

MINUTES

March 5, 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.*

Michael Gillian, 201 Third Avenue W., voiced opposition to building a hotel and parking deck downtown.

Caroline Gunther, 128 Poplar Loop Drive, Wag Boutique, voiced support of the hotel and parking garage projects.

4. Consideration of Agenda:

- Addition to Consent Agenda:**
- M. Consideration of Northside Water System Improvements Project State SRP Amended Loan Offer Acceptance
  - 06i. Proclamation for Dr. Pierce "P J" Moore, Jr.
  - 20a. Closed Session

Council Member Simpson 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: February 6, 2020 Regular Meeting
- B. Consideration of Budget Amendment for Stormwater Intern: Mr. Adam Murr, Budget and Management Analyst, an intern was budgeted for the Stormwater Department for FY19-20. The initial budget of \$5,700 for the position was reallocated to help fund the sinkhole repair off Third Avenues. He provided a budget amendment to reallocate resources in this department to fund the position. He explained City Council must approve all personnel-related budget amendments.

Fund 67: Increase of \$4,875

C. Consideration of Tax Discoveries, Releases, Refunds and Forgiven Interest: Deputy Tax Collector submitted tax bill adjustments occurring between January 16, 2020 and February 20, 2020.

SUMMARY TOTAL OF DISCOVERIES, RELEASES, REFUNDS, AND FORGIVEN INTEREST		
FOR TRANSACTIONS AS OF 2/20/2020		
VALUE CHANGE	\$	(2,543,460)
RELEASES	\$	(12,643.57)
REFUNDS	\$	-
FORGIVEN INTEREST	\$	-
TOTAL TAX BILL ADJUSTMENTS	\$	(12,643.57)
Adjustments, Releases, Refunds are provided by Henderson County Tax		

D. Consideration of Revisions of State of Emergency Ordinance: City Attorney Fritschner explained since the time City Council adopted an ordinance respecting emergency powers, the General Assembly

amended the enabling legislation to permit local governments to restrict certain travel in emergency areas. He provided a proposed ordinance to update the City Code to reflect and add those additional powers.

Ordinance #20-0313

**AN ORDINANCE AMENDING SECTION 36-184 PERTAINING TO THE AUTHORITY OF THE MAYOR TO  
ISSUE EMERGENCY DECLARATIONS**

WHEREAS, the Code of Ordinances Chapter 36 Article V Division 2 provides for the declaration of emergencies within the City, and

WHEREAS, since the adoption of the aforementioned ordinances certain changes have been made to the North Carolina General Statutes with respect to the declaration of emergencies by local governments, and

WHEREAS, the Ordinance in its currently form does not completely conform to the current North Carolina General Statutes; and

WHEREAS, the City Council wishes to revise its ordinance to bring the same into conformity with the General Statutes in such a way as to invest the Mayor with the broadest discretion permitted in the declaration of emergencies and exertion of powers pursuant thereto,

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

SECTION 1. Section 36-184 of the Hendersonville Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 36-184. - Restricted activities enumerated.

During the existence of a proclaimed state of emergency, the mayor may impose by proclamation any or all of the following restrictions:

(1) Of movements of people in public places, including imposing a curfew; directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency area, and the movement of persons within the area.

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages.

(4) Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this section does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subdivision, the term "dangerous weapons and substances" has the same meaning as it does under G.S. 14-288.1. As used in this subdivision, the term "firearm" has the same meaning as it does under G.S. 14-409.39(2).

(5) Upon travel and the operation of vehicles within the City, including the powers of closure, within the emergency area, of streets, roads, highways, bridges, public vehicular areas, and other areas ordinarily used for vehicular travel, except to the movement of emergency responders and other persons necessary for recovery from the emergency.

~~(5)~~ (6) Upon other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

A declaration authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency; rather the Mayor is authorized hereby to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

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

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption. Adopted this fifth day of March 2020.

/s/Barbara G. Volk, Mayor

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

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

**E. Consideration of Statewide of Mutual Aid Agreement:** Mr. Connet reported the State of North Carolina has updated the Statewide Mutual Aid Agreement in 2017. He stated it is in the City's best interest to adopt it. He recommended approval of the agreement between the City of Hendersonville and the State of North Carolina.

**NORTH CAROLINA STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT**

Revision 2017

For the CITY OF HENDERSONVILLE

THIS AGREEMENT IS ENTERED INTO BETWEEN THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, AND ITS DIVISION OF EMERGENCY MANAGEMENT OF THE STATE OF NORTH CAROLINA AND BY EACH OF THE ENTITIES THAT EXECUTES AND ADOPTS THE UNDERSTANDINGS, COMMITMENTS, TERMS, AND CONDITIONS CONTAINED HEREIN:

WHEREAS, the State of North Carolina is geographically vulnerable to a variety of natural disasters;

WHEREAS, Chapter 166A of the North Carolina General Statutes, entitled the North Carolina Emergency Management Act, recognizes this vulnerability and provides that its intended purposes are to:

1. Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
2. Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;
3. Provide for the rapid and orderly rehabilitation of persons and restoration of property;
4. Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery;

WHEREAS, in addition to the State, the Federal Emergency Management Agency (FEMA) has recognized the importance of the concept of coordination between the State and local governments;

WHEREAS, under Chapter 166A and other chapters of the North Carolina General Statutes, entities entering into mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services; and

WHEREAS, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance amongst one another at the appropriate times;

THEREFORE, pursuant to G.S. 166A-19.72, these entities agree to enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

#### SECTION I. DEFINITIONS

"Agreement" means this document, the North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement.

"Aid and assistance" includes personnel, equipment, facilities, services, and supplies.

"Authorized Representative" means a party's employee who has been authorized, in writing by that party, to request, to offer, or to otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.)

"Disaster declaration" means a gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a Type I, II, III disaster as defined in G.S. 166A-19.21(b).

"Emergency" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary cause.

"Local Agency" means a county agency charged with coordination of all emergency management activities for its geographical limits pursuant to G.S. 166A-19.15.

"Party" means a governmental entity which has adopted and executed this Agreement.

"Provider" means the party which has received a request to furnish aid and assistance from another party in need (the "Recipient").

"Recipient" means the party setting forth a request for aid and assistance to another party (the "Provider").

#### SECTION II. INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.

Given the finite resources of any jurisdiction and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

Pursuant to G.S. 166A-19.60 and as elaborated upon in Section X of this Agreement, all functions and activities performed under this Agreement are hereby declared to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section X of this Agreement.

#### SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by an emergency and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this Agreement. The request shall be followed as soon as practicable by a written confirmation of that request, including the transmission of a proclamation of local state of emergency under G.S. 166A-19.22, and a completed form describing recipient's projected needs in light of the emergency. All requests for mutual aid and assistance shall be transmitted by the party's Authorized Representative or to the Coordinator of the Local Agency as set forth below.

##### A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE: Recipient shall set forth requests as follows:

(i) REQUESTS ROUTED THROUGH THE RECIPIENT'S LOCAL AGENCY: Recipient may directly contact the Local Agency, in which case it shall provide the Local Agency with the information in paragraph B of this Section (Section III). The Local Agency shall then contact other parties on behalf of Recipient to coordinate the provision of mutual aid and assistance. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to Section VII of this Agreement.

(ii) REQUESTS MADE DIRECTLY TO PROVIDER: Recipient may directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section (Section III). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VII of this Agreement. Provider and Recipient shall be responsible for keeping Local Agencies advised of the status of response activities, in a timely manner.

(iii) RECORD OF REQUESTS TO BE PROVIDED: A record of the request for assistance shall be provided by the Recipient to the Director of the Division of Emergency Management in the NC Department of Public Safety, in a timely manner.

##### B. REQUIRED INFORMATION: Each request for assistance shall include the following information, in writing or by any other available means, to the extent known:

1. Stricken Area and Status: A general description summarizing the condition of the community or emergency area (i.e., whether the emergency and/or disaster declaration is imminent, in progress, or has already occurred) and of the damage sustained to date;
2. Services: Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;
3. Infrastructure Systems: Identification of the type(s) of public infrastructure system for which assistance is needed (water and sewer, storm water systems, streets) and the type of work assistance needed;
4. Aid and Assistance: The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;
5. Provider's Traveling Employee Needs--Unless otherwise specified by Recipient, it is mutually understood that Recipient will provide for the basic needs of Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's traveling employees, including, without limitation, transportation expenses for travel to and from the stricken area. Further, Recipient shall house and feed Provider's traveling employees at its (Recipient's) sole cost and expense. If Recipient cannot provide such food and/or housing at the emergency area, Recipient shall specify in its request for assistance that the Provider's traveling employees be self-sufficient.

6. Facilities: The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and
7. Meeting Time and Place: An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: Recipient shall be responsible for coordinating requests for state or federal assistance with its (Recipient's) Local Agency.

#### SECTION IV. PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by the Recipient/Local Agency, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the Recipient/Local Agency (whichever communicated the request). Provider shall complete a written acknowledgment, whether on the request form received from Recipient or on another form, regarding the assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient/Local Agency for a final response. Provider's acknowledgment shall contain the following information:

1. In response to the items contained in the request, a description of the personnel, equipment, and other resources available;
2. The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section [Section VI] of this Agreement.)
3. The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Requesting Party; and
4. The name of the person(s) to be designated as Provider's supervisor (pursuant to the "Supervision and Control" section [Section V] of this Agreement.)

Where a request has been submitted to the Local Agency, the Local Agency shall notify Recipient's authorized representative and forward the information from Provider. The Recipient/Local Agency shall respond to Provider's written acknowledgment by signing and returning a copy of the form to Provider by the most efficient practical means, maintaining a copy for its file.

#### SECTION V. SUPERVISION AND CONTROL

Provider shall designate one of its employees sent to render aid and assistance to Recipient as a supervisor. As soon as practicable, Recipient shall assign work tasks to Provider's supervisor, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisor and Recipient. Recipient shall provide necessary credentials to Provider's personnel authorizing them to operate on behalf of Recipient. Based upon such assignments from the Recipient, Provider's supervisor shall:

1. Have the authority to assign work and establish work schedules for Provider's personnel. Further, supervisor shall retain direct supervision and control of Provider's personnel, equipment, and other resources. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;
2. Maintain daily personnel time records, material records, and a log of equipment hours;
3. Report work progress to Recipient at mutually agreed upon intervals.

#### SECTION VI. LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

Unless otherwise provided, the duration of Provider's assistance shall be for an initial period of seven days, starting from the time of arrival. Thereafter, assistance may be extended in daily or weekly increments as the situation warrants, for a period agreed upon by the authorized representatives of Provider and Recipient.

As noted in Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of Provider's intent to terminate mission, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

#### SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending aid and assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses.

A. Personnel-- During the period of assistance, Provider shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. Recipient shall reimburse Provider for all direct and indirect payroll costs and expenses including travel expenses incurred during the period of assistance, including, but not limited to, employee

retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, as stated in Section IX of this Agreement, Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's personnel under the terms of the North Carolina Workers' Compensation Act (Chapter 97 of the North Carolina

General Statutes).

B. Equipment-- Recipient shall reimburse the Providers for the use of equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition.

At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. Materials And Supplies-- Recipient shall reimburse Provider for all materials and supplies furnished and that are used or damaged by Recipient during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor, and supplies, which shall be included in the equipment rate established in subsection B of this section (Section VII), Recipient will not be responsible for costs where such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 C.F.R. 206.228. In the alternative, the parties may agree that Recipient will replace, with like kind and quality as determined by Provider, Provider's materials and supplies used or damaged in a reasonable time. If such an agreement is made, it shall be reduced to writing and transmitted to the North Carolina Division of Emergency Management.

D. Record Keeping-- Recipient and North Carolina Division of Emergency Management personnel shall provide information, directions, and assistance for record-keeping to Provider's personnel. Provider shall maintain records and submit invoices for reimbursement by Recipient or the North Carolina Division of Emergency Management using the format used or required by FEMA publications, 2 C.F.R. Part 200 and applicable Office of Management and Budget (OMB) Circulars.

E. Payment; Other Miscellaneous Matters as to Reimbursements-- The reimbursable costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44

C.F.R. part 206. Recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing signed by both parties by mutual agreement. This shall not preclude Provider or Recipient from assuming or donating, in whole or in part, the costs and expenses associated with any loss, damage, or use of personnel, equipment, and resources provided to Recipient.

F. Contracting -- If recipient or provider contracts with a third party to perform any aid or assistance under the provisions of this agreement, then the entity shall follow any applicable local, state, or federal contracting requirements.

#### SECTION VIII. RIGHTS AND PRIVILEGED OF PROVIDER'S EMPLOYEES

Pursuant to G.S. 166A-19.60 whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Provider.

#### SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKER'S COMPENSATION POLICY

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees under the terms of the North Carolina Workers' Compensation Act, Chapter 97 of the General Statutes, due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for the payment of workers' compensation benefits to its own respective employees pursuant to G.S. 97-51.

#### SECTION X. IMMUNITY

Pursuant to G.S. 166A-19.60 all activities performed under this Agreement are hereby declared to be governmental functions. Neither the parties to this Agreement, nor, except in cases of willful misconduct, gross negligence, or bad faith, their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule, or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be liable for the death of or injury to persons or for damage to property as a result of any such activity.

#### SECTION XI. PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS FROM LIABILITY

To the extent allowed by applicable law, each party (as indemnitor) agrees to protect, defend, indemnify, and hold the other party (as indemnitee), and its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto.

To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement. Notwithstanding the foregoing, to the extent that each party does not purchase insurance, it shall not be deemed to have waived its governmental immunity by law.

#### SECTION XII. ROLE OF THE DIVISION OF EMERGENCY MANAGEMENT

Pursuant to GS 166A-19.12(19) and under this agreement, the responsibilities of the North Carolina Division of Emergency Management are:

- (1) to serve as the central depository for executed Agreements, to maintain a current listing of entities with their authorized representatives and contact information, and to provide this listing to each of the entities on an annual basis;
- (2) to coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this Agreement;
- (3) to keep a record of all requests for assistance and acknowledgments; (4) to report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate; and (5) if the parties so designate, to serve as the eligible entity for requesting reimbursement of eligible costs from FEMA and provide information, directions, and assistance for record keeping pursuant thereto.

#### SECTION XIII. AMENDMENTS

Manner-- This Agreement may be modified at any time upon the mutual written consent of the Recipient and Provider.

Addition of Other Entities--Additional entities may become parties to this Agreement upon:

- (1) acceptance and execution of this Agreement; and
- (2) sending an executed copy of the Agreement to the North Carolina Division of Emergency Management.

#### SECTION XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Director of North Carolina Division of Emergency Management, which shall provide copies to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent by the Director of the North Carolina Division of Emergency Management to all other parties. A party's withdrawal from this Agreement shall not affect a party's reimbursement obligations or any other liability or obligation under the terms of this Agreement incurred prior to withdrawal hereunder.

Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

#### SECTION XV. HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

#### SECTION XVI. SEVERABILITY: EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more

of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

In the event that parties to this Agreement have entered into other mutual aid and assistance contracts, for example pursuant to Chapter 160A of the North Carolina General Statutes, those parties agree that to the extent a request for mutual assistance is made pursuant to this Agreement, those other mutual aid and assistance contracts are superseded by this Agreement.

SECTION XVII. EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement to be duly executed in its name and behalf by its Chief Executive Officer, who has signed accordingly with seals affixed and attested with concurrence of a majority of its governing board, as of the date set forth in this Agreement.

DIVISION OF EMERGENCY MANAGEMENT

DEPARTMENT OF PUBLIC SAFETY

BY: Erik A. Hooks, Secretary

Department of Public Safety

Date:

BY: Michael A. Sprayberry, Director

Division of Emergency Management

Date:

BY: Barbara G. Volk

WITNESS:

Chief Executive Officer/Local Government

Name: Barbara G. Volk

Title: Mayor

Name of Unit: City of Hendersonville

Date: March 5, 2020

APPROVED AS TO PROCEDURES:

BY: Office of General Counsel

Department of Public Safety

Date:

LIST OF AUTHORIZED REPRESENTATIVES TO CONTACT FOR EMERGENCY ASSISTANCE

FOR THE City of Hendersonville

MAILING ADDRESS: 160 6<sup>th</sup> Ave. E., Hendersonville NC 28792 DATE:

PRIMARY REPRESENTATIVE

NAME: John Connet

TITLE: City Manager

FIRST ALTERNATE REPRESENTATIVE

NAME: Brian Pahle

TITLE: Assistant City Manager

SECOND ALTERNATE REPRESENTATIVE

NAME: Tom Wooten

TITLE: Public Works Director

**F. Consideration of Franchise Agreement with Public Service Company of North Carolina, Inc.:** Mr. Connet reported the franchise agreement with Public Service Company (Company) of North Carolina Incorporated and its successors expires on November 26, 2020. The franchise agreement grants them the right to utilize public right of ways to provide natural gas to our residents and businesses. The company has requested an updated franchise agreement that extends their rights until 2050. The execution of a franchise agreement requires two readings by the City Council. Therefore, the agreement will not be finalized until after your approval at you April meeting.

Ordinance #20-0314

**AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE PUBLIC WAYS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A GAS UTILITY SYSTEM AND ALL NECESSARY MEANS FOR TRANSMITTING AND DISTRIBUTING GAS WITHIN SAID CITY FOR A PERIOD OF THIRTY YEARS.**

WHEREAS, Public Service Company of North Carolina, Incorporated proposes to continue to construct, operate and maintain a Gas Utility System and all necessary means for transmission and distribution of gas within the City of Hendersonville, North Carolina, the "City" and

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

SECTION 1. DEFINITIONS. Whenever and wherever used in this Ordinance the following words and names shall have the following meanings:

(a) CITY COUNCIL shall mean the governing body of the City of Hendersonville, North Carolina, as now or hereafter constituted.

(b) COMPANY shall mean Public Service Company of North Carolina, Incorporated, dba Dominion Energy North Carolina, its successors and assigns.

(c) CITY shall mean the City of Hendersonville, North Carolina, including its present and future boundaries.

(d) DEPARTMENT OF TRANSPORTATION shall mean the North Carolina Department of Transportation or its successor.

(e) GAS shall mean natural gas, mixed gas and substitute fuels carried over the Company's facilities as authorized by the North Carolina Utilities Commission.

(f) GAS UTILITY SYSTEM shall mean all facilities of the Company in the City used for the transmission or distribution of Gas within the City. NC Franchise Ordinance Page 2 of 8 April 16 2014 PSNC 12-001A

(g) FERC shall mean any reference made to the Federal Energy Regulatory Commission or its successor.

(h) COMMISSION shall mean the North Carolina Utilities Commission or any successor body lawfully constituted.

(i) PUBLIC WAY OR WAYS shall mean any public street, avenue, road, alley, lane, bridge, or other public right-of-way within the City over which the City has jurisdiction or exercises control.

(j) GOOD UTILITY PRACTICES shall mean the practices, methods and acts engaged in or approved by a significant portion of the gas industry during the relevant time period or other practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, requirements of governmental agencies having jurisdiction, and at the lowest reasonable cost. The term Good Utility Practices is not intended to be limited to the

optimum practices, methods or acts to the exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods, or acts.

**SECTION 2. Grant of Authority** The right, power and authority is hereby granted to and vested in the Company to construct, install, replace, repair, maintain and operate transmission mains, gas mains, pipes, equipment, service lines, communications lines, facilities and other appurtenant apparatus of the gas system, for the purpose of operating a natural gas system along, across, and under the streets, alleys, bridges, rights-of-way, and other public places of the City together with any necessary rights of access thereto; and to use that natural gas system to conduct a gas business. This granting of authority is provided that the City as of the applicable time, has jurisdiction or exercises control of the public ways. This Franchise Agreement shall also permit the Company to exercise the rights granted herein without the need for additional permit(s) from the City.

**SECTION 3. Conditions on Use of Public Ways**

(a) No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than reasonably necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. However, should any such damage occur due to the Company's failure to use due care, the Company shall repair the same as promptly as possible, and, in default thereof, the City, after written notice and opportunity for the Company to repair, may make such repairs and charge the reasonable cost thereof and collect the same from the Company. The Company shall save the City harmless from liability (including judgment, decrees, and legal court costs) resulting directly from its negligence and failure to use due care in the exercise of the privileges hereby granted or of its rights under this Section.

(b) All work upon the streets and public places of the City shall be done subject to reasonable inspection of the City Manager or designee (or other legally constituted governing body) of the City, all sidewalks or street pavements or street surfaces which may be displaced by reason of such work shall be properly replaced by the Company, its successors and assigns, to the reasonable requirements of the City.

**SECTION 4. Annexation Notification:** The City shall mail or email notice to the Company of areas annexed into the City. Said notices shall include pertinent maps and/or tax map numbers, so that newly annexed customers may be identified.

**SECTION 5. Service:**

(a) The Company may supply any form of gas containing approximately one thousand (1,000) BTU's per cubic foot, and its obligation in respect thereto shall continue only so long as it is able to reasonably obtain an adequate supply of such gas hereunder, provided, however, that in the supply of such gas the customers within the City shall enjoy equal rights with respect to other similar customers served by the Company consistent with Commission rules and regulations.

(b) The Company shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the rules and regulations of the Commission, Department of Transportation, and FERC or its successors, applicable to gas service in the City.

**SECTION 6. Nonexclusive Grant and Term:**

(a) The gas franchise granted by this Ordinance is not exclusive. The City may grant the same or similar rights and privileges to other certified persons or companies at any time, provided that any such grants shall be made under terms and conditions which do not materially impair the exercise of the rights and privileges granted to the Company under this franchise.

(b) Upon ratification and acceptance, this franchise shall constitute a contract between the City and the Company, and shall be in force and effect for an initial term of thirty (30) years, and shall continue in force and effect year-to-year thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial term or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than one (1) year before the proposed date of termination.

**SECTION 7. Franchise Not Waiver of Law** This franchise is subject to the constitution and laws of the State of North Carolina, and is not a waiver of any present or future law or regulation. This franchise is not a limitation of the authority of the City to enact any ordinance or policy that does not diminish, conflict or impair the rights and authority granted to the Company in this franchise or otherwise impose additional obligations on the Company in order to exercise the rights granted herein.

**SECTION 8. Regulations, Safety and Customer Service**

(a) Gas utility service is not guaranteed to be free from interruptions, supply failure or outages.

(b) The Company will restore gas utility service using Good Utility practices.

(c) The Company shall maintain and operate its Gas Utility System in compliance with applicable State and Federal maintenance and safety regulations.

(d) Company vehicles, responding to natural gas emergencies, may park as close to the location of the emergency as is practicable.

**SECTION 9. Commission Rules and Rates:** The Company may from time to time declare, make and enforce such rules and regulations as shall have been fixed or allowed by the Commission as to the sale or distribution of Gas to any of its customers in the City. The rates to be charged for Gas at all times shall be such rates as are fixed or allowed by the Commission, including such rates as shall be negotiated by the Company with certain industrial or commercial customers pursuant to authority granted by the Commission.

**SECTION 10. Plat of Gas Utility System.** The Company shall maintain maps or plats of its Gas Utility System within the area covered by this franchise. Such maps or plats shall be maintained in the Company's offices, and the City may review the same during any regular business hours of the Company.

**SECTION 11. Bankruptcy, Successors, Assigns** In the event the Company is adjudged bankrupt or its assets are placed in the hands of a receiver or other court officer, either voluntarily or involuntarily, then the interest, rights and remedies of the City in respect to said properties and operations shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the Company, shall be bound by this Ordinance and the terms and provisions hereof and shall be bound to carry out and perform the obligations and duties imposed upon the Company by this Ordinance. Likewise, if the Company reorganizes, merges, or consolidates with any other company, then the City is bound by this Ordinance.

SECTION 12. Revocation In the event the Company fails to comply with the provisions of this Ordinance and, within thirty (30) days after receipt of written notice from the City, the Company fails to cure or remedy such default, or to have begun reasonable measures to do so, then the City may cause the Company to appear at a hearing before the City upon thirty (30) days prior written notice. Any written notice to the Company shall be sent to Public Service Company of North Carolina, 800 Gaston Road Gastonia, North Carolina, 28053, ATTN: D. Russell Harris. If at such hearing the City should determine that the Company's failure or default has been substantial, repeated or flagrant, then upon such determination the City may revoke and terminate this franchise; provided, however, that the Company may file with the City within ten (10) days after such determination the Company's election to appeal to the proper North Carolina court, during the pendency of which the Ordinance shall remain in full force and effect. In that event the City and Company agree that such court shall hear and determine de novo whether there has been substantial, repeated or flagrant failure or default by the Company of the terms, conditions or obligations of this Ordinance. Failure or default which cannot be corrected by the Company shall not be grounds for revocation or termination, unless such failure or default shall be determined to be material and continuing.

SECTION 13. Severability, Third Party Rights

- (a) If any provision in this contract is determined to be invalid, void or unenforceable by any court or regulatory body having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or gas supply, this Contract or transaction or any provisions thereof.
- (b) The rights hereunder in this Ordinance accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this franchise shall not create any rights in third parties.

SECTION 14. Effective Date, Term, Adoption, and Ratification

- (a) This Ordinance shall be effective from and after the fifth day of March, 2020, provided the Company shall have executed the written acceptance hereof at the end of this Ordinance, and shall exist in force for a period of 30 years hereafter, and continue in force year to year thereafter until cancelled upon written notice of either party at least one year in advance.
- (b) All other Ordinances and clauses of Ordinances in conflict herewith are hereby repealed.

Adopted by the City of Hendersonville on the fifth day of March 2020, and hereby ratified.

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

Public Service Company of North Carolina, Incorporated does hereby accept and acknowledge the foregoing Ordinance, and in consideration of the benefits and privileges granted to it does hereby agree to the terms and conditions therein provided. This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED  
By: D. Russell Harris President and Chief Operating Officer  
ATTEST: Jordan C. Saltzberg, Assistant Corporate Secretary (Corporate Seal)

**G. Consideration of Agreement Regarding Billing for Sewer Service with Metropolitan Sewerage District of Buncombe County (MSD):** Deputy Tax Collector Jennifer Musselwhite reported in July 2020, Metropolitan Sewerage District of Buncombe County (MSD) will take over operation of the Cane Creek Sewer District. MSD has requested to enter into an agreement with the City to bill sewer fees for customers in the Cane Creek District who also receive water service from the City. She requested Council approve the agreement with MSD for billing of fees for sewer collection services provided by MSD.

STATE OF NORTH CAROLINA  
COUNTIES OF BUNCOMBE AND HENDERSON

AGREEMENT REGARDING BILLING  
FOR SEWER SERVICE

This AGREEMENT, made this sixth day of March, 2020, by and between the METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, a North Carolina public body and body politic and corporate created and established under the provisions of the North Carolina Metropolitan Sewerage Districts Act, Chapter 153, Article 25, Sections 153-295 to 153-324, inclusive (succeeded by Chapter 162A-64-81, inclusive) of the North Carolina General Statutes, with its principal office and place of business at 2028 Riverside Drive, Woodfin, N.C. 28804 (hereinafter "MSD" or "District") and the CITY OF HENDERSONVILLE, a body corporate and politic with its principal office and place of business at 160 Sixth Avenue East, Hendersonville, N.C. 28793 ( hereinafter "Hendersonville" or "City").

WITNESSETH

WHEREAS, MSD was created and established by the North Carolina State Stream Sanitation Committee by resolution adopted on January 19, 1962, and the MSD is currently comprised of the following political subdivisions:

- City of Asheville
- Town of Biltmore Forest
- Town of Weaverville
- Town of Black Mountain
- Town of Woodfin
- Woodfin Sanitary Water and Sewer District
- Avery Creek Sanitary District
- Busbee Sanitary District
- Crescent Hill Sanitary District
- Skyland Sanitary District
- Fairview Sanitary District
- East Biltmore Sanitary District
- Caney Valley Sanitary District



Swannanoa Water and Sewer District  
Beaverdam Water and Sewer District  
Venable Sanitary District  
Enka-Candler Water and Sewer District

WHEREAS, MSD operates and maintains a system of interceptor and collector sewer lines and a wastewater treatment facility which system of interceptor and collector sewer lines and wastewater treatment facility is referred to herein as the "District Sewerage System;" and

WHEREAS, MSD currently collects and treats wastewater from the Cane Creek Water and Sewer District in North Henderson County in the District Sewerage System pursuant to contract; and

WHEREAS, in accordance with the provisions of North Carolina General Statutes 162A-68.5, the Cane Creek Water and Sewer District ("CCWSD") has submitted a request to become part of MSD, the MSD Board has approved such request, and subject to the approval of the North Carolina Environmental Management Commission ("EMC"), CCWSD will become a part of MSD, effective July 1, 2020; and

WHEREAS, MSD is authorized and empowered under Article 5 of Chapter 162A of the General Statutes to fix and revise rates, fees and charges for the use of or for the services and facilities provided by the District Sewerage System and to enter into contracts and agreements with the governing body of any political subdivision regarding the collection of rates, fees and charges for the services and facilities provided by the District Sewerage System; and

WHEREAS, Under MSD's current contract with CCWSD, CCWSD is required to bill and collect rates, fees and charges for the use of and services furnished by the District Sewerage System to users within the CCWSD; and

WHEREAS, Upon the consolidation of the CCWSD into the MSD, MSD will become responsible for the billing and collecting rates, fees and charges for the use of and the services furnished by the District Sewerage System within the CCWSD; and

WHEREAS, City owns and operates a system for the provision of water (the "City Water System") to persons in Hendersonville and Henderson County, and the City currently provides water to some users of the District Sewerage System living within the CCWSD; and

WHEREAS, MSD desires to contract with City to bill and collect rates, fees and charges for the use of and services provided by MSD to those users of the District Sewerage System in CCWSD who also receive water from the City; and

WHEREAS, City desires to contract with MSD to provide the billing and collecting services requested by MSD, and City has the authority and capability to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and obligations herein undertaken, it is agreed as follows:

1. City will act as MSD's agent and bill and collect all rates, fees and charges levied by MSD for the use of and services furnished by the District Sewerage System to those customers in the CCWSD who also receive water from the City Water System (hereinafter "Customers").

2. MSD will provide City with the rates, fees and charges for sewer service provided to Customers in the CCWSD who also receive water from the City, and a list of such Customers on an annual basis. The Customer list will be updated as new users connect to the District Sewerage System or the City Water System.

3. City will send bills to Customers as shown on the Customer list on a monthly basis and will exercise all reasonable efforts to ensure such bills are paid promptly. MSD and City acknowledge and agree that one bill for water and sewer service will be sent to Customers. City shall take appropriate action to collect any unpaid fees for sewer service, including but not limited to, the discontinuing of water service to such Customer.

4. MSD will pay City \$2.45 per bill. City will bill MSD, and MSD shall promptly pay such charges. This fee may be adjusted, annually, by mutual agreement of MSD and City based on the prevailing MCI or CPI.

5. Payments received by City from a Customer shall be applied to charges for water and sewer service. To the extent any payments received are less than the total bill for water and sewer service, such payments shall be prorated to the charges for water and sewer service. MSD agrees to accept all City policies for adjustments to the customers' bills. Delinquent or late fees collected by the City shall be the property of the City. MSD reserves the right to terminate any Customer's sewer service for non-payment.

6. Payments received by the City for the Customers' sewer service shall be deposited in an account designated by the District on a bi-monthly basis.

7. Except as set forth herein, City shall have no responsibility to collect unpaid charges for sewer service from any Customer.

8. City's records and accounts relating to the billing and collection of rates, fees and charges for sewer service shall be open to inspection by the District at all reasonable times.

9. The effective date of this agreement is July 1, 2020. MSD will provide Customer and billing information so that City can begin billing for sewer service as of July 1, 2020.

10. This Agreement may not be amended except by a writing signed by an authorized representative of MSD and the City.

11. This agreement shall remain in effect until terminated by mutual agreement of MSD and City or by operation of law. If either City or MSD desire to terminate this agreement, the party requesting termination shall send the other party a request for termination. Such request shall be in writing and shall be sent via regular US Mail and by electronic mail, no later than six months prior to the requested termination date; addressed as follows:

AS TO CITY: City Manager  
City of Hendersonville  
160 Sixth Avenue East  
Hendersonville, N.C 28739  
Via e-mail @ jconnett@hvlnc.gov

AS TO MSD: General Manager  
W.H. Mull Building  
2028 Riverside Drive  
Woodfin, N.C. 28814  
Via e-mail @ thartye@msdbc.org

IN WITNESS WHEREOF, the parties hereto acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in two counterparts, each of which shall constitute an original.

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY

By: Jerry VeHaun, Board Chair

ATTEST: By: Secretary

CITY OF HENDERSONVILLE

By: Barbara Volk, Mayor

ATTEST: By: Tammie K. Drake, City Clerk

APPROVED AS TO FORM: By: Samuel H. Fritschner, City Attorney

This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act  
By: MSD Finance Officer

**H. Consideration of Certificate of Sufficiency for the Contiguous Annexation of a Parcel**

**Located at 1412 Old Spartanburg Highway Identified as Tax Parcel 9578-42-6584:** Development Assistance Director Susan Frady presented the application of Mark Coleman for the contiguous annexation of a 0.115-acre parcel located at 1412 Old Spartanburg Highway identified as tax parcel 9578-42-6584. She also 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 for April 2, 2010.

**I. Consideration of Utility Line Extension Agreements for Arcadia Views Sewer and Water Extension Request, WXZ Development, Inc.:**

Utilities Director Lee Smith presented a utility line extension agreement for water and sewer service for Arcadia Views, 199 single family residential units. This project is located within the planning and zoning jurisdiction of the Town of Laurel Park and has received approval dated January 16, 2018.

The extension of the water system will consist of 308 linear feet of eight-inch main and one fire hydrant. The extension of the sewer system will consist of 2,048 linear feet of eight-inch PVC and 50 linear feet of eight-inch DIP gravity main; 6,460 linear feet of four-inch PVC force main and a 0.053 million gallon-per-day sewer pump station.

Based on the above information, Mr. Lee Smith stated the Water and Sewer Department has the capacity to support this additional infrastructure and associated connections and hereby recommends approval of said project contingent upon final approval of construction plans and specifications by the Water and Sewer Department.

In addition, the City will enter into a Utility Extension Agreement with the developer. Mr. Lee Smith provided a draft version of the Utility Extension Agreement. He stated it will be revised in the near future and asked the Council to authorize the City Manager to execute the finalized version of the agreement.

**J. Consideration of Special Event Permit for Meltdown Vintage Motorcycle Show:**

Development Assistance Director Susan Frady stated this event will be held on April 25th from 8 A.M. - 6 P.M. at Southern Appalachian Brewery. This is the tenth year for this event. The change this year is that the applicant has requested to sell alcohol in a barricaded area on Locust Street rather than at the brewery. Locust Street is closed for the event. Off-duty police officers will be hired by the applicant to work during this event as required by the Special Events Ordinance. The Special Events Committee voted unanimously to recommend the Council's approval of this event.

**K. Consideration of Ground Maintenance Equipment Lease Proposal:** Public Works Director Tom Wooten requested the City enter into a five-year lease agreement with Smith Turf and Irrigation for five eXMark mowers (propane powered engines), one Workman with a snow plow blade and utility bed and a six foot wide broom attachment, and a Toro spreader/sander for \$87,705.68 or \$1,414.13 per month. This agreement includes trading in seven older Kubota and Woods mowers for a credit of \$11,350.

Mr. Wooten explained over the last several years, the City has been purchasing one new mower a year at a cost of about \$14,000. He proposed redirecting these funds toward the lease agreement and renegotiate a new lease at the end of five years.

Mr. Wooten reviewed the benefits of the agreement stating the City will have a newer fleet of mowers, a better commercial grade mower with less maintenance, less down time, and will realize a savings in fuel costs by switching from diesel engines to propane engines. In addition, they will have two new pieces of equipment to work on a variety of things but specifically cleaning parking lots of snow and mud/silt after flooding, cleaning the Oklawaha Greenway Trail of snow and mud/silt after flooding, and applying fertilizer and granular herbicide to our parks and City property.

**L. Consideration of America's Water Infrastructure Act (AWIA) and NC Source Water Risk and Resiliency Plan Requirements and Associated Budget Amendment:**

Utility Director Lee Smith explained the America's Water Infrastructure Act of 2018 (AWIA) requires community water systems serving more than 3,300 people complete a Risk & Resiliency Assessment and an Emergency Response Plan. Based on total population served by the City of Hendersonville's water system (approximately 65,000 per the 2017 Water Master Plan), two components must be completed, and certification sent to the U.S. EPA: (1) Risk & Resilience Assessment (RRA) prior to December 31, 2020 and (2) Emergency Response Plan (ERP) within six months of RRA, but not later than June 30, 2021.

Mr. Lee Smith stated since the enactment of AWIA, the North Carolina Department of Environmental Quality (NCDEQ) has proposed new changes to rule 15A NCAC 18C .1305 to reduce regulatory burden and allow public water systems to create and maintain one plan that would meet both AWIA requirements and the state's requirements for source water protection planning. Following the rule change, the documents prepared for compliance with AWIA may also be referred to as a Source Water Risk and Resiliency Plan (SWRRP) and used to satisfy compliance with State rule .1305.

Mr. Lee Smith requested Council approve the scope of work in the proposal by McKim and Creed to assist the City in completing these documents and submitting certification as well as work to prepare the City for recertification in five years.

**M. Consideration of Resolution Accepting Loan Offer for the Northside Water System**

**Improvements Project State SRP:** City Engineer Brent Detwiler reported the Northside Water System Improvements Project was publicly bid on September 6, 2019. This project is being funded by the NCDEQ Division of Water Infrastructure (DWI). M. B. Kahn Construction Co., Inc. of Columbia, SC submitted the apparent low bid for the project. Each bid received was above the project's available funding. Therefore, following receipt of bids, McKim & Creed and the City entered into negotiations with M. B. Kahn pursuant to NC G.S. 143-129 to reduce project cost. Additional funding was formally applied for through DWI to increase the State Reserve Project loan amount. He presented an Amended Funding Offer for State SRP Loan from NCDEQ which requires a resolution by City Council accepting the loan offer.

Resolution #20-0313

RESOLUTION BY GOVERNING BODY OF APPLICANT

WHEREAS, the Safe Drinking Water Act Amendments of 1996 and the North Carolina Water Infrastructure Fund have authorized the making of loans and/or grants, as applicable, to aid eligible, drinking-water system owners in financing the cost of construction for eligible, drinking-water infrastructure; and

WHEREAS, the North Carolina Department of Environmental Quality has offered a State Reserve Loan in the amended amount of \$5,370,932.00 for the construction of the Northside Water System Improvement Project, hereafter referred to as the "Project"; and

WHEREAS, the City of Hendersonville intends to construct said project in accordance with engineering plans and specifications that have been or will have been approved by the North Carolina Public Water Supply Section.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

That the City of Hendersonville does hereby accept the State Reserve Loan amended offer in the amount of \$5,370,932.00; and

That the City of Hendersonville does hereby give assurance to the North Carolina Department of Environmental Quality that they will adhere to all applicable items specified in the standard "Conditions" and "Assurances" of the Department's funding offer, awarded in the form of State Reserve Loan; and

That John Connet, City Manager, and successors so titled, is hereby authorized and directed to furnish such information, as the appropriate State agency may request, in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application; and

That City of Hendersonville has complied substantially or will comply substantially with all Federal, State and local laws, rules, regulations, and ordinances applicable to the Project and to Federal and State grants and loans pertaining thereto.

Adopted this the fifth day of March 2020 at Hendersonville, North Carolina.

/s/Barbara G. Volk, Mayor

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

**Council Member Hensley 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. Proclamations:**

- **American Red Cross Month:** Mayor Volk presented a proclamation for American Red Cross Month.
- **Dr. Pierce "P J" Moore, Jr.:** Mayor Volk presented a proclamation to Dr. Moore for his service to his community and his Country on the occasion of his 100<sup>th</sup> birthday.

**ii. Announcement of Walk of Fame Honorees:** Mr. Ronnie Pepper, Walk of Fame Steering Committee, announced the following honorees for the 2020 Walk of Fame:

**RG Anders** - Long serving superintendent to the Henderson County Public Schools. During his reign, he worked to enrich all children in Henderson County and modernized the school system. He was affectionately known as the superintendent on horseback.

**Art Cooley** - A pioneer in broadcasting, Mr. Cooley was instrumental in providing communication to the residents of Henderson County and surrounding areas for over 40 years. In addition to radio, Mr. Cooley launched the first cable tv system in Henderson County.

**William Franklin Edwards** - A well-known businessman and builder in the late 1800's and early 1900's, Mr. Edwards was responsible for the building of the Henderson County Historic Courthouse, the Edward Memminger home, known as Tranquility, the first town hall and Opera Hall, the Hotel Wheeler and the People's National Bank.

**Frank Fitzsimmons** - A schoolteacher, banker, football coach, register of deeds and soldier during World War II. His long-lasting contribution to Henderson County were his three volumes of books entitled "From the Banks of the Oklawaha" which continues to tell the history of Henderson County today.

**Dr. George Alexander Jones** - a pastor, politician, historian and preservationist...all of which would come to extraordinary service to his community. He helped form the Henderson County Genealogical and Historical Society, led the fight to restore the Henderson County Historic Courthouse and contributed to the documentation of local history as editor of the Volumes I and II of the Henderson County Heritage.

**Sam Mills** - a member of the Hendersonville City Council, Mr. Mills worked to bring about the integration of schools during the Civil Rights Movement and led the Hendersonville Redevelopment Commission and the Urban Renewal Program.

**Rodger Popkin** - Alongside his father, Rodger Popkin, established the Blue Star Camp to provide a camp for Jewish children from the south who were not allowed at other camps. For over 50 years, he has continued to work on issues of inclusion and has been part of a National campaign to end bullying.

**Russell Sacco M.D.** - A local Henderson County Doctor, Dr Sacco served as the first medical advisor for Pardee Hospital's Geriatric Evaluation team and the first Medical Director for the Henderson County Health Agency. His long-lasting contribution to Henderson County was creating the Henderson County Free Clinic.

**Carl and Lilian Sandburg** - Husband and wife team brought national attention to Hendersonville through the books and poems written by Carl Sandburg and the genetic research inspired by Lilian Sandburg and her goat farming. Today the Sandburg home in Henderson County brings visitors from all over the nation.

**Pat Shepherd** - Artist Pat Shepherd has brought national attention to Hendersonville by showcasing her art of dance. Through her work she has empowered hundreds of children and teens through her art and has brought national attention to our community by performing in such places as The Macy's Thanksgiving Parade, Walt Disney World, and The Orange Bowl.

**Kathleen Featherstone Williams** - Mrs. Williams has been described as a pioneer of Civil Rights in Henderson County. She played a vital role in the social changes that occurred in Henderson County in the 1960's including the integration of schools. In her later years she worked to promote and preserve the Black History of Henderson County.

**iii. Introduction of Police Officer:** Chief Blake introduced and welcomed Officer Nicole Marie Joanson.

**iv. Introduction of Downtown Employees:** Downtown Director Lew Holloway introduced new employees Jamie Carpenter, Downtown Economic Development Coordinator, and Meredith Friedheim, Downtown Events Coordinator.

**v. Swearing in of Fire Chief Darren James Miller:** Mr. Pahle provided some background on Chief Miller. The oath of office was performed by Mayor Volk who welcomed Mr. Miller as the new fire chief. Chief Miller expressed his appreciation to Council and management for allowing him to continue to be a servant leader.

**7. Public Hearing - Consideration of an Order to Permanently Close a Portion of an Unimproved Right-of-Way for West Pine Street:** Development Assistance Director Susan Frady presented the application from Stephen Robertson to close an unimproved portion of right-of-way (25 feet) of West Pine Street. West Pine Street currently has a 70-foot right-of-way. There is 16-21 feet of paved street. The applicant discussed with Tom Wooten, Public Works Director closing 25 feet of the 70 foot right-of-way. Mr. Wooten was not opposed to this. A 45-foot right-of-way will remain. She stated there are no public utilities within this right-of-way.

Mrs. Frady reported the Council adopted a Resolution of Intent to close this portion of the right-of-way at their January 9 meeting. She certified a copy of the Resolution of Intent was mailed to the adjoining property owners, notification of the proposed closing was posted on the property, and the Resolution of Intent and notice of public hearing was advertised four times in the legal notice section of the local newspaper.

Mrs. Frady reviewed North Carolina General Statute 160-299 containing the procedures for permanently closing streets and alleys.

The public hearing was opened at 6:25 p.m. by Mayor Volk in accordance with NCGS by notice published in the Times News. The following spoke in favor of the street closing:

Stephen Robertson, applicant, requested Council to close the unimproved right-of-way.

The public hearing was closed at 6:26 p.m.

**Council Member Miller moved Council to adopt the Order to Permanently Close an unimproved portion of right-of-way (25 feet) of West Pine Street as petitioned by Stephen Robertson. A unanimous vote of the Council followed. Motion carried.**

ORDER #20-0316

**ORDER TO PERMANENTLY CLOSE A PORTION OF AN UNIMPROVED  
RIGHT-OF-WAY (25 feet) OF WEST PINE STREET  
(Petition by Stephen Robertson)**

NORTH CAROLINA  
HENDERSON COUNTY

TO WHOM IT MAY CONCERN:

WHEREAS, North Carolina General Statute Section §160A-299 authorizes a city council to permanently close any street or public alley way within its corporate limits or area of extraterritorial jurisdiction and provides a procedure for the closing of such streets or alleyways; and

WHEREAS, Stephen Robertson has petitioned the City of Hendersonville to close a portion of the Right-of -Way for West Pine Street; and

WHEREAS, on the ninth day of January 2020, the Hendersonville City Council adopted a resolution expressing the intention of the municipality to close portions of these streets and setting the fifth day of March 2020, as the date of a public hearing regarding such closure; and

WHEREAS, the aforementioned resolution has been published once a week for four successive weeks prior to the public hearing in the Hendersonville Times News (a newspaper of general and regular circulation in Hendersonville and Henderson County) and a copy thereof has been sent by certified mail to all owners of property adjoining the street as shown on the county tax records; and

WHEREAS, notice of the closings and of the public hearing has been posted in at least two places along the streets; and

WHEREAS, a public hearing was held in conformance with the aforementioned public notice on the fifth day of March 2020.

NOW, THEREFORE, the City Council of the City of Hendersonville does hereby make the following findings of fact:

1. The closing of the right-of-way hereafter described are not contrary to the public interest.
2. No individual owning property in the vicinity of the alley or in the subdivision in which it is located would be deprived by the closing of such right-of-way of reasonable means of ingress and egress to his property.

IN CONSIDERATION THEREOF, IT IS HEREBY ORDERED:

1. The following portions of streets are permanently closed and no longer existent as of the effective date of this order:

Being that certain 25-foot strip of West Pine Street to be vacated in the City of Hendersonville, Henderson County, North Carolina, and being more particularly described as follows:

Beginning found iron pipe at the intersection of the South right-of-way line of Park Street (vacated) and the West right-of-way line of West Pine Street as shown on the plat of Leno Park recorded in Plat Cabinet B, slide 178A, Register of Deeds, Henderson County, North Carolina; Point of Beginning also being the Northernmost point of Block E of the aforesaid Lenox Park; thence along the West right-of-way line of West Pine Street the following six (6) courses to wit: (1) S38-50-05E for 76.00 feet to a found iron pipe; (2) S43-50-05E for 50.01 feet to found iron pipe; (3) S44-13-52E for 50.20 feet to a found iron pipe; (4) S46-00-52E for 49.48 feet to a found iron pin; (5) S44-45-29E for 50.54 feet to a found iron pin; (6) S 28-38-03E for 50.01 to a found iron pipe at the Southeast corner of Lot 18, Block E, Lenox Park; thence a new line N66-01-52E for 25.08 feet to a point; thence N28-38-03W for 55.59 feet to a point; thence N44-45-29W for 54.35 feet to a point; thence N46-00-52W for 49.37 feet to a point; thence N44-13-52W for 49.73 feet to a point; thence N43-50-05W for 48.83 feet to a point; thence N38-50-05W for 129.56 feet to a point on the West line of West Pine Street and the East line of that 0.15 acre parcel shown on a plat recorded at Plat Slide 11942, Register of Deeds, Henderson County, North Carolina; thence with the West right-of-way line of West Pine Street S02-45-14E for 42.45 feet to a found iron pin at the intersection of the North right-of-way line of Park Street (vacated) and the West right-of-way line of West Pine Street; thence S38-50-05 E for 22.34 feet to the Point of Beginning. Containing 9,175 square feet, more or less.

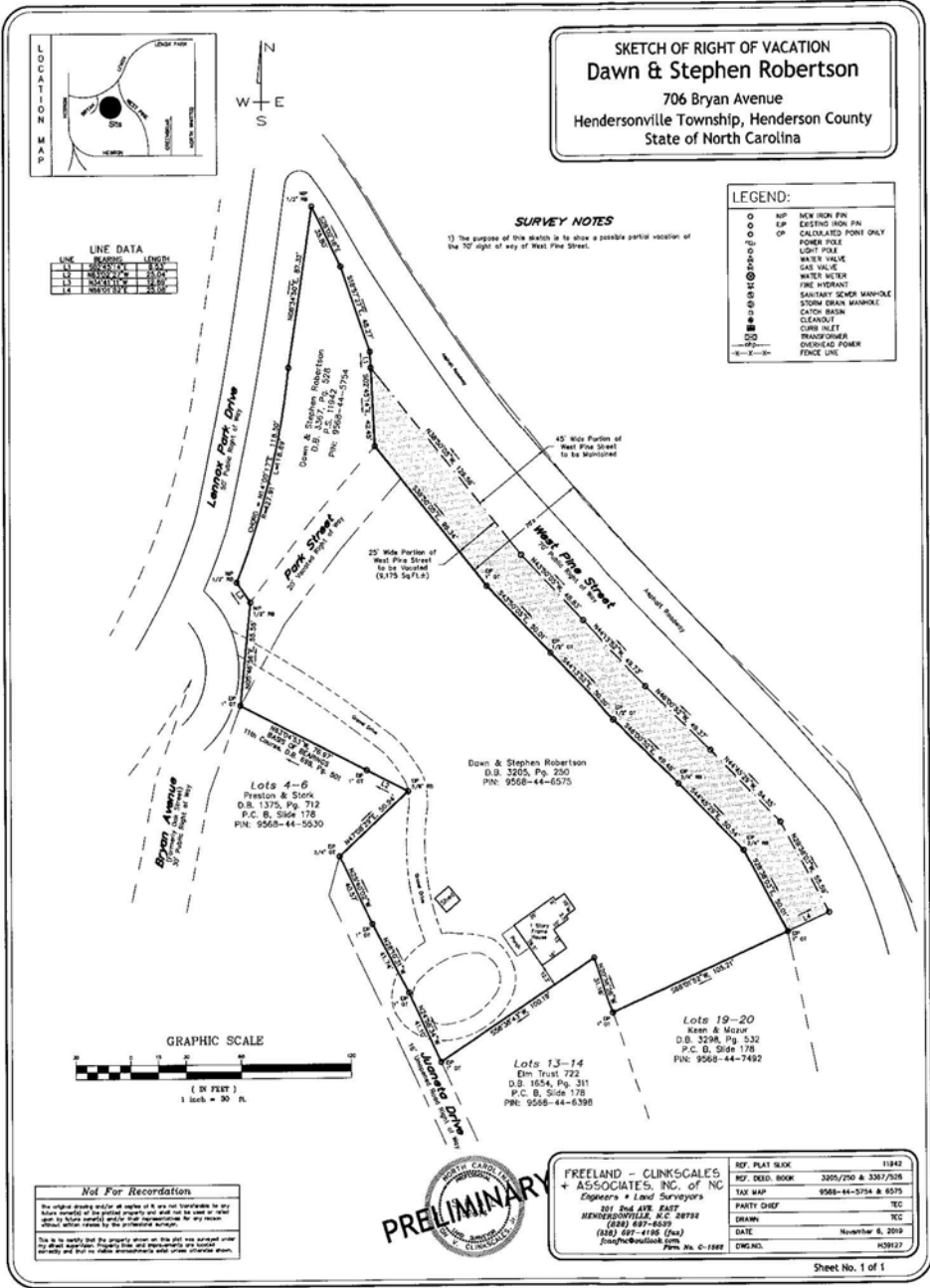
2. The City Clerk shall forthwith cause a certified copy of this order to be filed in the Office of the Register of Deeds of Henderson County.

This order shall take effect the fifth day of March 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 an Application from Grace Blue Ridge Church for a rezoning to a Conditional Zoning District for Parcels Located at 109 Florence Street from R-15 Medium Density Residential to C-2CZD Secondary Business Conditional Zoning District:** Senior Planner Daniel Heyman presented the application for a conditional rezoning from Grace Blue Ridge Church. The applicant is requesting to rezone a 2.46-acre lot that contains Grace Blue Ridge Church and their parking facilities, parcel numbers 9578-21-4699, 9578-21-4924, 9578-21-4699, and 9578-21-5614. The subject property is currently zoned C-2 Secondary Business and R-15 Medium Density Residential. The applicant is requesting to be zoned C-2 CZD Secondary Business Conditional Zoning District. The applicant is requesting the following uses be permitted: religious institutions, offices, business, professional and public and parking lots and parking garages. He stated most of Grace Blue Ridge Church’s parking is situated on land that is currently zoned R-15 Medium Intensity Residential. Since parking lots are not a permitted use in R-15, this zoning change will bring these parcels into zoning compliance.

Mr. Heyman stated the applicant is also requesting to allow offices as a permitted use. There is a separate office at the rear of the building that was previously used for light manufacturing.

*Existing Land Use & Zoning:* Mr. Heyman reviewed the existing land use and zoning. The subject parcel is currently zoned C-2 Secondary Business and R-15 Medium Density Neighborhood and contains Grace Blue Ridge Church and parking lots. The parcels to the north west, west and south west are zoned R-15 Medium Density Residential and contain residential uses. The parcels to the north east, east and south east are zoned C-3 Highway Business include the Little Red School Hendersonville and the Dixie Trails Mobile Home Park.

*Comprehensive Plan Consistency:* Mr. Heyman stated the 2030 Comprehensive Plan’s Future Land Use Map designates the subject area as High intensity Neighborhood and Medium Intensity Neighborhood. He reviewed the goal of both categories. He stated the adjacent properties are designated as either Medium Intensity Neighborhood or High Intensity Neighborhood on the 2030 Comprehensive Plan’s Future Land Use Map.

*Plan Review: Buildings:* Mr. Heyman stated the site plan shows an existing structure which houses Grace Blue Ridge Church.

*Parking:* The site plan shows 102 existing parking spaces to remain.

*Buffers/Landscaping:* The landscaping plan shows a 10-foot type-B buffer along the south side of parcel number ending in 5614 and the north side of parcel number ending in 4924. The site plan shows an existing privacy fence buffering existing residential uses in between their vehicular use areas.

*Neighborhood Compatibility Meeting:* Mr. Heyman reported a neighborhood compatibility meeting concerning the application was held on December 18, 2019.

*Planning Board:* Mr. Heyman stated the Planning Board voted unanimously to recommend City Council approve the ordinance to change the zoning because it will improve the functionality of the existing property.

*Zoning Ordinance Guidelines:* Mr. Heyman reviewed Section 11-4 of the City’s Zoning Ordinance that must be considered prior to amending the official zoning map.

Mayor Volk opened the public hearing at 6:31 p.m. in accordance with North Carolina General Statutes by notice published in the Times News. No one expressed a desire to speak. The public hearing was closed.

**Mayor Pro Tem Smith moved the City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from C-2 Secondary Business and R-15 Medium Density Residential to C-2-CZD Secondary Business Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan’s Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons: it extends the use of the parking lot and allows an additional area to be used for additional parking. A unanimous vote of the Council followed. Motion carried.**

Ordinance #20-0317

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

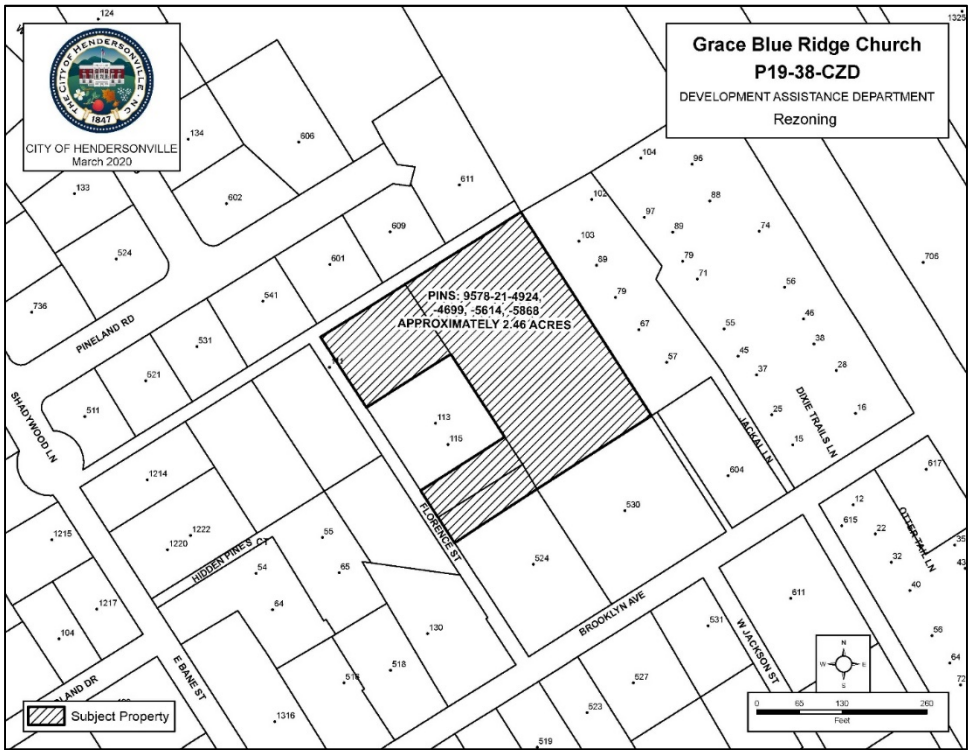
IN RE: FILE NO. P19-38-CZD; Grace Blue Ridge Church

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 9578-21-4699, 9578-21-4924, 9578-21-4699, and 9578-21-5614 from C-2, Secondary Business and R-15 Medium Density Residential to C-2-CZD, Secondary Business Conditional Zoning District.
- 2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fifth day of March 2020.

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





**9. Public Hearing - Consideration of an Application from William A. Pace, Jr. for the Rezoning of a Parcel Located at 137 E. Central Street from C-3 CZD Highway Business Conditional Zoning District to C-2CZD Secondary Business Conditional Zoning District:**

Planner Tyler Morrow presented the application for a conditional rezoning application from William Pace of Pace Brothers Construction. He provided the following information:

The subject project is located on parcel number 9578-24-8681 and contains a commercial structure. The property was rezoned in 2018 from R-15 Medium Density Residential to C-3 CZD. City Council approved the rezoning with the following permitted uses: business services, construction trades facilities, personal services, public and semi-public buildings, recreational facilities-indoor, religious institutions, repair services, residential dwellings - single-family, residential dwellings - two-family, and wholesale businesses. The applicant is requesting to rezone the subject property to C-2 CZD, Secondary Business Conditional Zoning District in order to have light manufacturing as a conditional use.

The applicant wants to maintain the permitted uses from the 2018 approved rezoning with the addition of light manufacturing. He read the definition of light manufacturing per the zoning ordinance.

*Existing Land Use & Zoning:* Mr. Morrow reviewed existing and the surrounding land uses and zoning districts.

*Comprehensive Plan Consistency:* The subject property is classified as High Intensity Neighborhood on the 2030 Comprehensive Plan's Future Land Use Map. He reviewed the goal of that classification. He reported the 2030 Comprehensive Plan's Future Land Use Map designates all adjacent parcels as High Intensity Neighborhood. Some parcels located to the southwest of the project are classified as Neighborhood Activity Center.

*Plan Review: Buildings:* Mr. Morrow stated the site contains a 10,000 square foot commercial structure.

*Landscaping:* A buffer, as well as a grass berm, were installed as a condition of the 2018 rezoning. No changes to the structure have been submitted. The site was developed in accordance to the site plan and landscaping plan approved by City Council.

*Neighborhood Compatibility:* Mr. Morrow stated a neighborhood compatibility meeting concerning the application was held on February 3, 2020. No one representing the public attended. He provided a copy of the neighborhood compatibility report.

*Planning Board:* The Planning Board voted unanimously to recommend City Council adopt an ordinance changing the zoning designation of the subject parcel from C-3 CZD Highway Business Conditional Zoning District to C-2 CZD Secondary Business Conditional Zoning District.

*Zoning Ordinance Guidelines:* Mr. Morrow reviewed the factors in Section 11-4 of the City's Zoning Ordinance, that must be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map.

Mayor Volk opened the public hearing at 6:38 p.m. in accordance with NCGS by notice published in the Times News. No one expressed a desire to speak. The public hearing was closed.

**Council Member Miller moved the City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from C-3 CZD Highway Business Conditional Zoning District to C-2 CZD Secondary Business Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons: the addition of light manufacturing as a permitted use on the property will benefit the property, the surrounding area and the City generally. A unanimous vote of the Council followed. Motion carried.**

Ordinance #20-0318

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

IN RE: William Pace Rezoning; File # P20-4-CZD

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:

Parcels 9578-24-8681 from C-3 CZD, Highway Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District.

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

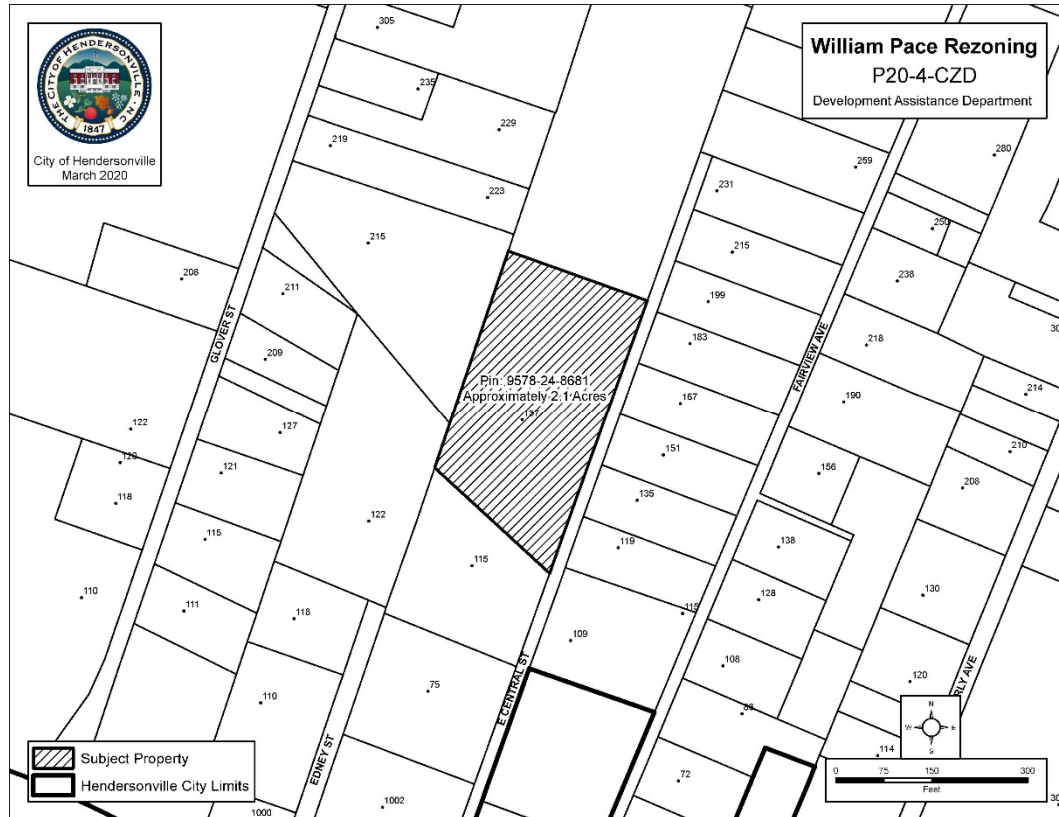


Adopted this fifth day of March 2020.

/s/Barbara G. Volk, Mayor

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

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



#### 10. Public Hearing - French Broad River Raw Water Intake and Pump Station: Mr.

Detwiler explained the objective of this project is to provide an additional redundant drought tolerant intake for the water treatment plant on the French Broad River in order to increase water supply and resiliency. He stated the environmental documentation and assessment will allow permitting of the expansion of the water treatment plant from 12 million gallons per day (mgd) to 15 mgd treatment capacity.

Mr. Detwiler introduced Alea Tuttle from ClearWater Environmental Consultants. Ms. Alea Tuttle, Project Biologist for ClearWater Environmental Consultants, stated they were contracted on behalf of the City to aid in the State Environmental Policy Act (SEPA) for the Environmental Assessment (EA) of the project.

Ms. Tuttle stated they evaluated 15 environment factors ranging from impacts to topography, cultural resources and the potential affects and these were discussed in the Environmental Assessment. She explained if impacts were found, mitigated measures would be required to offset those impacts. She reported based on the EA they believe the NC Department of Environment and Natural Resources will conclude that a finding of no significant impact is the appropriate decision for the project. She discussed the environmental factors and how they have been addressed.

Ms. Tuttle stated the water intake will not have significant effect on the topography, soils, land use, forest resources or prime and unique cultural lands in this area. There will be removal of trees on the bank of the French Broad River in the vicinity of the intake but will not negatively affect the forest resources of the area. The project area is not in a hydrologic unit known to contain hibernation and maternity sites for the endangered Northern Long Ear Bat. Streams are present within the project area. There is a road crossing of an unnamed tributary to the French Broad River that will be accomplished with an arched culvert and will not result in any permanent impacts to the stream. A temporary utility crossing will occur on the stream, however, that impact is temporary and limited to the time of construction.

Ms. Tuttle stated as a part of the design of the intake canal, a section of the bank from the French Broad River will be replaced with bank stabilization structures known as sheet piling and will be armored with riprap stone. Several agencies have expressed concern about possible impacts to habitat suitable for the Federally endangered Appalachian Elktoe Mussel and other rare mussels. A mussel survey was conducted in the French Broad River at the intake location and no live specimens were found. The U.S. Fish and Wildlife indicates the project may but is unlikely to affect the Appalachian Elktoe. In order to avoid impact to the Appalachian Elktoe or other rare species, the applicant will coordinate with the U.S. Fish and Wildlife Service for survey and relocation of any mussels found in the impact area prior to construction.

Ms. Tuttle stated the site was evaluated for cultural and archeological resources by Archeological Consultants of the Carolinas in August of 2018. They found no significant archeological resource will be impact by the proposed construction.

Ms. Tuttle stated the area was also evaluation for environmental justice impacts. She stated this project will not disproportionately effect minority or low-income populations.

**Mayor Volk opened the public hearing at 6:46 p.m. in accordance with NCGS by notice published in the Times News. The following addressed the Council:**

Ken Fitch, 1046 Patton Street, asked where the known populations of the Elktoe Mussels are in relation to this site. Ms. Tuttle stated details are available in the EA found at the Operations Center.

**The public hearing was closed at 6:48 p.m.**

**No action was required or taken by the City Council.**

### **11. Public Hearing – Input on Community Development Needs and Potential**

**Applications for the 2020 Program Year:** Downtown Economic Development Director Lew Holloway explained as a component of Community Development Block Grant (CDBG) application, there is an initial public hearing required for feedback on what projects are in need of CDBG funds.

Mr. Holloway stated in North Carolina, one of the programs that has been used is the NC Neighborhood Program. He stated CDBG are targeted to low- and moderate-income individuals which are 80 percent and below of the area median income. He stated the Neighborhood Program was used for the Grey Mill project and Seventh Avenue. He explained a public hearing is required for future projects.

Mayor Volk opened the public hearing at 6:50 p.m. in accordance with North Carolina General Statutes by notice published in the Times News. The following addressed the Council:

Ken Fitch, 1046 Patton Street, commented the Ashe Street area needs upgrading and asked if it would be eligible for this program. Mr. Connet replied an application for that area has been submitted but the grants have not yet been awarded. He stated the City may reapply but is now awaiting action.

The public hearing was closed at 6:52 p.m. **No action was required or taken by the City Council.**

**12. Consideration of Subdivision Ordinance:** Mr. Chad Meadows, CodeWright Planners, stated the draft Subdivision Ordinance was revised based on the guidance and input of the City Council. He summarized the changes to the draft ordinance.

1. Public land dedication: added clarity – greenway dedication or reservation are credited towards park dedication requirements.
2. Private streets: new water/sewer connection requirements will likely trigger annexation; thus most new streets will be in the corporate limits.
3. Vehicular gates: most new streets will likely be publicly owned.
4. Steep slopes: a new slope comparison graphic was added.
5. Ridgetop development: there are few instances where this development would occur, so this provision was removed.
6. Owners; associations: when a subdivision has common ownership: removed minor subdivisions (eight or fewer lots) from the requirement to form an owners' association so hardships are not created with the regulation.
7. Preliminary plat name: changed name from preliminary plat to "major subdivision".
8. Definitions: added 63 definitions
9. "Dry" hydrants: removed requirements for dry hydrants at the request of the fire department. Spacing will be at the discretion of the fire department.
10. Purpose and Intent: added references to protecting and preserving wildlife.

In discussion, Council Member Miller asked about who maintains the greenway when required. Mr. Meadows explained subdivisions with more than 30 lots are required to make public dedication for parkland or greenway which is expected to be dedicated to the City or an easement reserved, and, in that instance, it would be the City's responsibility to maintain it. He explained private common open space held by a developer or owner's association and the City is not responsible for maintaining that land. He explained the City has the choice to accept the dedication or not. He stated an alternative is for the City

to accept a fee-in-lieu if a park is not needed. Those funds may be used to purchase land in an area that is deficient in parkland.

**Mayor Pro Tem Smith moved the City Council to adopt the revised Subdivision Ordinance. A unanimous vote of the Council followed. Motion carried.** *[The Subdivision Ordinance is available in the office of the City Clerk.*

**13. Presentation of Results of Affordable Housing Survey:** Assistant Manager Brian Pahle presented the results of the affordable housing survey results from the Council conversations in 2019.

He reported there was:

123 respondents

92 percent considered housing affordability a concern

The top three essential resources to encourage affordable housing are: utilities, construction quality and durability, green space

Monthly payment ranges most accurately reflecting their definition of affordable housing: approximately 70 percent said \$500 to \$1,000/month, 48 percent saying \$500 - \$750/month

How likely are they to support affordability and availability through tax revenues: approximately 70 percent said they are likely to very likely would support it, approximately 19% were neutral.

How likely are they to support the following housing density options:

Small lot development, apartments, duplexes and townhomes (highest ranked) scored high on the very likely and likely scale. Manufactured homes, mobile or tiny homes scored lower but requests were received to exclude tiny homes from the category which indicates support.

Topics they wanted to discuss were: growth and development, sidewalks and greenways and crime and safety scored very high.

Other comments were on: stormwater, road improvements, sidewalks, affordable housing, speed limit, enforcement, neighborhood safety and parking downtown.

Mayor Pro Tem Smith asked for an explanation of affordable and workforce housing from Sarah Grimes. She stated the rule for HUD for affordability is no more than 30% of income for housing and provided median income ranges. She stated HUD also sets fair market rents in the workforce category.

Mayor Volk asked for this information to be put on the City's website for the public. **No action was required or taken by the City Council.**

**14. Discussion of Stormwater Rate Study:** Stormwater Administrator Mike Huffman addressed the Council and stated at the meeting in January, staff received feedback from the Council on CIP funding, and financing scenarios, etc. for establishing stormwater rates. He stated their feedback was reviewed with WithersRavenel. He introduced Seth Robinson from WithersRavenel.

Mr. Robinson provided an overview of the January meeting: what level of service does Hendersonville want to provide and what fee structure could be used. Council requested additional information based upon a Level B-/C+ service: scenarios for a fee increase schedule, example rates for representative non-residential users based upon ERU rate structure and a credit program for stormwater improvements.

Mr. Robinson reviewed the current level of service and stated the City is doing partial proactive planning of capital improvement needs, had a basin studied and identified projects. The City has been reactive and is doing proactive permit compliance and is doing five of the necessary measures. He stated the current \$3 per month/parcel flat fee does not maintain the minimum level of service.

Mr. Robinson presented options to provide the necessary revenue to provide the level of service the City desires from \$3.50 to \$5/month with annual increases at five years and result in \$36.5 million in capital outlay over a ten-year period, 3.5 additional FTEs. He provided examples of ERU which is a charge based upon comparison of an impervious surface to the average residential impervious surface of 3,000 square feet and non-residential assumptions. There was discussion on residential

Ordinance update: Mr. Robinson stated they are currently reviewing ordinances in North Carolina and nationwide to see how other municipalities are addressing stormwater and are looking for simplicity, fee structure, an appeals process, and credit/rebate programs for stormwater improvements. He stated they will make a final recommendation on version to the current ordinance to cover the new fee structure.

Stormwater Design Manual: Mr. Robinson stated there is a very good stormwater design manual in North Carolina in coordination with NC State University so good data and standards are available. He stated the manual would be used for determining credits, rebates based on reductions established in the NC stormwater design manual for runoff treatment and volume.

Mr. Connet reminded the Council the City started a stormwater utility years ago because the City is a Phase II Community under the National Pollutant Discharge Elimination System and is required as part of the Asheville Metropolitan area with more than 10,000 in population. This is mandated by the Federal and State governments to put stormwater measures in place. He stated if the City does not, we can be fined. He stated thorough audits are

being conducted to ensure EPA standards are being met. He stated having the revenue is necessary to deal with the aging infrastructure in our community that may be undersized and/or causing repairs by private property owners.

Mr. Robinson provided rebate program examples and stated long-term maintenance will be required to maintain the credits. Council Member Miller asked if this information has been presented to the Business Advisory Committee. Mr. Connet stated they have received a presentation and Mr. Huffman echoed staff has done a lot of public outreach prior to this meeting. Council Member Miller asked staff to communicate this information to Henderson County and the Board of Education.

Mr. Connet stated next steps are to set rates and make a policy decision as part of the budget document. Mr. Hoffman asked for guidance from the Council to establish rates for the new budget year. Council Member Hensley asked for comparisons of other systems, implementation and ways of minimizing impacts on businesses. Mr. Huffman stated there is a stormwater rate dashboard that provides more information. He stated only one other city in Western North Carolina has a stormwater rate. Council Member Hensley voiced support of the program and for the City taking action. There was some discussion of the audit.

No action was taken by the Council.

**15. Consideration of Eminent Domain Procedures for Half-Way Tree Sewer Project and Northside Water Tank Project:** City Attorney Sam Fritschner stated the project will address many failing septic systems. He stated the City is currently acquiring the rights-of-way to get sewer service to and from the subdivision.

City Attorney Fritschner said the City considered several access points. He stated the current access point is on an unnamed right-of-way. The Legal Department has attempted to discover the ownership of the right-of-way and as expected, an owner was found in the 1800s to 1940s. He stated the way to accomplish acquiring the right-of-way is to institute an eminent domain action against unknown owners. He stated a guardian is necessary and he has requested Attorney Sharon Alexander to serve as guardian. He stated a deposit may be required. He stated the Court will have to allow the City to acquire the right-of-way.

City Attorney Fritschner explained this would only be for an easement for a sewer line and only with respect to the width of the roadway. He reported they are in productive conversations with adjacent property owners.

City Attorney Fritschner reported a second authorization is needed for the northside water tank project. He stated the contract engineers have identified additional property needed for easements. He stated staff has been in conversations with the landowner. He requested permission to exercise eminent domain in the future if needed.

**Mayor Pro Tem Smith moved the City Council to authorize the city attorney to institute eminent domain proceedings with respect to the Halfway Tree project and the Northside water tank project. A unanimous vote of the Council followed. Motion carried.**

RESOLUTION #20-0320

**A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE ACTIONS UNDER N.C.G.S. CHAPTER 40A WITH RESPECT TO CERTAIN REAL PROPERTIES IN HENDERSON COUNTY**

WHEREAS the City Council finds it necessary in order to improve its water distribution system and sewerage collection systems in favor of potential customers who are in need of such improvement, and  
WHEREAS the City Council finds that efforts to obtain easements to aid such improvements have proved impractical or ineffective, and  
NOW, BE IT THEREFORE RESOLVED that the City Attorney be and he is hereby authorized to cause the filing of actions under N.C.G.S. Chapter 40A with respect to the following identified real properties.

Record Owner: PIN  
KME Development, LLC 9663-54-4661  
Also, a sewer easement over that unnamed 16.5-foot (more or less) right-of-way abutting and directly to the west of real property identified as Henderson County PINs  
9577-17-3813  
9577-17-3618  
9577-17-3663.

Adopted this fifth day of March 2020.  
/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

**16. Public Records Presentation:** City Clerk Tammie Drake provided a presentation on “Sunshine Week” and gave information to the Council on the open meetings and public records laws.  
No action was required or taken by the City Council.

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

Council Member Hensley reported on the French Broad MPO meeting. She stated Henderson County is taking the lead on the Ecusta project by applying for a grant to build the Ecusta trail. She stated there is approximately \$28 million in grant funding for transportation needs and that includes greenways and sidewalk. She stated there appears to be additional funding available.

Council Member Hensley requested staff apply for funding for the Clear Creek Greenway project. Mr. Connet stated there is a required 20 percent match. This project will connect the area of Carolina Village to Clear Creek.

**Council Member Hensley moved the Council to resolve to authorize city staff to apply for grant funding for the Clear Creek Greenway project, and to acknowledge the 20 percent match, and further, to authorize withdrawal of the application if it conflicts with the application for the Ecusta Trail. She further moved Council to resolve to support Henderson County's grant application for funding to construct Ecusta Trail. A unanimous vote of the Council followed. Motion carried.**

Resolution #20-0321

**RESOLUTION TO APPLY FOR FRENCH BROAD RIVER MPO GRANT FUNDING AS PART OF THEIR LOCALLY ADMINISTERED PROJECT PROGRAM FOR THE CLEAR CREEK GREENWAY PROJECT**

WHEREAS, The City Council of the City of Hendersonville is committed to improving safe and convenient transportation options for bicyclists and pedestrians; and

WHEREAS, The City Council of the City of Hendersonville plans to expand and improve the infrastructure that supports safe and convenient transportation for bicyclists and pedestrians; and

WHEREAS, The City Council of the City of Hendersonville recognizes the economic and transportation benefits of recreational greenway network throughout the community; and

WHEREAS, The City Council of the City of Hendersonville wishes to apply for funding for the Clear Creek Greenway Project from the French Broad River MPO as part of their Locally Administered Project Program.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE THAT:

Section 1. The City of Hendersonville acknowledges the commitment of the 20 percent match requirement to provide the financial contribution necessary to complete the Clear Creek Greenway Project, and that financial contribution is within reason.

Section 2. The City Council hereby authorizes the withdrawal of the application if it conflicts with Henderson County's application for funding of the Ecusta Trail.

Section 3. The City Council supports Henderson County's grant application for funding to construct the Ecusta Trail.

Section 4. This Resolution shall become effective upon its adoption and approval.

Adopted the fifth day of March 2020.

/s/Barbara G. Volk, Mayor

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

Council Member Simpson commented in consideration of the numerous downtown projects and how the Council manages growth, she asked the Council to consider expanding the historic district to include more properties than just King to Church Streets to keep the small-town ambience. Discussion followed on the historic district versus the municipal service district. Council Member Simpson proposed the historic district be expanded from Washington Street to Grove Street. She stated this would be a good way to have checks and balances on the types of buildings and aesthetics.

There was discussion on historic district regulations and tax credits. Mr. Connet explained a study is necessary to approve the expansion of the historic district, identifying contributing historic structures, etc. He stated staff can present the process for Council's consideration and possibly other ways such as an overlay district, to accomplish this if this is a priority of the City Council.

Mayor Volk asked staff to research options and bring them back to the Council for consideration.

*Environmental Sustainability Board (ESB) Meeting Update:* Council Member Simpson provided an update on ESB. She requested them to research the solar panel program. She is working with the chair of the board on a sustainability plan. She stated there is also a SoSmart accreditation that the City can work toward which requires a solar statement from the Council.

Mayor Pro Tem Smith congratulated Sarah Grimes who was recently appointed to the NC Housing Coalition Policy Committee to recommend policy for workforce and affordable housing for Western North Carolina for 2021 long session. Ms. Grimes welcomed Council's input.

## **18. Staff Reports**

Because of the new initiatives and full agendas, Mr. Connet proposed Council establish a second meeting per month for policy decisions, receive reports, and to keep meetings more efficient. He suggested naming it

“Committee of Whole”. He proposed no votes be taken by the Council and keep it to a finite period of time; no more than two hours. He will seek Council feedback at the April meeting.

## **19. Consideration of Appointments to Boards/Commissions**

**Animal Service Advisory Committee:** Mrs. Drake presented the applications received for this Committee.

**Council Member Miller nominated Caroline Gunther for a three-year term. A unanimous vote of the Council followed. Motion carried.**

**Council Member Simpson nominated Angela Prodrick for a three-year term. A unanimous vote of the Council followed. Motion carried.**

**Council Member Hensley nominated Sarah Hoffman for a two-year term. A unanimous vote of the Council followed. Motion carried.**

**Council Member Simpson nominated Jean Greeson for a two-year term. A unanimous vote of the Council followed. Motion carried.**

**Council Member Hensley nominated Constance Stewart for a one-year term. A unanimous vote of the Council followed. Motion carried.**

The Police Department representative will be appointed by Chief Blake.

Mrs. Drake reminded the Council of the vacancies of other boards and commissions.

## **20. New Business:** There was none.

**20a. Closed Session:** At 8:30 p.m., Council Member Simpson moved Council to enter Closed Session to consult with the City attorney in order to preserve the attorney-client privilege between the public body and the attorney and to instruct the public body's staff concerning the position to be taken regarding the price and other material terms of proposed contract for the acquisition of real property as provided under NCGS §143-318.11(a)(3)(5). A unanimous vote of the Council followed. Motion carried.

The Council discussed potential litigation, the sale of the Dogwood Lot for the construction of a hotel and the purchase of property for construction of the parking deck. The Council exited the closed session at 9:46 p.m.

**Council Member Miller moved the City Council proceed with the sale of the Dogwood lot for the construction of a hotel. The vote was three in favor, two opposed (Smith, Simpson). Motion carried.**

**Council Member Miller moved to proceed with the purchase of properties for a parking deck from Fazio and Jackson. Vote was unanimous.**

## **21. Adjourn.** The meeting adjourned at 9:48 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