

September 3, 2015
Regular Meeting of the City Council
Council Chambers – City Hall
5:45 p.m.

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

Staff Present: City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Planning Director Sue Anderson, Police Captain Bruce Simonds, Engineering Director Brent Detwiler, Development Assistance Director Susan Frady, Public Information Officer Tara Ledbetter, Assistant to the Manager Brian Pahle, Utilities Director Lee Smith, Finance Director Lisa White, Interim Fire Chief Joseph Vindigni, 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.*

Mayor Volk commented a ceremony/dedication was just held for an American Flag depository located near the Sixth Avenue entrance of City Hall. Council Member Miller expressed appreciation to the City for providing the location and Blue Ridge Auto Center for painting the donated postal box. He stated it is a respectful vessel for the deposit of American Flags that are to be retired. He also expressed appreciation to Household Lock and Key for providing the locking mechanism. He encouraged citizens to deposit their Flags that needs to be retired so they will be properly retired. American Legion Post #77 will collect the flags and, in conjunction with Boy Scout Troops, ensure they are properly retired.

Patrick Shea voiced opposition to the extension of the telecommunication tower citing concerns about the safety of radio ways and effects on the body.

Graham Hamblin, 820 Yarborough Street, proposed closing a street used as a short cut from White Street to Kanuga Road. He stated there is not a posted speed limit on the street so the speed limit is 35 mph. He stated there have been approximately 25 accidents in the last year at this location. He asked the Council to consider cutting the asphalt and installing a landscape berm. He stated the cost will be minimal. He stated emergency access will remain. He stated there are vehicles are parked at the red roofed building that makes zero visibility. He distributed information to the Council and asked for their consideration of closing the street. Mayor Volk commented City staff will investigate it.

4. Consideration of Agenda: The following amendments were made to the agenda:

Addition to Consent Agenda:

05j. Consideration of Revisions to the Treatment Plant Employment and Compensation Policy

Council Member Caraker moved approval of the agenda as amended with the addition to the consent agenda. A unanimous vote of the Council followed. Motion carried.

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

A. Consideration of Minutes: August 6, 2015 Regular Meeting

B. Consideration of an Ordinance Repealing Chapter 14, Article III Entitled Closing-Out Sales of the Hendersonville Code of Ordinances Pertaining to the Licensing of Going Out of Business: City Clerk Tammie Drake reported that G.S. 66-77, the statute requiring licenses for closing-out sales, has been repealed effective July 1, 2015. The repeal, found in SL 2015-103 (HB 836), Section 2, and was signed into law on June 22, 2015. As a result, businesses are no longer be required to obtain a license to conduct closing-out sales. She presented an ordinance to repeal that chapter of the City's Code of Ordinances.

Ordinance #15-0947

AN ORDINANCE REPEALING CHAPTER 14, ARTICLE III ENTITLED CLOSING-OUT SALES OF THE HENDERSONVILLE CODE OF ORDINANCES PERTAINING TO THE LICENSING OF GOING OUT OF BUSINESS

Pursuant to SESSION LAW 2015-103 HOUSE BILL 836; be it hereby ordained by the City Council of the City of Hendersonville:

1. Chapter 14 Article III entitled Closing-out Sales, of the Hendersonville Code of Ordinances respecting the licensing of closing-out sales is hereby repealed.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September, 2015.

/s/Barbara G. Volk, Mayor
 Attest: /s/Tammie K. Drake, MMC, City Clerk
 /s/Samuel H. Fritschner, City Attorney

C. Consideration of a Capital Project Ordinance and Budget Amendment to Provide Funding Authority for the Biked Grant: Mr. Brian Pahle presented the following capital project ordinance and budget amendment to provide funding authority for the Biked grant approved by the Council at their August meeting.

Ordinance #15-0948

GRANT PROJECT ORDINANCE FOR BIKEPED PLANNING PROJECT

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

Section 1: The City has received a grant award from the North Carolina Department of Transportation for a Federal grant: CFDA # 20.205, with a twenty-four month period. The grant project consists of the planning and production of a Comprehensive Bicycle Plan.

Section 2: The officers of the City of Hendersonville are hereby directed to proceed with the grant project within the terms of the grant agreement entered into with the NCDOT; with expenditures in the total amount of \$50,000, and \$35,000 total grant award, with the detail budget contained herein.

Section 3: The City Council appropriated \$5,000 in the fiscal year 2015, in the General Fund, Development Assistance department's operating budget for a partial grant match. The Blue Ridge Bicycle Club has committed to raising the remaining \$10,000 local grant match. The finance director is hereby authorized to reduce the Developmental Assistance Department's Professional Services line item budget by \$5,000 and then transfer \$5,000 from the General Fund to the newly established grant fund to provide for the City match. No in-kind services are to be included in the grant agreement.

The following revenues and match budget and expenditures are hereby established and authorized by City Council to be available to complete this grant project:

Account	Account Name	Total Budget
3304370 424900	Grant Revenue	35,000
3304370 998330	Transfer in From General Fund	5,000
3304370 498207	Contribution from Bike Club	10,000
	Total Project Funding Sources:	\$ 50,000

Section 4: The following expenditure amounts are appropriated for the grant project:

Account Number	Account Name	Total Budget
3304370 519000	Professional Services	50,000
104370 519000	Professional Services	(5,000)
109900 999330	Transfer to Biked Grant Fund	5,000
	Total Grant Project Appropriation:	\$ 50,000

Section 5: The Finance Director is hereby directed to establish a multi-year grant project fund and maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the grant agreements.

Section 6: Reimbursement requests shall be made in an orderly and timely manner by the Finance Department.

Section 7: The Finance Director is directed to report, at least annually, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenditures during each annual budget submission made to the Governing Board for the project duration.

Section 9: Copies of this grant project ordinance shall be furnished to the City Clerk, Finance Director, City Planning Director, Budget Analyst and City Manager for direction in carrying out this grant project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this third day of September 2015.

/s/Barbara G. Volk, Mayor
 Attest: /s/Tammie K. Drake, MMC, City Clerk
 /s/Samuel H. Fritschner, City Attorney

Budget Amendment: Fund 330
 To establish a budget for the bikaped grant.

Totals in Balance \$100,000

D. Consideration of an Ordinance Amending Section 38-1 of the Code of Ordinances Respecting Hours of Operation of Recreational Facilities and Adding a Section Respecting Parking at Such Facilities: City Attorney Fritschner reported staff has identified a potential problem with automobiles parked for hours at a time

at recreational facilities (including specifically the dog park) by patrons and employees of nearby businesses. In consultation with the city manager, the police chief and the public works director, he drafted an ordinance that permits the city manager to change the hours of operation for recreational facilities and have signs posted prohibiting parking by persons not actively using the facility. There is also a deletion of a reference to Edwards Park that is no longer owned by the City.

Ordinance #15-0949

AN ORDINANCE AMENDING SECTION 38-1 OF THE CODE OF ORDINANCES RESPECTING HOURS OF OPERATION OF RECREATIONAL FACILITIES AND ADDING A SECTION RESPECTING PARKING AT SUCH FACILITIES

WHEREAS, the City of Hendersonville in the interest of the health, safety and welfare of its residents and visitors establishes from time certain recreational facilities including public parks and dog parks, and

WHEREAS, the City desires to protect users of the said facilities by establishing and maintaining rules respecting operational hours and use of, and parking at, such facilities,

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Section 38-1 of the Hendersonville Code of Ordinances is hereby amended to add an additional section as follows:

Sec. 38-1. - Closing hours for public parks and other recreational facilities generally; exceptions.

(a) Except as otherwise provided herein, All public parks and other recreational facilities within the corporate limits of the city shall be closed to the general public between the hours of 11:00 p.m. and 6:00 a.m., daily, and it shall be unlawful for any person to remain in or to enter such ~~public parks facilities~~ between such hours; provided, however, that the provisions of this section shall not apply to the following:

(1) Employees or others employed by the city to maintain, protect or conserve such public parks facilities in the regular performance of their duties;

(2) Any ~~public park recreational facility~~ or portion thereof where prior written permission has been obtained from the director of public works for an activity to extend beyond 11:00 p.m.; or

~~(3) Any person or group of persons duly involved in or participating in any of the activities of, related to, or a part of the general program of the Boy Scouts of America or the Girl Scouts of America, or any subsidiary or adjunct thereof, or the invitees and licensees of such organizations and subsidiaries thereof, or any other authorized group; provided, however, that such activity shall be, and this exception shall be limited to, the confines of that geographical area maintained by the city as a public park or place of recreation and known as Edwards Park.~~

(b) The city manager shall have the power to designate from time to time other reasonable hours of operation and parking at all City recreational facilities including parks and dog parks.

SECTION 2. Chapter 50 of the Hendersonville Code of Ordinances is hereby amended to add an additional section as follows:

Sec. 50-258. Parking at City Recreational Facilities: Exceptions.

(a) It shall be unlawful for any person to permit any motor vehicle of any nature or kind whatsoever owned or operated by such person to stop, stand or park in the parking area of any City-owned or -operated recreational facility, including specifically parks and dog parks.

(b) This section shall be enforced with regard to any recreational facility only where the city manager has caused to be conspicuously placed one or more signs designating that parking at such facility is limited to active users as specified in paragraph (a) hereof.

SECTION 3. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this sixth day of September 2015.

/s/Barbara G. Volk, Mayor

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

/s/Samuel H. Fritschner, City Attorney

E. Consideration of Special Events Permit for:

i. Apple Bear 5k & Color Run: Ms. Susan Frady, Development Assistance Director, reported the Special Events Committee recommends approval of the application from Bruce Drysdale Elementary PTO, sponsor of Apple Bear 5K & Color Run, to be held October 24, 2015 from 8:00 a.m. - noon. This is a first time event.

The 5K Fun Run will benefit the children at Bruce Drysdale Elementary and the proceeds will go towards building a new playground. The run will begin and end at Patton Park. Either off-duty police officers or PTO volunteers will be present on each side of North Main Street where the course crosses the street for safety.

ii. Health/ Community Relations Event: Ms. Frady reported the Special Events Committee recommends approval of an application from Henderson County NAACP, St. Paul AME Zion Church and the Eastern Star sponsors of the Health/Community Relations event to be held on September 19, 2015 from 9 a.m.-1 p.m. at Sullivan Park. This is a first time event. At this event, information will be distributed to the community about health and resources for everyday living. Some of the participants will be Mainstay, the Healing Place, the Hendersonville Police Department and Blue Ridge Community Health.

iii. Oktoberfest: Ms. Frady reported the Special Events Committee recommends approval of an application from Southern Appalachian Brewery for Oktoberfest to be held September 27, 2015 from 1-6 p.m. at the Appalachian Brewery. This is the fifth year this event has been held. Locust Street will be closed from Bearcat Boulevard to the end of the Appalachian Brewery portion of the building. Locust Street will be roped off for the alcohol area. A \$10 gate fee will be charged and the proceeds will benefit Pardee Hospital. There will be two off-duty officers present during the entire event. Approval of this application will include approval of the sale of alcohol in a secured area on Locust Street.

iv. Vintage Hendo Market: Ms. Frady reported the Special Events Committee recommends approval of an application from Southern Appalachian Brewery, sponsor of Vintage Hendo Market to be held on October 10, 2015 from 11 a.m. - 7 p.m. Locust Street will be closed from Bearcat Boulevard to the end of the Appalachian Brewery portion of the building. There will be vendors and beer sales in the street. The area will be roped off for beer sales. Approval of this application will include approval of the sale of alcohol in a secured area on Locust Street.

F. Consideration of Budget Amendments (2): Mr. Pahle presented the following budget amendments and explanations:

Budget Amendment: Fund 68

The cost of the garbage truck was lower than budgeted. This budget amendment will lessen the amount borrowed and the total allocated to the purchase of the truck. Totals in Balance \$67,700

Budget Amendment: Funds 10, 60

This amendment is to move three new positions created in the W/S Fund to different divisions within the Fund. They were budgeted in Facilities Maintenance but should be budgeted in the Line Maintenance Divisions. In addition, the Utilities Engineer is requested to be budgeted in Admin instead of Shop Operations. Additionally, the GIS Intern should be budgeted in Shop Operations instead of Admin. There is also a new retiree. Retiree insurance will be added from contingency. Lastly, the paralegal's salary was inadvertently left a couple thousand dollars short. This minor fix will be drawn from contingencies. Totals in Balance: \$83,659

G. Consideration of an Agreement with Lamar Advertising for the Removal of Signs: Mr. Connet explained staff has been working for the last three months with Lamar Advertising to develop an agreement that will allow them to maintain their billboard on City property near the I-26 interchange on Four Seasons Boulevard in exchange for removing billboards on Martin Luther King Blvd. He reported both the City and Lamar agree on the following terms:

- Outdoor signs on pump station property will remain on a 5+5-year term with a +5-year option to Lamar,
- Lamar will remove five sign faces at other locations on Martin Luther King boulevard (two double-sided, side by side poster signs on Cooley property and a square billboard on the Flowers property),
- Lamar will work with NCDOT to remove and replace landscaping in front of pump station signs on DOT right of way
- Rental rate will be \$5,000 per year for all 5+5 years.
- The rental rate is increasing from \$2,000 per year to \$5,000 per year. Mr. Connet stated staff is recommending that these funds be allocated to the Seventh Avenue Municipal Service District for streetscape improvements.

H. Consideration of Accepting the Bid for Capital Equipment Financing from Macon Bank for the rate and terms provided and Approval of the Resolution Approving Financing Terms: Ms. Lisa White, Finance Director, explained the fiscal year 2016 budget provides for Capital Equipment Financing for the purchase of a garbage truck for the Environmental Services Fund in the amount of \$222,000 and \$83,000 in the Downtown Fund for the purchase of seven parking kiosks. The City received a discount for purchasing seven kiosks at once.

Ms. White reported the Finance Department issued a Request for Proposals (RFP) on July 10, 2015 for a total of \$336,800. She noted the loan amount will be amended to reflect the discount on the kiosks; the revised loan amount will be \$305,000.

Ms. White reported the RFP was posted on the City's website on July 10 and was emailed to 19 local banks/ financial institutions. The City received the following bids:

1 Macon Bank	7 years	1.89%	No prepayment fees; no origination fees
2 BB&T	7 years	1.97%	No prepayment fees; no origination fees
3 US Bancorp	7 years	2.067%	
4 First Citizens	7 years	2.13%	

5 Santander	7 years	2.295%
6 SunTrust	7 years	2.64%
7 Bank of North Carolina	7 years	2.68%

Ms. White recommended Council accept the bid from Macon Bank for the rate and terms provided. She provided the following resolution that provides approval for the City Manager and Finance Director to execute the loan documents with Macon Bank.

Resolution #15-0950

Resolution Approving Financing Terms

WHEREAS: The City of Hendersonville ("City") has previously approved the fiscal year budget for fiscal year 2016 which included proceeds of bank financing for capital equipment, the Finance Director has now presented a proposal for the financing of such Capital Equipment.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Capital Equipment through Macon Bank, in accordance with the proposal dated August 17, 2015. The amount financed shall not exceed \$305,000 the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.89%, and the financing term shall not exceed seven (7) 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. The City Manager and Finance Director 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 Capital Equipment as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Capital Equipment Fund Agreement as Macon Bank may request.
3. The Finance Director 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 Director 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 Director shall approve, with the Finance Director'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 shall not take or omit to take any action the taking or omission of which shall 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).
5. 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 shall take effect immediately.

Approved this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

I. Consideration of an Ordinance Amending Portions of Chapter 50 of the Code of Ordinances Respecting Civil Penalties for Unlawful Parking: Mr. Connet explained Chapter 50 of the City Code of Ordinances currently includes fines and penalties for parking offenses. These fines and penalties are inconsistent with the current fee schedule adopted by the Council. He presented an ordinance to remove the fines and penalties from the City Code and change the language to read that the fines and penalties will be established by the City Council in the Fee Schedule. This will allow the fines and penalties to be adjusted without a Code amendment.

Ordinance #15-0951

AN ORDINANCE AMENDING PORTIONS OF CHAPTER 50 OF THE CODE OF ORDINANCES RESPECTING CIVIL PENALTIES FOR UNLAWFUL PARKING

WHEREAS, the City of Hendersonville City Council establishes from time to time a Schedule of Fees to prescribe fees, civil penalties and the like, and

WHEREAS the City Council deems it desirable to establish from time to time civil penalties for certain parking violations within the Schedule of Fees.

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Subsection (b) of Section 50-249 of the Hendersonville Code of is hereby amended as follows.

Sec. 50-249. - Parking in alleys; penalty for violation of section.

(a) No person shall park a vehicle within an alley and leave the vehicle unattended. No person shall park a vehicle within an alley, while under his direct supervision and control for purposes of loading and unloading, in such a manner or under such conditions as to leave available less than ten feet of the width of the alley for the free movement of vehicular traffic. No person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.

(b) Any person violating any provisions of this section shall be ~~ined \$10.00~~ for subject to a civil penalty for each such offense in accordance with the fees established from time to time by the City Council in the City's Schedule of Fees.

SECTION 2. Subsection (d) of Section 50-257 of the Hendersonville Code of is hereby amended as follows.

Sec. 50-257. - Use of parking lots.

(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:

Parking lot means any area within the city on which more than ten automobiles may be parked and shall include public parking lots and those parking lots which are for the principal purpose of providing parking during business hours for shopping centers, stores, restaurants, drive-ins, theaters and other business or commercial establishments.

(b) *Congregation of persons.* It shall be unlawful for more than ten people to congregate on any one parking lot in the city between the hours of 12:00 midnight and 6:00 a.m., if the closest part of the parking lot is within 300 feet of a private residence, excepting any person parking a vehicle on a lot or being on such lot for the purpose of patronizing a business establishment which is actually open for business between the hours of 12:00 midnight and 6:00 a.m.

(c) *Enumeration of offenses.* It shall be unlawful for any person on a parking lot in the city between the hours of 12:00 midnight and 6:00 a.m., to do one or more of the following:

- (1) Talk in a loud or boisterous manner;
- (2) Drink beer or any kind of alcoholic beverage;
- (3) Throw any type of bottle, can, container, trash or paper on the parking lot;
- (4) Use profanity or cursing in such a manner that those standing in the immediate vicinity of the person may hear the profanity or cursing; or
- (5) Make such noise or disturbance that persons living in homes or other dwelling accommodations within 300 feet of such parking lot are disturbed in their place of living and deprived of their peace and quiet.

(d) *Unlawful stopping, standing or parking; penalty.* It shall be unlawful for any person to permit or allow any motor vehicle of any nature or kind whatsoever to stop, stand or park in any specified area of any parking areas or driveways of any hospital, shopping center, apartment house, condominium complex or commercial office complex, or any other privately owned public vehicular area, in violation of specified hours of permitted stopping, standing or parking of motor vehicles indicated by appropriate signs, posters or other displays on such premises, and provided a written request for the application of this subsection to the privately owned public vehicular area has been filed with the chief of police. The owner of any vehicle parked, stopped or standing in violation of this subsection shall be deemed to have appointed any appropriate law enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. A violation of this subsection shall ~~constitute a misdemeanor and a fine of \$10.00 shall be imposed therefor.~~ subject the violator to a civil penalty in accordance with the fees established from time to time by the City Council in the City's schedule of fees.

SECTION 3. Section 50-341 of the Hendersonville Code of is hereby amended as follows:

Sec. 50-341. - Schedule of civil penalties for stopping, standing, parking and parking meter violations.

~~(a) The following civil penalties for violations of divisions 1, 2 and 3 of this article are established:~~

~~(1) Overtime parking at metered and non metered space\$ 10.00~~

~~A second or subsequent violation within a 24-hour period shall be subject to a civil penalty of \$20.00.~~

~~(2) Unauthorized parking in area indicated as reserved for handicapped persons shall be in accordance with North Carolina General Statutes which establishes minimum and maximum fines.~~

~~(3) All other violations10.00—100.00~~

~~(b) Parking violations included in this section shall be delinquent after the 15th day from the issuance of the citation. Thereafter, the following civil penalties shall apply to the parking violations enumerated in subsection (a) of this section, in addition to the stated penalty:~~

~~Delinquent Period ——— Additional Penalty~~

~~(1) Fifteen or more days delinquent on a violation of \$10.00 or more subject to a penalty of\$ 15.00~~

~~(2) Thirty or more days delinquent on a violation subject to an additional penalty of25.00~~

~~(a) Civil penalties for violations of divisions 1, 2 and 3 of this Article shall be as established from time to time by the City Council in the City's Schedule of Fees.~~

~~(e b) This violation and any delinquent penalty are not subject to the penalty provisions of G.S. 14-4, but instead constitute civil penalties to be recovered by the city in a civil action in the nature of debt when the violator does not pay the penalty within the prescribed period of time set forth, pursuant to G.S. 160A-175(c).~~

SECTION 4. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney

J. Consideration of Revisions to the Treatment Plant Employment and Compensation Policy: Mr. Brian Pahle presented the following revisions to Section 7, Shift Differential Compensation, of the "Treatment Plant Employment and Compensation Policy" to provide clarification on the manner by which employees are eligible for shift differential pay, specifically, if they are compensated for overtime, vacation, and sick time. These revisions are in accordance with Fair Labor Standards Act (FLSA) guidelines.

7. Shift Differential Compensation

- a. Regular permanent employees assigned to second and third shift will be eligible for additional compensation, detailed as follows:
 - i. Shift II (second shift) = additional \$0.50 per hour
 - ii. Shift III (third shift) = additional \$0.75 per hour
- b. This compensation is only available for employees assigned to second and third shift. Eligible employees who are not assigned second or third shift and work into those shifts will not be compensated at the shift differential rate.
- c. Shift differential compensation is based on actual hours worked and will not be applicable for vacation, sick, and holiday compensation. However, eligible employees required to work on regularly scheduled holidays will be paid at the shift differential rate for actual hours worked. (see Personnel Policy Art. VII Sec. 4)
- d. Under FLSA guidelines shift differential pay will be included in overtime pay for actual hours worked. (see Personnel Policy Art. III Sec. 12)
- e. The Department Head will be responsible for notifying the Human Resources Office of any changes in assigned shifts.

[Additions are underlined.]

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

6. Public Hearing - Application from the City of Hendersonville for a Zoning Ordinance Text Amendment of Article VII Development Review Section 7-4-3.1 Contents pertaining to Property Owner Signatures:

Planning Director Sue Anderson explained there are two Planned Development Special Use permit projects within Hendersonville where the Special Use Permit has expired: Blythe Commons and Towne Place. The Special Use permits for these two projects expired prior to all the proposed units being completed. The expiration date of both of these projects includes the time allotted by the NC State Legislature that stopped the clock for a period during the recession for approved projects. Blythe Commons is zoned Planned Residential Development and has 15 or the original 20 residential units completed. Towne Place is zoned Planned Commercial Development and has 36 of the original 40 units completed.

Ms. Anderson explained in order to complete these projects a new Special Use Permit is required. The new Special Use Permit application requires that either the property owner(s) sign the application or if the applicant is other than the record owner of the property, then the consent of the record owner to the application must be noted on the application.

Ms. Anderson stated in accordance with Section 7-4-3.1, she has required all property owners within both developments sign the application or provide consent of the record owners. Since these are planned developments and viewed as one development, property owner(s) signature or consent is required of the owners of the individual residential units, which also includes the land under each building, along with the owner of the common areas. In both cases, the common area includes the area where the proposed unbuilt units are to be located.

Ms. Anderson stated generally, in these types of situations, once the project is complete, the common areas are turned over to a homeowner's association.

Ms. Anderson reported in the case of Blythe Commons, all property owners, including individual residential unit owners have signed the application and that a new Special Use Permit was approved by City Council on November 6, 2014. The remaining five residential units are now under construction.

Ms. Anderson reported in the case of Towne Place, the application only contains the signature of the manager of Park Place Developers. According to Henderson County records, it appears Park Place Developers LLC owns 6.68 acres of what may be considered common area. In addition, it appears that Town Place Development LLC owns .33 acres of what may be considered common area.

Ms. Anderson provided an image of the final site plan for Town Place showing the units completed and those yet to be built. She stated she informed the applicant that the application does not include all the required signatures and therefore is incomplete. The applicant filed for an Administrative Review and relief from her decision. These types of reviews go before the Board of Adjustment.

Ms. Anderson reported in conversations with the City Manager and City Attorney, it was determined to first have this issue go before the Planning Board and City Council. The applicant is willing to postpone the Administrative Review until the Planning Board and City Council have the opportunity to discuss the specific language in the Zoning Ordinance and any possible revisions to clarify the requirements.

Ms. Anderson reviewed the references in Section 7-4 and 7-4-3.1 of the Zoning Ordinance regarding the application requirements.

Ms. Anderson provided two possible considerations for the City Council:

1. Clarify the existing language under 7-4-3.1 to include signatures from what are considered all property owners within a proposed special use development, or

2. Clarify the existing language under 7-4-3.1 to include signatures from what are considered all property owners within a proposed special use development and provide additional language for incomplete and or expired Special Use permits that require property owner signatures only from the property owners of undeveloped portions of a previously approved development.

Ms. Anderson reviewed the proposed Zoning Ordinance text amendments.

Ms. Anderson reported the Text and Policy Committee recommended the proposed text amendment include both clarifying the existing language under 7-4-3.1 and providing additional language for incomplete and or expired Special Use permits. The Planning Board recommended Council adopt an ordinance amending the Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents relating to required property owner signatures. The motion passed with a vote of seven for and one against.

Ms. Anderson reviewed the factors contained in Section 11-4 of the Zoning Ordinance, which must be considered by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance.

At 6:04 p.m., Mayor Volk opened in public hearing in accordance with NCGS by notice published in the Hendersonville Lightning. The following spoke in favor of the proposed amendment:

Lawrence D. Winson, attorney representing the applicant for the special use permit, stated the applicant is trying to complete the project. The special use permit has expired. The original developer, Dan Young, is deceased. They are in the process of selling remaining parcels. He stated a major objection from property owners is that when they purchased their property, they relied on the ordinance in place. The site plan is clear; it called for 40 units, and four are incomplete. If the Zoning Ordinance approves the amendment that clarifies the existing ordinance, it will allow the completion of the project with the consent of Park Place Developers, the current owner of the property. They will undergo the special use permitting process.

Mr. Winson relayed a concern about the existing ordinance that allows one person out of 36 to object which would result in the remaining four units not being completed. He interpreted the existing ordinance as not requiring all unit holders to sign the application but only the current owner of the incomplete units. He stated the amendments will clarify the ordinance. There was contention among property owners and they were not successful in getting all property owners' signatures on the application. The construction will be short-lived and will add to the City's tax base, to value of the property, etc.

Linda Cooper, 133 Towne Place Drive. As owners they were aware units would be constructed as set out in the original site plan provided at the time of purchase, including the two remaining undeveloped lots. She voiced support of amendment #2 because a single homeowner could deny development of an incomplete area that was included in the site plan when the original special use permit was granted. The 100 percent rule applies regardless of percentage of completion and applies citywide. This would render the completion of the development impossible and makes the remaining property worthless to its owner. That is not the intent of the special use permit process. Property owners still have the right to discuss compatibility under the process.

The following spoke in opposition to the proposed amendment:

Sarah Massagee 918 Fortune Place, Hendersonville, attorney representing a number of Town Place property owners who oppose the proposed text amendment. This decision is not only about Town Place but a change will impact the entire City. It appears different rules or lesser burden should apply for a developer who has allowed an existing special use permit to lapse and later wishes to submit a new application. The proposed text change invites manipulation and misuse by developers. It creates an authorized framework by which a development may bypass the intentions of the ordinance. She stated the amendment would benefit one person and will not allow those who bought into community any say in how undeveloped portions are allowed to evolve.

Ms. Massagee explained proponents of the amendment say one property owner can dissent and prevent the development that everyone else is in favor of but the proposed amendments do the same. This ordinance has served the City since 1997 through considerable residential development. The amendment will constitute a drastic legislative change. She asked the Council to consider what is best for the entire City and asked them to vote against the proposed text amendment.

Council Member Smith asked Ms. Massagee if her position is that if someone applies for a special use, everyone else in the development has lost their voice. Ms. Massagee stated yes but they may have an opportunity to raise opposition later. She responded the current structure allows property owners a voice by requiring their signature.

No one else expressed a desire to speak. The public hearing was closed at 6:19 p.m.

In discussion, Council Member Miller commented it is not usually possible to get 100% of people to agree. He questioned how an application may be denied if the new builder adheres to the exact same plans that were approved previously. He stated if there are design changes, it will have to go through the process where there are many opportunities for input.

Ms. Anderson explained applicants will have to submit a site plan, elevations and all property owners within 400 feet of the property will receive notification of the neighborhood compatibility meeting. A public hearing is held at the City Council level and they will also receive notification of the hearing. She stated the application is reviewed by the Planning Board and a recommendation is made.

Council Member Miller commented the amendment does not decrease the public's opportunity for input on the special use permit. Council Member Caraker commented the ordinance has not truly been tested because real estate sales and development was thriving but this situation points out a flaw in the ordinance that needs to be corrected.

Mayor Pro Tem Stephens agreed the requirement of 100 percent of property owner signatures is almost impossible to do. He commented on the possible financial disadvantage because of maintenance to paved streets, homeowner association dues, etc. He stated he does not see an argument against a developer who wants to proceed with the original plans.

Council Member Smith commented amendments to the special use permits have to come back to the City Council for a hearing and approval by the Council. The Council discussed the special use permit process. Discussion followed on whether the owners would have any standing. Mayor Volk commented the special use permit is always a formal quasi-judicial hearing with evidence presented.

Discussion followed on the motions and modifications to the proposed amendment to the ordinance. **Council Member Smith moved City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents, to include signatures from what are considered all property owners within a proposed special use development and provide additional language for incomplete and or expired special use permits that require property owner signatures only from the property owners of undeveloped portions of a previously approved development with the following modification: For previously approved special use permit developments that are incomplete, or expired, or both, the application shall include the name, address and signature of at least one owner of each parcel previously approved for such development but need not include the signatures of owners of any other parcel. A unanimous vote of the Council followed. Motion carried.**

Ordinance 15-0952

**AN ORDINANCE AMENDING ARTICLE VII DEVELOPMENT REVIEW
SECTION 7-4-3.1 CONTENTS OF THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE
PERTAINING TO REQUIRED PROPERTY OWNER SIGNATURES**

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes, and minimum housing standards and other related measures, and

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to amend, supplement, change, modify or repeal zoning regulation ordinances, and

WHEREAS, the City of Hendersonville desires to amend those regulations with regards to required property owner signatures.

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

1. Article VII Development Review Section 7-4-3.1 Contents is hereby amended to read as follows:

7-4-3.1 Contents. Applications shall include the name, ~~and~~ address and signature of the applicant. ~~Applications shall also include the name, and address and signature of the owner of each zoning lot involved and the relationship of the applicant and property owner(s) in connection with the application. at least one owner of each parcel making up any part of the property that is subject to the application. If the applicant is other than the record owner of the property, the consent of the record owner to the application shall be noted on the application or in some other fashion acceptable to the Planning Director.~~ The application shall may also designate an agent for the project to whom notice may be given by the City. The Planning Director shall prescribe any other material that may reasonably be required to determine compliance with this article, with sufficient copies for necessary referrals and records.

For previously approved special use permit developments that are incomplete or expired or both, the application shall include the name, address and signature of at least one owner of each parcel previously approved for such developments, but need not include the signatures of the owners of any other parcel.

2. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
4. 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.
5. 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.
6. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney

7. Quasi-Judicial Public Hearing – Consideration of an Application from Skyway Towers, LLC for a Special Use Permit Amendment to Replace the Existing 100-foot Lattice-Type Telecommunication Tower with a 135-foot Monopole Telecommunication Tower at 427

Armstrong Avenue: Mayor Barbara Volk explained the procedures for quasi-judicial public hearing including persons wishing to speak or provide testimony must be sworn in. Council may only consider facts and expert witness testimony, not opinions. Quasi-judicial hearings differ from regular public hearings in that interested persons have the right to cross-examination.

Mayor Volk requested the City Council members to announce any contacts concerning the application that are not included in the file. There was none. Mayor Volk asked the Council members to announce any conflicts of interest. There was none.

Mayor Volk asked if there is any person present who is aware of anything of value that has been given or promised in exchange for a vote to be taken on the application. There was none.

Four persons were sworn in to provide testimony.

Ms. Sue Anderson, Planning Director, provided the following testimony:

On September 6, 2012, City Council approved a Special Use Permit for a 100-foot lattice type telecommunication tower with a 10-foot lightning rod for a total height of 110 feet. The site is located on City-owned property at 427 Armstrong Avenue and is listed as PIN 9568-25-6736. The purpose of this tower is for the Hendersonville Water and Sewer Department Advanced Metering Infrastructure (AIM) system. This site also includes the location of one of two City-owned reservoirs. The other reservoir is located on a separate adjacent parcel. The approved tower is intended to accommodate five antennas for the purpose of transmitting emergency services communications and water meter communications.

On March 6, 2015, the Planning Department received a Special Use Permit amendment application from Skyway Towers, LLC. The application proposed to replace the existing 100-foot lattice-type telecommunication tower with a 150-foot monopole telecommunication tower. City Council held a public hearing on this special use permit amendment at its regular meeting on June 4, 2015. The City Council voted unanimously to approve the variance from the requirement for a concealed tower. The City Council made a motion to approve the application for an amended Special Use Permit based on the site plan submitted by the applicant. The vote was one in favor and four opposed, therefore the motion failed and the amended special use permit was not approved.

On June 29, 2015, the City received a new Special Use Permit amendment application from Skyway Towers, LLC. The application proposes to replace the existing 100-foot lattice type telecommunication tower with a 135-foot monopole telecommunication tower. The applicant is also requesting a variance from the requirement for a concealed tower.

Existing Land Use & Zoning: The reservoir property is surrounded by single-family homes. Adjacent properties are classified as R-15 Medium Density Residential.

Comprehensive Plan Consistency: The reservoir property is classified as Natural Resource/Agricultural on the 2030 Comprehensive Plan's Future Land Use Map. Adjacent properties are classified as Medium Intensity Neighborhood. The goal of the Natural Resource/Agricultural category is to "create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources." She reviewed drawings of the property.

Plan Review: Zoning Ordinance Section 16-4-24 has specific requirements for telecommunication towers and antennas. The requirements include submitting an application, a site development plan, an engineered tower design, proof of regulatory compliance, general standards including complying with the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) and standards for siting. The submitted plan meets the requirements of Section 16-4-24. Additional requirements for towers permitted under special use permits are listed below.

Additions requirements include; setbacks, screening, feasibility, concealment, noise and height. The applicant is requesting a variance from the concealment requirement under the special use permit process. Concealed towers are required unless existing topography, vegetation or other site conditions make the tower not readily visible from adjoining properties. The existing vegetation on site and the physical location make the existing tower not readily visible from adjoining properties with the exception of the adjoining reservoir property which does not include a residential use. Council Member Smith asked if there will be additional plantings. Ms. Anderson responded there will be some plantings around the base in the fenced-in area. Regarding concealment, Council may determine the tower is shielded enough by topography and vegetation or a grant a variance. Council Member Smith asked if a variance means they do not have to have additional plantings. Ms.

Anderson responded the variance is so the applicant does not have to conceal the tower. A concealed tower is designed so it doesn't look like a regular tower, e.g., flagpole, tree, etc. She presented a drawing showing the location of the tower on a hill with consideration vegetation including deciduous trees. There is potential viewing of the tower on one side and thus is the reason for the variance request.

She reviewed 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. The communication tower at the closest point is located 129 feet from the property line and is designed so that it would yield/buckle at the 55-foot elevation resulting in a maximum 80 foot fall radius should a catastrophic failure occur. Staff has not identified any other issues concerning 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 necessary electric service is already available on the property.

(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. The applicant has requested a variance from the requirement for a concealed tower. Zoning Ordinance Section 16-4-24.4 (d) Concealment requires telecommunication towers going through the Special Use Permit process to be concealed unless it is determined that existing topography, vegetation or other site conditions sufficiently screen the tower from adjoining properties.

(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 July 14, 2015. 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. Staff included both reservoir parcels when creating the mailing list. Ninety-six notification letters were sent. Two members of the general public were present for the meeting. She provided a neighborhood compatibility meeting report.

(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 Natural Resource/Agricultural category lists "utilities other than stormwater management" as a secondary recommended land use. The Plan recommends secondary uses be allowed on a case-by-case basis through special use procedures.

The Comprehensive Transportation Plan does not indicate any improvements to Armstrong Avenue and the proposed tower location is 129 feet from the right-of-way.

Planning Board: The Planning Board took this matter up at its regular meeting of August 10, 2015. The Planning Board voted unanimously to recommend City Council City approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment. The Planning Board also voted unanimously to recommend that City Council approve the application for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions. She provided the Planning Board report.

She reviewed a condition that was added under 2(1): A lease agreement shall be executed between the City of Hendersonville and the appropriate party in a timeframe established by City Council.

Mr. Tom Johnson, Attorney with Nexsen Pruet, 4141 Park Lake Avenue, Raleigh, representing the applicant Skyway Towers, addressed the Council and provided the following testimony.

They heard the concerns last time. The application lowers the tower height by 15 feet. Ninety-six notification letters went out for the neighborhood compatibility meeting and two people showed up. Mrs. Snyder came to the neighborhood compatibility meeting and indicated she will not be able to see the tower in the summer and might see some when the leaves are off the trees. He provided pictures taken from her property that illustrates that. Mr. Dermid came to the meeting. He also has pictures from Mr. Dermid's property. The trees are so thick from his property he cannot see the tower. Mr. Dermid also made the point about what he perceives as a prior commitment by a prior Council not to put any other tower at that site than what was approved. He reviewed the minutes of the Planning Board and the City Council extensively and found no commitment of that sort that was made at the time the original tower was presented. In fact, former City Manager Bo Ferguson indicated during some of the proceedings that it would be his desire to co-locate, or have as many antennas on the same tower as possible, throughout the City, including City-owned towers. That was stated policy at that time and is in the record as part of the process. He did not have that information previously when he was before Council.

They are adding landscaping at the base of the tower whether the variance is approved or not. There is no landscaping around the base of the existing tower.

He consented to the conditions including the condition that was added by Ms. Anderson about the leasing of the property. He asked that the information in the record be admitted in support of the application. Ms. Anderson stated what they have submitted meets the requirements of the ordinance.

He distributed pictures with an aerial view, a photo showing how the existing tower and the proposed tower will look from the Snyder's property, a photo from Armstrong Avenue and admitted those into the evidence as support of the application. He reviewed the photo with the existing tower and proposed tower. The existing tower is behind trees now; the proposed tower will be behind trees as well even with the additional 35 feet added to the top. This is the most visible position from Armstrong Avenue. Toward the tower, there is still a significant number of trees although not as thick as at the other locations. On the second photo at the Snyder's property, you can see the height of the existing tower, the height of the proposed tower, and how it will be covered by trees at this location. The aerial photo shows Mr. Dermid's house and there is no visibility to the tower.

In this process and in meeting the requirements of the ordinance: appearance, compatibility, etc., they are proposing a utility use where a utility use already exists. The biggest and most visible structures at this location are not the towers but the tanks that are huge. The tanks serve a very useful purpose without a doubt. He found in the minutes that the original tower location was chosen by the utility department. They could have put it on the high ground where the tanks are but they wisely and respectfully of the neighbors put it on the low side. They are going back on the low side because the trees will cover it and it will not be seen. When you come down to the end of Armstrong Avenue where there are not many trees, you see the tanks, not the tower.

Not only will they move the City's equipment to the tower that is at 100 feet, they will have the ability to add T-Mobile who is the initial carrier now and add additional operators in the future. In any public disaster, everyone including the public and emergency services are relying on wireless services for communication. The traditional landlines are rarely used as much but they tend to go down. This is a public utility with a public function and provides public access to emergency services.

In this county, 73 percent of calls made to 9-1-1 are from wireless devices and that is why it is crucial that good service be provided.

He appreciates the comments of Mrs. Snyder, Mr. Dermid and Mr. Shea's comments during public comment time regarding health effects. The General Statutes and Federal Statutes are very clear that it is not something this Council considers. It is governed by the Federal government and these facilities operate well within the licenses issued by the FCC which says they operate safely. Therefore, its appearance and compatibility is a typical zoning decision the Council has but health affects is not one of those. There is a FCC license on computers and wireless devices and shows compliance. Handheld devices are governed and licensed by the FCC and limited in its power by the FCC. The devices could be stronger. The previous car phones were stronger because it stayed in the car. The ones closer to the body is not as strong. He wanted to explain that and did not want to ignore the comments.

He stated Mr. Graham Herring is present. He prepared the simulation comparing the heights. He also prepared an impact study that was submitted indicating there is no adverse impacts on property values for the tower. He is available by cross-examination. An amended report was submitted as part of the package. He appreciates Council's reconsideration of this request. It is a positive for the City, citizens, and for T-Mobile to provide better service to their customers and a positive for his client in being able to serve a community need by putting the public's utility antenna on this tower but to allow the flexibility for co-locations in the future.

In comments, Mayor Pro Tem Stephens stated he saw this as a real benefit last time and voted for it. He stated he saw it would reduce the number of towers required. He asked if lowering the tower to 15 feet reduces the number of co-locators. Mr. Johnson replied yes, in reality it will but they heard what the community was saying and therefore reduced the height. There will still be the ability for co-location. Mayor Pro Tem Stephens asked how many co-locators are possible. Mr. Johnson replied tree heights range from 70 to 90 feet and a ten-foot separation is required for antennas. He stated it is possible to have five users with the terrain and tree consideration. If antennas are installed below the tree line, it can block the signal and it won't benefit anyone. He stated that is the reason the tower is proposed at 100 feet to get above that. Mayor Pro Tem Stephens commented they probably lost a couple of carriers by reducing the height. Mr. Johnson agreed because the antennas are placed in 10-foot increments but it is a trade-off and it could be reconsidered in the future.

Council Member Miller asked if it is likely a co-locator would be placed under 100 feet. Mr. Johnson stated it is not likely but if so, they will ensure that will not interfere with the City's equipment. It is possible there may be the capacity to have one at 90 feet but if so, they will have a discussion with the utility department. He stated the Utility Department or someone else may want to add something at 90 feet. Council Member Smith asked if they go beneath the City's antennas, will the Council have a say in that. Mr. Johnson stated the City has a say in anything they put on there, that it will not interfere with the operation of the City's equipment which is the basic

premise of the FCC rules. They will not interfere and the Council will have a say. They will work with the contractor to relocate the City's equipment. They were present at one of the meetings and discussed it.

Mayor Volk asked what color the monopole is. Mr. Johnson stated it is dull, galvanized steel like the existing tower. They find that it is better because it blends in with the surroundings better. If a tower is painted, the paint may not look good in all circumstances and it is a maintenance issue. Mayor Volk commented rusty brown seems to blend in and were not as noticeable. Mr. Johnson stated they have painted them a variety of colors before but find that may have been an older tower that rusted; some are not galvanized and may rust over time. He stated they have found from a maintenance point of view, and a visibility point of view that the dull galvanized steel, like the existing tower, tends to work better in variety of circumstances.

Mayor Pro Tem Stephens commented when he drove there, he had to drive on the City's property to see the tower and could not see it from the street. He stated he has not been there in the winter. Mr. Johnson stated once it is up, no one will notice it after a while. He stated there are many circumstances where he says there is a tower at a certain location but no one notices it. It becomes reality and part of the landscape. He stated in this location, the trees will cover it so much that it won't be noticed especially next to the big tanks.

Council Member Miller commented he is not a fan of putting any antennas lower than the City's equipment. Mr. Johnson stated it is not likely to be helpful to an antenna to be lower on the tower and if the City desires not to have any located beneath theirs, that is fine or that they would have to come for consent. Mayor Pro Tem Stephens stated it should be left up to the City's consultant to oversee the City's interest. Mr. Johnson stated they will relocate the City's equipment back exactly at 100 feet. They will work with the consultant. If the City wants to stipulate that if there is any location below the 100 feet, that they have to get approval from utilities department and the City's consultant, that is fine. Council Member Smith asked if any of the other apparatuses interferes with the City signal, if they will fix it. Mr. Johnson stated yes, they will fix it. He stated there are filters, etc. that are used routinely.

Council Member Smith asked Mr. Connet if he is satisfied that if there is some interference with the City's signal that we are protected to ensure the City's signal is preserved first. Mr. Connet stated that will be part of the lease agreement with Skyway Towers to ensure the City equipment is protected contractually.

Mayor Volk asked if anyone else wanted to speak in favor of the permit. There was none. She asked if anyone wanted to speak in opposition to the permit. There was none. She asked if anyone wanted to cross-examine anyone who has commented. There was none. She also for further questions or comments. There was none. The public hearing was closed at 7:15 p.m.

***Variance:* Council Member Caraker moved City Council to approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment, finding that a literal enforcement of the dimensional and improvements standards of the Zoning Ordinance will result in practical difficulty or unnecessary hardship because it will be hideous. A unanimous vote of the Council followed. Motion carried.**

***Amended Special Use Permit:* Council Member Caraker moved City Council to approve the application for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions for the following reasons:**

- 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.
- 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 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.
- 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.
- 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.

In addition, the following additional condition: the permit is granted upon the condition that a mutually-agreeable lease agreement is negotiated and executed by both parties. There shall be no building permit issued nor any work performed on the property until a lease agreement is executed by both parties. A unanimous vote of the Council followed. Motion carried.

8. Public Hearing – Consideration of an Application from Mr. Fred Higgins for a Zoning Ordinance Text Amendment of Article XIII Sign Regulations, Maintenance and Enforcement, Section 13-1-3(a) Sign Location Pertaining to Painted Wall Advertising Signs: Ms. Anderson reported the City has received of a Zoning Ordinance Text Amendment application from Mr. Fred Higgins requesting the removal of a requirement in Section 13-1-3 Sign Location pertaining to painted wall advertising signs.

Ms. Anderson reviewed Section 13-1-3 a) "No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any walkway it may overhang. Painted wall advertising signs are not permitted." She stated the applicant is requesting this provision be removed from the ordinance. Removing this provision of the Zoning Ordinance will apply to properties within the city limits and the extraterritorial jurisdiction.

Based on staff research, Ms. Anderson stated it appears this provision was added to the Zoning Ordinance in July 1970.

Historic Preservation Commission (HPC): Regarding painting a sign directly on brick or stone in the Main Street Local Historic District, Ms. Anderson reported the HPC Design Guidelines specifically states under Section 3.5.1 that "it is not appropriate to paint unpainted brick and stone, or to paint copper and bronze." Therefore, should the City Council adopt an ordinance removing the prohibition of painted wall advertising signs, an applicant wishing to paint a wall advertising sign on unpainted brick or stone in the Main Street Local Historic District, they will need to go before the HPC for approval. If the wall is already painted, then adding a painted wall advertising sign will only require staff approval.

Ms. Anderson provided examples of painted wall advertising signs. She noted this applies only to advertising signs for business and does not apply to murals, artwork, etc.

Planning Board Recommendation: The Text and Policy Committee reviewed this request. Two of the four members were present and recommended approval of the proposed text amendment. The Planning Board voted unanimously to recommend that City Council adopt the ordinance removing the provision prohibiting painted wall advertising signs.

Zoning Ordinance Guidelines: Ms. Anderson reviewed the factors contained in Zoning Ordinance Section 11-4 requiring City Council's consideration prior to adopting or disapproving an amendment to the text of the Zoning Ordinance.

Ms. Anderson reported Mr. Higgins was in attendance for questions.

Mayor Volk opened the public hearing at 7:23 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following spoke in favor of the amendment:

Ken Fitch, 1046 Patton Street, asked if the content of the sign is subject to review of the Historic Preservation Commission as it relates to the compatibility of the historic district. City Attorney Fritschner answered that the review of the content is prohibited by the First Amendment of the U.S. Constitution. There was discussion of the content of signs. Mayor Pro Tem Stephens asked if the HPC may consider the design of the sign. City Attorney Fritschner stated they may review size, colors, etc. but not the content.

Ms. Anderson reviewed the design guidelines for signs in the downtown special tax district contained in Zoning Ordinance Section 13-1-9. Mr. Fitch commented painted walls signs and advertising have been distinctive historic elements in the City and region. Some have become landmarks and attractions. He welcomed this traditional means of advertising for a particular business that is continuing to operate in a historic building.

Mark Ray, 26 Victoria Park Drive, thanked Mr. Higgins and the community for allowing him to pursue the mural opportunities with Coca Cola. He stated this is a community initiative between Coca Cola and the merchant of the building. The photo archives of the Baker Barber collection show this particular building with a mural that was recreated. The letter on the building is consistent with the merchant that was in the facility at that time. He proposed "Dad's Collectible" be painted in the marked area, within the required square footage, in a proper font in keeping with the historic theme in place. He encouraged Council's approval stating it may be a precedent for the future Seventh Avenue rehab.

The following spoke in opposition to the text amendment:

Cheryl Jones, 1230 Woodmont Drive, chairperson of the Historic Preservation Commission, pointed out the Coca Cola signs are murals and their intent is not advertising. This amendment will impact the City as a whole. She stated if signs are allowed on unpainted buildings without further guidelines and restrictions, the content may not be governed and asked at what point does advertising become a mural. They are not opposed to exploring opportunities to allow advertising in creative ways but are concerned with erasing the historic fabric of Hendersonville. HPC wants to preserve what is remaining: a mix of residences and commercial endeavors. They oppose the painting of advertising signs and the removal of an ordinance that has been effective for 45 years, with a blanket exception so anyone can paint an advertisement sign on a historic building. This gives them great concern because they do not have the ability to regulate it. She requested the Council deny the request and take time to look at the district and put together a plan, have input from those impacted, and work together for a resolution. There is a transition period on Main Street with growing businesses, technology, and they have concerns about the screens on Main Street as advertisement. They also have concerns about speakers, loud voices, the blocking of foot traffic and impeding pedestrians. These things should be considered as the district grows. She stated they feel preserving the past is important while respecting the future and they know businesses need to

advertise. She asked the Council to table the discussion until guidelines may be implemented. They would like to help craft a master plan through a well thought-out process.

Council Member Miller expressed support for the larger picture of the Main Street district. He asked about shadow signage and asked for a resolution for the restoration of a mural including the name of the current business. Ms. Jones explained the fault of the amendment is that it is too broad.

Council Member Miller asked why the name of the business, Dad's Collectibles, was denied. Mrs. Frady explained it was denied because the ordinance says "no painted wall advertising signs". She suggested amending the ordinance to read "unless the advertising is associated with a ghost mural ..." and allow staff approval. Discussion followed on the sign changing if the business leaves the location.

Mr. Fred Higgins expressed a concern that if this business vacates the building and another business goes in, they should have the right to change the sign with the name of their business. Council Member Caraker expressed support of the advertising sign in connection with a ghost mural and it should change with the business.

Mayor Volk closed the public hearing at 7:51 p.m.

Council Member Smith asked for language to accomplish the purpose and asked whether Council should table the issue. Mr. Connet advised dealing with this issue and with the other issues separately.

There was discussion of the language and terminology of the amendment. After discussion, **Council Member Miller moved City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article XIII Sign Regulation, Maintenance and Enforcement, amending Section 13-1-3 (a) Sign Location, to read as follows: No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any sidewalk it may overhang. Painted wall advertising signs are not permitted except in association with a previously-existing painted advertising sign. A unanimous vote of the Council followed. Motion carried.**

Ordinance #15-0953

**AN ORDINANCE AMENDING ARTICLE XIII SIGN REGULATION, MAINTENANCE AND ENFORCEMENT
SECTION 13-1-3 (A) SIGN LOCATION OF THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE
PERTAINING TO PAINTED WALL ADVERTISING SIGNS**

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes, and minimum housing standards and other related measures, and

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to amend, supplement, change, modify or repeal zoning regulation ordinances, and

WHEREAS, the City of Hendersonville desires to amend those regulations with regards to painted wall advertising signs.

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

1. Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location is hereby amended to read as follows:

No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any ~~sidewalkway~~ it may overhang. Painted wall advertising signs are not permitted except in association with a previously-existing painted advertising sign.
2. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
4. 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.
5. 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.
6. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney

9. Public Hearing – Consideration of an Application from Housing Assistance Corporation for the Contiguous Annexation of Portions of PINs 9569840372 and 9569842945, Comprising Approximately 8.148 acres, Located within the Oklawaha Village Project, off North Main Street: Ms. Anderson presented a petition from the Housing Assistance Corporation for the contiguous annexation of a portion of PIN 9569840372 and a portion of PIN 9569842945 that is approximately 8.148 acres. This parcel is a part of the previously-approved Oklawaha Village project located on North Main Street. She reported Council accepted the Clerk's Certificate of Sufficiency and recommended a public hearing for this meeting.

Ms. Anderson explained at this hearing, any person residing in or owning property in the area proposed for annexation and any resident of Hendersonville may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If City Council then finds and determines that the area described in the petition meets all of the standards set out in G.S. 160A-31, Council may adopt an ordinance annexing the area described in the petition.

Mayor Volk opened the public hearing at 8:05 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following spoke:

Don Danes, 602 Kanuga Road, Director of Residential Housing for the Housing Assistance Corporation, expressed support of the annexation. He noted the Planning Department made certain the annexation lines coincided so the entire Oklawaha Village is in the City. He thanked the Council for their consideration.

Ken Fitch, 1046 Patton Street, asked if this development is located on one of the proposed routes for the Duke Energy transmission lines and if that will impact consideration of this annexation. Mr. Danes answered they were also concerned about the proposed transmission line. He stated one of the proposed routes is to their east and does not cross their property.

No one else expressed a desire to speak. The public hearing was closed at 8:07 p.m.

Council Member Caraker moved City Council adopt an ordinance annexing the property included in the Housing Assistance Corporation petition. The effective date is September 3, 2015. A unanimous vote of the Council followed. Motion carried.

Ordinance #15-0954

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
CITY OF HENDERSONVILLE, NORTH CAROLINA
Housing Assistance Corporation**

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein; and,

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the third day of September 2015, after due notice by publication as by law provided; and,

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

- a. The area is contiguous to the present City boundaries;
- b. The petition presented to the City Council was signed by the owners of the real property located in the area;
- c. The petition was prepared in accordance with a form prescribed by NCGS 160A -31, and
- d. At the public hearing all persons owning property in the area to be annexed who allege an error in the petition were given an opportunity to be heard, as well as residents of the City who question the necessity for annexation.

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

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the third of September 2015.

DESCRIPTION OF PROPERTY

Being located within the Hendersonville Township - Henderson County, North Carolina and being more particularly described as follows:

Beginning at a 1-1/4" Diameter Iron Pipe (2.0' Above Adjacent Grade) located on the Northern Margin of the 20' Private Right of Way located over Oklawaha Drive (said Right of Way Recorded and Shown on Plat Cabinet B Slides 29 AND 344A); said Iron Pipe also marking the Southern Most corner of the property of Robert Ricky Ruff (As Recorded in Deed Book 638 Page 23) and further bearing NC Grid Coordinates (NAD83-Epoch 2011) of: Northing = 594,443.09' and Easting = 968,088.14'; thence following the Eastern Line of the said property of Ruff North 27°23'01" East 21.01 feet to a 1/2" Diameter Iron Pipe (0.4' Above Adjacent Grade); thence continuing with said Eastern Line of Ruff North 24°19'29" East 84.26 feet to a calculated point located on the current limits of the jurisdictional boundary of the City of Hendersonville; thence leaving the said Ruff property and following with the said current jurisdictional boundary of the City of Hendersonville South 82°17'21" East 478.04 feet to a calculated point; thence leaving the said current jurisdictional boundary and following the New Line as recorded and shown on Plat Slide 9686 the following Two Courses and Distances: 1) South 06°45'37" East 75.95 feet to a #4 Rebar with McAbee ID Cap and 2) crossing Bat Fork Creek South 46°10'53" West and passing a #4 Rebar with McAbee ID Cap at a distance of 672.47' for a total distance of 692.47 feet to a calculated point located in the center of Mud Creek; thence continuing with Mud Creek North 42°19'08" West 997.60 feet to a calculated point located at / near the confluence of Bat Fork Creek with Mud Creek; thence leaving Mud Creek and running with a portion of the lines of Tract 4, as recorded and described in Deed Book 1453 Page 270, and also following the Southern Margin of the 20' Private Right of Way over Oklawaha Drive (said Right of Way Recorded and Shown on Plat Cabinet B Slides 29 AND 344A) the following three courses and distances: 1) South 81°07'12" East 194.49 feet to a calculated point, 2) South 71°47'12" East 81.05 feet to a calculated point and finally 3) South 64°15'13" East 407.06 feet to a #4 Rebar with McAbee ID Cap; thence turning and crossing the said 20' Private Right of Way North 25°00'33" East 20.00 feet to the Point and Place of Beginning.

Section 2. Upon and after the third day of September 2015, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

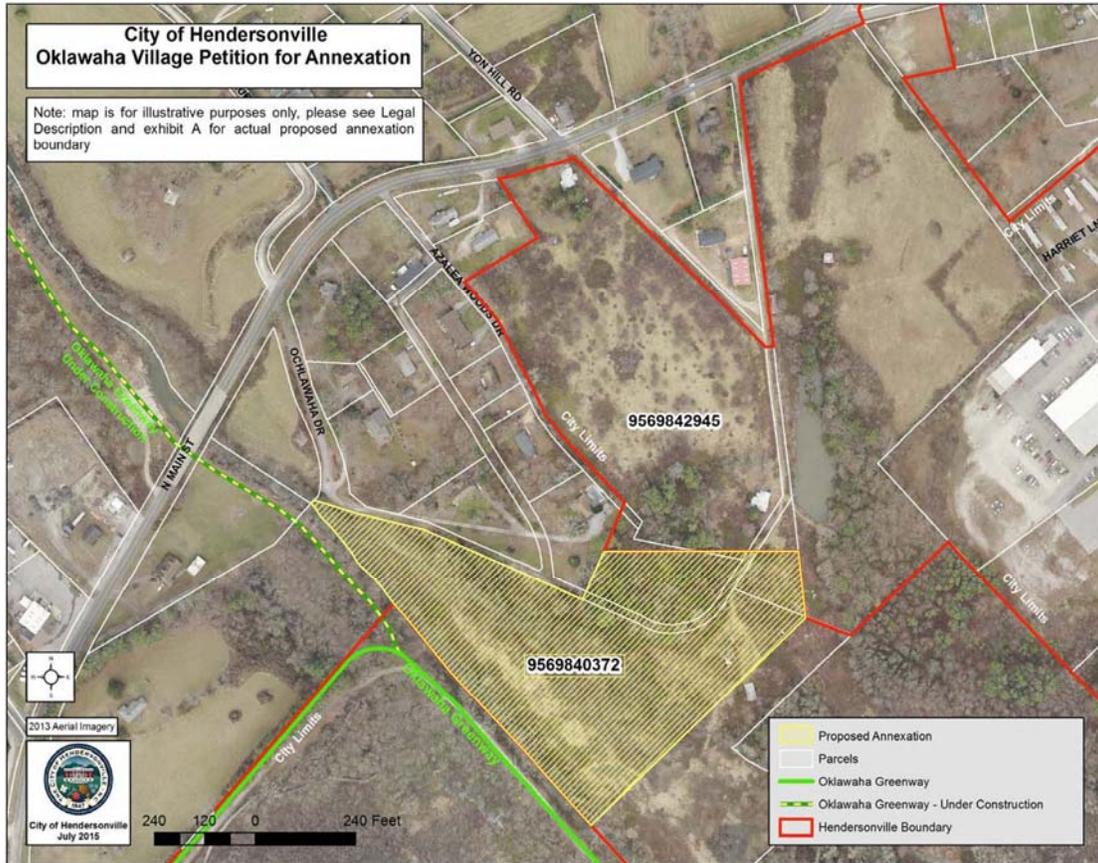
Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with a duly certified copy of this ordinance.

ADOPTED this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney



10. Public Hearing – Consideration of an Application from the City Manager Requesting the Annexation of 11.34 acres of City-Owned Property Located at 632 Sugarloaf Road (Fire Station #2):

Ms. Anderson reported the City of Hendersonville has petitioned for the satellite annexation of PIN 9579657695 that is approximately 11.34 acres and is located at 632 Sugarloaf Road. This parcel contains the new City of Hendersonville Fire Station #2. The Council accepted the Clerk’s Certificate of Sufficiency and recommended a public hearing for this meeting.

Ms. Anderson explained at this public hearing, any person residing in or owning property in the area proposed for annexation and any resident of Hendersonville may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If City Council then finds and determines that the area described in the petition meets all of the standards set out in G.S. 160A-31, Council may adopt an ordinance annexing the area described in the petition.

Mayor Volk opened the public hearing at 8:09 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following addressed the Council:

Interim Fire Chief Joe Vindigni spoke in favor of the annexation.

No one else expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved City Council adopt an ordinance annexing the property included in the City of Hendersonville petition. The effective date is September 3, 2015.

Ordinance #15-0955

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA 632 Sugarloaf Road

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein; and,

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the third day of September 2015, after due notice by publication as by law provided; and,

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

- a. All of the proposed satellite corporate limits are less than three miles from the primary corporate limits of Hendersonville. The map distance is 717 feet.
- b. No point on the proposed satellite corporate is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
- c. The area is situated so that the City of Hendersonville, if City Council so determines, will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- d. The area proposed for annexation is not a subdivision as defined in GS 160A-376.
- e. The area within the proposed satellite corporate limits when added to the areas within all other satellite corporate limits does not exceed 10 percent (10%) of the area within the primary corporate limits of the City of Hendersonville. The total area within the satellite corporate areas, including land involved in this petition, constitutes 3.7 percent of the area within the primary corporate limits.

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

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the third of September 2015.

Description Of Property: All that real property described in that deed recorded in Deed Book 1418 at page 202, Henderson County Registry.

Section 2. Upon and after the third day of September 2015, the above-described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

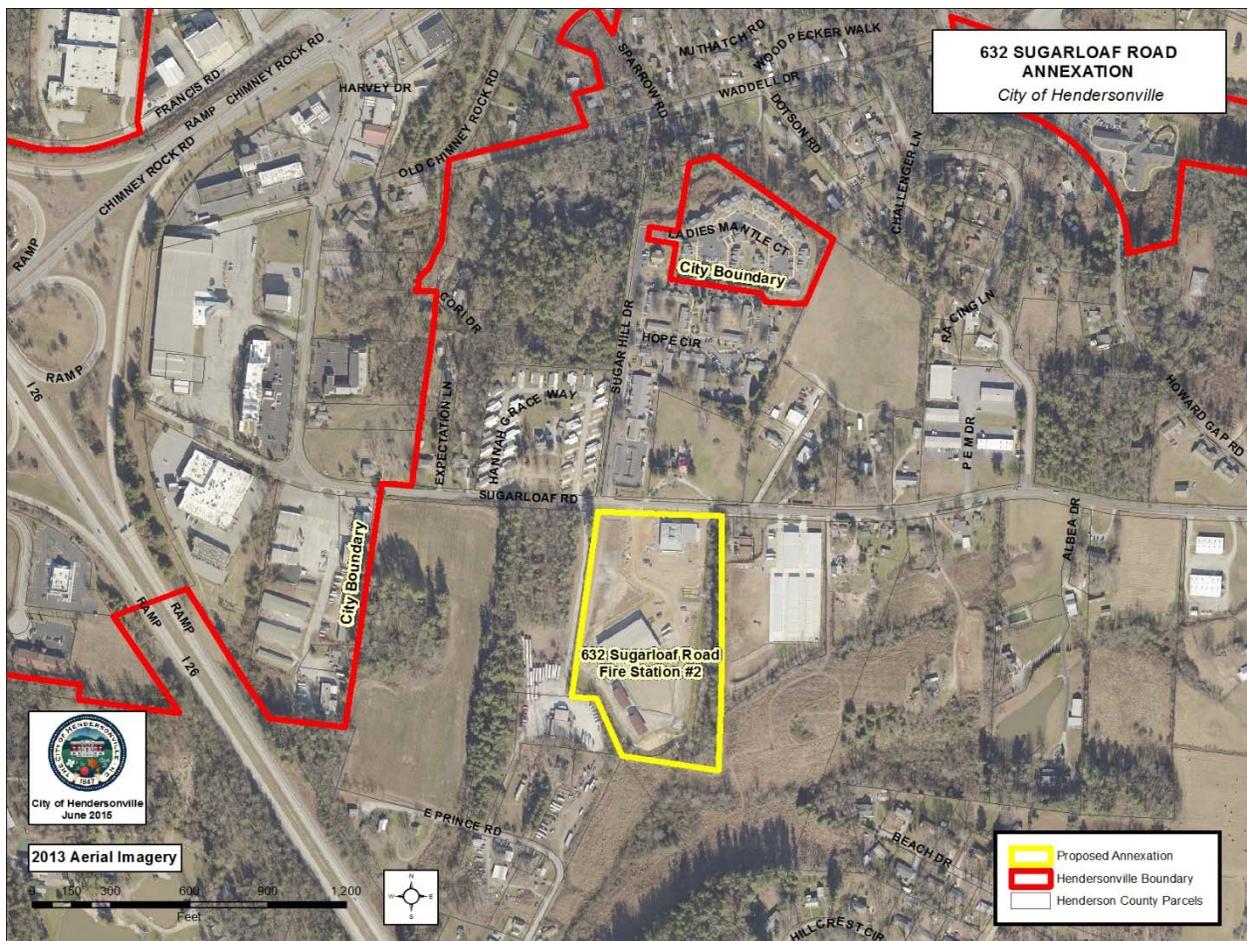
Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with a duly certified copy of this ordinance.

ADOPTED this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney



11. Public Hearing – Consideration of an Application from the City of Hendersonville for a Zoning Ordinance Text Amendment of Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries: Ms. Anderson reported the City Council adopted a text amendment in January 2015 defining and adding “day centers” to the C-2 Secondary Business and CMU Central Mixed Use zoning districts as special uses subject to certain requirements contained in Section 16-4. A day center is defined

as “an establishment that provides a combination of case management, resources or a range of like services to aid persons who are primarily indigent, needy, homeless or transient.”

Ms. Anderson explained in February 2015, City Council adopted a text amendment adding “day centers” as a special use subject to certain requirements contained in Section 16-4 to the C-3 Highway Business and I-1 Industrial zoning districts.

Ms. Anderson reported receipt of an application for the Storehouse Food & Hygiene Pantry to relocate to 1049 Spartanburg Highway. The Storehouse functions as what is commonly referred to as a food bank or food pantry that also distributes basic hygiene products and limited clothing. Although this use may be interpreted as a “day center” based on the definition above, staff had not intended for day centers to also include stand-alone food pantries that can distribute food, clothing or other basic necessities to residents. To clarify, staff is suggesting to add a new zoning category called “food pantry” that will include these types of establishments as a permitted use in the C-2 Secondary Business and C-3 Highway Business zoning district categories with added conditions that these facilities be separated by a minimum of 1,500 feet and no outdoor storage of items to be distributed is allowed.

Ms. Anderson reviewed the proposed changes to the Zoning Ordinance.

Ms. Anderson reported the Planning Board voted unanimously to recommend that City Council adopt the ordinance amending the aforementioned sections of the Zoning Ordinance.

Ms. Anderson provided a map that shows the location of the downtown zoning districts, the C-2 Secondary Business district, the C-3 Highway Business district and the I-1 Industrial district.

Mayor Volk opened the public hearing at 8:16 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following spoke in favor of the amendment:

Mr. Bob Pierce, Chairman of the Board of Directors of the Storehouse, voiced supported of the amendment that will facilitate moving their facility to Spartanburg Highway.

Mayor Volk and Council Member Miller expressed appreciation to Mr. Pierce for the outstanding work they do for the community. Mr. Pierce stated they provided 1,250 children with Christmas gifts and served more than 750,000 pounds of food to the needy. They have been in existence for approximately 15 years.

No one else expressed a desire to speak. The public hearing was closed at 8:17 p.m.

Council Member Smith moved City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries. A unanimous vote of the Council followed. Motion carried.

Ordinance #15-0956

**AN ORDINANCE AMENDING SECTION 4-5 CLASSIFICATION OF USES TABLE 4-5,
SECTION 5-7-1 C-2 SECONDARY BUSINESS PERMITTED USES,
SECTION 5-8-1 C-3 HIGHWAY BUSINESS PERMITTED USES,
ARTICLE VI GENERAL PROVISIONS TABLE 6-5-2 PARKING,
SECTION 12-2 DEFINITION OF COMMONLY USED TERMS AND WORDS, AND
ARTICLE XVI SPECIAL REQUIREMENTS FOR CERTAIN USES SECTION 16-4 STANDARDS PERTAINING TO
FOOD PANTRIES**

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes, and minimum housing standards and other related measures, and

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to amend, supplement, change, modify or repeal zoning regulation ordinances, and

WHEREAS, the City of Hendersonville understands the need to serve all members of the community, and

WHEREAS, the City of Hendersonville supports organizations that supply services to those in need, and

WHEREAS, the City of Hendersonville desires to amend those regulations with regards to food pantries.

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

1. Article IV Establishment of Districts Section 4-5 Classification of Uses Table 4-5 is hereby amended to include the following:

Add “food pantries” as permitted by right subject to special requirements (SR) in the C-2 and C-3 Zoning Districts.

2. Article V Zoning District Classifications, Section 5-7-1 C-2 Secondary Business Permitted Uses is hereby amended to include the following permitted use:

Food pantries, subject to the special requirements contained in Section 16-4, below.

3. Article V Zoning District Classifications, Section 5-8-1 C-3 Highway Business Permitted Uses is hereby amended to include the following permitted use:

Food pantries, subject to the special requirements contained in Section 16-4, below.

4. Article VI General Provisions Section 6-5 Off-Street Parking Table 6-5-2 is hereby amended to include the following parking requirements:

USES	PARKING SPACE REQUIREMENT
<u>Food pantries</u>	<u>1 per 2 employees and volunteers at maximum staffing on a single shift</u>

5. Article XII Definition of Terms Section 12-2 Definition of Commonly Used Terms and Words is hereby amended to include the following definition:

Food Pantry: A nonprofit establishment that primarily distributes food but may also distribute non-food items and other resources to needy individuals and families.

6. Article XVI Special Requirements For Certain Uses Section 16-4 Standards is hereby renumbered as follows:

- 16-4- ~~13~~ 14 Golf Driving Ranges
- 16-4- ~~14~~ 15 Microbreweries
- 16-4- ~~15~~ 16 Mini-Warehouses
- 16-4- ~~16~~ 17 Nursing Homes`
- 16-4- ~~17~~ 18 Private Clubs
- 16-4- ~~18~~ 19 Progressive Care Facilities
- 16-4- ~~19~~ 20 Public Utility Facilities
- 16-4- ~~20~~ 21 Residential Care Facilities
- 16-4- ~~21~~ 22 Rest Homes
- 16-4- ~~22~~ 23 Restaurants
- 16-4- ~~23~~ 24 Schools, Primary & Secondary
- 16-4- ~~24~~ 25 Shelter Facilities
- 16-4- ~~25~~ 26 Telecommunications Towers and Antennas

7. Article XVI Special Requirements For Certain Uses Section 16-4 Standards is hereby amended to include the following uses and special requirements:

16-4-13 Food Pantries.

- a) The parcel on which a food pantry is situated shall not be closer than 1,500 feet to any parcel on which another food pantry is situated.
- b) Storage of items for distribution shall be located entirely within the building.

8. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.

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

10. 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.

11. 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.

12. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney

12. Consideration of an Ordinance Amending Section 20-35 Respecting the Limitation of

Noise: City Attorney Fritschner presented an amendment to the noise ordinance that changes from a specific decibel standard to an “unreasonable disturbance” standard. He stated that has proven to be a difficult and not workable solution to measure noise levels. He stated the proposed amendment will provide flexibility in enforcing the ordinance.

City Attorney Fritschner reported the ordinance used for this amendment has been proved as constitutional in full by the North Carolina Court of Appeals.

Mayor Volk commented at the time the existing ordinance was adopted, the concern was whose standards do you apply to loud music. Decibels were incorporated because it could be measured. She stated this ordinance makes it an opinion and asked if the police can enforce this. Captain Simonds explained every officer does not have a meter with them. He stated when the responding officer arrives to a call he cannot enforce the ordinance without the decibel meter reading. He stated if they are called and find that it is disturbing to the neighbors or disturbing the peace, they can cite the violator. He stated previously, the proposed language was not tested by the court and they did not have any problems with it. He stated the existing ordinance makes it difficult to manage complaints. He stated the amendment will help.

There was discussion of why the ordinance changed from the discretion of the officer.

After discussion, **Council Member Caraker moved the City Council adopt the ordinance amending City Code section 20-35 respecting limitation of noise. A unanimous vote of the Council followed. Motion carried.**

Ordinance #15-0957

AN ORDINANCE AMENDING SECTION 20-35 RESPECTING THE LIMITATION OF NOISE

WHEREAS, the City Council has determined that the noise levels within the City of Hendersonville affect quality of life and the health, safety and welfare of persons traveling in and persons residing within the City; and

WHEREAS, the Council has further determined that the maximum noise level within the Municipal Services District is in need of adjustment;

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Hendersonville City Code section 20-35 is hereby amended as follows:

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

(a) In addition to the requirements of section 20-34, above, and except as otherwise provided herein or in conjunction with special events permits, ~~no person or group of persons shall operate or cause to be operated any source of sound level which at its peak exceeds the limits set forth herein below, when measured at the property line from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, building or wall exteriors or other physical features commonly associated with property boundaries are presumed to be at a point which is at the property line. In all cases the maximum sound level permitted by use occupancy shall be determined on the basis of the use occupancy of the property from which the sound originates and not by the use occupancy of any surrounding property. Sound level measured at any point beyond the property line is presumed to be equaled or exceeded at the property line.~~

~~(b) The following are established as maximum sound levels:~~

~~(1) Nighttime sound levels (after 11:00 p.m. until 7:00 a.m.) may not exceed 60 dB (A) except as noted in subsection (b)(3) below.~~

~~(2) Daytime/evening sound levels (between 7:00 a.m. and 11:00 p.m.) may not exceed 70 dB (A) except as noted in subsection (b)(3) below.~~

~~(3) Daytime/evening sound levels up to 85 db(A) may be authorized by means of a permit to exceed, pursuant to section 20-37, below.~~

~~(4) Except for special events authorized pursuant to section 46-84 of the Code, a permit to exceed sound levels may only be issued for the following dates and times: Fridays 5:00 p.m. to midnight, and Saturdays 10:00 a.m. to midnight.~~

~~(c) Notwithstanding the provisions of subsection (b) above, the following are established as maximum sound levels within the main street municipal service district, also known as the downtown tax district, as it may exist from time to time:~~

~~(1) Nighttime sound levels after 11:00 p.m. until 7:00 a.m. may not exceed 45 dB (A) except as noted in subsection (c)(3) below.~~

~~(2) Daytime/evening sound levels between 7:00 a.m. and 11:00 p.m. may not exceed 55 dB (A) except as noted in subsection (c)(3) below.~~

~~(3) Daytime/evening sound levels up to 85 db(A) may be authorized by means of a permit to exceed, pursuant to section 20-37, below.~~

~~(4) Except for special events authorized pursuant to section 46-84 of the Code, a permit to exceed sound levels may only be issued for the following dates and times: Fridays 5:00 p.m. to midnight, and Saturdays 10:00 a.m. to midnight. it shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continue any loud, raucous and disturbing noise, which term shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville. The term loud, raucous and disturbing noise shall be limited to loud, raucous and disturbing noises heard upon the public streets, in any public park, in any school or public building or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise, or upon the grounds thereof.~~

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner, City Attorney

13. Comments from Mayor and City Council Members: There was none.

14. Reports from Staff: There was none.

15. Boards and Commissions:

a. **Consideration of Appointments:**

Walk of Fame Steering Committee: Council Member Caraker nominated Dr. Amy Pace. This appointment will expire June 30, 2017. A unanimous vote of the Council followed. Motion carried.

b. **Announcement of Vacancies/Upcoming (Re)appointments:** City Clerk Tammie Drake reminded the Council of the vacancies on the Environmental Sustainability Board, the upcoming appointments to the Historic Preservation Commission and Planning Board.

16. New Business: There was none.

17. Adjournment: Being no further business, the meeting adjourned at 8.27 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk