

March 7, 2013
Regular Meeting of the City Council
Council Chambers – City Hall
5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Jeff Collis, and Council Members: Steve Caraker, Jerry Smith, and Ron Stephens

Staff Present: City Manager Lee Galloway, City Attorney Samuel H. Fritschner, City Clerk Tammie Drake, Planning Director Sue Anderson, Engineering Director Brent Detwiler, IT Director Allen Edge, Main Street Director Lew Holloway, Finance Director Jim Rudisill, Utilities Director Lee Smith, Public Works Director Tom Wooten

1. Call to Order: Mayor Volk called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with all five members in attendance.

2. Invocation and Pledge of Allegiance: A moment of silence for prayer was followed by the Pledge of Allegiance to the Flag.

3. Public Comment Time: *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.*

McCrae Benson, President/CEO, and Randy Romeo, Board Chair, with the Community Foundation, stated they opened a fund to assist with the Main Street enhancements especially with regard to helping build a fountain on Main Street. The fund remains open through the end of June. The General Community Fund, matched with an award by the Perry N. Rugnick endowment, have each contributed \$10,000 toward this effort making a current total of \$20,000. He presented a check to the City for \$20,000. Mayor Volk expressed appreciation to the Community Foundation and to the contributors.

David Weintraub, Executive Director, ECO, voiced support of funding for the Mills River Partnership for the protection of the watershed and to create a sustainable fund.

4. Consideration of Agenda:

Council Member Smith requested the addition of item 17b under Mayor/Council comments: Discussion of a resolution encouraging the District Attorney to prosecute violations of NCGS Section 14-306.4 re: video gaming.

Mayor Pro Tem Collis moved approval of the agenda as amended. A unanimous vote of the Council followed. Motion carried.

5. Consideration of Consent Agenda: *These items are considered routine, non-controversial in nature and are considered and approved by a single motion and vote.*

A. Consideration of Minutes: February 7, 2013 Regular Meeting, February 15, 2013 Special Meeting and February 20, 2013 Special Meeting

B. Consideration of Special Event Permits:

i. Bearfootin' Public Art Reveal: The Special Events Committee voted unanimously to recommend approval of a special event permit for the 2013 Bearfootin' Public Art Reveal. The event will be held at

the First Citizen's Bank Plaza at the corner of Sixth Avenue and Main Street. The 15-minute parking space will be closed from 3 p.m. – 8 p.m. This is the 11th year of this summer long public art event.

ii. Downtown Rhythm & Brews Concert Series: The Special Events Committee voted unanimously to approve the 2013 Downtown Rhythm & Brews Concert Series after review of an application from Historic Downtown Hendersonville, sponsor of the 2013 Downtown Rhythm & Brews Concert Series to be held on May 16, June 20, July 18, and August 15, 2013. This is a new event. The events will be held in the Azalea Parking Lot between Third and Fourth Avenues. This is a family-friendly concert series targeted to draw an expanded demographic into downtown. The events will feature live music and local industries (brewing and outdoor related). An amendment to the City Code will be needed for the consumption of alcohol on City-owned property (parking lot). This will be on the April City Council Agenda.

iii. Main Street Mile Grand Prix Series: The Special Events Committee voted unanimously to approve the 2013 Main Street Mile Grand Prix Series after review of an application from Historic Downtown Hendersonville, sponsor. The events will held on May 16, June 20, July 18, and August 15, 2013. This is a new event. The four race running series will be family-friendly entry to expert level race targeted to draw an expanded demographic into downtown. The races will kick off the Rhythm & Brews Series. Main Street will not be closed.

iv. Mad Mountain Mud Run and Family Mud Fun: The Special Events Committee voted unanimously to recommend approval of a special event permit for Mad Mountain Mud Run and Family Mud Run after review of an application from the sponsor, Hands On! The event will be held May 31, 2013 from 6:00 p.m. – 8:00 p.m. and June 1, 2013, from noon – 7 p.m. at Berkeley Mills Park and quarry. The application includes approval of the designated area for the consumption of alcohol which encompasses about 40,000 square feet to the west of the baseball field, including the picnic shelter, restrooms and stage. Approval of the area authorizes the sponsors to serve alcohol at Berkeley Park in the specified area in conjunction with the special event permit contingent upon the City Manager's certification that all requirements of the City's Policy Governing the Sale of Alcohol at Special Events in City Parks have been satisfied. The Police Department reported that there were no problems with the alcohol consumption at this event last year.

v. Meltdown Vintage Motorcycle Show: The Special Events Committee voted unanimously to recommend approval of a special event permit for Meltdown after review of an application from the sponsor, Southern Appalachian Brewery. The event will be held April 27, 2013, from 1 p.m. – 9 p.m. Locust Street will be closed from Bearcat Boulevard to Eighth Avenue and from Track Street to Eighth Avenue. Eighth Avenue will remain open for traffic to cross Locust Street to Maple Street. The event will be family-friendly and 200 or more motorcycles are expected. This event was held last year but the street was not closed. The Historic Seventh Avenue District will be having a car and vintage motorcycle show the same day in front of the Depot.

C. Consideration of Ordinance Directing Code Enforcement Official to Demolish Structure at 710 E Pace Street: Mrs. Susan Frady reported the structure owned by Samuel N. and Mary Angram and located at 710 E. Pace Street has been condemned as unsafe for human habitation.

Ordinance #13-0311

ORDINANCE DIRECTING CODE ENFORCEMENT OFFICIAL TO DEMOLISH

Whereas, pursuant to Section 12-31 of the Code of Ordinances of the City of Hendersonville (hereinafter called the "Code"), the Code Enforcement Official of the City of Hendersonville (hereinafter called the "Code Enforcement Official") has requested the City Council of the City of Hendersonville (hereinafter called "Council") to adopt an Ordinance requiring the owner to repair or demolish certain structures on certain premises as outlined in Section 12-31 of the Code; and

Whereas, the Council hereby finds that the owners and parties in interest in the premises, commonly known as 710 E. Pace Street, Hendersonville, North Carolina, which premises are described in that certain deed recorded 6/20/1980, in the Henderson County Registry in Deed Book 590, Page 513, to which reference is hereby made are as follows:

Samuel N. Angram
Mary Angram
1302 SW Crest Avenue
Port St. Lucie, FL 34953 and

Whereas, the Council hereby finds that the premises appears to be vacant, appears to be in such dilapidated condition as to cause or contribute to blight, vagrancy and appears to be a safety hazard and is a imminent danger to life or other property; and

Whereas, the Council hereby finds that there has been compliance with all applicable provisions of Section 12-31 of the Code relative to the adoption of this resolution; and

Whereas, the owner of the premises, after having been given a reasonable opportunity to do so, has failed and refused to comply with a lawful order of the Code Enforcement Official to repair or demolish the structure located on the premises within the time therein prescribed;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL THAT:

Section 1. The Code Enforcement Official shall cause the structure on the premises commonly known as 710 E. Pace Street, Hendersonville, North Carolina, and described in the aforesaid deed to be vacated, closed, and removed or demolished.

Section 2. The cost of the removal or demolition shall be a lien on the premises to be collected pursuant to Article 10 of Chapter 160A of the North Carolina General Statutes.

Section 3. A copy of this Ordinance, certified as a true copy by the City Clerk, shall be recorded in the Henderson County Registry and the Register of Deeds shall index the name of the owner in the "Grantor Index" pursuant to North Carolina General Statutes 160A-443(5).

Section 4. This Ordinance shall become effective upon its adoption.

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

D. Consideration of Ordinance Directing Code Enforcement Official to Demolish Structure at 1206 Martin Circle: Mrs. Frady reported the structure owned by Xavier Lamar Mackey located at 1206 Martin Circle has been condemned as unsafe for human habitation.

Ordinance #13-0312

ORDINANCE DIRECTING CODE ENFORCEMENT OFFICIAL TO DEMOLISH

Whereas, pursuant to Section 12-31 of the Code of Ordinances of the City of Hendersonville (hereinafter called the "Code"), the Code Enforcement Official of the City of Hendersonville (hereinafter called the "Code Enforcement Official") has requested the City Council of the City of Hendersonville (hereinafter called "Council") to adopt an Ordinance requiring the owner to repair or demolish certain structures on certain premises as outlined in Section 12-31 of the Code; and

Whereas, the Council hereby finds that the owners and parties in interest in the premises, commonly known as 1206 Martin Circle, Hendersonville, North Carolina, which premises are described in that certain deed recorded 6/20/1980, in the Henderson County Registry in Deed Book 1418, Page 363, to which reference is hereby made are as follows:

Xavier Lamar Mackey
112 Roper Road
Flat Rock, NC 28731 and

Whereas, the Council hereby finds that the premises appears to be vacant, appears to be in such dilapidated condition as to cause or contribute to blight, vagrancy and appears to be a safety hazard and is a imminent danger to life or other property; and

Whereas, the Council hereby finds that there has been compliance with all applicable provisions of Section 12-31 of the Code relative to the adoption of this resolution; and

Whereas, the owner of the premises, after having been given a reasonable opportunity to do so, has failed and refused to comply with a lawful order of the Code Enforcement Official to repair or demolish the structure located on the premises within the time therein prescribed;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL THAT:

Section 1. The Code Enforcement Official shall cause the structure on the premises commonly known as 1206 Martin Circle, Hendersonville, North Carolina, and described in the aforesaid deed to be vacated, closed, and removed or demolished.

Section 2. The cost of the removal or demolition shall be a lien on the premises to be collected pursuant to Article 10 of Chapter 160A of the North Carolina General Statutes.

Section 3. A copy of this Ordinance, certified as a true copy by the City Clerk, shall be recorded in the Henderson County Registry and the Register of Deeds shall index the name of the owner in the "Grantor Index" pursuant to North Carolina General Statutes 160A-443(5).

Section 4. This Ordinance shall become effective upon its adoption.

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

E. Consideration of Resolution Authorizing the Donation of Surplus Property (Tasers) to Laurel Park Police Department Pursuant to NCGS 160A-280: Police Chief Blake reported the Police Department has upgraded their tasers to the newer more compact X26 model and has surplused four older, larger M26 Tasers. Because the Laurel Park Police Department is in need of tasers, he requested permission to donate four M-26 tasers, two M-26 taser chargers, four M-26 battery holders and 16 taser cartridges to the Laurel Park Police Department.

Resolution #13-0313

RESOLUTION AUTHORIZING THE DONATION OF SURPLUS PROPERTY TO LAUREL PARK POLICE DEPARTMENT PURSUANT TO NCGS 160A-280 ENTITLED DONATIONS OF PERSONAL PROPERTY TO OTHER GOVERNMENTAL UNITS

WHEREAS; The City of Hendersonville has in its possession four surplus M-26 Tasers (as listed below), two M-26 Taser Chargers, four M-26 battery holders and 16 Taser cartridges and,

WHEREAS; The City of Hendersonville desires to donate such surplus property to Laurel Park Police Department, and

WHEREAS; The City of Hendersonville is authorized to make such a donation pursuant to NCGS 160A-280 entitled "Donations of Personal Property to other Governmental Units" and

WHEREAS; The City of Hendersonville posted its intention to conduct such donation on March 1, 2013.

BE IT RESOLVED THAT the City Council of Hendersonville, North Carolina seeks to donate and provide to Laurel Park Police Department the properties listed below:

M-26 Taser Serial # P4-008166

M-26 Taser Serial # P7-020652

M-26 Taser Serial # P7-020656

M-26 Taser Serial # P7-020669

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

F. Consideration of Utility Line Extension Agreements:

i. Sewer Service, Highland Park Road requested by Jimmy Dale Freemand: This agreement will allow the extension of sewer service to a single lot located on Highland Park Road, just .1 miles east of the intersection North Highland Lake Road. The entire cost of this project will be paid for by the owner, Jimmy Dale Freemand. Due to its proximity to the primary corporate limits of the Village of Flat Rock, this property cannot be annexed by the City.

ii. Ballantyne Commons, Phase 2: This agreement will allow the extension of water and sewer services to phase 2 of the existing residential development located along Howard Gap Rd within the city limits of Hendersonville. This project will be paid for by the developer, Triangle Real Estate of Gastonia, Inc.

G. Consideration of Budget Amendments:

Grant Fund: To amend grant received from the North Carolina Governor's highway safety program for the bike safety grant.

Total current budget appropriation:	\$31,000
Amount of increase/decrease:	4,255
Total current amended budget appropriation:	\$35,255

H. Consideration of Ordinance Amending Chapter 52, Article V - Wastewater Use, Collection and Treatment as Required by the Division of Water Quality, a Division of the NC Department of Environment and Natural Resources: Mr. Lee Smith From explained from time to time, the Division of Water Quality (DWQ, a division of the NC Department of Environment and Natural Resources), the state agency that regulates the City's sewer system, updates and revises the model sewer use ordinances for all that are regulated by this agency. He stated it appears these changes, required by the State, would seem to create very little if any impact on sewer customers.

Ordinance #13-0314

AN ORDINANCE AMENDING CHAPTER 52 ENTITLED "UTILITIES, ARTICLE V – WASTEWATER USE COLLECTION AND TREATMENT" OF THE CITY OF HENDERSONVILLE CODE OF ORDINANCES

WHEREAS, North Carolina State Statutes 160A-312 grants municipalities the power to regulate certain utilities; and

WHEREAS, the North Carolina Department of Environment and Natural Resources, Division of Water Quality has required the City of Hendersonville to amend the text of Chapter 52 - Utilities, Article V, of the Code of Ordinances.

NOW THEREFORE, be it hereby ordained by the City Council of the City of Hendersonville, that the following sections are hereby amended:

Section 1. ARTICLE V. WASTEWATER USE, COLLECTION AND TREATMENT; DIVISION 1. GENERALLY

Sec. 52-167. 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:

Pollutant means any waste as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, metals or odor).

POTW director, also referred to in this article as "utilities director," means the person designated by the city council with the responsibility for the pretreatment program, and enforcement of this sewer use ~~article and to direct and manage the operation of the Control Authority's (and/or POTW's if different from Control Authority) NPDES, collection system and non-discharge permit or a downstream water quality standard even if not in the permit, and who is charged with certain duties and responsibilities by this article, or his duly authorized representative(s).~~ ordinance.

Significant noncompliance or SNC means a status of noncompliance ~~defined as follows:~~

Of a Significant Industrial User when one or more of the following criteria are met. Additionally any Industrial User which meets the criteria in Violations of wastewater discharge Limits section 1, Parts c d, or h.

- (1) Violations of wastewater discharge limits as follows:
- a. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of the measurements taken during a six-month period exceed (by any magnitude) the same daily maximum or the same average limit for the same pollutant parameter; (Not including Flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits as defined by 40 CFR part 403.3(1). ~~this percentage is determined by dividing the total number of violations for the parameter by the number of compliance judgment points for the parameter.~~
 - b. Technical Review Criteria (TRC) violations, defined here as those in which Thirty-three percent or more of the measurements taken for the same pollutant parameter during a six-month period are equal or exceed the product of the numeric Pretreatment Standard or Requirement including Instantaneous limits, as defined by 40 CFR Part 403.3(1) multiplied by the applicable TRC; TRC=1.4 for BOD, TSS and FOG, 1.2 for all other pollutants (except flow and pH). BOD, TSS and FOG TRC =1.4
~~For all other pollutants TRC =1.2~~
 - c. Any other violations of a pretreatment standard or requirements defined by 40 CFR Part 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass through; or endangered the health of the sewage treatment plant personnel or the public.
 - d. Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health/welfare or to the environment or has resulted in either the Control Authority or the POTW's if different from Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Division 8 enforcement section 52-376(e) of this SUO to halt or prevent such a discharge.

(Code 1971, § 32-82; Ord. No. 06-1048, § 32, 10-10-06; Ord. No. 07-0633, § 1, 6-7-07)

Cross references: Definitions generally, § 1-2.

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~]

Section 2. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 3. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Section 4. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

Section 5. The ordinance shall be in full force and effect from and after the date of adoption.

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

I. Consideration of Resolution in Support of the Hendersonville Co-op Expansion: Mayor Volk received a request for a resolution supporting the Hendersonville Community Co-op expansion.

Resolution #13-0315

A RESOLUTION SUPPORTING THE EXPANSION OF THE HENDERSONVILLE COMMUNITY CO-OP

WHEREAS, the Hendersonville Community Co-op has since 1978 provided residents of Hendersonville and surrounding communities with healthful organic foods, and helped our citizens learn more about the role of food and nutrition in our health and economy; and

WHEREAS, the Hendersonville Community Co-op has always been owned within our community, by fourteen families in 1978 to more than 2,000 families at present, and now employs more than 35 people in its grocery store, and that the Co-op is by nature an enterprise that is firmly rooted in Hendersonville and which keeps its profits within Hendersonville; and

WHEREAS, the Hendersonville Community Co-op has grown to the point where it is now purchasing its own land and building, significantly increasing the food and product offerings, resources for the community, and the number of jobs available in the community; and now it is hereby

RESOLVED, that the City of Hendersonville recognizes and celebrates the Hendersonville Community Co-op as a significant and truly local member of our business community; and further

RESOLVED, that the City of Hendersonville supports the Hendersonville Community Co-op in its expansion and new permanent location; and further

RESOLVED, that the City of Hendersonville encourages its citizens and neighbors to support the Hendersonville Community Co-op with their business and good will.

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

J. Consideration of Resolution of Intent to Close Portions of Two Streets near the Ingles at 625

Spartanburg Highway: Ms. Anderson reported the City has received an application from Ingles Markets and William and Mark Pace to close portions of Joel Wright Drive, Copper Penny Street and an unopened alley surrounding the Ingles Market at 625 Spartanburg Highway.

Resolution #13-0316

RESOLUTION OF INTENT

A resolution declaring the intention of the City of Hendersonville City Council to consider the closing of portions of Joel Wright Drive and Copper Penny Street, and an unopened alley surrounding the Ingles Market at 625 Spartanburg Highway.

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

WHEREAS, the City Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of portions of Joel Wright Drive, Copper Penny Street, and an unopened alley surrounding the Ingles Market at 625 Spartanburg Highway.

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

1. A meeting will be held at 5:45 p.m. on the second day of May, 2013, in the Council Chambers of City Hall to consider closing portions of Joel Wright Drive, Copper Penny Street, and an unopened alley surrounding the Ingles Market at 625 Spartanburg Highway.
2. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
3. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
4. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

K. Consideration of System Development Charges Policy: Mr. Lee Smith presented a policy allowing developers and owners that are connecting potentially large water-using establishments to the City's water and sewer utility, to pay these charges over a period not to exceed three years unless approved by the City Council.

SYSTEM DEVELOPMENT CHARGES FOR NEW COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL CUSTOMERS

PURPOSE: To recover from new customers a portion of the incremental cost of providing capacity in the treatment facilities, transmission mains, major outfalls and sewer trunks which have been constructed to allow for new development and expansion of the systems. These one-time charges to new customers are based strictly on the potential demand each will place on the City's utility systems. Revenues generated by these charges will be maintained in the City's water and sewer cash reserve fund or a dedicated water and sewer capital reserve fund, intended merely to fund or supplement funding for projects associated with expansion of capacity due to growth.

A. CHARGES AND FEES FOR NEW SERVICES.

The installation of a new service is broken into two cost components. The first is referred to as the "tap fee". This represents the actual cost of the installation of the service(s) including labor, equipment and materials. ¾-inch water services, 1-inch water services and all sewer services have a fixed cost (refer to the schedule of rates and fees currently in force) while all water services greater than 1-in. are based on actual costs to the City to install said service plus 10% for overhead. These larger meter installations can vary in cost from size to size and from location to location based on the characteristics of the installation (i.e., pavement cut / repair, depth of lines, distance from utility main to service location, cost for service pipe, etc.). The second cost component of a new service is referred to as the "system development charge" or SDC. This charge is calculated based the potential and/or actual demand that a new customer will be anticipated to place on the City's utility systems, on a daily basis.

B. RESIDENTIAL EQUIVALENT UNIT (REU).

1. Definition.

This is a unit of measure defined as the average amount of usage per day for a residential customer (400-gallons per day for water and 360-gallons per day for sewer). These average daily usage amounts are described in NCAC T15A:18C.0409, July 2010 for water and NCAC T15A:02T.0114, January 1, 2009 for sewer, or the most current version of each. City staff has developed a basis for establishing a more "fair" system development charge. By comparing all commercial, industrial and institutional usage to residential usage, since residential customers comprise the majority of our customer base, in sheer numbers, we can compare all other customer classes to an average residential usage.

2. Calculation Methodology.

First, determine daily water and sewer demand for new customer, which is expressed in gallons per day (gpd). These amounts can either be provided by the new customers based on actual usage experience at other similar facilities or may be calculated using the appropriate information from the NCAC referred to above. Compare these amounts to a

residential equivalent unit (REU) for water (400-gpd) and sewer (360-gpd) by dividing water and sewer REU into new demand (gpd), respectively. Multiply each of the resulting ratios (or multiplier) by the respective water and sewer system development charge (SDC) currently in force. The results of these calculations are the SDCs for water and sewer.

Example 1:

If a business has 8-employees at 25-gpd per employee (NCAC T15A: 18C.0409) of water usage for a total daily demand of 200-gpd. When you compare this usage to the REU for water, 400-gpd, one would anticipate this new customer to use approximately 50% of what an "average" residential customer would use in a day. Based on this comparison, we would then calculate the system development charge for this business by using the following

Method: 8 employees x 25-gpd per employee = 200-gpd
200-gpd / 400-gpd (REU) = 0.50
\$800 (current residential SDC for water) x 0.50 = \$400

In this example the business would only pay \$400 for their system development charge because, in theory, this type of customer will apply less demand on the City's water system.

Example 2:

A proposed new restaurant with 50 seats at 40-gpd per seat of sewer (NCAC T15A: 02T.0114). The SDC calculation for this new restaurant would be as follows:

250-seats x 40-gpd per seat = 10,000-gpd
10,000-gpd / 360-gpd (REU) = 27.78
\$1,400 (current residential SDC for sewer) x 27.78 = \$38,889

In this example, the restaurant would pay \$38,889 for their system development charge because, in theory, this facility will discharge much more sewer on a daily basis than a residential customer thus placing a much greater demand on the City's sewer system.

C. PAYMENT.

1. SDC Payment Eligibility. All new commercial, institutional and industrial may opt to pay system development charges owed to the City, upon connecting to the City's water and/or sewer systems, on a monthly basis for a period not to exceed three years.

2. Exceptions. All requested exceptions to C.1 above shall be reviewed and approved by city council.

L. **Consideration of Abatement of Nuisances:** Mrs. Frady certified that she notified five property owners were of a nuisance condition on their property but they failed to remedy the nuisance. She requested approval to remedy the nuisances and to assess the actual cost to the property owners.

Council Member Caraker moved approval of the items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.

6. Public Hearing – Consideration of the Filing of an Application for Approval of a Financing Contract Authorized by NC General Statutes 160A-20 to Finance the Construction of a New Fire Station, Replacing a Fire Engine, and Completion of Phase 3 of the Main Street Rehabilitation Project by use of an Installment Contract:

Mr. Rudisill explained the City intends to fund these three projects with a \$6 million installment purchase agreement. He reviewed a history of the project approvals and a time line for the financing of these projects.

Mr. Rudisill reported seven Request for Proposals were sent out to area banks and only one response was received and deemed valid. He asked the Local Government Commission if one bid is enough and they agreed as long as the City felt as though they were treated reasonably by the banking community. He stated more than half of the City's loans have been with BB&T, they have been competitive, and are easy to work with. He recommended accepting the bid from BB&T.

Mayor Volk opened the public hearing at 5:55 p.m. in accordance with notice published as required by the North Carolina General Statutes. No one expressed a desire to speak. The public hearing was closed.

Mayor Pro Tem Collis moved Council to accept the low bidder, BB&T Government Finance, for the Installment Purchase Financing to build a new fire station, replace a fire engine and complete Phase 3 of the Main Street Rehabilitation Project and the Resolution Approving the Financing Terms. A unanimous vote of the Council followed. Motion carried.

Resolution #13-0317

RESOLUTION APPROVING FINANCING TERMS

WHEREAS, The City Council of the City of Hendersonville ("City") has previously decided to build a new fire station, replace a fire engine and complete Phase 3 of the Main Street Rehabilitation Project ("the Project") and the Finance Officer has now presented a term sheet for the financing of these projects.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the above projects through Branch Banking and Trust Company ("BB&T") in accordance with their term sheet dated February 25, 2013. The amount financed shall not exceed \$6,000,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.49%, and the financing term shall not exceed twenty (20) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.

The Financing Documents shall include a Financing Agreement and Deed of Trust, and, a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City will not take or omit to take any action the taking or omission of which will cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3) if applicable.

5. The City intends that the adoption of this resolution will be a declaration of the City's official intent to reimburse expenditures for the Project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City's General Fund, or any other City fund related to the Project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution will take effect immediately.

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

7. Quasi-Judicial Public Hearing – Consideration of an Application for a Special Use Permit to Construct a 10,906 square foot Fire Station at 604 Sugarloaf Road and to Rezone the Property from I-1 Industrial to C-3SU Highway Business Special Use: Mayor Volk explained the procedures for the quasi-judicial hearing including Council may only consider facts in making their decision. She asked the Council Members if anyone has discussed this issue with them beyond the normal reports at Council meetings. There was none. She asked the Council members if anything of value was given in exchange for a vote. There was none. She stated witnesses providing information to the Council must be sworn in. Three persons were sworn in to provide testimony.

Ms. Anderson entered into the record File #P12-55-SUR into the record and requested official notice be taken of the City's Zoning Ordinance, the Official Zoning Map, the 2030 Comprehensive Plan and the Transportation Plan. She provided the following testimony:

The City of Hendersonville is applying for a Special Use Permit to construct a 10,906 square foot fire station at 604 Sugarloaf Road. The 11.56-acre site currently includes a 29,675 square foot warehouse, two 3,302 square feet shed buildings and a 150-foot lattice type telecommunication tower. The City is also requesting that parcel # 9579-65-7695 be rezoned from I-1 Industrial to C-3SU Highway Business Special Use.

Existing land use: The existing warehouse and shed buildings are vacant. The new telecommunication tower will accommodate five antennas for the purpose of transmitting emergency services communications and water meter communications.

Adjacent zoning & land use: Properties to the east and south include single-family residential, multifamily residential and a mini storage facility. The property to the west is in commercial use. Properties across Sugarloaf Road include a single family residence and a daycare.

Comprehensive plan consistency: This parcel is classified as Business Center on the 2030 Comprehensive Plan's Future Land Use Map. Surrounding parcels are also classified as Business Center and parcels to the north across Sugarloaf Road are classified as High Intensity Neighborhood. The goal of the Business Center classification is to "create an employment corridor along I-26 that supports the growth of Hendersonville as a business destination" and to "create a campus-like mixed-use environment that includes office, research and low impact industrial uses, as well as supportive retail amenities."

The goal of the High Intensity Neighborhood is to "encourage low-maintenance, high density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family."

Plan Review: Building Addition: The site plan shows the addition of a 10,906 square foot free standing building to the site. Along with accommodating the basic needs of a fire station, the building will include a multipurpose room with seating for 45 persons available to city staff and the general public for special events and training.

Parking: The site plan shows the addition of 39 parking spaces. The proposed parking area is in excess of the minimum necessary for the function of the fire department and will provide additional parking for special events and training.

Stormwater: The City will be improving the site's stormwater management by replacing compacted gravel areas with grass and adding stormwater management facilities that will meet current stormwater management requirements.

Rezoning: The City is requesting a rezoning from City of Hendersonville I-1 Industrial to C-3SU Highway Business Special Use. Public and semi-public buildings (the fire station falls under this category) and telecommunication towers are permitted uses in the C-3 Highway Business district.

Analysis: Section 7-4-10.1 of the Zoning Ordinance states, "no special use permit shall be approved by City Council unless each of the following findings is made."

(A) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare. A new fire station at this location will decrease emergency response times and enhance the public health, safety and general welfare.

(B) There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11. The property is currently served by water. For sewer, a new grinder pump station will be installed near the existing steel building in order to serve the entire property with public sanitary sewer. A force main will be extended from the grinder pump station to the existing public sewer along Sugarloaf Road.

(C) The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations. No variances are requested.

(D) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located. A neighborhood compatibility meeting concerning the application was held on December 13, 2012. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance. One member of the general public attended the meeting. [She provided a copy of the neighborhood compatibility meeting minutes.]

(E) The use or development conforms to the general plans for the physical development of the City as embodied in this Ordinance and in the Comprehensive Plan and the Comprehensive Transportation Plan. The 2030 Comprehensive Plan's Business Center classification goal is to "create an employment corridor along I-26 that supports the growth of Hendersonville as a business destination" and to "create a campus-

like mixed-use environment that includes office, research and low-impact industrial uses, as well as supportive retail amenities.” Providing a second fire station in this location will improve emergency response times and will support both existing and future development.

Sugarloaf Road is shown in the FBRMPO Comprehensive Transportation Plan as needing improvement and is classified as a low priority. Recommendations include the addition of turn lanes, widen shoulders and improve geometrics and intersection operations as appropriate. Existing right-of-way width is 60 feet and the existing roadway width is approximately 24 feet. The building is proposed to be setback approximately 34 feet from the existing 60-foot right-of-way. The distance from the edge of the 60-foot right-of-way to the existing pavement is an additional 18 feet.

Planning Board Recommendation: The Planning Board voted unanimously to recommend City Council approve the application for a Special Use Permit subject to the limitations and conditions stipulated on the published List of Uses and Conditions. The Planning Board also voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of Parcel # 9579-65-7695 from I-1 Industrial to City of Hendersonville C-3SU Highway Business Special Use, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest and meets the needs to serve that area for fire protection.

Ms. Anderson stated a representative from Mattern & Craig is in attendance to answer questions.

At 6:07 p.m., Mayor Volk asked if anyone wished to speak in favor of the application. There was none. No one expressed a desire to speak in opposition. Mayor Volk closed the public hearing at 6:07 p.m.

Council Member Caraker moved City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, changing the zoning designation of Parcel #9579-65-7695 from I-1 Industrial to City of Hendersonville C-3SU Highway Business Special Use, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest. He further moved the City Council to approve the application for a Special Use Permit based on the site plan submitted by the City and subject to the limitations and conditions published “List of Uses and Conditions”. A unanimous vote of the Council followed. Motion carried.

Ordinance #13-0318

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE
IN RE: Hendersonville Fire Station #2 (File # P12-55-SUR)

Be it ordained by the City Council of the City of Hendersonville:

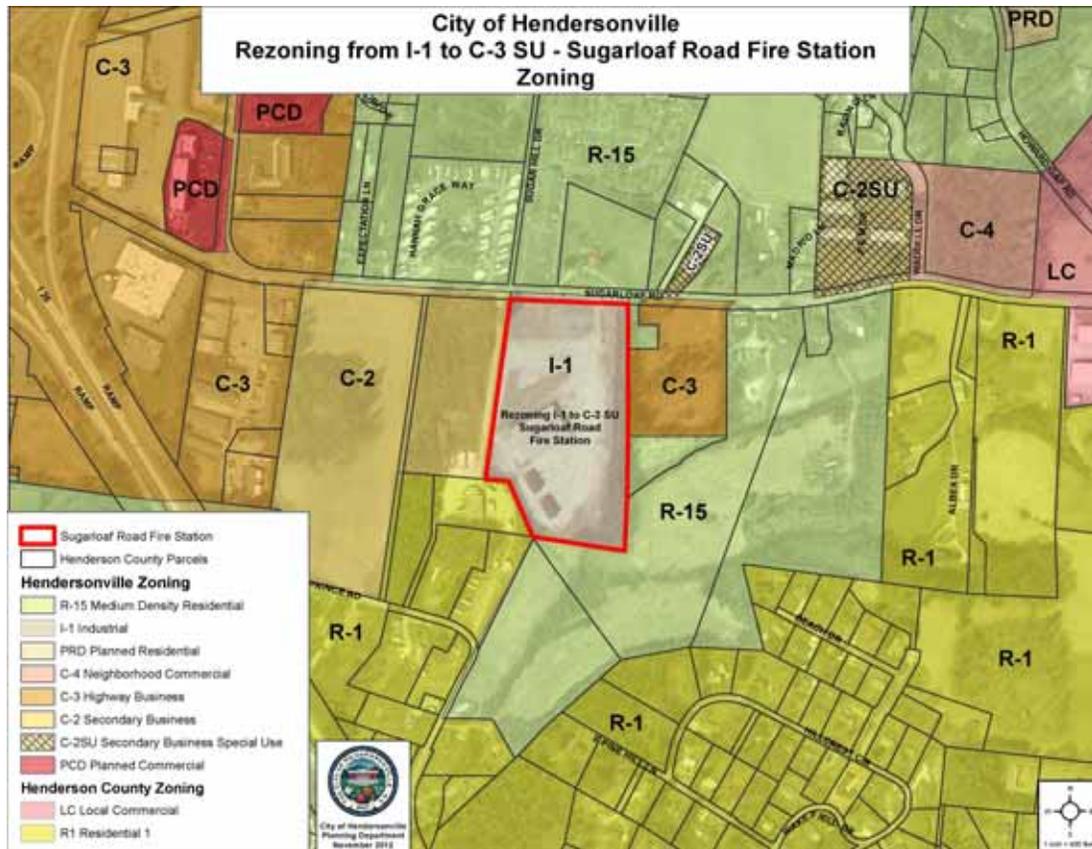
1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of Parcel # 9579-65-7695 from I-1 Industrial to City of Hendersonville C-3SU Highway Business Special Use.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this seventh day of March 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner



8. Consideration of Possible Funding for the Mills River Partnership: The City Council received a presentation from Mr. Bert Lemkes, on the goals and needs of the Mills River Partnership. Several Board members were also in attendance. He stated the Mills River Partnership is a unique group of stakeholders with a common goal: addressing and maintaining the water quality of the watershed.

Mr. Lemke reviewed the area within the watershed. He stated there is a broad range of groups, individuals and organizations with a vested interest in the water, the land and ultimately the watershed including: agriculture, soil, water, fish, conservation and environmental benefits. He reviewed a history of the watershed stating between 1998-2000, part of the watershed was classified as “impaired”. Action was taken through an informal group, grants were available to help address some of the issues and the improvements were obvious. Efforts ceased due to a lack of grant funding. From 2007-2010 a fish kill happened in the South Fork. A sampling of water during periods of heavy rain showed recurring sediments and accompanying pollution issues. The South fork has now been classified as “impaired”. By the end of 2010 a new effort was made to resurrect the Mills River Partnership within a manner that will lead to a sustainable organization working toward voluntary watershed improvements and maintenance.

Mr. Lemkes stated the goal is to improve and maintain long-term drinking water quality. To achieve this, they have developed several (voluntary) programs that may be started, developed and possibly expanded but it needs constant coordinating support. He reviewed the 319 Grant and a small grant from the NC Clean Water Management Trust Fund. He reviewed the budget stating the largest part goes toward best management practices (BMP), keeping overhead and staffing limited. He stated what they need to succeed is a self-perpetuating, basic revenue stream so they don’t have to depend on grants from year to year. He requested the City to become this part of the sustained financial support. He stated they plan to make the same request to the City of Asheville.

Mr. Lemkes stated they will work closely with Soil and Water, use independent consultants if feasible and will initially work with part-time staff. He stated the agricultural and green industries want to work together for the common goal.

Discussion from the Council included: the funding, the City of Asheville's share of funding, asking users to pay for the funding, funding watershed protection as a continued project, a Council member sitting on the Board and assigning a staff person to oversee the practices. Mr. Kieran Roe stated they will do everything they can to continue to seek grants.

The Council agreed by consensus that the protection of water quality is important and they are willing to make a financial commitment to the Mills River Partnership with reassessment of the request on a regular basis. In order to fund the request, the Council discussed the options of dividing the cost (\$66,000) by the number of customers or meters (flat fee) or by the volume of water used. Staff will perform calculations and report back to the Council on the amount of water sold, etc.

Mayor Volk thanked the Mills River Partnership for the presentation.

Council Member Caraker moved the City Council to commit to the Mills River Partnership funding request for the next two years, beginning with the next fiscal year, with how it is funded (through fees, etc.) to be determined. A unanimous vote of the Council followed. Motion carried.

9. Update on Main Street Advisory Committee on Recommendation for Main Street/Seventh Avenue Gateway: Mr. Lew Holloway reported the Council directed the Main Street Advisory Committee to review all options and seek public input for an art element for the Main Street/Seventh Avenue gateway. He reported the Main Street Advisory Committee recommends the intersection design proceed without a unique art feature on the southwest corner as approved at the February meeting so it does not delay the construction. **The Council agreed by general consensus.**

There was discussion on the restoration of the McClintock clock. Mr. Holloway stated additional research on the clock will continue. He also reported the Main Street Advisory Committee has discussed the possibility of a revolving art program in the district as a whole.

10. Consideration of Refined Drawings and Proposals for the 700 Block of the Main Street Project: Mr. Brent Detwiler, Engineering Director, presented refinements to the 700 Block of Main Street at Council's direction from the February 15, 2013 meeting. He stated the figure presented at that meeting was low because of a discrepancy in scaling on concept drawings. He stated the refined design cost is \$125,000. He reviewed a concept which includes: new sidewalk, new curb and gutter, curb and gutter around the rolled asphalt curb at Highway 25 and Main Street, a crosswalk and landscaping: trees, bushes and keeps existing trees and vegetation.

The Council discussed: keeping the Sycamore trees, a breakdown of the cost estimate, the existing curb, the proposed crosswalk in the middle of the block, possible removal of the sidewalk on the east side, replacing the curb and gutter and improvement of the landscaping of the triangular section and repaving. The Council also discussed the large Japanese Maple trees on the west side which are possibly sellable or may be used in another location. Mayor Volk suggested checking with the Garden Club who is doing work in the triangular section now to see if they are willing to do more. She stated they have put in a lot of time into that garden.

The Council discussed repaving a section of the area instead of patching it and the condition of the sidewalk in front of the Bank of America. **The Council agreed by consensus to see another concept drawing with costs laid out as line items for: repaving, (separating removal of existing pavement), replacing the curb and gutter, curb and gutter around the triangular section, scaling back the number of trees, removing the crosswalk mid-block, with minimal changes to west side of the block, possibly removing the sidewalk on the**

east side, and possibly removing the asphalt under the triangular section. The Council agreed by consensus to ask the Garden Club, possibly for a joint project with the Tree Board, for work on the triangular section.

11. Consideration of Proposal to Change the Crosswalks from Allen Street to First Avenue:

Mr. Detwiler provided details, at Council's request, for changing the crosswalks from thermoplast to brick pavers from Allen Street to First Avenue on Main Street: He stated the cost is approximately \$8,900 for the two crosswalks. **Council Member Smith moved to install brick pavers at the crosswalks at Allen Street to First Avenue. A unanimous vote of the Council followed. Motion carried.**

12. Consideration of Funding for Enhancement of Wi-Fi on Main Street: Mr. Allen Edge, IT Director, explained the Council expressed an interest at their retreat in possibly expediting this project before the beginning of the summer season. He gave a history of the existing Wi-Fi which was installed seven years ago for coverage between Allen Street and Sixth Avenue and is meant for outdoor use. He stated those antennas now must be removed from the top of downtown buildings.

Mr. Edge proposed replacing the existing three access points with at least eight newer technology units designed for use at the street level. He expects this has the potential to expand the coverage area including partially down the side streets. He explained the new units will be attached to the light poles and will be the same color. He presented a budget amendment for \$35,000 for the increased coverage, \$24,000 is for the purchase of hardware for a minimum of eight access points, \$7,000 for installation and configuration, \$4,000 for unforeseen issues or possible extra access point. He reported it could be installed by May 1. He stated for the total amount, he will increase the coverage area as much as possible. He stated the existing equipment might have some resale value.

Council Member Stephens voiced support of moving forward with the enhanced coverage and have it operating by May 1. Coverage will extend northward to Seventh Avenue and southward to Allen Street and possibly farther.

After discussion, **Council Member Stephens moved approval of the budget amendment to expedite the completion of the Wi-Fi upgrade project on Main Street. A unanimous vote of the Council followed. Motion carried.**

Information Technology Department: To appropriate funds from Fund Balance for upgrading the Downtown Wi-Fi system.

Amount of increase/decrease: \$35,000

13. Consideration of Possible changes to the Recycling Program and Consideration of Funding for Roll-Out Recycling Carts:

Mr. Wooten informed the Council of a grant opportunity for the conversion of recycling bins to carts. He stated the grant is available through the Division of Environmental Outreach and Assistance at DENR.

Mr. Wooten reviewed the costs associated with switching from bins to carts. He reported this conversion could not happen without adding equipment and personnel. He reviewed two options to accomplish this (assuming weekly collection): Option 1: Use an existing low-entry garbage truck (that will be replaced next fiscal year) and add two new personnel. Additional expenses for year one will be approximately \$105,000 for a new truck. Option 2: Purchase a new truck now and hire one new staff person. He estimated additional annual expense for year one of \$250,500 which will be reduced by \$195,000 in the next budget year.

Mr. Wooten asked for Council direction as to how to proceed with the recycling program. To pay for the increased costs, he stated some service could be reduced or the rate increased.

Discussion from the Council included the size of the bins (18 gallons) versus the size of the carts (65-gallon) and the possibility of bi-weekly collection. He stated some communities have reduced the amount garbage and tipping fees by increasing the amount of recycling.

Grant review: Mr. Wooten reported the grant would reimburse the City up to \$75,000 or \$25 per cart and American Recycling will also reimburse a percentage of the cost of carts. He estimated 4,800 carts will be needed and the City's would pay \$106,500 plus possible additional costs for distributing the carts.

Mr. Ron Moore, American Recycling, addressed the Council stating he has been in WNC for about one year in partnership with Henderson County. He stated they want to provide competitive service and get the recycling rates up. He stated their main goal is to grow and lower their overall costs. He stated their grant will piggy-back with the State's grant program.

Mr. Moore reviewed the advantages of the recycling carts including: increasing the recycling rate, increasing the landfill diversion rate, and decreased disposal costs. He reviewed the successes of the cities of Asheville and Charlotte. Based on reducing disposal by 7 percent, he estimated Hendersonville's savings of \$13,266/year.

Mr. Moore reviewed the costs of the carts: \$242,000 for 96-gallon carts. A State grant is available for \$75,000 and the grant from American Recycling is for \$25,000. He stated they will require a three-year agreement with the City requiring recycling materials be taken to either the Henderson County transfer station or delivered to their facility. He stated they will provide assistance in writing the grant.

After discussion of the customers having a choice of the two sizes of the carts, **without objection, the Council agreed to move forward with the recycling carts, providing customers the choice of a 65- or 96-gallon cart, with weekly collection (on the same day as garbage collection).**

There was discussion of funding the necessary equipment, the possibility of a grant for a CNG truck, carts and staffing. **The Council agreed to Option 1: using a back-up truck for one year and plan for a new truck in year 1 of the CIP. The Council asked to see the numbers as part of the budget process to determine how to fund it and requested options for customers wanting the larger cart.**

Mayor Pro Tem Collis moved to allow the Director of Public Works to apply for the curbside recycling rollout cart grant through the NC Department of Environment and Natural Resources, Division of Environmental Assistance and Outreach, in order to switch from bins to carts for the curbside recycling program. A unanimous vote of the Council followed. Motion carried.

There was discussion of recycling efforts downtown.

14. Consideration of Hiring of a Contractor to Perform a Pavement Condition Survey: Mr. Wooten explained the last Pavement Condition Survey was completed by B&F Consulting in 2003. This survey measures and inspects every road maintained by the City and assigns a Pavement Condition Rating (PCR) or score between 0 – 100 (new or newly-rebuilt). The streets are placed in ascending order with the lowest scores at the top of the list. Streets are then separated into groups to create an annual street resurfacing plan. He stated staff has been updating the survey but it is time to bring in another consultant in order to make sure funds are used effectively. A Request for Proposals for a new Pavement Condition Survey was distributed and nine proposals were received and rated. He reported U.S. Infrastructure (USI) from Greensboro, NC was selected as the firm with the most experience and expertise to complete the survey. USI has completed more than 77 surveys for municipalities in North Carolina.

Mr. Wooten stated funding is available in Powell Bill funds to complete the survey.

Council Member Smith moved to allow the Director of Public Works to negotiate a contract with the U.S. Infrastructure in order to complete a pavement management study for the City of Hendersonville. A unanimous vote of the Council followed. Motion carried.

15. Reports from Staff:

Dana Water Contamination: Mr. Galloway briefed the Council on the situation with the contaminated wells in the Dana community. He stated water lines exist on Blue House Road and an extension is planned to Academy Road but it needs to be expanded to Sugarloaf Road. He stated approximately 30 wells have been found contaminated and further testing is being done as the flume could spread. He stated the chemical may be used in the corn fields or for termites in the past. He estimated the cost of extending the lines as \$600,000.

Mr. Galloway explained in a meeting with the State, they made staff aware of different grant opportunities that may be available to assist with the cost of expanding the lines to provide water service to these residents. He stated the maximum amount available through the Bernard Allen Fund is \$200,000. There is also a possibility of a Rural Center Grant with a limit of \$300,000 but Henderson County must apply for the grant. He stated staff met with Municipal Engineering Services that specializes in contamination problems and they recommended applying for a \$400,000 CDBG. He stated the CDBG will require a 5 percent match but the Bernard Allen fund could be counted as the match.

Mr. Galloway reported public hearings or input will be required for the CDBG one of which will be held at the April 4 Council meeting and possibly another hearing at the May meeting. He reported a tap will be done at a nearby church for drinking water for residents on a temporary basis. Discussion followed on other sources of funding, moving the project up in the CIP and if the City would be reimbursed by grants if the project is done as soon as possible. He stated our Representatives have pledged their support of the grant.

The Council agreed to proceed with required public input sessions and move the project up in the CIP for Year 1.

a. Meeting Announcements/Reminders: City Clerk Tammie Drake reminded the Council of the following meetings/training opportunities:

Reminder of Special Council Meetings:

- Friday, April 5, 2013, noon, City Hall, Closed Session for Manager Search Process
- Friday, May 17, 2013, 8:00 a.m., City Hall, Budget Review

Training Opportunities:

- 2013 Town Hall Day – March 27, 2013, Raleigh, NC

16. Consideration of Appointments to Boards/Commissions and Announcement of Vacancies:

a. Appointments for Consideration: There was none.

b. Announcement of Vacancies: City Clerk Tammie Drake announced a vacancy on the Environmental Sustainability Board. There are no applications on file from citizens willing to serve. **No action was taken.**

17. Comments from Mayor and City Council Members:

a. Memorial Program: Mayor Pro Tem Collis requested the Council consider forming a committee to look at a memorial program within the City. He stated he spoke to Mr. Tom Orr about a committee to explore ways to honor those who have made a significant contribution to the City. Mayor Volk stated there have been past discussions about establishing a memorial program. She stated choosing who to recognize will be a difficult task.

Mr. Tom Orr addressed the Council and stated a suitable way needs to be established to honor individuals and preserve our history. He volunteered to assist in exploring every opportunity for this memorial, how it could be funded, carefully determining the categories, suggesting committee members, etc. Mayor Volk will share a draft policy with Mr. Orr that includes different levels and recognitions. Council Member Caraker suggested letting Mr. Orr choose the committee members. **The consensus of the Council was to allow Mr. Orr to proceed with forming the committee.**

b. Resolution on Gaming: Council Member Jerry Smith presented a resolution that encourages and requests the District Attorney to enforce NCGS 14-306.4 which was upheld by the North Carolina Supreme Court so the Police can begin writing citations for illegal gaming. He stated it appears as though the modifications made to the gaming machines are not materially different than before. He stated he would like the City to enforce those laws.

Council Member Smith moved Council to approve the resolution encouraging the district attorney to prosecute violations of North Carolina General Statutes Section § 14-306.4. A unanimous vote of the Council followed. Motion carried.

Resolution #13-0317

A RESOLUTION ENCOURAGING THE DISTRICT ATTORNEY TO PROSECUTE VIOLATIONS OF NORTH CAROLINA GENERAL STATUTE SECTION § 14-306.4

WHEREAS the General Assembly has in its wisdom enacted a bill codified as North Carolina General Statute § 14-306.4, and

WHEREAS the said act renders illegal the operation of certain machines, which operation constitutes what is effect gambling, and

WHEREAS the Supreme Court has reviewed the said statute and found it to be valid and enforceable as written, and

WHEREAS the Supreme Court further has noted, clearly and specifically, that it is the nature of the purveyors of the said machines to make immaterial changes to the machines in an attempt to evade coverage by, and resulting enforcement of, statutes enacted to restrict gambling, and

WHEREAS since entry of the recent Supreme Court cases the purveyors and operators of the said machines have offered for use the same machines with purported changes, and

WHEREAS the City of Hendersonville, acting through its various agents, has examined the machines and believes the changes to their operation to be less than material, as described by the Supreme Court, and

WHEREAS the District Attorney has taken under advisement the changes to the machines in an effort to determine whether the said statute should be enforced to prosecute as criminal their operation within this District, and

WHEREAS the City of Hendersonville is, like the General Assembly, concerned about the negative effects of gambling in the City, District and State,

NOW, THEREFORE, in consideration of the foregoing and in furtherance of the general welfare of the citizens of this City, District and State, be it

RESOLVED that the City Council does encourage, urge and request the District Attorney to make a speedy determination to enforce the terms of N.C.G.S. § 14-306.4 as written, and actually to effect such enforcement, against operation of those machines, with or without the recent immaterial changes, currently or henceforth in operation in this District.

This resolution is effective upon its adoption.

Adopted this the seventh day of March, 2013.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

c. Pay Study: Council Member Stephens stated a salary study was recently done for Henderson County and Laurel Park employees and asked if Council should also consider it in the budget process. Mayor Volk stated a study was done relatively recently. She explained every year one-third of the jobs were done and the City Manager felt it could be put off for a while because nothing much has changed and it is an expense that the City shouldn't have to incur. She stated once the economy begins to pick up and if turnover or other conditions exist, it may warrant a study. Mr. Galloway stated he was told by Becky Veazey of the Maps Group that the numbers in the study done in 2008 in Waynesville are still valid. **No action was taken.**

18. New Business: There was none.

19. Closed Session: There was none.

20. Adjournment: Being no further business, the meeting adjourned at 8:50 p.m. upon unanimous consent of the Council.

Barbara G. Volk, Mayor, City of Hendersonville

Tammie K. Drake, MMC, City Clerk