

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

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

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

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

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

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

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

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

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

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

- (a) Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense ~~or a misdemeanor~~ or whenever in such Code or ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, ~~where no specific penalty is provided therefor unless this code provides otherwise~~, the violation of any such provision shall subject the offender to ~~one or more of the following:~~

 - ~~(a) — A class 3 misdemeanor, punishable by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 30 days; or~~
 - ~~(b) — A~~ civil penalty in the amount of \$50.00 per violation to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within 45 days after the citation for violation of the ordinance or this Code.
 - (b) Whenever in this Code or in any ordinance of the City any act is declared to be a misdemeanor, or the doing of any act is required and the failure to do such act is declared to be a misdemeanor, unless this Code provides otherwise, the violation

of any such provision shall be punishable by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 30 days, or both.

- (c) Whenever in this Code or in any ordinance of the City any act is declared to be an infraction, or the doing of any act is required and the failure to do such act is declared to be an infraction, unless this Code provides otherwise, the violation of any such provision shall be punishable by a fine not exceeding \$100.00.
- (d) Each day that any violation of this Code or of any ordinance shall continue shall constitute a separate offense.
- (e) The ordinances contained in this Code and other ordinances of the city may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.
- (f) A violation of this Code of any ordinance may be enforced through a combination of one or more of the enforcement methods provided in this section 1-6.

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

Sec. 6-1. State statutes applicable.

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

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

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

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

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

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

It shall be unlawful for any person to consume or drink any alcoholic beverage, as defined in G.S. 18B-101(4), on the premises of any park, swimming pool, playing field, playground or other recreational facility of any kind whatsoever owned and operated by the city. Notwithstanding the foregoing, a person who is not an occupant of a motor

vehicle and who is of the age permitted by North Carolina Statute may consume or possess malt beverages and/or unfortified wine in any city-owned or -operated park at a community event or festival, if the city council has adopted a resolution making provisions for the possession and consumption of malt beverages or unfortified wine or both at such festival, to the extent permitted by such resolution.

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

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

(a) It shall be unlawful for any person to have in his possession in any public ~~place or thoroughfare, street, public alley, public parking lots, or any other property owned, occupied, or controlled by the city, public building, whether as a pedestrian or driver in any type or mode of vehicle, public or private~~ who is not an occupant of a motor vehicle, any container of ~~alcoholic malt beverage or unfortified wine~~, as defined in G.S. 18B-101(4). For purposes of this section, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container, which shall have had any seal, cap, tap, stopper, cork or other device intended to seal the container, broken, removed or otherwise moved from its original position so as to make the contents available for consumption. Such public areas shall be construed to mean, and include, any drive, driveway, road, roadway, street, sidewalk, alley, parking area or other space open for the purpose of vehicular traffic or operation upon the grounds or premises of any service station, car wash, supermarket, store, restaurant, amusement center, lounge, shopping center or office building, or any other business or municipal establishment, or groups of such establishments providing parking spaces for customers, patrons, employees or the general public.

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

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

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

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

Sec. 8-39. Gambling.

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

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

Sec. 8-40. Disorderly conduct.

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

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

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

Any device shall at all times be kept and placed in plain view of any person who may frequent or be in any place of business where such devices are kept or used. Nothing in this article shall be construed to authorize, permit or license any gambling device of any nature whatsoever.

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

~~Sec. 8-44. Penalty for violation of article.~~

~~Any person violating any provision of this article shall be punished in accordance with section 1-6.~~

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

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

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

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

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

~~Sec. 14-166. Penalty for violation of article.~~

~~Any person convicted of violating any provision of this article shall be guilty of a misdemeanor, punishable in accordance with section 1-6.~~

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

Sec. 14-226. Peddling hours restricted.

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

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

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

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

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

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.

Sec. 14-258. Penalty Reserved.

~~Any person violating any provision of this article shall, upon conviction, be punished in accordance with section 1-6.~~

Sec. 14-283. - ~~Penalty for violation of division~~Reserved.

~~Any person violating any provision of this division shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-6.~~

Sec. 14-284. Required.

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

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

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.

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.

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

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

Sec. 18-16. Violations of this chapter.

- (a) The city may debar any funeral home from being eligible to apply for an interment permit, or to otherwise inter or cause the interment of human remains or human cremains within any public cemetery for repeated violations of this article.

- (b) In addition to section 18-16(a) above and any other remedy specifically provided, section 1-6 of the Code shall apply to violations of this chapter.

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

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

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

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

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

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

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

Sec. 22-3. False fire alarms.

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

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

Sec. 22-4. Prohibited acts.

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

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

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

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

Sec. 24-160. General enforcement and violations.

- (a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his or her designee, or any authorized agent of the city.

Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of the city.

- (b) *Violation unlawful.* Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this article, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article. ~~and is~~ Violation of this article is subject to the same ~~civil or criminal penalties~~ remedies as other City Code (see section 1-6 of this Code) violations, with each day that a violation continues constituting a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (c) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, owner of an interest, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

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

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

Sec. 24-161. - Remedies and penalties.

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

- (a) Remedies.

- (1) Withholding of certificate of occupancy. The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the owner, an owner of an interest, or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) Disapproval of subsequent permits and development approvals. As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.
- (3) Injunction, abatements, etc. The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- (4) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the stormwater administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (b) Civil penalties. Violation of this article may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. civil penalties may be assessed up to the full amount of penalty to which the city is subject for violations of its phase II stormwater permit, or if no phase II stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

~~(c) — Criminal penalties. Violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.~~

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

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

- (a) *Purpose and intent.* The city has the general authority and control over all public streets, sidewalks, and other ways of public passage within its corporate limits, except those ways of public passage that are owned or maintained by the State of North Carolina. The city has the duty to keep such streets, sidewalks, and other ways of public passage open for travel and free from unnecessary obstructions. G.S. 160A-296. This ordinance prohibits actions that block or impede the safe passage of pedestrians and vehicles on public sidewalks and streets.

- (b) *Definitions.* The following words, terms, and phrases when used in this section shall have the meanings set forth in this subsection, unless the context of their usage clearly indicates another meaning:
- (1) *Block* means to unreasonably obstruct passage on a sidewalk or entrance or exit to a building.
 - (2) *Impede* means to render the use of a street unreasonably difficult or dangerous, including the following actions:
 - i. Weaving or darting through, around, and in between multiple occupied vehicles, whether the vehicle is stopped or in travel, for a purpose other than passage to a sidewalk. This subsection (i) is meant to prohibit walking through a street parallel to the sidewalk but not meant to prohibit crossing lanes of a street to reach occupied vehicles when a stop light is red.
 - ii. Placing or throwing a tangible thing on or inside an occupied vehicle that is on the street, except if an occupant requests that the acting individual deliver the tangible thing to an occupant or consents to such exchange.
 - iii. Standing, sitting, or lying down on the portion of a traffic island that is less than six feet wide, except where using the traffic island to cross the street or during an emergency.
 - (3) *Sidewalk* means the part of a street improved for pedestrian traffic.
 - (4) *Street* means the entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purpose of vehicular traffic. For purposes of this section the terms street and highway are synonymous.
 - (5) *Traffic island* means a raised portion of the street in between lanes of traffic intended to separate lines of traffic or guide traffic, not to hold people or provide pedestrian refuge. A traffic island may be commonly called a median. For the purpose of this section, a traffic island is any raised part of the street meant to separate lanes of traffic that is less than six feet in width. Width is measured as the length of the traffic in the direction of pedestrian travel if the pedestrian is traveling perpendicular to the street.
 - (6) *Vehicle* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes, of this chapter bicycles shall be deemed vehicles.
- (c) It shall be unlawful for an individual to impede the use of a street or highway.
- (d) It shall be unlawful for an individual to block a sidewalk.

- (e) It shall be unlawful for an individual to block the entrance or exit to a building served by a sidewalk or street unless otherwise granted permission by the owner or tenant. Permission granted by the owner may be evidenced by oral or written confirmation of permission from the owner or tenant.
- (f) Nothing in this subsection shall be interpreted to prohibit the exchanging of objects into and out of vehicles where the vehicle is stopped or parked according to traffic laws and no blocking or impeding of a street or sidewalk occurs. Where an individual is engaged in lawful activity on the sidewalk and such activity evokes a response by a third party that is in violation of this section or any other ordinance or state law, the individual engaged in lawful activity shall not be in violation of this section.
- (g) This section shall not apply to actions taken by first responders; or to actions taken in response to an emergency or to prevent an accident.
- (h) This section shall not apply to persons or entities granted a permit by the city for purposes, including, but not limited to, under section 46-85 and following of this Code.
- (i) No action punishable under G.S. 20-174.1 shall be punishable under this section. This section shall only apply to public streets, sidewalks, and other ways of public passage within the city's corporate limits for which authority and control is not vested in the North Carolina Board of Transportation.
- (j) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in Section 1-6.

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

- (a) Purpose and intent.
 - (1) The city is empowered, pursuant to G.S. 160A-174, to protect the health, safety and welfare of its citizens and to ensure the peace and dignity of the city. It is the intent of council in enacting this ordinance to recognize the rights of all citizens while at the same time protecting the coexistent rights for all citizens to enjoy safe and convenient travel in public spaces free from harassment. In the course of public hearings and debates regarding solicitation and safety in public spaces in Hendersonville, the city recognizes that the dangerous effects of harassment may occur in the commission of or completely separate from an act of solicitation, where such conduct occurs in public spaces and includes following a person or cornering a person for the purpose of intimidating that person.
 - (2) The current state laws on stalking and harassment do not protect individuals who are harassed in public spaces where such harassment is confined to a single occasion but is also dangerous or intimidating. Such

harassment causes intimidation and fear and may result in an interaction with dangerous or violent consequences. Free and safe passage on city sidewalks and streets is necessary. Therefore, the following ordinance intends to address harassment on sidewalks and streets by penalizing the following conduct.

- (b) Definitions. The following definitions apply in this section:
 - (1) Public space means streets, sidewalks, alleys, and other public property, as well as city-owned and city-controlled property.
 - (2) Reasonable person means a reasonable person in the same or similar circumstances.
- (c) Offense. A person is guilty of harassment in a public space if the person:
 - (1) Knowingly and intentionally performs either of the following with no legitimate purpose:
 - i. Following an individual in or about a public space with the intent of threatening, intimidating, or causing fear for personal safety; or
 - ii. Surrounding an individual or intentionally and physically directing the individual's movement through or in a public space with the intent of threatening, intimidating, or causing fear for personal safety. This subsection includes crowding or cornering an individual with the intent of threatening, intimidating, or causing fear for personal safety and without that individual's consent as the individual is actively engaging or attempting to use an automated teller machine or parking meter and the individual must stand within the public space to access the automated teller machine or parking meter;
 - (2) The conduct described in subsection (c)(1)(i) or (ii) is directed at an individual in the individual's presence; and
 - (3) The person continues the conduct described in subsection (c)(1)(i) or (ii) after the individual to whom the conduct is directed has made a negative oral response or taken action that a reasonable person would understand as a negative response.

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

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

Sec. 36-41. Trespass.

- (a) *Prohibited generally.* It shall be unlawful for any person to commit a trespass within this municipality upon either public or private property.

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

Sec. 36-43. Disturbing public meetings.

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

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

Sec. 36-44. Unlawful assembly.

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

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

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

Sec. 36-45. Fighting.

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

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

Sec. 36-46. Disturbing lawful assemblages.

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

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

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

Sec. 36-81. Projectiles.

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

Sec. 36-82. Discharge of firearms.

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

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

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

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

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

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

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

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

(c) As provided in N.C.G.C. 14-318.1, violation of this section is a misdemeanor.

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

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

~~Felony means a crime punishable by potential sentence of two years or more imprisonment by the courts of this state, or any crime defined as a felony in any other state or of the United States without regard to date of conviction, discharge from prison or termination of probation, parole or suspended sentence or type of crime.~~

~~Firearm means, by way of illustration, but not limitation, any gun, pistol, rifle, shotgun, machine gun, revolver, derringer or weapon of like kind in operable condition or which may be made to operate, whether loaded or unloaded including, but not limited to, any item defined in USC 821(J).~~

- ~~(b) Prohibited acts. It shall be unlawful for any person who has previously been convicted of any felony to have in his possession while on the public streets, sidewalks, alleys, other public property and any facility open to the public in the city any firearm.~~
- ~~(c) Penalty for violation of section. Any person found in violation of subsection (b) of this section shall be guilty of a misdemeanor and shall be punished as set forth in G.S. 14-4(a).~~
- ~~(d) Firearms of felon declared contraband. Any firearm found in the possession of any person previously convicted of a felony is hereby declared to be contraband. Such firearm shall be retained by the chief of police until no longer needed as evidence, but no less than 180 days. After the firearm is no longer needed as evidence:
 - ~~(1) It shall be returned to the owner if determined to be previously stolen.~~
 - ~~(2) It may be disposed of according to the terms of an order entered by any court of lawful jurisdiction.~~
 - ~~(3) If neither subsection (d)(1) or (d)(2) of this section is applicable, the firearm shall be destroyed.~~
 - ~~(4) Under no circumstances, shall the firearm be returned to any person for the use of any convicted felon.~~~~

[Deleted. Preempted by North Carolina law.]

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

- (a) Carry of certain weapons prohibited.
 - (1) Prohibited acts. Except as provided in subsection (b) of this section, all persons are prohibited from possessing firearms as defined in G.S. 14-415.10 in city government buildings and their appurtenant premises.
 - (2) Where posted, the carrying of a concealed handgun on city government recreational facilities identified specifically as follows is hereby prohibited:
 - ~~a. Berkeley Park Baseball Field including any appurtenant facilities such as restrooms, during an organized athletic event, if the field has been scheduled for use with the Hendersonville Department of Public Works;~~
 - ab. Patton Park Athletic Fields including any appurtenant facilities such as restrooms, during an organized athletic event, if the fields have been scheduled for use with the Hendersonville Department of Public Works;

- be. Patton Park Swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool;
- cd. Boyd Park and Patton Park Tennis Courts during organized athletic events, if the courts have been scheduled for use with the Hendersonville Department of Public Works;
- de. William H. King Park Baseball Field including any appurtenant facilities such as restrooms, during an organized athletic event, if the field has been scheduled for use with the Hendersonville Department of Public Works;
- ef. Sullivan Park Basketball Facility including appurtenant facilities such as restrooms, during an organized athletic event, if the facility has been scheduled for use with the Hendersonville Department of Public Works;
- fg. Whitmire Activity Center Shuffleboard Courts including appurtenant facilities such as restrooms, during an organized athletic event, if the courts have been scheduled for use with the Hendersonville Department of Public Works.

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

in consultation with the chief of police, may determine is in the interest of the health, safety and welfare of the city.

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

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

Sec. 36-121. Indecent exposure or behavior.

~~It shall be unlawful for any person to indecently expose his or her person, or to behave in a boisterous or indecent manner in or on any street, house or public building or elsewhere in the city.~~

[Deleted. Preempted by North Carolina law.]

Sec. 36-122. Displaying obscene pictures.

~~No person shall display on any street or alley, or in any store, shop or public place in the city, any obscene pictures, marks, words or representations.~~

[Deleted. Preempted by North Carolina law.]

Sec. 36-124. Prostitution—Solicitation.

~~It shall be unlawful for any person to solicit any man or woman for sexual intercourse within the city.~~

[Deleted. Preempted by North Carolina law.]

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

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

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

Sec. 36-126. Bawdy houses.

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

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

Sec. 36-127. Assignment houses.

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

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

Sec. 36-128. Staying in bawdy house.

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

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

Sec. 36-129. Disorderly houses.

~~It shall be unlawful to keep or rent a disorderly house, or to allow within any house lascivious or loose conduct.~~

[Deleted. Preempted by North Carolina law.]

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

Sec. 36-213. ~~Penalty for violation of division.~~Reserved.

~~The punishment for violation of this division shall be according to the provisions of section 1-6.~~

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

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

- (1) *Time limits.* It is unlawful for any minor to be or remain upon any public place as defined in this section in the city between midnight Friday and 5:00 a.m. on Saturday, or between midnight Saturday and 5:00 a.m. on Sunday, or between the hours of 11:00 p.m. and 5:00 a.m. of the following morning on Sunday, Monday, Tuesday, Wednesday or Thursday.
- (2) *Exceptions.* The restrictions provided by subsection (1) of this section shall not apply to any minor who is accompanied by a guardian, parent or other person charged with the care and custody of such minor, or other responsible person over 18 years of age, nor shall the restriction apply to any minor who is traveling between any two of the following: his home, place of employment, place of worship, any government building or any school-sanctioned function, if the minor is attending or has attended such function.
- (3) *Responsibility of minor.* It is unlawful for any minor to be in or upon, or remain in or upon a public place within the city within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (4) *Responsibility of adults.* It is unlawful for any parent, guardian or other person charged with the care and custody of any minor to allow or permit such minor to be in or upon, or remain in or upon, a public place within the city within the

curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.

- (5) *Responsibility of business establishments.* It is unlawful for any person operating a place of business or amusement to allow or permit any minor to be in or upon, or to remain in or upon, any place of business or amusement operated by them within the curfew hours set by subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (6) *Enforcement.* Enforcement of this division shall be according to the following procedures:
 - a. When a minor is found to be in violation of this division, the officer will, by telephone or radio, check with the communications center of the city police department to determine if the juvenile is a first offender. If the juvenile is a first offender, he will be issued a written warning and taken to the residence of his parent or guardian. In addition to this action, a written warning will be given to that adult and an incident report taken by the officer to include the name of the juvenile and adult, and the time, date and location of the offense. This shall apply in all cases where a written warning is issued. This report will be turned in to the clerk and entered into the police department's computer system. A copy of the report will be maintained in the records division of the police department.
 - b. If upon checking with the communications center the juvenile is found to be a repeat offender, he will be taken to the residence of his parent or guardian and will be subject to having a juvenile petition filed against him for the violation. In addition, the adult (parent or guardian) will be subject to a criminal citation, pursuant to subsection (8) of this section. A report will be turned in to the communications center and entered into the police department computer system. A copy of the report will be maintained in the records division of the police department.
 - c. If the juvenile is, in the opinion of the apprehending officer, an abused, neglected or dependent juvenile as those terms are defined in G.S. 7A-517 then the apprehending officer shall make an immediate report of the same to the county department of social services.
- (7) *Violation of curfew by minor.* It shall be a violation of this division for any minor to act in violation of subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (8) *Aiding and abetting by adult, guardian or parent.* It shall be a violation of this division for an adult, guardian or parent to allow, permit, encourage, aid or abet a minor in the violation of subsection (1) of this section, except as otherwise provided in subsection (2) of this section.
- (9) *Refusal of guardian or parent to take custody of a minor.* If any guardian or parent refuses to take custody of his minor child found in violation of this division, the officers with custody of the minor shall contact the county department of social services and release the minor to that agency pending further

investigation by the police department and the department of social services. The adult will be subject to a criminal citation, pursuant to subsection (8) of this section.

- (10) *Emergency curfew.* Under the authority of G.S. 14-288-12, whenever the mayor of the city deems that an emergency exists, and there is a clear and present danger to the preservation of the public peace, health, life or safety, or to public or private property in the city necessitating expansion of the curfew provisions set forth in subsection (1) of this section, the mayor may effect such expansion, effective for the period of the emergency, by proclamation. The proclamation shall contain a statement of the reasons for such necessity and the period of the expanded curfew, and shall provide that no minor under the age of 16 shall be upon or about, or remain upon or about, public places in the city between the hours of 8:00 p.m. and 5:00 a.m. on the following morning, unless accompanied by his parent, guardian or responsible adult. Such proclamation may further provide that no parent or guardian of any minor under the age of 16 shall allow the child to be upon or about, or remain upon or about, any public place in the city between the hours of 8:00 p.m. and 5:00 a.m. of the following morning, unless the child is under direction or protection of some adult person with authority and consent of such parent or guardian for his being there. Such proclamation shall become effective 30 minutes after being publicly announced by the mayor for such period, or until rescinded by the mayor or repealed by the city council in the manner in which ordinances are repealed. As soon as is reasonably possible, the proclamation shall be published and reported in the local media and posted conspicuously about the city.

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

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

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

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the city any vehicle which has been impounded pursuant to the provisions of this article unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

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

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

Sec. 38-3. Prohibited conduct.

No person shall, while in any public park:

Drive any nongovernment vehicle on any area except the paved park roads or designated parking areas, or such other areas as may on occasion be specifically designated as

temporary parking areas by the city, except that bicycles shall be permitted on all trails unless specifically prohibited.

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

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

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

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

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

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

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

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

Sec. 38-15. Skate park sign posting.

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

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

Sec. 38-17. ~~Violations.Reserved.~~

~~Violations of the provisions of this article may constitute a misdemeanor, punishable by a fine. The city reserves the right to revoke the use of the skatepark to individuals who violate the rules and regulations of the skatepark.~~

Sec. 38-18. City skate park rules.

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

Notice to all skaters.

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

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

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

- (1) This is an unsupervised skate park and its use is free of charge. Avoid skating when the surface is wet from rain, etc.
- (2) Skating and skateboarding only are allowed in the skatepark.
- (3) Every person riding a skateboard at this facility, skateboard in the facility must wear a helmet, elbow pads, and kneepads. ~~Any person failing to do so will be subject to citation under [this article] under subdivision (1) of this subsection (b) of G.S. 99E-23.~~
- (4) Motorized vehicles are not allowed. Only skateboards, roller skates, in-line skates are allowed on ramps.
- (5) Call 911 for emergencies.
- (6) Drugs, alcohol, glass containers, tobacco products, profanity, fighting, horseplay, destroying or defacing public property are prohibited. Vandalism, including graffiti, stickers and tagging is illegal. If this occurs it may require the park to be closed temporarily. Violators will be prosecuted.
- (7) Food or beverages are not allowed on the skate area. Glass containers are prohibited in or near the skating surface.
- (8) No one under the age of eight is allowed without adult supervision.
- (9) No spectators are allowed on the skate area.

- (10) The city reserves the right to revoke the use of the skatepark to individuals who violate the rules and regulations of the skatepark.
- (11) Help keep the skatepark clean! Put trash in the receptacles, even if it is not yours!
- (12) Be courteous and respectful of others.
- (13) Events, lessons and other organized activities require written permission from the director of public works or his/her designee.
- (14) No other park items such as benches, tables, etc. may be used as ramps or jumps in the skatepark.
- (15) Firearms are prohibited in the skatepark.

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

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

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

Sec. 42-1. Purchases from minors.

~~No person engaging in business as a junk dealer or a secondhand dealer within the city shall purchase or receive from any minor of 17 years of age or less any article of merchandise or personal property, unless such minor is accompanied by a parent and the parent's consent obtained.~~

[Deleted. Preempted by North Carolina law.]

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

[Footnote: State Law reference—~~Pawnbrokers Modernization Act of 1989~~ Pawnbrokers and Cash Converters Modernization Act, G.S. ~~91A-1 et seq.~~ Ch. 66, Art. 45, Part 1.]

Sec. 42-36. Adoption of state provisions.

The city adopts the provisions of G.S. ~~91A-1 et seq.~~ Ch. 66, Art. 45, Part 1, the ~~Pawnbrokers Modernization Act of 1989~~ Pawnbrokers and Cash Converters Modernization Act.

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

Sec. 42-37. Definitions.

Cash converter shall have the same meaning as defined in Chapter ~~91A-66~~ of the North Carolina General Statutes or any successor statute.

Pawnbroker shall have the same meaning as defined in Chapter ~~91A-66~~ of the North Carolina General Statutes or any successor statute.

Pawnshop shall have the same meaning as defined in Chapter ~~91A-66~~ of the North Carolina General Statutes or any successor statute.

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

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

Sec. 42-38. Electronic record keeping.

Every owner or operator of a cash converter business, pawnbroker, pawnshop, precious metals dealer or secondary metals recycler subject to this article shall maintain an electronic inventory tracking system that is capable of delivery and transmission of all information required by G.S. ~~91A-766-391~~ or ~~91A-7-166-392~~ (in the case of cash converters, pawnbrokers and pawnshops) or G.S. 66-~~169410~~ (in the case of precious metals dealers) or G.S. 66-~~11421~~ (in the case of secondary metals dealers) by computer to the entity designated by the city police department.

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

Every owner or operator of a cash converter business, pawnbroker, pawnshop, precious metals dealer or secondary metals recycler subject to this article is required to upload the information required by G.S. ~~91A-766-391~~ or ~~91A-7-166-392~~ to the entity designated by the city police department within one business day of receipt of the goods purchased or pawned.

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

Sec. 44-3. ~~Reserved. Penalty for violation of chapter.~~

~~Any violation of the provisions of this chapter is punishable in accordance with section 1-6.~~

Sec. 44-5. Littering prohibited—Generally.

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

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

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

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

- (a) Residential collection. All occupants of residences, whether single-family or multifamily, subdivision, planned unit developments, condominiums, apartment buildings, duplexes or any other arrangement of ownership, shall use city-provided mobile containers, which shall be placed adjacent to the street for collection. Rollout containers shall be emptied one time per week by the city sanitation department on days designated by the director of public works.
 - (1) Placement. Rollout containers shall be placed adjacent to the street for collection on days designated by the director of public works for pickup. The mobile containers shall be placed within five feet of the curb or street edge or in an accessible location approved by the director of public works, but shall not be placed in the street or on the sidewalk.
 - (2) Time requirements. The mobile containers shall be placed in the required location for collection no earlier than 7:00 p.m. on the day preceding a designated pickup day and shall be removed from the curbside location no later than 7:00 p.m. on the designated pickup day. Except during these hours, the containers shall be kept in a location no closer to the street than the front line of the residence. Containers must be curbside no later than 7:00 a.m. on collection day.
 - ~~(3) — Ownership and responsibility. The mobile containers shall be furnished by the city and shall remain the property of the city. Mobile containers that are damaged, destroyed or stolen through abuse, neglect or improper use of occupant or user shall be replaced by the city at the expense of the occupant or user or resident owner. Mobile containers that are damaged in the course of normal and reasonable usage or that are damaged through no neglect or improper use of the occupant or user shall be replaced by the city at no expense to the occupant or user or resident owner. The director of public works shall determine whether the mobile container was damaged through abuse, neglect or improper use of occupant or user. Any determination made by the director of public works pursuant to this section shall be appealable to the city council if written notice of appeal is given by the occupant or user or resident owner to the city council within ten days after the director's decision. The mobile cart shall not be damaged, destroyed or defaced by any person. Markings or identification devices on containers, except as placed or specifically permitted by the director of public works, are expressly prohibited and shall be regarded as damage to the containers.~~
- (b) Multifamily dwelling collection. Multifamily dwellings with four or more units may utilize mobile carts or bulk containers on an individual resident or user basis;

provided, however, that such multifamily dwellings must maintain and require the use of a central and common collection and pickup area, the location of which has been approved and accepted by the city director of public works.

- (c) Location of containers. Those provisions set forth in sections 44-2, 44-4, 44-6, 44-7 and subsection (a) of this section shall apply to occupants of multifamily dwellings utilizing mobile containers.
- (d) Commercial and industrial collection. Commercial and industrial collection shall be as follows:
 - (1) Provisions for containers. Each establishment disposing of the equivalent of less than four cubic yards weekly shall provide rollout containers leased from the city, to remain the property of the city, and sufficient in number to contain the volume of refuse based on a once-per-week pickup. Each establishment disposing of more than four cubic yards weekly shall provide bulk containers of adequate size necessary to contain the volume of refuse based on once-per-week pickup. Establishments disposing of more than 16 cubic yards weekly shall provide bulk containers of eight cubic yards minimum capacity. Where feasible, low volume disposers may choose to combine their refuse with adjoining business, provided written permission is obtained from the business owner. Other low volume disposers may choose alternative disposal methods as approved by the director of public works.
- (e) Location of containers. Containers must be located in a position approved by the director of public works, easily accessible by the sanitation collection equipment.
- (f) Ownership and responsibility. All containers furnished by the city, including mobile containers and rollout containers as referenced herein, shall remain the property of the city. Containers that are damaged, destroyed or stolen through abuse, neglect or improper use of occupant or user shall be replaced by the city at the expense of the occupant or user or resident owner. Containers that are damaged in the course of normal and reasonable usage or that are damaged through no neglect or improper use of the occupant or user shall be replaced by the city at no expense to the occupant or user or resident owner. The director of public works shall determine whether the container was damaged through abuse, neglect or improper use of occupant or user. Any determination made by the director of public works pursuant to this section shall be appealable to the city council if written notice of appeal is given by the occupant or user or resident owner to the city council within ten days after the director's decision.
 - (1) Containers shall not be intentionally damaged, destroyed or defaced by any person. Markings or identification devices on containers, except as placed or specifically permitted by the director of public works, are expressly prohibited and shall be regarded as damage to the containers. In addition to any other remedy available, violation of this subsection (f)(1) is also a misdemeanor as provided in Section 1-6.

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.

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.

Sec. 46-87. Street entertainers.

- (a) "Street entertainers" or "Entertainers" as used herein shall mean persons and groups of persons providing entertainment intended for the benefit of pedestrians on sidewalks, which entertainers in the course of their entertainment remain substantially stationary in areas adjoining or within 25 feet of Main Street in downtown Hendersonville between Sixth Avenue and First Avenue. This ordinance shall apply equally to all persons regardless of whether such persons are requesting or accepting reward associated with the entertainment. The terms as used herein shall not apply to substantially mobile pedestrians regardless of

whether such pedestrians are attempting to entertain or communicate with other pedestrians.

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

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

SECTION 26. Chapter 50 - Traffic, Article I – In General of the Code of Ordinances for the City of Hendersonville is amended as follows:

Sec. 50-2. Reserved.~~Compliance with chapter.~~

~~It shall be a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.~~

Sec. 50-3. Obedience to police.

~~No person shall wilfully fail or refuse to comply with any lawful order or direction given by a police officer in the performance of his duties or the exercise of powers prescribed by this chapter.~~

[Deleted. Preempted by North Carolina law.]

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.

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

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

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

Sec. 50-16. Mufflers.

- (a) ~~Required. No person shall drive a motor vehicle on any street in the city unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke.~~
- (b) ~~Cutouts. It shall be unlawful for any person to use a muffler cutout on any motor vehicle operated within the city.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-17. Riding motorcycles generally.

~~A person operating or riding a motorcycle shall at all times while so operating such vehicle wear a crash helmet and ride only upon the permanent and regular seat attached thereto. Such operator shall not carry any other person, nor shall any other person ride on a motorcycle unless such motorcycle is equipped with a seat designed for two persons, and has footrests for the operator and the passenger.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-22. Solicitation in public rights-of-way prohibited.

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

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

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

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

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

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

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

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

Sec. 50-59. Failure to obey citation.

~~It shall be unlawful for any person to violate his written promise to appear given to an officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which such citation was originally issued.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-62. Issuance of warrant.

~~If any person fails to comply with a traffic citation (excluding parking violations) given to such person fails to make appearance in court pursuant to instructions stated on the citation, the clerk of the court shall secure and issue an order for his arrest upon being instructed to do so by the presiding district court judge.~~

~~[Deleted. Preempted by North Carolina law.]~~

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

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

~~Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:~~

- ~~(1) —When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;~~
- ~~(2) —When an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;~~
- ~~(3) —Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or~~
- ~~(4) —Upon a roadway designated and signposted for one way traffic.~~

~~[Deleted. Preempted by North Carolina law.]~~

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

~~In crossing an intersection of streets or the intersection of a street by a railroad right of way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the street, unless such right half is obstructed or impassable.~~

~~[Deleted. Preempted by North Carolina law.]~~

Sec. 50-98. Meeting of vehicles.

~~Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one half of the main traveled portion of the roadway as nearly as possible.~~

~~[Deleted. Preempted by North Carolina law.]~~

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

~~All vehicles operated on any roadway which has been clearly marked with lanes for traffic shall be driven, as nearly as practical, entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.~~

[Deleted. Preempted by North Carolina law.]

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

- (a) ~~—The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the street or highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of section 50-101.~~
- (b) ~~—The driver of a vehicle shall not drive to the left side of the center of a street or highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.~~
- (c) ~~—The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the street or highway where the driver's view is obstructed within a distance of 500 feet.~~
- (d) ~~—The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection, unless permitted so to do by a traffic or police officer.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-101. Same—When permitted on right.

~~The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:~~

- (1) ~~—When the vehicle overtaken is in a lane designated for left turns;~~
- (2) ~~—Upon a street or highway with unobstructed pavement of sufficient width which has been marked for two or more lanes of moving vehicles in each direction and which are not occupied by parked vehicles;~~
- (3) ~~—Upon a one-way street, or upon a highway on which traffic is restricted to one direction of movement when such street or highway is free from obstructions and is of sufficient width and is marked for two or more lanes of moving vehicles which are not occupied by parked vehicles; or~~
- (4) ~~—When driving in a lane designating a right turn on a red traffic signal light.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-102. Same—Duty of driver of overtaken vehicle.

~~The driver of a vehicle about to be overtaken and passed by another vehicle approaching from the rear shall, unless the overtaking and passing is being made upon the right as permitted in section 50-101, give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle. In any event, the driver of the overtaken vehicle shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.~~

[Deleted. Preempted by North Carolina law.]

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

- ~~(a) — When two vehicles approach or enter an intersection or junction at approximately the same time, except at arterial highways, stop streets or through streets, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise provided in this chapter.~~
- ~~(b) — The driver of a vehicle approaching, but not having entered an intersection or junction, shall yield the right of way to a vehicle already within such intersection or junction whether the vehicle in the junction is proceeding straight ahead or turning in either direction; provided, however, that this subsection shall not be interpreted as giving the right of way to a vehicle already in an intersection or junction when such vehicle is turning either to the right or left unless the driver of such vehicle has given a plainly visible signal of intention to turn as required by section 50-107.~~
- ~~(c) — The driver of any vehicle upon a street within a business or residence district shall yield the right of way to a pedestrian crossing such street within any clearly marked crosswalk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices.~~

[Deleted. Preempted by North Carolina law.]

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

- ~~(a) — The driver of a vehicle entering a public street or highway from a private road or drive shall yield the right of way to all vehicles approaching on such public street or highway.~~
- ~~(b) — The driver of a vehicle upon a street or highway shall yield the right of way to police and fire department vehicles and public and private ambulances when the latter are operated upon official business and the drivers thereof sound an audible signal by bell, siren or exhaust whistle. This section shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance from the duty to drive with due regard for the safety of all persons using the street or highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right of way.~~

[Deleted. Preempted by North Carolina law.]

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

- ~~(a) — Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the righthand side of the street and, in turning, shall keep as closely as practicable to the righthand curb or edge of the street. When intending to turn to the left, the driver shall approach such intersection in the lane for traffic~~

~~to the right of and nearest to the center of the street and, in turning, shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. When a vehicle is being operated on a three-lane street, the driver thereof intending to turn to the left at an intersection shall approach the intersection in the lane nearest to the center of the street and designated for use by vehicles traveling in the same direction as the vehicle about to turn.~~

- ~~(b) — For the purpose of this section, the center of the intersection shall mean the meeting point of the medial lines of the streets intersecting one another.~~
- ~~(c) — The city council may modify the method of turning at intersections described in subsection (a) of this section by clearly indicating, by buttons, markers or other direction signs within an intersection installed or erected in accordance with the provisions of section 50-181, the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in accord with such indications.~~

[Deleted. Preempted by North Carolina law.]

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

~~The driver of any vehicle upon a street or highway, before starting, stopping or turning from a direct line, shall first see that such movement can be made in safety and, if any pedestrian may be affected by such movement, shall give a clearly audible signal by sounding the horn. Whenever the operation of any other vehicle may be affected by such movement, the driver shall give a signal as required in section 50-107, plainly visible to the driver of such other vehicle, of the intention to make such movement.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-107. Same—Manner of giving.

- ~~(a) — The signal required by section 50-106 shall be given by means of the hand and arm in the manner specified in this section, or by any mechanical or electrical signal device approved by the department of motor vehicles of the state, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by such department.~~
- ~~(b) — Whenever the signal is given, the driver shall indicate his intention to start, stop or turn by extending the hand and arm from and beyond the left side of the vehicle as set forth in this subsection:~~

~~Left turn, hand and arm horizontal, forefinger pointing;~~

~~Right turn, hand and arm pointed upward; and~~

~~Stop, hand and arm pointed downward.~~

- ~~(c) — All hand and arm signals shall be given from the left side of the vehicle, and all signals shall be maintained or given continuously for the least 100 feet traveled prior to stopping or making a turn.~~

[Deleted. Preempted by North Carolina law.]

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

~~Upon the approach of any police or fire department vehicle, or other authorized emergency vehicle, giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the righthand edge of the curb, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer, until the police or fire department vehicle, or other emergency vehicle, shall have passed.~~

[Deleted. Preempted by North Carolina law.]

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

~~It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into within one block where fire apparatus has stopped in answer to a fire alarm.~~

[Deleted. Preempted by North Carolina law.]

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

~~It shall be unlawful for any person to drive a vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a firefighting apparatus or any other equipment from its source of supply, regardless of its distance from the fire.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-111. Backing.

~~The driver of a vehicle shall not back the vehicle into any intersection or over a crosswalk and shall not, in any event or at any place, back a vehicle unless such movement can be made in safety. He shall have given ample warning to those who may be behind by hand and horn or other signal.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-112. Entering intersections and marked crosswalks.

~~No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-113. Driving vehicles on sidewalks.

~~The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-116. Following too closely.

~~The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-117. Driving overloaded or overcrowded vehicle.

~~No person shall operate upon a street or highway a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the street or highway, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-141. Reasonable and prudent limitation.

~~No person shall drive a vehicle on a highway or on any parking lot, drive, driveway, road, roadway, street or alley; upon the grounds and premises of any public or private hospital, college, university, benevolent institution, school, orphanage, church, or any of the institutions maintained and supported by the state or any of its subdivisions; or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building; or any other business or municipal establishment, providing parking space for customers, patrons or the public at a speed greater than is reasonable and prudent under the conditions then existing.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-142. General district limitations.

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

- (1) Twenty miles per hour in any business district;
- (2) Thirty-five miles per hour in any residential district;
- (3) Forty-five miles per hour in places other than those named in subsections (1) and (2) of this section for:
 - a. All vehicles other than passenger cars, regular passenger vehicles, pickup trucks of less than one-ton capacity, and school buses loaded with children; and
 - b. All vehicles, of whatever kind, which are engaged in towing, drawing or pushing another vehicle; provided, however, that this subsection (3)b shall

not apply to vehicles engaged in towing, drawing or pushing trailers with a gross weight of not more than 3,000 pounds; and

- (4) Fifty-five miles per hour in places other than those named in subsections (1) and (2) of this section for passenger cars, regular passenger carrying vehicles and pickup trucks of less than one-ton capacity.

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

Sec. 50-143. Duty to decrease.

~~The fact that the speed of a vehicle is lower than the limits established by this division shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, or when special hazards exist with respect to pedestrians or other traffic or by reasons of weather or street conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the street or highway, and to avoid causing injury to any person or property either on or off the street or highway, in compliance with legal requirements and the duty of all persons to use due care.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-144. Variation of maximum speed limits.

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

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

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

Sec. 50-145. School zones.

- (a) ~~It shall be unlawful for any person to operate or drive any vehicle at a speed greater than 20 miles per hour in any school zone during a period of time of 60 minutes prior to and 30 minutes following the times when such school begins and ends its daily schedule.~~
- (b) ~~For the purposes of this section, a school zone shall be deemed to be that portion of any street abutting any school property for a distance not to exceed 500 feet on either side of such school property.~~

[Deleted. Preempted by North Carolina law.]

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

Sec. 50-182. Obedience to devices.

~~It shall be unlawful for any person to drive, operate or use a vehicle upon the streets of the city contrary to any signs, signals or other traffic control devices that are placed upon the streets for the purpose of directing traffic, except upon direction of a police officer and except as otherwise provided in this chapter.~~

[Deleted. Preempted by North Carolina law.]

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.

Sec. 50-188. Stop intersections.

~~When stop signs are placed, erected or installed upon streets intersecting a through street or stop intersection designated as provided in section 50-181, every driver of a vehicle shall stop in obedience to such signs before entering the intersection and shall not proceed into or across such intersection until he has first determined that no conflict with traffic will be involved.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-189. Yield intersections.

~~Whenever main traveled or through streets are designated by erecting, at the entrance thereto from intersecting streets, signs notifying drivers of vehicles to yield the right of way to drivers of vehicles approaching the intersection on the main traveled or through street, pursuant to section 50-181, it shall be unlawful for the driver of any vehicle to enter or cross such main traveled or through street, unless he shall first slow down and yield the right of way to any vehicle in movement on the main traveled or through street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main traveled or through street. No failure to so yield the right of way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right of way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence.~~

[Deleted. Preempted by North Carolina law.]

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

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

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

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

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

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

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

Sec. 50-193. Driving through safety zone.

~~The driver of a vehicle shall not at any time drive through or over a safety zone marked, signed and designated pursuant to section 50-181.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-194. ~~Driving in school zones~~Reserved.

~~Whenever authorized signs are placed designating any street or part thereof as a school zone pursuant to section 50-181, drivers of vehicles using such street shall exercise the greatest care for the protection of children.~~

Sec. 50-196. Driving on play streets.

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

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

Sec. 50-376. - Application of article.

~~Pedestrians shall be subject to traffic control signals at intersections, as provided in this chapter, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.~~

~~[Deleted. Preempted by North Carolina law.]~~

Sec. 50-377. Right-of-way at crosswalks.

- ~~(a) — Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this article.~~
- ~~(b) — Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.~~

~~[Deleted. Preempted by North Carolina law.]~~

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

- ~~(a) — Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.~~
- ~~(b) — Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.~~
- ~~(c) — Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.~~

~~[Deleted. Preempted by North Carolina law.]~~

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

~~It shall be unlawful for pedestrians to walk along the traveled portion of any street or highway unless sidewalks are not provided; in which event, such pedestrians shall walk on the extreme lefthand side of such street, and such pedestrians shall yield the right of way to approaching traffic.~~

~~[Deleted. Preempted by North Carolina law.]~~

Sec. 50-380. Soliciting rides.

~~No person shall stand in the traveled portion of a street or highway for the purpose of soliciting a ride from the driver of any private vehicle.~~

~~[Deleted. Preempted by North Carolina law.]~~

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

- ~~(a) — At any street, road or highway crossing or intersection, where the movement of traffic is not regulated by a traffic officer or by traffic control signals, any blind or partially blind pedestrian shall be entitled to the right of way at such crossing or intersection, if such blind or partially blind pedestrian shall extend before him, at arm's length, a cane white in color or white tipped with red, or if such person is accompanied by a guide dog. Upon receiving such a signal, all vehicles at or approaching such intersection or crossing shall come to a full stop, leaving a clear lane through which such pedestrian may pass, and such vehicle shall remain stationary until such blind or partially blind pedestrian has completed the passage of such crossing or intersection. At any street, road or highway crossing or intersection, where the movement of traffic is regulated by traffic control signals, blind or partially blind pedestrians shall be entitled to the right of way if such person having such cane or accompanied by a guide dog shall be partly across such crossing or intersection at the time the traffic control signals change, and all vehicles shall stop and remain stationary until such pedestrian has completed passage across the intersection or crossing.~~
- ~~(b) — Nothing contained in this section shall be construed to deprive any blind or partially blind person not carrying a cane white in color or white tipped with red, or being accompanied by a guide dog, of any of the rights and privileges conferred by law upon pedestrians crossing streets and highways, nor shall the failure of such blind or partially blind person to carry a cane white in color or white tipped with red, or to be accompanied by a guide dog, upon the streets, roads, highways or sidewalks be held to constitute or be evidence of contributory negligence by virtue of this section.~~

[Deleted. Preempted by North Carolina law.]

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

~~It shall be unlawful for any person, except one who is wholly or partially blind, to carry or use on any street or highway, or in any other public place, a cane or walking stick which is white in color or white tipped with red.~~

[Deleted. Preempted by North Carolina law.]

Sec. 50-383. Duty of drivers.

~~Notwithstanding the provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precautions upon observing any child or any confused or incapacitated person upon a roadway.~~

[Deleted. Preempted by North Carolina law.]

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

Sec. 50-417. Permit required for parades.

- (a) No parade is permitted unless a permit has been first obtained from the chief of police allowing the parade pursuant to this article.
- (b) A person seeking to obtain a parade shall file an application with the chief of police on forms provided by such official.
- (c) A person seeking to obtain a parade permit which requires a street closing or otherwise requires police officers to stop or reroute vehicular traffic upon any street because the participants will not comply with normal traffic regulations or controls shall file an application with the chief of police at least ten days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter timeframes from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.
- (d) A person seeking to obtain a parade permit for Main Street which requires the closing of Main Street for greater than three hours shall file an application with the chief of police at least 45 days before the time for which the parade is proposed to commence. The chief of police shall notified downtown merchants via the Downtown Advisory Committee or successor committees at least 30 days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter time-frames from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.
- (e) The application for a parade permit shall include the following:
 - (1) The name, address, telephone number, and email address of the person seeking to conduct the parade, and the name, address, telephone number and email address, if available, of the organization with which the person is affiliated or on whose behalf the person is applying to conduct the parade or public assembly (collectively "applicant");
 - (2) The name, address, telephone number and email address, if available, for an individual who shall be designated as the "responsible planner and on-site manager" of the parade;
 - (3) The requested date, time, place, and route (from starting point to ending point) of the parade including the location where and time when the parade will assemble and disband, and any requested sidewalk or street closings;
 - (4) The anticipated number of persons, vehicles, and things that will constitute the parade or (including the basis on which this estimate is made), and a description of the vehicles and things that will be part of the parade;

- (5) A general description of any recording equipment and sound amplification equipment, along with a general description of the size and composition of any banners, signs, flags, or other attention-getting devices to be used in connection with the parade;
- (6) Arrangements for additional police protection and additional emergency medical services, if required under subsection 50-418(b);
- (f) A parade/assembly permit issued under this article shall include the information set out in paragraph (d) of this section, which information shall constitute conditions of the permit to the extent such information sets out the time, place, and manner of the parade or public assembly.

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

Sec. 50-425. Prohibitions.

The following prohibitions shall apply to all parades:

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

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

Sec. 50-426. Weapons.

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

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

Sec. 50-427. Public conduct during parades.

- (a) No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or with any person, vehicle, animal, or thing participating or used in a parade.
- (b) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade. The chief of police shall post signs to that effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation of such signs.

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

Sec. 50-429. - Penalties.

In addition to any remedy specifically provided, A-violation of any section or subsection of this article shall be subject to a civil penalty of \$500.00 to be recovered in the nature of a debt as allowed in section 1-6 of this Code ~~or by a misdemeanor punishable by up to a \$500.00 fine as provided in G.S. 14-4.~~

Sec. 50-430. Vehicle processions.

- (a) *Definition.* For the purpose of this section, the term "*vehicle procession*" shall be deemed to mean:
 - (1) A group of motor vehicles;
 - (2) Preceded by a vehicle of a law enforcement agency with blue warning light activated;
 - (3) Traveling in single file with headlamps illuminated and emergency four-way flashers activated; and
 - (4) The lead vehicle shall bear a distinctive flag or marker.
- (b) *Right-of-way; penalty for violation of section.* The operator of any motor vehicle traveling upon, along or through any public street or highway, or entering upon or leaving such street or highway, shall yield the right-of-way to a vehicle procession. A vehicle procession shall be accorded the right-of-way at any intersection, regardless of the method of traffic control at such intersection or

whether or not the same shall be activated. Any operator of any motor vehicle who shall fail to yield the right-of-way to any vehicle procession shall be liable for an infraction and shall be assessed a penalty of \$35.00 and court costs for each such failure.

- (c) *Driving through vehicle procession.* No vehicle not a portion of a vehicle procession shall be driven through any such procession, and the operator of any vehicle violating this subsection shall be guilty of an infraction and a fine of \$35.00 and court costs for each such violation. This subsection shall not apply to emergency vehicles as defined in G.S. 20-156 and G.S. 20-157, when operated in conformance with the provisions of G.S. 20-156 and G.S. 20-157.
- (d) *Speed of vehicle procession.* A vehicle procession may proceed at a speed not in excess of 20 miles per hour and shall be driven at a rate less than the maximum stated in this section if caution and circumspection shall dictate such reduced speed. In addition to any other remedy available, violation of this section is also an infraction as provided in Section 1-6.

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

Sec. 50-487. Obedience to warning device.

~~Whenever any person driving a vehicle approaches a railroad track crossing with any street, alley or other public way in the city and a clearly visible and positive signal gives warning of the immediate approach of a railroad train, car or other similar equipment, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing.~~

[Deleted. Preempted by North Carolina law.]

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

Sec. 52-4. Pollution of water.

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

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

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.

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

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

Violation of this section shall be punished in accordance with N.C.G.S. 14-151.

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

Sec. 52-128. Approval of application.

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

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

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

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

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

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

Sec. 52-216. Discharges generally.

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

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

Sec. 52-217. Direct discharges.

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

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

Sec. 52-218. Indirect discharges.

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

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

Sec. 52-219. Wastewater generally.

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

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

Sec. 52-220. - Stormwater generally.

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

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

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.

Sec. 52-246. General discharge prohibitions.

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

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

Sec. 52-247. Specific discharge prohibitions.

- (a) No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any of the following pollutants, substances or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city, the state or EPA considers a fire hazard or a hazard to the system.
 - (2) Solid or viscous substances in amounts which will cause obstruction of flow or interference in the POTW. Prohibited materials include, but are not limited to, solids greater than one-half of an inch in any dimension, grease, garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, mud, spent lime, stone or marble dust, metal, glass or glass grinding or polishing wastes, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, or plastics.

- (3) Petroleum oils, tar, asphalt residues, residues from refining or processing of fuel or lubricating oils, nonbiodegradable cutting oil or products of mineral oil origin in amounts that may cause interference or pass through.
- (4) Any wastewater having a pH less than 5.0 or more than 11.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
- (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW.
- (6) Any wastewater having a temperature greater than 150 degrees Fahrenheit (66 degrees Celsius), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).
- (7) Any pollutants which result in the presence of toxic gases, vapors or fumes, either singly or by interaction with other pollutants, that may cause acute worker health and safety problems.
- (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW director in accordance with section 52-255 of this division.
- (9) Any noxious or malodorous liquids, gases or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.
- (11) Any wastewater which imparts color which cannot be removed by the treatment process including, but not limited to, dye wastes and vegetable tanning solutions which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW director in compliance with applicable state or federal regulations.

- (13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW director.
 - (14) Fats, oils or greases of animal or vegetable origin in amounts which in the discretion of the POTW director, may cause interference, pass through or obstruction to the POTW collection system.
 - (15) Any sludges, screenings or other residues from the pretreatment of industrial or nondomestic wastes.
 - (16) Any medical wastes, except as specifically authorized by the POTW director in a wastewater discharge permit.
 - (17) Any material containing ammonia, ammonia salts or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
 - (18) Any material that would be identified as hazardous waste according to 40 CFR 261 if not disposed of in a sewer except as may be specifically authorized by the POTW director.
 - (19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200.
 - (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - (21) Recognizable portions of the human or animal anatomy.
 - (22) Any wastes containing detergents, surface active agents or other substances which may cause excessive foaming in the POTW system or the receiving stream in other than trace amounts.
 - (23) At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.
- (b) Pollutants, substances, wastewater or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
- (c) When the POTW director determines that a user is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW director shall:
- (1) Advise the user of the potential impact of the contribution on the POTW in accordance with division 8 of this article; and

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

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

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:
- Ten thousand gallons a day if tributary to a sewage lift station; or
 - Twenty-five thousand gallons a day if tributary to the main gravity system.

- (c) Domestic strength wastewater levels for pollutants not listed in this section shall be determined as necessary by the POTW director and shall be based on either actually measured local domestic strength wastewater levels or literature values.
- (d) High strength user-specific local limits for appropriate pollutants of concern shall be included in wastewater permits, when necessary to ensure that the POTW's maximum allowable headworks loading will not be exceeded for pollutants of concern, and are considered pretreatment standards.
- (e) The POTW director may impose mass limits in addition to, or in place of, the concentration-based limits.
- (f) When the director determines that a user is contributing to the POTW any of the above-enumerated substances in such amounts which exceed the limitations established in this section, the POTW director shall:
 - (1) Advise the user of the contribution to the POTW;
 - (2) Advise the user of the permit requirements of this article for such discharges; and
 - (3) Take the appropriate actions necessary for correction of the violation.

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

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.

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.

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.

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

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

wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which time the user discharges more than such quantities of any hazardous waste do not require additional notification.

- (c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This section does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued under this article, or any applicable federal or state law.

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

Sec. 52-328. Recordkeeping.

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

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

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

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

- (a) Any violation of the provisions of this article ~~shall constitute a misdemeanor punishable, upon conviction, in accordance with section 1-6 of this Code, and in~~

~~addition thereto such violation~~ may be enjoined and restrained as provided in G.S. 160A-175.

- (b) Application, violation, enforcement, penalties. This section applies to all persons using city water, inside and outside the city limits, regardless of whether they have a contract for water service with the city, provided mandatory schedules or limits shall not apply to any public or volunteer fire department while fighting a fire. A customer of the city shall be responsible for all violations that occur associated with water that passes through the meter for which the customer is billed by the city. Any person who uses water in violation of a restriction, schedule or ban imposed on the use of water during mandatory or emergency stages of drought, or in violation of a water rationing policy, or who otherwise violates the provisions of this section, or who impedes or interferes with any action undertaken or ordered pursuant to this section and policies adopted hereunder, shall be subject to the penalties listed below:
- (1) Enforcement by law enforcement. Upon the declaration of mandatory stage (A or B), declaration of emergency stage, or during any period of rationing, the manager, every police officer of the city and all others so authorized by the city may enforce any restrictions or bans imposed on the use of city water.
 - (2) Suspicion of violation. Whenever the city has reasonable cause to believe that a person is violating any of the provisions of this section or any policy or declaration or action plan adopted hereunder, the city shall immediately notify that person of the violation by affixing a written notice of violation (NOV) to the property where the violation occurred and/or personally delivering or mailing such notice to the customer of record and to any other person known to the city who is responsible for the violation or its correction. Such notice shall describe the violation, order that it be corrected, cured or abated immediately or within such specified time as the manager determines is reasonable under the circumstances, and warn that more severe measures, such as civil penalties, criminal charges or termination of water service may be brought, assessed or imposed. If the order is not complied with within the allotted time period, the manager may undertake enforcement action as follows.
 - (3) Enforcement action. Any person who, after being given notice of violation, does not comply with this section or policy adopted hereunder within the time period specified shall, at the option of the city, be subject to any of the following: civil penalties, criminal penalties where specifically indicated, termination of water service, injunctive relief or any appropriate equitable remedy issuing from a court of competent jurisdiction.
 - a. ~~Criminal penalties. Any person may be charged with violation of this section or policy adopted hereunder and prosecuted in district court. Any person so charged and found guilty of violating this section or policy shall be guilty of a misdemeanor. Each day's~~

~~violation shall constitute a separate offense. The penalty for violation shall be a maximum fine of \$50.00 per occurrence. The imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.~~

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

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.

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

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

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

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

Sec. 52-482. Approval.

- (a) No person or unit of local government shall begin construction or alteration of a public water distribution system or award a contract for construction or alteration of a public water distribution system operating or being situate in whole or in any part, as of the time of commencement of construction or alteration, within the city limits or extraterritorial jurisdiction of the city unless:
 - (1) The plans for construction or alteration have been prepared by an engineer licensed by this state;
 - (2) The city has determined that the distribution system, as constructed or altered, will be capable of compliance with the drinking water rules;

- (3) The city has determined that the distribution system is capable of interconnection at an appropriate time with an expanding municipal system;
- (4) The city has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water distribution system; and
- (5) The city has approved the plans and specifications.

~~Sec. 52-483. Penalty for violation of article.~~

(b) Penalty for violation:

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

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

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

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

- (a) New water service connections. No new residential water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved dual check valve or approved equal. No new nonresidential and irrigation water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved backflow prevention assembly, unless otherwise approved by the city

prior to installation. The BPA shall be tested and properly functioning as prescribed herein prior to the issuance of a certificate of occupancy (CO) for any building. All new nonresidential construction plans and specifications shall be made available to the city for review to determine the health hazard and level (health or non-health) to the city's public water system.

- (b) Existing water service connections. An approved backflow prevention assembly shall be installed on all existing cross-connections to the city's public water system upon notification of the need for installation by the city resulting from circumstances such as, but not limited to, change of use, change or ownership or modifications to facilities, etc. Upon determining that a backflow prevention assembly (BPA) is required to be installed on an existing irrigation or nonresidential water service connection the city will notify the customer in writing of:
- (1) The requirement for installation;
 - (2) The health hazard level ("high hazard" or "moderate hazard" or "non-health hazard") which has been established for that customer by the city based upon the use of their premises;
 - (3) The type of approved backflow prevention assembly required;
 - (4) The date by which it must be installed and tested. The customer will have the following time periods within which to install and test the specified backflow prevention assembly and submit test results to the city.
 - a. High hazard: Within 14 calendar days of date of notice, unless specified otherwise by city;
 - b. Moderate hazard: Within 30 calendar days of notice;
 - c. Non-health hazard: Within 60 calendar days of date of notice.

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

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.

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.

Sec. 52-515. Penalties.

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

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

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

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

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

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

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

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney