AGENDA

CITY OF HENDERSONVILLE CITY COUNCIL – REGULAR MEETING

FEBRUARY 6, 2020 – 5:45 P.M.

Council Chambers – City Hall
160 Sixth Avenue E.
Hendersonville NC 28792

1. **Call to Order**

2. **Invocation and 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***

4. **Consideration of Agenda**

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:

      i. January 9, 2019 Regular Meeting
      ii. January 21, 2020 Special Meeting

   B. Consideration of Mid-Year Budget Report and Amendments

   C. Consideration of Tentative Award for the Northside (Fletcher) Water System Improvements Project

   D. Consideration of Sole Source Purchasing for:
      I. Generator for Water/Sewer system
      ii. SCADA

   E. Consideration of Oklawaha Village Conservation Easement

   F. Consideration of Tax Discoveries, Releases, Refunds and Forgiven Interest

   G. Consideration of Special Event Permit for Pinball Extravaganza

   H. Consideration of Confidential Information Policy

   I. Consideration of Revisions to Nepotism Policy

J. **Consideration of Job Description and Advertisement for City Attorney**

K. **Consideration of Clerk's Certificate of Sufficiency for the Contiguous Annexation of Campbell and Ewbank Property Located on Fifth Avenue and Set the Public Hearing Date**

6. **Recognitions:**

   i. **B.J. Slovacek**

   ii. **Adam Murr – Certified Budget and Evaluation Officer**

   iii. **Service Excellence MVPs**

   iv. **Service Excellence Employee(s) of the Year**

7. **Public Hearing - Consideration of the Rezoning of Recently Annexed Property Encompassing Approximately 2.61 acres located on Upward Road (Dairi-O)**
   Presenter: Senior Planner Daniel Heyman

8. **Public Hearing - Consideration of New Subdivision Ordinance**
   Presenter: Chad Meadows of Code Wright Planners

9. **Consideration of Amendments to the Animal Control Ordinance**
   Present: Police Captain Chris LeRoy

10. **Review/Update on Police Department Headquarters**
    Presenter: Assistant Manager Brian Pahle

11. **Presentation on Seventh Avenue Streetscape**
    Presenter: Downtown Economic Development Director Lew Holloway

12. **Consideration of Capital Project Ordinances for the Clear Creek Sewer Interceptor Project, Hebron Zone Water Improvement Project and the Wastewater Treatment Plant Master Plan Project and Associated Reimbursement Resolution and Associated Budget Amendment**
    Presenter: Budget and Management Analyst Adam Murr

13. **Consideration of Resolution to Exempt Clear Creek Sewer Interceptor Design from Provisions of NC General Statute 143-64.31 and to Award Design Contract**
    Presenter: City Engineer Brent Detwiler

14. **Consideration of Proposal by McKim & Creed to the On-call Engineering Agreement for a Wastewater Treatment Plant Master Plan**
    Presenter: City Engineer Brent Detwiler

15. **Reports/Comments by Mayor and City Council Members**

16. **Staff Reports**

17. **Consideration of Appointments to Boards/Commissions**

18. **New Business**

19. **Closed Session**

20. **Adjourn**

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brian Pahle & Adam Murr

Department: Admin

Date Submitted: 01/28/2020

Presenter: Brian Pahle & Adam Murr

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05b

A mid-year report on the City's budget.

Budget Impact: $ Described in Report Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I resolve to approve the budget amendments as presented.

Attachments:

Mid-year Report

Agenda

To: John Connet, City Manager

CC: City Council

Department Heads

Re: Mid-Year Budget Report

Date: January 16th, 2020

From: Brian Pahle, Assistant City Manager

Adam Murr, Sr. Budget & Management Analyst

The following report provides information on the City of Hendersonville's FY19-20 budget and the respective analysis for revenues and expenditures at mid-year, through December 2019. The report will summarize high-level observations, provide an overview of recommended adjustments, and provide an amendment for accounts requiring Council approval. The report is broken down by a governmental and enterprise section and reports on the main six City funds (General, Main St. MSD, 7th Ave. MSD, Water/Sewer, Stormwater, and Environmental Services). This report will be submitted to City Council at their regular February 6th, 2020 meeting.

Governmental Funds

The three governmental funds covered in this report include the General Fund, Main St. MSD Fund, and 7th Avenue MSD Fund. The General Fund revised budget as of 12/31/2019 totals $17,327,138 including a budgeted fund balance appropriation of $743,196. The Main Street MSD Fund revised budget totals $556,923 including a budgeted fund balance appropriation of $70,916. The 7th Avenue MSD Fund revised budget totals $95,208 including a budgeted fund balance appropriation of $19,125.

Major highlights of these fund's mid-year performance and recommended adjustments is presented in the following sections.

Ad Valorem Tax (Revenues)

For the tax year 2019, the City entered into an interlocal agreement with Henderson County to consolidate tax collection under the County. The County provides this service for a fee of 0.5% of the total collections. At mid-year, collections for the 2019 General Fund ad valorem taxes total approximately 85% of the total budget. Comparably, in years 2018 and 2017, collections totaled 83% and 71%, respectively. The Main Street MSD Fund and 7th Avenue MSD Fund are experiencing similar effectiveness, at 88% and 78% for 2019, respectively.

On top of the strong current year collections, there has been an increase in the effectiveness of prior year collections. For the General Fund prior year's ad valorem taxes, we have collected near $100,000. Our total budget for these years is $80,525. Additionally, another $20,598 has come in from past due interest. Concurrently, staff is recommending an increase in the revenue budget for these accounts, totaling $45,640 for the General Fund, $700 for the Main St. MSD Fund, and $107 in the 7th Ave. MSD Fund.

Finally, the last ad valorem tax budget impacted by this change, relates to motor vehicles. The estimated end-of-year collection is $719,119. Our current budget totals $675,000. Staff presents a recommended increase in revenue of $25,000 for this account, in the General Fund.

Overall, the recent changes and partnership with Henderson County has produced an effective collection for the City and a more customer friendly process for our citizens.

Unrestricted Intergovernmental Taxes (Revenues)

These taxes are revenues received through other governmental entities, primarily the State, and are not restricted, outside of the standard authorized expenditures provided to municipalities by the State.

The largest revenue budget in this source, is the local sales and use tax. For the General Fund, the City amended the budget for this account at its regular January meeting to help cover the increase in expenditures for the SAFER grant one-time costs. This amendment increased the budget to $3,462,780 for the General Fund. We are seeing an average increase of 14% for FY20, after four collections. Even under a conservative 4%-5% increase for the remaining collections, we would see a total of approximately $3,550,000 in revenues at year end. Staff recommends leaving the General Fund budget at the current level for this account and allow any additional collections to be used to offset the budgeted fund balance appropriation at year end. For the MSD funds an increase of $15,000 is recommended for Main Street, and an increase of $3,557 is recommended for 7th Avenue.

ABC revenues is another revenue source, that has recommended changes in the General Fund. These revenues are distributed to the City as a share of total profit made by the local ABC board. The board's audit provided that the board's net profit was $450,000 in 2019. Per State law, the City receives half of this net profit. The total revised budget in the General Fund is $165,000. Concurrently, staff recommends this budget be increased by $60,000 to reflect the total $225,000 the City received last year.

For FY 2020 payment in lieu of tax increased $56, 819 over FY 2019. This increase was due to adjustment made by the Hendersonville Housing Authority to the reported value of their property and the tax rate used to calculate the payment in lieu of tax.

The last major revenue sources in this category, are utility sales taxes. These are broken into four sub-categories, electricity, piped natural gas, telecommunications, and video programming. Electricity and piped natural gas continue to trend upward, approximately 2%-3% per year. Telecommunications and video programming both continue to decline at varying rates, due to the migration away from traditional home phone lines and cable television. For the FY20 budget year, staff recommends increasing the electricity sales tax budget by $60,000. The current revised budget is $840,000 and we forecast the end-of-year collection totaling approximately $930,000 for this account. We also recommend decreasing the telecommunications budget by $20,000. The current revised budget is $185,000 and we forecast the end-of-year collection totaling approximately $170,000.

Other (Revenues)

There are various other revenue account adjustments provided in the budget amendment. These range from an increase in planning application fees, to reimbursements for paving cuts, and proceeds from insurance claims.

Salary & Benefits (Expenditures)

There are a variety of salary and benefit lines that are forecasted to exceed budget. The majority of these fall within the overtime account or cellphone stipend account. There is one forecasted overage in Engineering Department in the General Fund. The Finance Department will be looking into the payroll records and make sure the employees were allocated correctly across funds. We have included an amendment and increase to these accounts to cover this forecasted overage, if it does turn out to be accurate in the system. If it is not, we will have additional cushion in those accounts through the remainder of the fiscal year.

The Downtown Economic Development Department has a similar issue as the Engineering Department. Staff has identified a part-time employee's salary being coded to the regular salaries account. This will need to be corrected by Finance. The current budget is at 58% used to date. In addition, to the part-time coding issue, we have an additional position approved in the budget and a conversion of a part-time position, to a full-time position. Not having the full picture of the account, due to the coding issue, we are recommending a conservative increase in this budget of approximately $42,000 to cover regular salaries through the end of the fiscal year. Additionally, we are recommending adding approximately $13,500 to cover the new position's health insurance costs. The additions are covered by the existing revenue amendment for the Main St. and 7th Ave. MSD Funds and will not require any additional fund balance appropriation.

Utilities and Street Lighting (Expenditures)

All utility and lighting accounts are significantly under budget. They average 32% used for six (6) different accounts. In total, these expenditure accounts will be decreased by $34,600 to cover other expenditure account overages. This decrease will still maintain ample budget to cover remaining costs for utilities and street lighting for the remainder of the fiscal year.

Other Equipment, Supplies, & Services (Expenditures)

A budget increase of $15,000 is recommended for conference room updates, including new chairs, tables, paint, and other improvements.

A budget increase of $14,000 is recommended for security upgrades for the City Operations facility.

A budget increase of $52,000 is recommended for costs associated with the Oracle software system implementation. This expense was approved by Council in the summer with the intention to provide implementation costs through a mid-year budget amendment. We have the funds to do so, within this amendment without using additional fund balance appropriation. The background on this software change can be found in the June 2019 agenda, page 448.

A budget increase of $8,000 is recommended for a software license for the public survey tool Public Input (used at the Council Conversations meetings).

A budget increase of $20,000 is recommended to transfer to our capital projects funds to cover any additional due diligence that may be required for the public private partnership, hotel/parking deck project.

Contingencies (Expenditures)

Finally, the remaining surplus from the amendment totals $93,034. This funding is recommended to be placed in contingencies, with the intention that it will cover any unforeseen circumstances or be returned to fund balance at the end of the fiscal year. Staff recommends increasing contingencies in the General Fund by $93,034.

The total recommended increase/decrease in total budget for the governmental funds is presented, as follows.

Fund	**$ Change**
General Fund	Increase $234,500
Main St. MSD Fund	Increase $19,687
7th Ave. MSD Fund	Increase $4,069

The amendment detailing these changes is included with the agenda item.

Enterprise Funds

The three enterprise funds covered in this report include the Water and Sewer Fund, Stormwater Fund, and Environmental Services Fund. The Water and Sewer Fund revised budget as of 12/31/2019 totals $17,865,861 including a budgeted fund balance appropriation of $1,373,431. The Stormwater Fund revised budget totals $568,152 including a budgeted fund balance appropriation of $15,362. The Environmental Services Fund revised budget totals $1,662,855 including a budgeted fund balance appropriation of $149,855.

Major highlights of these fund's mid-year performance and recommended adjustments is presented in the following sections.

User Charges (Revenues)

User charges for the sale of utility services are the largest income source for the enterprise funds. Operating under a business-like structure, the City charges customers directly based on the amount of a service or resource consumed. The City has deliberated with rate experts and consultants to recommend rates to the City Council. Adherence to recommendations for the current fiscal year (FY19-20) and forward will be an important consideration as we continually prioritize capital projects, analyze the health and longevity of our utility systems, and meet financial covenants set through our bond indentures.

Contributing to the reliability of user charges in our Enterprise Funds are initiatives by the Finance Department to identify and correct incorrect billing accounts. This ongoing effort continually improves our system, ensuring users are accurately billed for services rendered.

As of December 31st, 2020, the water sales account has collected $4,686,529 (45.90%) of budgeted user charge revenue. At this same time in 2018, the account totaled approximately 44.5% of budgeted revenues. The sewer charges account has collected $2,325,681 (43.9%) of budgeted revenues. At this same time in 2018, the account totaled approximately 41.8% of budgeted revenues. The Stormwater Fund has collected $166,599 (51.68%) of budgeted user charge revenue. The Environmental Services Fund has collected $559,704 (46.29%) of budgeted user charge revenue. Overall, the outlook for these revenue sources is positive – percentages of revenue collections match trends from prior years and our projections for these sources do not require mid-year amendment. These accounts trend below 50% collection at mid-year because the collections run a month behind. The benchmark is 41.6% collection for December 31st.

Tap Fees (Revenues)

In addition to user charges, the Water and Sewer Fund tracks revenues collected from the connection of customers to our infrastructure. The tap fee revenue source is a good indicator of the local economy, providing insight to the rate of development in the City and Henderson County. In FY19-20, we have collected $107,923 (45.50%) of budgeted water tap revenue and $23,550 (52.30%) of budgeted sewer tap revenue. These revenue sources fall in-line with projections and will not need mid-year adjustment. We can reasonably anticipate that as development increases in the City and Henderson County, tap fee revenue will also rise.

Other (Revenues)

Various other minor revenue sources are accounted for in the enterprise funds. Some other sources of revenue include disconnect/reconnect fees, customer participation charges, investment earnings, sale of assets, and miscellaneous income. At mid-year FY19-20, staff recommends Council approve the adjustment to the increase disconnect/reconnect fee by $15,000 in the Water and Sewer Fund to reflect higher than anticipated revenue collections. Staff further recommend the increase of miscellaneous income by $800 in the Environmental Services Fund, also to reflect higher than anticipated revenues for the current year.

Salary & Benefits (Expenditures)

A number of salary and benefit accounts have exceeded budget or are projected to do so. The majority of these accounts involve uniforms, overtime expenses, and cellphone stipends. Each year, we budget for these items based on historical trends. Trend analysis provides a reasonably accurate insight to these accounts; however, adjustments are needed from time to time. In addition, some outliers are explained through expense codification conflicts in the Finance Department. The Finance Department will look into records for the current year, ensuring salary and benefits expenses were appropriately categorized.

Salary and benefit expenses are split each year to match the anticipated work to be completed by employees in each fund. For example, a Water and Sewer Line Maintenance Mechanic may be paid on a 67% water, 33% sewer basis in one fiscal year and 50% water, 50% sewer the next fiscal year – depending on the work the department anticipates. For the Water and Sewer Fund, Stormwater Fund, and Environmental Services Fund, this factor may contribute to codification adjustment needs. Additionally, projects scheduled for FY19-20 as well as unforeseen/emergency repairs in the Enterprise Funds are a driving force behind overtime expenses each fiscal year.

Professional and Contracted Services (Expenditures)

Professional and contracted services expenditures cover items we often request assistance with from outside firms. Engineering consulting, construction management, land surveying, information technology consulting, and master planning are a few common expenditures in this category within our Enterprise Funds.

For FY19-20, the Water and Sewer Fund has exceeded its information technology budget in professional and contracted services – both of these accounts are budgeted to receive an increase of $15,000 at mid-year. Driving forces for the adjustment need are upgrades to the City's website, upgrades to the Cityworks system, agreements with VC3 (our IT support team), and a change in enterprise resource planning (ERP) software companies. There have been solid improvements made to the City's infrastructure and software in FY19-20, our adjustments will reflect needed upgrades in systems driving efficiencies for business operations.

A notable account related to professional and contracted services that will also see an increase is a postage account in the Water and Sewer Fund. As directed by the Water and Sewer Advisory Council's recommendation, staff moved forward with the publication and mailing of a brochure style annual report to all customers who receive paper utility bills. This one-time cost will be adjusted at mid-year.

Other Equipment, Supplies, & Services (Expenditures)

Included in equipment, supplies and services are a few items recommended for adjustment at mid-year. Our recommendation is to increase budget for an upgrade to business furniture in City Hall ($12,500). The Water and Sewer Fund will cover 50% of the total purchase cost.

A budget increase of $10,000 is recommended to replenish funds for the repair and maintenance of equipment, which has exceeded budget at mid-year and will likely need additional resources to cover unforeseen repairs to wrap up FY19-20.

An additional non-capital equipment expenditure increase of $1,000 is recommended for the purchase of tools by the water distribution team.

To cover the increased expenditure budgets, funds are proposed to be transferred from various accounts related to the repair and maintenance and equipment. This reallocation of funds is projected to have minimal impact on the City's capacity to execute work and procure needed equipment and services.

Contingencies (Expenditures)

Contingencies in the Water and Sewer Fund and Stormwater Fund will be unaffected by the mid-year amendment as proposed. The Environmental Services Fund contingency budget is recommended to increase by $700 to offset an increase in revenues from miscellaneous sources. Contingencies budget may by used later in the year for adjustments related to unforeseen events – adjustments for items such as workers comp insurance claims are a common use for contingencies.

The total recommended increase/decrease in total budget for the governmental funds is presented, as follows.

Fund	**$ Change**
Water and Sewer Fund	Increase $15,000
Stormwater Fund	No Change
Environmental Services Fund	Increase $800

The amendment detailing these changes is included with the agenda item.

Agenda

Agenda

TO MAYOR & COUNCIL - February 06, 2020 **FISCAL YEAR 2020**

BUDGET AMENDMENT

FUND: 10 | 20 | 21

ACCOUNT NUMBER					
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
100010	411300		TAX LATE LIST >10 YEARS OLD	5,000.00	
100010	411400		TAX - INTEREST	20,500.00	
100010	411410		TAX COLLECTION FEES	1,000.00	
100010	420101		AD VAL TAX - MTR VEHS	25,000.00	
100010	420800		2008 AD VAL TAX - R/P	5.00	
100010	420900		2009 AD VAL TAX - R/P	80.00	
100010	421000		2010 AD VAL TAX - R/P	5.00	
100010	421200		2012 AS VAL TAX - R/P	500.00	
100010	421300		2013 AD VAL TAX - R/P	4,800.00	
100010	421400		2014 AD VAL TAX R/P	4,750.00	
100010	421500		2015 AD VAL TAX R/P	3,000.00	
100010	421800		2018 AD VAL TAX R/P	6,000.00	
100030	425000		ABC REVENUES	60,000.00	
100030	433100		PAY IN LIEU OF TAX	56,421.00	
100030	433400		ELECTRICITY UTILITY TAX	60,000.00	
100030	433500		TELCOM SALES TAX		20,000.00
100050	434600		SPEC PROJ FEES - PLAN	2,000.00	
100050	434700		COND USE FEES - ZONE	250.00	
100050	434780		STREET SIDEWLK ENCROACHMENT	100.00	
100080	404500		MISC REVENUE- PUBLIC WORKS	2,190.00	
100080	434750		STREET PAVING CUT-CUSTOMER	5,400.00	
100090	443610		SALE OF FIXED ASSETS	500.00	
100090	444000		INSURANCE SETTLEMENTS	4,499.00	
104110	529900		SUPPLIES & MATERIALS	1,475.00	
104110	532100		TELEPHONE	2,500.00	
104110	549900		MISC BD EXPENSE	2,000.00	
104110	569000		CONTRACTED SERVICES	6,400.00	
104120	512200		SALARIES & WAGES - OVERTIME	1,000.00	
104120	539400		TRAVEL	2,500.00	
104120	545600		LIAB/PROP INS & BONDS	500.00	
104120	549750		PERMITS, LICENSE AND FEES	500.00	
104120	550000		NON-CAPITAL EQUIPMENT	15,000.00	
104120	557000		LAND,ROW,AND LAND IMPROVEMENT	500.00	
104130	512200		SALARIES & WAGES - OVERTIME	500.00	
104130	517200		CELLPHONE STIPEND	25.00	
104131	512100		SALARIES & WAGES-REG	15,226.00	
104131	518100		FICA TAX EXPENSE	729.00	
104131	518200		RETIREMENT EXPENSE	1,455.00	
104131	518300		GROUP MED & LIFE INS	6,251.00	
104131	519000		PROFESSIONAL SERVICES		15,000.00
104131	525100		GASOLINE & DIESEL	1,500.00	
104131	532100		TELEPHONE	6,300.00	
104131	535300		R & M - AUTO/TRUCKS	898.00	
104140	519000		PROFESSIONAL SERVICES	14,000.00	
104140	549750		PERMITS, LICENSE AND FEES	8,000.00	
104140	550000		NON-CAPITAL EQUIPMENT	4,000.00	
104140	569000		CONTRACTED SERVICES	54,962.00	
104150	518600		WORKER'S COMP INS		1,000.00
104250	533000		UTILITIES		3,500.00
104270	529900		SUPPLIES & MATERIALS	5,000.00	
104270	533000		UTILITIES		5,000.00
104310	525100		GASOLINE & DIESEL		5,000.00
104340	535200		R & M - EQUIPMENT		5,000.00
104340	545600		LIAB/PROP INS & BONDS	2,500.00	
104340	549750		PERMITS, LICENSE AND FEES		1,000.00

Agenda

TO MAYOR & COUNCIL - February 06, 2020 **FISCAL YEAR 2020**

BUDGET AMENDMENT

FUND: 10 | 20 | 21

ACCOUNT NUMBER						
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE	
104340	554000		CAP OUTLAY-MOTOR VEHS	500.00		
104370	519000		PROFESSIONAL SERVICES	12,500.00		
104370	525200		TIRES		500.00	
104370	525300		VEHICLE PARTS		500.00	
104370	525400		OIL, LUBRICATION, ETC		500.00	
104370	526000		OFFICE SUPPLIES		1,000.00	
104370	532500		POSTAGE		1,000.00	
104370	549999		MISCELANEOUS EXPENSE	100.00		
104500	545600		LIAB/PROP INS & BONDS	1,000.00		
104510	535300		R & M - AUTO/TRUCKS		2,500.00	
104520	512200		SALARIES & WAGES-O/T	4,000.00		
104520	512250		SALARIES & WAGES-HOLIDAY PAY	1,000.00		
104520	533900		STREET & TRAFFIC LTS		16,000.00	
104520	545600		LIAB/PROP INS & BONDS	1,000.00		
104520	552000		CAPITAL OUTLAY - EQUIPMENT	12,000.00		
104760	545600		LIAB/PROP INS & BONDS	225.00		
104760	555000		CAP OUTLAY-OTR EQUIP	2,000.00		
106170	533000		UTILITIES		1,600.00	
109621	574407		INT - FIRE ENGINE	20.00		
109900	999410		TRANSFER TO CPF - GOV	20,000.00		
109900	999015		TRANSFER TO CRF - GOV	93,034.00		
FUND 10			TOTAL REVENUES	262,000.00	20,000.00	242,000.00
			TOTAL EXPENDITURES	301,100.00	59,100.00	242,000.00
200010	411300		TAX LL PRIOR 2008, ADV	500.00		
200010	411400		TAX - INTEREST	675.00		
200010	421400		2014 AD VAL TAX R/P	50.00		
200010	421500		2015 AD VAL TAX R/P		25.00	
200010	421600		2016 AD VAL TAX R/P		500.00	
200030	432300		S&U TAX REIMBURSEMENT	15,000.00		
200080	443800		DISCOUNTS EARNED	225.00		
204750	444310		SPONSORSHIPS & DONATIONS	1,600.00		
204750	512100		SALARIES & WAGES-REG	32,000.00		
204750	512900		SALARIES & WAGES - P/T		10,000.00	
204750	517200		CELLPHONE STIPEND	72.00		
204750	518100		FICA TAX EXPENSE	1,000.00		
204750	518200		RETIREMENT EXPENSE	1,000.00		
204750	518300		GROUP MED & LIFE INS	11,066.00		
204750	533000		UTILITIES		5,000.00	
204750	535300		R & M - TRUCKS	500.00		
204750	569000		CONTRACTED SERVICES		10,000.00	
204750	575210		CREDIT CARD PROCESSING FEES	50.00		
204755	443215		BEARFOOTIN' BEAR SALES	2,162.00		
204755	561700		CONTRIBUTION OF % BEAR SALES		5,452.00	
209910	599100		CONTINGENCIES	4,451.00		
FUND 20			TOTAL REVENUES	20,212.00	525.00	19,687.00
			TOTAL EXPENDITURES	50,139.00	30,452.00	19,687.00
210010	411300		TAX LL PRIOR 2008, ADV	17.00		
210010	421300		2013 AD VAL TAX - R/P	14.00		
210010	421400		2014 AD VAL TAX R/P	13.00		
210010	421500		2015 AD VAL TAX R/P	11.00		
210010	421600		2016 AD VAL TAX R/P	52.00		
210030	432300		S&U TAX REIMBURSEMENT	3,557.00		
210080	443210		SPECIAL EVENTS - MRKT AT DEPOT	405.00		
214751	512100		SALARIES & WAGES - REGULAR	10,856.00		

Agenda

TO MAYOR & COUNCIL - February 06, 2020 **FISCAL YEAR 2020**

BUDGET AMENDMENT

FUND: 10 | 20 | 21

ACCOUNT NUMBER					
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
214751	512900		SALARIES & WAGES - P/T		3,500.00
214751	518300		GROUP MED & LIFE INS	2,459.00	
214751	529900		PW SUPPLIES & MATERIALS		3,371.00
214751	533900		STREET/TRAFFIC LIGHTS		3,500.00
214751	569000		CONTRACTED SERVICES	1,075.00	
214751	575210		CREDIT CARD PROCESSING FEES	50.00	
FUND 21			TOTAL REVENUES	4,069.00		4,069.00
			TOTAL EXPENDITURES	14,440.00	10,371.00	4,069.00

A mid-year amendment, described in the mid-year report document.

John Hoyt
CITY MANAGER

1-28-20
Date:

APPROVED BY CITY COUNCIL: DATE: 2/6/2020

Agenda

TO MAYOR & COUNCIL - February 06, 2020 **FISCAL YEAR 2020**

BUDGET AMENDMENT

FUND: 60 | 67 | 68

ACCOUNT NUMBER						
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE	
600050	452300		DISCONNECT/RECONNECT ADMIN FEE	15,000.00	-	
604140	519000		PROFESSIONAL SERVICES	15,000.00	-	
604140	569000		CONTRACTED SERVICES	15,000.00	-	
604140	559000		CAPITAL - INTANGIBLE	-	18,000.00	
607110	550000		NON-CAPITAL EQUIPMENT	12,500.00	-	
607110	532500		POSTAGE	11,000.00	-	
607110	517200		CELLPHONE STIPEND	1,260.00	-	
607110	512200		SALARIES & WAGES-O/T	500.00	-	
607110	513500		SALARIES & WAGES-UNIFORM/TAXAB	50.00	-	
607110	535100		R & M - BUILDINGS	-	1,000.00	
607110	535200		R & M - EQUIPMENT	-	1,000.00	
607113	575210		CREDIT CARD PROCESSING FEES	10,000.00	-	
607113	549310		BANK RECONCILIATION SUSPENSE	1,200.00	-	
607113	549300		CASH SHORT/OVER	200.00	-	
607113	549200		UNCOLLECTIBLE ACCOUNTS	100.00	-	
607113	532500		POSTAGE	-	11,500.00	
607123	535100		R & M - BUILDINGS	-	5,000.00	
607123	569000		CONTRACTED SERVICES	-	10,000.00	
607124	512200		SALARIES & WAGES-O/T	3,000.00	-	
607124	545600		LIAB/PROP INS & BONDS	1,500.00	-	
607124	535100		R & M - BUILDINGS	-	3,500.00	
607125	512200		SALARIES & WAGES-O/T	1,000.00	-	
607125	550000		NON-CAPITAL EQUIPMENT	-	1,000.00	
607126	545600		LIAB/PROP INS & BONDS	4,000.00	-	
607126	549750		PERMITS, LICENSE AND FEES	1,000.00	-	
607126	553000		NON-CAPITAL EQUIPMENT	1,000.00	-	
607126	549999		MISCELANEOUS EXPENSE	300.00	-	
607126	513500		SALARIES & WAGES-UNIFORM/TAXAB	50.00	-	
607126	598500		PAVING CUT REPAIRS	-	6,350.00	
607127	535300		R & M - AUTO/TRUCKS	42.00	-	
607134	512200		SALARIES & WAGES-O/T	500.00	-	
607134	513500		SALARIES & WAGES-UNIFORM/TAXAB	175.00	-	
607134	552000		CAPITAL OUTLAY - EQUIPMENT	-	1,319.00	
607135	512200		SALARIES & WAGES-O/T	250.00	-	
607136	512200		SALARIES & WAGES-O/T	10,000.00	-	
607136	535200		R & M - EQUIPMENT	10,000.00	-	
607136	535250		R&M-LINES	-	25,958.00	
FUND 60			TOTAL REVENUES	15,000.00	-	15,000.00
			TOTAL EXPENDITURES	99,627.00	84,627.00	15,000.00
674720	512100		SALARIES & WAGES - REGULAR	14,482.00	-	
674720	518200		RETIREMENT EXPENSE	803.00	-	
674720	518100		FICA TAX EXPENSE	682.00	-	
674720	552000		CAPITAL OUTLAY - EQUIPMENT	126.00	-	
674720	575200		BANK SERVICE CHARGES	50.00	-	
674720	553000		NON-CAPITAL EQUIPMENT	25.00	-	
674720	519000		PROFESSIONAL SERVICES	-	16,168.00	
FUND 67			TOTAL REVENUES	-	-	-
			TOTAL EXPENDITURES	16,168.00	16,168.00	-
680080	443900		MISCELLANEOUS INCOME	800.00	-	
684250	512250		SALARIES & WAGES-HOLIDAY PAY	100.00	-	
689910	599100		CONTINGENCIES	700.00	-	
FUND 68			TOTAL REVENUES	800.00	-	800.00
			TOTAL EXPENDITURES	800.00	-	800.00

Agenda

TO MAYOR & COUNCIL - February 06, 2020 **FISCAL YEAR 2020**

BUDGET AMENDMENT

FUND: 60 | 67 | 68

ACCOUNT NUMBER					
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
A mid-year amendment, described in the mid-year report document.					

CITY MANAGER Date: 1-28-20

APPROVED BY CITY COUNCIL: DATE: 2/6/2020

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 1/29/20

Presenter: Brent Detwiler

Date of Council Meeting to consider this item: 2/6/20

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05c

Northside (Fletcher) Water System Improvements Project - Tentative Award

The Northside Water System Improvements Project was publicly bid on September 6, 2019. This project is being funded by the NCDEQ Division of Water Infrastructure (DWI). M. B. Kahn Construction Co., Inc. of Columbia, SC submitted the apparent low bid for the project. Each bid received was above the project's available funding. Therefore, following receipt of bids, McKim & Creed and the City entered into negotiations with M. B. Kahn pursuant to NC G.S. 143-129 to reduce project cost. Agreement on negotiated pricing has been successfully reached for the items indicated on the attached bid tabulation. Additional funding has also been formally applied for through DWI to increase the State Reserve Project loan amount. The additional funding needed through DWI has been recommended to the North Carolina LGC by NCDEQ DWI staff, and approval is expected during the LGC's regularly scheduled February 4th meeting.

City staff and McKim & Creed recommends the tentative project award to M. B. Kahn Construction Co., Inc. for the mutually agreed upon negotiated total amount of $3,699,407.00. Please note that the final award will be contingent upon the approval of the North Carolina Department of Environmental Quality. Please let us know if you have any questions or require additional information regarding this project.

Budget Impact: $ 3,699,407.00 Is this expenditure approved in the current fiscal year budget? Yes If no, describe how it will be funded.

Suggested Motion:

I move to authorize the Mayor to execute a resolution of tentative award and the City Manager to execute the contract for the construction of the Northside (Fletcher) Water System Improvements Project to M. B. Kahn Construction Co., Inc., in the amount of $3,699,407.00, as presented and recommended by staff.

Attachments:

Resolution of Tentative Award, Award Letter, Bid Tabulation

Agenda

McKIM&CREED

ENGINEERS
SURVEYORS
PLANNERS

January 29, 2020 064960005 (54)

Mr. Brent Detwiler, PE
City Engineer
City of Hendersonville
305 Williams Street
Hendersonville, NC 28792

RE: Bid Tabulation and Recommendation
Hendersonville Northside Water System Improvements

Dear Mr. Detwiler:

On September 6, 2019, three (3) bids were received for the City of Hendersonville Northside Water System Improvements Project. M. B. Kahn Construction Co., Inc. of Columbia, SC submitted the apparent low bid for the project. Each bid received was above the project's available funding. Therefore, following receipt of bids, McKim & Creed and the City entered into negotiations with M. B. Kahn pursuant to NC G.S. 143-129 to reduce project cost. Agreement on negotiated pricing has been successfully reached for the items indicated on the attached bid tabulation. Additional funding has also been formally applied for through NCDEQ Division of Water Infrastructure to increase the State Reserve Project loan amount. The additional funding needed through NCDEQ DWI has been recommended to the North Carolina LGC by NCDEQ DWI staff, and approval is expected during the LGC's regularly scheduled February 4th meeting.

McKim & Creed has completed a detailed analysis of each bid submitted, none of which affected the bid of M. B. Kahn Construction Co., Inc. or the order of the bids received. A Bid Tabulation of each bid received is attached.

We therefore recommend that the City of Hendersonville tentatively award the construction contract for the City of Hendersonville Northside Water System Improvements to M. B. Kahn Construction Co., Inc. for the mutually agreed upon negotiated total amount of $3,699,407.00. This tentative award of the construction contract to M. B. Kahn Construction Co., Inc. shall be subject to review and authorization by NCDEQ Division of Water Infrastructure staff. Please see the attached RESOLUTION OF TENTATIVE AWARD for City Council approval.

8020 Tower Point Drive
Charlotte, NC 28227

704.841.2588
Fax 704.841.2567

www.mckimcreed.com

We appreciate this opportunity to serve the City of Hendersonville and look forward to the completion of this project. Please contact our office (704-841-2588) with any questions or concerns.

Respectfully submitted,

McKIM & CREED, Inc.

Zachary Trammel, PE
Project Manager

Attachments

RESOLUTION OF TENTATIVE AWARD

WHEREAS, the City of Hendersonville, North Carolina has received bids, pursuant to duly advertisement notice therefore, for construction of the Northside Water System Improvements project, and

WHEREAS, McKim & Creed, Inc., the Consulting Engineers have reviewed the bids; and

WHEREAS, M. B. Kahn Construction Co., Inc. was the lowest bidder for the Northside Water System Improvements project, in the total bid amount of $3,699,407.00, and

WHEREAS, the consulting Engineers recommend **TENTATIVE AWARD** to the lowest bidder(s).

NOW, THERE FORE, BE IT RESOLVED that TENTATIVE AWARD is made to the lowest bidder(s) in the Total Bid Amount of $3,699,407.00.

Name of Contractor	**Amount**
1. M. B. Kahn Construction Co., Inc.	$3,699,407.00
2. The Harper Corporation	$3,959,500.00
3. State Utility Contractors, Inc.	$4,191,000.00

BE IT FURTHER RESOLVED that such TENTATIVE AWARD be contingent upon the approval of the North Carolina Department of Environmental Quality.

Upon motion of _____, seconded by_____, the above **RESOLUTION** was unanimously adopted.

This is 6th day of February, 2020.

_____(Signature)_____
(Name and Title of Authorized Representative)

(Seal)

Attest:

_____(Signature)_____

(Name, Clerk)

NORTHSIDE WATER SYSTEM IMPROVEMENTS Bid Tabulation Owner: City of Hendersonville, NC Engineer: McKim & Creed, Inc. Bid Opening: September 6, 2019 at 2:00 PM EDT						M. B. Kahn Construction 101 Flintlake Road Columbia, SC 29223 NC License #1425			The Harper Corporation 312 E Coffee Street Greenville, SC 29601 NC License #3146		State Utility Contractors, Inc. P.O. Box 5019 Monroe, NC 28111-5019 NC License #17793	
Section Title	**Line Item**	**Item Code**	**Item Description**	**UofM**	**Quantity**	**Unit Price**	**Extension**	**NEGOTIATED VALUE**	**Unit Price**	**Extension**	**Unit Price**	**Extension**
A - WATER MAIN PIPE							$57,715.00			$104,720.00		$184,866.00
	A-1	A-1	8-INCH RESTRAINED JOINT DUCTILE IRON WATER MAIN, CLASS 350, ALL DEPTHS	Ln Ft	10	$70.00	$700.00		$120.00	$1,200.00	$320.00	$3,200.00
	A-2	A-2	10-INCH DUCTILE IRON WATER MAIN, PUSH-ON JOINTS, CLASS 350, ALL DEPTHS	Ln Ft	284	$75.00	$21,300.00		$140.00	$39,760.00	$145.00	$41,180.00
	A-3	A-3	10-INCH RESTRAINED JOINT DUCTILE IRON WATER MAIN, CLASS 350, ALL DEPTHS	Ln Ft	171	$80.00	$13,680.00		$150.00	$25,650.00	$178.00	$30,438.00
	A-4	A-4	12-INCH DUCTILE IRON WATER MAIN, PUSH-ON JOINTS, CLASS 350, ALL DEPTHS	Ln Ft	37	$85.00	$3,145.00		$150.00	$5,550.00	$676.00	$25,012.00
	A-5	A-5	12-INCH RESTRAINED JOINT DUCTILE IRON WATER MAIN, CLASS 350, ALL DEPTHS	Ln Ft	161	$90.00	$14,490.00		$160.00	$25,760.00	$476.00	$76,636.00
	A-6	A-6	16-INCH RESTRAINED JOINT DUCTILE IRON WATER MAIN, CLASS 250, ALL DEPTHS	Ln Ft	40	$110.00	$4,400.00		$170.00	$6,800.00	$210.00	$8,400.00
B - GATE VALVES WITH VALVE BOX ASSEMBLIES							$15,600.00			$28,500.00		$23,800.00
	B-1	B-1	8-INCH GATE VALVE WITH VALVE BOX ASSEMBLY	Ea	2	$2,000.00	$4,000.00		$3,500.00	$7,000.00	$2,700.00	$5,400.00
	B-2	B-2	10-INCH GATE VALVE WITH VALVE BOX ASSEMBLY	Ea	2	$2,200.00	$4,400.00		$4,000.00	$8,000.00	$3,350.00	$6,700.00
	B-3	B-3	12-INCH GATE VALVE WITH VALVE BOX ASSEMBLY	Ea	3	$2,400.00	$7,200.00		$4,500.00	$13,500.00	$3,900.00	$11,700.00
C - CONNECTIONS TO EXISTING WATER MAINS							$100,000.00			$32,000.00		$106,000.00
	C-1	C-1	US HWY 25: 8-INCH AND 10-INCH CONNECTIONS TO EX. 16-INCH WATER MAIN, WITH 16-INCH BUTTERFLY VALVE AND VALVE BOX ASSEMBLY	LS	1	$60,000.00	$60,000.00		$15,000.00	$15,000.00	$73,000.00	$73,000.00
	C-2	C-2	STA. 0+00 WOODHILL DR.: 8-INCH CONNECTION TO EX. 8-INCH WATER MAIN	LS	1	$20,000.00	$20,000.00		$8,000.00	$8,000.00	$24,000.00	$24,000.00
	C-3	C-3	STA. 0+00 GROUND STORAGE TANK SITE: 12-INCH CONNECTION TO EX. 12-INCH WATER MAIN	LS	1	$20,000.00	$20,000.00		$9,000.00	$9,000.00	$9,000.00	$9,000.00
D - PERMANENT BLOW-OFF ASSEMBLY							$10,000.00			$5,000.00		$7,300.00
	D-1	D-1	PERMANENT BLOW-OFF ASSEMBLY	Ea	1	$10,000.00	$10,000.00		$5,000.00	$5,000.00	$7,300.00	$7,300.00
E - CHECK VALVE VAULT							$8,500.00			$10,000.00		$14,000.00
	E-1	E-1	CHECK VALVE VAULT	LS	1	$8,500.00	$8,500.00		$10,000.00	$10,000.00	$14,000.00	$14,000.00
F - REMOVAL AND REPLACEMENT OF ASPHALT PAVEMENT							$17,050.00			$37,200.00		$44,950.00
	F-1	F-1	REMOVAL AND REPLACEMENT OF ASPHALT PAVEMENT	Sq Yd	310	$55.00	$17,050.00		$120.00	$37,200.00	$145.00	$44,950.00
G - REMOVAL AND REPLACEMENT OF CONCRETE							$3,200.00			$10,000.00		$4,840.00
	G-1	G-1	REMOVAL AND REPLACEMENT OF CONCRETE SIDEWALK AND DRIVEWAYS	Sq Yd	20	$135.00	$2,700.00		$350.00	$7,000.00	$165.00	$3,300.00
	G-2	G-2	REMOVAL AND REPLACEMENT OF CONCRETE CURB AND GUTTER	Ln Ft	20	$25.00	$500.00		$150.00	$3,000.00	$77.00	$1,540.00
H - EROSION AND SEDIMENTATION CONTROL MEASURES							$68,135.00			$59,915.00		$101,870.00
	H-1	H-1	PERMANENT GRASSING	LS	1	$12,000.00	$12,000.00		$15,000.00	$15,000.00	$20,570.00	$20,570.00
	H-2	H-2	CONSTRUCTION ENTRANCES	Ea	2	$4,250.00	$8,500.00		$2,500.00	$5,000.00	$3,600.00	$7,200.00
	H-3	H-3	SILT FENCE	Ln Ft	630	$3.50	$2,205.00		$5.00	$3,150.00	$3.50	$2,205.00
	H-4	H-4	SILT FENCE WITH STONE OUTLET	Ea	6	$680.00	$4,080.00		$500.00	$3,000.00	$475.00	$2,850.00
	H-5	H-5	SCOUR HOLE/SLOPE DRAIN/ARC FILTER INLET	Ea	2	$800.00	$1,600.00		$1,500.00	$3,000.00	$6,050.00	$12,100.00
	H-6	H-6	SCOUR HOLE	Ea	6	$650.00	$3,900.00		$750.00	$4,500.00	$770.00	$4,620.00
	H-7	H-7	TEMPORARY DIVERSION DITCH	Ln Ft	740	$5.75	$4,255.00		$6.00	$4,440.00	$18.00	$13,320.00
	H-8	H-8	PERMANENT DIVERSION DITCH	Ln Ft	1000	$6.00	$6,000.00		$6.00	$6,000.00	$15.00	$15,000.00
	H-9	H-9	ROCK PIPE INLET PROTECTION	Ea	1	$1,800.00	$1,800.00		$500.00	$500.00	$1,650.00	$1,650.00
	H-10	H-10	WATER BARS	Ln Ft	110	$12.00	$1,320.00		$5.00	$550.00	$11.00	$1,210.00
	H-11	H-11	ROLLED EROSION CONTROL PRODUCT	Sq Yd	4750	$2.00	$9,500.00		$2.50	$11,875.00	$3.50	$16,625.00
	H-12	H-12	SILT SACK INLET PROTECTION	Ea	4	$525.00	$2,100.00		$500.00	$2,000.00	$440.00	$1,760.00
	H-13	H-13	RIP RAP APRON	Ea	3	$3,625.00	$10,875.00		$300.00	$900.00	$920.00	$2,760.00
I - TRAFFIC CONTROL							$50,000.00	$42,500.00		$20,000.00		$24,000.00
	I-1	I-1	TRAFFIC CONTROL	LS	1	$50,000.00	$50,000.00	$42,500.00	$20,000.00	$20,000.00	$24,000.00	$24,000.00
J - DUPLEX BOOSTER PUMP STATION							$1,065,080.00	$1,028,477.00		$1,074,130.00		$1,337,394.00
	J-1	J-1	DUPLEX BOOSTER PUMP STATION	LS	1	$1,065,080.00	$1,065,080.00	$1,030,635.00	$1,074,130.00	$1,074,130.00	$1,337,394.00	$1,337,394.00
K - GROUND STORAGE TANK SITE IMPROVEMENTS							$1,750,000.00			$1,950,000.00		$1,700,000.00
	K-1	K-1	GROUND STORAGE TANK SITE IMPROVEMENTS	LS	1	$1,750,000.00	$1,750,000.00		$1,950,000.00	$1,950,000.00	$1,700,000.00	$1,700,000.00
L - ASPHALT PAVEMENT FOR TANK SITE ACCESS DRIVEWAY							$111,800.00			$161,250.00		$96,750.00
	L-1	L-1	ASPHALT PAVEMENT FOR TANK SITE ACCESS DRIVEWAY	Sq Yd	2150	$52.00	$111,800.00		$75.00	$161,250.00	$45.00	$96,750.00
M - REMOVAL AND ABANDONMENT OF EXISTING WATER MAINS							$25,625.00			$10,000.00		$8,000.00
	M-1	M-1	REMOVAL AND ABANDONMENT OF EXISTING WATER MAINS	LS	1	$25,625.00	$25,625.00		$10,000.00	$10,000.00	$8,000.00	$8,000.00

N - DEMOLITION OF EXISTING GROUND STORAGE TANK AND TRANSMITTER HOUSE							$140,000.00			$120,000.00		$197,000.00
	N-1	N-1	DEMOLITION OF EXISTING GROUND STORAGE TANK AND TRANSMITTER HOUSE	LS	1	$140,000.00	$140,000.00		$120,000.00	$120,000.00	$197,000.00	$197,000.00
O - CONTINGENT WORK							$14,500.00			$18,000.00		$14,500.00
	O-1	O-1	MISCELLANEOUS EXCAVATION (MINIMUM $5/CY)	Cu Yd	100	$30.00	$3,000.00		$40.00	$4,000.00	$30.00	$3,000.00
	O-2	O-2	MISCELLANEOUS FILL (MINIMUM $10/CY)	Cu Yd	100	$40.00	$4,000.00		$50.00	$5,000.00	$40.00	$4,000.00
	O-3	O-3	SPECIAL BACKFILL (MINIMUM $10/CY)	Cu Yd	100	$50.00	$5,000.00		$60.00	$6,000.00	$50.00	$5,000.00
	O-4	O-4	EXCAVATION/STABILIZATION BELOW SUBGRADE (MINIMUM $15/CY)	Cu Yd	50	$50.00	$2,500.00		$60.00	$3,000.00	$50.00	$2,500.00
P - MOBILIZATION							$106,305.00			$118,785.00		$125,730.00
	P-1	P-1	MOBILIZATION (MAXIMUM 3%)	LS	1	$106,305.00	$106,305.00		$118,785.00	$118,785.00	$125,730.00	$125,730.00
Q - CONTINGENCY ALLOWANCE							$200,000.00			$200,000.00		$200,000.00
	Q-1	Q-1	CONTINGENCY ALLOWANCE	LS	1	$200,000.00	$200,000.00		$200,000.00	$200,000.00	$200,000.00	$200,000.00
TOTAL BID - NORTHSIDE WATER SYSTEM IMPROVEMENTS							**$3,743,510.00**	**$3,699,407.00**		**$3,959,500.00**		**$4,191,000.00**

I hereby certify that the above tabulation is a correct tabulation of the bids received on September 6, 2019. _____

Agenda

Zachary Trammel

From: Melissa Roldan <mroldan@mbkahn.com>
Sent: Wednesday, January 29, 2020 11:35 AM
To: Zachary Trammel
Cc: Katherine J. Van Sice; Josh Marlin; Casey Byrd
Subject: Northside Hendersonville Credit Summary
Attachments: Northside Hendersonville Credit Summary 01.29.2020.xlsx

Importance: High

Good Morning Zach,

Please reference the attached sheet which summarizes all the credits that have been offered for the Northside Hendersonville project. If there are any questions, please do not hesitate in reaching out.

Thank you,

Melissa Roldan
Estimator

M. B. Kahn
KAHN Construction Co., Inc.

101 Flintlake Rd, Columbia, SC 29223
803.736.2950 (main)
803.227.1279 (direct)
678.749.5860 (cell)
www.mbkahn.com
NC #1425 | FL #CGC05689
(licenses listed per state law)

Agenda

Northside Water System Improvements
Hendersonville, NC

Credit Summary

Description	Value
Bid Day (09/06/2019)	$3,743,510
Flagger/Traffic Control Credit	($7,500)
Pump Station Pipe Modifications	($1,638)
10" Electromagnetic Flow Meter Credit	($4,462)
Masonry - Building Length Reduction	($1,150)
FPI Magmeter Addition	$4,779
Patterson Pump Credit	($34,132)
Updated Contract Value (01/29/2020)	**$3,699,407**

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Lee Smith

Department: Utilities

Date Submitted: 12/18/2019

Presenter: Lee Smith

Date of Council Meeting to consider this item: 1/9/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05d

Justification for the Sole Source Purchasing of Cummins Auxiliary Power Supply and Automatic Transfer Switching Equipment for the water and sewer pumping facilities throughout the City water distribution and sewer collection systems:

The above referenced equipment is required to provide back-up power supply for water and sewer pumping stations owned and operated by the City during times of commercial power outage. NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchased using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

Please see the attached recommendation from City staff to sole source purchase of Cummins auxiliary power supply and automatic transfer switching equipment required for all City water and sewer pumping facilities supplied by Cummins through Maybin Emergency Power, a certified Cummins dealer located in Henderson County.

Budget Impact: $ Not to exceed approved budget Is this expenditure approved in the current fiscal year budget? Yes If no, describe how it will be funded.

Suggested Motion:

I move City Council to resolve to approve the purchase of Cummins Auxiliary Power Supply and Automatic Transfer Switching Equipment to be installed throughout the City water distribution system pumping facilities and sewer collection system pumping facilities, as deemed necessary by City staff each fiscal year, as authorized by the sole source exemption of NCGS 143-129(e)(6) and to authorize the City Manager to execute documents associated with said purchase.

Attachments:

-Sole-source justification memo from City staff
-Quote from Maybin Emergency Power for Fiscal Year 2019-2020 for Cummins Auxiliary Power Supply and Automatic Transfer Switching Equipment

Agenda

Sole Sourcing Justification – Maybin's Emergency Power

Per City of Hendersonville, NC Purchasing Policy

2.1 Local Buying

I understand that the City of Hendersonville desires to purchase and contract service with local vendors within the City and Henderson County. We do have a local sales / service / installation provider that is factory certified by Cummins to sell, install and provide service to Cummins Generators.

2.4 Buying Proper Quality.

It has been my experience that the quality of Cummins Generators are very good. Cummins has the Engineering and field support and stand behind their products. The Water and Sewer department has had good success with the Cummins Generators that we currently have in our Water Distribution and Sewer Collections System.

5.3 Sole Source of Supply

Maybin's Emergency Power is factory certified / trained dealer, Licensed NC Electrical Contractor specializing in power generation equipment, licensed to sell, service, and repair, install and warrant Cummins Generators for the Western North Carolina area. While in a contract with Maybin's Emergency Power, the mark up cost for required maintenance parts is negotiated at no more than ten percent above dealer cost, and no more than four and a half percent on new generator sells. This is a substantial saving over the general contractor mark up of twenty percent. The advantage of Sole Source for us is the consistency of pricing, parts and service. Sole Sourcing helps us to increase our efficiency when ordering parts, emergency service and new Generators. It fits our long term goals of standardizing our Generator equipment to one name brand.

5.4 Single Brand Convenience

This will help in the future by only having to stock part's from only one manufacture / brand of equipment. It also helps us when it comes training, advanced training and experience on generators and transfer switches, it is a lot easier to train and get experience when dealing with only one brand of generator and transfer switch.

Agenda

MAYBIN'S EMERGENCY POWER INC.

197 MTN. VALLY CEM. RD

ZIRCONIA, N.C. 28790

1-828-674-9428

Dealer #4892

- Maybin's Emergency Power has been in Business for over 25 Years with over 35 years experience specializing in Power Generation .
- We are a full service dealership that offers Sales, Service, Parts, repair and installation of Cummins/Onan Power Generation systems including Standby, Prime, Towable and Commercial Moble generators.
- Licenced as a Electrical Contractor in the State of North Carolina.
- Factory Certified Onan/Cummins Power Generation Company.
- Certified to do factory repair Warranty on Industrial, Commercial, Residential,Towable and Commercial Moble Genset's up 3MKW gensets.
- Only dealer Certified to use In-Power diagnostic computer based software for troubleshooting and repairing switchgear and Generator control Boards in the Western North Carolina area.
- Offer"s load banking for testing and servicing units to NFPA 110 Compliance in the area.
- We offer site consulting,site load calculations, annual and semi-annual service contracts for multiple generator site's.

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E134
Date 10/22/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
		Total Job cost

Description	Quantity	Rate	Tax 1	Amount
Equipment Cost	1.00	$129,988.84		$129,988.84
Installation	1.00	$36,000.00		$36,000.00

Price includes generators , Auto transfer switchs and installation. Does not include fuel, gas piping or NC sales tax.

Amount Paid	$0.00
Amount Due	$165,988.84

Sub Total	$165,988.84
Sales Tax 6.75% on $0.00	$0.00
Total	$165,988.84

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E124

Date 10/20/2019

Bill To:

City of Hendersonville
145 5thAve. East
hendersonville, NC, 28792

Ship To:

PO Number	Terms	Project
		Hunters crossing

Description	Quantity	Rate	Tax 1	Amount
40kw genset Diesel	1.00	$21,197.98		$21,197.98
	0.00	$0.00		$0.00

Price is for a 40kw Diesel genset NC sales Tax, installation and fuel not included.

Amount Paid	$0.00
Amount Due	$21,197.98

Sub Total	$21,197.98
Sales Tax 6.75% on $0.00	$0.00
Total	**$21,197.98**

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E125

Date 10/20/2019

Bill To:

City of Henderson W&S
145 5tn Ave E
Hendersonville, NC, 28792

Ship To:

PO Number	Terms	Project
		Hunters Crossing upper

Description	Quantity	Rate	Tax 1	Amount
50kw Diesel Genset	1.00	$24,819.34		$24,819.34
	0.00	$0.00		$0.00

Included in price is 50kw 1ph diesel genset and 225 OTEC transfer switch and installation. NOT included is installation, NC sales Tax and fuel.

Amount Paid	$0.00
Amount Due	$24,819.34

Sub Total	$24,819.34
Sales Tax 6.75% on $0.00	$0.00
Total	**$24,819.34**

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E128

Date 10/20/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
		Hunters Glen

Description	Quantity	Rate	Tax 1	Amount
45kw LP/NG genset 3ph	1.00	$17,290.04		$17,290.04

45kw 3ph LP/NG genset.not inluded is NC sales Tax Gas Piping and installation.

Amount Paid	$0.00
Amount Due	$17,290.04

Sub Total	$17,290.04
Sales Tax 6.75% on $0.00	$0.00
Total	**$17,290.04**

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E127

Date 10/20/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
		Carrage Park 101

Description	Quantity	Rate	Tax 1	Amount
45kw NG Genset 1ph	1.00	$17,699.04		$17,699.04

Included 45kw 1ph genset lp/ NG. Not included is installation NC sales Tax or gas piping.

Amount Paid	$0.00
Amount Due	$17,699.04

Sub Total	$17,699.04
Sales Tax 6.75% on $0.00	$0.00
Total	**$17,699.04**

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E126

Date 10/20/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
		Hawthorne Hills

Description	Quantity	Rate	Tax 1	Amount
70KW genset NG	1.00	$21,468.96		$21,468.96
		$0.00		$0.00

Included in price is 70kw 3ph NG genset. NOT included is installation, NC sales Tax and gas piping.

Amount Paid	$0.00
Amount Due	$21,468.96

Sub Total	$21,468.96
Sales Tax 6.75% on $0.00	$0.00
Total	$21,468.96

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E130
Date 10/20/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
	LP/NG OPTION	Highland Lake 012

Description	Quantity	Rate	Tax 1	Amount
40 kw genset NG/LP	1.00	$16,038.48		$16,038.48

40Kw Genset NG/LP Gas included is installation ,NC sales Tax or gas piping not included.

Amount Paid	$0.00
Amount Due	$16,038.48

Sub Total	$16,038.48
Sales Tax 6.75% on $0.00	$0.00
Total	$16,038.48

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E132

Date 10/20/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
		Transfer switchs

Description	Quantity	Rate	Tax 1	Amount
5 Cummins transfer switchs 225,OTEC	5.00	$2,295.00	✔	$11,475.00

This price is for 5 Otec. NON- Service rated transfer switchs .
Installation Not included in this price.

Amount Paid	$0.00
Amount Due	$11,475.00

Sub Total	$11,475.00
Sales Tax 6.75% on $0.00	$0.00
Total	**$11,475.00**

Agenda

Maybin's Emergency Power Systems

P.O. Box 244
Flat Rock, N.C. 28731
Office: 828-697-1195 Email: meps@hughes.net

Estimate

Number E131
Date 10/20/2019

Bill To:	Ship To:
City of Henderson W&S 145 5tn Ave E Hendersonville, NC, 28792	

PO Number	Terms	Project
		installation Per site

Description	Quantity	Rate	Tax 1	Amount
Installation of Gensets per site	6.00	$6,000.00		$36,000.00

Price included installation of gensets , pad, all devices required..Does Not include Piping, fuel or NC sales tax. Freight to job site included in price.

Amount Paid	$0.00
Amount Due	$36,000.00

Sub Total	$36,000.00
Sales Tax 6.75% on $0.00	$0.00
Total	**$36,000.00**

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Lee Smith

Department: Utilities

Date Submitted: 12/18/2019

Presenter: Lee Smith

Date of Council Meeting to consider this item: 1/9/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05dii

Justification for the Sole Source Purchasing of SCADA (supervisory control and data acquisition) Equipment and Components for the City's water and sewer facilities including water treatment, water distribution, sewer collection and wastewater treatment systems:

The above referenced equipment and components is required to communicate information to and from varying types of pumping facilities and treatment equipment throughout the City's utility systems. This information is critical to the daily operation and maintenance of these systems located throughout Henderson County; and serves has an early warning system for issues within these systems. NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchased using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

Please see the attached recommendation from City staff to sole source purchase of SCADA (supervisory control and data acquisition) Equipment and Components for the City's water and sewer facilities including water treatment, water distribution, sewer collection and wastewater treatment systems, supplied by Fortech Automation and Controls.

Budget Impact: $ Not to exceed approved budget Is this expenditure approved in the current fiscal year budget? Yes If no, describe how it will be funded.

Suggested Motion:

I move City Council to resolve to approve the purchase of of SCADA (supervisory control and data acquisition) Equipment and Components to be installed throughout the City water distribution system pumping facilities and sewer collection system pumping facilities, including Water treatment and Wastewater treatment facilities, as deemed necessary by City staff each fiscal year, as authorized by the sole source exemption of NCGS 143-129(e)(6) and to authorize the City Manager to execute documents associated with said purchase.

Attachments:

-Sole-source justification memo from City staff
-Quote from Fortech Fiscal Year 2019-2020 for installation of new Scada system equipment and components.

Agenda

CITY COUNCIL:
BARBARA G. VOLK
Mayor
JERRY A. SMITH, JR.
Mayor Pro Tem
JEFF MILLER
DR. JENNIFER HENSLEY
LYNDSEY SIMPSON

CITY OF HENDERSONVILLE

The City of Four Seasons

WATER AND SEWER DEPARTMENT
Lee Smith, Utilities Director

OFFICERS:
JOHN F. CONNET
City Manager
SAMUEL H. FRITSCHNER
City Attorney
TAMMIE K. DRAKE
City Clerk

Thursday, January 30, 2020

SUBJECT: Sole Source Justification – Fortech Automation

SCADA (supervisory control and dada acquisition) systems are a critical part of daily operation and maintenance for our water and sewer systems. Reliable, consistent, accurate information is crucial to ensuring regulatory compliance. Fortech Automation and Controls has been our Sole Source Supplier of SCADA Systems and SCADA System Integrator since 2008 / 2009. We currently have 80 percent of the Water and Sewer pumping stations currently on the NEW Scada System. This will complete about 95 % the Scada System.

Fortech has proven to provide excellent materials and workmanship. They understand how our SCADA system operates which makes installation and integration of new components into our system much easier and more reliable in comparison to having another company attempt the installations.

Hendersonville Water Sewer

305 Williams St.
Hendersonville, NC 28792-4461

lsmith@hvlnc.gov
www.hendersonvillenc.gov

Phone: (828) 697-3073
Fax: (828) 697-3089

City of Hendersonville

PURCHASE ORDER/QUOTE FORM

Employee Name:	Department:
Dwayne Jones	Water and Sewer

DATE QUOTES OBTAINED:	DATE GOODS ARE REQUIRED:	
September, 23,1019 Revised Oct. 21, 2019	Purchased and Installed by June 25th 2020	___N/A_EMERGENCY ORDER

	VENDOR 1 NAME	VENDOR 2 NAME:	VENDOR 3 NAME:
VENDOR #:	**Fortech Incorporated**		
CONTACT NAME:	**Jon Forrest**		
PHONE #:	**1.704.333.0621**		
QUOTE $:	$183,822.00 Purchase 12 Scada Panels $43,747.00 (4) Hydro Pump Stations Scada Panel Installations Cost. $70,155.00 (9) Sewer Lift Station Scada Panel Installations Cost. **Total $297,724.00**		
Other Information:	This will complete about 95 % of the SCADA System Project.		

REASON(S) QUOTES NOT OBTAINED /EXPLANATION OF SOLE SOURCE OR EMERGENCY:

Fortech Automation and Controls is our SCADA Systems Integrator, we currently have 80 percent of the Water and Sewer pumping stations currently on the NEW Scada System. This will complete about 95 % the purchases and installations of the New Scada System Project. We plan to have these Scada Panels installed by June 25th 2020.

Agenda

FORTECH
Automation Controls
2124 Wilkinson Blvd., Charlotte, N.C. 28208
704-333-0621 www.fortech.us

October 21, 2019

Fortech Incorporated Proposal

Hendersonville SCADA
(4) Four Hydro Stations Installation Quotation

Dear Sirs:

Per our discussions, we are pleased to offer the following quotation for the installation of the listed SCADA panels. This includes installation and commissioning of the sites.

~~Hunters Crossing Surrey Ln (112)~~
~~Hunters Crossing Hunters Ln (113)~~
Stone Bridge (123)
~~Mountain Vista (133)~~
Sugar Loaf (134)
Blacksmith Run (136)
Carriage Park Grapevine Hydro & L/S (102 & 015)

~~Hunters Crossing - Surrey Ln (112) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, (2) Pump motor starters to replace existing, (1) Air compressor starter to replace existing, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat, concrete to secure antenna base.~~

~~Hunters Crossing - Hunters Ln (113) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, (2) Pump motor starters to replace existing, (1) Air compressor starter to replace existing, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat.~~

Stone Bridge (123) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, (1) Air compressor starter to replace existing, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat.

~~Mountain Vista (133) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, No starters required at this site, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat.~~

Sugar Loaf (134) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, No starters required at this site, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat. Note: The pumps at this site are cycling very often.

Blacksmith Run (136) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, (2) Pump motor starters to replace existing, (1) Air compressor starter to replace existing, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat.

Carriage Park Grapevine Hydro & L/S (102 & 015) Items required for installation: Voltage monitor relay in clear box, (2) pressure transmitters, CT switch for run status, (2) Pump motor starters to replace existing, (1) Air compressor

starter to replace existing, pump power loss relay, water on floor switch, smoke alarm, door contacts, building temperature/thermostat.

TOTAL $43,747.00

For all the above listed sites, this will be a turnkey solution with all the installation, phase–voltage monitor installation and interconnect wiring to the existing pump panels.

Your net price for the above described equipment is listed above, FOB shipping point with full freight allowed to the job site and including startup service. Startup service is included in the pricing of the above items and will not be broken out as a separate item.

Preliminary field modification drawings can be provided 4 weeks after acceptance of order with installation to begin one week after approval of our drawing and project schedule.

Please note that our pricing does not include any sales, use excise, or similar tax, or any export, import or other duties. Payment terms are net-30 after delivery of the equipment. The purchaser shall pay any such taxes or duties that are applicable to the sale. No installations, wiring, painting, flange bolts, or any other items not referenced are included. If you have any questions or concerns, please call.

Yours truly,

Jon Forrest

Jon Forrest, P.E.

(Q2618E Hville 4 Hydro SCADA Install 10-21-19)

FORTECH
Automation Controls
2124 Wilkinson Blvd., Charlotte, N.C. 28208
704-333-0621 www.fortech.us

October 21, 2019

Fortech Incorporated Proposal

Hendersonville SCADA
(9) Nine Lift Stations Installation Quotation

Dear Sirs:

Per our discussions, we are pleased to offer the following quotation for the installation of the (9) nine listed SCADA panels. This includes installation and commissioning of the sites.

Dana School (025)
Clear Creek School (026)
Carriage Park Preserve Ct (029)
Carriage Park Barnes Dale (030)
Carriage Park Deep Valley (032)
Carriage Park Wood Owl (033)
Carriage Park High Rd (035)
Carriage Park Crest Rd (036)
Carriage Park Crest Turnaround (038)
~~Sugarloaf Warehouse (042)~~

$7,795.00 / Lift Station site TOTAL $70,155.00

For all the above listed sites, this will be a turnkey solution with all the installation, phase–voltage monitor installation and interconnect wiring to the existing pump panels.

Your net price for the above described equipment is listed above, FOB shipping point with full freight allowed to the job site and including startup service. Startup service is included in the pricing of the above items and will not be broken out as a separate item.

Preliminary field modification drawings can be provided 4 weeks after acceptance of order with installation to begin one week after approval of our drawing and project schedule.

Please note that our pricing does not include any sales, use excise, or similar tax, or any export, import or other duties. Payment terms are net-30 after delivery of the equipment. The purchaser shall pay any such taxes or duties that are applicable to the sale. No installations, wiring, painting, flange bolts, or any other items not referenced are included. If you have any questions or concerns, please call.

Yours truly,
Jon Forrest
Jon Forrest, P.E.

FORTECH
Automation Controls
2124 Wilkinson Blvd., Charlotte, N.C. 28208
704-333-0621 www.fortech.us

October 21, 2019

Fortech Incorporated Proposal

Hendersonville SCADA (12) Sites

Dear Sirs:

Per our discussions, we are pleased to offer the following quotation for the various types of SCADA sites. These sites reflect the scope defined by our emails and meetings.

(9) Dana School (025)
Clear Creek School (026)
Carriage Park Preserve Ct (029)
Carriage Park Barnes Dale (030)
Carriage Park Deep Valley (032)
Carriage Park Wood Owl (033)
Carriage Park High Rd (035)
Carriage Park Crest Rd (036)
Carriage Park Crest Turnaround (038)
~~Sugarloaf Warehouse (042)~~

Each with a NEMA-4 painted steel enclosure, new style GE MDS SD licensed radio, Allen-Bradley MicroLogix 1200 PLC, PLC expansion modules to provide additional digital and additional analog signals, surge protection for analog signals as required, yagi radio antenna and polyphaser radio cable surge suppressor, 660VAUPS for surge suppression and backup power. $15,293.00 each plus tax

(3) ~~Hunters Crossing Surrey Ln Hydro (112)~~
~~Hunters Crossing Hunter Ln Hydro (113)~~
Stone Bridge Hydro (123)
~~Mountain Vista Hydro (133)~~
Sugarloaf School Hydro (134)
Blacksmith Run Hydro (136)

Each with a NEMA-4 painted steel enclosure, new style GE MDS SD licensed radio, Allen-Bradley MicroLogix 1200 PLC, PLC expansion modules to provide additional digital and additional analog signals, surge protection for analog signals as required, yagi radio antenna and polyphaser radio cable surge suppressor, 660VAUPS for surge suppression and backup power. $15,395.00 each plus tax

For all of the above listed sites, provide computer system enhancements at the Hendersonville WTP to RSview-SE system, display graphical interface, process and store operating history and transmit control signals. This site will require more programming than any of the previous sites.

TOTAL for the 12 listed sites **$183,822.00**

Your net price for the above described equipment is listed above, FOB shipping point with full freight allowed to the job site and including startup service. Startup service is included in the pricing of the above items and will not be broken out as a separate item.
Shop drawings shall be provided 3 week after acceptance of order. Shipment shall be 6 weeks after approval.
Please note that our pricing does not include any sales, use excise, or similar tax, or any export, import or other duties. Payment terms are net-30 after delivery of the equipment. The purchaser shall pay any such taxes or duties that are applicable to the sale. No installations, wiring, painting, flange bolts, or any other items not referenced are included.

If you have any questions or concerns please call.

Yours truly,

Jon Forrest

Jon Forrest, P.E.

(Q2618E Hville SCADA 12 Sites 10-21-19)

Agenda

Purchase Order

City of Hendersonville
145 Fifth Avenue E
Hendersonville, NC 28792

Fiscal Year 2020 Page 1 of 0

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS

Purchase Order # 2020206-00

FACILITIES MAINTENANCE
305 WILLIAMS ST
HENDERSONVILLE, NC 28792

PO Expiration Date
06/30/2020

FORTECH INC
2124 WILKINSON BLVD
CHARLOTTE NC 28208

FACILITIES MAINTENANCE
305 WILLIAMS ST
HENDERSONVILLE, NC 28792

[illegible]	[illegible]	Requisition Number	Delivery Reference
704-333-0621	704-333-2820	2020214	

[illegible]	[illegible]	Date Required	Freight Method/Terms	Department/Location
12/18/2019	9013			W & S PUMPING & SUPPLY

	Description	Qty	UOM	Unit Price	Extended Price
1	SCADA System 2020 - 9 lift stations / 4 hydro stations / 12 sites	1.0	EACH	$297,724.000	$297,724.00
	******** GL SUMMARY ********				
	607123 - 552000 C/O DP EQ 297,724.00				

C B

Finance Director

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

FINANCE COPY

PO Total **$297,724.00**

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 01/28/2020

Presenter: John Connet

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05e

In 2017 the City of Hendersonville traded property with Housing Assistance Corporation (HAC). HAC received two lots on the corner of N. Main Street and Maple Street that will be utilized for single family houses. The City received a large tract located on the edge of HAC's Oklawaha Village Subdivision. Due to the fact the City's property is located adjacent to Mud Creek and within the flood plain, the property will be utilized as permanent green space and flood storage. HAC's Oklawaha Village lender, USDA, is requiring reassurances that the City has no plans to develop the acreage adjacent to Oklawaha Village. Therefore, City Attorney Sam Fritschner has drafted the attached restrictive covenants for the City Council's approval.

Budget Impact: $ NA Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move that the City Council resolve to adopt the restrictive covenants for the City owned property adjacent to Oklawaha Village Subdivision.

Attachments:

Proposed Restrictive Covenants

~~NORTH CAROLINA~~
~~HENDERSON COUNTY~~
DRIVE

RESTRICTIVE COVENANTS
Lot 23 Oklawaha Village~~ PARCEL MUD CREEK and OCHLAWAHA~~

This declaration of limitations, restrictions and uses made and entered into this the _____ day of _____, 2020 by The City of Hendersonville, a North Carolina Municipality (~~the A~~Grantor~~@~~), in favor of the United States Department of Urban Development (~~A~~~~the~~ Grantee~~@~~).

W I T N E S S E T H:

WHEREAS, the Grantor is the owner of a tract of land described in that deed recorded in Deed Book 3241 at page 660, Henderson County Registry (~~the A~~Property~~@~~), and

WHEREAS, the said Grantor desires to subject all of the Property to the following limitations, restrictions and uses, which shall run with the land and be binding not only upon the undersigned Grantor, but upon all the successors in title;

NOW, THEREFORE, the said Grantor does hereby make the following declarations as to limitations, restrictions and uses to which the above described tract of land shall be subject:

1. The Property shall not be used except for recreational purposes or purposes not normally associated with the use, establishment, maintenance, alteration and removal of public greenways and their immediate adjuncts. No trade, business, commercial, industrial, religious enterprise, undertaking or use shall be permitted. No commercial structure of any type shall be placed upon or constructed on the Property. Notwithstanding the foregoing, the Grantor may construct, maintain, and remove and suffer to be constructed, maintained and removed, pipes, wires, conduits and other equipment that constitute parts of public utilities.

2. The Grantor shall not cause nor suffer any person to cause any act that would stop, prevent, or immediately threaten preservation of the floodplain existing upon the Property.

3. It shall be lawful for the Grantee and its assigns to institute and prosecute any proceedings in equity against the Grantor or its assigns, and against any other person or persons violating or threatening to violate the foregoing Covenants. Failure to commence an action or proceeding, however, shall not be considered a waiver to prosecute such actions to such violation or any other violations that have or may occur.

4. Invalidation of any one of these Covenants by judg~~e~~ment or court order shall not in any way affect any of the other provisions above set out, which shall remain in full force and effect.

5. Any part of these covenants may be waived in writing by the Secretary of the Grantee or by such

person='s designee.

The undersigned Grantor does hereby declare that the advantages accruing to its property from the Covenants and restrictions hereinabove affixed this the day and year first above written.

IN WITNESS WHEREOF, the undersigned Grantor has hereto caused this instrument to be executed this the day and year first above written.

CITY OF HENDERSONVILLE

BY:_____
John F. Connet, City Manager

State of North Carolina
County of Henderson

I, _____, a Notary Public of the County and State aforesaid, certify that John F. Connet in his capacity as city manager of the City of Hendersonville appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this ____ day of _____ 2020.

_____ SEAL
Notary Public

My commission expires:

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Jennifer Musselwhite

Department: Finance

Date Submitted: 01/22/2020

Presenter: Jennifer Musselwhite

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05f

The Deputy Tax Collector, Jennifer Musselwhite, would like to submit for your approval the tax bill adjustments occurring between December 17, 2019 and January 21, 2020. These adjustments include all Discoveries, Releases, Refunds, and Forgiven Interest. These adjustments were provided by Henderson County Tax Department.
Documentation is available in the Tax Office.

Budget Impact: $ 0 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move Council to adopt the resolution directing and authorizing the Tax Adjustments submitted by Henderson County Tax and relieve the Deputy Tax Collector of the charges owed.

Attachments:

Summary Total of Tax Adjustments

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SUMMARY TOTAL OF DISCOVERIES, RELEASES, REFUNDS, AND FORGIVEN INTEREST

FOR TRANSACTIONS AS OF **1/21/2020**

VALUE CHANGE	**$**	**(552,228)**
RELEASES	**$**	**(2,295.65)**
REFUNDS	**$**	**-**
FORGIVEN INTEREST	**$**	**-**
TOTAL TAX BILL ADJUSTMENTS	**$**	**(2,295.65)**

Adjustments, Releases, Refunds are provided by Henderson County Tax

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Susan G. Frady

Department: Development Asst Dept

Date Submitted: 1-22-2020

Presenter: Susan G. Frady, Development Asst Director

Date of Council Meeting to consider this item: 2-6-20

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05g

Pinball Extravaganza

This event will be held on Sunday, March 1st from 5:30 P.M. - 9:00 P.M. This event will be held at the Appalachian Pinball Museum located at 538 N. Main Street. The event is to raise money for Camplify's nine year leadership program for local youth ages 4-12. The request is to close two parking spaces in front of the Appalachian Pinball Museum for a food truck to park for the event. There will be no food sold from the food truck. The event attendee's will be given tickets as part of their registration for food from the food truck. The food truck will be provided by Amazing Pizza.

The Special Events Committee voted unanimously to approve this event.

Budget Impact: $ 0 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move City Council resolve to approve the special event permit for Pinball Extravaganza.

Attachments:

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Jennifer Harrell

Department: Admin

Date Submitted: 01/23/2020

Presenter: Jennifer Harrell

Date of Council Meeting to consider this item: February 6,2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05h

During the course of employment, employees may learn, see or acquire confidential information about City personnel. Confidential information has the greater power to harm if disclosed than other information and hence requires greater protection. Keeping in mind the need to comply with public information requirements as mandated by federal, state and city laws and regulations staff has developed a confidential information policy.

Budget Impact: $ .00 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move City Council resolve to approve the Confidential Information Policy as presented.

Attachments:

	CITY OF HENDERSONVILLE		
Policy Name:	Confidential Information Policy	Date adopted:	February 6, 2020

I. PURPOSE

It is the policy of the City of Hendersonville to provide a personnel policy with best practices for confidential information. The City expects that employees will use this policy and good judgement with confidential information in the workplace.

II. PROVISIONS

A. Confidential Information

Confidential information has the greater power to harm if disclosed than other information, and hence requires greater protection. Employees are encouraged to use common sense when handling confidential information. If an employee is uncertain of the classification of a particular piece of information, the employee should contact their Department Head or Human Resources for clarification.

Confidential information may include, among other things, medical records, employee records, other personal information regarding City employees or former employees, economic development information, records of criminal investigations, and business or financial records.

We recognize the need to comply with public information requirements as mandated by federal, state and City laws and regulation.

(1) Information gained while employed: During the course of employment, employees may learn, see or acquire confidential information about the City, other employees, or our citizens. Such information must be handled in strict confidence and is to be shared only with those persons within the City who need to know such information. Employees are expected to deal with confidential information in a manner which complies with state and federal laws and regulations. Unauthorized access to confidential information is prohibited.

(2) Breach of confidentiality: Employees must recognize that the unauthorized disclosure of confidential information could cause irreparable harm and be detrimental to the City of Hendersonville and its employees. Any violation of this policy may result in disciplinary action, up to and including termination. Employees who violate confidentiality laws may also be subject to sanctions as imposed by federal or state law, including possible criminal sanctions.

	CITY OF HENDERSONVILLE		
Policy Name:	Confidential Information Policy	Date adopted:	February 6, 2020

(3) Personnel Information:

a. All City of Hendersonville personnel information is categorized into two main classifications with regard to disclosure: **Public** and **Confidential.**

b. The information covered in this policy includes all personnel information within the City's information systems that is processed, stored, or transmitted via any means. This includes electronic information, information on paper, and information shared orally or visually.

Only the following ten items in an employee's personnel file must be disclosed to the public when requested:

a. The employee's name.

b. The employee's age.

c. The date of the employee's original employment or appointment.

d. The employee's current position title.

e. The employee's current salary.

f. The date and the amount of each increase or decrease in the employee's salary.

g. The date and type of each employee's promotion, demotion, transfer, suspension, separation or other change in position classification.

h. The date and type of each employee's dismissal, suspension, or demotion for disciplinary reasons. If the disciplinary action was a dismissal, a copy of the written notice of the final decision setting forth the specific acts or omissions that are the basis of the dismissal.

i. The office or station to which the employee is currently assigned.

j. The terms of any contract by which the employee us employed whether written or oral, past and current, to the extent that the City has the written contract or a record of the oral contract in its possession.

Any person may have access to the information described in (a) through (j) above for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the City may adopt. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the City.

B. Access to Confidential Information

All information contained in a City employee's personnel file, other than the aforementioned information, is confidential and shall be open to inspection only in the following instances:

a. The employee or his/her duly authorized agent may examine all portions of his/her personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.

b. A licensed physician designated in writing by the employee may examine the employee's medical record.

c. A City employee having supervisory authority over the employee may examine all material in the employee's personnel file.

d. By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.

e. An official of an agency of the State or Federal Government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

f. An employee may sign a written release to be placed in his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information

specified in the release to prospective employers, educational institutions, or other persons specified in the release.

g. The City Manager, with the concurrence of the City Council, may inform any person of the employment, non-employment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a City employee, and the reasons for that action. Before releasing that information, the City Manager shall determine in writing that the release is essential to maintaining public confidence in the administration of the City services or to maintain the level and quality of City services. The written determination shall be retained by Human Resources, is a public record subject to public inspection, and shall become a part of the employee's personnel file.

C. <u>Precautions</u>

(1) Keep all confidential personnel documents out of view and locked away.

(2) Confidential personnel information on your personal computer should always be password protected and should never be left open when stepping away from your desk or electronic device.

(3) Electronic confidential personnel documents should be filed on a secured, password protected system and kept on your own personal drive such as OneDrive and not on a shared drive. If documents must be shared, documents must be password protected or encrypted.

(4) Monitor the printer when printing a confidential personnel document. Do not leave confidential personnel documents unattended.

(5) Remove all confidential personnel documents from any printer when completed. In the event of a machine jam, make sure all confidential papers are removed and shredded.

(6) Close doors when confidential personnel discussions occur during meetings. Erase and/or remove all white boards, flip charts, and papers once the meeting has concluded. Be discreet in communications with others to ensure that unauthorized disclosure of confidential personnel information does not occur.

(7) Confidential personnel related mail may be sent via regular mail courier. Interoffice confidential mail should be hand carried to local destinations (within reasonable traveling

distance). Please instruct staff that incoming mail marked "Confidential" should be delivered unopened to the recipient immediately. Confidential papers (including notes and working papers) should not be discarded in wastebaskets or recycle bins. Confidential personnel papers should be shredded or placed in a locked shred box.

(8) Using the fax machine for transmitting confidential personnel information is not recommended. However, if necessary, arrangements should be made at both ends of the transmission to monitor the fax machine until the entire fax has been sent and received. Do not leave a fax machine unattended when sending or receiving a confidential personnel document.

(9) All conference calls where confidential personnel information may be discussed should be conducted behind closed doors.

(10) Individuals should be cautious of their surroundings when leaving voice mail messages that may contain confidential personnel information.

D. Personnel Actions

Human Resources, with the approval of the City Manager, will prescribe necessary forms and reports for all personnel actions. Official personnel files shall contain documents such as employment applications and related materials, records of personnel actions, documentation of employee warnings, disciplinary actions, performance evaluations, letters of recommendation, and other personnel-related documents. Any documents not contained in these files are not an official part of the personnel file.

E. Records of Former Employees

The provisions for access to records apply to records of former employees as they apply to those of current employees. The retention of former employee files will be in accordance with the adopted Records and Retention Schedule published by North Carolina State Archives adopted by the City Council on May 2,2019.

F. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. The employee may seek removal of such material in accordance with established grievance procedures.

G. Examining and/or Copying Confidential Material without Authorization

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

H. Destruction of Records Regulated

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with North Carolina General Statute §121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided in Chapter 132.3 of the North Carolina General Statutes.

As of February 6, 2020 this policy replaces and supersedes any previous policies or unwritten policies or practices covering the same subject.

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Jennifer Harrell

Department: Admin

Date Submitted: 01/27/2020

Presenter: Jennifer Harrell

Date of Council Meeting to consider this item: February 6,2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05i

Staff has been evaluating the City's current Nepotism policy and determined it to be outdated due in part to the current job market.
For some positions, we have had a difficult time locating qualified applicants, with unique skill sets required by the position, that aren't relatives of other employees in the same work unit. Currently, in some departments, we have well qualified employees, with specialized certifications,experience and knowledge that would never have the opportunity for promotion within the City. We are in jeopardy of losing these employees to other agencies.
Hiring or promoting employees into the same work unit of a relative would not be common practice and would have to be justified to the City Manager who would then make the determination. The Manager will note the reasons for making the exception in writing to be maintained in the employee's personnel file and may note appropriate limitations on transfers and promotions for that employee in order to reduce the likelihood of future problems. The relative would will not be involved in any personnel decisions.
The new policy includes co-habitation, employees living in the same household, that share a relationship comparable to immediate family members. In research conducted, there are no North Carolina General Statutes or other regulations that municipalities are required to follow in creating a policy for hiring relatives as employees, it is up to the discretion of the organization. See pages 23 and 32 of the attached Personnel Policy.

Budget Impact: $ .00 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:
I move City Council resolve to approve the Nepotism Policy as presented.

Attachments:
Personnel Policy

CITY OF HENDERSONVILLE
PERSONNEL POLICY
Effective February 6,2020

BE IT RESOLVED by the City Council of the City of Hendersonville that the following policies apply to the appointment, classification, benefits, salary, promotion, demotion, dismissal, and conditions of employment of the employees of the City of Hendersonville.

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ARTICLE I. GENERAL PROVISIONS

Section 1. Purpose of the Policy

It is the purpose of this policy and the rules and regulations set forth to establish a fair and uniform system of personnel administration for all employees of the City under the supervision of the City Manager. This policy is established under authority of Chapter 160A, Article 7, of the General Statutes of North Carolina.

Section 2. At Will Employment

The employment relationship between the City and the employee is terminable at the will of either at any time and with or without cause and with or without notice. No employee, officer or representative of the City has any authority to enter into any agreement or representation, verbally or in writing, which alters, amends, or contradicts this provision or the provisions in these policies.

Section 3. Merit Principle

All appointments and promotions shall be made solely on the basis of merit. No applicant for employment or employee shall be deprived of employment opportunities or otherwise adversely affected as an employee because of such individual's race, color, religion, sex, national origin, political affiliation, non-disqualifying disability, marital status, veteran status or age.

Section 4. Responsibilities of the City Council

The City Council shall be responsible for establishing and approving personnel policies, the position classification and pay plan, and may change the policies and benefits as necessary. They also shall make and confirm appointments when so specified by the general statutes.

Section 5. Responsibilities of the City Manager

The City Manager shall be accountable to the City Council for the administration and technical direction of the personnel program. The City Manager shall appoint, suspend, and remove all City employees except those whose appointment is otherwise provided for by law. The City Manager shall make appointments, dismissals and suspensions in accordance with the City charter and other policies and procedures spelled out in other Articles in this Policy.

The City Manager shall supervise or participate in:

a) Recommending rules and revisions to the personnel system to the City Council for consideration;

b) Making changes as necessary to maintain an up to date and accurate position classification plan;

c) Preparing and recommending necessary revisions to the pay plan;

d) Determining which employees shall be subject to the overtime provisions of FLSA;

e) Developing and administering such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the City;

f) Performing such other duties as may be assigned by the City Council not inconsistent with this Policy; and

g) Appointing an employee to the role of Human Resources Director.

Section 6. Responsibilities of the Human Resources Director

The responsibilities of the Human Resources Director are to make recommendations to the City Manager on the following:

a) Recommending rules and revisions to the personnel system to the City Manager for consideration;

b) Recommending changes as necessary to maintain an up to date and accurate position classification plan;

c) Recommending necessary revisions to the pay plan;

d) Recommending which employees shall be subject to the overtime provisions of FLSA;

e) Maintaining a roster of all persons in the municipal service

f) Establishing and maintaining a list of authorized positions in the municipal service at the beginning of each budget year which identifies each authorized position, class title of position, salary range, any changes in class title and status, position number and other such data as may be desirable or useful;

g) Developing and administering such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the City;

h) Developing and coordinating training and educational programs for City employees;

i) Periodically investigating the operation and effect of the personnel provisions of this Policy; and

j) Performing such other duties as may be assigned by the City Manager not inconsistent with this Policy.

Section 7. Application of Policies, Plan, Rules, and Regulations

The personnel policy and all rules and regulations adopted pursuant thereto shall apply to all City employees. The City Manager, City Attorney, members of the City Council and advisory boards and commissions will be exempted except in sections where specifically included. An employee violating any of the provisions of this policy shall be subject to appropriate disciplinary action, as well as prosecution under any civil or criminal laws which have been violated.

Section 8. Departmental Rules and Regulations

Because of the particular personnel and operational requirements of the various departments of the City, each department is authorized to establish supplemental written rules and regulations applicable only to the personnel of that department. All such rules and regulations shall be subject to the approval of the City Manager, and shall not in any way conflict with the provisions of this Policy, but shall be considered as a supplement to this Policy.

Section 9. Definitions

For the purposes of this Policy, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Adverse Action. A demotion, dismissal, reduction in pay, layoff, suspension, or an involuntary transfer.

Allocated Position. An allocated position is authorized as a regular position by the City Council. Regular allocated positions are assigned a specific job title, salary grade, salary range, duties, and minimum qualifications. Appointments to allocated positions are made through a competitive selection process. All City positions are subject to budget review and approval each year by the City Council.

Compensatory Time (Comp Time). Under the Fair Labor Standards Act (FLSA) local governments may, at their discretion, compensate employees in time off rather than pay when employees work more than the standard workweek or work period hours for their classification (40 hours in a 7-day period; 171 hours for police and 212 hours for fire personnel in a 28-day cycle). The Comp Time is earned at the rate of one and one-half hours for each hour, or portion thereof, worked beyond the above stated standard workweek or work period hours.

Continuous Service. Years of regular service with the City of Hendersonville without a termination and rehire of employment. This does not include Family and Medical leaves of absence or eligible Military Leave under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Continuous service in regards to the Health Insurance for Retirees only includes full-time, regular employees.

Full-time employee. An employee who is in a position for which an average work week equals at least 35 hours, and continuous employment of at least 12 months, are required by the City.

Grievance. A claim or complaint based upon an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment expectations.

Part-time employee. An employee who is in a position for which an average work week of at least 20 hours and less than 35 hours and continuous employment of at least 12 months are required by the City.

Probationary Employee. A person appointed to an allocated position who has not yet successfully completed the designated probationary period. A probationary employee may be rejected, dismissed, demoted or suspended without the right to appeal. An employee who successfully completes the probationary period will be considered a regular employee of the City.

Probationary Period. The initial six (6) months (12 months for Sworn Law Enforcement Officers and Fire Fighters) of employment or promotion representing the period of observable work performance to determine the suitability and ability of the employee to satisfactorily perform the duties and responsibilities of the position. The Probationary Period may be extended up to an additional six (6) months but shall not exceed twelve (12) months (18 months for Sworn Law Enforcement Officers and Fire Fighters).

Reclassification. When, due to substantial and permanent changes, the majority of job duties, complexities and/or knowledge and skills required in a position are determined to be at a higher (or lower) classification level than the current level of the position, the position may be eligible for reclassification review. Changes in the nature, variety and complexity of job duties, the supervision received or supervision exercised, or the responsibility for staff and/or resources, may justify a reclassification review. Changes in the volume of work assigned, or an employee's performance, are not considered justification for a reclassification.

Regular employee. An employee appointed to a regular full or part-time position who has successfully completed the designated probationary period.

Regular position. A position authorized for the fiscal year for a full twelve months and budgeted for twenty or more hours per week. All City positions are subject to budget review and approval each year by the City Council and all employees' work and conduct must meet City standards.

Temporary Employee. A person hired by the City to perform additional, extra or special project assignment. May work on a seasonal or short-term basis. Temporary employees are paid on an hourly basis for hours actually worked and cannot work more than 25 hours, on average, in a workweek. They are not eligible for benefits except those mandated by State and Federal government. The temporary employee or the City can, at any time or for any reason, terminate the employment relationship.

Temporary Fellow. A person hired by the City through the Lead fr North Carolina (LFNC) program. The employee will be eligible for health care benefits or a taxable subsidy. The non exempt employee will be paid hourly for a maxium of 40 hours per week.

Trainee. An employee status when an applicant is hired (or employee promoted) who does not meet all of the requirements for the position. During the duration of a trainee appointment, the employee is on probationary status.

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. Purpose.

The position classification plan provides a complete inventory of all authorized and allocated positions in the City service, and an accurate description and specification for each class of employment. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities.

Section 2. Composition of the Position Classification Plan

The classification plan shall consist of:

a) A grouping of positions in classes which are approximately equal in difficulty and responsibility which call for the same general qualifications, and which can be equitably compensated within the same range of pay under similar working conditions;

b) Class titles descriptive of the work of the class;

c) Written specifications for each class of positions; and

d) An allocation list showing the class title of each position in its assigned pay grade.

Section 3. Use of the Position Classification Plan

The classification plan is to be used:

a) In determining lines of promotion and in developing employee training programs;

b) In determining salary to be paid for various types of work;

c) In determining personnel costs in departmental budgets; and

d) In providing uniform job terminology.

Section 4. Administration of the Position Classification Plan

The Human Resources Director shall allocate each position covered by the classification plan to its appropriate class, and shall be responsible for the administration of the position classification plan. The Human Resources Director shall periodically review portions of the classification plan and recommend appropriate changes to the City Manager.

Section 5. Authorization of New Positions and the Position Classification Plan

New positions shall be established upon recommendation of the City Manager and approval of the City Council. New positions shall be recommended to the City Council with a recommended class title after which the City Manager shall either allocate the new position into the appropriate existing class, or revise the position classification plan to establish a new class to which the new position may be allocated. The position classification plan, along with any new positions or classifications shall be approved by the City Council and on file with the Human Resources Director. Copies will be available to all City employees for review upon request.

Section 6. Request for Reclassification

When changes have occurred in a classification resulting in substantial and permanent changes in job duties, complexities, responsibilities and/or authorities, it is the responsibility of the Department Head to notify the Human Resources Director of such changes. Upon receipt of such notification, the Human Resources Director shall study the classification and make a determination regarding any changes in the essential functions. At the conclusion of the study the Human Resources Director shall recommend to the City Manager any necessary revision to the classification.

ARTICLE III. THE PAY PLAN

Section 1. Definition

The pay plan includes the basic salary schedule and the "Assignment of Classes to Grades" adopted by the City Council. Each position is assigned a classification title and each title is assigned to a salary grade with a specific salary range. Positions are assigned to grades within the pay plan based on the duties and responsibilities assigned. Positions with more complex tasks, more responsibility, or requiring more technical knowledge are assigned to higher salary grades than positions with lower responsibilities or knowledge requirements. Salary grade ranges are set based on two components: competitiveness with the market and internal equity with similar positions and occupational groups. The salary schedule consists of the minimum, midpoint and maximum rates of pay for all classes of positions, and a designation of the standard hours in the work week for each position.

Section 2. Administration and Maintenance

The City Manager, assisted by the Human Resources Director, shall be responsible for the administration and maintenance of the pay plan. All employees covered by the pay plan shall be paid at a rate listed within the salary range established for the respective position classification, except for employees in trainee status or employees whose existing salaries are above the established maximum rate following transition to a new pay plan.

The pay plan is intended to provide equitable compensation for all positions, reflecting differences in the duties and responsibilities, the comparable rates of pay for positions in private and public employment in the area, changes in the cost of living, the financial conditions of the City, and other factors. To this end, each budget year the Human Resources Officer shall make comparative studies of all factors affecting the level of salary ranges including the consumer price index, anticipated changes in surrounding employer plans, and other relevant factors, and will recommend to the City Manager such changes in salary ranges as appear to be pertinent. Such changes shall be made in the salary ranges such that the minimum rate, all intervening rates, and the maximum change according to the market. Periodically, the City Manager shall recommend that individual salary ranges be studied and adjusted as necessary to maintain market competitiveness. Such adjustments will be made by increasing or decreasing the assigned salary grade for the class and adjusting the rate of pay for employees in the class when the action is approved by the City Council.

Section 3. Starting Salaries

All persons employed in positions approved in the position classification plan shall be employed at the minimum rate for the classification in which they are employed; however, exceptionally well qualified applicants may be employed above the minimum rate of the established salary range upon recommendation of the Human Resources Director and approval of the City Manager. Such recommendation and approval may be based on such factors as exceptional qualifications of the applicant, shortage of qualified applicants, equal pay justification or operational need.

Section 4. Trainee Designation and Provisions

Applicants being considered for employment or City employees who do not meet all of the requirements for the position for which they are being considered may be hired, promoted, demoted, or transferred by the City Manager to a "trainee" status. In such cases, a plan for training, including a time schedule, must be prepared by the Department Head.

"Trainee" salaries shall be no more than two grades below the minimum salary rate established for the position for which the person is being trained. A new employee designated as "trainee" shall be regarded as being in a probationary period. However, probationary periods shall be no less than six months and trainee periods may extend from three to eighteen months. A trainee shall remain a probationary employee until the trainee period is satisfactorily completed.

If the training is not successfully completed to the satisfaction of the City Manager, the trainee shall be transferred, demoted, or dismissed. If the training is successfully completed, the employee shall be paid at least at the minimum rate established for the position for which the employee was trained.

Section 5. Probationary Pay Increases

Employees hired or promoted into the minimum rate of the pay range shall receive a salary increase within the pay range of approximately 5% upon successful completion of the probationary period. Employees serving a twelve-month probationary period may be considered for this increase after six months of employment.

Section 6. Merit Pay

Upward movement within the established salary range for an employee is not automatic, but rather based upon specific performance-related criteria. Procedures for determining performance levels and performance pay increases or other performance-related movement within the range shall be established in procedures approved by the City Manager.

Section 7. Merit Pay Bonus

Employees who are at the maximum amount of the salary range for their position classification are eligible to be considered for a Merit Bonus at their regular performance evaluation time. Merit bonuses shall be awarded based upon the performance of the employee as described in the performance evaluation and in the same amounts as employees who are within the salary range. Merit bonuses shall be awarded in lump sum payments and do not become part of base pay.

Section 8. Salary Effect of Promotions, Demotions, Transfers, and Reclassifications

Promotions. A promotion is the movement of an employee to a position in a class assigned to a higher salary range. The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility. When an employee is promoted, the employee's salary shall normally be advanced to the minimum rate of the new position, or to a salary which

provides an increase of at least approximately 5% over the employee's salary before the promotion, whichever is greater. In the event that an employee's salary is increased 5% but does not reach the probation completion amount for the position, that employee's salary shall be advanced to the probation completion amount. Upon promotion, the annual performance review date of the employee will change to the date of the promotion. Promoted employees may upon request of the hiring manager,serve a six-month probationary period except that employees in sworn police, entry level fire, and Department Head positions may serve a twelve-month probationary period. (Note: no pay increase is given at the end of a probationary period for a promoted employee unless promoted to the minimum rate of the pay range). If an employee does not successfully complete the probationary period, the employee may be reassigned to their original positon if the position is vacant or a position of similar duties or the employee may be terminated.Longevity date and any applicable market increase will be based upon the employee's hire date. In the event of highly skilled and qualified employees, shortage of qualified applicants, or other reasons related to the merit principle of employment, the City Manager may set the salary at an appropriate rate in the range of the position to which the employee is promoted that best reflects the employee's qualifications for the job and relative worth to the City, taking into account the range of the position and relative qualifications of other employees in the same classification. In no event, however, shall the new salary exceed the maximum rate of the new salary range. In setting the promotion salary, the City shall consider internal comparisons with other employees in the same or similar jobs.

Demotions. Demotion is the involuntary movement of an employee from one position to a position in a class assigned to a lower salary range. When an employee is demoted to a position for which qualified, the salary shall be decreased at least 5%. Salaries of demoted employees may be no greater than the maximum of the new range. The employee's annual performance review date will move to the demotion date. Longevity date and any applicable market increase will be based upon the employee's hire date.

Reassignments. A reassignment is defined as the voluntary movement to a position in a lower salary range. When an employee takes a reassignment, the salary shall be set at the rate in the lower pay range which provides a salary commensurate with the employees' qualifications to perform the job and consistent with the placement of other employees within the same classification. Salary may be retained at the same level when this option does not create internal inequities with other employees in the same or similar job.

Transfers. The salary of an employee reassigned to a position in the same class or to a position in a different class within the same salary range shall not be changed by the reassignment.

Reclassifications. A reclassification is a change in a position's salary grade and title due to substantial and permanent increases or decreases in job responsibilities, complexities, duties and authorities. An employee whose position is reclassified to a class having a higher salary range shall receive a pay increase of approximately 5% or an increase to the probation completion amount of the new pay range, whichever is higher.

If the position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level until the range is increased above the employee's salary. The employee's annual performance review date will move to the reclassification date. Longevity date and any applicable market increase will be based upon the employee's hire date.

Section 9. Salary Effect of Salary Range Revisions

A salary range revision is a change in the salary range or grade assigned to a specific class of positions. The change may be based upon increased salaries in the relevant labor market, recruitment and retention data or increased complexity in job content. When a class of positions is assigned to a higher salary range, employees in that class shall receive a pay increase of at least approximately 5%, or to the minimum rate of the new range, whichever is higher. When a class of positions is assigned to a lower salary range, the salaries of employees in that class will remain unchanged. If this assignment to a lower salary range results in an employee being paid at a rate above the maximum rate established for the new class, the salary of that employee shall be maintained at that level until such time as the employee's salary range is increased above the employee's current salary.

Section 10. Transition to a New Salary Plan

The following principles shall govern the transition to a new salary plan:

1) No employee shall receive a salary reduction as a result of the transition to a new salary plan.

2) All employees being paid at a rate lower than the minimum rate established for their respective classes shall have their salaries raised at least to the new minimum rate for their classes. If the employee has passed probation, the employee's salary shall be advanced at least to the probation completion amount in the new range.

3) All employees being paid at a rate above the maximum rate established for their respective classes shall have their salaries maintained at that salary level with no increases until such time as the employees' salary range is increased above the employees' current salary.

Section 11. Effective Date of Salary Changes

Salary changes approved after the first working day of a pay period shall become effective at the beginning of the next pay period, or at such specific date as may be provided by procedures approved by the City Manager.

Section 12. Overtime Pay Provisions

Employees of the City can be requested and may be required to work in excess of their regularly scheduled hours as necessitated by the needs of the City and determined by the Department Head. Overtime work should normally be approved in advance by the Department Head, City Manager or other designated City official.

To the extent that local government jurisdictions are so required, the City will comply with the Fair Labor Standards Act (FLSA). The Human Resources Director shall determine which jobs are "non-exempt" and are therefore subject to the Act in areas such as hours of work and work periods, rates of

overtime compensation, and other provisions.

Non-exempt employees will be paid at a straight time rate for hours up to the FLSA established limit for their position (usually 40 hours in a 7-day period; 171 hours for police and 212 hours for fire personnel in a 28-day cycle). Hours worked beyond the FLSA established limit will be compensated in either time or pay at the appropriate overtime rate. In determining eligibility for overtime in a work period, only hours actually worked shall be considered; in no event, will Comp. Time, vacation leave, sick leave, or holidays be included in the computation of hours worked for FLSA purposes.

Section 13. Compensatory Time (Comp Time)

Compensatory leave balances may not exceed 40 hours except for public safety employees (sworn police and firefighting employees) who may not accrue more than 48 hours. Any overtime worked after such maximum balances must be compensated in pay.

Employees are required to use or be paid for compensatory time before the start of each fiscal year, by June 30th. Employees if they choose, may retain and carry over up to twelve (12) hours of compensatory time each fiscal year. All other compensatory time will be paid out, in accordance with FLSA standards, upon the last pay period for the fiscal year. Department Heads may exercise discretion in the manner in which employees accrue compensatory time or are paid for overtime.

Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime.

Employees in positions determined to be “exempt” from the FLSA (as Executive, Administrative or Professional staff) will not receive pay for hours worked in excess of their normal work periods. These employees may be granted flexible time by their supervisor on an hour for hour basis where the convenience of the department allows. Such flexible time is not guaranteed to be taken and ends without compensation upon separation from the organization.

In the case of a severe and unusual circumstance including, but not limited to natural disasters, an official “State of Emergency” may be declared by the Mayor. Essential personnel are critical to ensure public safety, provide limited services at a minimum to the City of Hendersonville citizens and customers, and to restore the City of Hendersonville to normal operation.

Therefore, the following policy has been developed to address city operations during periods of State of Emergency situations/disasters.

1). Essential employees are expected to report to his/her workstation each work day and to make the necessary advance preparations so he/she can get to work in periods of states of emergencies/ disasters.

2). During emergency situations or disasters, an employee may be reassigned to other facilities to assist as needed.

3). Emergency Pay when a State of Emergency is declared by the Mayor during disaster situations. All essential exempt and non-exempt employees (excluding the City Manager and department heads) shall be compensated at a rate of one and one half (1 ½) hours for all hours worked above their normal work period. All employees on prior approved leave (vacation or sick)

who do not work during the declared emergency will be unaffected by this policy, unless the employee's presence is deemed as essential and his/her vacation is cancelled by the department head/City Manager.

4). Any employee not reporting to work as directed by his/her department head or the City Manager shall be deemed absent without approved leave and shall be subject to disciplinary action in accordance with the Personnel Policy.

5). Payment of overtime during emergency periods will not jeopardize or change an employee's exempt status.

6). Should the designation of the "State of Emergency" continue for an extended period of time due to severe and unusual circumstances or its aftermath, the City Manager or his/her designee may re-evaluate and modify the compensation rate and any other administrative policies deemed necessary.

Section 14. Call-back and Stand-by Pay

The City provides a continuous twenty-four hour a day, seven day a week service to its customers. Therefore, it is necessary for certain employees to respond to any reasonable request for duty at any hour of the day or night. One of the conditions of employment with the City is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal by the City Manager.

Call-back. Non-exempt employees will be guaranteed a minimum payment of two hours of wages for being called back to work outside of normal working hours. "Call-back" provisions do not apply to previously scheduled overtime work (scheduled one or more days in advance).

Stand-by. Stand-by time is defined as that time when an employee must carry a pager or other communication device and must respond immediately to calls for service. Non-exempt employees required to be on "stand-by" duty will be paid for two hours of work for each day of stand-by time they serve. Hours actually worked while on stand-by are calculated beginning when the employee reports to the work site and are added to the regular total of hours worked for the week.

Section 15. Payroll Deduction

Deductions shall be made from each employee's salary, as required by law. Additional deductions may be made upon the request of the employee on determination by the City Manager as to capability of payroll equipment, associated increase in workload and appropriateness of the deduction.

Section 16. Hourly Rate of Pay

Employees working in a part-time or temporary capacity with the same duties as full-time employees

will work at a rate in the same salary range as the full-time employees. Temporary Fellows will be paid according to the Lead for North Carolina program.

Section 17. Longevity Pay

Full-time and part-time employees of the City are compensated for years of continuous service by payment of a longevity supplement based on the following table. Employees shall receive longevity pay in the payroll that contains their anniversary date. Longevity pay shall reflect their continuous years of service as of their anniversary date according to the schedule listed in this section.

Longevity pay may be approved each fiscal year depending upon the financial conditions of the City and would not be considered a part of the annual base pay. Appropriate federal state, retirement, etc. deductions will be made.

Years of Service	Longevity Amount
5 to 9 Years	$500.00
10 to 14 Years	$750.00
15 to 19 Years	$1,000.00
20 or more Years	$1,250.00

Section 18. Pay for Interim Assignments in a Higher-Level Classification

An employee who is formally designated by the City Manager to perform the duties of a job that is assigned to a higher salary grade than that of the employee's regular classification shall receive an increase for the duration of the Interim assignment. The employee shall receive a salary adjustment to the minimum level of the job in which the employee is acting or an increase of 5%, whichever is greater. The salary increase shall be temporary and upon completion of the assignment, the employee shall go back to the salary he or she would have had if not assigned in the Interim role, taking into account any increases the employee would have received if they had not been placed in the Interim role.

ARTICLE IV. RECRUITMENT AND EMPLOYMENT

Section 1. Equal Employment Opportunity Policy

The City of Hendersonville fosters, maintains and promotes a consistent recruitment program to promote equal employment opportunity and to identify and attract the most qualified applicants for all vacancies. The City shall select employees on the basis of the applicant's qualifications for the job and award them with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, national origin, non-disqualifying disability, political affiliation, veteran status or marital status.

Section 2. Implementation of Equal Employment Opportunity Policy

All City employees responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related requirements is are being actively observed and administered so that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, non-disqualifying disability, national origin, political affiliation, veteran status or marital status. Notices with regard to equal employment matters shall be posted in conspicuous places on City premises in places where notices are customarily posted.

Section 3. Recruitment, Selection and Appointment

Recruitment Sources. When position vacancies occur, the Human Resources Department shall publicize these opportunities for employment, including applicable salary information and employment qualifications. Open positions shall be advertised for a minimum of seven calendar days prior to any offer of employment being made. Information on job openings and hiring practices may be provided to a variety of recruitment sources, including professional organizations and news media. In addition, notice of vacancies shall be posted on the City's website and at designated conspicuous sites within departments if practical. Individuals shall be recruited from a geographic area as wide as necessary and for a period of time sufficient to ensure that well-qualified applicants are obtained for City service. The North Carolina Division of Employment Security may be used as a recruitment source. In rare situations because of emergency conditions, high turnover, etc., the City may hire or promote without advertising jobs, upon approval of the City Manager.

Job Advertisements. Jobs will be advertised in local newspapers, professional publications, and other relevant publications in order to establish a diverse and qualified applicant pool. Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes.

Application for Employment. All persons expressing interest in employment with the City shall be given the opportunity to file an application for employment for positions which are vacant.

Selection. Department Heads, with the assistance of the Human Resources Director shall make such investigations and conduct such examinations as necessary to assess accurately the knowledge, skills, and experience qualifications required for the position, including criminal history where job-related using the DCI when needed. All selection devices administered by the City shall be valid measures of job performance.

Appointment. Before any commitment is made to an applicant either internal or external, the Department Head shall make recommendations to the Human Resources Director including the salary to be paid, and the reasons for selecting the candidate over other candidates. The Human Resources Director and Department Head shall recommend approval of appointments and the starting salary for all applicants to the City Manager. The City Manager shall approve appointments and the starting salary for all applicants.

Section 4. Probationary Period

An employee appointed or promoted to a regular position shall serve a probationary period. Employees shall serve a six-month probationary period, except that employees in sworn police, entry level fire, and Department Head positions shall serve a twelve-month probationary period. Employees hired as "trainees" shall remain on probation until the provisions of their traineeship are satisfied. During the probationary period, supervisors shall monitor an employee's performance and communicate with the employee concerning performance progress. Employees serving twelve-month probationary periods shall have a review at the end of six months as well as before the end of twelve months.

Before the end of the probationary period, the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths, and needed improvements. A summary of this discussion shall be documented in the employee's personnel file. The supervisor shall recommend in writing whether the probationary period should be completed, extended, or the employee transferred, demoted, or dismissed. Probationary periods may be extended for a maximum of six additional months.

Disciplinary action, including demotion and dismissal, may be taken at any time during the probationary period of a new hire without following the steps outlined in this policy.

A promoted employee who does not successfully complete the probationary period may be transferred or demoted to a position in which the employee shows promise of success. If no such position is available, the employee shall be dismissed. Promoted and demoted employees who are on probation retain all other rights and benefits such as the right to use of the grievance procedures.

Section 5. Promotion

Promotion is the movement of an employee from one position to a vacant position in a class assigned to a higher salary range. It is the City's policy to create career opportunities for its employees whenever possible. Therefore, when a current employee applying for a vacant position is best suited of all applicants, that applicant shall be appointed to that position. The City will balance three goals in the employment process: 1) the benefits to employees and the organization of promotion from within; 2) providing equal employment opportunity and a diversified workforce to the community; and 3) obtaining the best possible employee who will provide the most productivity in that position. Therefore, except in

rare situations where previous City experience is essential (such as promotions to Police Sergeant), or exceptional qualifications of an internal candidate so indicate, the City will consider external and internal candidates rather than automatically promote from within. Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Internal candidates shall apply for promotions using the same application process as external candidates.

Section 6. Demotion and Reassignment

Demotion is the movement of an employee from one position to a position in a class assigned to a lower salary range. Demotion may be voluntary or involuntary. A voluntary demotion may be called a "reassignment." An employee whose work or conduct in the current position is unsatisfactory may be demoted provided that the employee shows promise of becoming a satisfactory employee in the lower position. Such disciplinary demotion shall follow the disciplinary procedures outlined in this Policy.

An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a reassignment. A reassignment is not a disciplinary action and is made without using the above-referenced disciplinary procedures.

Section 7. Transfer

Transfer is the movement of an employee from one position to a position in a class in the same salary range. If a vacancy occurs and an employee in another department is eligible for a transfer, the employee shall apply for the transfer using the usual application process. The Department Head wishing to transfer an employee to a different department or classification shall make a recommendation through the Human Resources Director to the City Manager with the consent of the receiving Department Head. Any employee transferred without requesting the action may appeal the action in accordance with the grievance procedure outlined in this Policy. An employee who has successfully completed a probationary period may be transferred into the same classification without serving another probationary period.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Work Schedule

Department Heads shall establish work schedules, with the approval of the City Manager which meet the operational needs of the department in the most cost effective manner possible.

Section 2. Political Activity

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States. However, no employee shall:

a) Engage in any political or partisan activity while on duty;

b) Use official authority of influence for the purpose of interfering with or affecting the result of a nomination or an election for office;

c) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;

d) Coerce or compel contributions from another employee of the City for political or partisan purposes;

e) Use any supplies or equipment of the City for political or partisan purposes; or

f) Be a candidate for nomination or election to office under the City Charter;

Any violation of this section shall subject the employee to disciplinary action including dismissal.

Section 3. Outside Employment

The work of the City shall have precedence over other occupational interests of employees. All outside employment for salaries, wages, or commissions and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the Department Head. The Department Head will review such employment for possible conflict of interest and then submit a record of the employment and review to the Human Resource Director for placement in the employee’s personnel file. Conflicting or unreported outside employment are grounds for disciplinary action up to and including dismissal. Documentation of the disapproval or approval of outside employment will be placed in the employee’s personnel file.

Examples of conflicts of interest in outside employment include but are not limited to:

a) Employment with organizations or in capacities that are regulated by the employee or employee's department; or

b) Employment with organizations or in capacities that negatively impact the employee's perceived integrity, neutrality, or reputation related to performance of the employee's City duties.

Employees are prohibited from performing outside employment while on Workers' Compensation Leave, Family and Medical Leave, or any Leave Without Pay status from City employment.

Section 4. Dual Employment

A full or part-time employee of the City may simultaneously hold another temporary position with the City if the temporary position is in a different department and clearly different program area from that of the full or part-time position. The work of the temporary position must also be performed on an occasional or sporadic basis as identified in Fair Labor Standards Act regulations. However, the work of the full or part-time position shall take precedence over the temporary position, and such temporary work will not count toward the calculation of overtime for pay or time off.

Section 5. Employment of Relatives

~~The City is committed to the highest standards of professional conduct and integrity and believes the familial relationships in the workplace can result in conflicts of interest, or an appearance of conflict of interest, and/or situations that might impair objective judgement or create a hostile work environment. Therefore, the City prohibits the hiring and employment of immediate family in regular positions within the same work unit. "Immediate Family" is defined in Article VII, Section 12. The City also prohibits the employment of any person into a regular position who is an immediate family member of individuals holding the following positions: Mayor, Mayor Pro Temp, City Council Member, City Manager, Finance Director, Human Resources Director, City Clerk, or City Attorney. Otherwise, the City will consider employing family members or related persons in the service of the City, provided that such employment does not:~~

~~1) Result in a relative supervising relatives;~~

~~2) Result in a relative auditing the work of a relative;~~

~~3) Create a conflict of interest with either relative and the City; or~~

~~4) Create the potential or perception of favoritism.~~

~~5) Romantic relationships between any employee and a direct or indirect supervisor or subordinate of that employee are prohibited~~

Members of an immediate family shall not be employed within the same department if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. This does not apply to seasonal or temporary employees.The term immediate family includes spouse, child, parent, brother, sister, grandparent, grandchild, son-in-law, daughter-in-law, parent-in-law, brother or sister-in-law, aunt, uncle, of the employee or spouse or guardian of the employee. This also includes various combinations of "step", "half", and adopted relationships. For these purposes, it also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.

Exceptions may only be granted by the City Manager and only when a subject employee or applicant possesses a unique set of skills or experience needed by the City and the employee's spouse or relative will not be involved in any personnel decisions regarding that employee. The Manager will note the reasons for making the exception in writing to be maintained in the employee's personnel file and may note appropriate limitations on transfers and promotions for that employee as a condition of initial employment, in order to reduce the likelihood of future problems.

This provision shall not apply retroactively to anyone employed when the provision is adopted by the City.

Section 6. Harassment Prohibited

The City prohibits and will not tolerate sexual harassment or harassment on the basis of sex, race, color, religion, national origin, age, non-disqualifying disability, political affiliation, marital status or veteran status. Harassment complaints or allegations will be investigated promptly and where, it is determined that such inappropriate conduct occurred, the City will act immediately to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action up to and including dismissal.

Harassment is defined as conduct that culminates in tangible employment action or is sufficiently severe or pervasive to create a hostile work environment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment includes repeated offensive sexual remarks, continual or repeated comments about an individual's body and offensive sexual language.

Any employee who believes that he or she may have a complaint of harassment may follow the Grievance Procedure described in this Policy or may file the complaint directly with the Human Resources Director or Department Head who will immediately notify the City Manager. The employee may file the complaint directly with the City Manager if it involves a Department Head. The Human Resources Director will insure that an investigation is conducted into any allegation of harassment and advise the employee and appropriate management officials of the outcome of the investigation.

Employees who are found to be engaged in harassment are subject to disciplinary action up to and including dismissal. Employees making complaints of harassment are protected against retaliation from alleged harassers or other employees.

Section 7. Solicitation and Acceptance of Gifts and Favors

No official or employee of the City shall solicit or accept any gift, favor, or thing of value (more than $50) that may tend to influence such employee in the discharge of the employee's duties, or grant in the discharge of duty an improper favor, service, or thing of value.

Section 8. Performance Evaluation

Supervisors and/or Department Heads shall conduct Performance Evaluation conferences with each regular employee at least once a year. These performance evaluations shall be documented in writing and placed in the employee's personnel file. Procedures for the performance evaluation program shall be published by the City Manager.

Section 9. Safety

Safety is the responsibility of both the City and employees. It is the policy of the City to establish a safe work environment for employees. The City shall establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods. Department Heads and supervisors are responsible for insuring the safe work procedures of all employees and providing necessary safety training programs. Employees shall follow the safety policies and procedures and attend safety training programs as a condition of employment. Employees who violate such policies and procedures shall be subject to disciplinary action up to and including dismissal.

Section 10. Substance Abuse Policy

The City may establish policies and procedures related to employee substance abuse in order to insure the safety and well-being of citizens and employees, and to comply with any state, federal, or other laws and regulations. The City provides a drug free workplace for all employees.

Section 11. Disruption of the Work Place

The City has a responsibility to maintain a productive and professional work environment conducive to conducting the City's business**.** To that end, employees are expected to keep any work place disruptions and distractions to a minimum. This includes personal visits and phone calls, texting, receiving personal mail or packages, charitable solicitations, or other activities that distract an employee or coworkers from the work of the City. Supervisors will provide feedback to employees on any actions that are becoming distracting.

Section 12. Attendance

The City depends on employees to provide needed services every day. Regular attendance is mandatory and is part of the work standards for all jobs. Poor attendance can negatively affect performance evaluations or may lead to disciplinary action. Excessive absenteeism or a chronic attendance problem can lead to disciplinary action up to and including termination.

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility

As an integral part of a comprehensive, competitive compensation program, the City offers a variety of benefits. Specific benefit programs will vary from time to time and the type, level, eligibility and cost of such programs are subject to change at any time at the sole discretion of the City. To that end, the City will periodically review each employee benefit and may, with or without notification, modify, delete or add benefits at its own discretion as may be deemed to be appropriate and necessary.

All full-time and part-time employees of the City are eligible for employee benefits, subject to any waiting period, as provided for in this Article which are subject to change at the City's discretion. Temporary employees are eligible only for workers' compensation and FICA. Temporary Fellows are eligible for group health insurance or a taxable subsidy.

Section 2. Group Health and Hospitalization Insurance

The City provides group health and hospitalization insurance programs for full-time employees and their families, and part-time employees.

Employees who are scheduled to work 30 hours or more per week on a continuous year-round basis may, if they so desire, purchase available group health through the City for themselves or for themselves and qualified dependents. A prorated amount of the cost of coverage paid for a full-time employee shall be paid by the City with the remainder of the cost being paid by the employee. This prorated amount shall be based on regularly scheduled hours.

Information concerning cost and benefits shall be available to all employees from the Human Resources Office.

Section 3. Group Life Insurance

The City may provide group life insurance for each employee subject to the stipulations of the insurance contract. Life insurance may be provided by the City in an amount approved by the City, subject to appropriation.

Section 4. Other Optional Group Insurance Plans

The City may make other group insurance plans available to employees upon authorization of the City Manager or City Council.

Section 5. Retirement

Each employee who is expected to work for the City more than 1,000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System on the first day of employment as a condition of employment. New hires who are current members of the NC Local or State Government Employees Retirement Systems shall be covered under the retirement system by the City on their first day of employment.

Section 6. Supplemental Retirement Benefits

The City may provide 401(k) and 457 benefits for its regular full and part-time employees as a percentage of salary as designated by the City Council beginning on the first day of employment, subject to appropriation by the City Council.

Each sworn law enforcement officer shall receive 401(k) benefits as prescribed by North Carolina State Law and beginning on the first day of employment.

Section 7. Social Security

The City, to the extent of its lawful authority and power, has extended Social Security benefits for its eligible employees and eligible groups and classes of such employees.

Section 8. Workers' Compensation

All employees of the City (full-time, part-time, and temporary) are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once.

Responsibility for claiming compensation under the Workers' Compensation Act is on the injured employee, and such claims must be filed by the employee with the North Carolina Industrial Commission within two years from date of injury. The Department Head and the Human Resources Director will assist the employee in filing the claim.

This provision also applies to reactions to small pox vaccinations administered to City employees under Section 304 of the Homeland Security Act. Such reactions shall be treated the same as any other workers' compensation claim as regards leave and salary continuation.

Before returning to work, a statement from the attending physician must be submitted to the Human Resources Director giving permission for the employee to resume regular duties.

Upon return to work, the employee's salary will be computed on the basis of the last salary plus any salary increase to which the employee would have been entitled based upon performance and other compensation policies.

During the disability covered by Workers Compensation benefits, an employee continues to earn vacation leave, sick leave, and will retain all accumulated sick or vacation leave.

Employees may use sick leave, vacation and/or Comp Time during the waiting period before Workers' compensation benefits begin.

Section 9. Unemployment Compensation

In accordance with Public Law 94-566 and subsequent amendments, local governments are covered by unemployment insurance. City employees who are terminated due to a reduction in force or released from City service may apply for benefits through the local North Carolina Division of Employment Security office, where a determination of eligibility will be made.

Section 10. Tuition Assistance Program

Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time, which will improve their skills for their current job or prepare them for promotional opportunities within the City service. Tuition, registration, fees, laboratory fees, and student fees are eligible expenses. Employees may be reimbursed for 50% of eligible expenses. Satisfactory completion of the courses will be required for reimbursement. Requests for tuition assistance shall be submitted to the Department Head prior to course registration and are subject to the review by the Human Resources Director and approval of City Manager, subject to availability of funds.

Section 11. Law Enforcement Separation Allowance

Every sworn law enforcement officer, as defined by N.C. Gen. Statute 128-21(11b) or N.C. Gen. Statute 143-166.50, of the City shall be eligible for a separation allowance, as provided by N.C. Gen. Statute 143-166.42, in the amount specified in N.C. Gen. Statute 143-166.41(a).

Eligibility and continuation of these benefits are subject to the following conditions:

a. The officer shall have completed 30 or more year of creditable service, or have attained 55 years of age and completed five or more years of creditable service; and

b. Not have attained 62 years of age;

c. Have completed at least five years of continuous service as a law enforcement officer as herein defined with the City immediately preceding a service retirement, as defined by N.C. Gen. Statutes 143-166.41(a)(3) and 143-166.41(b).

Termination of these benefits happens:

a. At death;

b. On the last day of the month in which the officer attains 62 years of age; or

c. Upon the first day of re-employment in any position in any local government in North Carolina.

Notwithstanding the provisions of subdivision (c) of this section, any North Carolina local government employer may employ retired officers in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System, and doing so shall not cause payment to cease to those officers under the provisions of this section. If any such

retired law enforcement officer works 1000, or more, hours per year for a North Carolina Local Governmental Retirement System employer they shall be mandated to become members of that retirement system and; therefore, ineligible to continue receiving the Separation Allowance. Employment by any other North Carolina Retirement System employer shall not cause the retired officer to be ineligible. Any officer who is entitled to receive the special separation allowance from the City shall, within ten (10) days of any change in his/her employment status, report the same to the Human Resources Director.

ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

Section 1. Policy

The policy of the City is to provide vacation leave, sick leave, and holiday leave to all full-time and part-time employees, and to provide proportionately equivalent amounts to employees having average work weeks of different lengths. Employees shall accrue leave proportionately with each payroll.

Section 2. Holidays

The City has adopted the State Holiday Schedule and, as such, the Human Resources Director shall publish that schedule prior to the beginning of each calendar year.

In order to receive a paid holiday, an employee must have worked the day before and the day after the holiday(s), or have been given approved leave.

Section 3. Holidays: Effect on Other Types of Leave

Regular holidays which occur during a vacation, sick or other leave period of any employee shall not be considered as vacation, sick, or other leave.

Section 4. Holidays: Compensation When Work is Required or Regularly Scheduled Off for Shift Personnel

Shift employees required to perform work on regularly scheduled holidays may be granted compensatory time off or paid for hours actually worked in addition to any holiday pay to which they are entitled. This compensatory time shall be granted whenever feasible. If a holiday falls on a regularly scheduled off-duty day for shift personnel, the employee shall receive the hours for paid holiday leave. Departments with employees working a shift schedule may elect to compensate those employees for working on the “true” holiday rather than the designated holiday.

Section 5. Vacation Leave

Vacation leave is intended to be used for rest and relaxation, school appointments, and other personal needs.

Vacation leave may also be used by employees who wish to observe religious holidays other than those granted by the City. Employees who wish to use leave for religious observances must request leave from their respective Department Heads. The Department Head will attempt to arrange the work schedule so that an employee may be granted vacation leave for the religious observance. Vacation leave for religious observance may be denied only when granting the leave would create an undue hardship for the City.

Vacation Leave may be donated to other employees according to procedures published by the City Manager.

Section 6. Vacation Leave: Use by Probationary Employees

Employees serving a probationary period following initial employment may accumulate vacation leave but shall not be permitted to take vacation leave during the first six months of employment unless approved in a pre-employment agreement.

Section 7. Vacation Leave: Accrual Rate

Each full and part-time employee of the City shall earn vacation at the following schedule, prorated by the average number of hours in the workweek (Section 16):

Years of Service	Accrual Rate (Days per Year)
0 – 2	10
3	11
4	12
5	13
6	14
7	15
8	15
9	16
10	16
11	17
12	17
13	18
14	18
15	19
16	19
17+	20

Section 8. Vacation Leave: Maximum Accumulation

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. However, if the employee departs from service, payment for accumulated vacation leave shall not exceed 40 days prorated as shown in Section 16. Effective December 31st, any employee with more than 40 days of accumulated leave shall have the excess accumulation removed so that only 40 days are carried forward to January 1 of the next calendar year. Those hours, in excess of 40 days, shall be converted to the employee's sick leave account. Employees are not eligible to receive pay for vacation time not taken.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation.

Section 9. Vacation Leave: Manner of Taking

Employees shall be granted the use of earned vacation leave upon request in advance at those times designated by the Department Head which will least obstruct normal operations of the City. Department Heads are responsible for insuring that approved vacation leave does not hinder the effectiveness of service delivery. Vacation may be taken in one half (1/2 hour) increments.

Section 10. Vacation Leave: Payment upon Separation

An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation not to exceed 40 days prorated as shown in Section 16, provided notice is given to the supervisor at least two weeks in advance of the effective date of resignation.

Any employee failing to give and work the two-week notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the City Manager when deemed to be in the best interest of the City. Employees who are involuntarily separated shall be ineligible to receive and shall forfeit payment of any accrued vacation leave hours.

Section 11. Vacation Leave: Payment upon Death

The estate of an employee who dies while employed by the City shall be entitled to payment of all the accumulated vacation leave credited to the employee's account not to exceed the maximums established in Section 8 of this Article.

Section 12. Sick Leave

Sick leave may be granted to a probationary or regular employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease, when continuing work might jeopardize the health of others. Sick leave may be taken in half-hour (30 minutes) increments.

For these purposes, "immediate family" shall be defined as spouse, child, parent, brother, sister, grandparent, grandchild, son-in-law, daughter-in-law, parent-in-law, brother or sister-in-law, aunt, uncle, of the employee or spouse or guardian of the employee. This also includes various combinations of “step”, “half”, and adopted relationships. Sick leave may be used when an employee must care for a member of his or her immediate family who is ill.

Sick leave may also be used to supplement Workers' Compensation Disability Leave during the waiting period before Workers' compensation benefits begin.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave or according to departmental procedures.

Section 13. Sick Leave: Accrual Rate and Accumulation

Sick leave shall accrue at a rate of one day per month of service or twelve days per year. Sick leave for full-time and part-time employees working other than the basic work schedule shall be prorated as described in Section 16 of this Article. Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Governmental Employees' Retirement System.

All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the City, except as stated for employees retiring or terminated due to reduction in force.

In addition, employees hired before October 4, 2001, may receive a payment equal to 25% of the sick leave balance the employee had accrued as of September 28, 2001.

Section 14. Transfer of Sick Leave from Previous Employer

The City will accept sick leave balances when documented by a previous employer when the employee worked for a previous employer covered by the State or Local Government Retirement System and the employee did not withdraw accumulated contributions from that employer when leaving employment. The sick leave will be treated as though it were earned with the City of Hendersonville. The sick leave amount must be certified by the previous employer and it is the employee's responsibility to provide documentation from his or her previous employer within three (3) months of employment. Transferred sick leave will be credited to the employee upon completion of the probationary period.

Section 15. Sick Leave: Medical Certification

The employee's supervisor or Department Head may require a physician's certificate stating the nature of the employee's or employee's family member's illness and the employee's capacity to resume duties, for each occasion on which an employee uses sick leave or whenever the supervisor observes a "pattern of absenteeism." The employee may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

1) Employees shall not be on duty when they might endanger their health or the health of other employees; and

2) There will be no abuse of leave privileges.

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action up to and including dismissal.

Section 16. Leave Pro-rated

Holiday, annual, and sick leave earned by full-time and part-time employees with fewer or more hours than the basic work week (40 Hours) shall be determined by the following formula:

1) The number of hours worked by such employees shall be divided by the number of hours in the

basic work week (40 Hours)

2) The proportion obtained in step 1 shall be multiplied by the number of hours of leave earned annually by employees working the basic work week.

3) The number of hours in step 2 divided by 12 shall be the number of hours of leave earned monthly by the employees concerned, or divided by 26 shall be the number of hours of leave earned biweekly.

Section 17. Funeral Leave

Eligible employees scheduled to work eight (8) or twelve (12) hour shifts who have a death in the Immediate Family (as defined in Section 12 of this Article) are eligible to receive up to twenty-four (24) working hours of paid funeral leave. Eligible employees scheduled to work twenty-four (24) hour shifts are eligible to receive up to twenty-four (24) working hours paid funeral leave.Permanent part-time employes are eligible for leave,prorated by the average number of hours in the work week (Section 16). Any additional time or for deaths that are not covered by the Immediate Family designation, vacation leave or accrued compensatory time may be taken. Funeral leave pay cannot duplicate any other compensation of the same time period. The City may request documentation for this leave whenever there is a pattern of absenteeism demonstrated by the employee or for other reasons as needed.

Section 18. Leave Without Pay

A full or part-time employee may be granted a leave of absence without pay for a period of up to twelve months by the City Manager. The leave may be used for reasons of personal disability, sickness or disability of immediate family members, parental leave, continuation of education, special work that will permit the City to benefit by the experience gained or the work performed, or for other reasons deemed justified by the City Manager.

The employee shall apply in writing to the supervisor for leave. The employee is obligated to return to duty within or at the end of the time determined appropriate by the City Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority, and pay. If the employee decides not to return to work, the supervisor shall be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been requested, shall be considered a resignation.

Section 19. Family and Medical Leave

The City provides up to 12 weeks of job-protected leave in accordance with the Family and Medical Leave Act of 1993 (FMLA). Under the FMLA, eligible employees may be granted up to a total of 12 weeks of unpaid leave per 12-month period, as determined below, for any of the following reasons:

1) For incapacity due to pregnancy, prenatal medical care or child birth;
2) To care for the employee's child after birth, or placement for adoption or foster care;
3) To care for employee's spouse, son or daughter (under age 18 or incapable of self-care due to disability) parent (in-laws not included), with a serious health condition, as defined by FMLA;

4) For a serious health condition, as defined by FMLA, that renders employee unable to perform the job.
5) For qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation.

Service member Family Leave
FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty and is receiving medical treatment, recuperating or undergoing therapy for a serious injury or illness. In contrast to all other FMLA leaves, service member family leave may be taken only once and does not again become available with the start of a new FMLA year. An employee may not take more than a combined total of 26 workweeks of leave in any year in which he or she uses service member family leave. The same eligibility, leave usage, and medical certification requirements apply to service member family leave as apply to all other FMLA leaves.

Eligible employees
To qualify for FMLA coverage, the employee must have worked for the City of Hendersonville 12 months or 52 weeks; these do not have to be consecutive. However, the employee must have worked 1,250 hours during the twelve-month period immediately before the date when the FMLA time begins. Under the Uniformed Services Employment and Reemployment Rights Act (USERRA) an employee ordered to active military duty is eligible for FMLA if the employee would have otherwise been qualified had it not been for the active military duty.

Leave
Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. The request for the use of leave must be made in writing by the employee and approved by the City Manager. The FMLA permits, and the City of Hendersonville requires, that while utilizing FMLA leave employees exhaust all accrued paid sick leave first, then vacation leave, and lastly earned compensatory time before being granted unpaid leave. Additional time away from the job beyond the 12-week period may be approved in accordance with the City/s Leave Without Pay policy. Any use of sick leave beyond two weeks is required to be submitted as Family and Medical Leave. Family and Medical Leave runs concurrently with other types of leave including sick leave/disability, voluntary shared leave, and worker's compensation. An employee ceases to earn leave credits on the date leave without pay begins. An employee is prohibited from moonlighting or performing other outside work during any kind of leave including FMLA leave.

12-Month Period
For the purposes of determining available leave, the 12-month period during which employees may be eligible for leave will be calculated on a rolling leave year looking forward 12 months from the date an employee begins FMLA leave.

Medical Certification
The City may require medical certification to assess FMLA eligibility, as well as updates at reasonable intervals for continued certification. Employees are responsible for paying for the certification or re-certification. The City, at its own cost, may also require the employee to get a second or third opinion from a physician designated by the City. Failure to provide adequate information within 15 calendar days, may result in denial of leave. The employee is expected to return to work at the end of the time frame stated in the medical certification, unless he/she has requested additional time in writing under

the City's Leave Without Pay policy. The City requires a physician's statement certifying an employee's ability to return to work prior to returning from medical leave. An employee who does not return to work within three working days after their FMLA expires will be considered to have resigned their position.

Spouse's Combined Leave
If both spouses work for the City and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (not parent-in-law) with a serious health condition, the spouses together may only take a total of 12 weeks leave during the 12-month period under FMLA. The request for the use of leave must be made in writing by the employee and approved by the Department Head or City Manager.

Benefits Continuation
The City will continue to provide health care benefits; however, the employee will be responsible for paying his/her portion of the premium for dependent coverage if applicable. Other insurance and payroll deductions (i.e. dental, flex, etc.) are the responsibility of the employee and the employee must make those payments. Failure to pay premiums may result in loss of coverage. Under federal regulations, the City has the right to recover the insurance premiums if the employee fails to return to work for reasons other than the inability of the employee to work.

Reinstatement
Under most circumstances, employees who return to work immediately after the expiration of this leave and who do not exceed the amount of leave permitted under the FMLA, will be reinstated to either the same or equivalent job. If the twelve or twenty-six weeks of this leave are exhausted and the employee has not returned to work, the City will determine if the employee will be reinstated.

Section 20. Workers' Compensation Leave

Under the North Carolina Workers' Compensation Act, employees may be compensated for absence from work due to injury or illness covered by the Act, subject to the following leave provisions:

1) There is a mandatory 7 calendar day waiting period before Workers' Compensation salary benefits begin. For this waiting period, employees may use accrued compensatory time, sick or vacation leave.

2) Beginning on the 8th calendar day following the injury or illness, employees who have not returned to work shall be placed in a Workers' Compensation Leave Without Pay status until their return to work. Accrued leave cannot be used while in Leave Without Pay status.

3) Employees in leave without pay status will retain all accumulated compensatory time, sick and vacation leave while receiving Workers' Compensation benefits. An employee on Workers' Compensation leave may be permitted to continue to be eligible for benefits under the City's group insurance plans.

4) Upon reinstatement, an employee's salary will be computed on the basis of the last salary plus any salary increase to which the employee would have been entitled during the absence covered by Workers' Compensation benefits.

5) After returning to work, employees shall be required to use sick or vacation leave for any additional absences for doctor visits, physical therapy, and other required medical care except where any full or partial workday absence may be eligible for Workers' Compensation payment.

6) Any period of leave for a Workers' Compensation disability that qualifies as a "serious health condition" under the Family and Medical Leave Act (FMLA), will run concurrently with FMLA leave.

7) The City of Hendersonville's personnel policies shall continue to apply to an employee on Workers' Compensation leave in the same manner as they would apply to an employee who continues to work, or is absent while on some other form of leave.

8) An employee is prohibited from moonlighting or performing other outside work during any kind of leave including workers' compensation leave.

9) After a one-year (52-week) leave of absence on Workers' Compensation leave, employment with the City will be terminated to allow the City to fill the position. The employee will be eligible for rehire and given priority for qualified job openings upon a physician's statement certifying the employee's ability to return to work. The City reserves the right to separate the employee prior to 52-weeks.

10) During a period of leave under the Workers' Compensation Act, the employee remains responsible for paying for any voluntary benefits, or dependent benefits, at the same cost and at the same time as if the employee were still working. Failure to make timely payments will result in the cancelation of the voluntary benefit or dependent benefits coverage.

Section 21. Return to Work

Before an employee may return to work from an injury at full or light duty, the employee must provide a physician's note to Human Resources Director indicating that he/she is released and capable of resuming duties, and what, if any restrictions are in place.

If the employee retains some temporary disability after Workers' Compensation leave, which prevents successful performance in his/her original position, efforts will be made to place the employee in a Modified Duty assignment. A Modified Duty assignment is a temporary position to which an employee is assigned when he/she is unable to return to his/her regular position following an on-the-job injury or illness. The modified duty assignment temporarily addresses the restrictions placed on the employee by the treating physician. For work to be considered suitable modified employment, the following conditions must be met:

1) The employee must meet the required qualifications for the modified duty assignment,

2) The work must be a meaningful and productive part of the department's operations,

3) The work must conform to the medical restrictions set by the medical care provider, and

4) The modified duty assignment and/or modified work schedule cannot exceed ninety calendar days.

If the employee's regular department is unable to meet the employee's need for modified duty, the employee's department is responsible for payment of the employee's salary and benefits while

performing a Modified Duty position in a different department that has been able to meet the employee's needs. The employee placed in a Modified Duty position will be paid a salary that is equivalent to the salary of other employees holding the same position. The City cannot guarantee placement and is under no obligation to offer or create any specific position for purposes of offering placement.

An employee may choose to accept or refuse the Return to Work (modified duty) job offer. However, an employee who refuses a Modified Duty job offer is subject to termination. Rejection of the job offer might also result in cancellation of income benefits under Workers' Compensation Insurance.

If an employee is unable to return to work at full duty after 90 calendar days, he/she may request a continuation of Modified Duty not to exceed a total of 180 calendar days in a modified capacity. Approval beyond 90 calendar days will be based upon the assessment of the employee's ability to return to full duty within the immediate future. An employee requesting an extension beyond 90 calendar days must submit updated information from the treating physician. The City reserves the right to consider a separation of employment for any employee who is out on Workers' Compensation leave for an extended period of time thus causing hardship for the department.

Section 22. Military Leave

In accordance with federal and state laws, the City provides military leave to employees who are members of a United States Armed Forces Reserve organization or National Guard for absences to perform military duty, whether voluntary or involuntary. Absences to perform any military duty (including active duty, active duty training, inactive duty training such as scheduled drills and summer camp, full-time National Guard federal duty, fitness-for-duty examination, and funeral honors duty) are covered by this policy, unless the employee reaches the five-year maximum of military leave as established by the Uniformed Services Employment and Reemployment Rights Act (USERRA). This policy provides military leave to regular City employees unless their employment is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

Employees should submit a request for military leave to the supervisor or Department Head as soon in advance of the military duty as possible. The request should be in writing and should be accompanied by a copy of the military orders. Employees must report back to work as soon after military duty as possible, consistent with federal and state laws. If the reason for the employee's delay is not related to military duties, the employee is subject to the personnel policies and practices normally applied to employees with unexcused absences.

Employees may choose whether to use earned compensatory time, accrued vacation leave (leave with pay), leave without pay, or some combination thereof for these absences, and the provisions of that leave shall apply. Upon exhausting all other paid leave, employees may request to use sick leave, if approved by the City Manager.

Regular employees choosing to use military leave may claim up to ten (10) days of differential pay per calendar year provided the days are recorded as military leave and the military basic pay is less than the employee's regular City pay. To claim differential pay, the employee must submit a copy of his/her military orders, pay vouchers, Leave and Earnings Statement and/or other appropriate documentation evidencing performance and compensation pertinent to the military duty.

During the period of military leave, regular employees may continue health and dental insurance

coverage up to eighteen months under COBRA coverage, provided they continue to pay their share of the premiums. As with any other unpaid leave, employees do not accrue vacation leave or sick leave during the period of leave without pay. However, the balance of such accruals on the date of commencement of the military leave will remain intact for the employee's return to work.

Section 23. Reinstatement Following Military Service

Employees who are separated or discharged from military service under honorable conditions and who apply for reinstatement within the established time limits are reinstated to the same position or one of like status, seniority, and pay with the City. If, during military service, an employee is disabled to the extent that the duties of the original position cannot be performed, the employee is reinstated to a position with duties compatible with the disability, if available. The employee's salary upon reinstatement is based on the salary rate just prior to leave, plus any general salary increase(s) implemented while on leave. The addition of a performance salary increase may be considered. Employees who are eligible for military leave have all job rights specified by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

An employee's entitlement to the provisions of this section terminates upon the occurrence of any of the following events:

1) Such employee is separated from uniformed service with dishonorable or bad conduct discharge;
2) Such employee is separated from uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned;
3) The City's circumstances have so changed as to make such reemployment impossible or unreasonable; or
4) Such employee gives clear written notice s/he has no intention of returning to work.

Section 24. Civil Leave

A City employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation; except, that employees must turn over to the City any witness fees or travel allowance awarded by that court for court appearances in connection with official duties. While on civil leave, benefits and leave shall accrue as though on regular duty. Employees required to be in court for their own case, defendant or plaintiff, must use accrued compensatory time or vacation leave during such absence from the work of the City.

Section 25. Parental School Leave

A City employee who is a parent, guardian, or person standing in loco parentis (in place of the parent) may take up to four hours of unpaid leave annually to involve him or herself in school activities of his or her child(ren). This leave is subject to the three following conditions:

1) The leave must be taken at a time mutually agreed upon by the employee and the City; and,

2) The City may require the employee to request the leave in writing at least 48 hours prior to the time of the desired leave; and

3) The City may require written verification from the child's school that the employee was involved at the school during the leave time.

Paid leave (compensatory time or vacation time) taken by an employee to attend to school activities of his or her child shall count toward the fulfillment of this provision by the City.

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 1. Types of Separations

All separations of employees from positions in the service of the City shall be designated as one of the following types and shall be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two calendar weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notice is waived upon recommendation of the Department Head and approval by the City Manager.

Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be job abandonment, a voluntary resignation. Sick leave will only be approved during the final two weeks of a notice with a physician's certification or comparable documentation.

Section 3. Reduction in Force

In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's performance, organizational needs, and seniority in determining those employees to be retained. Employees who are separated because of a reduction in force shall be given at least two weeks' notice of the anticipated action. No regular employee shall be separated because of a reduction in force while there are temporary or probationary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary or probationary employee.

Section 4. Disability

The City will comply with the Americans with Disabilities act and will make all responsible efforts to provide reasonable accommodation to employees who may be or become disabled. An employee who cannot perform the essential duties of a position because of a physical or mental impairment may be separated for disability. Action may be initiated by the employee or the City. In either case, such action must be accompanied by medical evidence acceptable to the City Manager. The City may require an examination, at the City's expense, performed by a physician of the City's choice. In circumstances where the employee may be eligible to retire under the disability provisions of the North Carolina Local Governmental Employees' Retirement System the City will provide assistance to the employee in filing such application.

Section 5. Voluntary Retirement

An employee who meets the conditions set forth under the provision of the North Carolina Local Governmental Employee's Retirement System may elect to retire and receive all benefits earned under the retirement plan.

Section 6. Death

Separation shall be effective as of the date of death. All compensation due shall be paid to the estate of the employee.

Section 7. Dismissal

An employee may be dismissed in accordance with the provisions and procedures of Article IX.

Section 8. Reinstatement

An employee who is separated because of reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head, and upon approval of the City Manager. An employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

Section 9. Rehiring

An employee who resigns while in good standing may be rehired with the approval of the City Manager, and may be regarded as a new employee, subject to all of the provisions of rules and regulations of this Policy. An employee in good standing who is separated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position.

ARTICLE IX. UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT

Section 1. Disciplinary Action for Unsatisfactory Job Performance

A regular employee may be placed on disciplinary suspension, demoted, or dismissed for unsatisfactory job performance, if after following the procedure outlined below, the employee's job performance is still deemed to be unsatisfactory. All cases of disciplinary suspension, demotion, or dismissal must be approved by the City Manager prior to giving final notice to the employee.

Section 2. Unsatisfactory Job Performance Defined

Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the Department Head or City Manager.

Examples of unsatisfactory job performance include, but are not limited to, the following:

1) Demonstrated inefficiency, negligence, or incompetence in the performance of duties;

2) Careless, negligent or improper use of City property or equipment;

3) Physical or mental incapacity to perform duties after reasonable accommodation;

4) Discourteous treatment of the public or other employees;

5) Absence without approved leave;

6) Improper use of leave privileges;

7) Failure to report for duty at the assigned time and place;

8) Failure to complete work within time frames established in work plan or work standards;

9) Failure to meet work standards over a period of time; or

11) Failure to follow the chain of command to address work-related issues.

12) Failure to obtain or maintain current license or certificate required as a condition of the job.

13) Repeated or serious incident of unsafe behavior at work

14) Failure to wear or use appropriate safety equipment or otherwise to a abide by safety rules

Section 3. Communication and Warning Procedures Preceding Disciplinary Action for Unsatisfactory Job Performance

When an employee's job performance is unsatisfactory, or when incidents or inappropriate actions warrant, the supervisor shall meet with the employee as soon as possible in one or more counseling sessions to discuss specific performance problems. A brief summary of these counseling sessions shall be noted in the employee's personnel file by the supervisor.

An employee whose job performance is unsatisfactory over a period of time should normally receive at least two documented warnings, one of which may be in the final written warning, from the supervisor before disciplinary action resulting in dismissal is taken by the City Manager. In each case, the supervisor will record the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time limits set. If the employee's performance continues to be unsatisfactory, then the supervisor will use the following steps:

1) A final written warning from the supervisor serving notice upon the employee that immediate and lasting corrected performance must take place in order to avoid suspension, demotion, or dismissal.

2) If performance does not improve, a written recommendation should be sent to the City Manager for disciplinary action such as suspension, demotion, or dismissal.

Disciplinary suspensions are for the purpose of communicating the seriousness of the performance deficiency, not for the purpose of punishment, and should not generally exceed three days (24 hours) for nonexempt employees. Suspensions for exempt employees shall be in accordance with FLSA requirements to maintain exempt status.

Demotions are appropriate when an employee has demonstrated inability to perform successfully in the current job, but shows promise and commitment to performing successfully in a lower level job. If no other options are available, dismissal is appropriate.

If after suspension or demotion, the employee’s performance does not reach an acceptable level, the employee may be dismissed.

Section 4. Disciplinary Action for Detrimental Personal Conduct

With the approval of the City Manager, an employee may be placed on disciplinary suspension, demoted, or dismissed without prior warning for causes relating to personal conduct detrimental to City service in order to 1) avoid undue disruption of work; 2) to protect the safety of persons or property; or 3) for other serious reasons.

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior of such a serious detrimental nature that the functioning of the City may be or has been impaired; the safety of persons or property may be or have been threatened; or the laws of any government may be or have been violated.

Examples of detrimental personal conduct include, but are not limited to, the following:

1) Fraud, theft or other illegal activities;

2) Conviction of a felony or the entry of a plea of nolo contendere thereto;

3) Falsification of records for personal profit, to grant special privileges, or to obtain employment;

4) Willful misuse or gross negligence in the handling of City funds or personal use of equipment or supplies;

5) Willful or wanton damage or destruction to property;

6) Willful or wanton acts that endanger the lives and property of others;

7) Possession of unauthorized firearms, alcoholic beverages, illegal substances or other lethal weapons on the job;

8) Brutality in the performance of duties;

9) Reporting to work under the influence of alcohol or drugs or partaking of such while on duty. Prescribed medication may be taken within the limits set by a physician as long as medically necessary;

10) Engaging in incompatible employment or serving a conflicting interest;

11) Request or acceptance of gifts in exchange for favors or influence;

12) Engaging in political activity prohibited by this Policy;

13) Harassment of an employee(s) and/or the public on the basis of sex or any other protected class status; or

14) Harassment of an employee or the public with threatening or obscene language and/or gestures;

15) Stated refusal to perform assigned duties, flagrant violation of work rules and regulations, or serious malfeasance of work

Section 6. Possible Dismissal: Notice and Hearing

Before dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the department head or a designee thereof, along with other persons deemed necessary to the process, including the Human Resources Director will conduct a pre-dismissal hearing. This hearing will be held upon at least three business days' notice to the employee that a dismissal is being considered and the hearing will be held, unless the employee waives such notice or the particular circumstance require a different period. At this hearing, the employee may present any response to the proposed dismissal to the department head or designee. The department head or designee will consider the employee's response, if any, to the proposed dismissal, and will, within three business days following the pre-dismissal hearing, notify the employee in writing of the final decision. If the employee is dismissed, the notice shall contain a statement of the reasons for the action and the employee's appeal rights.

If the hearing results in a decision to dismiss the employee, the employee may appeal this decision in writing to the City Manager. The written notice of appeal shall be delivered to the Human Resources Director and the City Manager within five business days of the date of the dismissal decision.

Upon a timely appeal of a dismissal decision the City Manager will schedule a hearing. The employee shall appear at the hearing and may bring whatever documentation the employee deems appropriate, although voluminous documentation may be excluded at the City Manager's discretion. The employee may request the right to bring one or more witnesses to testify to critical facts upon written application to the City Manager, along with a brief statement as to the content of the proposed testimony. The City Manager shall have discretion as to whether to permit such testimony.

Section 7. Non-Disciplinary Suspension

During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of any civil action involving an employee, when suspension would, in the opinion of the Department Head or City Manager, be in the best interest of the City, the Department Head or City Manager may suspend the employee for part or all of the proceedings as a non-disciplinary action. In such cases, the City Manager may:

1) Temporarily relieve the employee of all duties and responsibilities and place the employee on paid or unpaid leave for the duration of the suspension, or

2) Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities.

If the employee is reinstated following the suspension such employee shall not lose any compensation or benefits to which otherwise the employee would have been entitled had the suspension not occurred. If the employee is terminated following suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits with the exception of accrued vacation and sick leave shall be maintained during the period of suspension.

ARTICLE X. GRIEVANCE PROCEDURE AND ADVERSE ACTION APPEAL

Section 1. Policy

The City shall provide a just procedure for the presentation, consideration, and disposition of employee grievances. The purpose of this article is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

Employees utilizing the grievance procedures shall not be subjected to retaliation or any form of harassment from supervisors or employees for exercising their rights under this policy. Supervisors or other employees who violate this policy shall be subject to disciplinary action up to and including dismissal from City service.

Section 2. Grievance Defined

A grievance is a claim or complaint by a current or a former employee based upon an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions. Grievance does not include appeal from a dismissal decision, which is covered by Article IX.

Section 3. Purposes of the Grievance Procedure

The purposes of the grievance procedure include, but are not limited to:

1) Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;

2) Encouraging employees to express themselves about the conditions of work which affect them as employees;

3) Promoting better understanding of policies, practices, and procedures which affect employees;

4) Increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures;

5) Increasing the sense of responsibility exercised by supervisors in dealing with their employees.

6) Encouraging conflicts to be resolved between employees and supervisors who must maintain an effective future working relationship, and therefore, encouraging conflicts to be resolved at the lowest level possible of the chain of command; and

7) Creating a work environment free of continuing conflicts, disagreements, and negative feelings about the City or its leaders, thus freeing up employee motivation, productivity, and creativity.

Section 4. Procedure

When an employee has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. A decision to rescind a disciplinary suspension or demotion must be recommended by the Department Head and approved by the City Manager.

Informal Resolution. Prior to the submission of a formal grievance, the employee and supervisor should meet to discuss the problem and seek to resolve it informally. Either the employee or the supervisor may involve the respective Department Head as a resource to help resolve the grievance. In addition, the employee or supervisor may request mediation from a local mediation services or other qualified parties to resolve the conflict, upon approval of the Human Resources Director. Mediation may be used at any step in the process when mutually agreed upon by the employee and relevant City supervisor or Manager. Mediation is the process where a neutral party assists the parties in conflict

with identifying mutually agreeable solutions or understandings.

Step 1. If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor in writing. The grievance must be presented within fifteen calendar days of the event or within fifteen calendar days of learning of the event or condition. The supervisor shall respond to the grievance within ten calendar days after receipt of the grievance. The supervisor should, and is encouraged to, consult with any employee of the City in order to reach a correct, impartial, fair and equitable determination or decision concerning the grievance. Any employee consulted by the supervisor is required to cooperate to the fullest extent possible.

The response from the supervisor for each step in the formal grievance process shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The responder at each step shall send copies of the grievance and response to the Human Resources Director.

Step 2. If the grievance is not resolved to the satisfaction of the employee by the supervisor, the employee may appeal, in writing, to the appropriate Department Head within ten calendar days after receipt of the response from Step 1. The Department Head shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal.

Step 3. If the grievance is not resolved to the satisfaction of the employee at the end of Step 2, the employee may appeal, in writing, to the City Manager within ten calendar days after receipt of the response from Step 3. The City Manager shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal. The City Manager's decision shall be the final decision. The City Manager will notify the City Board of any impending legal action.

Department Heads. In the case of Department Heads or other employees where the City Manager has been significantly involved in determining disciplinary action, including dismissal, the City may wish to obtain a neutral outside party to act as a mediator to assist in resolving the conflict.

The filing of a lawsuit by an employee on an issue while there is a grievance on the same issue will end the appeal(s) under the City's grievance procedure.

Section 5. Role of the Human Resources Director

Throughout the grievance procedure, the roles of the Human Resources Director shall be as follows:

1. To advise parties (including employee, supervisors, and City Manager) of their rights and responsibilities under this policy, including interpreting the grievance and other policies for consistency of application;

2. To be a clearinghouse for information and decisions in the matter including maintaining files of all grievance documents.

3. To give notices to parties concerning timetables of the process, etc.;

4. To assist employees and supervisors in drafting statements; and

5. To facilitate the resolution of conflicts in the procedures or of the grievance at any step in the process; and

6. To help locate mediation or other resources as needed.

The Human Resources Director shall also determine whether or not additional time shall be allowed to either side in unusual circumstances if the parties cannot agree upon extensions when needed or indicated.

Section 6. Grievance and Adverse Action Appeal Procedure for Discrimination

When an employee, former employee, or applicant, believes that any employment action discriminates illegally (i.e. is based on age, sex, race, color, national origin, religion, creed, political affiliation, or non-disqualifying disability, marital status or veteran status), he or she has the right to appeal such action using the grievance procedure outlined in this Article (Section 4 above). While such persons are encouraged to use the grievance procedure, they shall also have the right to appeal directly to the Human Resources Director or City Manager. Employment actions subject to appeal because of discrimination include promotion, training, classification, pay, disciplinary action, transfer, layoff, failure to hire, or termination of employment. An employee or applicant should appeal an alleged act of discrimination within thirty calendar days of the alleged discriminatory action, but may appeal for up to six months following the action. Nothing in this policy is intended to discourage or prevent an employee, former employee or applicant from filing a formal charge of discrimination or other illegal action with the appropriate state or federal agency having jurisdiction.

ARTICLE XI. RECORDS AND REPORTS

Section 1. Public Information

In compliance with GS 160A-168(b), the following information with respect to each City employee is a matter of public record:

1) Name;

2) Age;

3) Date of original employment or appointment to the service;

4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the City has the written contract or a record of the oral contract in its possession;

5) Current position title;

6) Current salary;

7) Date and amount of each increase or decrease in salary with the City;

8) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with the City;

9) Date and general description of the reasons for each promotion with the City;

10) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the municipality. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the municipality setting forth the specific acts or omissions that are the basis of the dismissal; and

11) The office to which the employee is currently assigned.

Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the City may adopt.

For the purposes of this subsection, the term “salary” includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the City.

Section 2. Access to Confidential Records

All information contained in a City employee's personnel file, other than the information mentioned above is confidential and shall be open to inspection only in the following instances:

1) The employee or his/her duly authorized agent may examine all portions of his/her personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.

2) A licensed physician designated in writing by the employee may examine the employee's medical record.

3) A City employee having supervisory authority over the employee may examine all material in the employee's personnel file.

4) By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.

5) An official of an agency of the State or Federal Government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the City Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

6) An employee may sign a written release to be placed in his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

6) The City Manager, with the concurrence of the City Council, may inform any person of

the employment, non-employment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a City employee, and the reasons for that action. Before releasing that information, the City Manager shall determine in writing that the release is essential to maintaining the level and quality of City services. The written determination shall be retained in the City Manager's office, is a record for public inspection, and shall become a part of the employee's personnel file.

Section 3. Personnel Actions

The Human Resources Director, with the approval of the City Manager, will prescribe necessary forms and reports for all personnel actions and will retain records necessary for the proper administration of the personnel system. There shall be one set of official personnel files, centrally located as designated by the City Manager, normally in the Human Resources office. Any document not located there is not an official part of that employee's personnel record. These files shall contain documents such as employment applications and related materials, records of personnel actions, documentation of employee warnings, disciplinary actions, performance evaluations, retirement and insurance records, letters of recommendation, and other personnel-related documents.

Section 4. Records of Former Employees

The provisions for access to records apply to former employees as they apply to present employees.

Section 5. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. The employee may seek removal of such material in accordance with established grievance procedures.

Section 6. Penalties for Permitting Access to Confidential Records

Section 160A-168 of the General Statues provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount consistent with the General Statutes.

Section 7. Examining and/or Copying Confidential Material without Authorization

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

Section 8. Destruction of Records Regulated

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever, alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided in Policy 132.3 of the General Statutes.

ARTICLE XII. IMPLEMENTATION OF POLICIES

Section 1. Conflicting Policies Repealed

All policies, ordinances,or resolutions that conflict with the provisions of these policies are hereby repealed.

Section 2. Severability

If any provision of these policies or any rule, regulation, or order thereunder of the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies of such rules, regulations, or orders to persons or circumstances other than those held invalid will not be affected thereby.

Section 3. Effective Date

These policies shall become effective on a date approved by the City Council.

Section 4. Amendments

This policy may be amended by action of the City Council and by a formal action appropriately approved. Notice of any suggested amendment to the policy, or any portion thereof, shall be provided to employees and opportunities for employee comment and reaction shall be made available prior to the amendments going to the City Council for action. Proposed amendments should be posted on bulletin boards in all employee work locations and/or in employee newsletters. Any revisions or amendments adopted in conformance with this procedure shall become effective as of the date of such adoption.

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 1/28/2020

Presenter: John Connet

Date of Council Meeting to consider this item: 2/6/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05j

City Attorney Sam Fritschner is retiring in September, so staff took the opportunity to update the City Attorney Job Description. We believe that this job description clearly illustrates the work performed by the City Attorney and are recommending its approval.

Budget Impact: $ TBD Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move that that the City Council resolve to approve the amended job description for the City Attorney.

Attachments:

Proposed Job Description

City Attorney

Primary Reason Classification Exists

To represent the City Council, City staff and City Boards and Commissions on all legal matters.

Distinguishing Features of the Class

An employee in this class performs complex executive and professional work as legal advisor to the City Council, City staff and various boards and commissions of the City.; provides legal representation for all elected and appointed officials and City departments; provides the City Council and City Administrator with the legal advice and legal documents necessary to ensure that policy and objectives are compliant with State, Local and Federal law. This classification is appointed by and serves at the pleasure of the City Council. The employee is responsible for performing sensitive and complex legal matters and rendering advice and options to the City Council, Boards and Commissions, the City Administrator and others. Work is performed with limited supervision and is evaluated on the basis of knowledge and demonstrated proficiencies, compliance with legal requirements and standards, and other performance criteria.

Illustrative Examples of Work Performed

- Provides general legal advice by communicating with City Council, City Manager and department heads and, where appropriate, does legal research, field work and other work and discusses results with City Council, City Manager and department heads.
- Drafts or supervises drafting of ordinances and resolutions for the Mayor, City Council and City Manager; explains legal drafts to the Mayor, City Council and City Manager, and answers questions from the Mayor, City Council, City Manager and department heads.
- Attends meetings of the City Council and boards and commissions and renders immediate legal advice when necessary.
- Acquires real property interests for city capital projects (sewer, water, sidewalks, streets, etc.) by many processes including title review, interdepartmental communications, negotiations, purchase, and litigation.
- Reviews contracts by reading the contracts and, where appropriate, does legal research and discusses the results with appropriate department heads or City Manager.
- Engages in litigation-related matters including drafting, discovery, court attendance, mediation, investigation, hearings and trials and similar activities.
- Researches, interprets, and applies laws, court decisions, and other legal authority in the preparation of opinions and briefs.
- Analyzes legislation including proposed state and federal legislation affecting the City.
- Prepares for and attends meetings of City boards, committees and commissions, as well as City Council meetings.
- Serves as legislative liaison with state and federal governments
- Provides legal advice on municipal law and procedure to City staff, boards and commissions.
- Performs other related work as required.

Knowledge, Skills, and Abilities
Comprehensive knowledge of municipal law, torts, contracts, civil rights, administrative process and real property: comprehensive knowledge of local, state, and federal laws and court decisions affecting municipalities: thorough knowledge of standard office procedures, practices and equipment; ability to present complex ideas effectively orally and in writing: ability to establish and maintain effective working relationships with the Mayor and City Council, the City Manager and department heads, court officials, members of the bar, City boards and commissions and the general public; ability to plan and supervise the work of subordinate or retained attorneys, paralegals and other staff; ability to prepare and render complex legal opinions.

Physical Requirements
Work in this class is generally sedentary. Work requires some light physical activity such as standing, fingering, grasping and walking. Work also includes the ability to see, hear, talk, and physically move about the office. Occasional field work may involve moderate and, rarely, strenuous physical activity. Visual acuity is necessary to read materials and operate computer terminals and other office equipment

Working Conditions
Work is performed primarily in an environmentally controlled environment without substantial exposure to workplace hazards.

Education
Graduation from an accredited college or university and law school with a bachelor's degree and a Juris Doctor.

Experience
One (1) to four (4) years of directly related experience supplemented by supervisory experience.

Special Requirements
- Valid driver's license may be required
- License to practice law in North Carolina

FLSA Status: Exempt

Disclaimer
This classification specification has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities, and qualifications required of employees to perform the job. The City of Hendersonville reserves the right to assign or otherwise modify the duties assigned to this classification.

February 2020

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 1/28/2020

Presenter: John Connet

Date of Council Meeting to consider this item: 2/6/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #**

City Attorney Sam Fritschner is retiring in September, so staff took the opportunity to develop the attached job advertisement. We believe that this job description clearly illustrates the work performed by the City Attorney and are recommending its approval.

Budget Impact: $ TBD Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move that that the City Council resolve to approve the job advertisement for the City Attorney position.

Attachments:

Proposed Job Advertisement

The **City of Hendersonville**, NC, is seeking an innovative and experienced **City Attorney** committed to working effectively within the Mayor and City Council and City Manager in leading the legal affairs of the city. The current City Attorney is retiring after fifteen years of service.

The Community: Located in Henderson County, Hendersonville consisting of six square miles and multiple historic districts, is listed on the National Register of Historic Places and sits between the Great Smokey and Blue Ridge Mountains, 22 miles south of Asheville, NC. With an altitude of 2200 feet above sea level, the region provides wonderful year-round recreational opportunities. A thriving Hendersonville Historic Downtown district, member of the NC Main Street Program, is host to a variety of businesses, festivals and activities throughout the year. This beautiful mountain community strives to maintain its quality of life for year-round residents as well as the seasonal influx of tourists in Fall and Summer. To learn more about the community, click here.

Position responsibilities: The City Attorney is responsible for providing general legal advice by communicating with the Mayor, City Council, City Manager and department heads. The individual will be responsible for drafting ordinances and resolutions, acquiring real estate interests, reviewing and preparing contracts, participating in litigation and serving as legislative liaison with state and federal governments. The City, home to over 14,251 residents, employs 263 FTE, 28 part-time or seasonal employees.

The City Attorney is appointed by and serves at the pleasure of the City Council but is generally supervised on a day to day basis by the City Manager. The Legal Department consists of the City Attorney and a part-time Paralegal.

About the Candidate: The preferred candidate will meet the following requirements:

EDUCATION AND PROFESSIONAL DEVELOPMENT

- Graduation from an accredited college or university and law school with a bachelor's degree and Juris Doctor
- Licensed to practice law in North Carolina
- One to four years of directly related experience supplemented by supervisory experience.
- Valid driver's license may be required

MANAGEMENT STYLE, SKILLS, KNOWLEDGE AND ABILITIES

Comprehensive knowledge of municipal law, torts, contracts, civil rights, administrative process and real property: comprehensive knowledge of local, state, and federal laws and court decisions affecting municipalities: thorough knowledge of standard office procedures, practices and equipment; ability to present complex ideas effectively orally and in writing: ability to establish and maintain effective working relationships with the Mayor and City Council, the City Manager and department heads, court officials, members of the bar, City boards and commissions and the general public; ability to plan and supervise the work of subordinate or retained attorneys; ability to prepare and render complex legal opinions.

COMPENSATION PACKAGE

- The starting salary dependent on qualifications. The pay range for the position is $93,277 to $141,943.
- Medical, dental, vision and life insurance available for employees and dependents. City pays for Employee portion and 50% of dependents.
- Participation in the North Carolina Local Governmental Employees' Retirement System.
- Optional 401(k) and 457 available both Pre-tax and Roth options.
- Paid holidays.
- Vacation and sick leave.

QUESTIONS

Questions about the recruitment process for the position should be directed to Jennifer S. Harrell, Human Resources Director at jharrell@hvlnc.gov or (828) 697-3003. For more information about the City of Hendersonville, visit our website at www.hvlnc.org.

APPLICATION PROCESS

Submit a 1) Cover letter, 2) Resume and 3) City of Hendersonville application or mail to
or send email to hremployment@hvlnc.gov. Application review will begin on March 16, 2020, but applications will be accepted until filled. The City of Hendersonville is an Equal Opportunity Employer.

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Susan G. Frady

Department: Development Asst Dept

Date Submitted: 1-29-2020

Presenter: Susan G. Frady, Development Asst Director

Date of Council Meeting to consider this item: 2-6-2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05k

The City of Hendersonville has received a petition from Charles S. Campbell,Jr., Marianne Ewbank Campbell, Joseph B. Ewbank and Linda C. Ewbank for contiguous annexation of 15.59 acres identified as tax parcels 9568-18-5388, 9568-17-5727, 9568-18-8043, 9568-18-8429 and 9568-18-9677.

Attached is the Clerk's Certificate of Sufficiency finding that the petition is valid. The next step in the annexation process is to accept the Clerk's Certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I Move Council to accept the City Clerk's Certificate of Sufficiency for the Campbell and Ewbank annexation and set March 5, 2020 as the date for public hearing.

Attachments:

CERTIFICATE OF SUFFICENCY

Re: Petition for Contiguous Annexation
Charles S. Campbell, Jr., Marianne Ewbank Campbell, Joseph Boothroyd Ewbank and Linda C. Ewbank
File No. P20-03-ANX

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the contiguous annexation of 15.591 acres identified as tax parcels 9568-18-5388, 9568-17-5727, 9568-18-8043, 9568-18-8429 and 9568-18-9677.

A. According to the Development Assistance Department, the area described in the petition meets all the standards set out in GS160A-58.1(b).

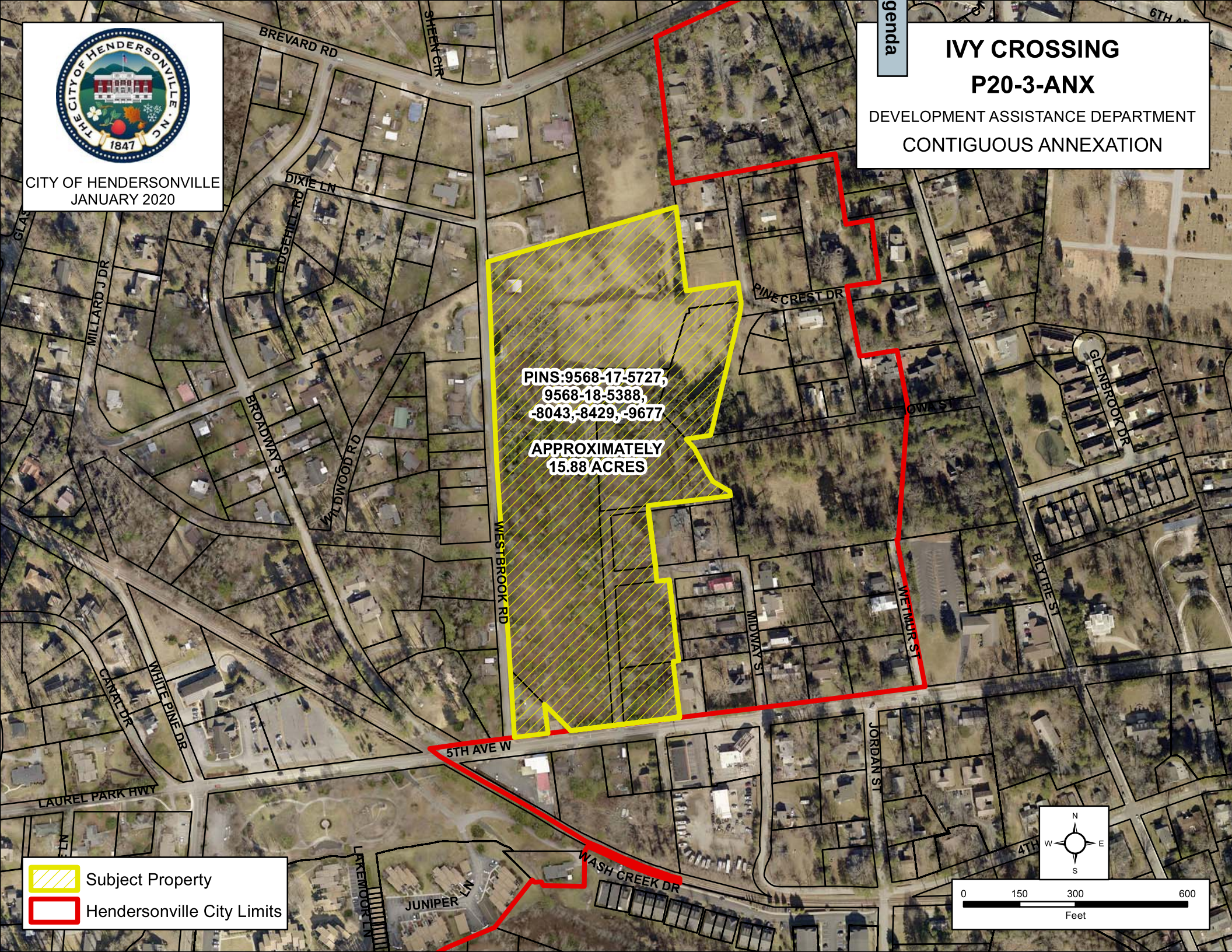
1. The petition follows the prescribed form.
2. The petition was signed by the owners of the subject property.
3. The subject property adjoins the existing city limits line.

Having made the findings stated above, I hereby certify the petition for satellite annexation presented by Charles S. Campbell, Jr., Marianne Ewbank Campbell, Joseph Boothroyd Ewbank and Linda C. Ewbank is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 29 day of January, 2020.

Tammie K. Drake

Tammie K. Drake, MMC, City Clerk


IVY CROSSING
P20-3-ANX
DEVELOPMENT ASSISTANCE DEPARTMENT
CONTIGUOUS ANNEXATION
CITY OF HENDERSONVILLE
JANUARY 2020
PINS:9568-17-5727,
9568-18-5388,
-8043,-8429, -9677
APPROXIMATELY
15.88 ACRES
BREVARD RD
SHEEN CIR
DIXIE LN
EDGEHILL RD
MILLARD J DR
BROADWAY ST
WILDWOOD RD
WESTBROOK RD
PINE CREST DR
IOWA ST
GLENBROOK DR
BLYTHE ST
WETMUR ST
MIDWAY ST
JORDAN ST
5TH AVE W
4TH
CANAL DR
WHITE PINE DR
LAUREL PARK HWY
LAKEMOOR LN
JUNIPER LN
WASH CREEK DR
Subject Property
Hendersonville City Limits
N
W
E
S
0
150
300
600
Feet

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 01.29.20

Presenter: Mayor Volk

Date of Council Meeting to consider this item: 02.06.20

Nature of Item: Council Action

Summary of Information/Request: **Item #** 06i

Mayor Volk will be recognizing B.J. Slovacek for 61 years of services to the American Red Cross.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

Attachments:

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brian Pahle

Department: Admin

Date Submitted: 01/17/2020

Presenter: Brian Pahle

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 06ii

Recognition of Adam Murr for Certified Budget Evaluation Officer in North Carolina.

Brian will present the certification to Adam.

Budget Impact: $ 0 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

N/A

Attachments:

N/A

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet
Department: Administration
Date Submitted: 1/10/2020
Presenter: John Connet
Date of Council Meeting to consider this item: 2/6/2020
Nature of Item: Presentation Only

Summary of Information/Request: **Item #** 06111

For the October thru December quarter, the Service Excellence Design Team selected those listed below as the quarterly winners.

On Saturday December 14th, Brian McCall was traveling on 64W when he came upon a stranded motorist. Brian stopped and offered assistance to an obviously upset scared motorist that couldn't get her stalled car cranked. Brian calmed her down and offered options of assistance, to where she agreed on a tow truck. Brian remained with the stranded motorist until the tow truck arrived, then proceeded to direct traffic for the tow truck. Brian showed his true nature with this selfless act on his day off.

On 10-27-2019, one of our reassurance callers did not call in. Jeff Tweed, Telecommuncator, dispatched Officer Zeff Childress to check on her. Upon arrival, he discovered her phone service had been disconnected. He contacted Jeff who called AT & T, spending over half an hour with them getting service hooked back up. Officer Childress then verified the phone was back before leaving the home. In the following morning's reassurance call, Mrs. Paramore was in tears talking and praising how kind and accommodating they were. She is legally blind so it could have been a dire situation for her.

Allison Nock was in Sullivan Park on a hot afternoon this past summer accompanying WLOS to get footage of Public Works crews working on the new playground. After the cameraman was gone, she saw a heartwarming moment between Ross Henderson & some neighborhood kids. From a distance she could see Ross talking to two girls who were playing basketball. Ross walked over to his truck, retrieved 2 bottles of water & walked back to give them to the girls. This small gesture was a great example of customer service & building community.

Budget Impact: $ NA Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion: *To disapprove any item, you may allow it to fail for lack of a motion.*

NA

Attachments:

None

OCTOBER - DECEMBER MVPs 2019

An incident occurred outside of City Hall as participants of the City Academy were leaving the building. A man had been shot and had ran into City Hall yelling for help. Several of us had to wait in the stairwell until it was clear for us to exit. **Allison Nock** sent texts out to check on us and make sure that we were okay after the incident. She asked us to let her know if we needed anything or if we needed to talk. Allison is always going above, and I was truly touched by her care and concern!

Mrs. Sprang called in wanting to thank **Austin Williams** for his service. She arrived at her cabin around 9:30 pm to no water, she called in and Austin had her back in water by 11:00 pm. She was not expecting to have such quick service.

With so many transitions and changes in both my Dept.(Fire) and the Finance Dept., **Krystal Powell and Ashley Staton** have been going above and beyond helping us work through processes to get our vendors paid and training us on procedures to keep our dept. running smoothly. Even though they have been spending an incredible amount of time in Oracle training, they always make time to assist us. They demonstrate the ultimate in work ethic and teamwork every day. We can't thank them enough for all they do.

On Saturday December 14th, **Brian McCall** was traveling on 64W when he came upon a stranded motorist. Brian stopped and offered assistance to an obviously upset scared motorist that couldn't get her stalled car cranked. Brian calmed her down and offered options of assistance, to where she agreed on a tow truck. Brian remained with the stranded motorist until the tow truck arrived, then proceeded to direct traffic for the tow truck. Brian showed his true nature with this selfless act on his day off.

A resident called our office and wanted to recognize **Chris Merbitz** for doing a great job cleaning up the road and for clearing brush away from the stop sign on her road. She said that Chris was working very hard on an area that had been grown up for a long time. Great Job Chris!

While Michelle was patrolling during a night shift, she located a vehicle in a parking lot with a woman sleeping inside. It was around 3am and the temperature was 22 degrees. The female was from Texas and was traveling to Maryland for her mother's funeral. She was almost out of gas and did not have enough money for a hotel room. **Officers Corn and Fisher** procured some gas for the female to make sure she could stay warm and also resume her travels the next day.

Mr. Dan Heyman allowed me to job shadow him for a day. This was an incredible experience and I really learned a lot about the Development Assistance Department and what they do. I really appreciate Mr. Heyman letting me shadow him and being so open about all that he and the rest of the department staff do for the City of Hendersonville.

During the week that the Patton Park pond was to be drained, a concerned citizen emailed Brent Detwiler about 3 domestic ducks who lived in the pond. Brent contacted a waterfowl rescue group about the situation, and they recommended the ducks be relocated because they were unable to fly. Volunteers with the Edith Allen Wildlife Sanctuary & City employees worked together to safely capture & relocate the ducks to a better habitat. Great job **Brent, Mike Huffman, Curtis Philon & Isiah Young**!

C-shift responded to a tangled flag at Home Depot. When fixing the flag, they noticed it was tattered and worn. Rather than placing the old flag in place they bought the store a new flag and hung it for them.

On 10-27-2019 one of our reassurance callers didn't call in, a health and welfare check was performed , and found out she had no phone service. She called and praised **Zeff Childress** on how kind/accommodating he was, and **Jeff Tweed** was on the phone over a half an hour with AT&T while Zeff stayed with her while AT&T worked on the line. Mrs. Dorothy Torres was in tears talking this morning on the phone to the TCC that answered. She's legally blind, so it could have been a dire situation for her.

HPD received a Facebook message from a lady who lost an engagement ring. **Monica Howard** checked to see if any property had been turned and we notified her via Facebook that we did not have it. **Kathe Ingram** took the level of customer service to the next level and called the lady back to let her know no on had turned it in, assuring her she would keep her information on file for the future in the event it was turned in and connected her with the Sheriff's Office evidence custodian. Great job.

Holly Nourigat went above and beyond by hand-making me a set of (over 50) dividers/tabs for my fire inspections manual. I was very discouraged after the State failed to allow me to test stating my previous tabs were illegal. Holly was very encouraging and wanted to help anyway possible. She made me new tabs (I didn't ask for them and offered to help me study. Her positive attitude really was refreshing and warranted an MVP. Thank you, Holly.

Pam Ludwig constantly goes above and beyond for the citizens of Hendersonville and the members of the Fire Department. She always comes in with a great attitude and puts her all into everything she does. She is a huge asset to our department and community.

Timmy Hensley and his team did an excellent job taking on a tough sidewalk project on 1st Avenue East. This was not a planned project, but they decided to take a poor piece of infrastructure and turn it into something great while working on another sidewalk extension in the area. Timmy and his team were keen to customers along the sidewalk and went back and made improvements for the individual businesses as issued arise. Great example of going above and beyond to enhance Mtn. Excellence.

Officer Isiah Young was on duty in Walmart doing a foot patrol when he heard a loud pop that he and other customers believed to be a gunshot in the back of the store. With customers running away he was able to use his personal cell phone to call the PD for additional units and go towards the perceived threat, finding it to be a bike tire bursting that had caused the panic. He remained professional, communicated to other officers quickly and used teamwork to resolve the situation.

On 10/14/19 **Matthew Keener** responded to 10 Whitehall Ln to check a Leak. The customer called in and said he did an excellent job investigating the leak and was very informative.

After working all these years with the city and having the same lunch**. Melinda Lunsford** agreed to change her lunch to help customer service answer phones during busy times. We appreciate all her hard work and for stepping up. This shows how teamwork is supposed to be. I love working very closely with Melinda and appreciate her for taking this initiative with a great attitude.

While responding to a larceny call from an elderly female I arrived as a backup officer to find **Officer Peter Laite** in the living room floor with a tire pump inflating the residents flat tire on her bike so she could ride it again. She was very proud of the bike and expressed how appreciative she was for Officer Laite's actions.

From start to finish, **Tyler Morrow and Susan Frady** were nothing but true professionals. Tyler and Susan were not only courteous, but they were eager and willing to go the extra mile to help get us ready to present to city

council and demonstrated a wealth of knowledge and skills that were comforting for someone who was pitching their business idea. The City of Hendersonville should be proud to have dedicated individuals such as Tyler and Susan representing the City from a business owners' standpoint.

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet
Department: Administration
Date Submitted: 1/10/2020
Presenter: John Connet
Date of Council Meeting to consider this item: 2/6/2019
Nature of Item: Presentation Only

Summary of Information/Request: **Item #** 06iv

In 2019, 148 employees were nominated for MVP and each quarter three were chosen as Quarterly MVPs. From these, the Service Excellence Design Team selected Monica Howard, Chris LeRoy, Robert Cantwell and Rich Olsen to share MVP of the Year for 2019.

Chris LeRoy, Rich Olsen, Robert Cantwell and Monica Howard (Police) showed outstanding leadership & compassion assisting in the planning and execution of the funeral for Lt. James Case. They worked tirelessly for several days making the Operations Plan and working with other agency leaders to make sure that the funeral was exactly what the family wanted. Sara Arell is a longtime friend of the cases wrote to thank the police department for going above and beyond to honor Jimmy and provide continuing support for his widow, Kris.

Each will receive $125 and their names will be added to the MVP of the Year plaque.

Budget Impact: $ NA Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion: *To disapprove any item, you may allow it to fail for lack of a motion.*

NA

Attachments:

None

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Daniel Heyman

Department: Development Asst Dept

Date Submitted: 01-29-2020

Presenter: Daniel Heyman, Senior Planner

Date of Council Meeting to consider this item: 02-06-2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 07

City Council adopted an ordinance annexing the property described in this application on December 5, 2019. The property is currently zoned by Henderson County. According to G.S. 160A-360(f), when property is annexed, the county regulations remain in effect for 60 days. During this time the City may hold hearings and take any other measures that may be required in order to adopt its regulations for the area. At the December meeting, City Council directed staff to initiate a zoning map amendment for the property.

The proposal is to rezone the subject property, parcel numbers 9577-89-1783, 9577-89-3603, 9577-89-3576, 9577-89-4851, and 9577-89-6845, from Henderson County Community Commercial to CHMU Commercial Highway Mixed Use.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

Motions are on page 8 of the memo.

Attachments:

Memo
Existing land use map, existing zoning map, future land use map

M E M O R A N D U M

TO: Honorable Mayor & City Council

FROM: Development Assistance Department

RE: D-2/Dairi-O LLC Rezoning

FILE #: P19-41-Z

DATE: February 6, 2020

PROJECT HISTORY

This proposed rezoning was initiated by the Development Assistance Department. The proposal is to rezone the subject property, parcel numbers 9577-89-1783, 9577-89-3603, 9577-89-3576, 9577-89-4851, and 9577-89-6845, from Henderson County Community Commercial to CHMU Commercial Highway Mixed Use.

The subject property is located on Upward Road and has a total area of approximately 2.61 acres. The property is approximately 1,656 feet from the primary corporate limits. It was annexed by voluntary petition December City Council meeting. The parcel is currently zoned Community Commercial by Henderson County. According to G.S. 160A-360(f), if property not zoned by a municipality is annexed, the county regulations shall remain in effect for 60 days, during such time the city may hold hearings and conduct other business to apply their own regulations. City Staff recommends that the subject property be zoned Commercial Highway Mixed Use.

EXISTING LAND USE & ZONING

This subject property is currently zoned Community Commercial by Henderson County and are vacant.

Parcels to the north are zoned Office Institutional by Henderson County and contain East Henderson High School. The parcel to the northeast is zoned CHMU Commercial Highway Mixed Use. Parcels to the east are zoned Community Commercial, Residential 1 and Regional Commercial by Henderson County. Parcels to the south are zoned Community Commercial and Residential 1. Parcels to the southwest are zoned CHMU Commercial Highway Mixed Use, C-2 Secondary Business, C-3 Highway Business and PCD Planned Commercial Development and contain various commercial uses. Parcels to the west are zoned Community Commercial and Residential 1 by Henderson County.

Surrounding land uses and zoning districts are shown on the “Existing Land Use” and “Existing Zoning” maps located on pages 10 and 11. A map containing existing county zoning can be found on page 12.

COMPREHENSIVE PLAN CONSISTENCY

According to N.C.G.S.160A-383, zoning map amendments shall be made in accordance with a comprehensive plan. As shown on the map located on page 13, the 2030 Comprehensive Plan’s Future Land Use Map designates the subject area as High Intensity Neighborhood.

The purpose of the High Intensity Neighborhood future land-use category is to “Encourage low-maintenance, high density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family development. Promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods.”

Parcels to the north are classified as High Intensity Neighborhood and Medium Intensity Neighborhood. Parcels to the east are classified as High Intensity Neighborhood. Parcels to the south are classified as High Intensity Neighborhood and Neighborhood Activity Center. Parcels to the west are classified as High Intensity Neighborhood and Neighborhood Activity Center.

PROPOSED ZONING CLASSIFICATION

The subject area is proposed to be rezoned to CHMU, Commercial Highway Mixed Use zoning district which is intended to encourage a mix of high density residential development in conjunction with appropriately scaled and compatible commercial development, consisting of community and regional retail sales and services, professional offices, research facilities, restaurants, accommodations services and similar uses.

ANALYSIS

Listed in Table A is an outline of the dimensional requirements for the CHMU zoning district classification. Table B is an outline of the dimensional requirements for the Henderson County Community Commercial zoning district classification.

Table A

CHMU	Single/ Two Family	Townhomes	Multi-Family	Commercial
Minimum Lot Width	50 feet	16 feet		None
Minimum Front Yard	15 feet	8 feet	10 Feet	10 feet
Minimum Side Yard	20% of lot width	0 feet (Corner 8 feet). Buildings within a development must be separated by a minimum of 15 feet	15 feet plus 5 feet for each floor above 2.	15 feet plus 5 feet for each floor above 2
Minimum Rear Yard	10 feet	15 feet from centerline of alley, if applicable.	15 feet plus 5 feet for each floor above 2.	15 feet plus 5 feet for each floor above 2.
Accessory Structure Minimum Side Yard	3 Feet	3 Feet	0 Feet	3 Feet
Accessory Structure Minimum Rear Yard	3 Feet	3 Feet	0 Feet	3 Feet
Maximum Height	2 ½ stories	3 stories	4 stories	4 stories

Table B

Community Commercial	Requirements
Minimum Front Yard	30 Feet
Minimum Side Yard	10 Feet
Minimum Rear Yard	10 Feet
Accessory Structure Minimum Side Yard	5 Feet
Accessory Structure Minimum Rear Yard	5 Feet
Maximum Height	50 Feet

Design and Architectural Guidelines

Commercial Highway Mixed Use has design and architectural standards for new developments. These requirements include but are not limited to front façade design, window design, common open space, building orientation, building scale, utilities, and

parking areas.

The following uses are permitted by right in the CHMU, Commercial Highway Mixed Use Zoning District Classification, provided that they meet all requirements of the ordinance.

CHMU, Commercial Highway Mixed Use District

Permitted Uses:

- Accessory dwelling units subject to special requirements contained in Section 16-4, below
- Accessory uses & structures
- Adult care centers registered with the NC Department of Human Resources
- Adult care homes
- Agriculture
- Animal hospitals & clinics so long as they contain no outdoor kennels
- Automobile car washes
- Automobile sales & service
- Banks & other financial institutions
- Business services
- Camps
- Childcare centers, subject to special requirements contained in Section 16-4, below
- Childcare homes
- Civic clubs & fraternal organizations, subject to special requirements contained in Section 16-4
- Congregate care facilities, subject to special requirements contained in Section 16-4, below
- Construction trades facilities, so long as the storage of equipment and materials is screened from view from
- any public rights-of-way
- Convenience stores with or without gasoline sales
- Cultural arts buildings
- Dance, health & fitness facilities
- Day care facilities
- Dry cleaning and laundry establishments containing less than 6,000 ft2 of floor area
- Equipment rental & sales
- Funeral homes
- Greenhouses & commercial nurseries
- Health clubs & athletic facilities
- Home occupations
- Hotels & motels
- Laundries, coin-operated
- Lawn & garden centers
- Manufacturing, light
- Music & art studios
- Neighborhood community centers
- Newspaper offices & printing establishments
- Nursing homes, subject to special requirements contained in Section 16-4, below
- Offices, business, professional and public
- Parking lots & parking garages
- Parks
- Personal services
- Progressive care facilities, subject to special requirements contained in Section 16-4, below
- Public & semi-public buildings
- Recreational facilities, indoors
- Recreational facilities, outdoors, commercial
- Religious institutions
- Repair services, miscellaneous
- Research & development with no outdoor storage and operations
- Residential care facilities

- Residential dwellings, single family
- Residential dwellings, multi-family
- Residential dwellings, two-family
- Restaurants
- Restaurants, drive-in
- Retail stores (not including manufactured housing, boat & heavy equipment sales)
- Schools, post-secondary, business, technical and vocational
- Schools, primary & secondary
- Service stations
- Signs, subject to the provisions of Article XIII, below
- Telecommunications antennas, subject to special requirements contained in Section 16-4, below
- Theaters, indoors

Conditional Uses:

- Bus stations
- Public utility facilities

Current Henderson County Zoning

The purpose of the Community Commercial District (CC) is to foster orderly growth where the principal use of land is commercial. The intent of this district is to allow for commercial development consistent with the recommendations of the Comprehensive Plan.

The district will allow for and provide commercial development that:

1. Includes a variety of retail sales and services, public and private administrations, offices and all other uses done primarily for sale or profit on the local and community level;
2. is directed largely to Community Service Centers as defined in the Comprehensive Plan;
3. is compatible with adjacent development and the surrounding community; and
4. will minimize congestion and sprawl. This general use district is meant to be utilized in areas designated as Transitional (RTA) or Urban (USA) in the Comprehensive Plan.

CC, Community Commercial

Permitted Uses:

- Adult Day Care Facility
- Agriculture
- Ambulance Services
- Assisted Living Residence
- Automatic Teller Machine
- Automobile and Equipment Service
- Broadcasting and Communications Facilities
- Camp
- Car Wash
- Cemetery/Mausoleum/Columbarium (excluding crematoriums)
- Childcare Facility
- Childcare Facility (as an accessory for a principal business)
- Christmas Tree Lot Sales
- Cinema Complex
- Circuses, Carnivals, Fairs, Religious Services (or similar

types of events)
- Club/Lodge
- Coin Operated Amusements
- College or University
- Communication Facilities, Category 1
- Communication Facilities, Category 2
- Community Club
- Continuing Care Retirement Community
- Convenience Store
- Drive-Thru Window
- Dumpster(s)
- Dwelling, Single- Family (as an accessory for a principal business)
- Events between 250 and 499 persons
- Exterminating and Pest Control Services
- Fire and Rescue Station
- Food Manufacturing
- Forestry
- Fuel Pumps
- Funeral Home or Crematorium
- Gate and/or Guardhouse
- Golf Course and/or Country Club
- Government Offices
- Government Recreational Facilities
- Greenhouse
- Hospice Residential Care Facility
- Hospital
- Landscaping Materials Sales and Storage
- Loading Bay
- Machining and Assembly Operation and Assembly Operations <10,000 sq. ft (of gross floor area)
- Marina
- Miniature Golf Course or Driving Tees/Ranges (operated for commercial purposes)
- Model Home Sales Office, Temporary
- Motel/Hotel
- Movie Production
- Museum/Library/Archive
- Nursing Home
- Office: Business, Professional and Public
- Outdoor Sale Display Areas
- Park
- Parking Garage
- Place of Assembly, Large
- Place of Assembly, Small
- Police Station
- Portable Storage Container
- Produce Stand
- Produce Stand, Accessory
- Produce Stand, Temporary
- Recreational Vehicle Park
- Recycling Centers, Drop- Off Facilities
- Religious Institution
- Research and Development Operations (Non-hazardous)
- Retail
- Retail Sales and Services >50,000 < 100,000 sq. ft of gross floor Area
- Riding Stables
- Rooming and Boarding house
- Sales and Services<50,000 Sq. Ft. of gross floor
- Satellite Dish
- School (Public/Private/Charter)
- School (Technical, Trade and Business)
- Self-Storage Warehousing
- Solar Energy Generation Facility< 30 Acres
- Solar Panels
- Solid Waste Facility, County Owned/ Operated

- Special
- Special Events greater than 500 persons
- Storage Shed
- Temporary Construction Project Buildings
- Tent Sale
- Theater, Drive-In
- Urgent Care Clinic
- Utility Substation
- Veterinary Services (livestock)
- Warehousing and Storage (Excluding Warehousing of Hazardous Substances)
- Wastewater Treatment Plant, Small Accessory
- Wholesale Trade
- Yard Sale
- Youth Center

Special Uses:

- Animal Shelter
- Dwelling, Multifamily
- Homeless Shelter
- Kennel
- Motor Sports Facility, Recreational
- Motor Vehicle Sales or Leasing
- Open Air Market
- Outdoor Storage >5000 sq. ft
- Shooting Ranges, Indoor
- Solar Energy Generation Facility >30 acres
- Transit and Ground Passenger Transportation
- Waste Collection and Transfer Facility (Non-hazardous)
- Wastewater Treatment Plant
- Water Treatment Plant
- Windmill/Turbine, Accessory < 40 ft height
- Windmill/Turbine, Accessory > 40 ft height

PLANNING BOARD

The Planning Board took this matter up at its regular meeting of January 13, 2020. The Planning Board voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, changing the zoning designation of the subject parcels from Henderson County Community Commercial to CHMU Central Highway Mixed Use based on the applicable zoning ordinance guidelines.

ZONING ORDINANCE GUIDELINES

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map:

1. **Comprehensive Plan consistency.** Consistency with the Comprehensive Plan and amendments thereto.

2. **Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.

3. **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.

4. **Public interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.

5. **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.

6. **Effect on natural environment**. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands, and wildlife.

SUGGESTED MOTIONS

For Recommending Approval:

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel numbers 9577-89-1783, 9577-89-3603, 9577-89-3576, 9577-89-4851, and 9577-89-6845 from Henderson County Community Commercial to CHMU, Commercial Highway Mixed Use, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, the rezoning is reasonable and in the public interest for the following reasons:

[PLEASE STATE YOUR REASONS]

For Recommending Denial:

I move City Council not adopt an ordinance rezoning parcel numbers 9577-89-1783, 9577-89-3603, 9577-89-3576, 9577-89-4851, and 9577-89-6845.

[PLEASE STATE YOUR REASONS]

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE

IN RE: FILE NO. P19-41-Z

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

1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel numbers 9577-89-1783, 9577-89-3603, 9577-89-3576, 9577-89-4851 and 9577-89-6845 from Henderson County Community Commercial to CHMU, Commercial Highway Mixed Use.

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

Adopted this 6th day of February, 2020

_____
Barbara Volk, Mayor

ATTEST:

_____
Tammie K. Drake, CMC, City Clerk

Approved as to form:

_____
Samuel H. Fritschner, City Attorney

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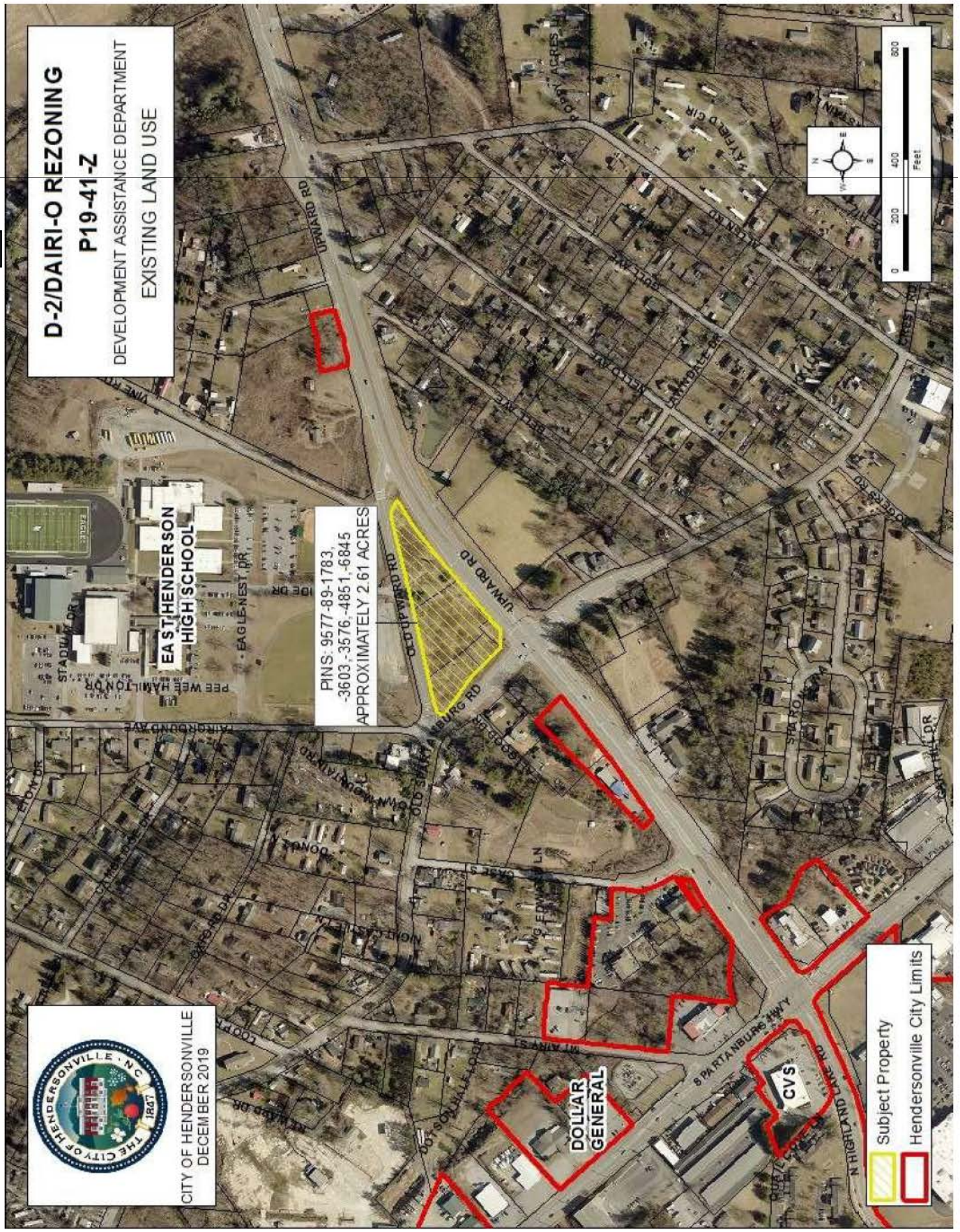
D-2/DAIRI-O REZONING
P19-41-Z
DEVELOPMENT ASSISTANCE DEPARTMENT
EXISTING LAND USE
PINS: 9577-89-1783, -3603, -3576, -4851, -6845
APPROXIMATELY 2.61 ACRES
EAST HENDERSON HIGH SCHOOL
DOLLAR GENERAL
CVS
UPWARD RD
OLD UPWARD RD
SPARTANBURG HWY
N HIGHLAND
Subject Property
Hendersonville City Limits
CITY OF HENDERSONVILLE
DECEMBER 2019
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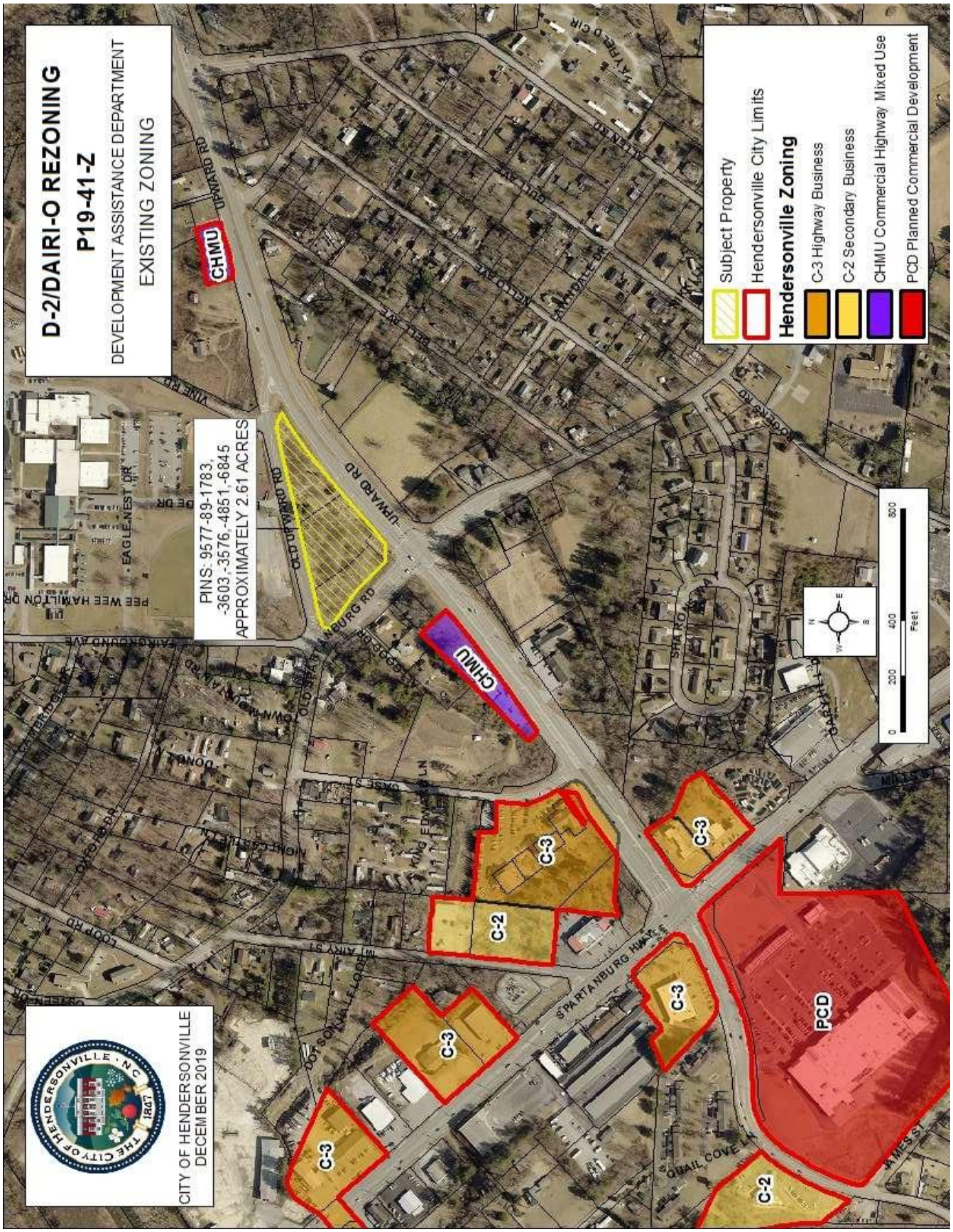
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CHMU
Subject Property
Hendersonville City Limits
Hendersonville Zoning
C-3 Highway Business
C-2 Secondary Business
CHMU Commercial Highway Mixed Use
PCD Planned Commercial Development
C-3
C-2
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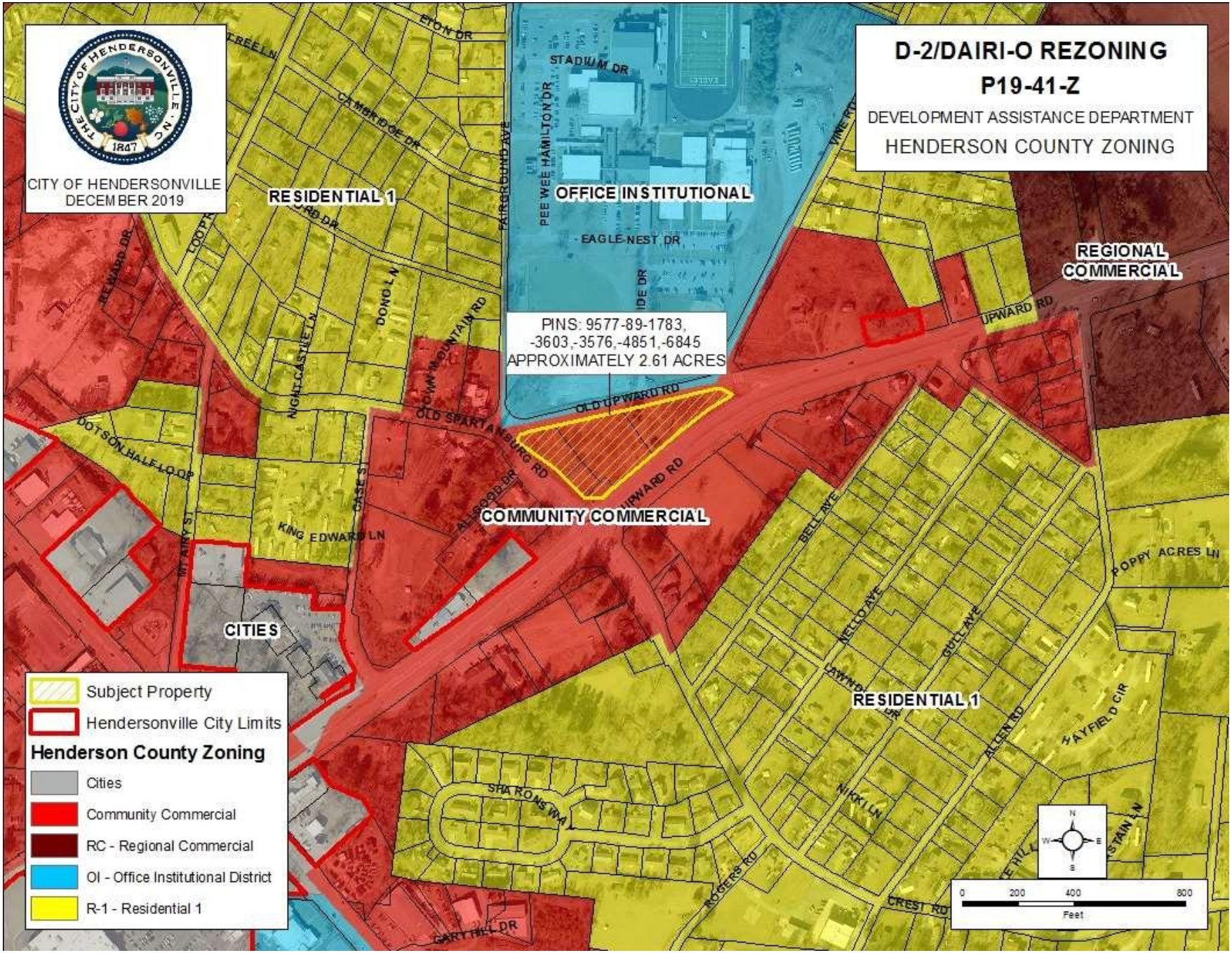
DECEMBER 2019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P19-41-Z
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CITY OF HENDERSONVILLE
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REGIONAL COMMERCIAL
COMMUNITY COMMERCIAL
CITIES
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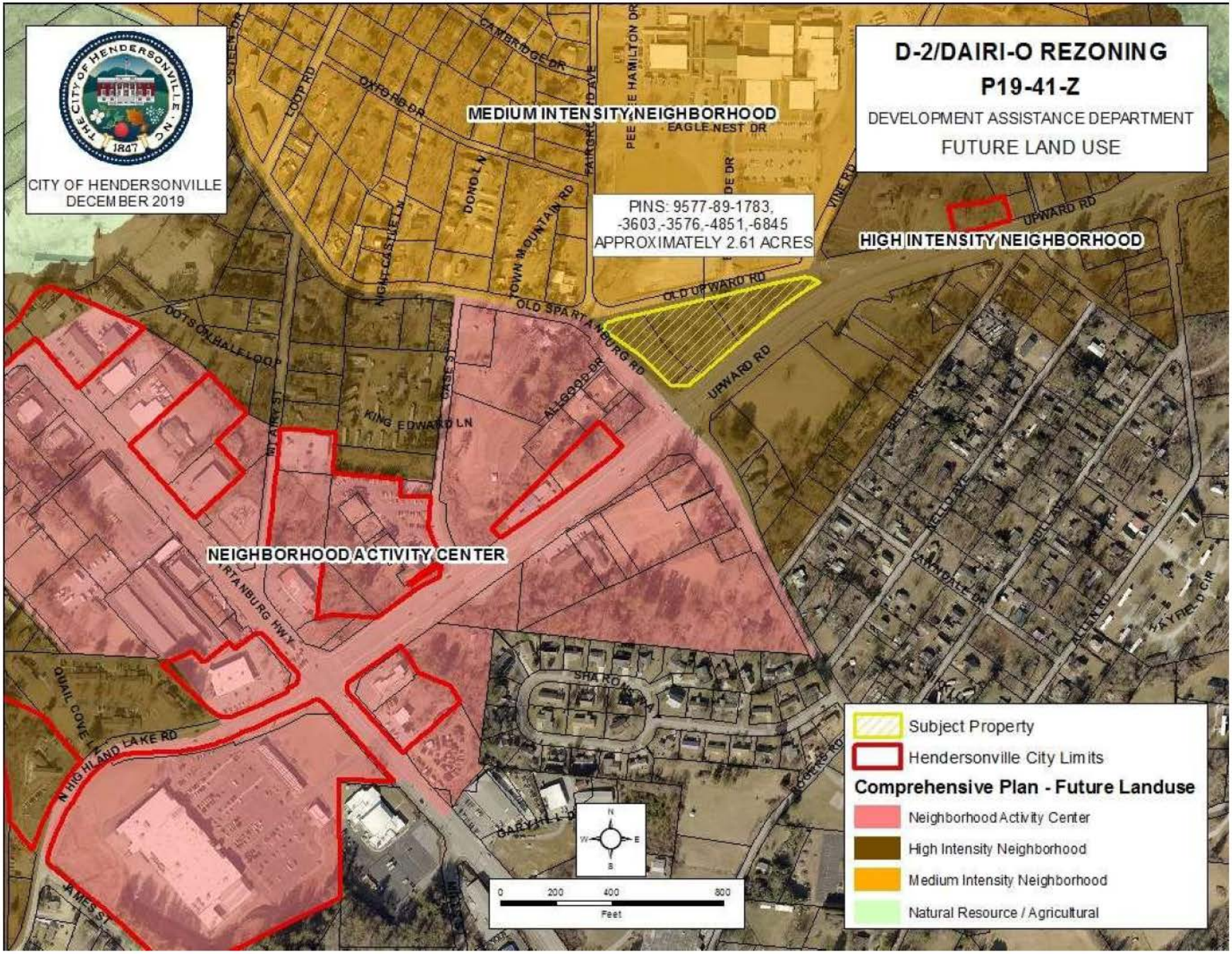
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P19-41-Z
DEVELOPMENT ASSISTANCE DEPARTMENT
FUTURE LAND USE
CITY OF HENDERSONVILLE
DECEMBER 2019
PINS: 9577-89-1783,
-3603,-3576,-4851,-6845
APPROXIMATELY 2.61 ACRES
MEDIUM INTENSITY NEIGHBORHOOD
HIGH INTENSITY NEIGHBORHOOD
NEIGHBORHOOD ACTIVITY CENTER
EAGLE NEST DR
OLD UPWARD RD
UPWARD RD
OLD SPARTANBURG RD
KING EDWARD LN
DOTSON HALF LOOP
N HIGHLAND LAKE RD
Subject Property
Hendersonville City Limits
Comprehensive Plan - Future Landuse
Neighborhood Activity Center
High Intensity Neighborhood
Medium Intensity Neighborhood
Natural Resource / Agricultural
0 200 400 800
Feet

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Daniel Heyman

Department: Development Asst Dept

Date Submitted: 01-29-2020

Presenter: Chad Meadows, CodeWright Planners

Date of Council Meeting to consider this item: 02-06-2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 08

The Development Assistance Department has retained Chad Meadows of CodeWright Planners to comprehensively rewrite the Subdivision Ordinance. Mr. Meadows and staff have spent the past year assessing the current regulations, engaging stakeholders, and drafting new proposed regulations. The resultant draft is attached.

This draft has been presented to several boards/commissions and other stakeholders who identified several issues. These topics require discussion and input from the City Council before staff can prepare a revised final adoption draft:

1. Public land/park dedication. 2. Variances. 3. Allowance of private streets and gated communities. 4. Steep slope regulations. 5. Required HOA reserve funds.

Staff's recommendation is to hold a public hearing to consider the Subdivision Ordinance and give direction on revisions. Then, the consultant and staff will prepare the revisions for Council's consideration at the March meeting.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

Attachments:

Draft Subdivision Ordinance

CITY OF HENDERSONVILLE

SUBDIVISION ORDINANCE

Adoption Draft December 2, 2019

ACKNOWLEDGEMENTS

CITY COUNCIL

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Jerry Smith
Jeff Miller

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Tom Wooten, Public Works Director
James Miller, Interim Fire Chief
Daniel Heyman, Planner II

CONSULTANT

CodeWright Planners, LLC
9 Blue Bottle Lane
Durham, NC 27705
www.codewright.info

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TABLE OF AMENDMENTS

TABLE OF AMENDMENTS[1]				
ORD#.	TITLE	DESCRIPTION	AFFECTED SECTIONS	DATE ADOPTED
1-17	Example	This is an example description of a text amendment	2.1.A, 3.2.	1-1-19

[1] This is a suggested table provided fir the City to track amendments to these subdivision regulations. It allows a user of the subdivision regulations to determine if they have the most recent copy of the provisions. This table is just a suggestion, and is not required. In the event the City relies upon an outside codifier, that codifier may provide a summary table of amendments which can be used instead.

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ARTICLE 1: GENERAL PROVISIONS

SECTION 1.01. TITLE[2]

This Ordinance shall be officially known as the "Subdivision Ordinance of the City of Hendersonville, North Carolina" and may be referred to herein as "the Subdivision Ordinance," or "this Ordinance."

SECTION 1.02. EFFECTIVE DATE[3]

This Ordinance shall be in full force and effect on [*insert the effective date of this Ordinance*][4], and repeals and replaces the Subdivision Ordinance for the City of Hendersonville, as originally adopted on May 5, 1977, and subsequently amended.

SECTION 1.03. AUTHORITY[5]

A. GENERAL AUTHORITY

This Ordinance controls the subdivision and re-subdivision of land within the City's planning jurisdiction, in accordance with the following:

1. The North Carolina General Statutes, including, but not limited to:
   a. Chapter 160A, Article 8 (Police Powers);
   b. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
   c. Chapter 160A, Article 19 (Planning and Regulation of Development);
   d. Chapter 143, Article 21 (Water and Air Resources);
   e. Chapter 113A, Article 4 (Sedimentation and Pollution Control);
2. The Hendersonville City Charter;
3. Other relevant laws, including but not limited to:
   a. All other relevant laws of the State of North Carolina; and
   b. Any special legislation applicable to the City of Hendersonville, as enacted by the North Carolina General Assembly.

B. REFERENCES TO STATE LAW

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes, the North Carolina Administrative Code, the State Building Code, or any other adopted State law, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section.

SECTION 1.04. PURPOSE AND INTENT[6]

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the landowners and residents of Hendersonville, and to ensure that all subdivision or re-subdivision of land within the City's planning jurisdiction is generally consistent with the following goals and objectives:

A. Foster convenient, compatible, and efficient relationships among land uses;

---

[2] This section replaces the title provisions from Article I from the current ordinance.

[3] This section consolidates and replaces Sections 704 and 706 of the current regulations

[4] This is a placeholder for the effective date of the Ordinance once it is established. Following adoption, these placeholders will be converted to the actual effective date.

[5] This is a new section that expands on the authority provisions from Article I of the current regulations. In 2019 the General Assembly adopted a sweeping set of changes to the North Carolina planning enabling laws often referred to as "160D". These changes will require, among other things, changes to the cross references in the General Statutes. 160D has not yet been codified, and will not become effective until January 1, 2021. Upon that date, cross references to the General Statutes will need to be revised.

[6] This section replaces the purpose language in Article I from the current ordinance with supplemental text.

B. Support orderly growth and development within the City's planning jurisdiction;

C. Better manage and lessen congestion in the streets;

D. Coordinate the development of streets with other public facilities;

E. Ensure the provision of adequate open space between uses for light, air, and fire safety;

F. Secure the safety of landowners and residents from flooding, fire, seismic activity, and dangers presented from extreme weather events, to the extent possible;

G. Facilitate the adequate and economic provision of transportation, potable water, sanitary sewage, stormwater management, schools, parks, and other public services;

H. Protect open space, natural resources, and rural character, where appropriate;

I. Improve city-wide and regional connectivity through greenways, trails, bicycle lanes and paths, and sidewalks;

J. Address the dedication and reservation of areas for recreation; and

K. Ensure the dedication and reservation of sufficient land for public rights-of-way and utilities; and

L. Implement the City's adopted policy guidance.

SECTION 1.05. APPLICABILITY[7]

A. GENERAL APPLICABILITY

1. The provisions of this Ordinance shall apply to the subdivision or re-subdivision of all land within the City's planning jurisdiction, unless expressly exempted by a specific section of this Ordinance.

2. The City's planning jurisdiction includes all land within the corporate limits of the City of Hendersonville along with the City's extra-territorial jurisdiction (ETJ) identified on the map entitled "Official Zoning Map, City of Hendersonville," which is incorporated by reference herein and made available for inspection in the offices of the Development Assistance Department.

B. APPLICATION TO GOVERNMENTAL UNITS

Unless expressly exempted, this Ordinance shall apply to:

1. THE CITY OF HENDERSONVILLE

Subdivision of land by the City or its agencies or departments.

2. COUNTY AND STATE GOVERNMENT

Subdivision of land by a State or county agency or department, public college or university, or other political subdivision of the State, in accordance with the standards in Section 160A-392 of the North Carolina General Statutes.

3. THE FEDERAL GOVERNMENT

Subdivision of land owned by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law. For those activities of the Federal government exempted from these regulations, compliance is strongly encouraged.

C. APPLICATION TO BONA FIDE FARMS

Unless exempted in accordance with Section 160A-376 of the North Carolina General Statutes, the standards and requirements in this Ordinance shall apply to the subdivision or re-subdivision of land within a bona fide farm or on land occupied by agricultural activities.

D. NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAW[8]

1. NO USE OR OCCUPANCY

[7] This section replaces Article 2 from the current regulations and provides greater clarity about application to governmental units. It also replaces Section 703 of the current regulations.

[8] This section builds on the standards in Article 4.

No person shall use, occupy, or divide any land or authorize or permit the use, occupancy, or division of land under their control, except in accordance with this Ordinance and all other applicable City, State, and federal regulations.

2. NO SALE OR TRANSFER

No lots in a subdivision may be sold or titles to land transferred until all the requirements of this Ordinance have been met, except as authorized by Section 160A-375 of the North Carolina General Statutes.

3. NO RECORDING WITHOUT PRIOR APPROVAL

No subdivision plat subject to this Ordinance shall be filed or recorded by the Register of Deeds of Henderson County until it has been approved in accordance with this Ordinance, and evidence of such approval is entered on the plat by the City.

4. NO BUILDING PERMIT OR UTILITIES WITHOUT PRIOR APPROVAL

No building permits shall be issued for development, nor shall public utilities or services be extended to serve land in a subdivision that is subject to these standards until a plat has been approved in accordance with this Ordinance.

5. NO DOUBLE COUNTING OF REQUIRED AREAS

No land area or other required space counted as part of a required yard, setback, lot area, or similar feature of one lot may be counted towards the requirements of another lot.

E. MINIMUM REQUIREMENTS

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

F. NO ABROGATION OF EXISTING SUBDIVISIONS

This Ordinance shall not repeal, abrogate, annul, impair, or interfere with any lawfully established subdivisions plats recorded in the Office of the Register of Deeds of Henderson County prior to [*insert the effective date of this Ordinance*].

SECTION 1.06. EXEMPTION FROM THIS ORDINANCE[9]

The division of land into parcels as part of a probated will or in accordance with the intestate succession provisions of Chapter 29 of the North Carolina General Statutes shall be exempted from this Ordinance.

SECTION 1.07. RELATIONSHIP TO OTHER LAWS AND POLICIES[10]

A. ADOPTED POLICY GUIDANCE

The administration, enforcement, and amendment of this Ordinance shall be accomplished in accordance with the City's adopted policy guidance. The City's adopted policy guidance includes, but is not limited to:

1. The 2030 Comprehensive Plan;
2. The Parks and Greenspace Plan;
3. The Pedestrian Plan;
4. The Bicycle Plan; and
5. Any other applicable City-adopted policy guidance.

B. ADOPTED ORDINANCES

These regulations shall be administered in accordance with the City's adopted Code of Ordinances, including the Zoning Ordinance.

[9] This is a new section.

[10] This is a new section, that builds on a portion of the language in Section 703 of the current regulations.

C. COVENANTS AND DEED RESTRICTIONS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights, provided such agreements or vested rights were lawfully established and remain in effect.

SECTION 1.08. CONFLICT[11]

A. CONFLICTS WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

B. CONFLICTS WITH OTHER CITY CODES OR LAWS

If a provision of this Ordinance is inconsistent with another provision found in other adopted ordinances of the City, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise.

C. CONFLICTS BETWEEN THE STANDARDS IN THIS ORDINANCE

1. GENERALLY

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control.

2. AUTHORIZED DEVIATIONS OR INCENTIVES

Development configured in accordance with an allowable deviation or incentive authorized by this Ordinance or by the City Code of Ordinances shall not be considered to conflict with the standards in this Ordinance.

D. DETERMINATION OF THE MORE RESTRICTIVE STANDARD

The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

SECTION 1.09. TRANSITIONAL PROVISIONS[12]

The standards in this section address existing violations, nonconformities, and applications in process at the time this Ordinance is adopted.

A. PRIOR VIOLATIONS

Violations of the previous subdivision ordinance shall continue to be violations under this Ordinance, unless the development complies with this Ordinance and is no longer considered to be in violation, or the ability to address the violation has lapsed.

B. EXISTING NONCONFORMING LOTS

If any lot legally existed on *[insert the effective date of this Ordinance]*, but does not fully comply with the standards of this Ordinance, the lot is considered nonconforming under this Ordinance and shall comply with the applicable requirements for nonconforming lots in the Zoning Ordinance.

C. PRIOR APPROVALS

1. Any development approvals granted before *[insert the effective date of this Ordinance]* shall remain valid until their expiration date.
2. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of their approval and the standards in effect at the time of approval, provided the approval is valid and has not expired.

[11] This section expands on Section 705 from the current regulations.

[12] This is a new section that provides guidance on how to process applications still in review or development that is not yet complete upon adoption of this Ordinance. It also addresses important aspects of permit choice identified in the General Statutes.

3. If an approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent subdivision of the site shall be applied for in accordance with the procedures and standards of this Ordinance.
4. An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required City, State, or federal permits or approvals.
5. Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.
6. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the applicable provisions for nonconformities in the Zoning Ordinance.

D. PENDING APPLICATIONS

1. COMPLETE APPLICATIONS

Applications accepted as complete prior to *[insert the effective date of this Ordinance]* may be decided in accordance with either the regulations in affect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant.

2. SUBMITTED, BUT NOT COMPLETE APPLICATIONS

Applications that have been submitted prior to *[insert the effective date of this Ordinance]* but not determined to be complete by the Development Assistance Department as of that date shall be reviewed and decided in accordance with this Ordinance.

SECTION 1.10. VESTED RIGHTS[13]

Vested rights under this Ordinance shall be established only in accordance with Chapter 40 of the City Code of Ordinances and the following:

A. BUILDING PERMIT

The issuance of a building permit establishes a vested right to development in accordance with Section 160A-385.1 of the North Carolina General Statutes, as long as the building permit complies with the terms and conditions of approval of that building permit.

B. COMMON LAW VESTING

A common law vested right is established only when the following can be demonstrated by the landowner:

1. There is an affirmative governmental act by the City in the form of an approval of a permit or development approval under this Ordinance; and
2. The landowner relies on this affirmative governmental act in good faith and makes substantial expenditures to develop the land; and
3. It would be inequitable to prevent the landowner from proceeding to develop the land consistent with the terms and conditions of the permit or development approval relied upon.

C. PRIOR VESTING

Amendments, supplements, repeals, or other changes in subdivision regulations shall not be applicable or enforceable without the consent of the landowner with regard to lots for which building permits, multi-phased development approvals, or vested rights certificates have been issued (pursuant to State law) prior to the enactment of the ordinance making the change(s), so long as the vested rights, building permit, or approval remain valid and unexpired.

[13] This is a new section that describes how vested rights are established. The vested rights certificate process includes a public hearing, which is required in order to vest a "site-specific development plan" (a subdivision plat).

SECTION 1.11. SEVERABILITY[14]

A. The legislative intent of the City Council in adopting this Ordinance is that all provisions shall regulate development in accordance with the existing and future needs of the City as established in this Ordinance, and promote the public health, safety, and general welfare of the landowners and residents of Hendersonville. If any section, subsection, sentence, boundary, or clause of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

B. The City Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, boundaries, clauses, or phrases are declared invalid.

[14] This section replaces Section 701 of the current regulations.

ARTICLE 2: PROCEDURES

SECTION 2.01. HOW TO USE THIS SECTION[15]

A. ARTICLE ORGANIZATION

1. This article includes all the subdivision application review provisions, and is comprised of the following sections:
   a. A section setting out the summary table of subdivision review procedures;
   b. A section explaining how subdivision applications are processed under this Ordinance;
   c. A section that describes the specific review procedures and the criteria used in evaluating applications submitted under this Ordinance;
   d. A section that addresses performance guarantees in cases where an applicant seeks to transfer land or obtain a building permit before completing all required steps in the subdivision process; and
   e. A section addressing payment of a fee in-lieu of providing required development features.
2. The summary table in Section <>, Summary Table, describes all the specific development application review procedures in this Ordinance and the review authorities who decide them.
3. Section <>, Application Processing, describes the common procedures, or the set of common development review procedures that apply to every type of development application. For example, the pre-application conference, application submittal, application completeness determination, staff review and report, public notification, public meeting or hearing procedures, and notification of decision steps are essentially identical for each type of development application, and as such, are listed only once in this Ordinance. In some cases, there are minor deviations from the common procedures for some types of development review applications. These deviations are noted in the specific review procedures section.
4. Section <>, Review Procedures, describes the steps in each type of application review process, the review criteria specific to that type of procedure, and any other provisions that apply in addition to or instead of the common procedures.

B. STEPS IN THE REVIEW PROCESS

An applicant seeking development approval under this Ordinance should first consult the summary table of subdivision review procedures to determine which review authorities are involved with the application. Then, an applicant should review the application processing section to understand the steps in the application process. Finally, an applicant should review the individual specific procedure related to their application type.

[15] This is a new section that explains how to use the subdivision procedures article.

SECTION 2.02. SUMMARY TABLE[16]

Table <>, Summary Table, lists each of the review procedures under this Ordinance and the review authority (ies) involved in the decision-making process. Review authorities are listed in columns across the top of the table and procedures are listed in rows down the side. Cells in the middle show actions taken by a particular review authority as part of the review process. Blank cells ("·") indicate that a particular review authority has no role in the particular procedure.

TABLE <>: SUMMARY TABLE

Type of Action: A=Appeal; D=Decision; R= Recommendation
Pre-Application Conference: M=Mandatory; O=Optional; N/A=Not Applicable
Type of Hearing: / /= Public Meeting; { }=Quasi-judicial Public Hearing

PROCEDURE	SECTION #	PRE-APP. CONFERENCE	REVIEW AUTHORITIES				
			CITY MANAGER [1]	DEVELOPMENT REVIEW COMMITTEE	PLANNING BOARD	CITY COUNCIL	BOARD OF ADJUSTMENT
Administrative Adjustment	<>	O	D	·	·	·	{A}
Appeal	<>	O	·	·	·	·	{D}
Conservation Subdivision	<>	M	D [2]	·	·	·	[3]
Exempt Subdivision	<>	N/A	D	·	·	·	{A}
Expedited Subdivision	<>	N/A	D	·	·	·	[3]
Final Plat	<>	N/A	D	·	·	·	[3]
Minor Subdivision	<>	O	D	·	·	·	{A}
Preliminary Plat	<>	M	·	R	/D/	·	[3]
Subdivision Variance	<>	M	·	·	·	·	{D}

NOTES:

[1] The City Manager may delegate any task or duty to a professional-level City staff member in accordance with Section <>, Delegation of Authority.

[2] Follows the procedure for a preliminary plat following approval of a conservation and development plan by the City Manager.

[3] Appeals of a decision by a City review authority shall be made to the Superior Court for Henderson County in accordance with all applicable state laws.

[16] This is a new section that sets out all the procedures associated with a subdivision review. The minor subdivision, preliminary plat (major subdivision), final plat, and subdivision variance procedures are carried forward (as revised); the others are new procedures. The exempt subdivision is a voluntary courtesy review that an applicant may request to document their proposed subdivision is exempt from this Ordinance. The expedited subdivision is a new type of subdivision recognized by the General Assembly in 2017. The conservation subdivision is a new procedure used to review clustered subdivisions. The administrative adjustment allows minor deviations in numerical standards by staff, subject to the approval criteria in the procedure.

SECTION 2.03. APPLICATION PROCESSING[17]

A. PURPOSE AND INTENT

This section establishes the rules used by the City for processing subdivision applications. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, City residents, City staff, and elected and appointed officials during the review of subdivision applications.

B. CONFLICT WITH SPECIFIC PROCEDURES

In instances where there are conflicts between the standards in this section and the standards in Section <>, Review Procedures, the standards in Section <>, Review Procedures, shall control.

C. PRE-APPLICATION CONFERENCE[18]

1. PURPOSE

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular application prior to undertaking its preparation. A pre-application conference is also an opportunity for City staff to become familiar with, and offer preliminary comments about the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

2. APPLICABILITY

a. PRE-APPLICATION CONFERENCE REQUIRED

A pre-application conference between the applicant and City staff is required before submittal of applications subject to a mandatory pre-application conference as identified in Table <>, Summary Table.

b. PRE-APPLICATION CONFERENCE OPTIONAL

A pre-application conference is recommended but not required before submittal of applications subject to an optional pre-application conference as identified in Table <>, Summary Table.

c. DISCUSSIONS NON-BINDING

Discussions at a pre-application conference are not binding on the City and do not constitute submittal or review of an application.

3. SCHEDULING

Applicants shall contact the Development Assistance Department to schedule a pre-application conference.

4. FEES

a. The initial pre-application conference is free of charge.

b. Any subsequent pre-application conferences associated with the same application require payment of a pre-application fee in accordance with the City's fee schedule.

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[17] This section sets out the standards and procedures used by City staff to process applications submitted under this Ordinance. The section addresses the common or typical aspects of all applications from pre-application conferences through application submittal. It sets out the standards for application completeness determination, the public hearing procedures, and notification of decisions on applications. Each of the specific review procedures in the subsequent section references the procedures in this section.

[18] This is a new section that sets out the procedures for conduct of a pre-application conference, which is required for some (but not all) application types. Application types where a pre-application conference is optional may include a pre-application conference at the request of the applicant. The pre-application conference is suggested as a replacement for the sketch plan process in Section 602.1. As drafted, the current regulations allow an initial sketch plan review with the Planning Board for subdivisions of fewer than 75 lots, and require it for subdivisions of 75 lots or more. These draft standards require pre-application conferences for any preliminary plat and allow for an optional conference for minor subdivisions. This approach is fairly typical and will ensure early input from the City for developments that include public infrastructure regardless of the number of lots.

D. APPLICATION FILING AND ACCEPTANCE[19]

1. AUTHORITY TO FILE APPLICATIONS

Unless expressly stated otherwise in this Ordinance, applications reviewed under this Ordinance shall be filed by the landowner, contract purchaser, or other person having a recognized property interest in the land proposed for subdivision.

2. APPLICATION FORMS[20]

Application forms are maintained by the Development Assistance Department.

3. APPLICATION FEES

The City Council shall establish application fees, which shall be identified in the City's adopted fee schedule.

4. FILING AND REVIEW SCHEDULE

Applications shall be filed in accordance with the City's application review schedule.

5. COMPLETENESS DETERMINATION

a. On receiving a development application, the City Manager shall determine, within seven days from the date of filing, whether the application is complete or incomplete.

b. A complete application is one that:

- **i.** Contains all information and materials required for submittal of the particular type of application;
- **ii.** Is in the form and number of copies required by the City;
- **iii.** Is legible and printed to scale (where appropriate);
- **iv.** Is signed by the person(s) with the authority to file the application;
- **v.** Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
- **vi.** Is accompanied by the fee established for the particular type of application; and
- **vii.** Does not precede a pre-application conference, if one is required.

c. Only applications determined to be complete shall be considered submitted.

6. APPLICATION INCOMPLETE

If the application is incomplete, the City Manager shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with Section <>, Completeness Determination.

7. APPLICATION SUBMITTED

On determining that the application is submitted, the City shall commence review in accordance with the procedures and standards of this Ordinance.

E. STAFF REVIEW AND ACTION[21]

1. STAFF REVIEW

a. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.

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[19] This section builds on and replaces the standards in Section 601.2 of the current regulations (provisions addressing water supply, sewerage, access, and drainage are addressed in the next section on review procedures and in the subdivision standards). One important addition is a completeness determination procedure where City staff review an application for completeness before it is considered "submitted". An application is not considered submitted until it has been declared complete. This provision is included to address recent changes in the Statutes regarding permit choice that allow applicants to choose which standards they wish to follow after submitting an application. The completeness determination procedure protects the City from incomplete applications filed simply to preserve an applicant's ability to move forward under prior code language.

[20] The current regulations include an appendix with application submittal requirements for sketch plans, preliminary plats, and final plats. Inclusion of submittal requirements in the ordinance means they may only be changed via public hearing. Application submittal requirements are proposed for relocation outside the ordinance to simplify application amendment.

[21] This is a new section that clarifies how administratively-approved decisions are made.

b. When an application is determined complete, it shall be distributed to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, in accordance with City policy.

c. In considering the application, the designated review authority shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.

d. If deficiencies in complying with applicable standards of this Ordinance are identified, the designated review authority shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

2. APPLICATIONS SUBJECT TO DECISION BY CITY STAFF

a. In cases where an application is decided by the City Manager, the City Manager shall approve or disapprove the application based on the review standards set forth in this Ordinance.

b. Decisions on applications made by City staff shall be provided within a reasonable timeframe.

F. PUBLIC NOTIFICATION[22]

1. PUBLIC HEARING SCHEDULING

When an application is subject to a public hearing, the designated review authority shall ensure that the public hearing is scheduled for a regular meeting or a meeting specially called for that purpose by the review authority.

2. PUBLIC NOTIFICATION

All applications subject to public notification requirements by State law shall comply with the standards in Section 160A-364 for published notice, 160A-384(a) for mailed notice, and 160A-384(c) for posted notice in the North Carolina General Statutes. Table <>, Public Notification Requirements, summarizes the application types required to provide public notification. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

TABLE <>: PUBLIC NOTIFICATION REQUIREMENTS

APPLICATION TYPE	REVIEW AUTHORITY	TYPE OF REQUIRED NOTICE (X = REQUIRED)		
		MAILED NOTICE	PUBLISHED NOTICE	POSTED NOTICE
Appeal	Board of Adjustment	X	X	·
Subdivision Variance	Board of Adjustment	X	X	X

3. NOTICE CONTENT

Unless expressly indicated otherwise, all notices by mail or publication shall:

a. Identify the date, time, and place of the public hearing;

b. Describe the land involved by county parcel identification number (PIN), street address, or by its relationship to a fronting street and the nearest cross street (if applicable);

c. Describe the nature and scope of the proposed development or action; and

d. Identify the means to contact a City official for further information.

4. CONSTRUCTIVE NOTICE

[22] This is a new section that clarifies which applications are subject to public notification requirements.

a. Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:

i. Errors such as landowner name, title, or address existing in the county tax listing; or

ii. Typographical or grammatical errors that do not impede communication of the notice to affected parties.

b. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly adhered to.

G. PUBLIC MEETING AND HEARING

The standards in this section set out the procedures for public meetings and quasi-judicial public hearings.

1. PUBLIC MEETINGS

Table <>, Summary Table, identifies the kinds of applications decided following a public meeting, which shall be conducted in accordance with the following requirements:

a. PROCEDURE

i. Public meetings do not require public notification in accordance with Section <>, Public Notification. The City may provide some form of public notification, but is not legally bound to do so. Failure of the City to provide public notification for a public meeting shall not invalidate the proceedings or decision.

ii. A public meeting shall be open to the public and shall be conducted in accordance with the Planning Board's adopted rules of procedure for public meetings.

iii. There is no requirement to allow public comment or testimony during a public meeting, though it may be allowed by the Chair or other presiding officer.

b. VOTING

i. A decision of the Planning Board on an application shall be decided by a simple majority of the Planning Board, excluding any members who are recused from voting due to a conflict of interest.

ii. A Planning Board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on them or a member of their immediate family in accordance with Section 160A-381(d) of the North Carolina General Statutes.

c. APPLICATION REVISION

i. An applicant may revise an application during a public meeting in response to recommendations or suggestions of the Planning Board.

ii. The Planning Board may approve an application modified during a public hearing provided that all changes are properly identified in the motion of approval.

iii. In cases where an application has been modified during a public meeting, the applicant shall submit any necessary plats or other documents depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

d. RECORD

i. A recording may be made of all public meetings and the recordings shall be maintained in accordance with City policy.

ii. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

2. QUASI-JUDICIAL PUBLIC HEARINGS

Table <>, Summary Table, identifies the kinds of applications decided following a quasi-judicial public hearing, which shall be conducted in accordance with State law, the Board of Adjustment's rules of procedure, and the following requirements:

a. NOTICE REQUIRED

Quasi-judicial public hearings shall not be conducted until after provision of required public notification in accordance with Section <>, Public Notification.

b. VOTING

I. GENERALLY

The Board of Adjustment shall consider the application, relevant support materials, staff report, any recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section <>, Review Procedures.

II. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this Ordinance, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

III. CONFLICTS OF INTEREST

A Board of Adjustment member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close family, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

c. APPLICATION REVISION

i. An applicant may revise an application during a public hearing in response to recommendations or suggestions of the Board of Adjustment.

ii. The review authority may approve an application modified prior to or during a public hearing provided all changes are properly identified in the motion of approval by the review authority.

iii. In cases where an application has been modified during a public hearing, the applicant shall submit any necessary plats or other documents depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

d. RECORD

i. A recording may be made of all public hearings and the recordings shall be maintained in accordance with City policy.

ii. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

H. EFFECT

1. APPROVAL LIMITED

Approval of an application in accordance with this Ordinance authorizes only the specific activity approved.

2. PERMIT PREREQUISITE

In the event an approval is a prerequisite to another permit or approval (e.g., administrative adjustment or variance approval prior to a preliminary plat approval), development may not take place until all prerequisite approvals are obtained. Approval of one application does not guarantee approval of any subsequent applications.

I. CONTINUANCE OR WITHDRAWAL

An applicant may request that a review authority's consideration of an application be continued, postponed, or withdrawn by submitting a written request to the appropriate review authority.

1. PROCEDURE FOR APPLICATIONS SUBJECT TO A PUBLIC MEETING OR HEARING

a. In cases where an applicant seeks a continuance or postponement of an application subject to a public meeting or hearing, but public notification of the meeting or hearing has not yet been provided, the designated review authority processing the application shall consider and decide the request.

b. If public notification of the pending public meeting or hearing has been provided in accordance with this Ordinance prior to the request for the continuance or postponement of an application. The request for continuance or postponement shall be placed on the agenda and be considered by the review authority. Additional public notification shall not be required.

c. A request for continuance or postponement may be approved in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, bring the application into closer alignment with the City's adopted policy guidance or the requirements of this Ordinance, or for good cause, as determined by the review authority.

2. WITHDRAWAL

An applicant may withdraw an application at any time.

SECTION 2.04. REVIEW PROCEDURES

A. HOW TO USE THIS SECTION

1. GENERALLY

This section sets out the standards and related procedural information for each of the specific development application types listed in Table <>, Summary Table. Section <>, Application Processing, establishes the generic steps in the application process used for all application types. Applicants should review both sections - application processing in its entirety, and the relevant review procedure in this section in order to understand all the applicable requirements.

2. STRUCTURE OF REVIEW PROCEDURES

a. The review procedures in this section are listed in alphabetic order.

b. Each review procedure follows a standardized format, comprised of the following subsections:

- **i.** Purpose for the procedure;
- **ii.** Applicability and any types of development exempted from the procedure;
- **iii.** The steps in the review process;
- **iv.** The review standards;
- **v.** How the approved application may be amended (if applicable);
- **vi.** How the approval may expire; and
- **vii.** How decisions on an application are appealed.

c. In addition to the standard subsections described above, a review procedure may also include additional standards or requirements unique to the particular application type.

3. PROCEDURAL FLOWCHART

a. The steps in the process for each review procedure are set out in the procedural flowchart associated with the procedure. The procedural flowchart uses a numbered block for each step in the process with text inside the block describing the step in greater detail. Some blocks may include cross references to other parts of the Ordinance.

b. The procedural flowchart is color coded to depict differing responsibilities. For example, white blocks indicate actions or responsibilities of the applicant. Blocks surrounded by dashed lines show optional steps an applicant may choose to undertake. Light grey blocks indicate actions of City staff. Dark grey blocks show the portion of the process where the decision is made.

c. Applicants seeking greater detail on the steps in the review process should conduct a pre-application conference or consult with the Development Assistance Department.

B. ADMINISTRATIVE ADJUSTMENT[23]

1. PURPOSE

The purpose for the administrative adjustment procedure is to establish a clear procedure and measurable review criteria for the consideration of requests for minor deviations to numeric standards in this Ordinance. The intent of the procedure is to provide minor relief without a variance where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by this Ordinance. It is the intent of this procedure that an administrative adjustment request only be granted in cases where the adjustment allows the proposed development to maintain compatibility with its surroundings or where the approval does not result in development that substantially deviates the City's adopted policy guidance.

Figure 2.04.B: Administrative Adjustment Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** Optional
2	**FILE APPLICATION** Filed with Development Assistance Department - May be a standalone application or submitted along with another application
3	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination
4	**CITY MANAGER REVIEW AND DECISION** Decision shall be made in writing
5	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
6	**PROCESS RELATED APPLICATIONS** As appropriate

2. APPLICABILITY

a. Except where otherwise prohibited, an administrative adjustment may be requested for a modification or deviation to any numeric requirement in this Ordinance.

b. In no instance shall an administrative adjustment application seek to reduce any of the following:

- **i.** The required minimum lot area in a zoning district;
- **ii.** The maximum allowable residential density on a lot;
- **iii.** Riparian buffer requirements;
- **iv.** Standards associated with flood damage prevention;
- **v.** Requirements associated with stormwater control; or
- **vi.** Standards associated with erosion control.

c. Administrative adjustments are not required for conservation subdivisions, provided that the conservation subdivision complies with all applicable requirements in this Ordinance.

3. ADMINISTRATIVE ADJUSTMENT AMOUNT

An administrative adjustment may allow a deviation from a numeric standard by up to 10 percent unless a different amount is explicitly stated elsewhere in this Ordinance.

4. ADMINISTRATIVE ADJUSTMENT PROCEDURE

a. APPLICATION TIMING

- **i.** An administrative adjustment may be requested either as a stand-alone application, or in combination with another review procedure except for a subdivision variance.

[23] This is a new procedure that allows for administrative consideration of minor deviations of 10% or less in some numeric standards without triggering the need to show hardship or undergo the variance process. It operates as a "safety-valve" for difficult sites. The amount of the deviation is capped and requests to exceed the cap require a variance.

Agenda

ii. In cases when submitted with another application, the administrative adjustment portion of the application shall be reviewed and decided prior to the other portion(s) of the application.

b. PRE-APPLICATION CONFERENCE

Optional (see Section <>, Administrative Adjustment).

c. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application Filing and Acceptance).
ii. In cases where a pre-application conference is conducted, the application shall include the date it was conducted.

d. STAFF REVIEW AND ACTION

i. Applicable (see Section <>, Staff Review and Action).
ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with Section <>, Administrative Adjustment Review Standards.

5. ADMINISTRATIVE ADJUSTMENT REVIEW STANDARDS

An administrative adjustment may be approved if the applicant demonstrates all of the following:

a. The administrative adjustment is consistent with the type and thresholds for an administrative adjustment established in this section;

b. The development, following application of an administrative adjustment, is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;

c. The administrative adjustment:

i. Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general; or
ii. Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
iii. Is necessary to allow for proper functioning of infrastructure; or
iv. Saves healthy existing trees; or
v. Preserves environmentally sensitive lands; or
vi. Will not result in development that is contrary to the City's adopted policy guidance, in the sole discretion of the City Manager;

d. The administrative adjustment will not pose a danger to the public health or safety;

e. Adverse impacts resulting from the administrative adjustment will be fully mitigated; and

f. The development standard being adjusted is not the subject of a previously approved administrative adjustment or condition of approval on the same site.

6. EFFECT

Approval of an administrative adjustment application allows consideration of any concurrent and related applications.

7. AMENDMENT

Amendment of an administrative adjustment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

If an administrative adjustment is associated with another permit or development approval, the expiration of the administrative adjustment shall be the same as the permit or development approval with which it is associated.

9. APPEAL

Appeal of a decision on an administrative adjustment shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

C. APPEAL[24]

1. PURPOSE

This appeal procedure is proposed to establish a clear and predictable procedure for persons with standing to appeal a decision or interpretation of this Ordinance by a review authority.

2. APPLICABILITY

a. This section sets out the procedure and standards for appealing certain decisions or interpretations by a City official as identified in Table <>, Summary Table.

b. Appeals of decisions made by the City Council, or BOA, and some decisions by City officials shall be to the Superior Court for Henderson County, in accordance with Table <>, Summary Table, and applicable State law.

3. INITIATION

An appeal shall be initiated by filing a written notice of appeal with the City Manager within 30 days of the date the decision being appealed is filed in the office of the Development Assistance Department.

4. APPEAL PROCEDURE

a. PRE-APPLICATION CONFERENCE

Optional (see Section <>, Pre-Application Conference).

b. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application Filing and Acceptance).

ii. The written notice of appeal shall include a statement of the error or improper decision, the date of the decision or interpretation, the grounds for the appeal, and all related support materials.

c. STAFF REVIEW

i. Applicable (see Section <>, Staff Review and Action).

ii. On accepting a notice of appeal, the City Manager shall transmit to the BOA the record of material considered by the decision-maker in making the decision or interpretation as well as the application for the appeal.

d. PUBLIC NOTICE

Applicable (see Section <>, Public Notification).

e. REVIEW AND DECISION BY BOARD OF ADJUSTMENT

i. The BOA, at the conclusion of a quasi-judicial public hearing (see Section <>, Public Meeting and Hearing), shall decide the application for the appeal.

Figure 2.04.C: Appeal Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** Optional
2	**FILE NOTICE OF APPEAL** Filed with Development Assistance Department
3	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination Application shall include - Error/decision being appealed - Date of error/decision - Grounds for appeal - All related support material
4	**STAFF REVIEW**
5	**PUBLIC NOTICE** See Section <>, Public Notification
6	**BOA REVIEW AND DECISION** Quasi-judicial public hearing - Decision shall be made in writing
7	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail

[24] The current subdivision regulations do not include provisions for appeal of staff decisions related to the subdivision of land. This procedure is included to address those instances.

ii. The decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the quasi-judicial hearing, and the standards in Section <>, Appeal Review Standards.

iii. The decision shall be either affirmation of the decision or interpretation (in whole or in part), modification of the decision or interpretation (in whole or in part), or reversal of the decision or interpretation (in whole or in part).

iv. A vote to reverse or modify a decision or determination shall require approval of a majority of a quorum present at the hearing excluding any members who have been recused from voting due to a conflict of interest.

v. Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance.

vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.

vii. The decision of the BOA shall be effective upon the filing of the written decision in the office of the appropriate review authority.

5. APPEAL REVIEW STANDARDS

a. The BOA is limited to the following determinations in considering the appeal, which shall be based on:

i. Whether the decision-maker erred in the interpretation of this Ordinance; and

ii. Whether the decision-maker erred in determining whether a standard of this Ordinance was met.

b. The BOA shall not hear any evidence or make any decision based on hardships or special conditions except as part of an application for a variance.

6. EFFECT

a. An appeal stays all proceedings in furtherance of the action appealed, unless the City Manager certifies to the BOA, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in the City Manager's opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance.

b. If certification by the City Manager is filed, administrative proceedings shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.

c. If the appeal is not stayed, the appellant may file for an expedited hearing of the appeal, and the BOA shall meet to consider the appeal with 15 days of the date the request is filed.

d. The filing of an appeal prevents the filing of an application for a rezoning or special use permit for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.

7. AMENDMENT

A decision on an appeal shall not be amended.

8. EXPIRATION

A decision on an appeal shall not expire.

9. APPEAL

a. Any decision by the BOA shall be subject to review by the Superior Court for Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

D. CONSERVATION SUBDIVISION[25]

1. PURPOSE AND INTENT

The purpose and intent of this section is to provide landowners in the rural and environmentally sensitive portions of the City's planning jurisdiction a development option that provides additional development flexibility to build on smaller lots when additional open space set-asides are provided, and the development is designed and located in a way that protects rural character, agricultural activities, or protects sensitive environmental features on the site. This is done in order to:

a. Conserve open land, including those areas containing productive agricultural soils, ridgelines, areas of steep slopes, unique and sensitive natural features such as floodplains, wetlands, river and stream corridors, areas with mature hardwood trees, and watersheds;

b. Promote existing rural character particularly in areas visible from major roadways in the City;

c. Retain and protect existing environmental, natural, and cultural resources;

d. Create a linked network of open lands; and

e. Provide reasonable economic use of the land.

Figure 2.04.D: Conservation Subdivision Procedure

STEP	ACTION
1	**FILE SITE ANALYSIS MAP** Filed with Development Assistance Department - Existing conditions on the site and within 500 feet of the site
2	**SITE INSPECTION** Conducted with City staff
3	**CONSERVATION AND DEVELOPMENT PLAN** Includes site analysis map, conservation and development areas map, and preliminary site improvements plan
4	**TECHNICAL REVIEW BY CITY STAFF**
5	**REVIEW AND DECISION BY CITY MANAGER** Decision only approves the proposed conservation and development plan
6	**FILE APPLICATION FOR PRELIMINARY PLAT** Application shall include the conservation and development Plan

2. APPLICABILITY

a. TYPE OF DEVELOPMENT

This conservation subdivision option shall be limited to development of single-family detached residential dwellings on individual lots in subdivisions of more than three lots. The conservation subdivision option shall not be available for any other form of development or use type.

b. WHERE PERMITTED

Single-family detached residential subdivisions of more than three lots in the R-15, R-20, and R-40 zoning districts may be developed as a conservation subdivision, in accordance with the standards in this section.

c. WHERE PROHIBITED

The conservation subdivision option is not available for use on land in any of the zoning districts other than R-15, R-20, and R-40 districts.

3. CONSERVATION SUBDIVISION PROCEDURE[26]

[25] This is a new type of subdivision and subdivision procedure. It requires at least 50 percent of the total land area to be set aside as private common open space (or retained as agricultural land). It also seeks to promote existing rural character through requirements to locate development away from visibility from streets, parks, and ridgelines. It calls for compact clustering of residential dwellings, and allows for typical lot dimension requirements to be reduced because so much land is preserved. Clustered homes on smaller lots may help reduce costs associated with utility extension, depending upon where connections are located.

[26] The conservation subdivision procedure requires two steps: the completion of a conservation and development plan in step one, then approval of a minor subdivision for the development in step 2. The minor subdivision is recommended as the review

Development utilizing the conservation subdivision option shall be subject to the requirements for a preliminary plat in accordance with the procedures and standards in Section <>, Preliminary Plat, after approval of a conservation and development plan in accordance with this section.

4. CONSERVATION AND DEVELOPMENT PLAN

Prior to review of a preliminary plat, an applicant shall have a conservation and development plan for the land reviewed and approved, or approved with conditions by the City Manager in accordance with this the following steps, the standards in Section <>, Conservation Subdivision Review Standards.

a. STEP 1—SITE ANALYSIS MAP

The applicant shall prepare a site analysis map that analyzes existing conditions both on the land proposed for the development including land within 500 feet of the site, and submit the site analysis map to the City Manager. It is the intent of this section that the information required to be presented in the site analysis map be produced from existing sources and maps to ensure the process is economical for the applicant.

b. STEP 2—SITE INSPECTION

After receipt of the site analysis map, the City Manager shall schedule a site inspection of the land with the applicant. The applicant or the applicant's representative shall attend the site inspection with a City staff member. The purpose of this site visit is to:

i. Familiarize the staff with the existing site conditions and features of the site;

ii. Identify potential site development issues, including the best location for the development to minimize its visibility from surrounding areas and major roadways; and

iii. Provide an opportunity to discuss site development concepts, including the general layout of conservation areas and potential locations for proposed structures, utilities, streets, and other development features. Comments made by the staff during the site inspection shall be interpreted as being only suggestive. No official decision on the conservation and development plan shall be made during the site inspection.

c. STEP 3—CONSERVATION AND DEVELOPMENT PLAN

Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a conservation and development plan. The conservation and development plan shall include the following:

i. A site analysis map;

ii. A conservation and development areas map that depicts areas intended for conservation and areas intended for development; and

iii. A preliminary site improvements plan, showing proposed site development, including the approximate locations of utilities, streets, other development features, buffers (if applicable), and lot lines in the proposed development area.

d. STEP 4-REVIEW BY THE DEVELOPMENT REVIEW COMMITTEE

The Development Review Committee shall review the conservation and development plan and prepare a written recommendation on any suggested revisions for consideration based on the standards in Section <>, Conservation Subdivision Review Standards.

5. CONSERVATION SUBDIVISION REVIEW STANDARDS

A conservation subdivision shall comply with the following standards:

a. LOCATION

Conservation subdivisions shall be configured to minimize their visibility from adjacent developed lands and major roadways.

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procedure given the intensive nature of the conservation and development plan preparation process – however, the City may decide the preliminary and final plat procedures are better suited to this kind of development. Either approach will work, so please advise if you would like the procedure revised to reference the preliminary and final plat procedures instead.

b. MINIMUM PROJECT SIZE

Conservations subdivisions shall be at least two acres in land area.

c. REQUIRED CONSERVATION AREA

The required conservation area shall occupy at least 50 percent of the total acreage of the conservation subdivision site, but nothing shall limit it from occupying more than 50 percent of a conservation subdivision site.

d. MAXIMUM RESIDENTIAL DENSITY

A conservation subdivision may establish a maximum residential density that is twice the maximum residential density for lots in the zoning district where located, but in no instance shall the density of a conservation subdivision exceed the maximum allowable within a designated water supply watershed.

e. DIMENSIONAL REQUIREMENTS

Lots in a conservation subdivision may deviate from the minimum dimensional requirements for lots in the zoning district where located, provided:

i. No lot frontage is less than 20 feet wide;
ii. Building separation between structures on different lots meets or exceeds the minimum applicable Fire Code provisions; and
iii. All structures shall comply with required setbacks from streets, wetlands/surface waters, or other protected natural areas.

f. LAND USED FOR AGRICULTURE

Nothing shall limit the ability of an owners' association to lease conservation area for the purposes of agriculture.

6. OWNERSHIP OF CONSERVATION AREAS

a. LANDOWNER OR ASSOCIATION

A conservation area shall be owned jointly or in common by the owners of the development or through a recognized homeowners or property owners association, which shall be established in accordance with Article 6, Owner Associations.

b. NONPROFIT ORGANIZATION

The landowners may decide to convey a conservation area to a nonprofit organization such as a land trust or land conservancy for management and maintenance if the City is provided adequate assurance the area will be properly managed and maintained.

c. DEDICATED TO CITY OR OTHER PUBLIC AGENCY

In some cases, certain lands designated as conservation areas, such as greenways, may be dedicated to the City, a nonprofit organization, or other public agency during the development review process, at the landowner's discretion. If offered by the landowner, the City Council shall determine whether that land is appropriate for dedication to the City or other public agency.

E. EXEMPT SUBDIVISION[27]

1. PURPOSE AND INTENT

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section 160A-376 of the North Carolina General Statutes. This review is voluntary on the part of the applicant and is provided by the Cityas a courtesy.

Figure 2.04.E: Exempt Subdivision Procedure

STEP	ACTION
1	**FILE APPLICATION** Filed with Development Assistance Department - Application is voluntary
2	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination - Application shall indicate why subdivision should be considered as an exempt subdivision
3	**STAFF REVIEW**
4	**CITY MANAGER DECISION AND CERTIFICATION** Decision shall be made in writing
5	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
6	**RECORDATION** Optional

2. APPLICABILITY

a. Requests for determination of an exempt subdivision by the City in accordance with this section are at the discretion of the landowner proposing the subdivision and shall not be mandated by the City.

b. The following forms of land division are identified in Section 160A-376 of the North Carolina Statutes as exempt subdivisions:

i. A combination or recombination of portions of previously subdivided and recorded lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of this Ordinance;

ii. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

iii. Public acquisition involving the purchase of strips of land for the widening or opening of streets;

iv. Division of a tract of land in single ownership, where the total area of all land in the land division is no greater than two acres, the division creates no more than three lots, where no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of this Ordinance; or

v. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with Chapter 29 of the North Carolina General Statutes.

c. Divisions of land that are not consistent with these criteria shall not be considered exempt subdivisions, and shall be subject to the applicable review procedure and requirements of this Ordinance.

3. EXEMPT SUBDIVISION REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Not applicable.

b. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application Filing and Acceptance).

[27] This is a new procedure proposed for the City's consideration. It is only used in cases when an applicant is seeking proof that a proposed subdivision is not subject to the standards in this Ordinance. It is voluntary as the City may not compel an applicant to file this application.

ii. An application for exempt subdivision determination may be filed by a landowner or a contract purchaser.

c. STAFF REVIEW AND ACTION

i. Applicable (see Section <>, Staff Review and Action).

ii. The City Manager shall review the application in accordance with Section <>, Exempt Subdivision Review Standards, and certify that the land division qualifies as an exempt subdivision.

d. RECORDATION

If an exempt subdivision plat is prepared by the applicant and approved by the City Manager in accordance with this section, it shall be certified by the City Manager, and may be recorded in the office of the Henderson County Register of Deeds.

4. EXEMPT SUBDIVISION REVIEW STANDARDS

A division of land shall be certified as an exempt subdivision only if it:

a. Is excluded from the definition of a subdivision in accordance with Section 160A-376 of the North Carolina General Statutes; and

b. Complies with or exceeds all applicable lot dimensional provisions for the zoning district where it is located in accordance with the Zoning Ordinance; and

c. Complies with all standards or conditions of any applicable permits or development approvals; and

d. Complies with all other applicable requirements in the City Code of Ordinances.

5. EFFECT

a. A division of land determined to be an exempt subdivision shall be exempted from the subdivision standards of this Ordinance, but development of land within an exempt subdivision shall remain subject to any applicable requirements for potable water or wastewater from Henderson County Environmental Health, as well as all applicable standards in the City Code of Ordinances.

b. In the event a division of land does not qualify as an exempt subdivision, it shall be reviewed in accordance with the applicable subdivision procedure and shall be subject to all applicable subdivision standards in this Ordinance.

6. APPEAL

a. Appeal of a decision on an exempt subdivision shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

F. EXPEDITED SUBDIVISION[28]

1. PURPOSE AND INTENT

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

2. APPLICABILITY

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

i. The proposed division of land is not exempted from the subdivision standards of this Ordinance in accordance with Section 160A-376(a) of the North Carolina General Statutes; and

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

iii. The area of land subject to the division shall be comprised of at least five acres under common ownership; and

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

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

vi. No extension of public streets is proposed.

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

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

Figure 2.04.F: Expedited Subdivision Procedure

STEP	ACTION
1	**FILE APPLICATION** Filed with Development Assistance Department - Required prior to conveyance of lots
2	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	**STAFF REVIEW**
4	**CITY MANAGER DECISION** Decision shall be made in writing
5	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
6	**RECORDATION** With the Henderson County Register of Deeds within 10 days of approval

3. EXPEDITED SUBDIVISION REVIEW PROCEDURE

a. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application Filing and Acceptance).

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

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

b. STAFF REVIEW AND ACTION

i. Applicable (see Section <>, Staff Review and Action).

[28] This is a new procedure that recognizes a new kind of subdivision established by the General Assembly in 2017. The expedited subdivision is limited in size and scope and does not include the extension of public utilities. It is a modified version of the current 10-acre subdivision exemption that recognizes smaller tracts of land of 5 acres in area. The procedure requires the recordation of plat and has a time limit, but the other requirements typically applied to subdivisions (like open space dedication) may not be applied to an expedited subdivision.

ii. The City Manager shall review and decide the application in accordance with Section <>, Expedited Subdivision Review Standards.

iii. If an expedited subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an expedited subdivision application that has been denied.

4. EXPEDITED SUBDIVISION REVIEW STANDARDS

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

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

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

iii. The expedited subdivision plat complies with all applicable standards in this Ordinance and Section 47-30 of the North Carolina General Statutes;

iv. The expedited subdivision plat includes all required certifications;

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

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

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

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

ix. The lots are served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with City standards; and

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

b. Subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. RECORDATION

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

b. Failure to record the final plat in accordance with Section <>, Expiration, shall render the plat null and void.

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

6. EFFECT

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

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

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

7. AMENDMENT

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

8. EXPIRATION

An expedited subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 10 days of approval.

9. APPEAL

a. Decisions by the City Manager on an expedited subdivision plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

G. FINAL PLAT[29]

1. PURPOSE

The purpose for this final plat procedure is to ensure proposed subdivisions of land have been completed in substantial conformity with a preliminary plat (as applicable) and all applicable regulations of this Ordinance prior to the conveyance of lots. These standards are intended to ensure preparation and recordation of a plat document of sufficient detail and data so as to enable the City or another landowner to readily determine and accurately reproduce the location, bearing, radius (as applicable), and length of the elements of a subdivision. The elements include, but shall not be limited to the following:

a. Every street or private accessway;

b. Aspects of public infrastructure such as potable water supply lines, or sanitary sewer lines;

c. Lot lines;

d. Easement boundaries;

e. Lands or resources dedicated or reserved for use by the general public;

f. Land or resources owned in common by residents of the subdivision; and

g. Unbuildable resource or conservation lands.

2. APPLICABILITY

a. The standards in this section shall apply to subdivisions subject to a preliminary plat.

b. A landowner shall not submit an application for final plat review until a preliminary plat (see Section <>, Preliminary Plat) is approved and all required improvements serving the subdivision are installed and inspected by the City, or the developer provides a performance guarantee for those required improvements in accordance with Section <>, Performance Guarantees.

3. FINAL PLAT REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Not applicable.

b. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application

Figure 2.04.G: Final Plat Procedure

STEP	ACTION
1	**FILE APPLICATION** Filed with Development Assistance Department - Required prior to conveyance of lots - May not be submitted prior to approval of a preliminary plat for subdivisions that include public streets, water, or sewer infrastructure
2	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	**STAFF REVIEW AND DECISION** Decision shall be made in writing - Application shall not be decided until all required dedications and easements are complete - Application shall not be decided until all proposed public infrastructure (including storm drains) is installed or subject to a financial guarantee (see Section <>, Performance Guarantees)
4	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
5	**RECORDATION** With the Henderson County Register of Deeds within 30 days of approval

[29] This section is proposed to replace Section 605 of the current regulations. The largest change in these draft provisions is the designation of the City Manager (Development Assistant Director) as the review authority responsible for deciding final plats instead of the City Council. This change is proposed because review of a final plat is a ministerial (not a legislative) decision. The application either does or does not meet the standards of this Ordinance. Requiring review by the Planning Board and City Council adds time and complexity to what should be a very straightforward and technical process.

Agenda

Filing and Acceptance).

ii. A final plat shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. In cases where a final plat includes only a portion of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

c. STAFF REVIEW AND ACTION

i. Applicable (see Section <>, Staff Review and Action).

ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with Section <>, Final Plat Review Standards.

iv. If a final plat application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a final plat that has been denied.

4. FINAL PLAT REVIEW STANDARDS

A final plat shall be approved if it complies with the following:

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

b. The final plat is prepared by a licensed professional authorized by the State to prepare such documents;

c. The final plat complies with the standards in Section 47-30 of the North Carolina General Statutes;

d. The final plat includes all required certifications;

e. All required infrastructure improvements (e.g., streets, sewer lines, water lines, drainage, etc.) depicted on the preliminary plat are installed, inspected, and accepted by the City, or are subject to a performance guarantee (see Section <>, Performance Guarantees);

f. All required easements and rights-of-way are properly depicted on the final plat;

g. If no public wastewater service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use;

h. If no public potable water service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water;

i. The final plat is in substantial conformance with the preliminary plat;

j. The applicant has secured all required State, federal, and other applicable City permit approvals;

k. The final plat complies with all standards and conditions of any applicable permits and development approvals; and

l. The final plat complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.

5. RECORDATION

a. Once a final plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The final plat may not be recorded without this and all other required certifications.

b. Following certification, the applicant shall record the final plat and all associated protective covenants and deed restrictions in the office of the Henderson County Register of Deeds.

c. Failure to record the final plat in accordance with Section <>, Expiration, shall render the plat null and void.

6. ACCEPTANCE OF PUBLIC INFRASTRUCTURE

a. The approval of a plat shall not be deemed to constitute the acceptance by the City of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.

b. The City Council may, by resolution, accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes when the lands or facilities are located within the ETJ.

c. Acceptance of dedication of lands or facilities located within the ETJ but outside the corporate limits of the City shall not place on the City any duty to open, operate, repair or maintain any street, utility line, or other land or facility, and the City shall not be held responsible in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits.

7. EFFECT

a. Approval of a final plat allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the final plat.

b. Development located outside the Hendersonville corporate limits shall comply with all City ordinances and policies related annexation and the extension of utilities.

8. AMENDMENT

Amendment of a final plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. EXPIRATION

a. A final plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval.

b. If a final plat is not recorded within two years of the associated preliminary plat approval, or if there is a lapse of more than two years between the recording of different sections or phases, then the preliminary plat shall expire. In such cases, the City may record a notice of expiration in the office of the Henderson County Register of Deeds.

c. An expired preliminary plat may be resubmitted in accordance with Section <>, Preliminary Plat, and shall be reviewed in accordance with the standards of this Ordinance.

10. APPEAL

a. Decisions by the City Manager on a final plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

H. MINOR SUBDIVISION[30]

1. PURPOSE AND INTENT

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

2. APPLICABILITY

a. Subdivisions of land that include up to eight lots (including the residual parcel) with no extension of or changes to public streets are minor subdivisions and shall be reviewed in accordance with the standards in this section.

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

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

3. MINOR SUBDIVISION REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section <>, Pre-Application Conference).

b. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application Filing and Acceptance).

ii. Applications shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. In cases where a minor subdivision is part of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

c. STAFF REVIEW AND ACTION

i. Applicable (see Section <>, Staff Review and Action).

ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

Figure 2.04.I: Minor Subdivision Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** Optional
2	**FILE APPLICATION** Filed with Development Assistance Department - Required prior to conveyance of lots
3	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
4	**STAFF REVIEW**
5	**CITY MANAGER DECISION** Decision shall be made in writing
6	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
7	**RECORDATION** With the Henderson County Register of Deeds within 30 days of approval

[30] This process is proposed to replace the language in Section 301 and Section 601 of the current regulations. One significant change between the current regulations and this draft ordinance is the requirement that a minor subdivision not include the extension of public streets or sewer service. Subdivisions that include public streets or sewer service are treated as major subdivisions subject a preliminary and final plat.

iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with Section <>, Minor Subdivision Review Standards.

iv. If a minor subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a minor plat that has been denied.

4. MINOR SUBDIVISION REVIEW STANDARDS

a. A minor subdivision shall be approved if the application complies with the following:

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

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

iii. The minor subdivision plat complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;

iv. The minor subdivision plat includes all required certifications;

v. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;

vi. The applicant has secured all required State, federal, and other applicable permit approvals;

vii. The minor subdivision is in substantial conformance with all applicable requirements in this Ordinance;

viii. All lots in the minor subdivision shall maintain minimum lot widths in accordance with the requirements for the zoning district where located;

ix. All required improvements depicted on the minor subdivision plat are installed and inspected by the City, or are subject to a performance guarantee (see Section <>, Performance Guarantees); and

x. The minor subdivision complies with all standards and conditions of any applicable permits and development approvals.

b. Minor subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. RECORDATION

a. Once a minor subdivision is approved, a signed statement of approval by the City Manager shall be entered on the face of the plat. The minor subdivision plat may not be recorded without this certification.

b. A minor subdivision plat shall not be recorded until after the City Manager receives confirmation that the proposed subdivision has been approved by the appropriate United States Postmaster, or evidence that the applicant has addressed comments submitted by the Postmaster.

c. Failure to record the minor subdivision plat in accordance with Section <>, Expiration, shall render the minor subdivision plat null and void.

6. EFFECT

Approval of a minor subdivision allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the minor subdivision plat.

7. AMENDMENT

Amendment of a minor subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

A minor subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval.

9. APPEAL

a. Appeal of a decision on a minor subdivision shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

Agenda

I. PRELIMINARY PLAT[31]

1. PURPOSE

The purpose for this preliminary plat procedure is to establish a fair, consistent, and predictable procedure for the review of requests to divide land into a series of lots for development or sale in ways that promote the health, safety, and welfare of the City of Hendersonville. The intent of these standards is to ensure:

a. Orderly growth and development;

b. Coordination of transportation and utility networks;

c. Preservation of open space for purposes of recreation or natural resource protection;

d. Protection from flooding, damaging sedimentation, and decreased surface water quality; and

e. Distribution of population in ways that supports infrastructure investment and diminishes the impact of traffic and overcrowding.

2. APPLICABILITY

Unless exempted by Section 160A-376 of the North Carolina General Statutes, all divisions of land involving two or more lots along with the provision of or changes to streets or other public infrastructure (e.g., sewer lines, storm sewer, etc.) shall be considered preliminary plats subject to the standards of this section.

3. PRELIMINARY PLAT REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section <>, Pre-application Conference).

b. APPLICATION SUBMITTAL

i. Applicable (see Section <>, Application Filing and Acceptance).

ii. A preliminary plat shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. The application shall include a transportation impact analysis for review when the new development meets the requirements for transportation impact analysis in Article 6 of the Zoning Ordinance.

c. STAFF REVIEW

Figure 2.04.J: Preliminary Plat Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** See Section <>, Pre-Application Conference
2	**FILE APPLICATION** Filed with Development Assistance Department - Must be professionally prepared - May require a TIA
3	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification statements
4	**STAFF REVIEW AND RECOMMENDATION BY THE DEVELOPMENT REVIEW COMMITTEE**
5	**PLANNING BOARD REVIEW AND DECISION** Decided after public meeting - Decision shall be made in writing
6	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
7	**APPLY FOR OTHER REQUIRED PERMITS** As appropriate

[31] This section is proposed to replace Section 603 of the current regulations. The sketch plan portion of the current process is replaced by the pre-application conference.

The City Manager shall submit the preliminary plat application to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

d. DECISION BY PLANNING BOARD

i. Following staff review, the Planning Board, after the conclusion of a public meeting (see Section <>, Public Meeting and Hearing), shall review and decide the application in accordance with Section <>, Preliminary Plat Review Standards.

ii. The decision shall be either: approval of the preliminary plat as proposed; approval of a revised preliminary plat; or denial of the preliminary plat.

iii. The Planning Board shall render a decision on an application for a preliminary plat within 32 days of the date of the first public meeting to consider the application unless a different review schedule is agreed to by the Planning Board, the City, and the applicant.

iv. If a preliminary plat application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a preliminary plat that has been denied.

e. APPROVAL TO PROCEED[32]

Following approval of a preliminary plat by the Planning Board, the applicant may proceed with an application to undertake land disturbing activities, or installation of public utilities, as appropriate.

4. PRELIMINARY PLAT REVIEW STANDARDS

a. An application for a preliminary plat shall be approved, if it complies with the following:

i. The preliminary plat is prepared and sealed by a licensed professional authorized by the State to prepare such documents;

ii. The preliminary plat complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;

iii. The preliminary plat includes all required certifications and other pertinent information as required by the City;

iv. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;

v. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Hendersonville or Henderson County;

vi. Street names used in the subdivision shall not duplicate or be similar to the names of streets in an existing subdivision in Hendersonville or Henderson County;

vii. All standards or conditions of any prior applicable permits and development approvals; and

viii. The preliminary plat complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.

b. Land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention.

5. EFFECT

a. GENERALLY

i. Approval of a required preliminary plat shall not constitute the approval for recording a subdivision with the Register of Deeds, or approval for the conveyance of lots.

ii. Approval of a required preliminary plat authorizes the submittal of street and utility construction plans, and soil erosion and sedimentation control plans.

b. LANDS OUTSIDE THE CORPORATE LIMITS

Preliminary plats for development located outside the corporate limits shall comply with any ordinances and City policies related annexation and the extension of utilities.

c. CONSTRUCTION PLANS

[32] Section 603.2 of the current regulations describes a certificate of approval for preliminary plats. This has not been carried forward.

i. Construction plans for all public improvements associated with the preliminary plat shall be approved prior to street and utility construction and prior to the approval of a final plat in accordance with the applicable standards this Ordinance.

ii. In the case of a multi-phase subdivision, street and utility construction plans shall include all improvements within a phase and all public improvements outside the phase but necessary to serve development within that phase.

6. PERFORMANCE GUARANTEES

All public improvements that have not been installed by the developer, and inspected and accepted by the City shall comply with the requirements in Section <>, Performance Guarantees, prior to the recordation of a final plat.

7. AS-BUILT PLANS

As-built plans for all public improvements shall be submitted in accordance with Section <>, As-Built Plans Required.

8. AMENDMENT

Amendment of a preliminary plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. EXPIRATION

An approved preliminary plat shall be valid for one year from the date of approval. Failure to record a final plat for land subject to an approved preliminary plat within four years of the date the preliminary plat is approved shall render the preliminary plat approval null and void.

10. APPEAL

a. Decisions by the Planning Board on a preliminary plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

J. SUBDIVISION VARIANCE[33]

1. PURPOSE

The purpose of this section is to allow deviations from the standards of this Ordinance when the landowner demonstrates that, due to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and that allowing the requested deviation would not be contrary to the public interest.

2. APPLICABILITY

Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.

3. SUBDIVISION VARIANCE PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section<>, Pre-Application Conference).

b. APPLICATION SUBMITTAL

Applicable (see Section <>, Application Filing and Acceptance).

c. STAFF REVIEW

i. Applicable (see Section <>, Staff Review and Action).

ii. In cases where a staff report is prepared, the staff report shall not include a recommendation.

d. PUBLIC NOTICE

Applicable (see Section <>, Public Notification).

e. DECISION BY BOARD OF ADJUSTMENT

i. The BOA, after the conclusion of a quasi-judicial public hearing (see Section <>, Public Meeting and Hearing), shall decide the application for a variance.

ii. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the appropriate standards in Section <>, Variance Review Standards.

iii. The concurring vote of four-fifths of the BOA shall be necessary to grant a subdivision variance.

iv. The decision shall be either approval of the variance as proposed, approval of the variance with revisions, or denial of the variance.

Figure 2.04.K: Variance Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** See Section <>, Pre-Application Conference
2	**FILE APPLICATION** Filed with Development Assistance Department
3	**COMPLETENESS DETERMINATION** See Section <>, Completeness Determination
4	**STAFF REVIEW** Staff report shall not include a recommendation
5	**PUBLIC NOTICE** See Section <>, Public Notification
6	**BOA REVIEW AND DECISION** Quasi-judicial public hearing - Decision shall be made in writing
7	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
8	**RECORDATION** With the Henderson County Register of Deeds within 30 days of approval

[33] This section replaces Section 606 of the current regulations but designates the Board of Adjustment as the review authority to decide the request. Review by the Planning Board has been removed as this review is inappropriate as part of a quasi-judicial decision-making process..

v. Each decision shall be made in writing and reflect the BOA's determination of any contested facts and their application to the standards in this Ordinance.
vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.
vii. The decision of the BOA shall be effective upon the filing of the written decision by the City Manager.

f. RECORDATION

If a variance application is approved, the notice of decision shall be recorded by the City in the office of the Henderson County Register of Deeds.

4. SUBDIVISION VARIANCE REVIEW STANDARDS

a. REQUIRED FINDINGS

A subdivision variance application shall be approved provided on a finding the applicant demonstrates all of the following:

i. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
iii. The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.
iv. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
v. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

b. NOT USED AS A BASIS FOR APPROVAL

None of the following may be used as the basis for approving a variance:

i. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
ii. The fact that land or a structure may be utilized more profitably or be more marketable with a variance; or
iii. Financial hardship.

c. CONDITIONS OF APPROVAL

i. The Board of Adjustment may apply conditions of approval that are reasonably related to the variance.
ii. All conditions shall be identified in the approval, the notice of decision, and on any associated plats.

5. EFFECT

Approval of a subdivision variance authorizes only the particular regulatory relief approved by the BOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the subdivision variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

6. AMENDMENT

Amendment of a subdivision variance may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

7. EXPIRATION

A subdivision variance shall not expire.

8. APPEAL

a. Any decision by the BOA shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

SECTION 2.05. PERFORMANCE GUARANTEES[34]

A. PURPOSE AND INTENT

These standards create the additional flexibility necessary for lots in a subdivision to be conveyed or for issuance of a building permit to commence with development prior to completion of all required infrastructure or site improvements, provided funds have been reserved for completion of these features. These provisions ensure that funds are available for the City's use to complete required pubic infrastructure or private site features in the event an applicant or developer is unable to do so.

B. APPLICABILITY[35]

1. Performance guarantees shall be configured and managed in accordance with the standards in this section. The City is under no obligation to grant a performance guarantee for any feature or under any circumstance.
2. The following facilities and site features may be eligible for performance guarantees at the discretion of the City:
   a. Sidewalks, multi-use paths, and greenways;
   b. The final lift of asphalt on a street;
   c. Private stormwater management facilities;
   d. Street lights; and
   e. Placement of vegetation, except when required as part of erosion control measures.
3. All other public infrastructure or required site features shall be completed prior to issuance of a certificate of occupancy for the development.

C. INELIGIBLE FACILITIES

The following infrastructure facilities are not eligible for performance guarantees, and shall be completed and dedicated to the City where appropriate, prior to approval of a final plat, conveyance, or issuance of a building permit:

1. Potable water;
2. Sanitary sewer;
3. Functional fire protection infrastructure;
4. The base and initial courses of asphalt on a street;
5. Stormwater drainage facilities associated with a street right-of-way;
6. Curb and gutter; and
7. Street signs and traffic control signals.

D. MAXIMUM TERM OF GUARANTEE

Performance guarantees associated with the placement of vegetation shall have a maximum term of one year, otherwise there shall be no maximum term or expiration for a performance guarantee.

E. FORM OF GUARANTEE

1. The applicant shall determine the form(s) of the performance guarantee, which shall be provided in one or more of the following forms:

   #### a. CASH OR IRREVOCABLE (EVERGREEN) LETTER OF CREDIT

[34] This section is proposed to replace the provisions in Section 604 of the current regulations. These proposed standards have been revised to reflect a series of recent changes in the statutes regarding the amount, term, form, and release of performance agreements.

[35] This is a new section that indicates which kinds of features may be subject to a request for a performance guarantee. The current regulations place no limits on what may be subject to a guarantee. These proposed provisions place limits on what can be the subject of a guarantee request, and allows City staff (instead of City Council) to review and decide the request.

The developer shall deposit cash or an irrevocable (or "evergreen") letter of credit, either with the City or in escrow with a North Carolina financial institution. If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer shall be filed with the City guaranteeing the following:

i. That the escrow account shall be held in trust until released by the City and may not be used or pledged by the developer for any other matter during the term of the escrow; and

ii. That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete or repair the improvements up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.

iii. The financial institution holding the cash or other instrument shall indicate to the City its notification requirements for release or payment of funds.

b. SURETY BOND

i. The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.

ii. The bond shall be payable to the City and shall be in an amount as required by this subsection.

c. OTHER GUARANTEE

The developer may provide another form of guarantee that provides equivalent security to a surety bond or letter of credit, as determined by the City Attorney.

2. The performance guarantee shall distinguish between the portion of the guarantee provided for public infrastructure improvements as well as the portion of the guarantee provided for private site improvements, if applicable.

3. The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the guarantee.

F. AMOUNT OF GUARANTEES

1. GENERALLY

Performance guarantees shall be in an amount equal to 125 percent of the estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.

2. ESTIMATED COSTS

Estimated costs of completing installation of required public improvements, vegetation, or stormwater measures shall be itemized by improvement type and certified by the developer's licensed professional, and is subject to approval by the City Manager.

3. RENEWAL

If a performance guarantee is renewed, the City Manager may require the amount of the performance guarantee be updated to reflect changes in cost over time.

G. RELEASE OR REDUCTION OF GUARANTEE

1. RELEASE REQUESTED

The City Manager shall release or reduce a performance guarantee only after:

a. The owner or developer has submitted to the City a written request for a release or reduction of the performance guarantee that includes certification by the owner's or developer's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications, and as-builts (if applicable);

b. City staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and

c. No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved.

2. ACCEPTANCE SHALL BE DOCUMENTED

The City Manager shall provide written notice of the City's final acceptance of the improvements subject to performance guarantees.

H. IMPROPER RELEASE OF FINANCIAL GUARANTEES

If the City releases a performance guarantee through error, the error shall not release the developer from responsibility for the completion of all improvements in accordance with this Ordinance.

I. FORFEITURE OF GUARANTEE

1. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS

If the owner or developer fails to complete installation of the guaranteed improvements within the term of the performance guarantee (as may be extended), the City Manager shall give the owner or developer 30 day's written notice of the scope and degree of the default, by certified mail.

2. CITY COMPLETION OF IMPROVEMENTS

After the 30-day notice period expires, the City may draw on the guarantee and use the funds to perform the work necessary to complete installation of the guaranteed improvements. After completing such work, the City shall provide a complete accounting of the expenditures to the owner or developer. In the event of a default triggering the use of the performance guarantee, the City shall return any of the unused deposited cash funds or other security.

J. AS-BUILT PLANS REQUIRED

1. PUBLIC IMPROVEMENTS

Upon completion of a public infrastructure project, the developer shall certify to the City Manager that the completed project has been constructed in accordance with the approved plans and shall submit actual "as-built" plans for all public improvements after final construction is completed.

2. STORMWATER MANAGEMENT FACILITIES

Upon completion of a private stormwater management facility, the developer shall certify to the Stormwater Administrator that the completed project is in accordance with the requirements in Sections 24-131 through 24-163 in the City's Code of Ordinances.

3. INSPECTION REQUIRED

A final inspection and approval by the City Manager shall occur before the release of the financial guarantee.

SECTION 2.06. FEE-IN-LIEU[36]

A. PURPOSE

The purpose for this section is to establish a procedure and standards for instances where an applicant and the City agree that a payment-in-lieu of dedication or construction of infrastructure by the applicant is appropriate and in closer alignment with the City's adopted policy guidance of capital improvement program.

B. PROCEDURE

1. REQUIRED BY CITY

a. In cases where the City Manager determines that installation of a required sidewalk, greenway, bikeway, or other roadway improvement could conflict with another City, State, or federal infrastructure project that is planned or programmed to begin construction within five years, the applicant or developer shall be required to submit a fee in-lieu of the required infrastructure element(s).

b. Notification of the requirement for provision of a fee-in-lieu shall be in writing, and shall be delivered to the applicant or developer prior to the notice of decision on the associated application.

c. Upon receipt of notification, and applicant shall provide the required fee-in-lieu in accordance with Section <>, Acceptance of Fee-in-Lieu.

d. In the event the conflict necessitating the fee-in-lieu is eliminated prior to final approval, the fee-in-lieu shall be refunded and the applicant or developer shall be required to dedicate the required land or perform the required installation. The developer or applicant may request the City retain the funds in accordance with Section <>, Requested by Applicant.

2. REQUESTED BY APPLICANT

In cases where an applicant or developer desires to receive final approval of development under this Ordinance without providing land or infrastructure as required, the process for requesting such approval shall be in accordance with this section.

a. FILE REQUEST

i. An applicant seeking the ability to provide a fee-in-lieu of making a required dedication or constructing required infrastructure shall file a written request with the City Manager prior to the rendering of a decision on the associated application by the appropriate review authority (see Table <>, Summary Table).

ii. The request shall include the reasons for the request, the rationale why a fee-in-lieu is in closer alignment with the City's adopted policy guidance, and the estimated value of the land that would otherwise be dedicated or the estimated cost of completion of the infrastructure in question, based on current unit prices.

b. STAFF REVIEW

Upon receipt of the request, the City Manager shall review the information and notify the applicant if the information provided is sufficient.

c. DECISION BY CITY MANAGER

i. The City Manager shall consider the request, and shall decide the request in accordance with the City's adopted policy guidance and Section <>, Review Standards for Fee-in-Lieu.

ii. The decision shall be to either accept the request for provision of fee-in-lieu as offered, accept a modified request for provision of fee-in-lieu, or deny the request for provision of fee-in-lieu.

d. ACCEPTANCE OF FEE-IN-LIEU

[36] This is a new section proposed for the City's consideration.

i. In cases where a fee-in-lieu is required by the City or a request for provision of a fee-in-lieu is accepted by the City Manager, payment of a fee-in-lieu shall take place prior to the approval of a final plat or issuance of the final approval associated with the subdivision.

ii. All fees collected by the City pursuant to this section shall be deposited in City's revolving fund for purchase of recreation land, installation of vegetation, or installation of required infrastructure (whether streets, sidewalks, bikeways, or other infrastructure, as appropriate).

iii. Use of funds collected in accordance with this section shall only take place in the general vicinity of where funds are collected and may only be used for the purchase of in-kind lands or the same type of infrastructure in accordance with all applicable State and federal law.

iv. The City Manager shall maintain records of the amounts collected, the timing, and the location, which shall be used by the City as part of its capital facilities program.

C. AMOUNT

1. LAND

a. The fee-in-lieu shall be calculated based upon the total acreage of land required for dedication.

b. The land's assessed value (as determined by the Henderson County Tax Assessor) following subdivision shall be used to arrive at the required payment-in-lieu amount.

2. INFRASTRUCTURE

a. The amount of fee-in-lieu shall be based on an estimate by a licensed professional authorized by the State to prepare such documents.

b. The estimate shall include the cost of all materials and labor based on current unit prices.

c. Nothing shall prevent the City Manager from acquiring an additional estimate for the same infrastructure from another licensed professional.

d. The City Manager, in his or her sole discretion, may select the estimate that will form the basis for the fee-in-lieu payment.

3. VEGETATION

In cases where a fee-in-lieu is proposed for the installation of vegetation, the fee amount shall be based upon the unit price of the vegetation along with all associated labor, transportation, and incidental costs such as ground cover, staking, and fertilizer, but not irrigation.

D. REVIEW STANDARDS FOR FEE-IN-LIEU

Decisions regarding requests for provision of fee-in-lieu shall be made in accordance with the following standards:

1. PARK LAND

a. There is sufficient public park land in proximity to the proposed development based on a review of the City's adopted policy guidance and information from City staff;

b. Private common open space resources provided on the subject site will be available for public use and will mitigate park land needs created by the proposed development;

c. Collected funds could be utilized to further improve an existing park facility in a proximate location;

d. The topography or other natural conditions of the site do not provide adequate opportunities for on-site recreation and park areas;

e. The amount of park land to be dedicated is too small to provide adequate recreation and park opportunities or to be efficiently maintained;

f. The intended location of the park land is too far from existing recreation and park areas to be efficiently maintained; or

g. Adequate access is not available to the proposed park land.

2. GREENWAY LAND

a. The conditions on the land make installation or operation of a greenway segment impossible or cost prohibitive for the City;

b. The potential for the connection of a proposed greenway segment to the City's greenway network is unlikely within the foreseeable future, in the opinion of City staff; or

c. There are suitable alternatives to a greenway segment, such as a multi-purpose trail, in close proximity to the proposed site.

3. STREETS

a. The proposed street alignment creates a unacceptable environmental impact; or

b. The proposed street is impossible or impractical to build based on topography, slope, soil conditions, or development patterns on adjacent lands.

4. SIDEWALKS

a. The potential for the connection of a proposed sidewalk segment to the City's sidewalk network is unlikely within the foreseeable future, in the opinion of City staff; or

b. There are suitable alternatives to a sidewalk, such as a greenway, in close proximity to the proposed site.

5. VEGETATION

a. The proposed location of vegetation will not support healthy vegetation due to shading or topographic conditions; or

b. The site where vegetation is proposed is incapable of supporting additional vegetation due to the presence of exiting vegetation, buildings, or impervious surfaces.

6. OTHER CRITERIA

a. When, in the sole opinion of the City Manager, the decision on a fee-in-lieu requires consideration of additional or different criteria, the City Manager shall identify those criteria and describe how the proposal does or not address them.

b. The applicant has sufficient opportunity to describe how the proposal meets those criteria prior to a decision by the City Manager.

ARTICLE 3: CONFIGURATION

SECTION 3.01. PURPOSE AND INTENT

This section sets out the basic configuration standards for subdivisions, including lot shapes, monuments, access to lots, easements for infrastructure, and related provisions.

SECTION 3.02. LAND SUITABILITY[37]

A. Where land to be subdivided is found by the City to be subject to the conditions of flooding, improper drainage, severe erosion, landslides, or to have other characteristics which pose an ascertainable danger to public health, safety, or property, the subdivider shall take measures necessary to correct these conditions in order to eliminate or mitigate any danger.

B. In making a determination about the potential danger to public health, safety, or property, the City or a review authority may take any of the following into consideration:

1. The official FEMA Flood Hazard Boundary Maps;
2. The Henderson County Soil Survey;
3. Recommendations of the Tennessee Valley Authority;
4. Information from the Soil Conservation Service;
5. Information from the USDA; and
6. The Henderson County Board of Health.

C. In cases where the City or a review authority makes findings pursuant to this section, the basis for such findings shall be in writing and recorded in a staff report, meeting minutes, or the written decision, as appropriate.

SECTION 3.03. LOTS[38]

A. DIMENSIONAL REQUIREMENTS

1. GENERALLY

a. The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated.

b. A lot shall have sufficient area, dimensions, and street access to allow a principal building to be erected on it in compliance with the requirements of this Ordinance and the Zoning Ordinance.

c. Lot sizes, shapes, and locations shall be made with due regard to topographic conditions, contemplated use, and the surrounding area.

d. The area of standing bodies of water shall not be included in determining minimum lot area requirements.

2. SINGLE-FAMILY RESIDENTIAL LOTS

a. WITHIN THE CORPORATE LIMITS

Lots intended for single-family residential development within the City's corporate limits shall comply with the minimum dimensional standards for the zoning district where located.

b. OUTSIDE THE CORPORATE LIMITS

i. Lots intended for single-family residential development outside the City's corporate limit that are served by both public water and sewage systems shall comply with the minimum dimensional standards for the zoning district where located.

[37] Carries forward Section 500 of the current regulations.

[38] This section carries forward Section 507 and its related subsections from the current regulations.

ii. Lots intended for single-family development outside the City's corporate limits that are not served by public water or by public sewer shall comply with the applicable dimensional standards in the Zoning Ordinance.

3. MULTI-FAMILY RESIDENTIAL LOTS

a. Lots intended for multi-family residential development shall comply with the minimum dimensional standards for the zoning district where located.

b. Prior approval from Henderson County Environmental Health must be obtained for lots containing multi-family development that are not served by both public water and sewer.

4. NONRESIDENTIAL AND MIXED-USE LOTS

Lots intended for non-residential and mixed-use development shall comply with the minimum dimensional standards for the zoning district where located.

B. SIDE LOT LINES

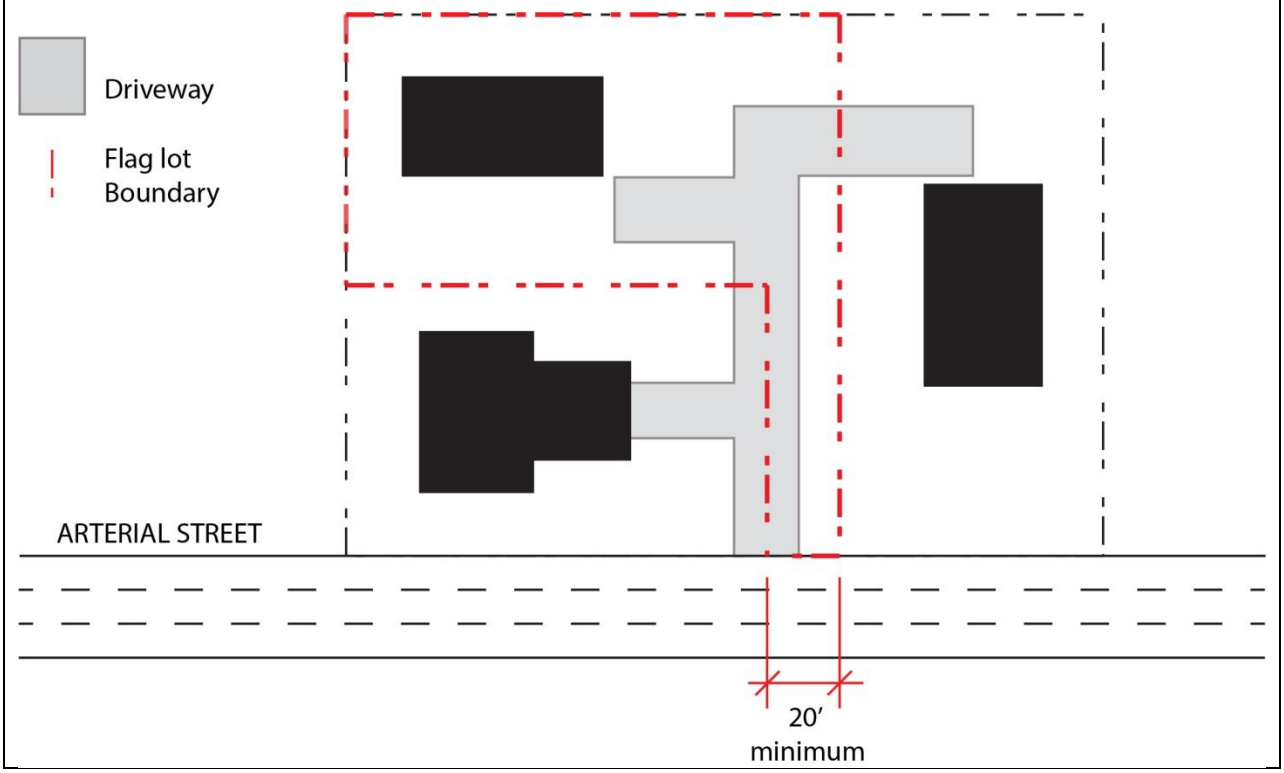
1. Side lines of lots should be at or near right angles or radial to street lines.
2. Where side lot lines intersect at the rear of the lot, the angle of intersection shall not be less than 60 degrees.

C. FLAG LOTS

New flag lots may be established, subject to the following requirements:

1. Except where topographic conditions or environmental constraints make lot access impractical, no more than five percent of the lots within a subdivision (or individual phase of a subdivision) may be configured as flag lots.
2. New flag lots may be established along an expressway or boulevard street only in cases where access to the street is shared with an adjacent lot (see Figure <>, Flag Lot Access).
3. The "pole," arm," or "pan handle" portion of a flag lot shall maintain a minimum width of at least 20 feet.
4. Use of a single driveway to serve an adjoining flag lot or to serve a flag lot and an adjoining conventional lot is encouraged. In the case of a driveway shared with a conventional lot, the preferred location for the driveway is on the flagpole portion of the flag lot, with the conventional lot granted an access easement over the flagpole.

FIGURE <>: FLAG LOT ACCESS



D. DOUBLE OR REVERSE FRONTAGE LOTS

1. Double frontage or reverse frontage lots shall be avoided, except when used in conjunction with the provisions for marginal access streets in Section <>, Marginal Access Streets.
2. Double frontage lots shall require a non-access buffer of 25 feet on one side of the lot bounded by a street, in addition to other dimensional requirements.

E. CORNER LOTS

Corner lots shall be of sufficient size to ensure development may be configured to avoid required sight distance triangles.

F. DRAINAGE AND FLOOD PREVENTION

New subdivisions shall comply with all applicable requirements for stormwater management (see Section <>, Stormwater Management), drainage (see Section <>, Sedimentation and Erosion Control), and all applicable standards for flood damage prevention from Sections 24-31 through 24-117 of the City's Code of Ordinances, when located within a special flood hazard area.

Agenda

SECTION 3.04. ACCESS TO LOTS[39]

A. EVERY LOT MUST MAINTAIN ACCESS

1. GENERALLY

Except for lots within bona fide farms, exempt subdivisions, or in accordance with Section <>, Street Access Exemptions, all lots intended to contain a building or structure shall abut a street designed, built, and maintained to City or State standards, as applicable.

2. STREET ACCESS EXEMPTIONS

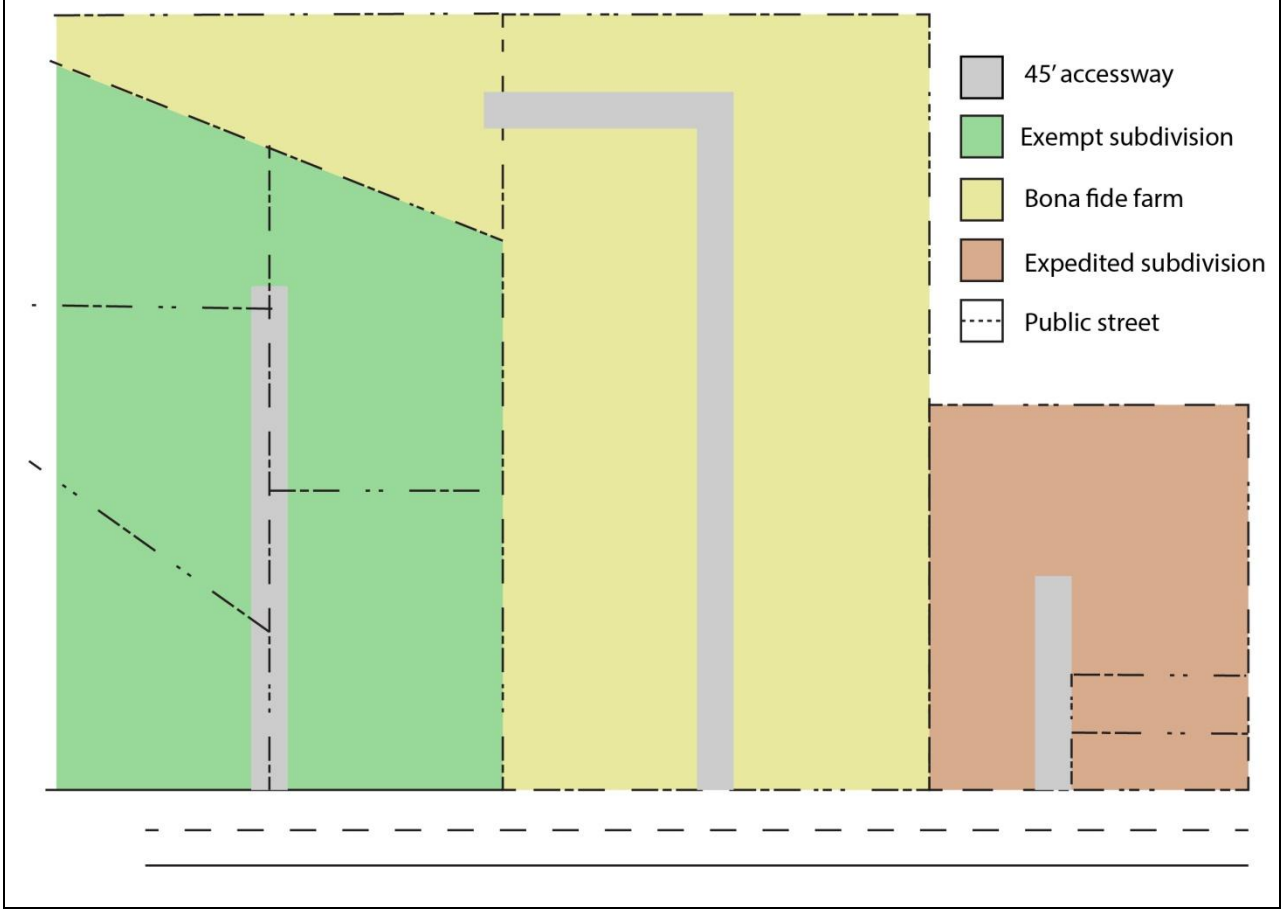
a. Lots in any of the following forms of development are not required to be served by a street meeting City or State standards:

i. Up to three lots in an expedited subdivision; or

ii. Up to three lots without roadway frontage that are served by a single, shared accessway.

b. Any lots not required to abut a street designed, built, and maintained to City or State standards shall maintain an access with a minimum width of 45 feet that is adequately maintained to afford a reasonable means of ingress and egress for emergency vehicles (see Figure <>, Street Access Exemptions).

FIGURE <>: STREET ACCESS EXEMPTIONS



3. ACCESS SERVING MORE THAN THREE LOTS

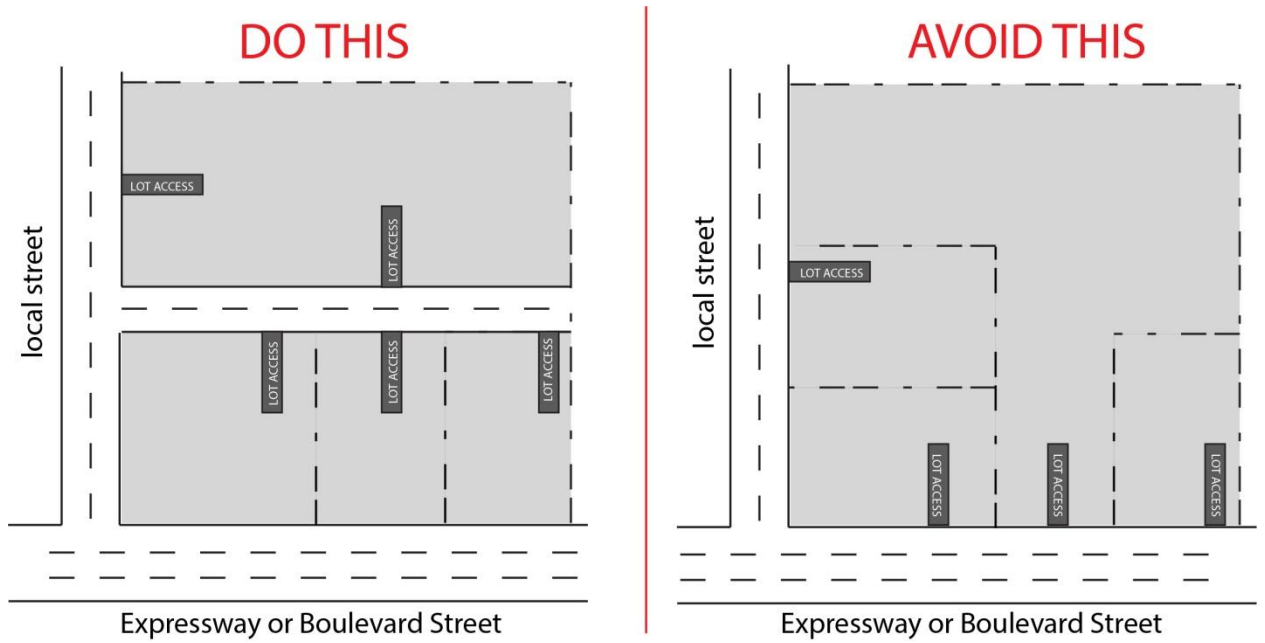
[39] This section is intended to replace Section 507.4 of the current regulations.

Accessways serving more than three lots outside a bona fide farm or exempt subdivision shall be designed, built, and maintained to public street standards.

B. ACCESS ON LOTS ABUTTING EXPRESSWAY OR BOULEVARD STREETS

1. In cases where a tract or site abutting an expressway or boulevard street is proposed for subdivision (whether residential or otherwise), then all lots created shall maintain sufficient frontage on a different street, either pre-existing or created as part of the subdivision, so that direct access to lots need not be provided by an expressway or boulevard street (see Figure <>, Lots Abutting Expressway or Boulevard Streets).
2. The final plat creating the subdivision shall indicate a notation that driveway access to an expressway or boulevard is limited and shall be provided by a different street.
3. In the event a site or tract is unable to comply with the access limitations in this subsection, an applicant may seek a variance in accordance with Section <>, Subdivision Variance.

FIGURE <>: LOTS ABUTTING EXPRESSWAY OR BOULEVARD STREETS



C. MARGINAL ACCESS STREETS

1. Where a tract of land to be subdivided adjoins an expressway or boulevard street, the subdivider may be required to provide a marginal access street parallel to the expressway or boulevard street or reverse frontage where access is obtained solely by a different street for the lots to be developed adjacent to the expressway or boulevard street.
2. Where reverse frontage is established, private driveways shall not have direct access to the expressway or boulevard street, and a 25-foot-wide non-access buffer zone on the side of the lot abutting the expressway or boulevard street shall be provided.

D. DRIVEWAY CONSOLIDATION ALONG EXPRESSWAY, BOULEVARD, AND THOROUGHFARE STREETS

While a lawfully-established access to an individual lot from an expressway, boulevard, or thoroughfare street created prior to [*insert the effective date of this Ordinance*] may remain, it is the intent of this Ordinance to consolidate or eliminate these driveways to help ensure public safety and to preserve the traffic-carrying capacity of the street. In order to encourage the beneficial removal of existing driveways or shared driveways serving two or more lots, the required side setbacks and any

perimeter landscaping buffers required between lots may be reduced or waived by the City Manager, subject to the following requirements:

1. NCDOT confirms the shared access can still achieve a satisfactory level of access control;
2. A cross-access easement between all parties sharing access is approved by the City Manager and recorded with the Henderson County Register of Deeds;
3. All Fire Code regulations are met;
4. Adequate utility and drainage easements are provided, if necessary; and
5. Minimum side setbacks or perimeter landscaping buffer requirements are reduced by the smallest amount necessary to accommodate the shared access.

SECTION 3.05. MONUMENTS[40]

Monuments shall be included as part of any subdivision, and shall be configured in accordance with *The Standards of Practice for Land Surveying in North Carolina*, as adopted by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, and the following:

A. Prior to the approval of the final plat, permanent reference points shall have been established in accordance with the standards in this section.

B. At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.

C. If a corner is within 2,000 feet of a U.S. Geodetic Survey or NC Grid System coordinated monument, then this corner shall be marked with a monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this monument to an accuracy of at least one to 10,000.

D. When a monument is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object, or structure. However, if in the opinion of City Manager, a subdivision is of a small size, or if there is an existing tie within a reasonable distance of the subdivision, this shall not be required.

E. Within each subdivision, at least two monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments, if required.

F. The location and type of all monuments used shall be indicated on the final plat.

G. All monuments shall be constructed of #4 rebar surrounded by three-inch PVC pipe and filled with concrete.

H. Each monument shall be set 24 inches in the ground unless this requirement is impractical because of unusual conditions.

I. The allowable angular error of closure and the linear error of closure for surveys shall be in accordance with *Standards of Practice for Land Surveying* published by the State Board of Registration for Land Surveyors.

[40] This section replaces Section 505 of the current regulations.

SECTION 3.06. EASEMENTS[41]

Easements for drainage or utilities may be required where necessary, and shall be provided in accordance with the following:

A. LOCATIONS

1. Easements shall center along or be adjacent to a common property line where practicable.
2. Redesign of the lot arrangements may be required to meet extreme conditions.
3. Easements for water and sewer service within a subdivision shall be extended to any lot line shared with vacant land unless the vacant land cannot be served by public water or sewer service due to topographic constraints, public ownership, or other limiting factors as determined under the sole discretion of the City Manager.

B. UTILITIES

1. POWER OR COMMUNICATIONS

Where alleys are not provided, easements (of not less than ten feet in width) shall be provided adjacent to public rights-of-way or in such other locations as may be directed by the City Manager for poles, wires, or conduits for electrical utilities, natural gas service, or telephone services.

2. POTABLE WATER

Easements shall be provided for public potable water supply systems in locations as may be directed by the City Manager for water distribution lines, water meters, and access points.

3. SANITARY SEWER

Easements shall be provided for public sanitary sewer systems in locations as may be directed by the City Manager for sewer collection lines and access points.

4. DRAINAGE

Stormwater or drainage easements, if provided, shall be in accordance with the City-approved stormwater operation and maintenance agreement.

C. WIDTH

Easement widths for potable water and sanitary sewer lines shall be provided in accordance with Table <>, Minimum Easement Width.

MINIMUM EASEMENT WIDTH

PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
Sanitary Sewer Mains			
8 - 10	10 or less	20	30
8 - 10	10 - 12.5	25	35
8 - 10	12.5 - 15	30	40
8 - 10	15 – 17.5	34	45
8 - 10	17.5 - 20	40	50
12 – 24	15 or less	30	40
12 – 24	15 – 17.5	35	45
12 – 24	17.5 – 20	40	50

[41] This section replaces Section 508 of the current regulations but does not include the buffer strip requirements since this is a landscaping standard.

MINIMUM EASEMENT WIDTH			
PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
> 24	Any depth	[3]	[3]
Any size not listed here	> 20	[3]	[3]
Potable Water Mains			
8 - 10	10 or less	20	30
8 – 10	> 10	25	35
12 – 24	10 or less	30	35
12 – 24	> 10	35	40

NOTES:
[1] Nominal diameter.
[2] Temporary easement for construction only.
[3] As specified by City Manager.

D. EASEMENT UPSIZING

The City Manager may increase the minimum required easement widths for potable water sanitary sewer, drainage, or other utility services based on topographic conditions, environmental considerations, the size of the line, the required depth of the line, or the need to remain clear of other utilities.

E. MAINTENANCE

1. All easements for drainage or utilities shall be cleared of undergrowth, trees, and other obstructions prior to approval of the final plat unless the City Manager certifies in writing that such clearance is unnecessary.
2. Clearance is not required for easements that are provided for possible future use.
3. Easements for stormwater management facilities and stormwater drainage systems located outside the street right-of-way shall be maintained by an owner's association, and maintenance responsibility for these features shall be indicated on the final plat.

F. IDENTIFICATION

All easements shall be granted in favor of the City of Hendersonville, the State of North Carolina, the appropriate utility provider, an owner's association, as appropriate, and shall be shown and clearly labeled on the final plat.

SECTION 3.07. SUBDIVISION NAMES

The name of a proposed development shall not duplicate or be phonetically similar to an existing development name in the County unless the proposed development lies adjacent or in proximity to the existing development.

SECTION 3.08. CLUSTER MAILBOX UNITS

New residential subdivisions shall include cluster mailbox units in accordance with U.S. Postal Service guidelines and the following:

A. Wherever possible, cluster mailboxes shall be located in a centralized location, within an open space set-aside, served by pedestrian access and served by two or more off-street parking spaces.

B. In cases where the cluster mailboxes must be placed within a public right-of-way, the mailbox unit(s) shall be located and configured in accordance with the latest revision of the NCDOT policy guidance on the placement cluster box units (CBUs), including provision of a vehicular turnout.

C. Cluster mailbox units placed on a private street shall comply with NCDOT policy guidance on the placement of cluster box units (CBUs) on State-maintained streets.

SECTION 3.09. DEDICATION OF PUBLIC LAND

A. DEDICATION OF LAND FOR PUBLIC PARKS

Subdivisions of land for 30 or more single-family residential lots (including detached and attached units) shall be required to dedicate a portion of the land, or pay a fee-in-lieu thereof, for public parkland, in accordance with the standards of this section.

1. DEDICATION AMOUNT

a. Single-family residential subdivisions of 30 or more lots shall dedicate 500 square feet of land per residential lot to the City for its use in developing public parkland.

b. No credit towards required parkland dedication is given for lands mandated for preservation by State or federal requirements.

c. No more than 25 percent of the total dedication requirement may be met through dedication of water areas.

2. PROCEDURE FOR DEDICATION OR PAYMENT

a. The developer shall identify land proposed for dedication on the preliminary plat, or propose payment of an in-lieu fee as part of the application for approval of a preliminary plat.

b. The City shall review the proposed application and determine if it complies with the standards in Section <>, Nature of Area to be Dedicated, or Section <>, Fee-In-Lieu, as appropriate. The decision to accept dedication is up to the sole discretion of the City Council.

c. Land shall be dedicated prior to recording the first final plat for the subdivision, or the payment-in-lieu shall be paid prior to recording the first final plat for the subdivision for which the payment-in-lieu is paid.

3. NATURE OF AREA TO BE DEDICATED

All lands proposed for dedication as recreation and park areas shall meet the following standards:

a. UNITY

The dedicated land shall be a single parcel of land, whether the subdivision is developed in phases or sections, except where it is determined by the City Manager that multiple parcels would better serve City residents.

b. USABILITY

Public parkland must be without significant topographic elevation changes, well-drained, usable land for a park, as determined by the City Manager. In cases where dedication includes an area of water, public access to all portions of a water feature shall be provided and maintained, regardless of water feature's size.

c. SHAPE

The dedicated land shall be of a shape that supports gathering and recreation activities.

d. LOCATION

i. The dedicated parkland shall be located so it can reasonably serve the park needs of the residents of the subdivision and immediate area.

ii. The City Council may require that the land dedicated be located on the periphery of the development in order to allow enlargement by combining the recreation and park area with adjacent development or park facilities, existing or planned.

e. ACCESS

i. All dwelling units in the subdivision and residents in the immediate area shall have access to and from the parkland provided by means of streets and public walkways or trails.

ii. Rights-of-way for this access shall be shown on the preliminary and final plats.

iii. All dedicated lands shall have access by way of a street. Such access can be provided when the dedicated land is adjacent to existing or proposed public parkland with street access.

ARTICLE 4: INFRASTRUCTURE

SECTION 4.01. PURPOSE AND INTENT

The purpose of this section is to establish standards for the planning, installation, and operation of public infrastructure as part of the subdivision of land in the City's planning jurisdiction. More specifically, this section is intended to:

A. Provide for the orderly growth and development of the City;

B. Coordinate the provision of streets within and contiguous to proposed subdivisions with other existing or planned streets in the general area;

C. Provide for the adequate provision of public services and infrastructure;

D. Maintain conditions essential to the public's health, safety, and general welfare; and

E. Facilitate the further re-subdivision of larger tracts into smaller parcels of land, where appropriate.

SECTION 4.02. GENERAL REQUIREMENTS

A. REASONABLE RELATIONSHIP

All required improvements and rights-of-way (other than required reservations) in this article shall substantially benefit the development or bear a reasonable relationship to the need for public facilities attributable to the new development.

B. CONSISTENCY WITH ADJACENT DEVELOPMENT

Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, the utility facilities (such as, water or sewer lines) shall be located and constructed in accordance with the standards in this section so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

C. WITHIN SPECIAL FLOOD HAZARD AREAS

Placement of required infrastructure within a special flood hazard area area shall only be in accordance with the applicable standards for flood damage prevention in the City Code of Ordinances.

D. AS-BUILT PLANS REQUIRED

1. Whenever a developer installs or causes to be installed any water, sewer, stormwater, or sidewalk, the developer shall, as soon as practicable after installation is complete, and before acceptance, furnish the City with an as-built plan prepared by a licensed professional that shows the exact location and configuration of the utility. Nothing shall limit the depiction of more than one type of utility on the same as-built plan sheet.
2. The as-built plan must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing the development.
3. As-built plans shall be prepared and verified prior to issuance of a certificate of occupancy, commencement of operation, approval of a final plat, or release of a performance guarantee, as appropriate.

E. MAINTENANCE REQUIRED

1. Required infrastructure installed or caused to be installed by a developer and intended for ownership or operation by another entity shall be maintained by the developer until such time as the infrastructure is accepted by the entity who will own or operate it.
2. All utility facilities shall be constructed in a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

F. DEDICATION AND ACCEPTANCE

1. STREETS AND ASSOCIATED FACILITIES

a. The subdivider or developer shall install all streets in accordance with all NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements, as appropriate.

b. Streets and their associated infrastructure shall remain under private ownership or be dedicated to the City or NCDOT, in accordance with all applicable requirements.

2. POTABLE WATER

a. The subdivider or developer shall install all potable water supply lines and meters in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.

b. Potable water supply lines, including water tanks, distribution lines, water mains, and laterals shall be dedicated to the City or other public entity providing potable water for maintenance and operation. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City or another public entity providing potable water.

c. All lots in new subdivisions subject to the standards in this Ordinance shall abut a potable water main line.

d. In no instance shall a potable water service line serving an individual use extend across the lot line.

3. SANITARY SEWAGE SYSTEM

a. In cases of development being served by a public sewage systems, the subdivider or developer shall install all sewer lines in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.

b. All lots in new subdivisions subject to the standards in this Ordinance shall abut a sanitary sewer main line.

c. Except for private centralized systems, sanitary sewage lines, pump stations, and treatment facilities shall be dedicated to the City for maintenance and operation.

d. In no instance shall a sewer service line serving an individual use extend across the lot line.

e. Sewer lines serving individual lots or uses prior to their connection to the central collection system shall not be the responsibility of the City.

f. Centralized private sewage systems shall be offered for dedication to the City, who may choose to accept the system in the sole discretion of the City Council.

4. STORMWATER MANAGEMENT FACILITIES

a. The subdivider or developer shall install all stormwater management facilities in accordance with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, and any applicable State or federal requirements.

b. The City shall not accept dedication of land occupied by a stormwater management facility or maintenance responsibilities, though the City may require posting of a performance guarantee for stormwater management facility maintenance in accordance with Section <>, Stormwater Management.

c. The City may require granting and recordation of an access and maintenance easement to allow the City or its designated representatives to access and maintain a stormwater management facility required by this Ordinance.

5. PUBLIC PARK LAND

a. Land designated as public park land on a final plat shall be considered to be offered for dedication until such offer is accepted by the City. The offer may be accepted through conveyance of fee simple marketable title (unencumbered financially and environmentally) of the land to the City at the time of final plat recordation.

b. Until an offer of dedication is accepted by the City, land offered for dedication may be used for open space purposes by the landowner or by the owners' association. Land offered for dedication shall not be used for any purpose inconsistent with the proposed public use.

SECTION 4.03. STREETS[42]

A. GENERALLY

1. STREETS DISTINGUISHED

All streets, roads, and alleys within the City's planning jurisdiction shall be designated as one of the following street types, based on maintenance responsibility:

a. State-maintained, or NCDOT streets (this includes roadways in the federal highway system);

b. City streets that are owned and operated by the City of Hendersonville; or

c. Private streets that are owned and maintained by individuals or owner associations.

2. TYPES OF STREETS

a. PUBLIC STREETS

Streets that are owned, operated, or maintained by the NCDOT, the City, or the federal government shall be considered as public streets.

b. PRIVATE STREETS

Streets that are owned, operated, or maintained by an individual or an owner's association shall be considered private streets.

3. STREET CLASSIFICATION

a. All new and existing streets in the City's planning jurisdiction shall be identified in the City's adopted policy guidance as one of the following street classifications:

TABLE <>: STREET CLASSIFICATION

STREET TYPE	DESCRIPTION
Freeway	Freeways are the highest classification of streets and are designed and constructed with mobility and long-distance travel in mind. Access is controlled, intersections are grade-separated, driveways serving individual lots are prohibited, and roadways are designed for high-speed travel of 55 mph or greater. Roadways in this functional classification category connect the City to other destinations in the State and connect major activity centers in the City to one another. Freeways carry the highest traffic volumes.
Expressway	These streets provide a high degree of mobility both within the City's urban areas as well as through neighboring rural areas. Vehicles move at high-to-moderate speeds and four-way intersections are often signal-controlled. These streets include at-grade intersections with other streets typically spaced 2,000 feet apart, but driveways to individual lots are typically limited to right-in/right-out or grade separated left turns. The average number of vehicles trips can vary widely based on the urban or rural location of an expressway.
Boulevards	Boulevards connect major streets to one another and provide for vehicle trips of moderate length at medium speeds. The road is typically two or more lanes with a median with median breaks provided for U-turns. Full-movement driveways may be provided when alternative forms of access are not available.

[42] This section is proposed to replace the standards in Section 501 of the current regulations. These proposed draft standards do not include references to the NC Secondary Road System standards in favor of simply referencing NCDOT standards.

TABLE <>: STREET CLASSIFICATION	
STREET TYPE	DESCRIPTION
Major Thoroughfare	Major thoroughfares provide a balance of mobility and access with moderate traffic volumes and low-to-medium speeds between 25 and 55 mph. Streets may be up to four lanes wide with no median and no requirements for access control. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
Minor Thoroughfare	Minor thoroughfares provide balanced mobility and access with moderate traffic volumes and lot-to-medium design speeds of up to 45 mph. Streets may have up to three lanes with no more than one lane per direction. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
Local	Local streets occupy the largest percentage of lane miles across all types of streets and primarily provide direct access to individual lots. Local streets are often configured to discourage through traffic, though local streets can also effectively disperse local traffic when configured as part of a highly connected network offering multiple routes.
Cul-de-Sac	A dead-end local street that terminates in a vehicular turnaround.
Alley	A secondary street that provides direct access to a limited number of individual lots or land uses. In most cases, access is provided to the side or rear of the lot served by the alley.

b. Nothing shall prohibit a change in street classification based on traffic volumes or anticipated needs.

c. In no instance shall a private street be classified as a freeway, expressway, boulevard, or thoroughfare street.

4. COMPLIANCE WITH POLICY GUIDANCE

a. ALL STREETS

Except where otherwise allowed in accordance with Section <>, Street Access Exemptions, all streets and rights-of-way within the City's planning jurisdiction shall be designed, constructed, and maintained in accordance with the following:

i. Streets maintained by the State shall comply with the standards established for the particular classification of street in question by the NCDOT.

ii. Streets dedicated to or maintained by the City shall comply with all applicable standards established by this Ordinance or the City's Code of Ordinances, whichever is higher or more restrictive.

b. ADDITIONAL STANDARDS FOR STATE-MAINTAINED STREETS

i. All streets intended for dedication to the State shall have rights-of-way and construction meeting the standards contained in the *Subdivision Roads, Minimum Construction Standards Handbook*, as revised, published by the NCDOT.

ii. The District Highway Engineer shall approve the plat with respect to road construction, road width, and right-of-way prior to recording. Without the approval, the plat cannot be recorded.

iii. Once the development meets the minimum housing requirements for state road acceptance, the developer shall petition NCDOT for state road acceptance.

iv. After inspection and upon receipt of outcome of the inspection, the developer shall have 12 months to turn over roads to NCDOT.

B. STREET DESIGN

1. DEDICATION AND CONSTRUCTION

a. All lands associated with a new or modified street right-of-way shall be dedicated to the City or the State as a part of the development process in accordance with Section 136-66.10 of the North Carolina General Statutes.

b. All streets shall be improved to the full width, cross section, and profile, including paving and drainage, as specified in the development approval, this Ordinance, the City's adopted policy guidance, State or federal law, and any other applicable provisions.

c. The subdivider or developer shall be responsible for the construction and installation of all streets and infrastructure in accordance with the applicable development approval, NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements.

d. No road construction or improvements shall commence until a plan showing the proposed roadway improvements and a construction plan is approved by the City Manager.

2. PRIVATE STREETS[43]

a. NEW STREETS

i. Except where otherwise allowed in accordance with Section <>, Street Access Exemptions, all streets constructed, extended, or modified after (*insert the effective date of this Ordinance*) shall be constructed, maintained, and operated in accordance with the standards for public streets.

ii. Private streets shall not be constructed as part of development within the City's corporate limits.

iii. Existing streets associated with land or subdivisions proposed for voluntary annexation shall meet applicable City requirements prior to or concurrent with annexation.

b. EXISTING PRIVATE STREETS

i. Neither the City of Hendersonville or NCDOT shall be responsible for maintenance of private streets existing on or after (*insert the effective date of this Ordinance*).

ii. The City shall not accept maintenance responsibility for any private streets that do not meet the City's standards for street configuration and construction.

3. GENERAL LAYOUT

a. Streets shall be related appropriately to the topography and designed to facilitate the drainage and stormwater runoff.

b. Street grades shall be governed by NCDOT requirements and shall conform as closely as practicable to the original topography.

c. Half streets (such as streets of less than the full required right-of-way and pavement width) shall not be permitted, except where the streets, when combined with a similar street, developed previously or simultaneously, on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this Ordinance.

d. When a development abuts or contains an existing or proposed freeway, expressway, or boulevard, the City Manager may require frontage streets, reverse frontage with landscape plantings, or other treatment as may be necessary for adequate protection of residential properties and to ensure separation of through and local traffic.

[43] These are new standards that prohibits private streets within the corporate limits, and requires private streets within the ETJ to be constructed to public street standards.

e. Reserve strips or parcels controlling access to streets shall be prohibited, except where required as part of development on a double-frontage lot.

4. COMPLIANCE WITH TRANSPORTATION IMPACT ANALYSIS FINDINGS

In cases where new development is subject to a requirement to prepare a transportation impact analysis, all streets and street-related infrastructure shall comply with the findings of the analysis.

5. CONTINUATION AND COORDINATION OF NEW STREETS

a. New streets or upgrades to existing streets resulting from new development shall comply with the location, classification, configuration, and operation requirements identified in the City's adopted policy guidance or NCDOT standards, as appropriate. For the purposes of this section, the City's adopted policy guidance shall include, but not be limited to the following:

i. The Comprehensive Plan;
ii. The Comprehensive Transportation Plan from the French Broad MPO, as amended; and
iii. The City's Standard Specifications and Details.

b. Whenever a street within a new development continues an existing street that formerly terminated outside the development or it is expected that a new street will be continued beyond the development at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the development.

c. The arrangement of streets in a development shall provide for the alignment and continuation of existing or proposed streets into adjoining lands in those cases in which the adjoining lands are undeveloped and deemed appropriate by the DRC for future development or in which the adjoining lands are developed and include opportunities for such connections.

d. Street rights-of-way shall be extended to or along adjoining property boundaries such that a roadway connection or street stub shall be provided for development where practicable and feasible in each direction (north, south, east, and west) for development which abuts vacant lands.

e. Boulevard and thoroughfare streets shall intersect with surrounding boulevard and thoroughfare streets at safe and convenient locations, as determined by the NCDOT and the City Manager.

f. At all locations where streets terminate with no street connection, but a future connection is planned or accommodated, a sign shall be installed at the location with the words "FUTURE ROAD CONNECTION" to inform property owners.

g. The final plat shall identify all stub streets and include a notation that all street stubs are intended for connection with future streets on adjoining undeveloped or underdeveloped lands.

h. The use of residential strips of land in order to prevent the extension of proposed or existing streets or access thereto is prohibited.

i. Where access to a subdivision site is by a street that does not meet City or State standards, that street shall be improved by the developer in order to meet current City or State standards, as appropriate.

6. CONNECTIVITY

Streets within new subdivisions shall be connected to one another to ensure emergency access and prevent traffic congestion in accordance with the following:

a. MINIMUM CONNECTIVITY INDEX SCORE REQUIRED

All development shall achieve an internal street connectivity score in accordance with Table <>: Minimum Street Connectivity Score.

TABLE <>: MINIMUM STREET CONNECTIVITY SCORE

ZONING DISTRICT WHERE DEVELOPMENT IS PROPOSED	MINIMUM REQUIRED STREET CONNECTIVITY INDEX SCORE

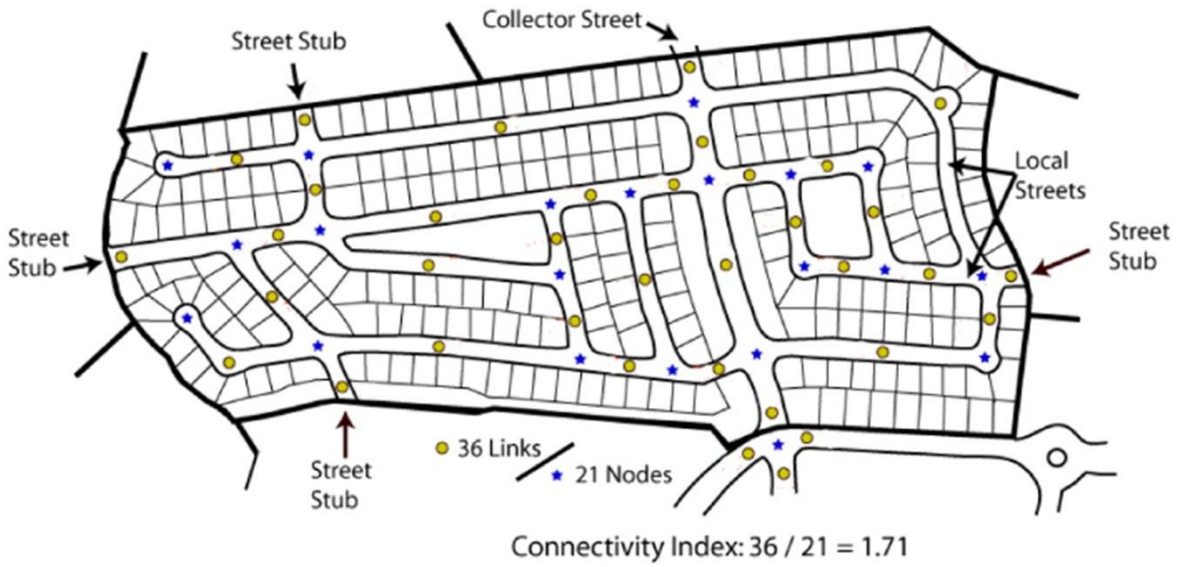
TABLE <>: MINIMUM STREET CONNECTIVITY SCORE	
ZONING DISTRICT WHERE DEVELOPMENT IS PROPOSED	MINIMUM REQUIRED STREET CONNECTIVITY INDEX SCORE
R-15, R-20, and R-40	1.20
All Other Districts	1.40

b. CONNECTIVITY INDEX SCORE CALCULATION

i. The connectivity index for a development is calculated by dividing its links by its nodes.

ii. Figure <>, Street Connectivity Index Example, provides an example of how to calculate the connectivity index. Nodes (stars) exist at street intersections and cul-de-sac heads within the development. Links (circles) are stretches of road that connect nodes. Street stub-outs are considered as links, but temporary dead-end streets internal to a development or alleys are not counted as links. One link beyond every node that exists in the development and provides access to the street system outside the development shall be included in the index calculation. In the diagram, there are 36 links (circles) and 21 nodes (stars); therefore the connectivity index is 1.71 (36/21 = 1.71).

FIGURE <>: STREET CONNECTIVITY INDEX EXAMPLE



c. REDUCTION IN MINIMUM INDEX SCORE

The minimum connectivity index score may be reduced if the owner/developer demonstrates it is not possible to achieve due to topographic conditions, natural features, existing road configurations, or adjacent existing development patterns. In these instances, internal street design shall achieve as high a connectivity index score as is reasonably practical.

C. STREET CONFIGURATION

1. STREET RIGHTS-OF-WAY

a. All new streets established in the City's jurisdiction after (*insert the effective date of this Ordinance*) shall include a minimum street right-of-way configured in accordance with Table <>: Minimum Street Right-of-Way Requirements.

TABLE <>: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS		
TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]
Expressway	8 lanes, raised median	160
	4 lanes, grass median	150
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Boulevard	8 lanes, raised median	160
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Major Thoroughfare	7 lanes	120
	5 lanes	100
	4 lanes	90
	3 lanes	80
Minor Thoroughfare	2 lanes, parking on each side	80
	2 lanes, parking on one side	70
	2 lanes, paved shoulder	70
Local	45	
Cul-de-Sac	45 [3]	
Alley	20	
NOTES: [1] The street right-of-way shall include curb and gutter, sidewalks, multi-use paths, bicycle lanes (where indicated), and associated utility strips. [2] Minimum rights-of-way may need to be wider to accommodate all forms of planned infrastructure in accordance with the City's adopted policy guidance. [3] Radius will be wider.		

b. In cases where an existing street is depicted on the City's adopted policy guidance, but is not configured to the required width or cross section, the roadway shall be improved in accordance with the City's adopted policy guidance as part of the development.

2. STREET INTERSECTIONS

Street intersections shall be configured in accordance with the following standards:

a. Not more than two streets shall intersect at any one point unless the City or NCDOT certifies that such an intersection can be constructed with no extraordinary danger to public safety.

b. Streets shall intersect at right angles to the maximum extent practicable, and no two streets shall intersect at less than 60 degrees.

c. Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of the street.

d. Where a street center line offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 125 feet.

e. Except when no other alternative is practicable or legally possible, no two streets may intersect with any other street on the same side at a distance of less than 200 feet measured

from centerline to centerline of the intersecting street. When the intersected street is an expressway or boulevard, the distance between intersecting streets shall be at least 1,000 feet, unless no other alternative is practicable.

f. Property lines at street intersections shall be shown as a chord connecting points not less than 15 feet back from the street intersection along each street right-of-way line. Longer setbacks for chord connections for property lines may be required by the DRC as needed for public safety.

g. In commercial developments the City may assign traffic control to thru traffic within 500 feet of the point of access to the public right-of-way.

3. DEVELOPMENT ENTRY POINTS

a. Unless exempted in accordance with subsection (d) below, all subdivisions shall provide streets from the development to the street system outside the development in accordance with Table <>, Required Points of Access:

TABLE <>: REQUIRED POINTS OF ACCESS [1]

TYPE OF DEVELOPMENT	DEVELOPMENT SIZE	MINIMUM NUMBER OF VEHICULAR ACCESS POINTS [2]
Residential and Mixed-Use Development [3]	30 or fewer lots	1
	31 or more	2
Non-residential Development, other than Industrial [4]	Less than 5 acres or fewer than 10 lots	1
	More than 5 acres	2

NOTES:
[1] Points of access shall refer to streets, not driveways.
[2] Additional vehicular access points may be required where determined necessary by the City.
[3] Multi-family or mixed-use developments of 100 dwelling units or more shall provide at least two points of access regardless of the number of lots.
[4] The Fire Code may require a minimum of two points of access.

b. Nothing in this section shall limit the total number of streets providing access to the street system outside a development, or exempt a development from meeting all applicable street connectivity standards.

c. Street stubs shall be credited as an access point when all ingress or egress to a development is only available from a single expressway, boulevard, or thoroughfare street.

d. Development shall be exempted from these standards if it is demonstrated the following conditions apply:

i. A transportation impact analysis allows a deviation;
ii. No other street access points can be located due to existing lot configurations, absence of connecting streets, environmental, or topographic constraints;
iii. NCDOT will not authorize the required number of entrances; or
iv. Alternative access can be provided in a manner acceptable to the City that is supported by a transportation impact analysis.

4. TURN LANES

Turn lanes for either or both left and right turns into a commercial or residential subdivision driveway may be necessary for safety when there are high roadway and/or turning volumes or traffic, when the roadway speeds are moderate or high, or where needed due to limited sight distance. When provided, turn lanes shall be configured in accordance with the following:

a. The final determination for the need, location, and design of a turn lane is the responsibility of the NCDOT, or the City, as appropriate.

b. Left and right turn lanes shall be constructed in accordance with NCDOT standards and specifications.

c. Right-turn lanes shall be constructed entirely within the frontage of the property being served, since an adjacent development might subsequently require an entrance that would otherwise encroach into the turn lane.

d. The NCDOT may require a undivided street to be widened when the median has an inadequate width for a left turn lane.

5. DECELERATION LANES

a. Any use capable of generating more than 60 trips per peak hour, as estimated by using NCDOT guidelines or the Institute of Traffic Engineers Trip Generation Manual, shall provide at least one deceleration lane per street front in accordance with NCDOT standards when the use is located along an expressway or boulevard street.

b. Deviations from these requirements may only be authorized when the NCDOT indicates that a particular development design or technique can still achieve a satisfactory level of access control consistent with the objectives of this section.

6. CUL-DE-SAC AND DEAD-END STREETS

a. No permanently designed cul-de-sac or other dead-end street shall be longer than 800 linear feet, except where land cannot otherwise be subdivided practicably in the opinion of the City Manager.

b. In cases where one cul-de-sac is accessed from another cul-de-sac, the maximum length for all cul-de-sacs accessed from one another shall be 500 linear feet.

c. All permanent cul-de-sacs or other dead-end streets shall be provided at the closed end with a turn-around configured in accordance with the City's minimum requirements.

d. Dead-end streets intended to be continued at a later time shall be provided with a turn-around as required for a dead-end street when required by the City Manager.

e. Only that portion to be required as right-of-way when the street is continued shall be dedicated and made a public street.

7. STREET GRADE

Street grades shall comply with the following standards:

a. Streets and their associated gutters shall maintain grade levels in accordance with Table <>, Maximum and Minimum Street Grade.

TABLE <>: MAXIMUM AND MINIMUM STREET GRADE

STREET TYPE	MAXIMUM GRADE	MINIMUM GRADE
Expressways and Boulevards	6%	Not less than 1%
Major and Minor Thoroughfares	8%	Not less than 1%
Local Streets	10%	

b. Street and intersection approaches shall not have grades in excess of three percent for a distance of 100 feet from the intersection of center lines in all directions for all streets.

c. All changes in grades for local streets and thoroughfares shall be connected by a vertical curve of a minimum length of 40 times the algebraic difference in the percents of grade ("K" value). Stop conditions shall have a minimum "K" value of 14 times the algebraic difference

of the percents of grade. "K" values for arterials shall be per the AASHTO Geometric Design of Highways and Streets based on design speed.

d. The City Manager may consider deviations from these standards based on topographic conditions or public safety concerns.

8. STREET CURVES

Street curves shall maintain the minimum radii established in Table <>: Minimum Curve Radii and Tangents:

TABLE <>: MINIMUM CURVE RADII AND TANGENTS

STREET TYPE	MINIMUM RADII (FEET)	MINIMUM TANGENT DISTANCE BETWEEN REVERSE CURVES ON THE SAME STREET (FEET)
Expressways and Boulevards	600	150
Major and Minor Thoroughfares	400	100
Local Streets	150	0

9. STREET DRAINAGE

a. All required drainage facilities associated with a street right-of-way shall be constructed prior to consideration of a final plat.

b. Storm sewers, drains, and structures installed by the subdivider shall be installed of a size, type, and in locations as approved by the City Manager, or NCDOT, as appropriate.

c. Street drainage facilities located outside the street right-of-way shall be maintained by the developer, the landowner, or an owners' association, and maintenance responsibility shall be noted on the final plat.

d. The City shall not be responsible for any private or commonly-held subdivision drainage infrastructure connected to publically-maintained drainage facilities, streams, or other outlets having constant flow.

10. SIGHT DISTANCE TRIANGLES

a. SIGHT DISTANCE TRIANGLES ESTABLISHED

i. Corner lots and lots with driveways, alleys, or other methods of ingress/egress to a street shall include sight distance triangles to ensure visibility for drivers and pedestrians moving through or in an intersection.

ii. Required sight distance triangles shall be configured in accordance with Table <>: Sight Distance Triangle Requirements.

iii. Land within a required sight distance triangle shall comply with the standards in Section <>, Limitations on Obstructions within Required Sight Distance Triangles.

TABLE <>: SIGHT DISTANCE TRIANGLE REQUIREMENTS

TYPE OF STREET, INTERSECTION, OR DRIVEWAY		MINIMUM REQUIRED SIGHT DISTANCE TRIANGLE [1] [2] [3]
Intersections of Streets [4]		10/70
Driveways Serving Parking Lots		10/70
Driveways Serving Land Uses Without Parking Lots	Residential	None
	All Other Uses of Land	10/70 wherever possible

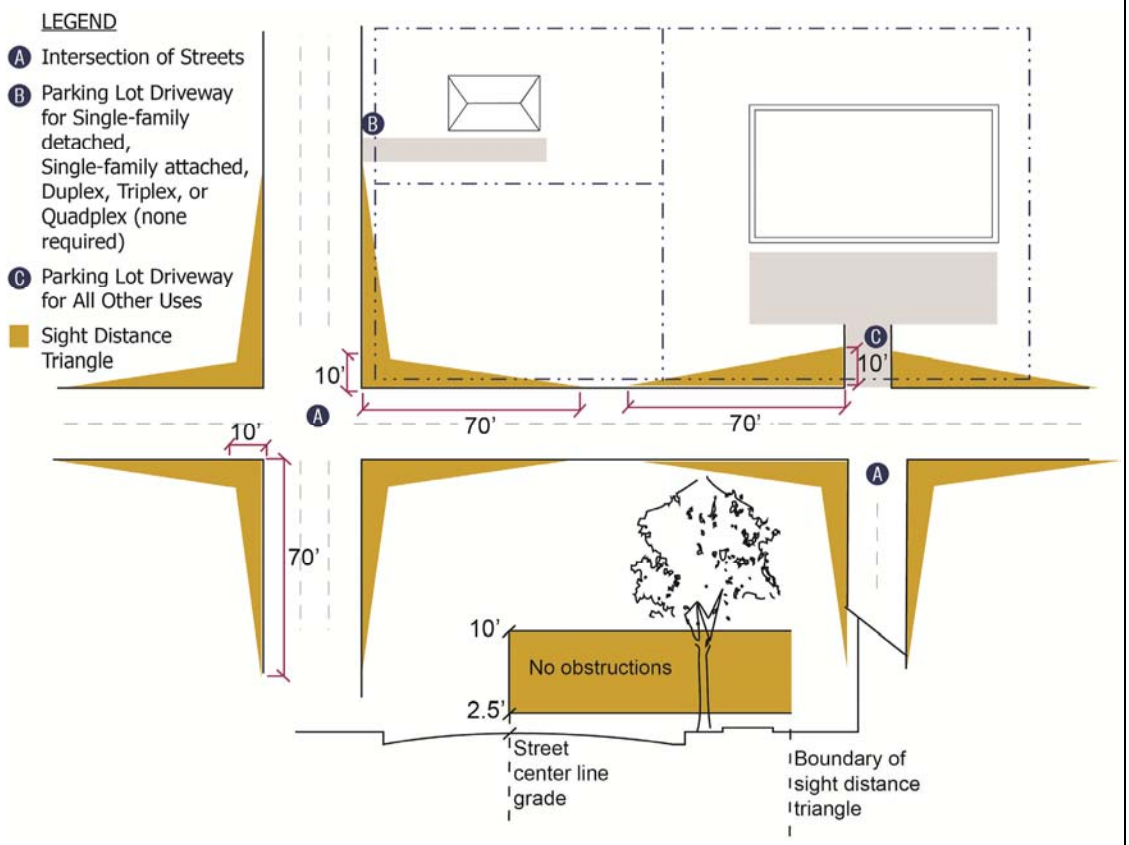
NOTES:
[1] See Figure <>, Sight Distance Triangle, for the 10/70 configuration.
[2] The NCDOT may require an alternate configuration.

[3] AASHTO requirements shall be applied to streets with curves.
[4] Includes all streets, including public streets.

b. MEASUREMENT OF SIGHT DISTANCE TRIANGLE

Sight distance triangles shall be an area between a point at the edge of a street right-of-way located 70 linear feet from the intersection and a second point at the edge of the opposing street right-of-way located ten feet from the intersection (see Figure <>, Sight Distance Triangles).

FIGURE <>: SIGHT DISTANCE TRIANGLES



c. LIMITATIONS ON OBSTRUCTIONS WITHIN REQUIRED SIGHT DISTANCE TRIANGLES

i. No planting, structure, fence, wall, slope, embankment, parked vehicle, or other obstruction to vision between the heights of two-and-one-half (2½) feet and ten feet above the centerline grades of intersecting streets or accessways may be located within a required sight distance triangle.

ii. No structure or object, regardless of its size, which obstructs visibility within a required sight distance triangle to the detriment of vehicular or pedestrian traffic shall be permitted.

D. STREET FEATURES

1. STREET NAMES[44]

[44] These standards are proposed to replace the standards in Section 501.7 of the current regulations.

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Street names and property address numbers shall be assigned by Henderson County.

2. TRAFFIC CONTROL SIGNS AND SIGNALS

a. If deemed necessary by the City or by NCDOT, signals shall be installed by the developer at each street intersection within the subdivision and at each intersection of a subdivision street and a state-maintained road or access road.

b. Signs and signals shall comply with NCDOT regulations with regards to size, shape, color, location and information contained thereon.

c. At least two or more traffic-control signs shall be placed at each four-way street intersection and at least one at each "T" intersection.

d. Signs and signals shall be installed free of visual obstruction.

3. STREET SIGNS[45]

a. The subdivider or developer shall install standard street signs as part of new development.

b. In cases where decorative street signs are proposed, the developer or subdivider shall be responsible for the cost of the decorative street signs.

c. Decorative street signs shall be approved as to form and content by the City prior to installation.

d. Street name signs shall conform to City and NCDOT standards.

e. At least two street name signs shall be placed at each four-way street intersection and at least one at each "T" intersection.

f. Street signs shall be installed on the northwest and southeast corners of every four-way intersection.

g. Signs shall be installed free of visual obstruction.

4. STREET LIGHTS

a. Streets and sidewalks shall be illuminated with street lights or pedestrian lighting for security and safety, in accordance with City, utility company, and NCDOT standards.

b. Areas adjacent to the vehicular entrances for non-residential, mixed-use, and multi-family residential developments shall be adequately lighted to ensure the safety of persons and the security of the buildings.

5. VEHICULAR GATES

a. Gates to private property shall conform to City requirements for emergency access and be served by a vehicular turnaround.

b. Proposed gates shall be reviewed and decided by the City Manager.

c. In no instance shall a vehicular gate be placed within a public street right-of-way.

6. BRIDGES AND CULVERTS

a. All bridges shall be designed by a professional engineer licensed by the State of North Carolina.

b. All bridges and culverts shall be built to NCDOT standards.

7. DAMS

a. Maintenance of a dam structure shall be the responsibility of the developer or an owners' association.

b. The party responsible for dam maintenance shall provide a performance guarantee for the dam's maintenance in perpetuity in accordance with the standards in Section <>, Performance Guarantees.

[45] These standards are intended to replace the provisions in Section 501.7 of the current regulations.

SECTION 4.04. SIDEWALKS[46]

A. LOCATION

Sidewalks meeting the requirements in Section <>, Configuration, are required in accordance with the City's adopted policy guidance and the following standards:

1. SIDEWALKS PROVIDED ON BOTH SIDES OF THE STREET

a. Sidewalks shall be provided along both sides of all expressway and boulevard streets, regardless of the zoning district where located.

b. Sidewalks shall be provided along both sides of all streets except alleys in the area designated as downtown in the City's adopted policy guidance.

2. SIDEWALKS PROVIDED ON ONE SIDE OF THE STREET

a. Sidewalks shall be required on one side of the street in the following locations:

i. Along local streets; and

ii. Along cul-de-sac, dead-end, and loop streets serving nine or more lots or nine or more dwelling units.

b. When sidewalks are required on one side of the street, they shall generally be located on the side of the street to best continue existing sidewalk networks, if present.

c. Sidewalks are not required around the head of a cul-de-sac street.

d. Where there is no clear preferable street side for the placement of a sidewalk, the sidewalk shall be placed on the street side where it is least likely to have a negative impact on stormwater management, in the opinion of the City Manager.

e. In cases where sidewalks are already found on both sides of a street serving immediately adjacent development, sidewalks shall be provided along both sides of the street serving new development.

3. NO SIDEWALKS REQUIRED

No sidewalks shall be required in the following locations:

a. Along freeways and interstate highways maintained by NCDOT;

b. Along alleys and accessways to individual lots not served by a street; and

c. Along gravel streets.

B. CLUSTER MAILBOX UNITS

Sidewalk access shall be provided to all cluster mailbox installations that do not include vehicle parking spaces in accordance with Section <>, Cluster Mailbox Units.

C. RESPONSIBILITY FOR SIDEWALK PROVISION

1. The applicant or developer of a subdivision or site plan, as appropriate, shall be responsible for the provision of sidewalks required in accordance with this section.

2. In no instance shall a final plat be recorded or land conveyed within a subdivision subject to the standards in this section before the sidewalk is completed, a fee-in-lieu has been provided (see Section <>, Fee-in-Lieu), or a performance guarantee has been provided in accordance with Section <>, Performance Guarantees.

D. CONFIGURATION

1. Sidewalks shall be located within a designated street right-of-way or in another City-approved location.

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[46] This section replaces Section 501.5 of the current regulations. The standards include new requirements for sidewalks on both sides of some streets and more guidance about when located on one side of the street. Smaller developments (e.g., minor subdivisions) are proposed for exemption from sidewalk standards, but may still be subject to greenway requirements. The new fee-in-lieu section allows some relief from sidewalk requirements. These standards differ somewhat from the current Zoning Ordinance provisions, but the City may wish to consider revising the Zoning Ordinance in accordance with these provisions.

2. Sidewalks shall be at least five feet wide, and may be required to match the width of a connecting sidewalk that exceeds five feet in width.
3. Sidewalks shall be constructed of concrete or other hard-surface materials, consistent with the established sidewalk patterns on adjacent developments.
4. Pedestrian street crossings shall be raised above the adjacent street level, be constructed of material other than asphalt, or be striped as a traffic-calming measure.
5. Sidewalks shall connect with existing sidewalks at property boundaries.
6. Whenever curb and gutter construction is used on public streets, wheelchair ramps for the disabled, configured in accordance with NCDOT standards, shall be provided at intersections and other major points of pedestrian flow in accordance with Section 136-44.14 of the North Carolina General Statutes.
7. New nonresidential, mixed-use, and multi-family development shall provide at least one on-site improved connection between the development and the adjacent public sidewalk system (planned or existing).

E. CREDIT FOR TRAILS

Hard-surfaced, ADA-accessible trails within open space set-asides shall be credited towards these sidewalk requirements when trails are available for use by the public and connect open space set-asides to schools, shopping areas, or other recreation areas.

SECTION 4.05. GREENWAYS[47]

A. REQUIRED GREENWAY DEDICATION AND CONSTRUCTION

1. Whenever a tract of land included within any proposed minor subdivision, preliminary plat, or conservation subdivision includes any part of a greenway designated in the City's adopted policy guidance, the greenway shall be platted and dedicated to the City as a greenway easement.
2. Greenways shall be constructed as part of the required infrastructure serving a site or a subdivision.

B. GREENWAY CONFIGURATION

1. A greenway easement shall be at least 50 feet wide, to the maximum extent practicable.
2. The greenway shall include an all-weather surface trail of at least ten feet in width, paved with asphalt or concrete that meets ADA guidelines for accessibility.
3. The trail shall be edged with gravel shoulders of at least one foot in width on each side.
4. Positive drainage shall be established in areas adjacent to the paved trail.
5. In cases where a greenway crosses a street, the pedestrian crossing area shall be demarcated and supplemented with signage that alerts drivers to the presence of pedestrians.

C. DENSITY CREDITS

1. Land that is dedicated in fee-simple interest to and accepted by the City in accordance with this section shall be credited toward the donating parcel's lot or tract area for the purpose of calculating the density of development and area coverage calculations though no longer part of the parcel.
2. Dedicated land credits shall be transferred to subsequent holders if properly noted in transfer deeds.

D. OPEN SPACE SET-ASIDE CREDITS

Land associated with a greenway easement shall be credited towards any open space set-aside requirements.

E. PAYMENT IN-LIEU OF PROVIDING GREENWAYS

Provision for payment of a fee-in-lieu of providing a greenway shall be in accordance with Section <>, Fee-in-Lieu.

[47] This is a new section proposed for the City's consideration. One precursor for implementation of this section is adopted policy guidance that specifies the location of greenways relative to lot lines. It is very difficult to apply greenway requirements without a map that shows their planned locations. The ability to pay an in-lieu fee softens this difficulty somewhat, but having greenway alignments mapped is vital.

SECTION 4.06. POTABLE WATER[48]

All new development shall comply with the City's standards for potable water in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

A. WATER SUPPLY SYSTEM REQUIRED

1. Every lot within a subdivision shall be served by a means of a water supply that is adequate to accommodate the reasonable needs of the use or subdivision lot(s).
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the potable water system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the water supply system requirements of this Ordinance.

B. CONNECTION TO CITY WATER SUPPLY SYSTEM

Except where exempted by this Ordinance, all new development shall connect to the public potable water supply system.

C. DEDICATION AND ACCEPTANCE

1. The subdivider or developer shall install all potable water supply lines and service connections in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for installation of the required potable water lines.
3. Potable water supply lines, including water tanks, distribution lines, water mains, pump stations, valves, hydrants, laterals, and other appurtenances shall be dedicated to the City for maintenance and operation.
4. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City.

D. OVERSIZING OF WATER SUPPLY SYSTEM-RELATED IMPROVEMENTS

1. The water supply system where the subdivision is being developed may require installation of certain oversized facilities, such as water mains in excess of eight inches in diameter, when it is in the interest of future development.
2. When oversizing is required, the public water system operating where the subdivision is located shall pay for that portion of the improvement that exceeds the standards set forth in this Ordinance.
3. When oversizing is required, the developer may enter into a development agreement with the City for reimbursement of the cost of the oversize lines.

[48] This section replaces Section 502 (as it pertains to potable water systems). These standards require connection to the water system for all new developments.

SECTION 4.07. SANITARY SEWER[49]

All new development shall comply with the City's standards for wastewater disposal in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

A. SEWAGE SYSTEM REQUIRED

1. Every lot within a subdivision intended to be developed shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of the use or subdivision lot and that complies with all applicable City and State requirements.
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the sanitary sewer system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the sanitary sewer system requirements of this Ordinance.
4. No sewage treatment system that discharges into surface waters shall be allowed.

B. CONNECTION TO PUBLIC SEWER

Except where exempted by this Ordinance, all new development shall connect to the public sanitary sewer system.

C. DEDICATION AND ACCEPTANCE

1. In cases of development being served by the public sewage system, the subdivider or developer shall install all sewer lines in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for the installation of the required sanitary sewer lines.
3. Sanitary sewage lines, including treatment facilities, pump stations, force mains, and laterals shall be dedicated to the City for maintenance and operation.
4. Service lines serving individual lots or uses outside of a right-of-way or sewer easement shall not be the responsibility of the City.

[49] This section replaces Section 502 (as it pertains to sewer systems). These standards require connection to the sewer system for all new developments.

SECTION 4.08. FIRE PROTECTION[50]

All new development shall comply with the City's adopted Fire Code and related appendices, the City's Standard Specifications and Details, as well as the following:

A. FIRE HYDRANTS

1. Every subdivision that is served by a public water system with at least six-inch lines shall include a system of fire hydrants within the development.
2. Fire hydrants must be located so that not more than 400 linear feet, measured along the centerline of the street right-of-way, separates a property within the development and a fire hydrant. However, the City may require a deviation from the standards in this section if a different configuration is warranted.
3. Local fire officials shall determine the precise location of all fire hydrants.
4. Fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter and placed within ten feet of the edge of a public street without curb and gutter.
5. The City shall, after consultation with local fire officials, determine the design standards of all hydrants based on fire flow needs, which shall maintain a minimum flow rate of 1,000 gallons-per-minute, and 20 psi, or shall be supplemented with a pump or increased diameter pipe sizes.
6. Additional lots subdivided from the same parent parcel/tract of land shall comply with these fire hydrant standards.

B. DRY HYDRANTS

In cases where fire hydrants are required by Section (A) above but the public water supply is insufficient to provide adequate water flow for firefighting, dry hydrants shall be required.

[50] This section replaces Section 502.4 from the current regulations, but requires provision of fire hydrants.

ARTICLE 5: ENVIRONMENT

SECTION 5.01. STORMWATER MANAGEMENT[51]

All new development shall comply with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, as well as the following:

A. PURPOSE AND INTENT

These stormwater management standards are proposed to ensure new and existing development is configured to retain and slowly release stormwater to help promote ground water quality and avoid nuisance flooding on surrounding lands. These standards are intended to:

1. Establish basic requirements for stormwater management for all uses in the City's planning jurisdiction; and
2. Identify the types of development required to file a stormwater management plan to control stormwater in accordance with this section.

B. APPLICABILITY

1. STORMWATER MANAGEMENT REQUIRED

The stormwater management standards in this section shall apply to all development that disturbs one acre of land area or more.

2. STORMWATER MANAGEMENT PLAN REQUIRED

Development subject to these standards shall comply with the following:

a. Stormwater management plans shall be prepared by a licensed professional authorized by the State to prepare such documents.

b. Stormwater management plans shall be prepared in accordance with Article 3, the Stormwater Ordinance, of the City's Code of Ordinances.

[51] This section is proposed to replace Section 503 in the current regulations.

SECTION 5.02. SEDIMENTATION AND EROSION CONTROL[52]

All new development shall comply with the standards in the Henderson County Soil Erosion and Sedimentation Control Ordinance and the following:

A. EROSION AND SEDIMENTATION CONTROL PLAN REQUIRED

Any development subject to a minor subdivision, conservation subdivision, preliminary plat, or final plat that requires land disturbing activity shall require prior approval of an erosion and sedimentation control plan by Henderson County in accordance with Section 113A-57(4) of the North Carolina General Statutes, unless exempted by this section.

B. EXEMPTIONS

Section <>, Erosion and Sedimentation Control Plan Required, shall not apply in cases where the Henderson County or the State Sedimentation Control Commission has certified to the City that:

1. An erosion and sedimentation control plan for the associated project has already been submitted to and approved by the County or the State Sedimentation Control Commission; or
2. The County or the State Sedimentation Control Commission has examined the preliminary plans for the development and it reasonably appears that an erosion and sedimentation control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits may be issued) until the County or the Commission approves the erosion and sedimentation control plan.

C. TIMING OF REVIEW

An applicant for development subject to this section shall submit proof of an approved erosion and sedimentation control plan prior to issuance of a building permit or final plat, as appropriate.

[52] This section carries forward the standards in Section 504 of the current regulations. This is sufficient unless the City has implemented its own sediment control regulations. If this is the case, this section needs to be revised to cross reference those standards.

SECTION 5.03. STEEP SLOPES[53]

A. PURPOSE

These standards establish additional requirements for subdivision and development of lands that include steep slopes, ridgelines, and hillsides that are visible from the public realm as necessary to protect the health, safety, and welfare of the public. More specifically, these standards are intended to:

1. Prevent or reduce the possibility of accelerated erosion on lands with significant slopes;
2. Reduce the risk of landslide or subsidence resulting from inappropriate construction techniques or development patterns in areas with steep slopes; and
3. Protect the scenic character of hillsides and ridgelines visible from the public realm.

B. APPLICABILITY

The standards in this section shall apply to minor subdivisions, conservation subdivisions, and preliminary plats located on the following:

1. AVERAGE SLOPE

Lands with an average slope of 15.1 percent or more; and

2. LAND AT ELEVATION

Lands with a pre-construction elevation of 2,600 feet above mean sea level or more regardless of the average slope of the land.

C. EXEMPTION

The standards in this section are not applied to the following:

1. Developments where 10 percent or less of the total development size includes areas of steep slopes (lands with an average slope or 10 percent or more); and
2. Ridge tops or hill tops over 2,600 feet above mean sea level that are not visible from the public realm, or that are comprised solely of public park land.

D. STANDARDS

1. MINIMUM LOT AREA AND COVERAGE

Regardless of the zoning district where located, lots located in lands subject to these standards shall maintain minimum lot sizes and maximum lot coverages in accordance with Table <>, Steep Slope Lot Standards.

TABLE <>: STEEP SLOPE LOT STANDARDS

AVERAGE SLOPE OF LOT	MINIMUM LOT SIZE	MAXIMUM LOT COVERAGE BY IMPERVIOUS SURFACE[%]
15.1% - 25%	1.3 times the minimum lot size of the zoning district where located	25
More than 25%	1.5 times the minimum lot size of the zoning district where located	20

2. DEVELOPMENT PROHIBITED

[53] This is a new section that seeks to limit development in areas with slopes over 15% and bar development in areas where slopes are 35% or more. The standards also limit development at elevations above 2,600 feet above mean sea level as a means of protecting scenic views of hills and ridges.

a. Except for public utilities and telecommunications equipment, permanent structures, including driveways, streets, and utilities are prohibited on lands with average slopes of 35 percent or more.

b. Nothing shall limit the ability to credit land with average slopes of 35 percent or more towards the gross residential density of the land.

c. Unless approved in accordance with Section <>, Subdivision Variance, new development consisting of above-grade buildings or structures proposed at or above an elevation of 2,600 feet above mean sea level shall be prohibited.

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SECTION 5.04. OPEN SPACE STANDARDS

New development shall provide common open space in accordance with Section 6-16, Common Open Space Standards, in the City's Zoning Ordinance.

ARTICLE 6: OWNER ASSOCIATIONS[54]

SECTION 6.01. PURPOSE

The purpose of this section is to set out the requirements for establishment of a homeowners' or property owners' association (hereinafter "association") that shall be responsible for the long-term maintenance of common areas, common features, and private infrastructure in a subdivision. This section also sets out the requirements associated with transfer of subdivision control and maintenance responsibility from the subdivider to the association.

SECTION 6.02. APPLICABILITY

The standards in this section shall apply to subdivisions with open space set-aside(s), lands held under common ownership, or shared responsibility for common infrastructure including, but not limited to streets or stormwater management facilities.

SECTION 6.03. CREATION REQUIRED

A. A homeowners' or property owners' association shall be established in areas that have private common open space or shared private infrastructure. Associations are required to accept ownership and maintenance responsibility of all open space set-aside(s), shared infrastructure, or common areas within a development.

B. Associations are also required in order to fulfill the requirements of Chapter 47C (the "Condominium Act") of the North Carolina General Statutes, or the requirements of Chapter 47F (the "Planned Community Act") of the North Carolina General Statutes.

C. The association shall be in legal existence prior to the conveyance, lease-option, or other long-term transfer of control of any unit or lot in the development, though maintenance responsibility shall only transfer from the developer to the association in accordance with Section <>, Transfer of Maintenance Responsibility.

SECTION 6.04. RESPONSIBILITIES OF ASSOCIATION

Upon transfer of maintenance responsibility, the association shall be responsible for:

A. Liability insurance and payment of premiums for liability insurance and local taxes;

B. Maintenance of all common elements including, but not limited to, stormwater management facilities, private utilities, private accessways, private sidewalks and trails, private streetlights, and private common recreation facilities shown on the preliminary and final plats;

C. Maintenance of public streets until such time as NCDOT or the City agrees to accept the responsibility for street maintenance, as appropriate;

D. Maintenance of an escrow account intended for the maintenance and repair of community facilities; and

E. Payment of assessments for public and private improvements made to or for the benefit of the common elements.

SECTION 6.05. PROCEDURE FOR ASSOCIATION ESTABLISHMENT

A. Documents for the creation of the association shall be submitted to the City for review and approval prior to approval of a minor subdivision (see Section <>, Minor Subdivision), or final plat (see Section

[54] This is a new section proposed for the City's consideration. It is intended to ensure that an owner's association is in place, functioning, and has sufficient resources for maintaining private common lands and infrastructure. The City is not responsible for enforcing covenants and deed restrictions, but does reserve the right to inspect them. This system may not stop neighborhoods from asking the City to take over private infrastructure, but it should help owners associations to better manage their own resources. These standards do not need to be included with the rest of the subdivision ordinance for the ordinance to function as intended; these standards are proposed for consideration in case the City has had problems with owner association solvency in the past.

<>, Final Plat), as appropriate. Documentation shall include, but not be limited to the information in Section <>, Documentation Requirements.

B. The association shall be established by the subdivider prior to the sale of the first lot in the subdivision.

C. The association documents shall establish that the subdivider shall maintain the common area, common facilities, and infrastructure until at least 75 percent of the lots are sold; and

D. Responsibility for maintaining the subdivision's common areas, common facilities, and private infrastructure shall be transferred in accordance with the standards in Section <>, Transfer of Maintenance Responsibility.

SECTION 6.06. DOCUMENTATION REQUIREMENTS

A. The association documents submitted to the City for review and approval prior to formation shall include, but not be limited to, the following:

1. A declaration of all restrictive covenants and conditions;

2. A declaration of all deed restrictions;

3. A declaration that the association is responsible for liability insurance and all applicable taxes;

4. A declaration of common ownership and maintenance responsibilities of all on-site improvements not dedicated to a local or state agency, including but not limited to streets, street signs, drainage systems, wastewater systems, open space set-aside areas, recreational facilities, and private infrastructure;

5. A description of the structural organization and operating procedures of the association;

6. Association by-laws;

7. A legal description of all open space set-asides and other lands owned in common;

8. Provisions establishing the legal authority of the association to maintain control over all common areas, common features, and private infrastructure in the subdivision, following transfer of control by the subdivider;

9. Provisions authorizing the association to compel contributions from owners in the development to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure;

10. Provisions authorizing the association to increase the amount of mandatory fees or assessments, when necessary, for the continued maintenance of common areas, common features, or private infrastructure;

11. Provisions authorizing the association to convert any member's unpaid assessments into a lien on the real property; and

12. Evidence related to the establishment of a reserve fund to support the continued maintenance and upkeep of common areas, common features, and private infrastructure.

B. Following approval of the required documentation by the City, the subdivider shall record all required documentation with the Henderson County Register of Deeds.

SECTION 6.07. MEMBERSHIP REQUIREMENTS

A. Following establishment of the association by the subdivider, membership in the association shall be automatic and mandatory for all purchasers of land within the subdivision and their successors in title.

B. All members of an association shall be responsible for contributions to the association's reserve fund to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure.

SECTION 6.08. TRANSFER OF MAINTENANCE RESPONSIBILITY

A. The subdivider shall be responsible for maintenance of all common areas, common features, and private infrastructure until maintenance responsibility is transferred to the association in accordance with the standards in this subsection.

B. Maintenance responsibility shall not be transferred from the subdivider to the association until all of the following occur:

1. At least 75 percent of the total number of lots in the subdivision are sold; and

2. The subdivider commissions a report prepared by a licensed professional indicating that all common areas, common features, and infrastructure elements comply with the minimum standards in this Ordinance and the City Code of Ordinances. The report shall also include verification of the reserve fund balance in accordance with the standards in this section; and

3. The City Manager reviews and approves the report prepared by the licensed professional; and

4. A reserve fund dedicated to the continued maintenance and upkeep of common areas, common features, and private infrastructure is established with a banking institution acceptable to the City in the name of the association that contains a minimum balance that includes the following:

a. Except for sidewalks and street trees, ten percent of the construction costs of common features and private infrastructure;

b. Liability insurance and taxes for two years; and

c. Facilities, stormwater, and landscaping maintenance costs for two years.

5. In the event the association has not collected sufficient assessment funds from the lot owners in the subdivision to meet the minimum balance requirements of the reserve fund, the subdivider shall be responsible for the difference needed to meet the minimum balance requirements.

C. The subdivider shall retain maintenance responsibility of all private streets until at least 75 percent of the lots are sold.

D. Applications to cede maintenance responsibility to the association for common areas, common features, or private infrastructure prior to conveyance of 75 percent of the lots in the subdivision may be reviewed by the City Manager. The City Manager, at the request of the subdivider, may waive the timing and reserve fund requirements upon a finding that the association has sufficient financial capacity to assume maintenance responsibility for common areas, common facilities, and private infrastructure.

SECTION 6.09. FAILURE TO MAINTAIN IS A VIOLATION

Failure to maintain common areas, common features, or infrastructure is a violation of this Ordinance and is subject to the penalties and remedies in Article 7, Enforcement.

ARTICLE 7: ENFORCEMENT[55]

SECTION 7.01. PURPOSE

This section establishes procedures through which the City seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.

SECTION 7.02. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons subdividing or occupying land in the City's planning jurisdiction.

SECTION 7.03. STATUTE OF LIMITATIONS

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes.

SECTION 7.04. VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

A. SUBDIVIDE IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Henderson County Register of Deeds;

B. DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in any construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plats, permits, certificates, or other forms of authorization as set forth in this Ordinance;

C. VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, variance, adjustment, condition, or qualification placed upon any required plat, permit, certificate, or other form of authorization upon land or improvements thereon;

D. VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Article 5, Environment, or any related environmental provision of the Zoning Ordinance or the City Code of Ordinances.

SECTION 7.05. RESPONSIBLE PERSONS

A. GENERAL

The landowner, tenant, or other occupant of any land or structure and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this Ordinance.

B. FAILURE BY CITY DOES NOT RELIEVE INDIVIDUAL

Failure of a City official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this section of the Ordinance, or to deny the issuance of a development permit, shall not relieve the landowner from responsibility for the condition or damages

[55] This section is proposed to replace Article 7 of the current regulations. It goes into much greater detail on what constitutes a violation, the City's procedure for addressing violation and remedies.

that may result and shall not result in the City, its officers, or agents being responsible for conditions or damages.

SECTION 7.06. ENFORCEMENT RESPONSIBILITIES

The City Manager shall have responsibility for enforcement of this Ordinance in accordance with the following:

A. INVESTIGATIONS

The City Manager shall have the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.

B. INSPECTIONS

1. The City Manager has the right, upon receipt of permission from a responsible person, to enter on any premises within the jurisdiction at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
2. If the City Manager cannot obtain permission to enter from a responsible person, the City shall obtain an administrative search warrant prior to entering the property.

C. SUPPORTING DOCUMENTATION

The City Manager or a designee shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, or reports relating to complaints or alleged violations of this Ordinance.

SECTION 7.07. ENFORCEMENT PROCEDURE

When the City Manager finds a violation of this Ordinance, they shall notify the responsible person(s) of the violation in accordance with the following:

A. WRITTEN NOTICE OF VIOLATION

A written notice of violation shall be prepared and shall include all of following:

1. VIOLATION EXISTS

That the land or activity is in violation of this Ordinance;

2. NATURE OF THE VIOLATION

The nature of the violation, and citation of the section(s) of this Ordinance violated;

3. REMEDY

The measures necessary to remedy the violation;

4. ALLOWABLE TIME PERIOD

The time period in which the violation must be corrected;

5. PENALTIES THAT MAY BE ASSESSED

That penalties or remedies may be assessed; and

6. APPEAL

That the party cited has the right to appeal the notice in accordance with Section <>, Appeal.

B. DELIVERY OF WRITTEN NOTICE

Written notice of violation shall be provided to the landowner, occupant, or any other responsible person by any of the following means:

1. Certified mail;
2. Registered mail to their last known address;
3. Hand delivery; or
4. Posting notice conspicuously on the property.

C. REMEDY UPON NOTICE

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the allowable time period.

D. FAILURE TO COMPLY WITH ORDER

If the landowner, occupant, or any other responsible person fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner or occupant shall be subject to such remedies and penalties as may be provided for by State law or Section <>, Remedies.

E. EACH DAY A SEPARATE VIOLATION

Each day a violations continues following notice or failure to comply is considered a separate and distinct offense.

SECTION 7.08. REMEDIES

A. CIVIL PENALTIES

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of $100.00 per day under the procedures provided in Section <>, Assessment of Civil Penalties.

B. DENIAL OF PLAT OR CERTIFICATE

The City Manager may withhold or deny a permit, certificate, or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

C. STOP WORK ORDERS

1. GENERAL

Whenever the City Manager determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this Ordinance and that irreparable injury will occur if the violation is not terminated immediately, the City Manager may order the specific part of the work that constitutes, creates, or results in a violation of this Ordinance to be immediately stopped.

2. ORDER IN WRITING

The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.

3. APPEAL

Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order in accordance with Section <>, Appeal. An appeal shall not stay the stop work order unless the BOA fails to hear the appeal within 30 days of receipt of the notice of appeal. If the BOA fails to hear the appeal within 30 days, the stop work order shall be stayed until the BOA acts on the appeal.

4. COMPLIANCE REQUIRED

Neither the responsible person nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect, unless the order is stayed in accordance with subsection (3) above.

D. REVOCATION OF PERMITS

1. The City Manager may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
2. Permits or certificates may be revoked, in accordance with Section 160A-422 of the North Carolina General Statutes, for any of the following:
   a. Any substantial departure from the approved application, plans, or specifications;
   b. Refusal or failure to comply with the requirements of State or local laws; or

c. For making false statements or misrepresentations in securing the permit, certificate, or approval.

3. Any permit or certificate mistakenly issued in violation of an applicable State or City law may also be revoked.

E. CRIMINAL PENALTIES

1. VIOLATION OF EROSION AND SEDIMENTATION CONTROL

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000) per day up to a maximum amount of twenty-five thousand dollars ($25,000) in accordance with Section 113A-64 of the North Carolina General Statutes.

2. ALL OTHER VIOLATIONS

Any violation other than a violation of erosion and sedimentation control rules of this Ordinance may be enforced as a Class 3 misdemeanor as provided for by Sections 14-4 and 160A-175 of the North Carolina General Statutes, subject to a maximum fine of $500 per day.

F. INJUNCTIVE OR OTHER EQUITABLE RELIEF

The City may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the City's application for equitable relief.

1. ACTION BY CITY COUNCIL

Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an subdivision plat, or soil erosion and sedimentation control plan, it may institute a civil action in the name of the City, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation either before, during, or after the institution of any other action or proceeding authorized by this Ordinance.

2. SUPERIOR COURT

The action shall be brought in the Superior Court of Henderson County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

3. NO RELIEF FROM CRIMINAL PENALTIES

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

G. STATE AND COMMON LAW REMEDIES

In addition to other enforcement provisions contained in this section, the City Manager may exercise any and all enforcement powers granted to it by State law or common law.

H. PREVIOUS ENFORCEMENT

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

I. REMEDIES; CUMULATIVE AND CONTINUOUS

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

SECTION 7.09. ASSESSMENT OF CIVIL PENALTIES

A. RESPONSIBLE PARTIES

Any person who violates any provision of this Ordinance, including the owner or occupant of any land, building, structure, sign, use of land, or part thereof, may be held responsible for the violation and subject to the penalties and remedies provided in this Ordinance.

B. NOTICE

1. NOTIFICATION REQUIRED

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with Section <>, Enforcement Procedure.

2. CIVIL PENALTY IMPOSED

If after receiving a written notice of violation under Section <>, Enforcement Procedure, the person fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

3. NOTICE OF PENALTY ASSESSMENT

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

4. ASSESSMENT CONTENTS

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 30 days of the date of the notice.

5. SEPARATE NOTICES

Separate notices must be provided for the first or second violations. The City may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

6. ASSESSMENT UNTIL COMPLIANCE

Civil penalties may be assessed until compliance is achieved.

C. CONTINUING VIOLATION

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

D. DEMAND FOR PAYMENT

If compliance is not achieved, then the City Manager shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

E. NONPAYMENT

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the City may recover any unpaid civil penalty by filing a civil action in the nature of debt.

F. PENALTIES

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation over the course of a calendar year.

ARTICLE 8: MEASUREMENT

SECTION 8.01. RULES OF LANGUAGE CONSTRUCTION[56]

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

A. MEANINGS AND INTENT

1. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Section <>, General Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance.
2. When a specific section of these regulations gives a different meaning than the general definition provided in Section <>, Definitions, the specific section's meaning and application of the term shall control.
3. Terms that are not defined are subject to their common or customary meaning.

B. HEADINGS, ILLUSTRATIONS, AND TEXT

1. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map other than the Official Zoning Map, the text shall control.
2. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

C. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

D. COMPUTATION OF TIME

1. The time in which an act is to be done shall be computed by excluding the first day and including the last day.
2. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the City.

E. TIME-RELATED LANGUAGE

1. TIME STANDARD

Whenever certain hours are named, they shall mean standard time or daylight saving time, as may be in current use in Hendersonville, North Carolina.

2. DAY

The term "day" means a calendar day, including weekends and holidays.

3. HOLIDAY

The term "holiday" means a legal holiday recognized by the City, State, or federal government.

4. MONTH

The term "month" means a calendar month.

5. YEAR

The term "year" means a calendar year.

6. TEMPORARY

The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

[56] This is a new section proposed for the City's consideration. These kinds of provisions are typically found in the zoning ordinance, but they work well in the subdivision regulations as well.

F. REFERENCES TO THIS ORDINANCE

A reference to an article, section, subsection, or paragraph means an article, section, subsection, or paragraph of this Ordinance, unless otherwise specified.

G. REFERENCES TO OTHER REGULATIONS OR PUBLICATIONS

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition or amendment of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

H. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

I. DELEGATION OF AUTHORITY

Whenever a provision of this Ordinance requires or authorizes an officer or employee of the City to do some act or perform some duty, the officer or employee may designate, delegate, and authorize subordinates to perform the act or duty, unless the terms of the provision specifically provide otherwise.

J. JOINT AUTHORITY

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

K. TECHNICAL AND NON-TECHNICAL TERMS

1. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
2. In cases where words or phrases in this Ordinance use two or more meanings, all meanings shall be identified in Article 9, Definitions.

L. PUBLIC OFFICIALS AND AGENCIES

All public officials, bodies, and agencies to which references are made in this Ordinance are those of the City of Hendersonville, North Carolina, unless otherwise indicated.

M. MANDATORY AND DISCRETIONARY TERMS

1. The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.
2. The words "provision," "standard," and "requirement" are used interchangeably and all have the same meaning.
3. The words "condition of approval" are used interchangeably with the word "stipulations" with regard to conditions or requirements attached to the approval of a proposed development.

N. CONJUNCTIONS

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions, or events apply.
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

O. TENSES, PLURALS, AND GENDER OF WORDS

1. TENSE

Words used in the past or present tense include the future tense as well as the past and present.

2. NUMBER

Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.

3. GENDER

Words used in the masculine gender include the feminine gender and the neuter, and vice versa.

P. OATH

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

Q. TERM NOT DEFINED

If a term used in this Ordinance is not defined, the City Manager is authorized to provide a definition, based upon the definitions used in professionally accepted sources.

SECTION 8.02. RULES OF MEASUREMENT[57]

A. PURPOSE

The purpose of this section is to clarify the rules of measurement and exemptions as typically used in this Ordinance. These standards may be modified by other applicable sections of this Ordinance.

B. MEASUREMENTS, GENERALLY

1. STRAIGHT LINES

Unless otherwise stated in this Ordinance, distances specified in this Ordinance are to be measured as the length of an imaginary straight line joining two points.

2. ROUNDING

All calculations that result in a fractional unit or part of a whole number, the number shall be rounded up to the next highest whole number, unless otherwise provided in this section or elsewhere in this Ordinance.

3. IRREGULAR SHAPES

In cases where an irregular shape complicates the application of these standards, the City Manager shall determine the applicable dimensional, setback, or bulk standards.

4. SEPARATION

When the provisions of this Ordinance require separation between two or more lots, or a lot and another feature, separation shall be measured by drawing straight lines from the nearest point of one lot line to the nearest point of the lot line subject to the separation requirement.

5. ABUTTING VERSUS ADJACENT

a. ABUTTING

The term abutting describes a condition where two or more features (a lot line, building, driveway, etc.) are immediately beside or next to one another either on the same lot or on different lots sharing a common lot line.

b. ADJACENT

The term adjacent describes a condition where two or more similar features (a lot line, building, use type, structure, site feature, etc.) are proximate to one another, but are separated by some form of intervening feature, such as a street, alley, water feature, railroad, lot or property under separate ownership, or natural feature of sufficient size so as to prevent direct sight or impede the movement of sound from one feature to another.

C. LOT DIMENSIONS

1. LOT MEASUREMENTS

a. MINIMUM LOT AREA

The minimum amount of required land area, measured horizontally, that must be included within the lines of a lot. Lands located within any private easements shall be included within the lot area. The following features shall not be included in calculating minimum lot area:

i. Public street rights-of-way;
ii. Private street area;
iii. The "pole," arm," or "pan handle" portion of a flag lot; and
iv. Land that is submerged or regularly underwater and jurisdictional wetlands.

b. LOT WIDTH

i. The mean width measured at right angles to its depth at the actual or proposed building setback line.

[57] This is a new section that sets out basic dimensional requirements for lots and measurement techniques used in both the subdivision regulations and often used in the zoning ordinance as well.

ii. Lot width on a cul-de-sac lot is measured at a point 50 feet inwards from the street right-of-way edge.

c. LOT DEPTH

The distance along the perpendicular bisector of the lot.

d. STREET FRONTAGE

The length of the lot line of a single lot abutting a public or private street right-of-way.

e. ACREAGE

The total number or gross number of acres on a tract or site.

2. LOT LINES

A lot line is a line of record bounding a lot which separates one lot from another lot or separates that lot from a public or private street or any other public space. The following terms describe differing types of lot lines:

a. FRONT LOT LINE

The lot line connecting the two side lot lines along the edge of the street that provides a lot's street address or that opposes the primary entrance of a building.

b. REAR LOT LINE

The lot line opposite and most distant from the front lot line.

c. SIDE LOT LINE

The lot line connecting the front and rear lot lines regardless of whether it abuts a right-of-way or another lot line.

3. LOT TYPES

a. CORNER LOT

A lot which occupies the interior angle at the intersection of two street lines or a single street which make(s) an angle of more than 45 degrees and less than 135 degrees. The front of the lot is the lot line adjacent to the street from which the lot obtains its street address.

b. FLAG LOT

A lot having shape and configuration so that it connects to street frontage by an extension and/or arm of the main portion of the lot.

c. INTERIOR LOT

A lot other than a corner lot with only one frontage on a street.

d. LOT OF RECORD

A lot which is part of a subdivision, a plat of which has been recorded in the Henderson County Register of Deeds prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

e. THROUGH LOT (DOUBLE FRONTAGE LOT)

A lot which fronts upon two parallel streets, and/or which fronts upon two streets which do not intersect at the boundaries of the lot.

4. LOTS SERVING CONDOMINIUM USE TYPES

Individual condominium uses, whether residential or nonresidential, are exempted from minimum lot area requirements in this Ordinance, but shall be located on a larger site or parent tract that meets the standards for the zoning district where located.

D. SETBACKS

New lots shall be developed in accordance with all required setbacks for the zoning district where development is located in accordance with the City's Zoning Ordinance.

E. LOT COVERAGE

1. Lot coverage is the percentage of a lot or development site that is covered by impervious, or built-upon area.
2. Built-upon area includes buildings, structures, pavement, and site features that are impervious or partially impervious to rain or stormwater runoff.
3. The following features are not considered impervious, and as a result are not included within the built-upon area:
   a. A slatted deck or walkway;
   b. The water area of a swimming pool;
   c. A surface covered by number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric;
   d. A trail as defined in Section 113A-85 of the North Carolina General Statutes that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or
   e. Landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle.

F. SLOPE AND ELEVATION

1. SLOPE

The degree of deviation of the ground surface from a flat, horizontal elevation, usually expressed in percent or degrees of deviation from horizontal.

2. AVERAGE SLOPE

The amount of elevation change from the lowest point of a lot to the highest point of a lot divided by the distance between the two points.

3. FINISHED GRADE

The established grade following grading, excavation, or other land-disturbing activity.

4. NATURAL GRADE

The level of the ground elevation prior to the commencement of development or land disturbing activity.

5. BASE FLOOD ELEVATION

A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation establishes the Regulatory Flood Protection Elevation.

6. REGULATORY FLOOD PROTECTION ELEVATION

The minimum height allowable for lowest structural member comprising habitable space within a building. This is a height equivalent to one linear foot in elevation above the base flood elevation.

ARTICLE 9: DEFINITIONS

SECTION 9.01. DEFINITIONS

Table <>, Definitions, includes definitions of terms used throughout this Ordinance.

TABLE <>: DEFINITIONS

TERM	DEFINITION
A	
ABANDONMENT	The relinquishment of property or a cessation of the use of the property for a continuous period.
ABUTTING LAND	For the purpose of public notice, abutting land is the condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street or alley.
ACCESS EASEMENT	An easement which grants the right to cross land.
ACCESSWAY	A paved or unpaved travelway intended to serve vehicles for the purposes of obtaining ingress, egress, or circulation around a lot or site. Subdivisions of up to three lots may be served by a vehicular accessway.
ACREAGE	Total acreage means gross acres.
ADJACENT	A parcel of land or development that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street, waterbody, or right-of-way divides the parcels.
ADMINISTRATIVE ADJUSTMENT	A type of flexibility permit approval reviewed and approved or denied by the City Manager in accordance with Section <>, Administrative Adjustment.
ADOPTED POLICY GUIDANCE	The combined future land-use policy guidance provided by the adopted comprehensive plan, area plans prepared for specific parts of the City, and system plans related to the City's infrastructure systems.
AFFECTED PARTY	Owners of land adjoining the land subject to an application and any other person who could suffer an adverse effect to a property interest from a proposed development.
AGGRIEVED PARTY	A person, with a legally recognized interest (i.e., fee simple ownership) and standing to appeal, that is injuriously affected by a decision from any decision-making body of the City, including any officer or agent of the City.
ALL WEATHER SURFACE	Paving or surface treatment to a walkway or vehicular use area that is capable of withstanding adverse weather while still maintaining is regular or typical surface characteristics.
AMENDMENT	A minor change, addition, or deletion to a legal statutory document.
APPEAL	A request for review of an administrative official's or decision-making body's interpretation or decision made under this UDO.
APPLICANT	A person who has submitted a development application for review under applicable provisions of this Ordinance.
APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate City department or board as part of the development review processes.
AS-BUILT PLANS	A set of engineering or site drawings that delineate the specific permitted development as actually constructed.
AUTHORIZED AGENT	A person with express written consent to act upon another's behalf.
B	

TABLE <>: DEFINITIONS	
TERM	DEFINITION
BASE FLOOD	The flood having a 1 percent chance of being equaled or exceeded in any given year. Also known as the "100-year flood."
BASE FLOOD ELEVATION	A determination of the water surface elevations of the base flood as published in the flood insurance study.
BEST MANAGEMENT PRACTICE	A structural or non-structural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
BLOCK	The land lying within an area bounded on all sides by streets.
BLOCK FACE	The lands abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, railroad right-of-way, watercourse, or un-subdivided land.
BOARD OF ADJUSTMENT	A quasi-judicial board appointed by the Board of Commissioners.
BONA FIDE FARM	A bona fide farm shall be as defined in Section 153A-340 of the North Carolina General Statutes, as amended.
BOND	See "Performance Guarantee."
BUILDING	A structure having a roof supported by walls or columns constructed or used for residence, business, industry, or other public or private purposes.
BUILT-UPON AREA	Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including, but not limited to, buildings, pavement, and certain recreation facilities. (Note: wooden slatted decks, gravel, and the water area of a swimming pool are considered pervious.)
BUSINESS DAY	Any day in which normal business is conducted. A business day does not include a holiday or a weekend day.
C	
CALENDAR DAY	All days in every month, including weekends and holidays.
CERTIORARI	A situation where an appellant may file an appeal of a decision directly to a higher court of law.
CLUSTER MAILBOX UNITS	A centralized series of two or more mailboxes that serve individual housing units within a development.
COMMON LAW VESTED RIGHT	Legal doctrine that recognizes where property owners have reasonably made a substantial expenditure of money, time, labor or energy in a good faith reliance on a permit from the government, that they acquire "vested rights" or a protected right to complete the development of their land as originally begun despite any changes in the zoning on the property.
COMPLETE APPLICATION	A complete application is one that: 1. Contains all information and materials established by the City Manager as required for submittal of the particular type of application; 2. Is in the form established by the City Manager as required for submittal of the particular type of application; 3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate review standards of this Ordinance; and 4. Is accompanied by the fee established for the particular type of application. An application will not be accepted for review until it is complete.
CONDITION (OF APPROVAL)	A limitation or stipulation on the range of allowable uses, density, intensity, configuration, or operational parameters of new development or redevelopment. A condition may be proposed by an applicant, a staff member, or an advisory or decision-making body that must be accepted by an applicant to become binding.

TABLE <>: DEFINITIONS	
TERM	DEFINITION
CONDOMINIUM	A building or group of buildings in which dwelling units, offices or floor area are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional undivided basis.
CONNECTIVITY	The relative degree of connection between streets, sidewalks, or other means of travel.
CONSERVATION SUBDIVISION	The division of a tract of land into two or more lots, building sites, or other divisions along with additional land area set aside as open space for conservation and/or recreation purposes.
CONSTRUCTION	The erection of any building or structure or any preparations (including land disturbing activities) for the same.
CONSTRUCTION PLANS	Drawing and specifications prepared by a qualified person showing buildings, structures, utilities, infrastructures, and site configuration aspects associated with development.
CONTIGUOUS	Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.
CONTINUANCE	The adjournment or postponement of review or decision on an application to specified future date.
CONTROL CORNER	A recognized corner of a lot or piece of real property that is permanently marked with a monument or marker for the purpose of determining distances, bearing, or metes and bounds descriptions of the lot or real property.
COVENANT	A binding written agreement between two or more private parties regarding the use, occupancy, or configuration of development that runs with the land.
CURB	A constructed element used to stabilize paving, gutter, planting areas, or sidewalks.
D	
DECK	A structure, without a roof, directly adjacent to a principal building which has an average elevation above finished grade.
DEDICATION	The act of giving, donating, or dedicating land or infrastructure improvements to a unit of government for their operation and maintenance.
DEED RESTRICTION	A written private agreement that restricts the use, occupancy, or configuration placed upon the title of real estate often by the developer.
DEFERRAL	A postponement of consideration of an application or request to a future date that may or may not be specified.
DEMOLITION	Complete or constructive removal of a building or portion of a building on any site.
DESIGNEE	A person selected or designated to carry out a duty or role.
DEVELOPER	A person engaging in land, site, or building development.
DEVELOPMENT	Any man-made change to improved or unimproved real estate, including but not limited to: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials. Development is also any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil.
DRAINAGE	General terms applied to the removal of surface or resurface water from a given area either by gravity via natural means or by systems constructed so as to remove water, and is commonly applied herein to surface water.
DRAINAGE EASEMENT	An easement which grants the right to maintain, relocate, or, utilize land within the easement for the improvement of drainage and stormwater flow.
DRAINAGE, POSITIVE	An area that has been graded or shaped to prevent pooling of stormwater runoff.
DRIVEWAY	The portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not a part of the vehicle accommodation.
DRY HYDRANT	See "Hydrant, Dry."

TABLE <>: DEFINITIONS	
TERM	DEFINITION
DWELLING UNIT	One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided for use as a permanent residence by one family.
E	
EASEMENT	The right to use or temporarily occupy the real property of another owner for a specifically identified purpose. An easement is a recognized interest in real property, but legal title to the underlying land is retained by the owner granting the easement.
EROSION	The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
EROSION CONTROL MEASURE	A device which controls the soil material within the land area under responsible control of the person conducting a land-disturbing activity.
EX PARTE COMMUNICATION	Any communication between a member of a decision-making body and a person involved in a development application that is made without the presence or knowledge of the other members of the same decision-making body.
EXEMPTION	A use, site feature, or development condition that is exempted authorized to deviate from otherwise applicable requirements
EXISTING DEVELOPMENT	Development that is built or those projects that at a minimum have established a vested right under North Carolina zoning law based on at least one of the following criteria: (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; (b) Having an outstanding valid building permit as authorized by Sections 153A-344.1 and 160A-385.1 of the North Carolina General Statutes; or (c) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by Sections 153A-344.1 and 160A-385.1 of the North Carolina General Statutes.
EXISTING LOT OF RECORD	A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the effective date of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of this Ordinance.
F	
FEE	An amount charged in accordance with the regularly adopted fee schedule of the City.
FILL	The act of depositing soil, sand, stone, or other inert debris customarily used for supplementing or augmenting land. The term "fill" also applies to the deposit soil, sand, stone, or other deposited material.
FINAL PLAT	A plan or drawing recorded in the office of the register of deeds that identifies the metes and bounds as well as all applicable conditions applied to a lot or group of lots that have been subdivided.
FINANCIAL GUARANTEE	See "Performance Guarantee."
FINE	A sum of money imposed on a violator as punishment for violation of law.
FLAG LOT	An irregularly shaped lot where the buildable portion of the lot is connected to its street frontage by an arm. Further, in cases where a minimum lot width is prescribed, the arm is less than the presumptive minimum required lot width.
FLOOD INSURANCE RATE MAP	An official map of a community issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the City are delineated.
FLOOD OR FLOODING	For flood damage prevention purposes, a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.

TABLE <>: DEFINITIONS	
TERM	DEFINITION
FLUSHING HYDRANT	See "Hydrant, Flushing."
FRONTAGE	A strip or extent of land abutting and extending along a street.
G	
GENERAL STATUTES	A statute is a written law passed the General Assembly that sets forth general propositions of law that courts apply to specific situations.
GOOD CAUSE	Legally adequate or substantial grounds or reason to take a certain action based upon the circumstances of each individual case.
GRADING	Excavating, filling (including hydraulic fill) or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.
H	
HABITABLE SPACE	A space in a building for living, sleeping, eating or cooking, or used as a home occupation.
HARDSHIP	Special or specified circumstances that place an unreasonable or disproportionate burden on one applicant or landowner over another.
HOLIDAY	A holiday observed by the City.
HOMEOWNERS' ASSOCIATION	An organization of homeowners or property owners of lots or land in a particular subdivision, condominium, or planned development. The owners' association is responsible for maintaining and enhancing the shared private infrastructure (e.g., stormwater, streets, and sidewalks) and common elements such as recreation areas.
HYDRANT, DRY	A hydrant provided for the purposes of fire protection that is not connected to a public or private water supply system, but is instead provides water from an alternate source such as a river or pond.
HYDRANT, FLUSHING	A hydrant that is connected to a public or private water supply system, but that is not intended for fire protection because it lacks sufficient water pressure for firefighting. Flushing hydrants are typically painted a different color than traditional fire hydrants.
I	
IMPERVIOUS SURFACE (OR COVER)	Any structure, material or ground cover consisting of, but not limited to, asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or any other natural or man-made material that prevents the absorption of surface water into the soil.
IMPROVEMENT	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
IN-LIEU FEE	Monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.
J	
JURISDICTION	The official power to make legal decisions and judgements. The term can also be used to describe the geographic boundaries of a municipal corporation or the extent over which a particular agency has control.
JUST CAUSE	Legitimate cause; legal or lawful ground for action.
K	
L	

TABLE <>: DEFINITIONS	
TERM	DEFINITION
LAND DISTURBANCE	Any movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LAND DISTURBING ACTIVITY	Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural grade and may cause or contribute to sedimentation, except activities that are exempt under Section 113A-52(6) of the North Carolina General Statutes. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin.
LANDOWNER	As applied to the standards related to vested rights, an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of the owner.
LEGISLATIVE PUBLIC HEARING	A hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing.
LOT	A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. The term includes plot, parcel, or tract.
LOT OF RECORD	A lot which is a part of an approved subdivision, a plat of which has been recorded in the Office of the Henderson County Register of Deeds or a lot described by metes and bounds the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Register of Deeds and the lot was created prior to the adoption of the City's first subdivision regulations or a lot upon which an existing structure is located provided a valid building permit was obtained for the construction or a lot which at the time of creation met all subdivision and zoning requirements.
M	
MAXIMUM EXTENT PRACTICABLE	No feasible or practical alternative exists, as determined by the City, and all possible efforts to comply with the standards or regulation to minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account but shall not be the overriding factor determining "maximum extent practicable."
MIXED USE DEVELOPMENT	A tract of land or structure developed for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public, or entertainment. Such uses are functionally integrated and share vehicular use areas, ingress/egress, and pedestrian access.
N	
NONCONFORMING LOT OF RECORD	A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance.
NOTICE OF PUBLIC HEARING	The formal legal notification of a public hearing on a proposed development application. A "published notice" is one required to be printed in a newspaper of general circulation. A "mailed notice" is one delivered to specified individuals by US Mail. A "posted notice" is a sign posted on or near the property subject to the application

TABLE <>: DEFINITIONS	
TERM	DEFINITION
NOTICE OF VIOLATION	A notice indicating a violation of this Ordinance.
NUISANCE FLOODING	Somewhat common or typical flooding that takes places in the same locations or with regular frequency.
O	
OATH	The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."
OCCUPANCY	The act, state, or condition of holding, possessing, residing, or otherwise using a premises, lot, site, building, or dwelling.
OPEN SPACE	Areas of land free from buildings, structures, or encumbrances, as well as lands with buildings or structures devoted to active or passive recreational purposes.
ORDINANCE	A legislative enactment of the City of Hendersonville, North Carolina.
OWNER	The person firm or organization in whom is vested the ownership, dominion or title of property. The person firm or organization who is recognized and held responsible by the law as the owner of property.
P	
PARCEL	See "Lot."
PEDESTRIAN PATHWAY	Interconnected paved walkway that provides a pedestrian passage through blocks running from street to street, vehicular use areas, through sites, or other locations.
PENALTY	Punishment for violation of a law or rule.
PERFORMANCE GUARANTEE	Cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or installation of required private site features prior to issuance of a building permit or other development approval.
PERSON	An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization or other entity acting as a unit.
PERSONAL PROPERTY	All forms of property, except real property.
PERVIOUS SURFACE	Any land surface not effectively covered by impervious surface, in which rainfall and stormwater runoff can naturally infiltrate.
PHASE	The discrete portion of a proposed development.
PLAT	A map or plan of a parcel of land which is to be, or has been subdivided.
PRE-APPLICATION CONFERENCE	A meeting or conference conducted by a potential applicant for a permit or development approval and City staff for the purposes of discussing a potential application or City rules regarding development.
PRE-FIRM	Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map..
PRELIMINARY PLAT	A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development including two or more lots.
PRIVATE STREET OR ROAD	A road or way for the use of private individuals that is not dedicated to the City, the State, or other public agency.
PROPERTY OWNER	See "Landowner."
PUBLIC INFRASTRUCTURE	Infrastructure or facilities (such as water lines, streets, storm drainage, sidewalks, trails, etc.) owned by the public and intended for use by the public.
Q	

TABLE <>: DEFINITIONS	
TERM	DEFINITION
QUASI-JUDICIAL DECISION	A decision by an elected or appointed body that applies previously-established policies. Examples include decisions on appeals and variances.
QUASI-JUDICIAL PUBLIC HEARING	A formal public hearing involving the legal rights of specific parties conducted by the Board of Commissioners or the Board of Adjustment based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed at the hearing, and typically involve findings of fact made by the decision-making body.
QUORUM	The minimum number of council, board, or commission members that must be present in order to conduct official business or take official action.
R	
REMEDY	The manner in which a right or law is enforced or satisfied when a violation of the UDO or related law has occurred.
REMEDY A VIOLATION	An act to bring the structure or other development into compliance with State or community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this subchapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.
REQUIRED YARD	The land area located between a lot line and the boundary of a required setback.
RESERVE FUND	A bank account containing reserve funds for the purpose of maintaining commonly-held land, infrastructure, or facilities.
RESIDENTIAL DEVELOPMENT	Buildings established for residential purposes such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, gazebos, and customary home occupations.
REVERSE FRONTAGE	A lot with two or more street frontages that includes a building or structure that is oriented in a manner that differs from other existing structures or from the development patterns indicated by adopted policy guidance or good planning practice.
RIGHT-OF-WAY	Property located within and adjoining the streets, roads and highways within the City, which rights-of-way are owned or otherwise maintained by the state.
ROAD	See "Street."
ROAD, PRIVATE	See "Private Street or Road."
ROAD, PUBLIC	See "Street, Public."
S	
SEDIMENT	Solid particulate matter, both mineral and organic, that is transported by water, air, gravity, or ice from its site of origin.
SEDIMENTATION	The process by which sediment resulting from accelerated erosion is transported off-site by land-disturbing activity.
SIDEWALK	A paved area public right-of-way running parallel to the street for the purposes of pedestrian travel and to facilitate pedestrian access to adjacent streets and land.
SIGHT DISTANCE TRIANGLE	The triangular area formed by a diagonal line connecting two points located at designated locations on intersecting right-of-way lines or a right-of-way line and the curb or a driveway.
SINGLE-FAMILY RESIDENTIAL	Any development where no building contains more than one principal dwelling unit, every principal dwelling unit is on a separate lot, and where no lot contains more than one principal dwelling unit.

TABLE <>: DEFINITIONS	
TERM	DEFINITION
SITE SPECIFIC DEVELOPMENT PLAN	A development plan prepared in accordance with Section 160A-385.1 of the North Carolina General Statutes.
SPECIAL FLOOD HAZARD AREA	The land in the floodplain subject to a one percent or greater chance of being flooded in any given year.
STOP WORK ORDER	An order issued by the City to a landowner or developer to cease and desist all land-disturbing or development activity on a site pending resolution of a problem or conflict.
STORMWATER CONVEYANCE	Stormwater management facilities or features designed to facilitate the movement of stormwater runoff.
STORMWATER MANAGEMENT DEVICE	A structure or facility intended to control stormwater runoff on an individual lot or development site.
STORMWATER RUNOFF	The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
STREET	A paved or unpaved travelway intended for use by automobiles and bicycles.
STREET STUB	A nonpermanent dead end street intended to be extended in conjunction with development on adjacent lots or sites.
STREET, BOULEVARD	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, THOROUGHFARE	A street whose principle function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties. It generally serves or is designed to serve, directly or indirectly, more than 100 dwelling units and is designed to be used or is used to carry more than 800 trips per day.
STREET, CUL-DE-SAC	A street that terminates in a vehicular turnaround.
STREET, EXPRESSWAY	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, LOCAL	A street whose primary function is to provide access to abutting properties. It generally serves or is designed to serve less than 100 dwelling units and handles less than 800 trips per day.
STREET, PRIVATE	A vehicular travelway not dedicated or offered for dedication as a public street but resembling a cul-de-sac or a local street by carrying traffic from a series of driveways to the public street system.
STREET, PUBLIC	A dedicated public right-of-way in which the roadway has been accepted or constructed to public standards for vehicular traffic, but not an alley.
SUBDIVIDER	Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

TABLE <>: DEFINITIONS	
TERM	DEFINITION
SUBDIVISION	As used in this ordinance means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition provided, however, that any subdivision document or plat to be recorded pursuant to such exclusions shall have the notation of "No Approval Required" and the signature of the City Manager or his designated agent before filing in the office of the Henderson County Register of Deeds. A "Subdivision" shall not include the following: 1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance. 2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved. 3. The public acquisition by purchase of strips of land for the widening or opening of streets. 4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way or easement dedication is involved and where the resultant lots equal or exceed the standards set forth in this Ordinance.
SUBDIVISION, EXEMPT	A division of land that is exempted from review and approval by the City in accordance with the North Carolina General Statutes.
SUBDIVISION, EXPEDITED	A subdivision of land reviewed and approved administratively that is exempted from most of the public infrastructure requirements.
SUBDIVISION, MINOR	A subdivision of land that includes up to eight lots (including the residual parcel) with no extension of public streets, public water, public sewer, or other public utility.
SURETY BOND	See "Performance Guarantee."
T	
TRACT	A separate tract of land under common or unified ownership in existence on the effective date of this Ordinance.
U	
UNSUBDIVIDED DEVELOPMENT	All construction of structures upon land under common singular ownership where such construction does not involve the sale of individual lots or parcels of land and the streets and ways are intended for use by the public or occupants of the development.
UTILITY EASEMENT	An easement which grants the right to install and maintain utilities including, but not limited to, water lines, sewer lines, storm sewer lines, electrical power lines, telephone lines, natural gas lines, and community antenna television systems.
V	
VARIANCE	The permission to develop or use property granted by the BOA, in a manner that that relaxes or waives a requirement in this Ordinance.
VEHICULAR ACCESSWAY	See "Accessway."
VESTED RIGHT	A right pursuant to North Carolina General Statutes Section 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.
VIOLATION	A breach, infringement, or transgression of a law or requirement in this Ordinance or a permit or development approval.
W	

TABLE <>: DEFINITIONS	
TERM	DEFINITION
WRIT OF CERTIORARI	A writ of superior court to call up the records of an inferior court or a body acting in a quasi-judicial capacity.
X	
Y	
YARD	An open space on the same lot with a building or group of buildings which open space lies between the building or group of buildings and the nearest lot line and is occupied and unobstructed from the ground upward by buildings or structures except by permitted accessory buildings or uses.
Z	

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 01/28/2020

Presenter: Captain Chris LeRoy

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 09

This revision of the animal ordinance clarified several definitions and removed some items that were unenforceable as previously written.

Major changes in the ordinance revolved around the addition of procedures to deem a dog or animal dangerous. Included in this procedure were notifications and appeal processes that can be taken by the animal owner. Also included are requirements the owner must adhere to in the event an animal is deemed dangerous and the owner elects to keep and maintain the animal.

The creation of an animal advisory board is also included in this revision. The animal advisory board will hear appeals to dangerous animal declaration, aid in the enforcement of the animal ordinance and provide recommendations to the animal ordinance. The board will be compiled of volunteers appointed by the City Council. The advisory board will have seven members that serve three-year terms.

Budget Impact: $ No Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move that City Council approve the revision of the Animal Ordinance.

Attachments:

Proposed Ordinance Revision
Propose Animal Advisory Board
Memorandum from City Attorney and District Attorney

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES WITH RESPECT TO THE WELFARE OF DOMESTIC ANIMALS

WHEREAS, the State of North Carolina has declared that municipalities may define and regulate animal cruelty; and

WHEREAS, the City of Hendersonville has determined that cruelty to animals is a danger to the public health, safety and welfare; and

WHEREAS, the City Council has determined that its current ordiane with respect to the welfare and protection of domestic animals is in many cases unenforceable; and,

WHEREAS, the City Council believes that the protection of animals is best effect with an enforceable ooordinance,

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

SECTION 1. Chapter 10 of the Hendersonville Code of Ordinances is hereby amended to read as follows:

Chapter 10 - ANIMALS[1]

Footnotes:

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Cross reference— Environment, ch. 20; health and sanitation, ch. 26; disposal of dead animals, § 44-47; application of traffic chapter to persons riding animals, § 50-7.

State Law reference— Authority to define and prohibit the abuse of animals, G.S. 160A-182; authority to regulate domestic animals, G.S. 160A-186.

ARTICLE I. - IN GENERAL

Sec. 10-1. - City declared bird sanctuary.

The territory embraced within the corporate limits of the city is hereby declared to be a bird sanctuary.

(Code 1971, § 6-1)

Sec. 10-2. - Harming or destroying birds prohibited; exceptions.

No person shall wilfully destroy or harm any bird or bird's nest within the city; provided, however, that this section shall not be deemed to protect any birds classed as predatory by the state law or by the wildlife resources commission nor shall it extend to English Sparrows, pigeons, crows or starlings.

(Code 1971, § 6-2)

Sec. 10-3. - Protection of squirrels.

(a) The entire area embraced within the corporate limits of the city is hereby designated as a sanctuary for all species of squirrel (family Sciuridae) and in particular, the Brevard White Squirrel.

(b) It shall be unlawful for any person to hunt, kill, trap or otherwise take any protected squirrels within the city limits except pursuant to the authority and permit of the state wildlife resources commission. This section may not protect any squirrels classified as pests by the state statutes, except that the Brevard White Squirrel shall always be protected by this section.

(Ord. of 8-8-96, §§ 1, 2)

Sec. 10-4. - Animals running at large.

It shall be unlawful for any person to allow or permit any animal owned, kept or harbored by such person to run at large within the city at any time upon any property not his own without the written permission of the owner of such property.

(Code 1971, § 6-3)

Cross reference— Streets, sidewalks and other public places, ch. 46.

Sec. 10-5. - Fowl running at large.

No person shall permit ducks, geese or chickens, or other fowl under his control to remain on or in any of the streets or public places of the city at night, or to run at large in the daytime.

(Code 1971, § 6-4)

Cross reference— Streets, sidewalks and other public places, ch. 46.

Sec. 10-6. - Dogs and cats fouling public grounds.

It is hereby declared to be unlawful for any owner, keeper or walker of any dog or cat to permit his dog or cat to discharge such animal's excreta upon any public or private property, other than the property of the owner of any dog or cat, within the city, if such owner, keeper or walker does not immediately thereafter remove and clean up such animal's excreta from the public or private property.

(Code 1971, § 6-7)

Cross reference— Parks and recreation, ch. 38; streets, sidewalks and other public places, ch. 46.

Sec. 10-7. - Animals at special events.

(a) It shall be unlawful for any person to allow or permit any animal owned, kept, or harbored by, or under the control of, such person to be present within the boundaries of any special event permitted pursuant to section 46-84, below, during the hours of operation of such special event.

(b) The following animals are exempted from the prohibition contained in subsection (a):

(1) Service dogs;

(2) Animals under the control of on-duty law enforcement personnel;

(3) Animals explicitly authorized by the terms of a street vendor permit issued pursuant to section 14-284, below.

(4) Dogs that are properly restrained and are at all times be under the full control of their handler.

(c) The special events committee, as established in section 46-85, may require the suspension of the exemption for domesticated dogs contained in subsection (b) item (4) above under either of two conditions.

(1) The health, safety and welfare of the community or the dogs or both will be compromised should dogs be allowed, or

(2) The event organizer requests that dogs be excluded from the event.

(Ord. No. 02-0523, § 1, 5-9-02; Ord. No. 17-0220, § 1, 2-9-17)

~~Sec. 10-8. - Enforcement by Henderson County.~~

~~Pursuant to N.C.G.S. § 153A-122, Henderson County shall be authorized and permitted to enforce the provisions of Chapter 66A of the Henderson County Code within the corporate limits of the city. In the event of a conflict between the provisions of chapter 66A of the County Code and the provisions of this chapter, the provisions of chapter 66A shall prevail.~~

(Ord. No. 04-0214, § 1, 2-5-04)

Editor's note— Ord. No. 04-0214, § 1, adopted Feb. 5, 2004, enacted provisions intended for use as § 10-7. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as § 10-8.

Secs. 10-9—10-40. - Reserved.

ARTICLE II. - KEEPING ANIMALS[2]

Footnotes:

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Editor's note— Ord. No. 09-0104, § 1, adopted Jan. 8, 2009, deleted the former Art. II, Div. 1, §§ 10-41—10-45, Div. 2, §§ 10-66—10-71, and enacted a new Art. II as set out herein. The former Art. II pertained to keeping animals and derived from Code 1971, §§ 6-17—6-21; Code 1971 §§ 6-27—6-32.

DIVISION 1. - GENERALLY

Sec. 10-41. - Compliance with article.

No sheep, cattle, goats or other livestock shall be kept or maintained by any person within the city except as provided in this article.

(Ord. No. 09-0104, § 1, 1-8-09)

Sec. 10-42. - Swine.

It shall be unlawful for any person to keep any hogs or other swine within the city with the exception of miniature pigs weighing not more than 100 pounds kept as household pets. Only one such miniature pig shall be kept in any household. Such pigs shall be kept in a restrained area and shall not be permitted to run at large. Any outside area occupied by a miniature pig shall be regularly sanitized and kept free from waste. No such area shall be allowed to become muddy or unsanitary.

(Ord. No. 09-0104, § 1, 1-8-09; Ord. No. 15-1268, § 1, 12-3-15)

Sec. 10-43. - Milking cows or goats and horses.

Milking cows, milking goats and horses may be kept within the city subject to applicable health statutes and regulations.

(Ord. No. 09-0104, § 1, 1-8-09)

Sec. 10-44. - Location restrictions.

No person shall keep any animal within 150 feet of any building in the city occupied and used as a residence.

(Ord. No. 09-0104, § 1, 1-8-09)

Sec. 10-45. - Maintenance of stables, sheds or other places where livestock is kept.

Any person owning or having the use of any stable, shed or place where any livestock is kept shall keep such place in a clean and sanitary condition. All droppings shall be removed from the premises every 24 hours.

(Ord. No. 09-0104, § 1, 1-8-09)

Cross reference— Buildings and building regulations, ch. 12.

Secs. 10-46—10-65. - Reserved.

DIVISION 2. - FOWL

Sec. 10-66. - Keeping of fowl subject to applicable law.

The keeping of fowl shall be subject to all applicable health statutes and regulations.

(Ord. No. 09-0104, § 1, 1-8-09)

Secs. 10-67—10-69. - Reserved.

Sec. 10-70. - Requirements for construction and maintenance of enclosures.

Each person keeping chickens and fowl within the city shall comply with the following rules and regulations:

(1) The chicken or fowl house and run must be enclosed, and the chickens or fowl kept within it at all times.

(2) The chicken or fowl house must be used for chickens or fowl only and it must be well ventilated, with one square foot of window to 15 square feet of floor space. All walls must be whitewashed twice yearly.

(3) The run must be well drained so there will be no accumulation of moisture.

(4) The floor of the house and run must be lined at least twice weekly from May 1 to October 1 of each year.

(5) The floor of the chicken or fowl house and run shall be cleaned daily in a manner approved by the health department and all droppings and body excretions shall be removed daily and placed in a flyproof covered container by the owner or holder of the permit.

(Ord. No. 09-0104, § 1, 1-8-09)

Sec. 10-71. - Disposal of dead chickens and fowl.

It shall be unlawful for any person to allow any dead chicken or fowl to remain on the premises covered by a permit issued under this division, and disposal of any dead chicken or fowl may not be contrary to any methods approved by the county health department.

(Ord. No. 09-0104, § 1, 1-8-09)

Cross reference— Solid waste management, ch. 44.

Secs. 10-72—10-105. - Reserved.

ARTICLE III. - DOGS

DIVISION 1. - GENERALLY

Sec. 10-106. - Definitions.

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

Animal control officer means any person designated or authorized by a local governing body, either city or county, to perform the duties of detaining or holding any animal deemed to be mischievous, sick or at large within the city limits, or a public nuisance animal. The animal control officer shall be the designated individual who, when necessary, will humanely destroy any dog deemed to have dangerous or vicious propensities or otherwise pose a safety or health risk to any person or other animals.

Animal control shelter means any holding place or other facility designated by the county board of commissioners for the detention of animals.

At large means off the premises of the owner and not under the control of the owner, a member of the owner's immediate family, or designee by means of a leash, cord, chain or voice command.

Dangerous dog means any dog that without provocation has killed or inflicted severe injury on a person; or is determined by the Chief of Police or designee and/or City of Hendersonville Animal Advisory Board to be potentially dangerous because the dog has engaged in one or more of the behaviors listed under "Potentially Dangerous Dog" definition. Any dog owned or harbored primarily or in part for the purposes of dog fighting, or any dog trained for dog fighting.

Dog means both the male and female members of the canine species of animals.

Holding facility means any pet shop, kennel, cattery or combination thereof.

~~*Owner* means any person owning, keeping, harboring, possessing or acting as custodian, however, temporarily, of an animal; provided, however, that a person having temporary custody or possession of an animal for the sole purpose of turning over such animal to a member of the county animal control division or other peace officer shall not be deemed the owner of the animal.~~

~~*Public nuisance*~~*Mischievous animal* means any animal or group of animals which:

(1) Is repeatedly found at large.

(2) Damages the property of anyone other than its owner.

~~(3) Is vicious.~~

(4) Causes fouling of the air by odors.

(5) Causes unsanitary condition of enclosures or surroundings.

~~(6) By virtue of number or type is offensive or dangerous to public health, safety or welfare.~~

(7) Excessively makes disturbing noises.

~~(8) Is diseased and dangerous to the public health.~~

Owner means any person owning, keeping, harboring, possessing or acting as custodian, however, temporarily, of an animal; provided, however, that a person having temporary custody or possession of an animal for the sole purpose of turning over such animal to a member of the county animal control division or other peace officer shall not be deemed the owner of the animal.

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Potentially dangerous dog means a dog that the Chief of Police or designee and/ or City of Hendersonville Animal Advisory Board determines to have:

a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

b. Killed or inflicted severe injury upon a domestic animal when not on the owner's property; or

c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Vicious animal means any animal which constitutes a physical threat to human beings or other animals by virtue of attacks of such number and severity as to cause property damage or physical injury.

Voice command means the ability to direct or instruct a dog under one's control by issuing verbal commands that will cause a dog to obey the person issuing such commands thereby causing the dog to act in a manner not likely to cause harm to any other person, animal or property. Voice command is also likely to prevent any dangerous, vicious or mischievous acts by any dog under such control.

(Code 1971, § 6-43)

Cross reference— Definitions generally, § 1-2.

Sec. 10-107. - Running at large.

It shall be unlawful for any owner to allow his dog to be at large in the city limits while not under the control of the owner, a member of the owner's immediate family or designee by means of a leash, cord, chain or voice command as required in this article.

(Code 1971, § 6-44)

Cross reference— Streets, sidewalks and other public places, ch. 46.

Sec. 10-108. - Female dogs in heat.

It shall be unlawful for any person who owns or keeps a female dog to allow such dog to run at large while in heat.

(Code 1971, § 6-45)

Sec. 10-109. - ~~Dangerous, vicious and~~ Mischievous dogs.

(a) No dog of ~~dangerous, vicious, fierce or~~ mischievous propensities or tendencies may be at large at any time within the limits of the city, and it shall be unlawful for the owner or other person having any such dog in his possession or under his control, or in any manner keeping or harboring any such dog within the limits of the city, to cause or permit any such dog to be at large in the city.

~~(b) If any dog bites or attempts to bite any person while such dog is at large, then such dog shall be conclusively presumed to be a dangerous dog and a dog of dangerous propensities and tendencies.~~

~~(c) If any dog attacks or attempts to attack any other dog or other animal while such dog is at large, or chases or otherwise attempts to catch a person, then such dog shall be conclusively presumed to be a vicious dog and to have vicious propensities and tendencies.~~

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(d) If any dog at large overturns a securely covered garbage ~~container, or~~container or removes any garbage from any such securely covered container, then such dog shall be conclusively presumed to be a mischievous dog and a dog of mischievous propensities and tendencies.

(Code 1971, § 6-46)

Sec. 10-110. - ~~Destruction of~~ Ddangerous~~, vicious~~ / potentially dangerous dogs restricted.

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A. General provisions. It shall be unlawful for any person to own or in any way maintain or harbor a dog that is dangerous/potentially dangerous, except as provided in this Chapter. Notwithstanding any exemption listed below, any dog which has killed a person shall be immediately euthanized by the Henderson County Animal Service Center.

1. Reporting requirement. Any attack or biting by a dog upon a person, livestock, or domestic animal; transfer, gift, sale or other conveyance of ownership or possession of a dangerous or potentially dangerous dog; confinement to a Veterinary facility; removal from territorial jurisdiction of the county; animal's death must be reported by any of the following individuals:

a. owner, keeper, harborer of a dog deemed dangerous/ potentially dangerous or of a dog who has attacked or bitten a person or domestic animal;

b. victim of or person witnessing such of an attack or biting;

c. veterinarian treating a domestic animal for such an attack or biting;

d. Health care professional treating a person for such an attack or biting.

2. The report must be made to the Police Department within 24 hours of the event.

3. Failure to report an incident within 24 hours may result in criminal and civil penalties under this Ordinance and personal liability in subsequent incidents.

B. Exemptions. The provisions of this chapter do not apply to dogs causing injuries when:

1. Used by law enforcement agencies to carry out official law enforcement duties;

2. Functioning lawfully as hunting or herding dogs, or in controlling predators on the property of, or under control of, the owner when performing duties appropriate to said functions;

3. Protecting the owner or owner's premises from trespassers and other criminal perpetrators while on its owner's premises;

4. Protecting itself or its young from assault, torment, or abuse.

C. Declaration of dangerous/potentially dangerous dog. The Police Chief or his/her designee shall have the authority to declare a dog to be a dangerous/potentially dangerous dog. Any determination that a dog is dangerous/potentially dangerous shall be made in writing summarizing the available evidence and which shall be delivered or mailed by certified or registered mail to the owner. The written determinations shall order compliance with the appropriate provisions of this ordinance and may impose reasonable conditions to maintain the public health and safety.

D. Appeal. Any person who owns a dog that has been declared dangerous/potentially dangerous shall have the right to appeal this decision to the Animal Advisory Board.

1. Manner of appeal. The owner of a dog declared dangerous/potentially dangerous must request an appeal of the determination in writing. The written appeal must be submitted to the Chief of Police, and must be received by the Chief of Police or postmarked within 5 calendar days of the receipt by the owner of notice of the declaration.

2. Pending the appeal, the owner of a dog declared dangerous/potentially dangerous shall comply with the provisions of § 10-110E.

3. Hearing procedures. Once properly appealed, the Animal Advisory Board shall conduct a public quasi-judicial hearing to determine whether the declaration of the animal as dangerous/potentially dangerous is correct.

4. Outcome. If the dog is affirmed by the Animal Advisory Board as being dangerous/potentially dangerous, then the owner shall comply with the terms of § 10-110E, F, G. Any person who owns a dog affirmed dangerous/potentially dangerous by the Animal Advisory Board or its designee has the right to appeal this determination to the Superior Court.

E. Enclosures and control measures for dangerous/potentially dangerous dogs. If a dog has been determined to be dangerous/potentially dangerous, as specified in this section, the dog may be retained upon the owner satisfying the following conditions:

1. The owner must insure that the dog at all times on and off the owner's property remains securely enclosed as per the Ordinance or controlled and muzzled as described below. Failure to do so shall subject the owner to penalty under this chapter:

   a. Confine the dog within the owner's residence; or,

   b. Erect and confine the dog (except when muzzled and controlled as required below), within 30 days in a securely enclosed and padlocked pen with a concrete bottom and secure top. The structure must be secured by a child-resistant lock. Pending construction of such pen, the dog must be confined within the owner's residence; or

   c. The animal must be muzzled and under restraint by a competent person who, by means of a leash or chain, has such animal firmly under physical restraint at all times when not in a secure building or enclosure.. The muzzle must be of the appropriate size for the animal, and must be of a type and model approved in advance by the Hendersonville Police Department, and must be in good repair. In approving or disapproving of a particular muzzle, the Hendersonville Police Department shall take into account the size and demonstrated behavior of the dog, and the potential for injury in case of a failure of appropriate muzzling.

   d. Any dog deemed dangerous shall not be permitted in public recreation areas, including dog parks, parks or greenways.

2. The owner must post a warning sign, of at least 120 square inches, which is to be visible to any adjoining property from each exposure of the residence or the structure in which the dangerous/potentially dangerous dog is confined. Each sign must have an approved graphic representation of an appropriate animal such that the dangerousness of the animal is communicated to those who cannot read, including young children.

3. Microchip. Within 10 days of the determination or appeal determination, the owner of a dangerous/ potentially dangerous dog must demonstrate to the Animal Enforcement that such dog had a microchip implanted.

4. Inspection. Animal Enforcement shall cause periodic inspections to be made of the premises where the dangerous/potentially dangerous dog is kept to assure compliance with the provisions of this Ordinance. The owner must permit these inspections at any reasonable time without notice to the owner from the Animal Enforcement Officers.

5. Control Measures.

    a. All control measures required by this section must be met immediately upon the determination that the animal is dangerous/potentially dangerous except for the construction of the enclosure discussed in section 1(b) of this provision. The Owner has 30 days to construct the enclosure during which time the animal must be confined indoors and may only be permitted outside under the control of a competent person by leash and the animal must be muzzled. Failure to meet all control measures may result in the immediate impoundment of the animal and civil and criminal penalties.

    b. If the owner has no place to keep the animal while the structure is being constructed, the animal may be kept at the Henderson County Animal Services Center or at a private establishment approved by Animal Enforcement at the owner's expense.

F. Notification. Within 24 hours:

1. Of change of address or ownership of a dangerous/potentially dangerous dog, the owner shall provide written notification of the change of address or ownership to the Chief of Police, stating the full name if there's a new owner, address, and location of the new owner of the dog.

2. Of the death of a dangerous/potentially dangerous dog, the owner shall provide written notification of the dog's death to the Chief of Police.

G. Notification prior to transfer. Prior to any transfer to a new owner (with or without consideration) of a dangerous/potentially dangerous dog, the owner must provide to the Chief of Police a written statement, signed before a notary by the transferee (on a form obtained from the Hendersonville Police Department), indicating the transferee's understanding of the transferee's obligations hereunder as an owner of a dangerous/potentially dangerous dog. If the dangerous or potentially dangerous dog is being transferred out of Hendersonville or out of North Carolina,

1. The owner of the animal must notify the Sheriff/Chief of Police of the new jurisdiction to which the animal is being moved that this dog has been deemed a dangerous/potentially dangerous dog;

2. The Chief of Police also shall notify the new jurisdiction that the animal has been deemed dangerous and the circumstances surrounding the case.

3. The owner must comply with any local regulations regarding dangerous dogs in the new location.

H. Immediate impoundment. Any dangerous/potentially dangerous dog kept in violation of this section may be immediately impounded upon issuance of any warrant for the same, pending the outcome of the criminal action. If the owner is convicted of a criminal offense of keeping a dangerous/potentially dangerous dog in violation of this section, in addition to any criminal penalties imposed, the Chief of Police or his/her designee may request Henderson County Animal Services to euthanize the dog. Nothing herein shall be construed to in any way limit the use of civil penalties for a violation of this section.

1. Cost of impoundment. Costs of impoundment at the Animal Services Center shall be paid by the owner or the person liable for the animal at a daily rate as determined by Henderson County. In instances where the Animal Services Center must impound the animal(s) at a private facility or kennel, the person liable for the animal will pay the rate established by those facilities.

2. Release from impoundment.

   a. No dog deemed dangerous or potentially dangerous who has been impounded by the Animal Services Center shall be released to the owner from impoundment except upon proof submitted by the owner or person liable for the animal that all the elements of this Ordinance have been met as verified by Animal Enforcement. This shall not apply in instances where criminal charges have been brought against the owner.

   b. If criminal charges have been brought against the owner for failure to comply with this Ordinance or for interference with the operations of the Animal Services Center, no dog deemed dangerous shall be released from Animal Services until determined by a court of competent jurisdiction. During this time while the dog is impounded, it cannot be euthanized and the cost of impoundment shall be charged to the owner.

   c. No dog deemed dangerous or potentially dangerous may be adopted.

   All dogs deemed dangerous or potentially dangerous must be altered within 30 days of the determination.

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~~Any dangerous or vicious dog or dog having dangerous or vicious propensities and tendencies found at large, after the owner thereof has previous knowledge or notice that such dog is dangerous or vicious or has dangerous or vicious propensities and tendencies, may be killed by any police officer of the city without such officer having to catch or impound such dog.~~

(Code 1971, § 6-47)

Sec. 10-111. - ~~Muzzling.~~ Destruction of animals that cannot be seized or confined by reasonable means.

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A. Notwithstanding any other provision of this Chapter, a dog or cat that cannot be seized by reasonable and normal means, trapped in a humane, live-capture animal trap, or tranquilized, may be humanely destroyed in the field by the Sheriff or other law enforcement officers.

B. Vicious, dangerous/potentially dangerous animals so designated, wild animals, or an animal attacking a human being, another pet, or livestock may be immediately destroyed, if such destruction is necessary for the protection of the public health and safety or that of County staff.

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~~Whenever it becomes necessary to safeguard the public from the dangers of hydrophobia, the mayor, if he deems it necessary, shall issue a proclamation ordering every person owning or keeping a dog to confine it securely on his premises unless such dog shall have a muzzle of sufficient strength to prevent its biting any person.~~

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(Code 1971, § 6-48)

Sec. 10-112. - Procedure upon suspicion of rabies.

(a) If a dog is believed to have rabies or has been bitten by or exposed to a dog or other animal suspected of having rabies, such dog shall be confined by a leash or chain or by other means on the owner's premises and shall be placed under the observation of a veterinarian at the expense of the owner for a period of two weeks. The owner shall notify the ~~county~~ animal control officer of the fact that his dog has been exposed to rabies, and, at his discretion, the animal control officer is empowered to have such dog removed from the owner's premises to a veterinarian hospital and there placed under observation for a period of two weeks at the expense of the owner.

(b) It shall be unlawful for any person knowing or suspecting a dog has rabies to allow such dog to be taken off his premises or beyond the limits of the city without the written permission of the county animal control officer. Every owner, or other person, upon ascertaining a dog is rabid, shall notify the animal control officer or a law enforcement officer who shall either remove the dog to the pound or summarily destroy it.

(Code 1971, § 6-49)

Cross reference— Health and sanitation, ch. 26.

Sec. 10-113. - Vaccination.

It shall be unlawful for any owner of any dog to fail to have his dog vaccinated with an anti-rabies vaccine by a licensed veterinarian.

(Code 1971, § 6-50)

Cross reference— Health and sanitation, ch. 26.

Sec. 10-114. - Tag.

Upon the vaccination of any dog under the provisions of this article, the veterinarian shall issue to the owner of such dog a tag evidencing such vaccination. It shall be the duty of the owner to affix the tag to the collar worn by the dog and to cause the dog to wear the collar at all times.

(Code 1971, § 6-51)

Sec. 10-115. - Impoundment authorized.

It shall be the duty of any law enforcement officer or animal control officer to initiate appropriate enforcement action whether such action requires the officer to cite the owner of such dog, apprehend, or cause to be apprehended, any dog found to be in violation of any provision of this article.

(Code 1971, § 6-52)

Secs. 10-116—10-135. - Reserved.

DIVISION 2. - RESERVED[3]

Footnotes:

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Editor's note— Ord. No. 15-0411, § 1, adopted April 2, 2015, repealed Ch. 10, Art. III, Div. 2, which pertained to the licensing of dogs and derived from Code 1971, §§ 6-58, 6-59.

Secs. 10-136—10-150. - Reserved.

ARTICLE IV. - ANIMAL CRUELTY[4]

Footnotes:

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Editor's note— Ord. No. 10-0409, § 1, adopted Apr. 1, 2010, did not specify manner of inclusion. Hence to facilitate indexing, said provisions have been codified as Art. IV, §§ 10-151—10-155.

Sec. 10-151. - Definitions.

As used in this article, the following terms have the meanings here provided.

Adequate food shall mean the provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foods shall be served in a receptacle, dish, or container that is physically clean.

Adequate shelter means proper and adequate shelter that will protect the animal from adverse weather and will allow the animal to stand, sit, turn around, and lie down without restriction and is kept humanely clean and sanitary.

Adequate water shall mean the ready availability to the domestic animal at all times of clean, potable (fresh) water.

Domestic animal shall mean any mammal or bird kept as a pet, and shall also include any animals including all dogs and cats owned or kept by a person, which animals are members of the genus Felidae or the genus Canidae.

Tether means a ~~metal~~ chain, ~~or~~ cable or rope ~~coated metal cable~~ used to restrain a domestic animal.

Tethering refers to the practice of securing a domestic animal to a stationary object by means of a ~~metal~~ chain, ~~coated steel~~ cable or rope keeping the animal restrained. This does not refer to periods when animals are being walked on a leash or for temporary grooming or other professional services.

(Ord. No. 10-0409, § 1, 4-1-10; Ord. No. 10-1148, § 1, 11-4-10; Ord. No. 11-0312, § 1, 3-3-11)

Sec. 10-152. - Mistreatment of animals prohibited.

(a) *[Unlawful treatment.]* It shall be unlawful for any person to deprive or cause to be deprived any domestic animal of adequate food, water, necessary medical attention and adequate shelter.

(1) Adequate food and water, as defined herein, must be provided for all domestic animals.

(2) Necessary medical attention. No person owning or responsible for any domestic animal shall fail to supply the animal with necessary medical attention when the animal suffers from illness, injury, or disease.

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(3) Adequate shelter, protection from the weather and humanely clean conditions. No persons owning or responsible for any domestic animal shall fail to provide the animal with appropriate shelter, protection from the weather and humanely clean conditions as prescribed in this section.

(b) *When confinement prohibited.* No animal may intentionally be confined in a building, enclosure, car, boat, vehicle or vessel of any kind when to do so would expose the animal to heat or cold harmful to its health.

(c) *Tethering.* Domestic animals may be tethered to a stationary object only if all of the conditions numbered (1) through (9) are followed:

(1) A tether must be equipped with a swivel on both ends.

(2) A tether must be a minimum of ten feet in length and is fabricated with a material that prevents tangling ~~be made of either metal chain or coated steel cable~~.

(3) Tethers must be attached to a collar or harness worn by the domestic animal and under no circumstances shall the tether be placed directly around the domestic animal's neck. Tethers are never to be used in conjunction with training collars such as choke or pinch-style collars.

(4) The weight of the tether must not exceed ten percent of the total body weight of the domestic animal but shall be of sufficient strength to prevent breakage.

(5) The tether by design and placement must allow the domestic animal a reasonable and unobstructed range of motion without the possibility of entanglement.

(6) The domestic animal must be six months of age or older to be tethered.

(7) Only one domestic animal may be attached to a single tether.

(8) Pulley systems, running lines, and trolley systems cannot be used in conjunction with training collars such as choke or pinch-style collars. The attached tether may not be made of rope, twine, cord or similar material.

a. Pulley, running line or trolley systems shall be at least ten feet in length and no more than seven feet above ground.

b. The attached tether shall be no less than ten feet in length.

(9) No tether shall be affixed to a stationary object which allows a domestic animal to come within five feet of any property line.

(10) The animal care & control officer may have in their sole discretion the power to order any resident a minimum tethering requirement when such a condition is found to be detrimental to the health, safety and welfare of the domestic animal.

(11) No animal shall be left tethered outside without adequate shelter for longer than 30 minutes, during any period which a serve weather warning has been issued for the immediate area by the National Weather Service and a licensed veterinarian determines that current or expected weather conditions could cause significant harm to the animal. The determination shall be based on breed, estimated age, health and condition of the animal. ~~more than two hours in any continuous 12 hour period.~~

~~(12) Exemptions. Citizens residing in townhomes, apartments, condos or similar multi-family housing units with lot sizes insufficient to meet the length and property lines requirements specified in sections (2), (8) and (9) above, may only tether domestic animals for temporary exercise and relief.~~

(d) *Properly fitted collars required.* An owner of a dog or cat shall not permit injury or inflict pain upon such animal from an improperly fitting or embedded collar.

(Ord. No. 10-0409, § 1, 4-1-10; Ord. No. 10-1148, § 1, 11-4-10; Ord. No. 11-0312, § 1, 3-3-11; Ord. No. 15-0741, § 1, 7-2-15)

Sec. 10-153. - Violations and penalties.

The following penalties shall pertain to violations of this chapter:

(a) *Misdemeanor.* The violation of any provision of this chapter shall be a misdemeanor, and any person convicted of such violation shall be punishable as provided in G.S. 14-4 or other applicable law. Each violation of this chapter (or if a continuing violation, each day in which the violation continues) is a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this subsection does not affect the liability for fees or civil penalties imposed under this chapter.

(b) *Enforcement.* Enforcement of this chapter may include any appropriate equitable remedy, injunction or order of abatement issuing from a court of competent jurisdiction pursuant to G.S. 153A-123(d) and (e).

(c) *Issuance of a citation.* Issuance of a citation for violation of this chapter is directed toward and against the owner. The purpose of the issuance of a citation is to affect the conduct of the owner by seeking to have the owner ~~insure~~ensure compliance with this chapter. The issuance of a citation hereunder shall not affect the prosecution of a violation hereof as a misdemeanor as provided above. A citation shall:

(1) Give notice of the violation(s) alleged of the owner;

(2) State the civil penalties for such violation(s);

(3) State the date by which any penalties for such violation(s) must be paid; and

(4) State that the city may initiate after such date a civil action to collect the civil penalties which are and may become due.

(d) *Civil penalties.* In addition to and independent of any criminal penalties and other sanctions provided in this article, violations of this article may also subject the offender to the civil penalties hereinafter set forth.

(Ord. No. 10-0409, § 1, 4-1-10)

Sec. 10-154. - Enforcement.

(a) The animal service director, animal service officers, sheriff, or sheriff's deputies or the chief of police or any city police officer may issue to the known owner of any animal, or to any other violator of the provisions of this chapter, a citation. Citations so issued may be delivered in person or mailed by certified or registered mail to the person charged if that person cannot be readily found. The imposed civil penalty shall be paid in full to the city within 30 days of receipt of the citation assessing the civil penalty. This civil penalty is in addition to other fees or costs authorized by this article.

(b) In the event that the owner of an animal or other alleged violator does not respond to the above-described citation, or the applicable civil penalty is not paid within the time period prescribed, a civil action may be commenced to recover the penalty and costs associated with collection of the penalty, and/or a criminal summons may be issued against the owner or other alleged violator of this chapter, and upon conviction, the owner shall be punished as provided by state law. The county animal service director and the city manager or his designee are expressly authorized to initiate and prosecute small claims actions in district court to collect civil penalties and fees due to the city and may call on the city legal department for assistance as needed.

(Ord. No. 10-0409, § 1, 4-1-10)

Sec. 10-155. - Enumerated civil penalties.

The following civil penalties are hereby established for each incident violation of this chapter:

Violation of this article as to any domestic animal (per day) $500.00

(Ord. No. 10-0409, § 1, 4-1-10)

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. This ordinance does not purport to cover treatment of animals where such treatment has been preempted by federal or North Carolina law.

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

Adopted this sixth day of February, 2020.

_____
Barbara Volk, Mayor

Attest:

_____
Tammie K. Drake, CMC, City Clerk

Approved as to form:

_____
Samuel H. Fritschner, City Attorney

Agenda

MEMORANDUM

To: Mayor and Council
cc: City manager
From: Sam Fritschner, city attorney after consultation with SAF
Greg Newman, district attorney for district 29B GN 9/26/2019
Date: 24 September 201926 September 2019
Re: Prosecution of dog cruelty cases by the district attorney for district 29B

The City has been confronted with questions concerning the tethering of animals in light of City Code § 10-152(c). In particular the city is facing issues concerning the likelihood of being able to get a jury conviction for the mistreatment of dogs.

Chief Blake and I recently met with the district attorney, Greg Newman, to discuss these issues. The city is respectful of the district attorney's time and other resources and does not wish to refer dog cruelty cases for criminal trial where a jury conviction is not likely.

The district attorney offered the opinion that normally in order to produce a conviction in a criminal tethering or similar dog-cruelty case the state must produce one of the following:

1. Evidence of physical injury to the dog that is apparent to a veterinarian;
2. Physical evidence of lack of feeding or watering a dog that is apparent to a veterinarian;
3. Visible evidence of dog suffering resulting from heat, cold, and the like;
4. Visible evidence of lack of dog veterinary care resulting in substantial physical harm to the dog.
5. Evidence that the defendant has intentionally subjected a dog to conditions causing unjustifiable pain, suffering, or death. As used in this sense, "suffering" is likely to have a narrow meaning.

ANIMAL SERVICES ADVISORY COMMITTEE

CHARTER

The Animal Services Advisory Committee (ASAC) shall assist the Hendersonville City Council by providing input on the operations and policies of the Hendersonville Police Department regarding the enforcement of the Animal Ordinance. This may include efforts such as collaborating with staff on operating procedures or providing expertise and recommendations regarding the Animal Ordinance. This Committee shall also hear dangerous dog appeals in a quasi-judicial format.

BYLAWS AND RULES OF PROCEDURE

I. NAME: Animal Services Advisory Committee (ASAC).

II. CHARTER. On the _____day of_____, _____, the City of Hendersonville City Council approved the charter for the Animal Services Committee (hereinafter referred to as "ASC") and subsequently appointed members to the Committee. The terms of the charter shall govern the activities of the Committee, and to the extent that these bylaws conflict with the charter, the terms of the charter shall control.

III. PURPOSE. The purpose of this Committee is to make recommendations to the City Council and staff regarding the Animal Ordinance, policies and procedures, and any other issues requested by the City Council. This Committee shall also hear dangerous dog appeals.

IV. MEMBERSHIP

A. Selection of Membership. The Committee shall consist of seven members. All appointments will be made by the City of Hendersonville City Council. Members will serve an initial 3-year staggered term. Seven members shall be from the general public with various affiliations and diverse backgrounds in addition to one veterinarian and one representative from the Hendersonville Police Department.

B. Duties of Members. Duties of Committee will be as assigned by the Hendersonville City Council.

C. Terms of Service. The term of service shall be 3 years. No member shall serve more than two consecutive full three-year terms.

D Vacancies and Reasons for Dismissal. All members serve at the pleasure of the City of Hendersonville City Council. Members may be dismissed for any reason without cause including but not limited to failure to attend meetings. Vacancies shall be filled at the earliest convenience of the City Council. A vacancy of the chair shall be filled by the Committee at a special election at the next regular meeting of the Committee and shall be approved by the City Council. A vacancy in the vice chair shall be elected by a majority of the Committee at the next regularly scheduled meeting.

E. Compliance with Animal Ordinance. All members must comply with the City of Hendersonville Animal Ordinance, and local, state and federal law as applies to animals. Failure to comply with this provision shall result in the immediate dismissal from the Committee.

V. MEETINGS

A. Open-Meetings Law. It is the public policy of North Carolina and The City of Hendersonville that the hearings, deliberations, and actions of this Committee be conducted openly. Except as allowed by NCGS 143-318.1 1, each meeting of the Committee shall be open to the public and any person is entitled to attend such a meeting. The public's right to attend such meeting does not necessary entitle the public to participate in the meeting.

B. Regularly Scheduled Meetings. The Committee shall hold meetings of the Animal Services Committee. —A regular schedule of meetings to be held on a quarterly basis on the third Thursday of the month at 5:30 pm in the Meeting Room of the Committee. The meeting location shall be kept on file with the secretary of the Committee and the Hendersonville City Clerk . The Committee shall have the authority to change the schedule of regular meetings, and/or to change the date of a particular regularly scheduled meeting without the approval of the City Council. If the Committee changes the schedule of regular meetings, the secretary shall forward a copy of the new schedule to the City Clerk at least seven (7) days prior to the first meeting held pursuant to the new schedule. If a particular regularly scheduled meeting date is changed, the secretary shall comply with the notice provisions of paragraph C below, SPECIAL MEETINGS.

C. Special Meetings. The chair of the Committee, the Appellate Board of Animal Services Committee, or the majority of the members of the Committee may at any time call a special meeting of the Committee by signing a notice stating the time and place of the meeting and the subjects to be considered. Such notice must be:

i. Posted on the bulletin board in the Animal Services Center lobby;
ii. Posted on the bulletin board in the front lobby of the Hendersonville City Hall Lobby.
iii. Posted on the bulletin board for the City of Hendersonville Operations Building,
iv. Mailed or delivered to each newspaper, wire service, radio station and television station which has filed a written request for notice with the secretary;
v. Mailed or delivered to any entity or person that has requested to be on the Committee's sunshine list as prescribed by law;
vi. Delivered to all members of the Committee at least 48 hours before the meeting.
vii. Only the business that is specified in the notice of the meeting may be transacted during a special meeting.

D. Public Input. Public input at all Committee meetings that are not quasi-judicial in nature shall have a 3-minute limit per speaker.

E. Attendance. All members of the Committee are expected to attend the regular and/or special meetings of the Committee. Any member not able to attend must notify the secretary in advance of the meeting. Any member missing more than 25% of regular meetings in a calendar year will be asked to resign or reported to the Hendersonville City Council.

F. Voting.

1. DUTY TO VOTE. It is the duty of each member, including the chair, to vote unless otherwise excused. The Committee may excuse members from voting on any matter involving their own financial interest, official conduct, or when a

member has indicated an inability to be impartial in any quasi-judicial matter before the Committee.

2. ABSTENTIONS. Should a member fail to vote on any matter before the Committee, without having been excused from such vote, such abstention will count as an affirmative vote.

VI. QUASI-JUDICIAL HEARINGS

A. Appeals. Appeals heard under the City of Hendersonville Animal Ordinance shall be quasi-judicial in nature and shall be heard by the Animal Services Appellate Board.

1. The Appellate Board shall consist of 3 members of Animal Services Committee. Remaining members of the Committee shall serve as alternates.
   One of the members of the Appellate Board must be the chairperson of the Committee who shall serve as chair of the Appellate Board. The vice chair shall not be designated as a regular appellate board member but shall serve in the chair's absence.
2. The Appellate Board shall schedule an appeal within 2 weeks of an appeal being filed in writing with Animal Services.
3. Appellate Board meetings shall be special meetings.

B. Dangerous Dog Appeals. Dangerous Dog appeals shall be quasi-judicial in nature and will be heard by the Appellate Board.

C. Procedure. Each quasi-judicial proceeding must be conducted in substantial conformity with the sections of Hendersonville City Council Rules of Procedure pertaining to the quasi-judicial proceedings and applicable law.

VII. OFFICERS

A. Required Officers

1. PRESIDING OFFICER. The presiding officer of each meeting of the Committee shall be the chair of the Committee. In situations where the chair is unavailable or unable to participate in the meeting or any particular matter before the Committee, the vice chair shall preside. In the event that neither the chair nor the vice chair is available, the members of the Committee, by affirmative vote of the majority, may appoint an acting chair who shall have all powers of the chair while acting as presiding officer.
2. SELECTION OF THE CHAIR AND VICE CHAIR. The chair shall be selected by majority vote of the Committee unless the City Council indicates to the Committee that the City Council will appoint said chair, in which case the appointment shall be made by the City Council. The vice chair shall be elected by a majority vote of the Committee.
3. POWERS AND DUTIES OF THE CHAIR AND VICE CHAIR. The chair shall preside at all meetings of the Committee but shall also have the right to engage in discussion and vote on any matter before the Committee unless otherwise excused. The chair shall have the power to call a special meeting, rule on procedural matters during a meeting, call a brief recess of a meeting at any time, and adjourn a meeting in an emergency. At any other time, adjournment shall be by motion, duly approved. The vice chair shall have all powers and perform all the duties of the chair in his or her absence.
4. DUTIES OF THE SECRETARY. The staff person assigned to the Committee shall serve as the secretary of the Committee and shall perform the following:
   a. The secretary shall ensure that all meetings of the Committee are properly noticed.

b. The secretary shall maintain the sunshine list that is a list of those persons or entities that have filed a written request indicating a desire to receive notice of all special meetings of the Committee.
c. The secretary shall take and record the actions of the Committee and draft minutes of the meetings accordingly. Minutes shall be sent to Committee members one week prior to their next regularly scheduled meeting. The secretary shall also forward a copy of the minutes as they are approved to the Clerk to the City Council.
d. The secretary shall be responsible for maintaining an accurate list of members of the Committee, submitting to the City Clerk a quarterly attendance report for its members and notifying the City Clerk of any resignations of any of its members, or any other change in membership of the Committee.

B. Schedule for Elections. Elections shall take place annually at the regularly scheduled meeting in January for chair and vice chair. Selection of regular members for the Animal Services Appeal Board shall also take place at this time.

C. Committees. Committees shall be formed based on the discretion of the Committee or at the direction of the City Council.

VIII. RULES OF CONDUCT. This Committee shall follow Roberts Rules of Order.

IX. REPORTS.

A. Annual Report. The Committee shall make a report to the City of Hendersonville City Council at least annual. This report must be submitted no later than July 1 of each year.

B. Public Records Law. The Committee shall abide by North Carolina Public Records Law N.C.G.S. Chapter 132.

X. ACTION BY THE COMMITTEE.

A. Quorum. A majority of the members shall constitute a quorum. No action of the Committee may be taken at any meeting where less than a quorum is present. Once a quorum has been established, it will not be defeated if members leave.
B. Motions. Action of the Committee may be taken upon a motion made by any member, including the chair, without the need for a second. A motion shall be adopted if approved by the affirmative vote of a majority of the members present and not excused after full discussion of the motion by the members.
C. Minutes. Minutes shall be kept of all meetings of the Committee. The secretary of the Committee shall present such minutes to the Committee for approval. Minutes of the meetings of the Committee shall be public records. The secretary shall be responsible for sending a copy of all approved minutes to the City Clerk .
D. Staff Support. City staff shall be assigned to the ASC, acting as the liaison between the ASC, City Departments, and the City Council and shall have the charge of correspondence, minutes, notifying members of meetings, and other information.

XI. AMENDMENTS. The Committee may amend these bylaws by action of the Committee; provided however, that amendments shall not be effective until they are approved by the Hendersonville City Council.

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brian Pahle

Department: Admin

Date Submitted: 01/17/2020

Presenter: Brian Pahle

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Presentation Only

Summary of Information/Request: **Item #** 10

A presentation and update on the new police department headquarters project.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

Attachments:

Presentation

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Lew Holloway

Department: Downtown

Date Submitted: 1/29/2020

Presenter: Lew Holloway

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Discussion/Staff Direction

Summary of Information/Request: **Item #** 11

Watermark Landscape Architecture and City of Hendersonville Staff will present and provide updates on the current status of the proposed Seventh Avenue Streetscape project. The updates will include conceptual design visualizations, information about stormwater design features, updated project scope details and general project budget review. Staff are seeking feedback on the design and scope of the current project and will have the design team available to answer questions about the project to date.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? Yes If no, describe how it will be funded.

Suggested Motion:

Attachments:

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Adam Murr

Department: Admin

Date Submitted: 01/28/2020

Presenter: Adam Murr

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 12

North Carolina General Statute 159-13.2 (Project Ordinances) Summary:
Capital Project Ordinance (CPO) authorizes appropriations necessary for the purchase and/or completion of capital projects and capital assets. CPOs span the life of a capital project and only need to be adopted by the City Council once per project. A CPO clearly identifies the project, revenue source(s), and appropriated budget necessary to complete the project.

City Staff recommend adopting the attached Capital Project Ordinances and Reimbursement Resolution, which meet statutory requirements and follow the City's Capital Improvement Program (CIP). The CPOs included in this item describe the project(s), revenue source(s), and appropriations.

The associated agenda item establishes Capital Project Ordinances for the Clear Creek Sewer Interceptor Project ($2,121,000), Hebron Zone Water Improvement Project ($550,000), and Wastewater Treatment Plant Master Plan Project ($460,000). A Reimbursement Resolution is included, which allows the City to replinish funds using proceeds of debt for the Cleark Creek Sewer Interceptor Project and Hebron Zone Water Improvement Project. The Wastewater Treatment Plant Master Plan Project is proposed to be supplemented by existing reserves in the Capital Project Fund. A budget amendment is included which provides detail on the expenditures associated with the projects and their revenue sources.

Budget Impact: $ 2,671,000 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

The City will seek a revenue bond for the amount listed above and has proposed a reimbursement resolution to replenish any funds used for the Clear Creek and Hebron Zone projects.

Suggested Motion:

I move City Council resolve to adopt the Capital Project Ordinances, Reimbursement Resolution, and Budget Amendment as presented.

Attachments:

(1) Clear Creek Sewer Interceptor Project- Capital Project Ordinance
(2) Wastewater Treatment Plant Master Plan Project- Capital Project Ordinance
(3) Hebron Zone Water Improvement Project- Capital Project Ordinance
(4) Reimbursement Resolution
(5) Budget Amendment

Ordinance #_____

**CAPITAL PROJECT ORDINANCE FOR
THE ACQUISITION, CONSTRUCTION AND INSTALLATION
OF THE CLEAR CREEK SEWER INTERCEPTOR 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 capital project ordinance is hereby adopted:

Section 1: The project authorized is a City infrastructure project described as the Clear Creek Sewer Interceptor project.

Section 2: The following amounts are appropriated for the project:

Account Number			Account Name	Total Budget
Org	Obj	Proj		
4607136	558000	18033	Capital Outlay - Lines	$ 2,121,000
			Total Project Appropriation	**$ 2,121,000**

Section 3: The following revenues are anticipated to be available via debt proceeds and transfers from the Water and Sewer Fund for project expenses:

Account Number			Account Name	Total Budget
Org	Obj	Proj		
4607136	499100	18033	Proceeds of Debt	$ 2,121,000
			Total Project Revenue	**$ 2,121,000**

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

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

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

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

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

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this sixth day of February, 2020.

_____
Barbara G. Volk, Mayor

ATTEST:

_____
Tammie K. Drake, City Clerk

Approved as to form:

_____
Samuel H. Fritschner, City Attorney

Ordinance #_____

**CAPITAL PROJECT ORDINANCE FOR
THE ACQUISITION, CONSTRUCTION AND INSTALLATION
OF THE WASTEWATER TREATMENT PLANT MASTER PLAN 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 capital project ordinance is hereby adopted:

Section 1: The project authorized is a City infrastructure project described as the Wastewater Treatment Plant Master Plan project.

Section 2: The following amounts are appropriated for the project:

Account Number			Account Name	Total Budget
Org	Obj	Proj		
4607134	558000	19007	Capital Outlay - Lines	$ 460,000
			Total Project Appropriation	**$ 460,000**

Section 3: The following revenues are anticipated to be available via debt proceeds and transfers from the Water and Sewer Fund for project expenses:

Funded through existing reserves.

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

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

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

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

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

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this sixth day of February, 2020.

_____
Barbara G. Volk, Mayor

ATTEST:

_____
Tammie K. Drake, City Clerk

Approved as to form:

_____
Samuel H. Fritschner, City Attorney

Ordinance #_____

**CAPITAL PROJECT ORDINANCE FOR
THE ACQUISITION, CONSTRUCTION AND INSTALLATION
OF THE HEBRON ZONE WATER IMPROVEMENT 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 capital project ordinance is hereby adopted:

Section 1: The project authorized is a City infrastructure project described as the Hebron Zone Water Improvement project.

Section 2: The following amounts are appropriated for the project:

Account Number			Account Name	Total Budget
Org	Obj	Proj		
4607126	558000	19037	Capital Outlay - Lines	$ 550,000
			Total Project Appropriation	**$ 550,000**

Section 3: The following revenues are anticipated to be available via debt proceeds and transfers from the Water and Sewer Fund for project expenses:

Account Number			Account Name	Total Budget
Org	Obj	Proj		
4607126	499100	19037	Proceeds of Debt	$ 550,000
			Total Project Revenue	**$ 550,000**

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

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

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

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

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

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this sixth day of February, 2020.

_____
Barbara G. Volk, Mayor

ATTEST:

_____
Tammie K. Drake, City Clerk

Approved as to form:

_____
Samuel H. Fritschner, City Attorney

Resolution #_____

HENDERSONVILLE, NORTH CAROLINA
DECLARATION OF OFFICIAL INTENT TO REIMBURSE

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

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

Expenditures to be Incurred. The Issuer anticipates incurring expenditures (the "Expenditures") for THE ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE CLEAR CREEK SEWER INTERCEPTOR PROJECT, ORDINANCE #_____, AND THE HEBRON ZONE WATER IMPROVEMENT PROJECT, ORDINANCE #_____, (the "Projects").

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

Maximum Principal Amount of Debt to be Issued. The maximum principal amount of the Borrowing to be incurred by the Issuer to finance the Project is **$2,671,000**.

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

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this sixth day of February, 2020.

_____
Barbara G. Volk, Mayor

ATTEST:

_____
Tammie K. Drake, City Clerk

Agenda

TO MAYOR & COUNCIL February 06, 2020 **FISCAL YEAR 2020**

BUDGET AMENDMENT

FUND: 460

ACCOUNT NUMBER					
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
4607136	558000	18033	Capital Outlay - Lines	2,121,000.00	
4607136	499100	18033	Proceeds of Debt	2,121,000.00	
4607126	558000	19037	Capital Outlay - Lines	550,000.00	
4607126	499100	19037	Proceeds of Debt	550,000.00	
4600000	549999		Miscellaneous Expense		460,000.00
4607134	551000	19007	Capital Outlay - Services and Fees	460,000.00	
FUND 460			TOTAL REVENUES	2,671,000.00	
			TOTAL EXPENDITURES	3,131,000.00	460,000.00

A budget amendment to increase proceeds of debt revenue to fund the Clear Creek Sewer Interceptor project ($2,121,000) and Hebron Zone Water Improvement project ($550,000). The amendment also uses cash in the Capital Projects Fund to support the Wastewater Treatment Plant Master Plan project ($460,000).

CITY MANAGER Date: 1-29-20

APPROVED BY CITY COUNCIL: DATE: 1/29/2020

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 1/29/20

Presenter: Brent Detwiler

Date of Council Meeting to consider this item: 2/6/20

Nature of Item: Council Action

Summary of Information/Request: **Item #** 13

The recently approved Clear Creek Subdivision development is going to connect to the City's sanitary sewer collection system on the south side of Clear Creek. Unfortunately the existing sewer interceptor is above the elevation of the creek bottom, which would necessitate the installation of a pump station to serve the proposed subdivision. Staff has proposed an arrangement whereby the Clear Creek Interceptor project would be moved up in our CIP to coincide with the development project connection, eliminating the need for a pump station. The developer would agree to reimburse the City for the cost of the pump station as part of a future utility extension agreement. We propose to hire the developer's consultant, WGLA Engineering, to provide the design and specifications for the interceptor with staff bidding and providing construction inspection.

In North Carolina, the procurement of professional services performed by architects, engineers, surveyors, and construction managers at risk is governed by G.S. 143-64.31, referred to as the “Mini-Brooks Act.” The Qualifications Based Selection (QBS) process focuses on the qualifications of potential firms rather than their fees. This is often done by using a request for qualifications (RFQ) to solicit responses from interested firms. G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than $50,000.

The schedule of the development project in conjunction with getting the interceptor constructed, would be strained by the demands of the QBS process. WGLA Engineering has significant experience designing interceptor sewers and has knowledge of the Clear Creek area due to their ongoing site design. Therefore, City staff recommends that the Council pass the attached resolution to exempt Clear Creek Interceptor Design from provisions of G.S. 143-64.31.

Budget Impact: $ 49,000 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

Budgeted as part of adjustment and CPO for Clear Creek Interceptor project to be approved at February 6, 2020 City Council Meeting.

Suggested Motion:

I hereby authorize the Mayor to execute a resolution to exempt the Clear Creek Interceptor Design from the provisions of G.S. 143-64.31. I also hereby move to approve a proposal from WGLA Engineering for completion of the design and to authorize the City Manager to execute a contract for said work; as presented and recommended by staff.

Attachments:

Resolution exempting Clear Creek Interceptor design from the provisions of G.S. 143-64.31
WGLA Engineering Proposal for Engineering Services - Clear Creek Interceptor - Sanitary Sewer

RESOLUTION EXEMPTING CLEAR CREEK INTERCEPTOR DESIGN

FROM G.S. 143-64.31

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively "design services") to be based on qualifications and without regard to fee;

WHEREAS, the City proposes to enter into one or more contracts for design services for work on the Clear Creek Interceptor Project; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than $50,000; and

WHEREAS, the estimated fee for design services for the above-described project is less than $50,000.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE RESOLVES:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

Section 2. This resolution shall be effective upon adoption.

Upon motion of _____, seconded by_____, the above **RESOLUTION** was unanimously adopted.

This is __ day of _____, 2020.

_____(Signature)_____

(Name and Title of Authorized Representative)

(Seal)

Attest:

_____(Signature)_____

(Name, Clerk)

WGLA Engineering, PLLC
724 5th Avenue West
Hendersonville, NC 28739
(828) 687-7177 wgla.com

January 29, 2020

Mr. Brent G. Detwiler, P.E.
City Engineer
City of Hendersonville
305 Williams Street
Hendersonville, NC 28792

Re: Proposal for Engineering Services
Clear Creek Interceptor – Sanitary Sewer

Dear Mr. Detwiler:

WGLA Engineering, PLLC (WGLA) sincerely appreciates the opportunity to provide you with a proposal for civil engineering and design services for the proposed Clear Creek Interceptor project. We understand the installation of the Clear Creek Interceptor is part of long range planning for future development and is funded by the City's CIP funds. We also understand that the developers of the Clear Creek Subdivision will contribute to this project financially to allow for the elimination of a potential force main needed for their development. This sewer extension will be approximately 3,250 linear feet of gravity sewer and will replace an existing 18" main with a 30" main.

This project would occur in conjunction with the planned sewer improvements associated with the NCDOT widening of Interstate 26. Based on our understanding of the project, we offer the following scope of work:

Review and Confirmation of Preliminary Routing
During this phase of the project, WGLA will work with the City of Hendersonville to confirm the routing for the proposed interceptor and spur collector lines. We understand the new 30" route will roughly parallel the existing 18" main across the Carolina Village, Joelle Orr, and Jeffery Holbert properties. We are in receipt of a preliminary route topographic survey prepared by Ed Holmes & Associates Land Surveyors.

WGLA will prepare an updated schematic layout for the route of the sewer line along with a listing of property owners who may need to dedicate an easement. With this information, we understand the City will coordinate all meetings with property owners and coordinate any easements necessary. We will then make adjustments to the routing based on comments from property owners.

During this phase, WGLA will notify the City of any additional field survey that is needed. Any required field survey will be paid for by the City and will be necessary to create detailed design plans and for the preparation of survey easements plats for the sewer line routing.

Concurrently with the route survey, we understand the City will engage an environmental consultant to conduct a stream and wetland delineation of the route to evaluate any impacts. Based on the preliminary route, one or more stream crossings may be necessary.

Preliminary Design
The approval of all stream and/or wetland impacts will be critical for the project schedule. WGLA will coordinate directly with the Environmental Consultant to prepare a submittal package to the US Army Corps of Engineers and NC Division of Water Quality for all proposed stream and wetland impacts. The preliminary routing information should be sufficient for submittal of this permit. Early submittal of this permit will be important to begin construction as quickly as possible.

Once the project survey has been fully completed for the route, WGLA will begin preparation of the sewer line plan and profile for the gravity sewer line. WGLA will meet regularly with the City staff to discuss the preliminary design and to discuss specific design decisions. When the preliminary plans have been completed, WGLA will meet with the City to review the plans in detail. Finally, WGLA will provide a detailed listing of all permits that will be necessary for the project and the approximate timelines for those agency reviews.

Easement Acquisition
WGLA will coordinate and provide the surveyor with design files for use in preparing necessary easement maps needed for the route. We understand that the City and their Surveyor will handle this scope of work and WGLA will have little to no involvement in this process outside of minimal coordination efforts.

Preparation of Final Plans and Engineering Specifications
After the City of Hendersonville has reviewed the preliminary design for the project, WGLA will begin preparation of the detailed plans and specifications. These plans will include construction details, stream crossing details as well as details for all roadway crossings. The specifications will provide detailed construction guidelines for a contractor to follow during installation of the sewer line.

Fees:
Below is a summary of the estimated fees for this project. Services will be billed monthly on an hourly basis per the attached fee schedule. The total below will not be exceeded without written approval from the City Engineer:

Anticipated Services Budget

Review & Confirmation of Preliminary Routing	$6,000.00
Preliminary Design	$17,500.00
Final Plans & Specifications	$25,500.00
TOTAL	**$49,000.00**

Additional services such as permitting, bidding assistance, and construction administration may be required at a later date but are not included in this fee.

Request for payment of services provided by Engineer will be submitted on a monthly basis for services provided during that month. Payment to Engineer will be made within 30 days after receipt of invoiced services. Payment of invoices not received within 30 days will accrue an interest charge at a rate of 1% per month from the thirtieth day until received.

Exclusions:
The following services are specifically not included in our scope of work:

-Non fast-track sewer permitting or coordination (if required)
-Environmental Assessment coordination (if required)
-Geotechnical investigations
-Retaining wall or other structural design
-Engineering plans beyond those described above
-Construction stakeout
-Permit review fees
-Stream/wetland permitting
-Traffic studies
-Boundary survey & topographic mapping
-Off site improvements
-Other permitting not listed in the scope of work
-Easement acquisition services
-Sewer permitting, bid assistance, or construction administration

Project Schedule:
WGLA understands the City's desire to complete this project as soon as possible. Based on that, we offer the following project schedule, assuming a notice to proceed is issued following the February 6, 2020 City Council Meeting.

Task	
Review of Preliminary Design (WGLA)	February 2020
Property Owner Meetings/ Securing Easements (COH)	February – April 2020
Route and Environmental Surveys	March – April 2020
Project Detailed Design	May – July 2020

This schedule can be adjusted depending on the needs of the City of Hendersonville.

Standard of Care:
The standard of care for professional engineering related services performed or furnished by the Engineer under this Agreement will be the care and skill ordinarily used by member of the Engineer's profession practicing under similar conditions at the same time in the same locality. The Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Engineer's services.

If you have any questions about or proposal or need additional information, don't hesitate to contact our office.

Sincerely,
WGLA ENGINEERING, PLLC

Jared L. DeRidder, P.E.

_____
Proposal Accepted By:

_____
Date:

WGLA Engineering

WGLA Engineering, PLLC
724 5th Avenue West
Hendersonville, NC 28739
(828) 687-7177 wgla.com

BASIC FEE SCHEDULE
4/24/19

I. PROFESSIONAL FEES (Hourly Rate)

Project Manager/Principal	140.00
Project Manager	115.00
Project Engineer	95.00
Engineering Technician	75.00
Construction Inspector	75.00
Computer-aided Design Technician	55.00
Field Technician	50.00
Clerical	30.00

II. EXPENSES

A. Mileage - $0.58 per mile

B. Telephone, reproduction costs, postage, overnight lodging, meals, and other incidental expenses shall be a direct charge per receipts.

III. ASSOCIATED SERVICES

Associated services required by the project such as soil analysis, materials testing, etc., shall be identified and agreed upon prior to initiating work.

genda

GRAPHIC SCALE

LEGEND

- EXISTING GRAVITY SEWER MAIN
- PROPOSED GRAVITY SEWER MAIN (WGLA)
- PROPOSED GRAVITY SEWER MAIN (NCDOT)

WGLA Engineering

WGLA ENGINEERING, PLLC
724 5th AVENUE WEST
HENDERSONVILLE, NC 28739
(828) 697-7177
WGLA.COM
NC LICENSE P-1342

CLEAR CREEK INTERCEPTOR SEWER EXTENSION

HENDERSONVILLE
HENDERSON COUNTY
NORTH CAROLINA

Preliminary Not For Construction

DATE	DESCRIPTION

811 Know what's below. Call before you dig.

PROJECT NUMBER:	[illegible]
DATE:	01-20-23
DRAWN BY:	JRD
CHECKED BY:	JLD

CONCEPT SKETCH

C-100

SCALE: 1"=150'

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 1/29/20

Presenter: Brent Detwiler

Date of Council Meeting to consider this item: 2/6/20

Nature of Item: Council Action

Summary of Information/Request: **Item #** 14

Wastewater Treatment Plant Master Plan Engineering:

As part of the ongoing effort to provide master planning for our water and sewer utility, staff has sought to begin a wastewater treatment plant master plan. The primary goal of the master plan will be to identify improvements and expansions to the City's treatment facility over a 20-year planning period (2040) to ensure that the facility is reliably maintained and expanded to meet projected growth demands in conjunction with the recently completed sanitary sewer collection system master plan. Staff has requested a proposal from McKim & Creed for the master planning effort as they have completed a number of projects at the wastewater plant and having familiarity with our processes. We ask that Council approve the proposal for this work and authorize the City Manager to execute an amendment to our current on-call engineering agreement with McKim & Creed for this work. We welcome any questions that you may have.

Budget Impact: $ 460,000.00 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

Budgeted as part of adjustment and CPO for Wastewater Treatment Plant Master Plan to be approved at February 6, 2020 City Council Meeting.

Suggested Motion:

I move to approve the proposal by McKim & Creed and to authorize the City Manager to execute an amendment to our current on-call engineering agreement for a Wastewater Treatment Plant Master Plan, as presented and recommended by staff.

Attachments:

Proposal from McKim & Creed

EXHIBIT A
PROFESSIONAL ENGINEERING SERVICES
for the
CITY OF HENDERSONVILLE
related to the
WASTEWATER TREATMENT FACILITY MASTER PLAN

The City of Hendersonville (OWNER) has requested McKim & Creed, Inc. (ENGINEER) to provide services to assist in the development of a Master Plan for the OWNER's existing Wastewater Treatment Facility. The primary goal of the Master Plan will be to identify improvements and expansions to the OWNER's treatment facility over a 20-year planning period (2040) to ensure that the facility is reliably maintained and expanded to meet projected growth demands. Primary components of the Master Plan will include:

- Condition assessments of existing infrastructure and major process equipment, including mechanical systems, electrical systems, structures, and communications networks.
- Review and evaluation of each treatment process for capacity, reliability and redundancy, potential capacity re-rating, future expansion, or recommendation for new facilities.
- Recommended facility improvements including project descriptions, capital and O&M costs, and project prioritization in 5-year planning increments for 2020, 2025, 2030, 2035, and 2040.
- Present worth analyses for each of the recommended improvements and 5-year planning increments to assist the OWNER in establishing capital improvement project budgets.
- Creation of select wastewater treatment facility Record Drawings for major facility components based on limited surveying and SUE services to be performed by McKim & Creed, and the "City of Hendersonville Wastewater Facilities Reference Drawings" by Willis Engineers (dated May 1999).

PROJECT UNDERSTANDING

Currently the Wastewater Treatment Facility (WWTF) is rated for a treatment capacity of 4.8 MGD. The WWTF operates a traditional activated sludge process consisting of influent pumping, mechanical screening, grit removal via aerated grit chambers, conventional activated sludge secondary treatment to achieve BOD removal and nitrification, secondary clarification, tertiary filtration through either one traveling bridge sand filter or a new AquaDiamond cloth media filtration unit, followed by UV disinfection, and cascade reaeration prior to discharge. The WWTF's current permit includes provisions and discharge limitations for a future capacity of 6.0 MGD pending receipt of design documents and issuance of an Authorization to Construct for an expansion to the existing facility. It is our understanding that the facility is currently in permit

compliance and there are no active or foreseen regulatory mandates to resolve. Given the population growth of the city, the OWNER requires that the facility is sufficiently maintained, expanded as required to meet growth, and continues to provide reliable service to the community.

The current WWTF was constructed in 1999 to replace the original WWTF that was located on the opposite side of Balfour Road. There were no significant improvements to the current WWTF until this year (2019), which includes the installation of a new emergency diesel generator and a new AquaDiamond tertiary filtration unit to replace one of the two existing traveling bridge sand filter units. Both significant improvements to the current WWTF are expected to be completed by February 2020. The current WWTF is intended to continue to meet the OWNER's wastewater treatment needs up to a future capacity of 6.0 MGD. However, based on previously developed growth projections included in the OWNER's Sanitary Sewer Asset Inventory and Assessment Master Plan Report (dated March 25, 2019), the 2040 average annual daily flow is projected to be 5.90 MGD and the 2040 maximum month daily flow is projected to be 7.68 MGD. As a result, the existing WWTF would need to be expanded to a design capacity of 7.7 MGD by 2040, or additional treatment facilities constructed elsewhere if expansion of the existing WWTF is not feasible. Therefore, the OWNER would like to ensure that investments made for wastewater treatment needs at this facility, and elsewhere if needed, are optimized and maximized. The scope of work detailed in this proposal will include an evaluation of existing physical conditions, existing treatment performance, future treatment needs, anticipated challenges to meet the future treatment needs, and recommendations from the ENGINEER to address those challenges.

The WWTF's existing UV disinfection system is currently known to be capacity and hydraulically limited above the facility's current rated capacity of 4.8 MGD, and the process equipment has reached the end of its useful design life. The issues associated with the UV disinfection equipment and channel were identified by McKim & Creed during the design of the tertiary filter replacement for the existing WWTF. Given the criticality of this system, the OWNER has requested the ENGINEER to evaluate and design the replacement of the UV disinfection system under separate contract. Therefore, evaluation of the UV system is not included in this scope of work.

The following Professional Engineering Services shall be performed by the ENGINEER and will be initiated upon written authorization by the OWNER:

TASK 1 – PROJECT ADMINISTRATION

The ENGINEER will perform project administration activities for the PROJECT to maintain efficiency and accomplish the goals of the project as identified in this scope of work. The following will be included in this effort:

A. Manage and coordinate the activities of the Project Team including ENGINEER's staff and sub-consultants, according to the project scope.

B. Prepare a project management plan for engineering activities during the initial phase of the project that will include project set-up, project schedule, and QA/QC plan.

C. Conduct a project kick-off meeting with OWNER and project team to review project goals, critical success factors, risks, communication protocols, team roles and responsibilities and confirm project milestones and schedule. Prepare and distribute written meeting minutes.

D. Prepare and distribute written meeting summaries of project status meetings.

E. Maintain a project filing system throughout the life of the PROJECT to use for storage and retrieval of project documents.

F. Prepare monthly invoices for ENGINEER's services in format acceptable to OWNER. Invoices shall describe all work completed on the PROJECT to date and all work completed on the PROJECT for the billing cycle.

G. Maintain a project cost accounting system throughout the life of the PROJECT.

H. Provide monthly progress reports. The reports will include a description of the completed tasks, tasks in progress, and tasks to be completed within the next month.

I. Conduct status update meetings with the OWNER every other month (bimonthly) via conference call. These bimonthly status update meetings will assist in key decision making, receipt of OWNER feedback, and ensure alignment with the OWNER's goals.

TASK 2 – WWTF PRELIMINARY EVALUATIONS

This task provides for the review and assessment of existing qualitative and quantitative data pertaining to the components of the wastewater treatment and disposal systems within the OWNER's service area. This task also provides for the review and condition assessment of the existing facility infrastructure, processes, and major process equipment. The specific tasks within the Preliminary Evaluations include:

A. Review of previous and available Master Plans or documents related to the treatment facility's operations. This includes the following:

   i. City of Hendersonville Sanitary Sewer Asset Inventory and Assessment (SSAIA) – Master Plan Report; Completed March 25, 2019. The information presented in this report is assumed to be used as the basis for future sanitary sewer flows tributary to the wastewater treatment facility through the 20-year planning period through 2040. This scope of work does not include wastewater flow projections.

   ii. City of Hendersonville Process Capacity Assessment and Plant Expansion – Addendum to the SSAIA Master Plan Report; Completed April 11, 2019.

B. Assess, through data collection (not less than three years of treatment facility data), wastewater influent flow (Average and Peak), wastewater influent and effluent characteristics, operational data, and effluent requirements based on the current facility permit. The purpose of this task is to confirm or amend previously reported

facility data, and projections for future facility influent loading for the 20-year planning period. Information to be collected will include:

i. Operational Permits (wastewater, sludge, air)

ii. Influent and effluent flow data

iii. Influent and effluent water quality data (including temperature, pH, BOD5, TSS, TN, NH3)

iv. Process data

v. Sludge production

vi. Sludge hauling records and current contract

vii. Electrical usage and current billing structure

viii. Chemical usage and current costs

ix. Maintenance records

x. Operations Reports (DMRs and O&M reports)

xi. Equipment cutsheets

xii. Equipment capacity curves

xiii. Equipment O&M manuals

C. Gather information from the OWNER for all proposed capital improvement projects for the wastewater treatment facility within the current Capital Improvement Plan. A summary of all known current capital improvement projects will be included in Technical Memorandum No. 1 to document currently planned expenditures. Information obtained on these currently planned capital improvement projects will be reviewed and assessed with respect to the results of the Master Plan evaluations as described in Task 7.

D. The ENGINEER will conduct three (3) one-day site visits at the wastewater treatment facility with the lead engineers from applicable disciplines (civil, structural, electrical, mechanical, and I&C) to review and document the major system needs and will interview OWNER staff to determine other facility needs. Additionally, the age, reliability/redundancy status, and condition of the existing equipment will be reviewed so that recommendations for rehabilitation, expansion, and/or replacement can be made for the 20-year planning period. During the site visits the ENGINEER will collect all paper copies of the information available listed above (Task 2, paragraph B) and deliver the paper copies to the OWNER to be scanned and returned to the ENGINEER as electronic PDF files. The ENGINEER will make available an electronic file sharing platform (Microsoft OneCloud, or equal) for the OWNER to upload electronic PDF files for the ENGINEER to include in TM No. 1. Planning level assessments will be provided in Technical Memorandum No. 1 for the following:

i. General condition/current operation of major mechanical, treatment process, electrical, structural, instrumentation and control, and piping systems.

ii. Anticipated useful life remaining for major systems.

iii. Reliability/redundancy status for major systems.

E. The information collected for major process equipment will be collected in a spreadsheet format and will be provided to the OWNER to be included in their asset management system (Cityworks®). Note, the scope does not include collection of data, evaluation, or condition assessment of minor ancillary equipment. Information to be collected for major process equipment will include the following:

i. Process Area (ex. 'Aeration Basins')

ii. Equipment Type (ex. 'Multistage Centrifugal Blower')

iii. Manufacturer

iv. Model

v. Head (if applicable)

vi. Design Flow (if applicable)

vii. Horsepower

viii. Voltage

ix. RPM

x. Drive

xi. Installation or Replacement Year

xii. Expected useful life remaining

xiii. Equipment cutsheets

xiv. Equipment capacity curves

xv. Equipment O&M manuals

F. A draft Technical Memorandum (TM) No. 1 will be prepared to summarize the existing and projected wastewater characteristics that will be utilized to evaluate the existing facility's treatment capacity, as well as document the findings of the existing condition assessments. The draft TM will include a spreadsheet format summary of priority rankings for current facility needs and major equipment replacement. A spreadsheet format summary will also be included for major process equipment asset management information, and PDF attachments will be included for equipment related documents.

The draft TM will be submitted for review with the OWNER. A workshop meeting will be held with the OWNER to review comments and questions from the OWNER. This workshop will also be conducted to review the major facility needs, review the

expected useful life remaining for major process equipment, and prioritize existing facility needs and equipment replacements. A summary of major facility needs, and equipment replacement needs will be provided prior to the meeting and will be discussed in detail during the workshop meeting.

Once all comments and questions have been received, the ENGINEER will finalize the TM within the original scope of the work and submit the Final Technical Memorandum No. 1 to the OWNER.

TASK 3 – FACILITY SURVEY AND ELEVATION VERIFICATIONS

The purpose of the facility survey and elevation verification is to assist with the hydraulic capacity evaluation of the existing facilities.

A. Review "reference drawings" (as-builts) for completed projects pertaining to the wastewater treatment facility.

B. Survey work will be performed to the Standards of Practice for Land Surveying in North Carolina. Horizontal survey control will be referenced to NC Grid NAD 83 or otherwise specified. Vertical survey control will be referenced to NAVD88 or otherwise specified. The ENGINEER will collect limited survey data of the existing facilities in order to verify key features of the record drawings and assist in the hydraulic evaluation of the master plan. The survey data to be collected will include the following:

   i. Ground elevation immediately adjacent to existing structures (maximum of 4 ground elevation points per structure)

   ii. Structure locations (maximum of 4 surveyed location points per structure)

   iii. Top of wall elevations of major basins

   iv. Weir elevations

   v. Select pipe invert and sump bottom elevations as needed to provide an updated hydraulic profile for the facility

   vi. Effluent discharge invert elevation at Outfall No. 001 (location as described in the facility's NPDES Wastewater Discharge Permit).

C. Provide survey data to the OWNER in AutoCAD ".dwg" file format and PDF format. Publicly available aerial imagery for the site will be included within the ".dwg" and PDF format files for reference to existing structures and locations.

This scope of work does not include survey collection or field verification for information regarding wall thicknesses, pipe materials, pipe diameters, valve types and other appurtenances of the facility.

TASK 4 – FACILITY HYDRAULIC PROFILE AND REFERENCE DRAWING UPDATES

A. Select pages of the existing "reference drawings" prepared by Willis Engineers (dated May 1999) will be annotated in PDF format and updated with the specific survey information obtained under TASK 3 of this scope of work. These annotations to select pages of the "reference drawings" will be limited to the following sheets and associated information:

i. G-21: Hydraulic Profile
- See Task 4, item B, below.

ii. M-3: Influent Pumping Station Sections and Details
- Invert of 42" DIP sewer
- Wet well bottom elevation

iii. M-4: Screening & Grit Collection Plan & Section
- Top of slab elevation (1)
- Weir plate elevations (2)

iv. M-10: Aeration Basins Plan and Sections
- Top of slab elevations (4)
- Weir plate elevations (2)
- Sluice gate inverts (4)

v. M-13: Clarifiers Plan, Sections and Detail
- Clarifier top of basin elevations (4)
- Weir plate elevations, at bottom of v-notch (4)
- Distribution box top of box elevation (1)
- Distribution box sluice gate inverts (2)

vi. M-17: Effluent Filters Sections
- Overflow channel weir elevation (1)
- Top of wall elevations for filter influent weirs (2)
- Top of filter basins wall elevations (2)
- Top of center walkway slab elevation (1)
- Filter effluent weir plate elevations (2)

vii. M-18: Disinfection Basin Plan and Sections
- Invert of 36" plant effluent pipe (1)
- Disinfection channel weir plate elevation (1)
- Effluent weir plate elevation (1)
- Top of slab elevation (1)

B. A revised hydraulic profile (sheet G-21) of the existing wastewater treatment facility will be prepared for the current facility capacity based on available record drawings and the information obtained in TASK 3. The revised hydraulic profile will provide a baseline for hydraulic impacts of future flows and alternate configurations to establish hydraulic limitations and improvements that may be required.

C. Updated facility reference drawings will be provided to the OWNER in PDF file format.

TASK 5 – WASTEWATER TREATMENT FACILITY PROCESS EVALUATIONS

The ENGINEER will evaluate the existing wastewater treatment facility for available capacity, potential re-rating of current capacity, and for potentially expanding the existing facility or construction of new treatment facilities in the future. The ENGINEER's team will also incorporate the sludge and biosolids process needs and recommendations based on the Solids Management Plan Evaluation, currently in progress as a separate Amendment to the On-Call Professional Engineering Services Contract. The following will be included in the Process Evaluations:

A. Configure a concept-based treatment process model of the existing wastewater treatment facility using BioWin wastewater treatment process simulator, based on the data reviewed during the Preliminary Evaluations and the existing NPDES discharge limits.

B. Evaluate current capacity and treatment performance of the existing wastewater treatment facility's biological, chemical, and physical processes including screening and grit removal, secondary treatment, secondary clarification, tertiary filtration, disinfection, and re-aeration. Current capacity and treatment performance will be evaluated using BioWin process simulator. Current treatment performance of the existing wastewater treatment facility will be compared to the facility's permit discharge limitations. The evaluation will include data collected previously by others.

C. Evaluate potential capacity re-rating to increase the permitted capacity of the existing wastewater treatment facility using BioWin process simulator and the results of the Preliminary Evaluations. This evaluation is based on re-rating the capacity of the existing facility without any modifications to the facility, based on actual performance data, operational data, and BioWin modeling.

D. The ENGINEER will evaluate liquid stream treatment process alternatives for expansion to the existing WWTF to meet the 2040 design capacity of 7.7 MGD. This evaluation will include analysis of the feasibility of expansion to the existing WWTF to meet the future design capacity. This will include evaluation of the need for flow and loading equalization in either on-line or off-line arrangements. Sizing of flow and loading equalization facilities will be performed as part of TASK 6.

   This evaluation will be based on the influent flow projections established by the SSAIA Master Plan Report prepared by others, influent constituent loading projections established in TASK 2, the results of the preliminary evaluations in TASK 2, current capacity evaluation, capacity re-rating possibility, treatment performance evaluation, and existing space constraints. Conceptual treatment process selection

and capacity determination will be provided using BioWin process simulator to identify the most feasible treatment process alternatives.

Conceptual treatment process selection and capacity determinations for potential expansion to the existing WWTF will be based on the influent flow projections established by the SSAIA Master Plan Report prepared by others, influent constituent loading projections established in TASK 2, and the current discharge limitations for the facility's permitted discharge to Mud Creek. Conceptual treatment process selection will also be based on the hydraulic limitations of the facility and the outfall pipe, and the anticipated need for flow equalization determined as part of TASK 5.

Conceptual treatment process alternatives will be compared and ranked based on economic and non-economic criteria. Each non-economic criterion will be assigned an importance weighting factor, and all process alternatives will be compared under each criterion to develop overall treatment process alternative rankings based on the weighted ranking of each criterion. The importance weighting factor for each non-economic criterion will be developed with the OWNER. The non-economic criteria to be used for this evaluation includes the following:

i. Process performance
ii. Process reliability
iii. Adaptability
iv. Land availability
v. Energy efficiency
vi. Mechanical equipment needs
vii. Chemical requirements
viii. Sludge production and sludge quality
ix. Personnel requirements
x. Constructability
xi. Other environmental impacts

If sampling, laboratory testing, and/or pilot testing is required to provide a comparison of treatment process alternatives, this will be provided as additional services.

E. Incorporate findings from the Solids Management Plan Evaluation, once completed, to integrate them with the overall process evaluation to provide a holistic approach to facility improvements.

F. A draft Technical Memorandum No. 2 will be prepared to document the results of the BioWin model configuration, current capacity/performance of existing components, potential for re-rating the existing facility, potential for expanding the facility, and conceptual treatment process selection and capacity determinations for

an expanded facility. This evaluation will include expansion and project staging recommendations for the planning horizons of 2020, 2025, 2030, 2035, and 2040. Additionally, the recommendations of the Solids Management Plan Evaluation will also be incorporated into TM No. 2.

The draft TM will be submitted for review with the OWNER. A workshop meeting will be held to review comments and questions from the OWNER. The relative rankings of treatment process alternatives and importance weighting factors for each non-economic criterion used to rank the treatment process alternatives with be reviewed and evaluated with the OWNER during this workshop meeting. These weighting factors and relative rankings under each criterion will be finalized based on the feedback received during this workshop.

Once all comments and questions have been received, the ENGINEER will finalize the TM within the original scope of the work and submit the Final Technical Memorandum No. 2 to the OWNER.

TASK 6 – EQUALIZATION BASIN PRELIMINARY ENGINEERING EVALUATION

Based on previous evaluations, the need for a new equalization basin is critical to the facility. As part of this Master Plan evaluation, the ENGINEER will determine the recommended sizing and location for a new flow equalization basin based on the projected inflow data identified in the recently completed Sanitary Sewer Asset Inventory and Assessment Master Plan Report, and from the recent inflow and infiltration study for sub-basin FM5. The following will be included in the Equalization Basin Evaluation:

A. It is assumed that the OWNER will provide hydrographs and associated data from the most recent calibrated Innovyze InfoSewer model to the ENGINEER for use in developing recommended sizing for the flow equalization facilities. It is assumed that hydrographs and associated data will be provided for the following design conditions.

   i. 2025: Average day diurnal flow hydrograph

   ii. 2025: 2-year design storm hydrograph

   iii. 2025: 10-year design storm hydrograph

   iv. 2040: Average day diurnal flow hydrograph

   v. 2040: 2-year design storm hydrograph

   vi. 2040: 10-year design storm hydrograph

B. The ENGINEER will develop recommended sizing for flow equalization for the 2025 and 2040 planning horizons, provide recommendations for project staging, type of flow equalization to be implemented (in-line vs. off-line), location of flow

equalization facilities, and develop opinions of probable project cost for the recommended improvements.

C. A draft Technical Memorandum No. 3 will be prepared to document the proposed sizing, location, and the opinion of probable project cost for new flow equalization facilities. A meeting will be held to review comments and questions from the OWNER. Once all comments and questions have been received, the ENGINEER will prepare and submit the final TM No. 3 as a stand-alone document. However, it will ultimately be incorporated as part of the overall Master Plan document.

TASK 7 – MASTER PLAN RECOMMENDATIONS

Using information obtained from the previous tasks, the ENGINEER will coordinate with the OWNER to document the evaluations, develop recommendations and costs for wastewater treatment capital improvement projects, and will prepare the Final Master Plan. Each recommended project for the 20-year planning period will be described and proposed prioritization presented. The proposed project prioritization will be based on capital and operational costs, capacity requirements, redundancy requirements, regulatory compliance relevance, water quality impacts, safety, and siting considerations. The following tasks are included in this effort:

A. Review and assessment of proposed capital improvement projects within the current Capital Improvement Plan. Currently proposed capital improvement projects will be reviewed to determine if they are in line with the findings of this evaluation and should be implemented, or if they should be modified or removed from the Capital Improvement Plan. Currently proposed capital improvement projects that are recommended to still be implemented will be incorporated into the Master Plan along with newly identified projects as follows.

B. Prepare a facility plan for comprehensive facility improvements for the planning horizons of 2020, 2025, 2030, 2035, and 2040. The plans will address categories of wastewater system facilities and equipment improvements that are necessary to serve the anticipated growth in services and demand. The plan will provide:

   i. A description of the facilities and recommendations for improvements, in terms of capital and / or operations and maintenance needs.

   ii. Proposed prioritization to implement the recommendations and list projects recommended for inclusion in the OWNER's annual ongoing Capital Improvements Program (CIP).

   iii. The ENGINEER will prepare present worth analyses for each of the recommended improvements and 5-year planning increments of 2020, 2025, 2030, 2035, and 2040 to assist the OWNER in establishing capital improvement project budgets and to guide financing decisions. The present worth analyses will include projections for Capital Costs,

Engineering Costs, and O&M Costs. The present worth analyses will include an immediate term investment requirement for each recommended improvement and 5-year planning increments.

iv. Planning level project cost estimates for each major improvement identified, presented in spreadsheet format. Key assumptions used for the cost estimates will be identified.

C. The ENGINEER will prepare the draft Master Plan and meet with the OWNER in a workshop to review the draft Master Plan, review the recommended prioritization of the recommended improvements, receive comments, and answer questions. It is anticipated that the Master Plan document will incorporate the previous TM's identified in this scope of work and include additional TMs as necessary to adequately address the overall evaluation and recommendations.

D. The ENGINEER will address the comments and questions received and will prepare and submit the Final Master Plan to the OWNER.

E. The ENGINEER will present the Final Master Plan recommendations to the OWNER's Administrative, Engineering, and Water & Sewer staff, present to City Council, and present to the Water & Sewer Advisory Council. Two (2) separate presentations of the Final Master Plan recommendations are assumed to be included in this task.

TASK 8 – UNALLOCATED PROJECT BUDGET

Task 8 will be set aside as unallocated project budget to provide for changes in the scope of work or unforeseen revisions to the project approach. McKim & Creed will not utilize or expend effort on Task 8 without prior development of a scope, schedule, and fee estimate for the change in scope, and written authorization from the OWNER. All tasks invoiced under the unallocated budget shall require prior approval from the OWNER.

TASK 9 – NEW WWTF SITING EVALUATION (*NOT INCLUDED IN SCOPE*)

Task 9 is not included in this scope of services detailed in this document, however, a detailed scope and fee can be established, and this task can be implemented upon authorization from the OWNER.

If deemed necessary, based on the information obtained from the previous tasks and upon approval from the OWNER, the ENGINEER will perform a desktop siting evaluation for a new wastewater treatment facility. This siting evaluation will consist of the following tasks:

A. The ENGINEER will determine the approximate land area required for a new treatment facility based on one of the treatment process technologies recommended

and selected by the OWNER, and considering additional area needed for future expansion beyond the 2040 design capacity.

B. Possible locations will be identified and evaluated based on siting criteria. Weighting of the siting evaluation criteria will be developed and presented to the OWNER for review, comment, and acceptance. The desktop siting evaluation criteria will include the following:

   i. Land area available and probable land costs. We will utilize available GIS information to identify relevant factors such as zoning, flood plains, wetlands, topography, or other environmental or site features that may impact a new WWTF.

   ii. Proximity of the site to the existing collection system

   iii. Proximity of the site to the receiving body of water for disposal (Mud Creek)

   iv. Risk of flooding

   v. Foundation stability based on review of published soil surveys (geotechnical investigations will be provided as additional services if requested)

   vi. Difficulty of site preparation including grading considerations and site access

   vii. Site slope, which must be great enough for predominantly gravity flow through the treatment processes, but low enough to limit site preparation costs

   viii. Power availability

   ix. Permit requirements

C. The ENGINEER will provide an opinion of probable cost for the siting for the new treatment facility. Cost will be approximate budgetary cost of the new facility and associated relocation/extension of sanitary sewer facilities for the selected location. The cost will not include cost associated with modification to infrastructure to provide service/support to the facility (i.e. Duke Energy electrical infrastructure).

COMPENSATION

McKim & Creed, Inc. will perform the services outlined in the Scope of Work detailed above for the fee amounts as detailed below. Services will be billed monthly on an hourly time and expense basis in accordance with the hourly rate schedule included in the On-Call Contract between the OWNER and the ENGINEER, and as amended per the terms and conditions of the On-Call Contract.

Task	Fee	Fee Type
Task 1 – Project Administration	$18,745	NTE
Task 2 – WWTF Preliminary Evaluations	$122,470	NTE
Task 3 – Facility Survey & Elevation Verifications	$25,400	NTE
Task 4 – Facility Hydraulic Profile and Reference Drawing Updt.	$8,324	NTE
Task 5 – Wastewater Treatment Facility Process Evaluations	$127,434	NTE
Task 6 – Equalization Basin Preliminary Engineering Evaluation	$25,960	NTE
Task 7 – Master Plan Recommendations	$87,140	NTE
Task 8 – Unallocated Project Budget	$40,000	TBD
Total Fee	**$455,473**	

Note: Task 9 as detailed in this proposal is not included in the scope, however, it can be added as an additional service if requested by the OWNER.

NTE = Not To Exceed (to be billed hourly)
TBD = To Be Determined

SCHEDULE

The following is the proposed schedule for the scope outline above:

Task / Milestone	Schedule	Cumulative Days
Notice to Proceed	0 days	0
Project Kick-off	15 days after NTP	15
Facility Survey and Facility Hydraulic Profile and Reference Drawing Updates	60 days after Project Kick-off	75
Preliminary Evaluations – Technical Memorandum No. 1	90 days after Project Kick-off	105
Process Evaluations – Technical Memorandum No. 2	150 days after TM No. 1	255
Equalization Basin Preliminary Design Report	60 days after TM No. 2	315
Master Plan Recommendations	90 days after Process Evaluations – TM No. 2	345
Present Recommendations to OWNER	15 days after Master Plan Recommendations	360

ADDITIONAL PROVISIONS APPLICABLE TO ALL TASKS

ADDITIONAL SERVICES

If authorized in writing by the OWNER, the ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid by the OWNER on an hourly rate basis in accordance with the current Hourly Rate Schedule.

- Design, permitting, or bidding services
- Providing for the sampling for and completion of a wastewater characterization study to determine estimated fractionation and composition of state variables
- Providing for the sampling for and completion of a grit characterization study
- Providing for the completion of secondary clarifier stress testing.
- Providing for, or coordination of, geotechnical investigations
- Activities associated with contaminated soils or hazardous wastes that might be discovered along the PROJECT.
- Special Corrosion Studies, specific corrosion monitoring or corrosion protection measures.
- Providing for an environmental assessment (EA) or environmental impact statement (EIS).
- Providing for detailed investigations and/or surveys for archaeological sites, protected/threatened/endangered species of shellfish, fish, wildlife, and natural vegetation.
- Preparing for, coordinating with, participating in and responding to structured independent review processes for construction management, cost estimating, value engineering and constructability reviews requested by the OWNER and performing or furnishing services required to revise studies, reports, drawings, specifications, or other bidding documents as a result of such review processes.
- Providing for SCADA integration.
- Construction survey and staking.
- Survey of water body buffers
- Survey of FEMA floodplain, flood way limits, and base flood elevation
- Property surveys
- Existing easements and deed book reference
- Topographic surveys
- SUE services
- Survey deliverables in Plant GRID
- Hydrographic surveys
- Wetland delineation
- Traffic control
- Providing for a detailed Operation & Maintenance Manual.
- Providing for Special Inspections (North Carolina State Building Code) if required by the Local Inspections Departments.

- Services resulting from significant changes in the scope, extent, or character of the portions of the PROJECT.
- Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the PROJECT.
- Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement. These services are to be identified as additional services for OWNER prior to the ENGINEER performing the service.

OWNER'S RESPONSIBILITIES

The following items shall be the responsibility of the OWNER:

- Provide the ENGINEER with all criteria and full information as to the OWNER's requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the OWNER will require to be included in the Drawings and Specifications; and furnish copies of the OWNER's standard forms, conditions and related documents for the ENGINEER to include in the Bidding Documents, when applicable.
- OWNER shall provide ENGINEER with copies of all reports, studies, documents, and CAD files of the existing facilities for the intended use as outlined in this scope of work.
- The timely provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the ENGINEER for the performance of the services provided herein.
- Providing assistance and cooperation for the ENGINEER in obtaining any other needed material which the OWNER does not have in its possession.
- Making available the services of the OWNER as may be necessary to obtain information as needed to perform the work program set forth in the Scope of Services.
- The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.
- Advise the ENGINEER of the identity and scope of services of any independent consultants employed by the OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering and constructability review.
- Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and Substantial Completion, final payment, and warranty reviews.
- The OWNER shall pay all costs for permit fees and application fees.
- The OWNER shall pay for all costs of publishing the Advertisement for Bid.
- The OWNER will provide a geotechnical subconsultant to provide for geotechnical services needed for material testing and geotechnical evaluations during design and construction.

- The OWNER shall provide for any required legal action and associated required legal notifications.

MISCELLANEOUS PROVISIONS

- Opinion of Probable Construction Costs: The ENGINEER's opinions of probable construction costs are based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. The ENGINEER cannot and does not guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the project may affect estimates. The OWNER waives and releases the ENGINEER from any loss, liability, or claim arising out of or in any way related to the ENGINEER's opinion of probable construction costs.
- SURVEYORS CERTIFICATIONS: The Surveyor shall not be required to sign any documents, no matter by whom they may be requested, that would result in the Surveyor's having to certify, guarantee or warrant the existence of conditions which the Surveyor cannot ascertain. The Client also agrees that it has no right to make the resolution of any dispute with the Surveyor or the payment of any amounts due to the Surveyor in any way contingent upon the Surveyor's signing any such certification
- Fixed fee tasks are predicated on the project proceeding in accordance with the indicated schedule. Should delays or suspension of activity more than 90 days occur, the remaining fee balances will be subject to an equitable adjustment equivalent to the increase in the ENR Construction Cost Index over the period corresponding to the suspension of activity.

HOURLY RATES

The hourly rate schedule shall be as specified in the McKim & Creed, Inc. On-Call Professional Engineering Services Contract between the City of Hendersonville (OWNER) and McKim & Creed, Inc. (ENGINEER), effective as of September 28, 2018. The hourly rate schedule shall be subject to future updates per the conditions of the On-Call Professional Engineering Services Contract.

Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 01.29.20

Presenter: Tammie Drake

Date of Council Meeting to consider this item: 02.06.20

Nature of Item: Council Action

Summary of Information/Request: **Item #** 17

Board/Commission Announcements:

Business Advisory Committee: 2 vacant City positions. Members are individuals, principals or other significant representatives of a business. The City appoints 6 of the 9 positions, the Chamber, Henderson County and Partners for Economic Development also appoint 1 representative each. We have applications on file from: Judy Stroud, Gloria Wagner, Ken Gordon, Kevin Campbell, Samantha Sorento. Hunter Jones - serving on the Planning Board. Ms. Wagner began serving on this committee when it was formed in 2014 and resigned at the end of 2016.

Downtown Advisory Committee: There is one vacant position for "member at large" result from Friesen resignation. You have applications from: Mike Andress, Reid Barwick and Matt Johnes.

Environmental Sustainability Board: This Board consists of 5 City residents and up to 4 others for their particular areas of expertise. There are 2 vacant positions for City residents. You have applications from Reid Barwick and Kevin Campbell, however, Mr. Campbell is not a City resident and those positions are currently filled.

Walk of Fame Steering Committee: There is one vacant City position [Royes resignation] on the Steering Committee. There are no applications on file at this time.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I nominate ... to serve on the [Board] [Commission].

Attachments:

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 01/28/2020

Presenter: John Connet

Date of Council Meeting to consider this item: 02/06/2020

Nature of Item: Council Action

Summary of Information/Request: **Item #** 19

Closed Session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee or hear or investigate a complaint, charge, or grievance by or against an individual public officer (or employee) and to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations as provided under NCGS §143-318.11(a)(6) and (4).

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

Attachments: