POTW director. The POTW may collect samples of each hauled load to ensure compliance with applicable standards. The POTW director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste and volume and characteristics of waste. The form shall identify the type of industry known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.
- (e) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-276. Nondomestic and/or high strength discharge without permit.**

It shall be unlawful for any person to connect or discharge nondomestic and/or high strength wastewater to the POTW without first obtaining the permission of the POTW director. When requested by the POTW director, a user must submit information on the nature and characteristics of its wastewater prior to action on the request. The POTW director is authorized to prepare a form for this purpose and may periodically require users to update this information.

In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-277. Wastewater discharge permits.**

- (a) The POTW director is authorized to allow connection or discharge to the POTW of wastewater which exceeds the limitations set forth in section 52-249 of this article by issuance of a wastewater discharge permit for nondomestic and/or high strength users.
- (b) The POTW director is authorized to make the determination between domestic and nondomestic users, between domestic strength and high strength users, and is further authorized to make the determination between nonsignificant and significant industrial users.
- (c) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-324. Notification of the discharge of hazardous waste.**

- (a) The city prohibits the discharge of any hazardous wastes without notification and approval of the POTW director. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharge during the calendar month and an estimation of the mass and concentration of such constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section 52-320 of this division. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 52-316, 52-318 and 52-319 of this division.
- (b) Dischargers are exempt from the requirements of subsection (a) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which time the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as

a hazardous waste, the user must notify the POTW director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This section does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued under this article, or any applicable federal or state law.
- (f) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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#### **Sec. 52-328. Recordkeeping.**

Users subject to the reporting requirements of this division shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling, and the name of the persons taking the samples; the dates the analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the POTW director.

In addition to any other available remedy, willful destruction of records in violation of this section is also a misdemeanor as provided in Section 1-6.

**SECTION 35.** Chapter 52 – Utilities, Article VI – Water Shortage Response and Conservation of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

#### **Sec. 52-437. Penalty for violation of article.**

- (a) Any violation of the provisions of this article may be enjoined and restrained as provided in G.S. 160A-175.
- (b) Application, violation, enforcement, penalties. This section applies to all persons using city water, inside and outside the city limits, regardless of whether they have a contract for water service with the city, provided mandatory schedules or limits shall not apply to any public or volunteer fire department while fighting a fire. A customer of the city shall be responsible for all violations that occur associated with water that passes through the meter for which the customer is billed by the city. Any person who uses water in violation of a restriction, schedule or ban imposed on the use of water during mandatory or emergency stages of drought, or in violation of a water rationing policy, or who otherwise violates the provisions of this section, or who impedes or interferes with any action undertaken or ordered pursuant to this section and policies adopted hereunder, shall be subject to the penalties listed below:
  - (1) Enforcement by law enforcement. Upon the declaration of mandatory stage (A or B), declaration of emergency stage, or during any period of rationing, the manager, every police officer of the city and all others so authorized by the city may enforce any restrictions or bans imposed on the use of city water.
  - (2) Suspicion of violation. Whenever the city has reasonable cause to believe that a person is violating any of the provisions of this section or any policy or declaration or action plan adopted hereunder, the city shall immediately notify that person of the violation by affixing a written notice of violation

(NOV) to the property where the violation occurred and/or personally delivering or mailing such notice to the customer of record and to any other person known to the city who is responsible for the violation or its correction. Such notice shall describe the violation, order that it be corrected, cured or abated immediately or within such specified time as the manager determines is reasonable under the circumstances, and warn that more severe measures, such as civil penalties, criminal charges or termination of water service may be brought, assessed or imposed. If the order is not complied with within the allotted time period, the manager may undertake enforcement action as follows.

- (3) Enforcement action. Any person who, after being given notice of violation, does not comply with this section or policy adopted hereunder within the time period specified shall, at the option of the city, be subject to any of the following: civil penalties, criminal penalties where specifically indicated, termination of water service, injunctive relief or any appropriate equitable remedy issuing from a court of competent jurisdiction.

- b. Civil penalties. In addition to any other remedy specifically provided, violation of this section or any policy adopted hereunder may subject the violator or customer to a civil penalty as set forth in the city budget fee schedule per violation per day for so long as the violation exists. Each day on which a violation occurs or continues shall constitute a separate and distinct violation. In determining the amount of the civil penalty, the manager shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, efforts to correct the violation, the compliance history of the person against whom the violation is assessed, the cost of enforcement to the city, whether the violation was willful or intentional and any other factor as justice requires. The city shall serve a written citation on the violator, and the customer, if different, by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty is collectible in a civil action in the nature of debt. The imposition of one or more penalties for a violation shall not excuse any violation or permit it to continue.

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#### **Sec. 52-446. Compliance.**

- (a) In the event the manager issues the notice described in this article, it shall be unlawful for any person to use or permit the use of water from the water system of the city's for any of the purposes hereinafter set forth until such time as this article is amended or repealed, or until the manager has declared such provisions no longer in effect. In exercising this authority, considerations shall be given to the following criteria: flow rate of the river(s), capabilities of the water production and distribution system, drawdown rates, outlook for precipitation, daily water use patterns, seasonal and long-term weather patterns and availability of water from other sources.
- (b) Hospitals, nursing homes and health care facilities shall comply with all restrictions imposed on residential and nonresidential water customers as may be applicable to each individual institution to the extent compliance will not endanger the health of the patients or residents of the institution.
- (c) Each hospital, nursing home or health care facility shall survey its water usage patterns and requirements and implement such additional conservation measures

as may be possible without endangering the health of its patients or residents to achieve a further reduction in the institution's water usage.

- (d) The following shall apply at all times to the outdoor sprinkling of lawns, shrubbery, trees, flowers, gardens, and other outside irrigation systems.
  - (1) By June 1, 2009, all irrigation systems equipped with a timer shall be equipped with rain sensors as approved by the city water and sewer department. Rain sensors shall be activated to prevent the system from operating after one-fourth inch of rain has fallen.
  - (2) It shall be unlawful to operate any irrigation system during times of rain or to operate an irrigation system, at any time, so as to disperse water on an impervious surface.
- (e) In addition to any other available remedy, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-448. Landscaping water use permitted—Designated hours.**

Beginning on May 1 and ending on September 30 each year, it shall be unlawful to use water for the spray irrigation of turf, gardens, trees, shrubbery or other vegetation between the hours of 9:00 am and 7:00 pm, unless otherwise exempted by city ordinance.

In addition to any other remedy available, violation of this section shall also be a misdemeanor as provided in Section 1-6.

**SECTION 36.** Chapter 52 - Utilities, Article VII – Construction or Alteration of Drinking Water Systems of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

**Sec. 52-482. Approval.**

- (a) No person or unit of local government shall begin construction or alteration of a public water distribution system or award a contract for construction or alteration of a public water distribution system operating or being situate in whole or in any part, as of the time of commencement of construction or alteration, within the city limits or extraterritorial jurisdiction of the city unless:
  - (1) The plans for construction or alteration have been prepared by an engineer licensed by this state;
  - (2) The city has determined that the distribution system, as constructed or altered, will be capable of compliance with the drinking water rules;
  - (3) The city has determined that the distribution system is capable of interconnection at an appropriate time with an expanding municipal system;
  - (4) The city has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water distribution system; and
  - (5) The city has approved the plans and specifications.

(b) Penalty for violation:

- (1) A person who violates a provision of this section shall be guilty of a misdemeanor. If the violator is a business entity, any individual who is an officer, manager, general partner, director or other responsible principal of such entity and who had knowledge of such violation before it was discovered by the city and who failed to report such violation to the engineer before such discovery shall be deemed to be a violator under this section.
- (2) A person convicted under this section shall be sentenced to a term of imprisonment of not more than two years and assessed a fine of not more than \$500.00 for each violation hereof. For purposes of the time to be imposed, each day on which any violation occurs shall constitute a separate violation hereunder and under section 52-485.
- (3) Notwithstanding or any contrary provision of law, a person imprisoned for violation of this article shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the district court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the state health director, in consultation with the local health director of the person's county of residence, have made recommendations to the court.

**SECTION 37.** Chapter 52 - Utilities, Article VIII – Cross-Connection and Backflow Prevention of the Code of Ordinances for the City of Hendersonville shall be amended as follows

**Sec. 52-505. New unprotected cross-connections prohibited, existing cross-connections to be protected.**

No contamination or pollution of public water system shall be allowed. All customers and any other person or entity receiving water from the city's public water system shall be in violation of this article if they fail to comply with any of the following:

- (a) New water service connections. No new residential water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved dual check valve or approved equal. No new nonresidential and irrigation water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved backflow prevention assembly, unless otherwise approved by the city prior to installation. The BPA shall be tested and properly functioning as prescribed herein prior to the issuance of a certificate of occupancy (CO) for any building. All new nonresidential construction plans and specifications shall be made available to the city for review to determine the health hazard and level (health or non-health) to the city's public water system.
- (b) Existing water service connections. An approved backflow prevention assembly shall be installed on all existing cross-connections to the city's public water system upon notification of the need for installation by the city resulting from circumstances such as, but not limited to, change of use, change or ownership or modifications to facilities, etc. Upon determining that a backflow prevention assembly (BPA) is required to be installed on an existing irrigation or nonresidential water service connection the city will notify the customer in writing of:
  - (1) The requirement for installation;
  - (2) The health hazard level ("high hazard" or "moderate hazard" or "non-health hazard") which has been established for that customer by the city based upon the use of their premises;
  - (3) The type of approved backflow prevention assembly required;
  - (4) The date by which it must be installed and tested. The customer will have the following time periods within which to install and test the specified backflow prevention assembly and submit test results to the city.
    - a. High hazard: Within 14 calendar days of date of notice, unless specified otherwise by city;
    - b. Moderate hazard: Within 30 calendar days of notice;
    - c. Non-health hazard: Within 60 calendar days of date of notice.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-507. No cross-connections.**

No private water system may be connected to any private well, or to any spring, or to any other water source not approved by the state as a public water supply and commissioned by the city as a public water supply source, or to any other private source of water, or to any plumbing located on private property which may be connected to any of the above. Any such connection must be terminated upon the effective date of this article. It shall also be unlawful to have plumbing cross-connected or so installed that water from the city's public water system and water from or in any private water system may in any way become intermingled.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

**Sec. 52-508. Compliance.**

No private water system shall be connected in any manner to the city's public water system nor may any service connection be made or maintained to the city's public water system unless the requirements of this article have been satisfied.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-511. Protection of the public water system during bulk water sales.**

No bulk water may be taken except as a sale from a city owned and operated bulk sales facilities. It shall be unlawful to connect any truck, tank, or receiving vessel either directly or indirectly connected to any pipe, hose or outlet to the city's public water system, unless so authorized by the city, in writing.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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**Sec. 52-515. Penalties.**

In addition to any other remedy specifically provided, the following penalties shall be applicable for a violation of this local law (see city's schedule of rates and fees currently in force for the penalty amounts):

- (a) Failure to install the appropriate backflow prevention assembly within a prescribed time frame after first notice.
- (b) Failure to install the appropriate backflow prevention assembly within the prescribed time frames after second notice.
- (c) Failure to install the appropriate backflow prevention assembly within the prescribed time frames after third notice - termination of service.
- (d) Failure to at least annually test the backflow prevention assembly - specified penalty and/or termination of water service.
- (e) Failure to replace or repair a backflow prevention assembly as required - specified penalty and/or termination of water service.
- (f) Falsifying records that are required to be submitted by this article - specified penalty per violation. If a certified backflow prevention assembly technician submits falsified records to the city, the city shall reserve the right to permanently revoke that certified

backflow prevention assembly technician's right to test BPAs within the city's public water system.

The city may increase any civil penalty assessed by 50 percent of the maximum civil penalty associated with the violation for a second violation of the same provision within a two-year period. The city may increase any civil penalty by doubling the amount of the penalty for a third violation of the same provision within a two-year period. Water service may be terminated after a third violation of the same provision within a two-year period.

Any person violating any provision of this article shall pay to the city all expenses incurred by the city in repairing any damage to the public water system caused in whole or in part by such violation and any expense incurred by the city in investigating such violation plus ten percent. All such expenses are deemed to be a part of the civil penalty assessed with the violation.

**SECTION 38.** If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

**SECTION 39.** This Ordinance shall be effective upon its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

**C. Resolution Declaring Property Surplus & Authorizing Sale** – *Tom Wooten, Director of Public Works*

Resolution #23-16

**RESOLUTION BY THE HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE SALE OF A 2008 TORO INFIELD SANDPRO TO WEST HENDERSON HIGH SCHOOL**

**WHEREAS**, the Hendersonville Public Works Department owns a 2008 Toro Infield Sand Pro; and;

**WHEREAS**, this piece of equipment is longer used by the public works department; and

**WHEREAS**, West Henderson High School desires to purchase the Toto Infield Sand Pro to help maintain their ball fields; and

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

**WHEREAS**, the Hendersonville Public Works Department wishes to sell the Toro Infield Sand Pro to West Henderson High School at a value of \$4,000.

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

1. The 2008 Toro Infield Sand Pro identified by VIN # 08703-280000238 respectively is deemed surplus and approved to be sold.
2. The City Council Councils authorizes the sale of the 2008 Toro Infield Sand Pro to West Henderson High School in accordance with §160A-274 at a price of \$4,000.
3. The City Manager is authorized to execute the Bill of Sale with West Henderson High School.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

**D. Street Closure: Resolution of Intent-Portion of N. Wall Street (C23-16-SCL)** – *Tyler Morrow, Planner II*

Resolution #23-17



**RESOLUTION OF INTENT TO CLOSE A  
PORTION OF N. WALL STREET**

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

**WHEREAS**, TJF Enterprises, LLC has petitioned the City of Hendersonville City Council to close a portion of the street known as N. Wall Street, located between PIN 9568-78-7052 and PINs 9568-78-8039, 9568-78-8036, 9568-78-8044, 9568-78-8042, 9568-78-8041, and 9568-77-8957; and

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

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

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

1. City Council herewith calls a public hearing to be held at 5:45 p.m. (or as soon thereafter as it may be heard) on the 12<sup>th</sup> day of April 2023, in the Assembly Room of the City Operations Center to consider closing a portion of the street known as N. Wall Street located between PIN 9568-78-7052 and PINs 9568-78-8039, 9568-78-8036, 9568-78-8044, 9568-78-8042, 9568-78-8041, and 9568-77-8957. Persons shall be allowed to attend and comment in person or via Zoom at the following address:

<https://zoom.us/join>

Dial-in by phone: (646) 558-8656

Meeting ID: 822 0104 2528

Passcode: 1847

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

2. The legal description for the portion of N. Wall Street proposed for closing is as follows:

Beginning at a drill hole in concrete,

and being the most NE corner of the

TJF Enterprises LLC property described in D.B. 948, PG. 520;

thence N 82°06'29" E a distance of 4.98' to a point;

thence N 82°06'29" E a distance of 4.98' to a point;

thence S 07°52'22" E a distance of 95.02' to a point;

thence S 08°15'00" E a distance of 41.95' to a point;

thence S 81°41'57" W a distance of 4.68' to a point;

thence S 81°41'57" W a distance of 4.81' to a point;

thence N 08°10'52" W a distance of 137.04' to a point;

which is the point of beginning.

Having an area of 1,320 square feet.

3. The City shall reserve all right, title, and interest in and to any utility infrastructure including water, sewer, and stormwater infrastructure within N. Wall Street, as well as an easement over, upon, across, under and through N. Wall Street for the placement, construction, and maintenance of public utilities including waterlines, sewer lines, stormwater management, and underground telecommunications facilities including cables, wires, and/or conduit.
4. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
5. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.

6. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be prominently posted in at least two along the portion of N. Wall Street proposed for closure as required by G.S. 160A-299.
7. The City Council herewith declares its intent to close the street as described above.

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Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

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

**E. Annexation: Certificate of Sufficiency-7 Bridgette Loop Road (Lynwood Cabins LLC)  
(C23-19-ANX) – Tyler Morrow, Planner II**

Resolution #23-18

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

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

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

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

**Section 1.** A public hearing on the question of annexation of the contiguous area described herein will be held at the City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. April 12<sup>th</sup>, 2023, or as soon thereafter as it may be heard.

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

BEING all of that real property consisting of PIN 9569-14-9568, described in the plat recorded in Book 2022 - \_\_\_\_ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9569-14-9568 being described by metes and bounds as follows:

Beginning at an existing iron pin at the southeast corner of Lot 27 of Lynnwood Subdivision, as shown on a plat filed in Plat Cabinet B, at Slide 158, in the Henderson County Registry;

Running with the existing Hendersonville city limits for the following five calls:

South 06 degrees 45 minutes 14 seconds West 11.01 feet to an existing pin;

Thence South 64 degrees 19 minutes 43 seconds East 241.17 feet to an existing iron pin;

Thence South 21 degrees 01 minutes 28 seconds West 179.75 feet to an existing iron pin;

Thence South 25 degrees 10 minutes 06 seconds West 364.83 feet to an existing iron pin along NC Highway 191 (Haywood Rd.)

Thence North 49 degrees 12 minutes 56 seconds West 79.98 feet along Haywood Road (NC 191) to an existing iron pin;

Thence, leaving Haywood Road (NC 191) and departing from the existing Hendersonville City limits, North 06 degrees 31 minutes 42 seconds East 185.36 feet to an existing iron pin;

Thence North 54 degrees 52 minutes 25 seconds West 311.62 feet to a calculated point at the corner of Lynnwood Circle (SR #1349);

Thence North 86 degree 12 minutes 56 seconds East 143.22 feet to an existing iron pin;

Thence North 22 minutes 52 degrees 12 seconds East 223.02 to an existing iron pin

Thence running South 75 degrees 49 minutes 58 seconds East 70.49 feet to an existing iron pin, the point and place of beginning, containing 3.06 acres, more or less.

Re: Petition for Contiguous Annexation  
Petitioner: Lynnwood Cabins LLC (Diane Newman, Member Manager)  
File No. C23-19-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 2<sup>nd</sup> day of March, 2023.

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

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

Ordinance #23-14

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND SECTION 8 OF THE FISCAL YEAR 2022-23 BUDGET ORDINANCE TO AMEND THE FEE SCHEDULE FOR PARKING SERVICES FEES AND RATES**

SECTION 8: That there is hereby adopted an official Fee Schedule listing specific fees, licenses, and utility rates charged by the City of Hendersonville for the use of City facilities and equipment for the purposes of making them available to public, utility rates the proceeds of which are for the maintenance and expansion utility systems, the reproduction of public records and other miscellaneous services to cover the actual cost of producing these documents and information under the provision of NCGS 132-6.2 and other various fees associated with enhanced direct services provided by the City. The Fee Schedule is incorporated herein by reference and shall be placed on in the office of the City Clerk.

**WHEREAS**, on January 5<sup>th</sup>, 2023 the City adopted a resolution amending the fee schedule to reflect changes for the new parking system; and

**WHEREAS**, additional changes are need for the fee schedule to reflect all changes to the updated parking ordinance.

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

1. Section 8 of the Fiscal Year 2022-23 Budget Ordinance for the City of Hendersonville shall be amended, effective March 1<sup>st</sup>, 2023, to revise the Fee Schedule as follows:

Parking Fees, Fines & Penalties:	
All Other Parking Violations C.O. 50	\$50.00
Construction parking permit (per day)	\$15.00
Crosswalk	\$50.00
Fire Lane	\$100.00
Fire Hydrant	\$100.00
Habitual Offender (3 Tickets or more in 30 days)	\$100.00
Handicapped	\$250.00
Loading Zone/15 minute parking	\$50.00
Lost Ticket Fee (Parking Deck)	\$20.00
Lost/Replacement/2nd Parking Deck Puck	\$25.00
Monthly Parking Space - Deck Permit	\$80.00
Monthly Parking Space - Interior Lot Permit	\$60.00
Monthly Parking Space - Exterior Lot Permit	\$25.00
Overtime/Expired meter	\$50.00
Parking Meter - Surface Lots and Decks (per hour)	\$1.50 (\$10 max per parking session)
Parking Meter - Main St. and Avenues (per hour)	\$2.00
Penalty after 30 days additional	\$100.00

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

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

G. **PULLED** Memorandum of Understanding (MOU) with Henderson County for Construction Related Activities Along Edwards Park and the VFW Site – *Angela S. Beeker, City Attorney*

H. **Request from Hope Coalition to Use Operation Assembly Room for Teen Court** – *John Connet, City Manager*

Resolution #23-20

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE USE OF THE OPERATION CENTER ASSEMBLY ROOM BY THE HOPE COALITION**

**WHEREAS**, The Hope Coalition is proposing to establish a Teen Court to serve as a diversion program for teenagers who perpetrate minor criminal offenses; and

**WHEREAS**, they wish to utilize a public facility for teen court on a monthly basis; and

**WHEREAS**, they have requested permission to use the City Operations Assembly Room once a month from 4:00 PM - 7:00 PM; and

**WHEREAS**, the City's facility use policy establishes a rental rate of \$50.00 per use; and

**WHEREAS**, the Hope Coalition is requesting that the City Council waive the rental fee for the Teen Court Program.

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

1. The City Council authorize the use of the Operation Center Assembly Room once a month from 4:00 PM to 7:00 PM for the Hope Coalition Teen Court.
2. The facility use fees be waived on a monthly basis in order to facilitate the Teen Court Diversion Program.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

### **I. Downtown Office Lease Agreement – Jamie Carpenter, Downtown Manager**

Resolution #23-21

#### **RESOLUTION OF INTENT BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO LEASE CITY OWNED REAL PROPERTY AT 125 5<sup>TH</sup> AVE WEST**

**WHEREAS**, the City of Hendersonville owns property located at 125 5<sup>th</sup> Avenue West described in deed of record in Deed Book 3225, Page 388, Henderson County Registry; and

**WHEREAS**, the City of Hendersonville purchased the property at 125 5<sup>th</sup> Ave West in 2018 for \$475,000 for the purposes of building public restrooms on the ground floor and office space on the second floor; and

**WHEREAS**, the City's Downtown Division will be relocated to City Hall and the City does not have another current need for the second-floor offices at 125 5<sup>th</sup> Ave West; and

**WHEREAS**, North Carolina General Statute § 160A-272 authorizes the City Council to lease City owned real property the City Council determines will not be needed by the City for the term of the lease; and

**WHEREAS**, North Carolina General Statute § 160A-272 requires public notice at least 30 days before approving the execution of a lease in excess of one year; and

**WHEREAS**, the City of Hendersonville intends to lease the individual office spaces for market rate which will pay towards the building's debt service.

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

1. The City intends to authorize a lease for the second floor offices and shared use of common spaces located at 125 5<sup>th</sup> Ave West.
2. The annual rent shall be \$12,000, paid monthly, for an initial three-year term, with an option to renew for two additional one year terms;
3. The City Council hereby declares its intent to authorize a lease at its next regular meeting of April 12, 2023 upon the terms stated herein.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

### **J. March 2023 Budget Amendments – Adam Murr, Budget Manager**

TO MAYOR & COUNCIL - March 02, 2023				FISCAL YEAR 2023	
		Form Number - 03022023-01			
BUDGET AMENDMENT					
FUND 301					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
301-0000-420050-G2101	Grant Revenue	4,511,800	-	-	4,511,800
301-1002-540001-G2101	Special Appropriation	2,000,000	-	2,000,000	-
301-1002-598901-G2101	Transfer Out (to 010)	2,511,800	2,000,000	-	4,511,800
FUND 301	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		2,000,000	2,000,000	
A budget amendment reflecting the use of APR funds received for revenue replacement as authroized through final guidance. ARP funds will be used specifically for governemetal services salaries for the period 07/01/2022 through 01/20/2023. \$4,511,800 is used by this amendment for revenue replacement. The lines above detail the impact for each department. Note: Department 1002-Administration, Department 1008-Finance, Department 1014-City Engineer, Department 1200-Development Assistance, Department 1300-Police, Department 1400-Fire, Department 1502-Public Works Administration, Department 1525-Grounds/Parks Maintenance, Department 1555-Streets & Highways.					

TO MAYOR & COUNCIL - March 02, 2023			FISCAL YEAR 2023		
			Form Number - 03022023-02		
BUDGET AMENDMENT					
FUND 460					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
460-0000-470010-23003	Bond Proceeds (2023 Revenue Bond)	-	525,000	-	525,000
460-7050-550103-23003	Capital Outlay - CIP	-	525,000	-	525,000
FUND 460	TOTAL REVENUES		525,000	-	
	TOTAL EXPENDITURES		525,000	-	
A budget amendment reflecting the creation of a capital project ordinance for the AMI Meter Replacement Project, #23003. This project is proposed for funding via the 2023 Revenue Bond, not to exceed \$525,000. The project replaces large/aging meters in the system to improve revenue security and service to our customers.					

TO MAYOR & COUNCIL - March 02, 2023			FISCAL YEAR 2023		
			Form Number - 03022023-03		
BUDGET AMENDMENT					
FUND 301   460					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
460-0000-470900-21020	Fund Balance Appropriated	300,000	-	300,000	-
460-7035-550102-21020	Capital Outlay - Services and Fees	300,000	-	300,000	-
FUND 460	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		-	-	
301-0000-420050-21020	Grant Revenue (DWI/SWIA)	-	400,000	-	400,000
301-7035-550102-21020	Capital Outlay - Services and Fees	-	400,000	-	400,000
FUND 301	TOTAL REVENUES		400,000	-	
	TOTAL EXPENDITURES		400,000	-	
A budget amendment reflecting the deletion of the former Water Treatment Plant Master Plan Project #21020 in fund 460 and the re-establishment of the project in the Grant Project Fund (301). The City received a DWI/SWIA grant for \$400,000, replacing the need for a \$300,000 use of reserve funding for the project initially established in fund 460.					

TO MAYOR & COUNCIL - March 02, 2023				FISCAL YEAR 2023	
		Form Number - 03022023-04			
BUDGET AMENDMENT					
FUND 460					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
460-0000-532400	Misc.		-	40,000	
460-0000-470900	Fund Balance Appropriated		-	40,000	
FUND 460	TOTAL REVENUES		-	40,000	
	TOTAL EXPENDITURES		-	40,000	
460-0000-470010-16019	Debt issuance	5,372,860	-	-	5,372,860
460-0000-470100-16019	Transfer in	615,840	-	-	615,840
460-0000-470900-16019	Fund Balance Appropriated	-	40,000	-	40,000
460-0000-598901-16019	Transfer Out	615,840	-	-	615,840
460-1014-550102-16019	C/O - Services and Fees	568,180	40,000	-	608,180
460-1014-550103-16019	C/O - CIP	4,654,680	-	-	4,654,680
460-1014-551000-16019	C/O - Land/easement/ROW	150,000	-	-	150,000
FUND 460	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		40,000	-	
A budget amendment using existing resources in the Water and Sewer Capital Project Fund to increase the Northside project to reflect higher than anticipated construction administration and engineering costs.					

TO MAYOR & COUNCIL - March 02, 2023			FISCAL YEAR 2023		
			Form Number - 03022023-05		
BUDGET AMENDMENT					
FUND 301					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
301-0000-460110-16021	Reimbursements	575,594	7,485	-	583,079
301-1014-519104-16021	Professional Services Engineering	575,594	7,485	-	583,079
FUND 301	TOTAL REVENUES		7,485	-	
	TOTAL EXPENDITURES		7,485	-	
A budget amendment reflecting a final summary report prepared by Hart & Hickman for the Mud Creek Dump investigation project for which the City will be reimbursed by NCDEQ for +\$7,485.					

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470100-19019	Transfer In (from 010)	159,579	12,500	-	172,079
410-0000-420050-19019	Grant Revenue (Stormwater)	-	70,000	-	70,000
410-0000-470010-19019	Bond Proceeds (2022 Installment Financing)	13,805,943	-	82,500	13,723,443
410-1002-550102-19019	Capital Outlay - Services and Fees	-	-	-	-
410-1002-550103-19019	Capital Outlay - CIP	13,965,522	-	-	13,965,522
FUND 410 (Fire Station #1)	TOTAL REVENUES	13,965,522	82,500	82,500	13,965,522
	TOTAL EXPENDITURES	13,965,522	-	-	13,965,522
410-0000-470010-19019	Bond Proceeds (2022 Installment Financing)	-	652,204	-	652,204
410-1002-550103-19019	Capital Outlay - CIP	-	652,204	-	652,204
FUND 410 (Temp. Fire Station)	TOTAL REVENUES	-	652,204	-	652,204
	TOTAL EXPENDITURES	-	652,204	-	652,204
410-0000-460090-21019	Contribution (Henderson County)	100,000	-	-	100,000
410-0000-460090-21019	Contribution (Other Agencies)	2,500	-	15,000	17,500
410-0000-470010-21019	Bond Proceeds (2022 Installment Financing)	2,043,853	82,500	-	2,126,353
410-1002-550103-21019	Capital Outlay - CIP	2,146,353	97,500	-	2,243,853
FUND 410 (Edwards Park)	TOTAL REVENUES	2,043,853	82,500	-	2,243,853
	TOTAL EXPENDITURES	2,146,353	97,500	-	2,243,853
410-0000-470010-19021	Bond Proceeds (2022 Installment Financing)	1,500,000	-	-	1,500,000
410-1400-550103-19021	Capital Outlay - CIP	1,500,000	-	-	1,500,000
FUND 410 (Replace HFD Ladder)	TOTAL REVENUES	1,500,000	-	-	1,500,000
	TOTAL EXPENDITURES	1,500,000	-	-	1,500,000
410-0000-470010-19020	Bond Proceeds (2022 Installment Financing)	800,000	-	-	800,000
410-1400-550103-19020	Capital Outlay - CIP	800,000	-	-	800,000
FUND 410 (Replace HFD Engine)	TOTAL REVENUES	800,000	-	-	800,000
	TOTAL EXPENDITURES	800,000	-	-	800,000
2022 Installment Financing Subtotal		18,802,000			
Other Financing Sources Subtotal		359,579			
Total Project Revenues (19019, 19020, 19021, and 21019)		19,161,579			
Total Project Appropriation (19019, 19020, 19021, and 21019)		19,161,579			

TO MAYOR & COUNCIL - March 02, 2023			FISCAL YEAR 2023		
			Form Number - 03022023-07		
BUDGET AMENDMENT					
FUND 010					
ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-410001	Sales and Use Tax	5,345,500	63,191	-	5,408,691
010-0000-534999	Contingency	19,359	-	19,359	-
010-1300-519200	Contracted Services	32,450	22,000	-	54,450
010-1400-519210	Rural Fire Dept. Contracts	-	11,050	-	11,050
010-1002-519104	Professional Services Engineering	-	49,500	-	49,500
FUND 010	TOTAL REVENUES		63,191	-	
	TOTAL EXPENDITURES		82,550	19,359	
A budget amendment increasing sales and use tax revenues to reflect higher than anticipated collections. The amendment uses increased sales tax revenues plus an allocation of contingency funds to allocate budget for a virtual equipment upgrade at HPD and to fund an interlocal agreement with Henderson County related to the Ecusta Trail project.					

K. March 2023 Capital/Grant Project Ordinances and Reimbursement Resolutions – Adam Murr, Budget Manager

Resolution #R-23-22

HENDERSONVILLE, NORTH CAROLINA

DECLARATION OF OFFICIAL INTENT TO REIMBURSE



**BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina, this declaration (the "Declaration") is made pursuant to the requirements of the United States Treasury Regulations Section 1.150-2 and is intended to constitute a Declaration of Official Intent to Reimburse under such Treasury Regulations Section.

The undersigned is authorized to declare the official intent of HENDERSONVILLE, North Carolina (the "Issuer") with respect to the matters contained herein.

**Expenditures to be Incurred.** The Issuer anticipates incurring expenditures (the "Expenditures") for EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE AMI METER REPLACEMENT (PROJECT #23003), ORDINANCE #O-23-16 (the "Projects").

**Plan of Finance.** The Issuer intends to finance the costs of the Project(s) with the proceeds of debt to be issued by the Issuer (the "Borrowing"), the interest on which is to be excluded from gross income for Federal income tax purposes.

**Maximum Principal Amount of Debt to be Issued.** The maximum principal amount of the Borrowing to be incurred by the Issuer to finance the Project is \$525,000.

**Declaration of Official Intent to Reimburse.** The Issuer hereby declares its official intent to reimburse itself with the proceeds of the Borrowing for any of the Expenditures incurred by it prior to the issuance of the Borrowing.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 2<sup>nd</sup> day of March, 2023.

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

Ordinance #O-23-16

CAPITAL PROJECT ORDINANCE FOR  
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE AMI METER  
REPLACEMENT PROJECT, #23003

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

**Section 1:** The project authorized is a City project described as the AMI Meter Replacement Project, #23003.

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

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
460	7050	550103	23003	Capital Outlay - CIP	\$525,000
Total Project Appropriation					\$525,000

**Section 3:** The following revenues are anticipated to be available via transfers:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
460	0000	470010	23003	Debt Proceed (2023 Rev. Bond)	(\$525,000)
Total Project Appropriation					(\$525,000)

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

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

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

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

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

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this 2<sup>nd</sup> day of March, 2023.

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

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

**L. Planning and Management Services Agreement with Hendersonville Connections Center, Inc. – John Connect City Manager**

Resolution #R-23-23

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL  
TO APPROVE A PLANNING AND MANAGEMENT SERVICES AGREEMENT WITH HENDERSONVILLE  
CONNECTIONS CENTER, INC.**

**WHEREAS**, the City of Hendersonville is desirous of contracting with the Hendersonville Connections Center, Inc., for the purpose of their providing planning and management services towards the establishment of a crisis and day center in the City of Hendersonville; and

**WHEREAS**, a crisis and day center will help to meet the immediate and short term needs of residents of the City of Hendersonville and the greater Hendersonville area who are in crisis through partnership with onsite community partners that can provide needed services to the clients of the center, with an eye towards permanent, safe and stable long term housing, health care, mental health care, and other health and human services care as needed;

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA** that:

4. The Planning and Management Services Agreement (“Agreement”) between the City of Hendersonville and Hendersonville Connections Center, Inc., a North Carolina nonprofit corporation, is approved as presented. .
5. The City Manager is authorized to execute the Agreement with such changes as he deems appropriate to carry out the intent of the Agreement, in consultation with the City Attorney.
6. The City Manager, City Finance Director, and City Attorney are authorized to take such further actions as may be needed to carry out the terms of the Agreement.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

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

**6. PRESENTATIONS**

- A. Proclamation-March for Meals – **PULLED. Mayor is presenting in person on March 20, 2023.****
- B. Proclamation – American Red Cross Month**

**Proclamation  
American Red Cross Month  
March 2023**

**WHEREAS**, the American Red Cross is a humanitarian organization that eases people’s suffering during life’s emergencies in Hendersonville, North Carolina and across the United States and around the world; and

**WHEREAS**, the American Red Cross Chapter serving Western North Carolina Chapter has a long history of helping our neighbors in need by delivering shelter, care and hope during disasters; making our community safer through its lifesaving Home Fire Campaign; providing lifesaving blood; teaching skills that save lives; and supporting military, veterans, and their families; and

**WHEREAS**, we thank and honor the selfless volunteers, dedicated employees and generous supporters who make this compassionate work possible; and

**WHEREAS**, last year in Western North Carolina, 223 active volunteers, helped 200 households affected by 181 local disasters; trained 8,289 people in First Aid, CPR & AED, babysitting and other lifesaving skills; collected more than 23,871 units of blood; and served 454 military members, veterans, and their families; and

**WHEREAS**, people in our community depend on the American Red Cross, whose lifesaving mission is powered by the devotion of volunteers, generosity of donors and partnership of community organizations.



**NOW, THEREFORE**, I, Barbara G. Volk, Mayor of the City of Hendersonville, by virtue of the authority vested in me by the Constitution and laws of Hendersonville, North Carolina, do hereby proclaim March, 2023, as Red Cross Month. We dedicate the month of March to all those who support its vital work to prevent and alleviate human suffering in the face of emergencies. I encourage all Americans to support this organization and its noble humanitarian mission.

**PROCLAIMED** this 2<sup>nd</sup> day of March, 2023.

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

**C. Proclamation – We Are Hope Week for Henderson County Public Schools.**

**Proclamation  
Honoring the Observance of  
“We Are Hope” Week in Henderson County Public Schools’  
Middle & High Schools  
February 27th - March 3rd, 2023**

**WHEREAS**, substance and alcohol abuse negatively affect many areas of the brain, the liver, the heart, and other body parts and can cause adverse behavioral, psychological, and social consequences; and

**WHEREAS**, there were more than 63,600 drug overdose deaths in the United States in 2016,

and the drug overdose death rate has more than tripled from 1999 to 2016; and

**WHEREAS**, substance and alcohol abuse continues to occur among children and youth in our society: in 2017, 12.1 percent of high school students in North Carolina smoked cigarettes, 44.1 percent used an electronic vape product, 26.5 percent drank alcohol, 36.5 percent used marijuana, 5.3 percent used cocaine, and 15 percent took prescription drugs without a doctor’s prescription, according to the Centers for Disease Control and Prevention’s 2017 Youth Risk Behavior Surveillance; and

**WHEREAS**, student leaders in Henderson County Public Schools’, six high schools and four middle schools, have joined with local Henderson County Hope Coalition in educating their peers on alcohol, tobacco, marijuana and prescription drug use and abuse; and

**WHEREAS**, students at Apple Valley Middle, Flat Rock Middle, Hendersonville Middle, Rugby Middle, East Henderson High, Henderson County Early College High, Hendersonville High, North Henderson High, and West Henderson High are pledging to be and remain substance-free.

**NOW THEREFORE BE IT RESOLVED**, I, Barbara G. Volk, Mayor of the City of Hendersonville, by virtue of the authority vested in me proclaim that February 27th-March 3rd, be observed in Henderson County Public Schools’, middle and high schools as “We Are Hope” substance abuse awareness week.

Proclaimed this the 2<sup>nd</sup> day of March, 2023.

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

**D. Proclamation for 2023 as “The Year of the Trail” in the City of Hendersonville – Brent Detwiler, City Engineer**

**Proclamation  
YEAR OF THE TRAIL 2023**

**WHEREAS**, the City of Hendersonville's natural beauty is critical to its residents' quality of life, health, and economic wellbeing; and

**WHEREAS**, the trails that span across our community are an integral part of the recreational and transportation possibilities of our area and promote an enjoyment of scenic beauty by our residents and our visitors; and

**WHEREAS**, the parks, greenways, trails, and natural areas in our community are welcoming to all and provide a common ground for people of all ages, abilities, and backgrounds to access our rich and diverse natural, cultural, and historic resources; and

**WHEREAS**, trails offer quality-of-life benefits to all as expressions of local community character and pride, as outdoor workshops for science education, as tools for economic revitalization, as free resources for healthy recreation, as accessible alternative transportation, and as sites for social and cultural events; and

**WHEREAS**, nature trails with the community vary from the Oklawaha Greenway along Mud Creek, to the soon to be completed Clear Creek Greenway and Henderson County’s Ecusta Trail, to natural surface and paved trails within our parks and greenpaces; and

**WHEREAS**, the North Carolina General Assembly designated 2023 as the Year of the Trail in North Carolina to promote and celebrate the state's extensive network of trails that showcase our state's beauty, vibrancy, and culture; and

**WHEREAS**, North Carolina is known as the "Great Trails State"; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that City Council does hereby proclaim 2023 as "THE YEAR OF THE TRAIL" in the City of Hendersonville and commend its observance to all people.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

## **7. PUBLIC HEARINGS**

### **A. Annexation: Public Hearing-Cottages at Mastermind (C23-02-ANX) – Tyler Morrow, Planner II**

The City of Hendersonville has received a petition from The Hammond Family Trust and John and Betty Hammond for contiguous annexation of PINs 9579-48-2415 and 9579-48-6832 located on Francis Road and Mastermind Lane that is approximately 12.76 acres.

On February 8<sup>th</sup>, 2023, City Council accepted the City Clerk's Certificate of Sufficiency for the petition submitted by The Hammond Family Trust and John and Betty Hammond and set March 2<sup>nd</sup>, 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 6:08 p.m.

Ken Fitch addressed City Council remotely via Zoom online software expressing concern if the sewer connection is still an issue or if it has been resolved. Tyler Morrow said the final design has not been submitted yet.

The public hearing was closed at 6:09 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 The Hammond Family Trust and John and Betty Hammond, identified as PINs 9579-48-2415 and 9579-48-6832, 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.*

### **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 Numbers: 9579-48-2415 and 9579-48-6832  
Cottages at Mastermind (File# C23-02-ANX)

**WHEREAS**, The City of Hendersonville has been petitioned by The Hammond Family Trust and John and Betty Hammond, 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 2<sup>nd</sup> day of March 2023, after due notice by publication as provided by law on February 19<sup>th</sup> 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 2<sup>nd</sup> day of March 2023.

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

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

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

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

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

- 25) South 83°11'00" East 34.15 feet to an unmarked point;
- 26) South 34°28'04" East 7.59 feet to an unmarked point;
- 27) South 54°16'23" East 40.45 feet to an unmarked point;
- 28) South 34°54'26" East 34.80 feet to an unmarked point;
- 29) South 43°34'08" East 18.45 feet to an unmarked point;
- 30) South 59°25'04" East 25.78 feet to an unmarked point;
- 31) South 39°09'59" East 35.96 feet to an unmarked point;
- 32) South 44°44'37" East 13.66 feet to an unmarked point;

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

2: Upon and after the second day of March 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 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

### **B. Subdivision Text Amendment: Changes to Expedited and Minor Subdivisions – Tyler Morrow, Planner II**

John Lively initiated a text amendment to our expedited review procedures after speaking with City staff concerning the requirements for smaller subdivisions (3 lots or less) to be reviewed as a minor subdivision when the total acreage of the site falls between 2 and 5 acres. Minor subdivisions require certain infrastructure to be installed or bonded prior to the conveyance of lots.

In Mr. Lively's case, he lives on a privately maintained gravel road, in the ETJ with well water and a septic system. In order to divide his 3.16-acre lot into 3 lots, he would be required to be reviewed as a minor subdivision. Minor subdivisions must connect to the public potable water and sanitary sewer systems, which would have included Mr. Lively extending both utilities to his property, neither of which currently serve his property. As a result of connecting to the public sewer system, Mr. Lively would be required to annex into the City of Hendersonville.

Minor Subdivisions must also be served by a NCDOT-maintained roadway, or a right-of-way constructed to and maintained in accordance with NCDOT or city standards. Blythewood Drive, where Mr. Lively's property is located is a privately maintained gravel road. He would be required to build a street to NCDOT standards and dedicate it to NCDOT for maintenance. The continuation of a public street would require that it then be reviewed as a major subdivision.

Outside of the Mr. Lively's petition request, City staff is proposing additional changes to the expedited subdivision section to align with state statutes. There are also wording changes to the minor subdivision language clarifying that those standards are for subdivisions of parcels between four to eight lots (including the parent parcel) with no extension of or changes to public streets.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:23 p.m.

Lynne Williams addressed City Council remotely via Zoom online software expressing concern that the property next to her was broken down into three lots and she is concerned about trees being torn down and conserving the canopy lots. Would like oversight into the environmental protections.

The public hearing was closed at 6:25 p.m.

*Council Member Debbie-Roundtree moved that City Council adopt an ordinance amending the official City of Hendersonville Subdivision Ordinance, Section 2.04. Review Procedures by revising subsection F. Expedited subdivision and subsection. I. Minor subdivision, based on the following:*

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

*The petition aligns with the Comprehensive Plan’s goals to Promote compatible infill development (Strategy PH-1.1.) and to amend zoning and/or subdivision standards to require and/or offer incentives for variation in lot sizes. (Action PH-2.1.1.).*

*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 while still limiting potential impacts to the greater community.*
2. *The proposed text amendment removes additional obstacles to accomplish less impactful infill developments.*
3. *The proposed text amendment could create opportunities for additional housing stock to be available for residents.*

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

Ordinance #23-18

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE CITY OF HENDERSONVILLE Subdivision ORDINANCE, SECTION 2.04. REVIEW PROCEDURES BY REVISING SUBSECTION F. EXPEDITED SUBDIVISION AND SUBSECTION. I. MINOR SUBDIVISION TO AMEND THE REQUIREMENTS FOR EXPEDITED AND MINOR SUBDIVISIONS IN THE CITY OF HENDERSONVILLE.**

**WHEREAS**, the City of Hendersonville’s Planning Board has reviewed and recommended, voting 8-0 in support of the adoption, a subdivision text amendment to requirements for expedited and minor subdivisions within the City of Hendersonville’s jurisdiction; and

**WHEREAS**, the proposed amendment is intended to encourage compatible infill development by reducing the upfront infrastructure costs of low impact subdivisions; and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina that Section 2.04. Review Procedures, Subsection F. Expedited Subdivision and Subsection. I. Minor Subdivision of the Subdivision Ordinance of the City of Hendersonville be amended as follows:

Sec. 2.04. Review procedures.

**F. Expedited subdivision.**

1. **Purpose and intent.** The purpose for this expedited subdivision review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their ~~small size and~~ limited likelihood to create significant impacts on surrounding lands.

Figure 2.04.D F: <del>Conservation</del> Expedited Subdivision Procedure	
STEP	ACTION
1	<b>FILE APPLICATION</b> Filed with <del>Development Assistance Department</del> <u>Community Development Department</u> -Required prior to conveyance of lots
2	<b>COMPLETENESS DETERMINATION</b> <del>See Section 2.03.D.5, completeness Determination</del> -Application shall include copies of any protective covenants or deed restrictions -Plat shall include all required certification language

3	STAFF REVIEW
4	CITY MANAGER DECISION Decision shall be made in writing
5	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1st class mail
6	RECORDATION With the Henderson County Register of Deeds within 10 days of approval

2.   **Applicability.**

a.   The standards in this section shall apply to divisions of land meeting all the following criteria:

i.   The proposed division of land is not exempted from the subdivision standards of this ordinance in accordance with G.S. 160D-802; and

ii.   The proposed division will not result in more than three lots (including any residual or "parent" parcel); and

iii.   The area of land subject to the division shall be comprised of ~~at least five~~ more than two (2) acres under common ownership; and

iv.   No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years; and

v.    The use of all lots is in conformity with the zoning district where located; and

vi.   No extension of public streets is proposed.

b.   Divisions of land not meeting all these standards shall be reviewed as a minor subdivision or major subdivision, as appropriate.

c.   Lots within an expedited subdivision are not exempted from any applicable zoning district dimensional requirements.

3.   **Expedited subdivision review procedure.**

a.   **Application submittal.**

i.   Applicable (see section 2.03.D, application filing and acceptance).

ii.   Expedited subdivision plats shall be prepared by a licensed professional authorized by the state to prepare such documents.

iii.   ~~Applications for an expedited subdivision shall include an evaluation from Henderson County Environmental Health indicating that an on-site wastewater system and on-site potable water system may be used on each lot not connected to the public potable water or sanitary sewer systems.~~

b.   **Staff review and action.**

i.   Applicable (see section 2.03.E, staff review and action).

ii.   The city manager shall review and make an administrative decision/determination regarding the application in accordance with section 2.04.F.4, expedited subdivision review standards. Notice of the administrative decision/determination shall be given in accordance with section 2.03.~~K~~ J.1.

iii.   If an expedited subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an expedited subdivision application that has been denied. Alternatively, the applicant may appeal the city manager's administrative decision or determination to the zoning board of adjustment in accordance with section 2.04 F.9. appeal.

4.   **Expedited subdivision review standards.**

a.   An expedited subdivision shall be approved if the application complies with the following:

i.   The expedited subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in Henderson County;

ii.   The expedited subdivision plat is prepared and sealed by a licensed professional authorized by the state to prepare such documents;

iii.   The expedited subdivision plat complies with all applicable standards in this ordinance and G.S. 47-30;

iv.   The expedited subdivision plat includes all required certifications;

v.    ~~The applicant has secured all required state and federal permit approvals;~~

vi.   ~~All lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use, in cases when the lots are not served by a centralized wastewater system;~~

vii.   ~~All lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water in cases when the lots are not served by a centralized potable water system;~~

viii.   All lots in the expedited subdivision comply with the applicable dimensional requirements for the zoning district where located;

- ix.

The lots are served by a NCDOT maintained roadway or a right of way constructed to and maintained in accordance with city standards; and A permanent means of ingress and egress is recorded for each lot.
- x.

No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years.
- b.

Subdivisions of land located within a special flood hazard area shall comply with all applicable city standards for flood damage prevention, and include the following statement:  
  
"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."
5.

**Recordation.**

a.

Once an expedited subdivision plat is approved, a signed statement by the city manager shall be entered on the face of the plat. The expedited subdivision plat may not be recorded without this and all other required certifications.

b.

Land may not be conveyed or construction started until the expedited subdivision plat is recorded.
6.

**Effect.**

a.

Approval of the expedited subdivision plat allows the sale or conveyance of lots within the subdivision.

b.

Building permits may be issued following recordation of the expedited subdivision plat.

c.

Land subject to an expedited subdivision approval shall not be further subdivided as an expedited subdivision within ten years of the date of the prior expedited subdivision approval.
7.

**Amendment.** Amendment of an expedited subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.
8.

**Expiration.** The period of validity for an expedited subdivision plat shall be determined in accordance with chapter 40 of the City of Hendersonville Code of Ordinances.
9.

**Appeal.** Appeal of an administrative decision or determination by staff under this section 2.04.F. expedited subdivisions, shall be reviewed and decided by the BOA in accordance with section 2.04.C, appeal.
- I.

**Minor subdivision.**

1.

**Purpose and intent.** The purpose for this minor subdivision review procedure is to allow certain land divisions to be reviewed via an administrative review procedure based on the limited number of new lots and no extension of or changes to existing public streets is required.

2.

**Applicability.**

a.

Subdivisions of land that include ~~up to four~~ to eight lots (including the parent parcel) with no extension of or changes to public streets are minor subdivisions and shall be reviewed in accordance with the standards in this section.
- | Figure 2.04.I: Minor Subdivision Procedure |  |
|--|--|
| STEP                                       | ACTION   |
| 1  | <b>PRE-APPLICATION CONFERENCE</b><br>Optional  |
| 2  | <b>FILE APPLICATION</b><br>Filed with <del>Development Assistance Department</del> <u>Community Development Department</u><br>-Required prior to conveyance of lots  |
| 3  | <b>COMPLETENESS DETERMINATION</b><br>See Section 2.03.D.5, Completeness Determination<br>-Application shall include copies of any protective covenants or deed restrictions<br>-Plat shall include all required certification language |
| 4  | <b>STAFF REVIEW</b>  |
| 5  | <b>CITY MANAGER DECISION</b><br>Decision shall be made in writing  |
| 6  | <b>NOTIFICATION OF DECISION</b><br>Delivered via personal service, electronic mail, or 1st class mail  |
| 7  | <b>RECORDATION</b><br>With the Henderson County Register of Deeds within 30 days of approval   |
- b.

All lots shall connect to the public potable water and sanitary sewer systems as part of the establishment of the minor subdivision. However, connection to the public water or sewer system shall not require the subdivision to be reviewed as a major subdivision.

c.

No lot within a minor subdivision (including the parent parcel) shall be the subject of another minor subdivision application for a period of three years from the date the minor subdivision is approved.

3.

**Minor subdivision review procedure.**

a.

**Pre-application conference.** Applicable (see section 2.03.C, pre-application conference).

b.

**Application submittal.**

i.

Applicable (see section 2.03.D, application filing and acceptance).

- ii. Applications shall be prepared by a licensed professional authorized by the state to prepare such documents.
  - iii. In cases where a minor subdivision is part of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.
- c. **Staff review and action.**
  - i. Applicable (see section 2.03.E, staff review and action).
  - ii. The city manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
  - iii. Following receipt of comments from technical review, if conducted, the city manager shall review and make an administrative decision/determination regarding the application in accordance with section 2.04.I.4, minor subdivision review standards. Notice of the administrative decision or determination shall be given as required by section 2.03.K.1.
  - iv. If a minor subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a minor plat that has been denied. Alternatively, the applicant may appeal the denial in accordance with section 2.04.I.9 appeal, below.
- 4. **Minor subdivision review standards.**
  - a. A minor subdivision shall be approved if the application complies with the following:
    - i. The minor subdivision plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;
    - ii. The minor subdivision plat is prepared and sealed by a licensed professional authorized by the state to prepare such documents;
    - iii. The minor subdivision plat complies with the applicable standards in G.S. 47-30;
    - iv. The minor subdivision plat includes all required certifications;
    - v. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or city standards, as appropriate;
    - vi. The applicant has secured all required state, federal, and other applicable permit approvals;
    - vii. The minor subdivision is in substantial conformance with all applicable requirements in this ordinance;
    - viii. All lots in the minor subdivision shall maintain minimum lot widths in accordance with the requirements for the zoning district where located;
    - ix. All required improvements depicted on the minor subdivision plat are installed and inspected by the city, or are subject to a performance guarantee (see section 2.05, performance guarantees); and
    - x. The minor subdivision complies with all standards and conditions of any applicable permits and development approvals.
  - b. Minor subdivisions of land located within a special flood hazard area shall comply with all applicable city standards for flood damage prevention, and include the following statement:  
"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."
- 5. **Recordation.**
  - a. Once a minor subdivision is approved, a signed statement of approval by the city manager shall be entered on the face of the plat. The minor subdivision plat may not be recorded without this certification.
  - b. A minor subdivision plat shall not be recorded until after the city manager receives confirmation that the proposed subdivision has been approved by the appropriate United States Postmaster, or evidence that the applicant has addressed comments submitted by the postmaster.
- 6. **Effect.** Approval of a minor subdivision allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the minor subdivision plat.
- 7. **Amendment.** Amendment of a minor subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.
- 8. **Expiration.** The period of validity of a minor subdivision approval shall be determined in accordance with chapter 40 of the City of Hendersonville Code of Ordinances.
- 9. **Appeal.** Appeal of an administrative decision or determination by staff under this section 2.04.I. minor subdivision, shall be reviewed and decided by the BOA in accordance with section 2.04.C, appeal.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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



**C. Rezoning: Standard Rezoning – Signal Hill Rezoning (P23-06-RZO) – Matthew Manley, AICP/Planning Manager**

The City of Hendersonville is in receipt of an application for a Standard Rezoning from James Koffman and Travis Fowler of First Victory, Inc, applicant. The applicant is requesting to rezone the subject property (PINs: 9579-07-6259; 9579-06-5791; 9579-06-7975; 9579-06-8507; 9579-06-8308; and 9579-06-8117) totaling 13.01 acres located at Signal Hill Rd and Lafolette St/Amazing Grace Ln, from R-20, Low Density Residential to R-15, Medium Density Residential.

If rezoned, there will not be a binding site plan, list of uses or conditions placed on the site. All permitted uses within the R-15 district would be allowed on the site. The City of Hendersonville Zoning Ordinance states that, during a standard rezoning process, an applicant is prohibited from discussing the specific manner in which they intend to develop or use a site.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:37 p.m.

Ken Fitch addressed City Council remotely via Zoom online software expressed concern for the forested ridge where hawks nest, as well as, having smaller lots, meaning less trees, meaning the hawks will lost their habitats. Also, losing tree canopy.

Mayor Volk read a digital comment from Virginia Haynes that was sent in on March 1, 2023.

Good evening, City Council. My name is Virginia Haynes and my husband- Dwain and I live adjacent to the proposed development on Signal Hill Road. My husband I are one of several homeowners in the area who are affected by the growth in the area we have called home for almost 30 years. We have many concerns about this development however, I will limit this to a few.

1. Does the city mean to eliminate all-natural landscape in and around the city? The recent growth within the city and surrounding ETJ have taken from the natural beauty of our city. As we lose trees and natural habit- Hendersonville loses it beauty.

2. The approximate 13 acres of land proposed for development in the Signal Hill project is home to deer, fox, wolf and an annual hawks nestling. We enjoy watching turkey, and other smaller wildlife including a few white squirrels. Where will these animals move to?

3. Signal Hill Road was not built for the amount of traffic that currently travels from 25 to Thompson Street. With the addition of Signal Hill Apartments, Mini Storage, Apartments coming in the summer near the WHKP tower, and the new homes on Clear Creek road, it is unsafe. The road stays in poor condition because it was not build for the 18 wheel trucks that now use the road every time traffic is delayed on 26. Traffic to and from the landfill from across the eastern part of the county leaves the road littered with bags of trash. Potholes constantly form and it is impossible at certain times to pull out of our road.

4. The proposed increase to medium density development will add a substantial amount of storm water runoff. With the number of roofs, roads, driveways, etc, this runoff will directly impact all of the surrounding property, including ours and all of the Cherry Creek Basin. We do not want our back yard flooded every time it rains making that portion of our property unusable.

5. Finally, we have large permanent silt ponds at the new Auto body Shop, Signal Hill apartments, the mini storage and I assume one will be required at the new large apartment complex at the corner of Signal Hill and North Main/Clear Creek. We are surrounded by stagnant water- breeding mosquitos.

Please consider the homeowners that have been your neighbors for many years. There are 7 property owners with over 2 acre lots. There is an established neighborhood between Amazing Grace Lane and Lafollett and there are several homeowners with 1/3 acre lots. We choose to live in this beautiful part of the county. As we become surrounded by high and medium density complexes, we hope you will protect the natural beauty, the wildlife, the safety of an overused road, the sanitation and the value of our homes, by denying the rezoning and allowing the low density zoning to remain in place to help limit these issues.

Lynne Williams addressed City Council remotely via Zoom online software expressed concern for the trees on site, the forested habitat and loss of that. Asking for more oversight and protection of the tree canopy.

Travis Fowler (the applicant) spoke in person. He explained that the specific reason for the change in density was to allow us to move the development further up and away from the canopy trees. We will still have to make a sewer connection along Cherry Creek but specifically the reason for the change in zoning is to lessen the impact and the cost of development per lot on the houses to bring the cost of the houses down to a more affordable range.

The public hearing was closed at 6:46 p.m.

Council Member Hensley asked if we can look into truck traffic to be sure they are following the protocol.

Council Member Smith said that this is the most density that he is comfortable with. Any more than this, is too much.

***Council Member Lyndsey Simpson moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9579-07-6259; 9579-06-5791; 9579-06-7975; 9579-06-8507; 9579-06-8308; & 9579-06-8117) from R-20 (Low Density Residential) to R-15 (Medium Density Residential) based on the following:***

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

***The High Intensity Neighborhood & Medium Intensity Neighborhood designations call for Single Family Residential as a primary land use and the proposed zoning district permits single-family & two-family residential uses.***

***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 proposed zoning district is compatible with the surrounding area because it permits the same land uses as the existing zoning district.***

***2. The petition provides for a marginal increase in density in close proximity to a wide range of commercial uses.***

***3. The petition would potentially provide additional housing that would utilize existing infrastructure.***

***4. The petition creates the opportunity for compatible infill development.***

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

Ordinance #O-23-19

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL NUMBERS: 9579-07-6259; 9579-06-5791; 9579-06-7975; 9579-06-8507; 9579-06-8308; & 9579-06-8117 BY CHANGING THE ZONING DESIGNATION FROM R-20 (LOW DENSITY RESIDENTIAL) TO R-15 (MEDIUM DENSITY RESIDENTIAL)**

IN RE: Parcel Numbers: 9579-07-6259; 9579-06-5791; 9579-06-7975; 9579-06-8507; 9579-06-8308; & 9579-06-8117  
(File # P23-06-RZO)

**WHEREAS**, the City is in receipt of a Zoning Map Amendment application from James Koffman & Travis Fowler of First Victory, Inc [Applicant] and Barbara L. White/Living Trust [Owner].

**WHEREAS**, the Planning Board took up this application at its regular meeting on February 9<sup>th</sup>, 2023; voting 8-0 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on March 2<sup>nd</sup>, 2023, and

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Numbers 9579-07-6259; 9579-06-5791; 9579-06-7975; 9579-06-8507; 9579-06-8308; & 9579-06-

8117 from R-20 Low Density Residential to R-15 Medium Density Residential.

2. Any development of the parcels shall occur in accordance with the Zoning Ordinance of the City of Hendersonville, North Carolina.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

**D. Rezoning: Standard Rezoning – 806 Shepherd St. (P22-110-RZO) - Matthew Manley, AICP/Planning Manager**

The City is in receipt of a Zoning Map Amendment (Standard Rezoning) application from David Mayo (applicant) and Diane & James Ward (owners). The applicant is requesting to rezone the subject property from R-15 (Medium Density Residential) to C-3 (Highway Business). The subject parcel (PIN 9578-41-9518) is located at the intersection of Shepherd St. and Old Spartanburg Rd and is approximately 0.56 acres in total. The parcel contains an existing structure originally built as a single-family residence. As a standard rezoning, there will not be a binding site plan, list of uses and/or conditions placed on the site if rezoned. All permitted uses within the C-3 district would be allowed on the site. The City of Hendersonville Zoning Ordinance states that, during a standard rezoning process, an applicant is prohibited from discussing the specific manner in which they intend to develop or use a site.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:56 p.m.

Lynne Williams addressed City Council remotely via Zoom online software expressed concern about saving the trees.

The public hearing was closed at 6:57 p.m.

***Council Member Jerry Smith moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PIN: 9578-41-9518) from R-15 (Medium Density Residential) to C-3 (Highway Business) based on the following: 1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because: The Neighborhood Activity Center designation calls for neighborhood retail sales and services as a primary recommended land use; and office, multi-family and other similar uses as secondary recommended land uses at the location of the subject property. 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 petition allows for increased intensity of uses at the intersection of two minor thoroughfares. 2. The petition would align with the parcels proximate to the subject property which are zoned C-3 and located between Old Spartanburg Rd and Spartanburg Hwy. 3. The petition creates the opportunity for infill development at a greater density / intensity. 4. The petition promotes walkable neighborhoods by creating mixed land use patterns that place residents within walking distance of services.***

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

Ordinance #O-23-20

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL NUMBER 9578-41-9518 BY CHANGING THE ZONING DESIGNATION FROM R-15 MEDIUM DENSITY RESIDENTIAL TO C-3 HIGHWAY BUSINESS**

IN RE: Parcel Number: 9578-41-9518 806 Shepherd St Rezoning  
(File # P22-110-RZO)

**WHEREAS**, the City is in receipt of a Standard Rezoning application from David Mayo (applicant) & Diane & James Ward (applicant & property owner).

**WHEREAS**, the Planning Board took up this application at its regular meeting on January 12<sup>th</sup>, 2023; voting 8-0 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on March 2nd, 2023, and

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Number 9578-41-9518 from R-15 Medium Density Residential to C-3 Highway Business.
2. Any development of the parcels shall occur in accordance with the Zoning Ordinance of the City of Hendersonville, North Carolina.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

**E. Rezoning: Conditional Zoning District – Lakewood Apartments (P22-54-CZD) –**  
*Matthew Manley, AICP/Planning Manager*

The City of Hendersonville is in receipt of an application for a Conditional Rezoning from Travis Fowler of First Victory, applicant and Group Ventures INC., property owner. The applicant is requesting to rezone the subject property, PINs 9579 -39-2060, 9579- 38-2595, 9579-29-0718, 9579-19-2770 and located off Lakewood Road, from I-1, Industrial to UR-CZD, Urban Residential Conditional Zoning District for the construction of 322 multi - family units on approximately 60.56 acres. This equates to a density of 5.31 units/acre. The proposal includes the addition of 8 multi-family structures, a clubhouse with pool and a day care center totaling 136,030 Sq Ft. Additionally, the development proposes 530 parking spaces at a rate of 1.65 spaces per unit (not including day care parking). The site plan features a greenway trail with an access to the City's planned Clear Creek Greenway. The Site Plan includes the provision of 40.24 acres of Open Space. Of the 911 trees surveyed on the site, the proposal intends to preserve 528 of them (58%). The developer proposes to plant 244 trees in the development and 140 in the floodplain restoration area.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 7:19 p.m.

Attorney Brian Gulden introduced himself and said he represents Travis Fowler and explained that he took specific language from surrounding communities to draft the language for this. We did 5 units at 60 AMI and 5 units at 80 AMI because we don't have any experience with who is going to apply and we don't want to leave any units empty, so we compromised. Council Member Hensley asked if he was the one that wrote the finishings clause in there. Mr. Gulden said yes and that was taken straight out of the inclusionary zoning of Charlotte and we are happy to strike it.

Travis Fowler of First Victory expressed that he wanted to simplify a few things. We don't think it's a good idea to have different finishings in different units so we are not going to do that. The finishes will be the same for everyone. We are also prepared to agree to a stipulation that NCDOT provide a driveway permit for our site and they will regulate it for us as per their requirements. The Tree Board made several recommendations to us and we have agreed to them. There have been discussions by the Planning Board about dark sky and we have a new solar light that we have used in other apartment complexes and it has a remote control and you can change the direction of the light and the intensity, the nature of the light and the color of the light and we're going to use those on this project and I believe we will be dark sky compliant. Also, this property is adjacent to I-26 and there are trees on that property that the Tree Board asked us to remove and we agreed. What I would also like to do is go across the stream in the floodplain area and reforest that area which will provide shade to Clear Creek. There is also a large greenspace adjacent to this property that we're either going to give to a non-profit or to the City. There is also the greenway that is going to pass through this development. Some butterflies and some squirrels will be displaced but that happens with development.

Lynne Williams addressed City Council remotely via Zoom online software and expressed concern about the forest and the birds, the monarchs and all of the animals that live on top of the ridge. She also expressed concern for bird migration and the stream buffer and encouraged that we not encroach on any of the streams and urged council to save more canopies.

Ken Fitch addressed City Council remotely via Zoom online software and expressed the good and bad that comes with this development. Some of his concerns are on many levels, about the current ecosystem including deer, monarch butterflies, a variety of birds and frogs, the stream, roads, and being dark sky compliant and the importance of keeping the canopy trees.

The public hearing was closed at 7:45 p.m.

Council Member Jerry Smith said that the developer seems be willing to negotiate and work with everyone, however, this development is too dense. We are currently as dense as Asheville and that level of density is not a level I'm willing to support and it just has too many units.

Jonathan Guy of Kimley-Horn said looking at NCDOT's improvement plans, they include a left turn lane into the daycare, a roundabout for the main access point which does address site distance. It also includes working with NCDOT and the developer of Universal at Lakewood on the intersection of Francis and Sugarloaf for improvements there. All in all, I am comfortable with the recommendations that have been put forth.

Council Member Roundtree is concerned about the traffic pattern on Francis Road as she used to live near there and they used to call it Deadman's Curve and she had a family member die there two years ago hitting a tree.

***Council Member Jennifer Hensley moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PINs: 9579-39-2060, 9579-38-2595, 9579- 29-0718, & 9579-19-2770) from I-1, Industrial to URCZD, Urban Residential Conditional Zoning District, for the construction of 322 multi-family units based on the site plan and list of conditions submitted by and agreed to by the applicant, [dated 2-21-2023,] and presented at this meeting and subject to the following:***

***1. The development shall be consistent with the site plan, including the list of applicable conditions contained therein, and the following permitted uses Permitted Uses:***

- 1. Residential Dwellings, Multi-Family***
- 2. Child Care Center***

***2. Permitted uses and applicable conditions presented on the site plan shall be amended to include:***

- 1. Developer agrees to provide a TIA deemed acceptable by the City and by NCDOT.***
- 2. Developer agrees to recommendations made by City Transportation consultant for the daycare access at Lakewood Rd.***
- 3. Developer agrees to provide mitigation at the intersection of US 64 & Francis Rd/Sugarloaf as recommended by the City Transportation consultant in consultation with NCDOT and in conjunction with the required mitigation associated with the Universal at Lakewood development.***
- 4. Make 10 rental units of affordable housing, 5 at or below 60% Area Median Income (AMI) and 5 at or below 80% Area Median Income (AMI) for the initial 10 years that the buildings are in service. The developer shall provide an annual report to the City of Hendersonville Development Office to prove compliance with this requirement.***
- 5. The Developer shall plant a pollinator garden to facilitate the preservation of the monarchs.***

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

***The petition aligns with the City's 2030 Comprehensive Plan's Goals for the 'Business Center', 'Regional Activity Center' and 'Natural Resource and Agriculture Area' Future Land Uses Designations. Specifically, the proposal is consistent with the Secondary Recommended Land Uses and Development Guidelines under LU-13.***

***4. Furthermore, we find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because:***

- 1. The proposed density and housing type are compatible with the surrounding area.*
- 2. The petition proposes to provide additional housing to offset local rental demand.*
- 3. The petition proposes to connect to the City's greenway network*
- 4. The petition proposes to offset tree loss with a net gain of 1 tree.*
- 5. The petition provides childcare on-site.*

***A 3-2 vote of the Council followed. Motion carried. Council Member Smith and Council Member Roundtree were nays.***

Ordinance #O-23-21

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS POSSESSING PIN NUMBERS: 9579-39-2060, 9579-38-2595, 9579-29-0718, & 9579-19-2770 BY CHANGING THE ZONING DESIGNATION FROM I-1, INDUSTRIAL TO UR-CZD, URBAN RESIDENTIAL CONDITIONAL ZONING DISTRICT**

IN RE: Parcel Numbers: 9579-39-2060, 9579-38-2595, 9579-29-0718, & 9579-19-2770  
Addresses: No Address Assigned  
Lakewood Apartments: (File # P22-54-CZD)

**WHEREAS**, the City is in receipt of a Conditional Rezoning application from applicant, Travis Fowler of First Victory, and property owners, Marilyn Barnwell & Robert Hogan of Group Ventures, Inc., for the construction of 322 multi-family units on approximately 60.56 acres near the intersection of Francis Rd and Lakewood Rd, and

**WHEREAS**, the Planning Board took up this application at its regular meeting on January 12, 2023; voting 8-0 to recommend City Council approve an ordinance with conditions amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on March 2, 2023, and

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Numbers: 9579-39-2060, 9579-38-2595, 9579-29-0718, & 9579-19-2770, changing the zoning designation from I-1, Industrial to UR-CZD, Urban Residential Conditional Zoning District
2. Development of the parcel pursuant to this Ordinance is subject to the following.
  - a. Development shall comply with the site plan submitted by the applicant dated February 21, 2023, including the conditions listed therein, as modified by City Council which shall be added to the site plan. The updated site shall be submitted to the City at or before the applicant's execution of this Ordinance].
  - b. Permitted uses shall include:
    - i. Residential Dwellings, Multi-Family
    - ii. Childcare Center
  - c. Additional conditions that shall be satisfied prior to final site plan approval include:
    - i. Developer agrees to provide a TIA deemed acceptable by the City and by NCDOT.
    - ii. Developer agrees to recommendations made by City Transportation consultant for the daycare access at Lakewood Rd.
    - iii. Developer agrees to provide mitigation at the intersection of US 64 & Francis Rd/Sugarloaf as recommended by the City Transportation consultant in consultation with NCDOT and in conjunction with the required mitigation associated with the Universal at Lakewood development.
    - iv. For a minimum period of ten (10) years, developer/owner will provide ten (10) units, constructed within the proposed residential development, as affordable housing (the "Commitment"). Affordable housing means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. Eligible households for at least five (5) of the affordable housing units shall be households with an income at or below 60% Area Median Income (AMI) based on the size of the household as set forth in the "Housing Needs Assessment" (Assessment) commissioned by Dogwood Health Trust and performed by Bowen National Research in November 2020. The remaining affordable housing units shall be for households with an income at or below 80% AMI based on the size of the household as set forth in the Assessment. The affordable housing units within the residential development shall be leased only to tenants who meet the financial requirements for an eligible household and whose primary residence shall be the affordable housing unit. Subletting of affordable housing units shall not be permitted. If a household's gross income increases above the maximum eligible household income level for a household of its size, the household may

continue to lease and occupy the affordable housing unit for the remainder of the lease term plus a one-year renewal without developer losing the designation of such unit as an affordable housing unit. In such an event, the rental for the affordable housing unit may be increased during the one-year renewal to a rate not to exceed 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rate rent in the development for units with the same number of bedrooms. Affordable housing units shall be constructed concurrently with the market rate units within the development and shall be dispersed among such market rate units and throughout the development. Developer or its designee shall be responsible to develop regulations to ensure compliance with the Commitment including the specific methodology for income verification. The developer or its designee shall monitor compliance during the term of the Commitment and, on a yearly basis will provide, in a timely manner, a report to the City's Community Development Department (or their successor department) setting forth Developer's review of compliance.

- v. Developer shall plant a pollinator garden to facilitate the preservation of the monarchs.
3. Except where modified by the terms of this Ordinance, development of the parcel(s) shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina.
4. Except where explicit relief is granted by the terms of this Ordinance, the development of the parcel(s) shall occur in accordance with all applicable standards within local ordinances and policies.

This ordinance shall not be effective until the list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

## **8. UNFINISHED BUSINESS - None**

## **9. NEW BUSINESS**

### **A. Downtown Business Investment Initiative – *Jamie Carpenter, Downtown Manager***

The Downtown Division has received a grant from Dogwood Health Trust in the sum of \$400,000 to be used over 24 months, with \$360,000 going to a small business loan program that will be administered by Mountain BizWorks (a CDFI), targeted at “under-fueled” businesses who need access to capital, including historically underutilized businesses. The remainder goes to partnering with programs to provide business training and assistance in partnership with marketing firms, nonprofits and educational centers. The grant was applied for in partnership with Mountain BizWorks and Black Wall Street AVL, in addition to in-kind partnerships with Blue Ridge Community College and the Small Business Center.

Bruce Waller, Executive Director of Black Wall Street, introduced himself and said he is glad to be a part of this awesome and historical moment.

Christine Laucher from Mountain Bizworks introduced herself as one of the partners and as part of a Community Development Financial Institution (CDFI) and has helped launch several places on Main Street and Downtown Hendersonville.

Rebekah Wallace from Mountain Bizworks introduced herself and thanked Jamie for all of her hard work on this.







**Funded \$400,000 over 2 years:**

- \$360,000 for loan program
- \$40,000 for training, technical assistance and program R&D

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**Phase 1**

**Training & Technical Assistance**

**Current businesses & new businesses**

**Connecting People to Programs:**

- One-on-one training
- Network of support
- Resource Navigators
- Training
- BRCC Small Business Success Plan
  - 5 downtown businesses participated in February 2023










**Phase 1**

**Access to Capital**

**Revolving Loan Fund**

- Initial earmark for within Main Street and 7th Avenue Districts (50/50 split)
- Opportunities to revise contract as needed
- 5 year term - City can decide future uses
  - Growing loan fund
  - funding programs and support related to goals of program







**Phase 1**

**Physical Space**

**Downtown Office - 125 5th Avenue W**

- 2 individual offices to be leased at market rate
  - revenue from lease can further support resources for the program
- Additional cubicle space and conference room available for shared use:
  - Businesses who participate in program through training programs, mentorship, loan recipients.
- Will provide: access to internet, printer/copier, meeting room space with virtual meeting ability.



**Future Phases:**

- Adapt programs based on the needs of businesses
- Training & Technical Assistance
- Physical Space
- Larger incubator space, market space, location in 7th Avenue District
- Leverage additional funds - commercial real estate, business growth
- Access to Capital
- Local Wealth & Investment
- Research & Development on how to leverage funds from local investors (angel funds, investment crowdfunding, etc)



**Next Steps:**

- Early March - Finalize contracts w/ Legal
- Mid March - Project team meeting prior to kickoff
- April - Program kickoff meetings, can be combined with 7th Avenue branding launch
  - Identify needs from participants
- Summer -
  - Further define training/technical assistance needs
  - Connect with lenders if ready

***Council Member Debbie Roundtree moved that City Council adopt the Resolution By The City Of Hendersonville City Council To Direct The City Manager To Negotiate A Contract With Grant Project Partners To Establish The Downtown Business Opportunity Initiative as presented.***

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

Resolution #23-24

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO DIRECT  
THE CITY MANAGER TO NEGOTIATE A CONTRACT WITH GRANT PROJECT  
PARTNERS TO ESTABLISH THE DOWNTOWN BUSINESS OPPORTUNITY  
INITIATIVE**

**WHEREAS**, the Dogwood Health Trust (the “Trust”) has established a grant that provides funding to municipalities for the development of and businesses within Investment Areas as defined by 12 CFR § 1805.201(b)(3)(ii) (“Investment Areas”); and

**WHEREAS**, the City of Hendersonville has within its municipal border areas designated as Investment Areas; and

**WHEREAS**, the City of Hendersonville, in particular its Downtown Development division applied for a grant from the Trust to establish a small business loan program for low-income entrepreneurs who are unable to access traditional financial services due to a lack of creditworthiness, small business education and technical assistance, and the development of a community investment fund (collectively “Allowable Purposes”); and

**WHEREAS**, the City’s has been awarded \$400,000.00 by the Trust to be used for the Allowable Purposes; and

**WHEREAS**, the City’s application partners included Mountain BizWorks as lending partner and Black Wall Street as a training and technical assistance partner; and

**WHEREAS**, the City of Hendersonville has accepted the grant funds, and authorize the execution of the grant funding agreement;

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

1. The City agrees to partner with Mountain BizWorks to administer \$360,000 in loans funded by the grant terms to be used for the Allowable Purposes; and
2. The City agrees to partner with Black Wall Street AVL to provide services funded by the grant terms to be used for the Allowable Purposes; and
3. The City Manager is authorized to execute a contract with Mountain BizWorks and with Black Wall Street AVL, with such changes as he deems appropriate, provided they are consistent with the terms of this Resolution;
4. City Staff are authorized and directed to proceed with the development of the programs for the Allowable Purposes for the terms of the grant program.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

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

**B. Adoption of Resolution Authorizing Mayor Volk to Enter into a Contract with the  
North Carolina Association of Chiefs of Police – John Connet, City Manager, Blair  
Myhand, Police Chief, and Angela S. Beeker, City Attorney**

In August 2020 a Hendersonville Police K-9 severely injured a local resident after escaping control of its police department handler. This incident resulted in a lawsuit against the City. The City Council has requested that the City Manager, Chief of Police and City Attorney review the events that led to this attack. City staff is proposing to hire the North Carolina Association of Chiefs of Police to conduct the investigation. A panel of three seasoned police professionals will review the events that led to the incident.

***Council Member Lyndsey Simpson moved that the City Council adopt the resolution authorizing Mayor Volk to enter into a contract with the North Carolina Association of Chiefs of Police.***

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

Resolution #23-25

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE MAYOR  
TO ENTER INTO A CONTRACT WITH THE NORTH CAROLINA ASSOCIATION OF CHIEFS OF POLICE**

**WHEREAS**, a Hendersonville Police K-9 attacked a Henderson County resident in August 2020 which resulted in serious injuries; and

**WHEREAS**, the City Council has directed City staff to review the events that led to the incident; and

**WHEREAS**, the Association of Chiefs of Police offers consulting services to assist local police agencies in evaluating programs or policies; and

**WHEREAS**, the City of Hendersonville would like to contract with the North Carolina Association of Chiefs of Police to investigate our police K-9 program and the events that led to the August 2020 incident. .

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

1. The Mayor is authorized to enter into a contract with the North Carolina Association of Chiefs of Police to review the events that led to the August 2020 Police K-9 attack in the amount of \$17,000.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 2<sup>nd</sup> day of March, 2023.

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

C. Parking Ordinance Amendments and Adoption of Official City Parking Map – Angela S. Beeker, City Attorney

Attached for City Council’s consideration is the proposed An Ordinance to Amend Chapter 50, Traffic, Articles IV Traffic Control Devices, and Article V Stopping, Standing and Parking, of the City of Hendersonville Code of Ordinances and to Adopt the Official City Parking Map Designating Parking Zones.

PARKING ZONES

METERED ZONES

- On-street

PAID ZONES

- Off-street

UNMETERED ZONES

- Time limit
- No time limit

Metered On-Street Parking Zones (9am-7pm)

Kiosk = meter (app may be used also)

5 consecutive hour limit per parking session/1 per day/30 minutes between parking sessions

\$2.00 / hour

Parking 30 minutes or less – no meter fee

Parking 31 minutes - \$2.00



# PAID PARKING ZONES

## • Interior Lots

- **Mixed Lots (9am-7pm)**
  - Parking by Permit
  - Hourly Paid Parking - \$1.50/hour
  - No time limit (except EV – 3 hours)
  - Parking 1 hour or less – no charge
  - Parking 61 minutes - \$3.00
- **Permit-Only Zones**
  - Parking by Permit Only – 24/7
  - No time limits

## • Exterior Lots

- Permit only M-Sat, Sun open to public, free

## • Parking Deck

- No time limit
- Paid parking 24/7 – “regulated parking hours” doesn’t apply.
- \$1.50 hour up to \$10.00 max/parking session
- New parking session starts at 4:00 a.m.
- Parking 1 hour or less – no charge
- Parking 61 minutes - \$3.00

# General Rules of Parking

- Fees charged in 1-hour increments
- Check-in is required (kiosk, Park-mobile app)
- One free parking period (30 min/1 hour) per 5 consecutive hours of time
- Handicapped – no time limits
- Regulated Parking hours – 9am-7pm, applies to interior mixed lots and metered on-street parking zone
- Paid time is parked time - No refunds

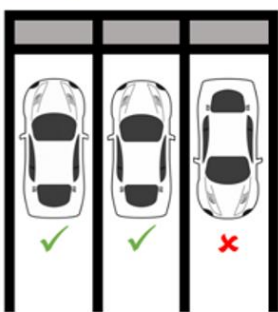


Figure 1. Backing into a space is prohibited.

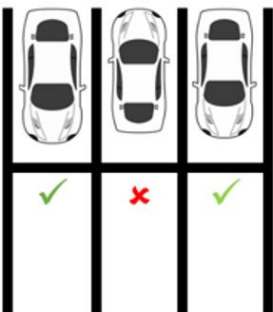


Figure 2. Pull-through parking is prohibited.

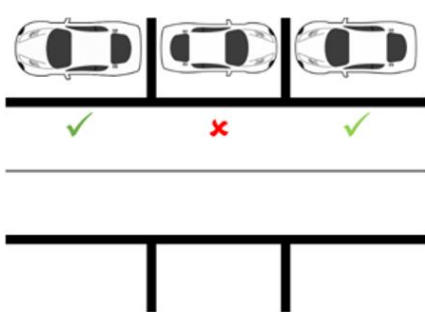


Figure 3. Parallel parking must go with the flow of traffic.

This will get you a parking ticket

This will also  
get you a  
parking ticket:

- Parking outside of the lines
- Illegally Parking in a handicapped spot
- Forgetting to extend your paid-for parking time/paid-for meter fees
- Forgetting to check-in
- Parking longer than is permitted within a limited time zone
- Entering the wrong license plate number at check-in, eg “1111”

This will get  
you towed:

- Parking in a no-parking zone
- Parking in a prohibited spot
  - Blocking a driveway
  - Too close to a fire hydrant
  - In a fire lane
- Habitual Violations (\$100 fine)
  - 6 or more parking tickets in 6 month period
  - 3 outstanding parking tickets
- Parking in violation of the ordinance 24 hours or more

Parking  
Citation  
Review  
Process

- Tickets must be paid within 30 days of receipt - \$100 penalty.
- Informal Review – request must be made w/in 5 days of citation
- Citation may be set aside if person can show:
  - They were actually in compliance OR
  - The Citation was issued in error
- If denied, payment owed within original 30 days of receipt of citation to avoid \$100 penalty.

*Council Member Jerry Smith moved that City Council to adopt An Ordinance to Amend Chapter 50, Traffic, Articles IV Traffic Control Devices, and Article V Stopping, Standing and Parking, of the City of Hendersonville Code of Ordinances and to Adopt the Official City Parking Map Designating Parking Zones, as presented.*



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

**10. CITY COUNCIL COMMENTS –**

Council Member Jerry Smith thanked Public Works for working on the parking area across from Jen's office in front of the high school to repaint and put a spot there. Thank you to everyone involved in that.

Council Member Jennifer Hensley said this month at the MPO meeting we are voting on project swaps and we had to cut down on projects so we've requested that we swap out the Kanuga Road project so that we can have the 64 Interchange fixed, so I just wanted to give everyone a heads up about that.

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

City Manager John Connet pointed out that surplus items have been sold off in the last month according to policy and is included in the agenda packet. I also wanted to remind Council of our Council/Staff Retreat next Thursday evening and all day Friday. You do have homework attached to the last Hendersonville Herald. There's four questions to prep you for Friday so please do your homework and bring it with you. It will be helpful if you do it before you get there. Thank you.

**12. CLOSED SESSION**

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

At 8:50 p.m. Council Member Lyndsey Simpson moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (5) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

*At approximately 9:00 p.m. Council Member Lyndsey Simpson moved that City Council return to open session. A unanimous vote of the Council followed. Motion carried.*

**13. ADJOURN**

There being no further business, the meeting was adjourned at approximately 9:00 p.m. upon unanimous assent of the Council.

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Barbara G. Volk, Mayor

ATTEST:

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Jill Murray, City Clerk