

MINUTES

February 6, 2020

REGULAR MEETING OF THE CITY COUNCIL

COUNCIL CHAMBERS – CITY HALL

5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Jerry Smith and Council Members: Jeff Miller, Jennifer Hensley and Lyndsey Simpson

Staff Present: City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Police Chief Herbert Blake, Finance Director John Buchanan, Engineering Director Brent Detwiler, Development Assistance Director Susan Frady, Human Resources Director Jennifer Harrell, Senior Planner Daniel Heyman, Downtown Director Lew Holloway, Administrative Aid Pam Ludwig, Interim Fire Chief James Miller, Planner Tyler Morrow, Communications Director Allison Nock, Utilities Director Lee Smith, Public Works Director Tom Wooten

- 1. Call to Order:** Mayor Volk called the regular meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with five members in attendance.
- 2. Invocation and Pledge of Allegiance to the Flag:** There was a moment of silence for prayer followed by the Pledge of Allegiance to the Flag.
- 3. Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.*

Bob Carlson, 1209 Forest Hill Drive, Hendersonville, expressed appreciation to the Council for serving the public, and for studying and understanding the issues. There are many significant projects coming up and not all citizens will agree with them. He is optimistic about the future of the City.

Kim Child, 14 Hendersonville, also thanked the Council for their work. She commented on the 2<sup>nd</sup> Amendment Sanctuary Resolution adopted by Henderson County. She voiced support of a red flag law.

**4. Consideration of Agenda:**

Council Member Hensley moved approval of the agenda as amended. A unanimous vote of the Council followed. Motion carried.

**5. Consideration of Consent Agenda:** *Consent agenda items are considered routine, non-controversial in nature and are considered and disposed of through a singular motion and vote.*

**A. Consideration of Minutes:**

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

**B. Consideration of Mid-Year Budget Report and Amendments:** Mr. Adam Murr, Budget and Management Analyst, provided a mid-year report on the City’s budget and presented the following budget amendments.

- Mid-year amendments per the budget report:
- 1. Fund 10: Total Revenues: \$262,000; Total Expenditures: \$301,100  
Fund 20: Total Revenues: \$20,212; Total Expenditures: \$50,139  
Fund 21: Total Revenues: \$4,069; Total Expenditures: \$14,440
  - 2. Fund 60: Total Revenues: \$15,000; Total Expenditures: \$99,627  
Fund 67: Total Revenues: \$0, Total Expenditures: \$16,168  
Fund 68: Total Revenues: \$800, Total Expenditures: \$800

**C. Consideration of Tentative Award for the Northside (Fletcher) Water System Improvements Project:** City Engineer Brent Detwiler reported the Northside Water System Improvements Project was publicly bid on September 6, 2019 with the following results:

1. <u>M. B. Kahn Construction Co., Inc.</u>	<u>\$3,699,407.00</u>
2. <u>The Harper Corporation</u>	<u>\$3,959,500.00</u>
3. <u>State Utility Contractors, Inc.</u>	<u>\$4,191,000.00</u>

Mr. Detwiler stated this project is being funded by the NCDEQ Division of Water Infrastructure (DWI). He explained each of the bids were above the project’s available funding. Therefore, following receipt of bids, McKim & Creed and the City entered into negotiations with M. B. Kahn, the apparent low bidder, pursuant to

NCGS 143-129 to reduce project cost. Agreement on negotiated pricing has been successfully reached for the certain items and additional funding has also been formally applied for through DWI to increase the State Reserve Project loan amount. He stated the additional funding needed through DWI has been recommended to the North Carolina LGC by NCDEQ DWI staff, and approval is expected.

Mr. Detwiler stated 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. He noted the final award will be contingent upon the approval of the North Carolina Department of Environmental Quality.

Resolution#20-0212

**RESOLUTION OF TENTATIVE AWARD  
Northside Water System Improvements project**

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.

This is 6th day of February 2020.

/s/Barbara G. Volk, Mayor

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

**D. Consideration of Sole Source Purchasing for:**

**I. Generator for Water/Sewer System:** Utilities Director Lee Smith reported this equipment will provide back-up power supply for water and sewer pumping stations owned and operated by the City.

Mr. Lee Smith explained 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.

Mr. Lee Smith stated staff recommends purchasing the 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.

**ii. Supervisory Control and Data Acquisition (SCADA) Equipment and Components:**

Utilities Director Lee Smith reported this equipment and components are necessary 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 has an early warning system for issues within these systems.

Mr. Smith stated staff recommends purchasing this equipment through the sole source method allowed by NCGS 143-129(e)(6) of SCADA 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.

**E. Consideration of Oklawaha Village Conservation Easement:** City Manager John Connet presented Restrictive Covenants for City-owned property. Because the property is located adjacent to Mud Creek and within the flood plain, the property will be utilized as permanent green space and flood storage. He stated the lender for the Housing Assistance Corporation (USDA) is requiring assurances that the City has no plans to develop this property located adjacent to Oklawaha Village.

NORTH CAROLINA  
HENDERSON COUNTY

RESTRICTIVE COVENANTS  
Lot 23 Oklawaha Village

This declaration of limitations, restrictions and uses made and entered into this the sixth day of February 2020 by the City of Hendersonville, a North Carolina Municipality (Grantor), in favor of the United States Department of Urban Development (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 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. Invalidity of any one of these Covenants by judgement 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: /s/ John F. Connet, City Manager

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

Deputy Tax Collector, Jennifer Musselwhite submitted 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.

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

**G. Consideration of Special Event Permit for Pinball Extravaganza:** Development Assistance Director Susan Frady reported the Special Events Committee voted unanimously to recommend the City Council approve this special event. She reported this event will raise money for Camplify’s leadership program for local youth ages 4-12. The event will be held at the Appalachian Pinball Museum on March 1, 5:30-9:30 p.m. The request is to close two parking spaces in front of the Appalachian Pinball Museum for the event so food can be provided.

**H. Consideration of Confidential Information Policy:** Human Resources Director Jennifer Harrell presented a Confidential Information Policy for Council’s consideration. She explained during 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.

**Confidential Information Policy**

- 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.

(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 was 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. Precautions.*

a. Keep all confidential personnel documents out of view and locked away.

b. 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.

- c. 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.
- d. Monitor the printer when printing a confidential personnel document. Do not leave confidential personnel documents unattended.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. All conference calls where confidential personnel information may be discussed should be conducted behind closed doors.
- j. 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, and as may be amended from time to time.

*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.

**I. Consideration of Revisions to Nepotism Policy:** Human Resources Director Jennifer Harrell explained it has been difficult to locate qualified applicants with unique skill sets required by some positions that are not 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 and the City is in jeopardy of losing these employees to other agencies.

Ms. Harrell 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. She presented the following revisions to the Personnel Policy for the Council's consideration.

#### Article V. Conditions of Employment

##### 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.

#### ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

##### 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.

**J. Consideration of Job Description and Advertisement for City Attorney:** City Manager John Connet provided a revised job description for the position of city attorney and a job advertisement. *[The job description is on file in the office of the Human Resources Director.]*

#### **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:**

Development Assistance Director Susan Frady presented the petition from Charles S. Campbell, Jr. and Marianne Ewbank Campbell, Joseph B. Ewbank and Linda C. Ewbank for the contiguous annexation of 15.59 acres identified as 9568-18-5388, 9568-17-5727, 9568-18-8043, 9568-18-8429 and 9568-18-9677.

Mrs. Frady presented the Clerk's Certificate of Sufficiency finding 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 as March 5, 2020 on the question of adoption of an ordinance of annexation.

**Mayor Pro Tem Smith moved the City Council to resolve to approve the items listed on the consent agenda as amended. A unanimous vote of the Council followed. Motion carried.**

## **6. Recognitions:**

**i. Mrs. B.J. Slovacek:** Mayor Volk presented a Certification of Appreciation and Commendation to B. J. Slovacek for 61 years of service to the American Red Cross and many communities.

**ii. Adam Murr – Certified Budget and Evaluation Officer:** Assistant Manager Pahle recognized Mr. Adam Murr for achieving Certified Budget and Evaluation Officer.

**iii. Service Excellence MVPs:** City Manager John Connet and Mayor Volk recognized Brian McCall (Water/Sewer), Jeff Tweed (Police), Zeffrey Childress (Police) and Ross Henderson (Public Works) as Quarterly Service Excellence MVPs.

**iv. Service Excellence Employee(s) of the Year:** City Manager John Connet and Mayor Volk recognized Captain Chris Leroy, Rich Olsen, Robert Cantwell and Monica Howard as MVPs of the Year for their assistance with planning the funeral of Lt. James Case and their continuing support of his family.

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

Senior Planner Daniel Heyman stated this rezoning is a result of a recent annexation. 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.

Mr. Heyman stated the vacant property is located on Upward Road and is approximately 2.61 acres. He reviewed the existing and surrounding land use and zoning. He reviewed the surrounding zoning.

*Comprehensive Plan Consistency:* Mr. Heyman explained N.C.G.S.160A-383 requires zoning map amendments be made in accordance with a comprehensive plan. The 2030 Comprehensive Plan's Future Land Use Map designates the subject area as High Intensity Neighborhood. He provided the purpose of that classification and the surrounding classifications according to the 2030 Comprehensive Plan's Future Land Use Map and Henderson County.

*Proposed Zoning Classification:* Mr. Heyman stated 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. He provided the dimensional requirements for current Henderson County zoning and the proposed City zoning stating they are similar.

Mr. Heyman stated there are design and architectural guidelines in the Commercial Highway Mixed Use district: façade and window design. Common open space, building orientation, where utilities are sited, etc.

*Analysis:* Mr. Heyman reviewed the permitted uses in each classification.

*Planning Board:* Mr. Heyman reported the Planning Board voted unanimously to recommend City Council approve 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:* Mr. Heyman reviewed the factors contained in Section 11-4 of the Zoning Ordinance that must be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map.

The public hearing was opened at 6:12 p.m. by Mayor Volk in accordance with North Carolina General Statutes (NCGS) by notice published in the Times News. No one expressed a desire to speak in favor of the rezoning.

Ken Fitch, 1046 Patton Street, voiced opposition to the rezoning because of the proximity to a school and potential safety issues. He voiced support of conditional zoning which cannot be imposed by the City Council because it was not requested by the applicant.

No one else expressed a desire to speak. The public hearing was closed at 6:15 p.m.

**Council Member Miller moved City Council to 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: it remains as a permitted use in the Henderson County zoning and continued use in the City. The vote was four in favor; one opposed (Smith). Motion carried.**

Ordinance #20-0205

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE**

IN RE: FILE NO. P19-41-Z; Dairi-O

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.

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

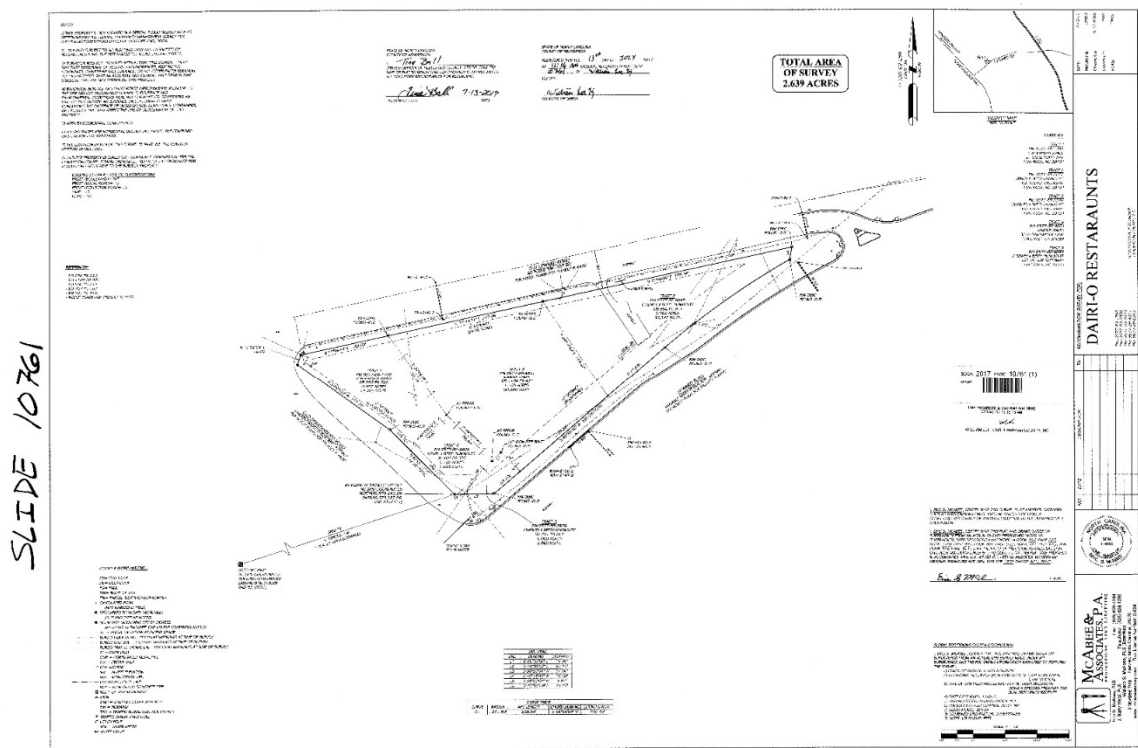
Adopted this 6<sup>th</sup> day of February 2020.

/s/Barbara G. Volk, Mayor

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

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





**8. Public Hearing - Consideration of a New Subdivision Ordinance:** The City Council received a presentation from Mr. Chad Meadows, Principal of Code Wright Planners on a new Subdivision Ordinance. He provided some background stating the current ordinance is difficult to administer, lack some information that allows staff to administer the regulations and may slow the development process and is missing some provisions for infrastructure.

Mr. Meadows stated they worked with a steering committee on draft language in 2019. They have presented it to the Business Advisory Committee, the Planning Board, a local engineering firm and the Water/Sewer Advisory Council. He stated they are looking for more clarity, good governance and integrating best practices.

Mr. Meadows stated there is a new chapter structure. He stated significant details were added and non-regulatory language was removed. He reviewed key changes in each of the articles.

Discussion included developers making a payment-in-lieu of required infrastructure, gated communities, and providing examples of some requirements.

Mr. Meadows stated topics for Council’s consideration:

- Land dedication for public parks
- Variance provisions
- Limits on gated communities/private streets
- Steep slope rules, including 2,600 AMSL limit
- HOA reserve fund requirement/how to handle small subdivisions

The public hearing was opened at 7:20 p.m. by Mayor Volk in accordance with North Carolina General Statutes (NCGS) by notice published in the Times News. The following addressed the Council:

Ken Fitch, 1046 Patton Street, stated there has been a need for an update and expansion of this ordinance for some time. He proposed some revisions to the language.

- Section 1.04 to read: “Protect open space, natural and cultural/historic resources and historic and/or rural character where appropriate.”
- Section 2.04 B, 5. Administrative Adjustment Review Standards: An addition to read: “Preserves environmentally sensitive lands and habitat.”
- Conservation Subdivision 2.04 D an addition to read: “areas with mature hardwood trees, wildlife habitat and watersheds.”
- Area of inconsistency: sidewalks on only one side of street.

No one else expressed a desire to speak. The public hearing was closed at 7:25 p.m.

There was discussion on review by the Tree Board. Mr. Heyman explained the Zoning Ordinance mentions review by the Tree Board in conditional zoning districts in which they may recommend conditions. Mr. Meadows will submit draft language for Council to review/reflect on. **No action was taken.**

**9. Consideration of Revisions to the Animal Control Ordinance:** Police Captain Chris LeRoy explained staff was asked to review and propose revisions to the City’s animal control ordinance. He stated there



are some conflicts with Henderson County's animal ordinance and there have been problems with criminally prosecuting violations of this ordinance.

Captain LeRoy reviewed the revisions to the ordinance including:

- Section 10-8 because Henderson County no longer enforces any animal ordinances within the City limits,
- Provide clear definitions for dangerous and mischievous dogs,
- a new Animal Services Advisory Committee was added,
- Section 10-152 Mistreatment of animals: some sections were removed because they could not be criminally enforced regarding tethering, adequate shelter and potable water,

The Council discussed the tethering and conditions to allow tethering and the necessity to tether on occasion. Mr. Connet explained to enforce criminally the City would have to show intent of "cruel and inhumane." He stated there is not a standard for tethering, and it is difficult for officers to enforce a time limit on tethering. Council Member Hensley asked if violators may continue to be cited even if not convicted. Captain LeRoy stated violators can be cited and sent through the court process. Discussion followed on enforcement and conviction the fence-building program through the Humane Society.

Captain LeRoy explained another amendment to the ordinance is the creation of the Animal Services Advisory Committee who will provide guidance to the Council and the staff and is part of the appeals process when a dog is deemed dangerous and the decision can also be appealed to the courts. Mr. Connet stated there is also a civil process whereby an animal can be taken. Discussion followed on establishing the committee. Mayor Pro Tem Smith commented the first task of the committee should be to review the ordinance.

Mayor Pro Tem Smith asked about a specific definition for "at large", distance, regulations for the Greenway, etc. Mr. Connet suggested "under voice control" could be removed from the ordinance so animals must be on a leash.

There was a brief recess to allow the drafting of additional language for the ordinance. The majority consensus of the Council was to amend the proposed ordinance and ask the Committee to review it and make recommendations to the Council. After further discussion of tethering, Mayor Pro Tem Smith suggested a person wanting to tether their dog could seek a permit to do so.

Mayor Volk asked the Council if their want to amend the draft ordinance with the one change and then have the committee make a recommendation as soon as possible. Council Member Hensley stated she does not support the ordinance as presented. She voiced support of banning tethering completely. Mayor Pro Tem Smith suggested instead of prohibiting tethering, the committee can create criteria and require a get permit.

**Mayor Pro Tem Smith moved to City Council to adopt an Ordinance amending Chapter 10 of the Code of Ordinances with Respect to the Welfare of Domestic Animals.**

**Mayor Pro Tem Smith amended the motion to revise Section 10-107 as follows: It shall be unlawful for any owner to permit such owner's dog to be off the owner's premises within the city limits unless such dog is on a leash and under the owner's control. Notwithstanding the foregoing, dogs may remain off leash with the city limits while:**

- (a) enclosed within an automobile, or**
- (b) enclosed within a designated fenced area on the premises of a city dog park, or**
- (c) within a commercial indoor area designated and maintained for the keeping of dogs, so long as the dog remains under the control of a dog keeping professional.**

**The vote on the proposed amendment was unanimous. Motion carried.**

**The vote on the ordinance including the revision by Mayor Pro Tem Smith was four in favor; one opposed (Hensley). Motion carried.**

Mayor Volk expressed appreciation to the members of the Blue Ridge Human Society and all who have provided assistance in the drafting of the ordinance.

Ordinance #20-0206

**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 ordinance 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 ordinance,

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**  
**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.

Sec. 10-2. - Harming or destroying birds prohibited; exceptions.

No person shall willfully 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.

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.

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.

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.

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.

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 exempted under (b) (1), (2), and (3) must be ~~that are~~ properly restrained and ~~are at all times be~~ under the full control of their handler at all times.

(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.

~~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.~~

**ARTICLE II. - KEEPING ANIMALS**  
**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.

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.

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.

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.

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.

**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.

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.

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.

**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 Services Center 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 Services Advisory Committee 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.
- (34) Causes fouling of the air by odors.
- (45) Causes unsanitary condition of enclosures or surroundings.
- (6) By virtue of number or type is offensive or dangerous to public health, safety or welfare.
- (56) 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.

*Potentially dangerous dog* means a dog that the chief of police or designee and/or City of Hendersonville Animal Services Advisory Committee 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.

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. It shall be unlawful for any owner to permit such owner's dog to be off the owner's premises within the city limits unless such dog is on a leash and under the owner's control. Notwithstanding the foregoing, dogs may remain off leash with the city limits while:

- (a) enclosed within an automobile, or
- (b) enclosed within a designated fenced area on the premises of a city dog park, or
- (c) within a commercial indoor area designated and maintained for the keeping of dogs, so long as the dog remains under the control of a dog keeping professional.

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.

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.
- (d) If any dog at large overturns a securely covered garbage 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.

Sec. 10-110. - Destruction of Dangerous, vicious/potentially dangerous dogs restricted.

- (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, harbinger 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 Services Advisory Committee.

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 Services Advisory Committee 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 Services Advisory Committee 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 Services Advisory Committee 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 ensure 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 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.
  - d. All dogs deemed dangerous or potentially dangerous must be altered within 30 days of the determination.

~~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.~~

~~Sec. 10-111. - Muzzling. Destruction of animals that cannot be seized or confined by reasonable means.~~

(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 Animal Control 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 City staff.

~~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.~~

~~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 Animal Services Center pound or summarily destroy it.

~~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.~~

~~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.~~

~~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.~~

#### **ARTICLE IV – ANIMAL CRUELTY**

~~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, 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 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 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.

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.

(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 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 tethered more than two hours in any continuous 12-hour period. No animal shall be left tethered outside without adequate shelter for longer than 30 minutes, during any period which a severe 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.~~

~~(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.

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.

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.~~

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.

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.

/s/Barbara G. Volk, Mayor

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

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

**10. Review/Update on Police Department Headquarters:** Assistant Manager Brian Pahle provided an update on the Police Department Headquarters. He provided background information on the project that began with a space needs study in City Hall. He stated moving the police into a separate facility will provide needed space for customer service. The project has included multiple public input meetings. He stated a construction manager at risk was chosen in September 2018. The preliminary budget was established in January 2019 and the Council voted to continue with a 26,000 square foot plan with a 35-year financing for the project. He stated construction documents were completed in late September 2019 as well as estimated costs. Permit approvals were received in January 2020 and bid openings are scheduled for mid-February 2020.

Mr. Pahle reviewed the estimated budget for the project authorized by the Capital Project Ordinance is for \$11.5 million; \$8 for construction and \$1.2 million for soft costs, \$500,000 for land acquisition and \$1.2 million for special services and \$600,000 in contingencies. He stated the City will be seeking a USDA loan which increased the special services costs and the construction costs have increased to \$8.3 million but soft costs have been decreased.

Mr. Pahle stated with construction drawings staff has a firmer estimate and contingencies have dropped. He stated an independent cost estimator is working with the architect and construction manager. He stated there is only \$77,000 difference so staff is comfortable with the estimated costs.

After review, Mr. Pahle stated staff recommends cost control in the following areas: change the retaining wall from cast concrete to a segmented wall, eliminate the canopy at the back garage, reduce the generator size, reduce the front seat wall by 50%. The updated estimated cost is \$11.6 million with \$8.7 in hard cost, and contingencies of \$300,000. He stated there may be other funds available from 9-1-1 funds if needed.

Mr. Pahle reviewed updated renderings.

Mr. Pahle stated there are a variety of environmental awareness finishes including a bioretention pond, permeable pavers in the parking lots, low flow appliances, LED lighting and a white roof to reflect radiant sunlight with less impact on the microclimate. Mayor Pro Tem Smith asked if solar panels could be installed. Mr. Pahle stated it is too late in the process. Mayor Pro Tem Smith commented he would like solar panels added if possible. Mr. Pahle stated staff is investigating looking at solar panels in the City as a whole and how they can be incorporated in future and existing buildings.

Next steps: Mr. Pahle reported an RFP has been sent out for interim financing. He stated a bank may be selected in March, an application submitted to the LGC for approval for the loans in April along with a notice to proceed, site work completed in July 2020 and project completion in September 2021. He stated the USDA is in process of reviewing the City's application. **No action was required or taken.**

**11. Presentation on Seventh Avenue Streetscape:** Downtown Development Director Lew Holloway and Hunter Marks and Brook Alexander with Watermark Landscape Architecture shared the conceptual scope and design work of the Seventh Avenue streetscape, presented stakeholder feedback and requested Council's feedback on the project.

Mr. Marks provided an overview and scope of the project, phasing and design. Phase I will extend from Grove Street to the railroad tracks. The larger project will extend to the Oklawaha Greenway and include parts of Locust Street to Bearcat Boulevard.

Mr. Marks presented the design that is oriented toward bring people and the history back, making it a destination, creating a green street with plantings and trees making it an attractive, inviting and usable space, stormwater features such as bio-swells and pervious paving. He discussed alternates for Locust Street stating the project will eventually link Ashe Street to the greenway.

Mr. Marks stated they were tasked with making this a greener street, and provide standards that is replicable, cost effective and can be used in other parts of the City.



Regarding parking, Mr. Marks stated they have looked for opportunities to increase parking: along the railroad track on Maple Street and on Bearcat Boulevard.

Mr. Marks stated the utilities currently add a lot of visual clutter that needs utility adjustment. He stated there may be an opportunity to raise the power lines to allow the planting of larger trees.

Stormwater Administrator Mike Huffman provided stormwater aspects of the project. He stated benefits of a green streets approach is they encourage pedestrian and bicycle access, improve the aesthetics, minimize stormwater impacts, provide stormwater retention and storage off-site and increase infiltration, reduce runoff and enhance watershed health.

Mr. Huffman stated the project is being funded through a \$150,000 NC 319 Grant that supplements the existing project budget. He stated previous master plans recommend implementing green infrastructure in future CIP projects. He stated the main goal is to provide treatment for polluted urban runoff. He stated demonstration projects will be created in this public setting and provides educational opportunities.

Mr. Huffman stated tree infiltration boxes can capture stormwater while creating an optimal environment for tree health and growth. He proposed 35 trees in Silva cells in this project and permeable parking. He stated modeling estimates show these measures will treat approximately one million gallons of polluted runoff annually, the green infrastructure will contribute to green streets and is an excellent opportunity for public education and outreach.

*Utilities:* Mr. Holloway stated the Community Character Committee and the Seventh Avenue Advisory Committee have been working to refine the design. They believe the design presented can be accomplished with the project budget. They have worked actively with utility companies but do not have final estimates. He presented the option to raise Morris Broadband and AT&T higher on the poles to accommodate larger trees and/or have them bury their lines in the sidewalk which may be feasible.

Mr. Holloway stated the team discussed alternates such as adding decorative lighting on Locust Street and parking.

Mr. Holloway stated burying the power lines will not fit into existing budget. The cost is estimated between \$1-\$2 million because it would require a vault under sidewalks which will add to the timeline of project. He stated staff's goal is to complete construction documents so the project can be bid winter of 2020.

Mr. Holloway stated they have had some public input sessions. He stated their overall goal is to add parking spaces but there will be loss of some of the current spaces.

Discussion followed on the power poles and the possibility of putting electrical lines underground. Council Member Simpson commented the Committees wanted to ensure all possibilities for the utilities were explored. Mr. Connet asked if the Council wants staff to pursue the cost estimates, but it will extend the timeline. Mr. Detwiler commented underground utilities will be cost prohibitive. The Council discussed minimizing the look of the poles, e.g., lines above the tree canopy. **The Council agreed by consensus for the electrical lines to be above ground and to make it aesthetically pleasing as possible.**

## **12. 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:**

Budget and Management Analyst Adam Murr presented Capital Project Ordinances (CPO) which authorizes appropriations necessary for the purchase and/or completion of the Clear Creek Sewer Interceptor, the Hebron Zone Water Improvement and the Wastewater Treatment Plant Master Plan capital projects. He explained CPOs span the life of a capital project and only need to be adopted by the City Council once per project. A CPO also clearly identifies the project, revenue source(s), and appropriated budget necessary to complete the project.

Mr. Murr also presented a reimbursement resolution which allows the City to replenish funds using proceeds of debt for the Clear 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. He also provided a budget amendment that provides detail on the expenditures associated with the projects and their revenue sources.

**Mayor Pro Tem Smith moved the City Council to adopt the Capital Project Ordinances, Reimbursement Resolutions and budget amendment as presented. A unanimous vote of the Council followed. Motion carried.**

Ordinance #20-0207

### **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
			<b>Total Project Appropriation</b>	<b>\$ 2,121,000</b>

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
			<b>Total Project Revenue</b>	<b>\$ 2,121,000</b>

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.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

Ordinance #20-0208

**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
			<b>Total Project Appropriation</b>	<b>\$ 460,000</b>

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		
4607134	998460	19007	Transfer from CPF 460	\$ 460,000
			<b>Total Project Revenue</b>	<b>\$ 460,000</b>

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.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

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.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

Resolution #20-0210

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 #20-0207, AND THE HEBRON ZONE WATER IMPROVEMENT PROJECT, ORDINANCE #20-0209, (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.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk

**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:** City Engineer Brent Detwiler explained the Clear Creek Subdivision is connecting to City sewer. He stated the City has an interceptor sewer on the southside of Clear Creek however, it was installed about 30 years ago and is at or above the bottom elevation of the creek so pumping to the interceptor would be necessary and the City would have to maintain the pump station.

Mr. Detwiler reported staff is proposing to move up a CIP project that would replace the interceptor line so the development can be served by gravity. He reported the developer will reimburse the City the amount of the pump

station that will help offset the cost of the interceptor design. He further proposed working with their consultant, WGLA, to have this project designed. He stated it would be constructed as a public project.

Mr. Detwiler reported there is a qualification-based selection process in place for engineering and architects that the City must abide by unless the City Council exempts that process. He stated because WGLA has been working in this area and are familiar with project, and have a survey, he asked that Council forego the process.

**Council Member Miller moved the City Council to adopt a resolution to exempt the Clear Creek interceptor design from the provisions of G.S. 143-64.31. He further moved Council to approve the proposal from WGLA Engineering for completion of the design and to authorize the City Manager to execute a contract for the work as presented and recommended by staff. A unanimous vote of the Council followed. Motion carried.**

Resolution #20-0211

**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.

Adopted this sixth day of February 2020.

/s/Barbara G. Volk, Mayor

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

**14. Consideration of Proposal by McKim & Creed to the On-call Engineering Agreement for a Wastewater Treatment Plant Master Plan:** City Engineer Brent Detwiler explained as growth and expansion of the City's wastewater collection system with commercial and residential continue, it is important to include that facility in the Master Planning Effort. He explained a master plan will include: a condition assessment of existing infrastructure, inventory and measure process equipment, review and evaluate each of the treatment processes to look at capacity, reliability, redundancy and make recommendations for improvements in the same five-year planning increments in the current Wastewater Collection System Master Plan to 2040.

Mr. Detwiler stated the proposal by McKim and Creed also includes preliminary engineering for an equalization basin.

**Council Member Hensley moved the City Council to resolve to approve the proposal by McKim and Creed and to authorize the city manager to execute an amendment to the current on-call Engineering Agreement for a Wastewater Treatment Plant Master Plan a presented and recommended by staff. A unanimous vote of the Council followed. Motion carried.**

**15. Reports/Comments from Mayor and City Council Members:**

Mayor Pro Tem Smith reminded the Council of the public input meeting on Thursday, February 13 at 5:30 p.m. at the Operations Center.

Council Member Hensley reported on the Metropolitan Planning Organization discussion. She provided graphs and charts that the MPO was asked to make recommendations from. She stated the MPO was asked for input on where to target or plan for roadways and projects. She stated the growth projections do not change significantly. She reported the general consensus was the MPO wanted to follow the walkup model because it is the most likely to maintain growth patterns and plans exhibited by municipalities.

Council Member Hensley reported on a grant opportunity, Locally Administered Projects Program, that utilizes federal funds for greenway construction and requires a 20 percent match. The applications are due March 31 and encouraged staff to seek a grant. Mr. Connet stated funds from that source were utilized for Phase III of the Greenway. He stated staff is working on a PARTF grant for part of the Greenway.

**16. Reports from Staff:**

Mr. Connet reminded the Council of an open house at the Grey Mill Building Apartments on February 8, 2020.

Mr. Connet also provided information and survey questions relating to the public information meeting.

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

**Business Advisory Committee:** City Clerk Tammie Drake reported two vacant City positions on this Committee and provided the applications on file. **Council Member Miller nominated Judy Stroud and Ken Gordon to serve on the Business Advisory Committee. A unanimous vote of the Council followed. Motion carried.**

**Downtown Advisory Committee:** City Clerk Tammie Drake reported a vacancy in the member-at-large position and presented applications on file. **Mr. Matt Johnes was nominated by Council Member Hensley. A unanimous vote of the Council followed. Motion carried.**

**Environmental Sustainability Board:** City Clerk Tammie Drake reported there is one vacant position for a City representative. She presented the applications on file. **Mr. Reid Barwick was nominated by Council Member Miller; a unanimous vote of the Council followed. Motion carried.**

**Walk of Fame Steering Committee:** City Clerk Tammie Drake reported there is one vacant position for a City representative. There are no applications on file. **No action was taken by the Council.**

**18. New Business:** There was none.

**19. Closed Session:** At 9:42 p.m., Council Member Simpson moved the City Council to enter 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). A unanimous vote of the Council followed. Motion carried.

**20. Adjournment:** The meeting adjourned at 10:57 p.m. upon unanimous assent of the Council.

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Barbara G. Volk, Mayor

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Tammie K. Drake, City Clerk