

**October 1, 2016**  
**Regular Meeting of the City Council**  
**Council Chamber – City Hall**  
**5:45 p.m.**

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

**Staff Present:** City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Engineering Director Brent Detwiler, Development Assistance Director Susan Frady, Senior Planner David Hazzard, Utilities Director Lee Smith, Fire Chief Joseph Vindigni, Finance Director Lisa White, 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 all members in attendance.

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

**3. Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.* No one expressed a desire to speak.

**4. Consideration of Agenda:**

**Removal from Consent Agenda:**

**H. Consideration of Donation of “S” Permit Parking Space to Benefit the Humane Society**

Mayor Pro Tem Caraker moved City Council’s 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:** September 1, 2016 Regular Meeting

**B. Consideration of Amendments to the Personnel Substance Abuse Policy:** Mrs. Jennifer Harrell explained it is the policy of the City to provide a safe, healthy and efficient work environment for its employees and to protect the public that it serves by establishing and maintaining an alcohol and drug-free workplace. Alcohol and drug abuse is a problem of serious concern and one which affects all segments of the community including the workplace. She explained the current policy only encompasses those employees who hold a Commercial Drivers License (CDL). She stated City administration, including herself, believes all employees that are in safety sensitive positions as well as potential employees should adhere to the City's Alcohol and Substance Abuse policy. She provided a resolution adopting the amended policy for Council’s review and approval.

Resolution #16-1033

**A Resolution Amending the City of Hendersonville Alcohol and Substance Abuse Policy**

WHEREAS, the City of Hendersonville has a Drug and Alcohol testing program for CDL drivers and wishes to amend that policy to encompass the entire City workforce as well as potential employees; and

WHEREAS, the City of Hendersonville wants to confirm its commitment to provide a safe, healthy and efficient work environment for its employees and to protect the public that it serves by establishing and maintaining an alcohol and drug-free workplace as more particularly set forth in the body of the policy; and

WHEREAS, the attached amended policy provides rules and procedures that are consistent with current regulations; now therefore

BE IT RESOLVED, by the City Council of the City of Hendersonville, from and after the effective date of this resolution, that the Alcohol and Substance Abuse Policy attached to this resolution, is hereby adopted.

AND BE IT FURTHER RESOLVED that all policies or resolutions or parts of policies or resolutions in conflict herewith are repealed to the extent of such conflict

Adopted this 6th day of October 2016.

**Alcohol and Substance Abuse Policy**

I. Purpose: It is the policy of the City to provide a safe, healthy and efficient work environment for its employees and to protect the public that it serves by establishing and maintaining an alcohol and drug-free workplace. Alcohol and drug abuse is a problem of serious concern and one which affects all segments of the community, including the workplace.

II. Applicability

1. Applicants who have been offered employment must undergo a drug screen test as part of the hiring process.

2. All employees are covered under this Alcohol and Substance Abuse Policy and are subject to post-accident or post-incident testing.
3. Employees serving in positions determined to be safety sensitive are subject to random and "follow-up" testing, when applicable.
4. Employees who must hold a Commercial Driver's License (CDL) as a requirement for the job are subject to random and "follow-up" testing as required by the U.S. Department of Transportation, if applicable.
5. Employees who are transferring to safety sensitive positions.

III. Prohibited Conduct for All City Applicants and Employees: The following conduct is expressly prohibited and violations will result in disciplinary action up to and including termination:

1. Possession, consumption, manufacturing, distribution, dispensation or being under the influence of an unauthorized controlled substance, an illegal drug, drug paraphernalia or alcohol while on duty, on City premises, in City-supplied vehicles, or in any City work area. Law enforcement officials shall be notified, as appropriate, where criminal activity is suspected.
2. Sale, use, or possession of illegal drugs; or possession with intent to sell illegal drugs.
3. Use of alcohol or controlled substances when these activities adversely affect job performance, job safety, or the public's confidence in an employee's ability to perform their duties in an adequate and effective manner, or any use of illegal drugs or abuse of prescription drugs for which he/she does not have a doctor's prescription.
4. No employee shall report for duty or remain on duty while having an alcohol concentration of .04 or greater. The employee will be removed from duty for a twenty-four (24) hour period. The employee will be subject to a return to duty test. The return to duty alcohol test must indicate an alcohol concentration of 0.00.

IV. Drug Screening Criteria: The City of Hendersonville will consider an employee for a drug screening test under the following circumstances:

1. PRE-EMPLOYMENT: Applicants determined to be final candidates for a full time or part time position will be required to submit to a drug screening. The drug screen shall be performed within forty-eight hours from the time the conditional job offer is made or as soon thereafter as possible but no longer than five (5) business days and before the candidate begins performing the job in question. The City will withdraw an offer of employment made to any applicant whose drug screen test reveals the presence of illegal drugs or prescription drugs without a valid prescription.
2. POST-ACCIDENT or INCIDENT: All full time and part time employees will be tested for the presence of controlled substances and/or alcohol following an on-the-job accident/incident that involves the following:
  - a. A fatality;
  - b. Bodily injury requiring medical attention or professional medical treatment (W/C). The employee is tested only if circumstances indicate that such bodily injury (whether to an employee or citizen or both) may have been caused, at least in part, by the employee; or by reasonable suspicion by a supervisor or
  - c. Property damage which causes one or more vehicles to be incapacitated, where employee is issued a citation, if circumstances suggest that an employee may have contributed to the accident/incident to be determined by the department head or supervisor in charge, or where the department head or supervisor has reasonable suspicion of the presence of controlled substance or alcohol.Testing for drugs and alcohol should occur within two (2) hours of the accident/incident but not more than eight (8) hours following the time of the accident/incident. If the employee is unable to be tested within two hours, reasons for the delay must be documented. Refusal to test will result in termination.

Employees will be escorted to a testing facility after an accident/incident has occurred.

No employee is authorized to operate City owned equipment or vehicles until test results are confirmed.
3. REASONABLE SUSPICION TESTING: When there is reasonable suspicion that any employee on duty has alcohol or drugs in his/her system, the employee will be tested. Reasonable suspicion must be based on specific, objective facts or reasonable inferences drawn from facts that would cause a reasonable person to suspect that the employee is or has been using drugs or alcohol.

Facts supporting a reasonable suspicion determination include, but are not limited to, anyone or more of the following:

- a. Direct observation of prohibited drug or alcohol use;
  - b. Slurred speech;
  - c. Odor of marijuana or alcohol about the person;
  - d. Inability to walk a straight line;
  - e. Physical or verbal altercation;
  - f. Behavior that is so unusual that it warrants summoning a supervisor or anyone else in authority (i.e. confusion, disorientation, lack of coordination, marked personality changes irrational behavior);
  - g. Possession of drugs or alcohol;
  - h. A report of prohibited drug or alcohol use provided by a reliable and credible source; or
  - i. Arrests, citations, and deferred prosecutions associated with drugs or alcohol.
4. FEDERAL OR STATE MANDATED SUBSTANCE ABUSE TESTING: City employees who are subject to federal or state mandated substance abuse testing, including but not limited to Department of Transportation regulations, will be tested pursuant to such testing requirements notwithstanding this Substance Abuse Policy.

5. **RANDOM TESTING:** An employee that is entrusted with preserving public health/safety or the safety of other employees has a special responsibility to maintain physical and mental fitness for duty at all times while on the job. Testing may be conducted on a random basis on employees that hold safety-sensitive positions, chosen by a method that provides an equal probability that any employee from a group of employees will be selected. Safety-sensitive positions within the City of Hendersonville are defined as:

- a. All sworn law enforcement personnel;
- b. All Certified Fire Department personnel;
- c. Positions (full-time and part-time) requiring the consistent and frequent operation of heavy equipment or motor vehicles as a primary task;
- d. Positions working around large equipment or with potential for hazards;
- e. Positions working with youth and/or those required to drive other persons;
- f. Positions requiring the handling of hazardous materials, the mishandling of which may place the employee, fellow employees, or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace; and
- g. Other positions as required by law, or as designated by the Human Resources Director, due to the specific safety-sensitivity of individual jobs.

6. **METHOD FOR RANDOM TESTING:** All employees in safety-sensitive positions will be subject to random testing for alcohol and controlled substances. For compliance purposes two groups of employees for random selection will be maintained—DOT-covered employees and safety sensitive non-DOT employees. Random testing will be conducted on a percentage basis in a fair manner as provided by DOT regulations.

Each time a random selection is made, every employee will have an equal chance of being selected. Random tests will be unannounced and spread reasonably throughout the year.

Employees when notified that they have been selected for random testing will proceed immediately to the collection site.

V. **Relief from Duty:** An employee may be placed on administrative leave for twenty-four (24) hours when tested under Section IV. Drug Screening Criteria (2) Post Accident or Incident. An employee may be placed on administrative leave pending the outcome of the test results when tested under Section IV. Drug Screening Criteria (3) Reasonable Suspicion. Employees will normally be placed on administrative leave while awaiting results of a post-accident/incident or reasonable suspicion drug test results. Employees will be paid scheduled working hours during this period.

For convenience, efficiency and cost-effectiveness, the City will have the testing conducted onsite or by an approved testing facility. If conducted onsite, a positive or inconclusive result sends the applicant or employee directly to an approved testing facility with an escort for clinical lab testing and review of a MRO (Medical Review Officer).

1. **CONSENT:** Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those City officials with a need to know. The consent form shall provide space for employees to acknowledge that they have been notified of the City's Alcohol and Substance Abuse Policy and to indicate current or recent use of prescription or over-the-counter medication.
2. **REFUSAL TO CONSENT:** Any employee who refuses to consent to a drug and/or alcohol test will be terminated. Any final applicant who refuses to consent to a drug and/or alcohol test will have the offer of employment withdrawn.
3. **CONFIDENTIALITY:** All information from an employee or applicant's drug and alcohol test is confidential and only those with a need to know are informed of the test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant, except as provided by law. The results of a positive drug test shall not be released until the results are confirmed by a MRO (Medical Review Officer).

#### 4. SPECIMEN COLLECTION

- a. **Pre-Employment.** Applicants who refuse to take the tests will not be hired. The applicant will be required to sign and submit the consent form. Applicants will be required to have the test conducted at an approved testing facility.
- b. **Post-Accident or Incident and Reasonable Suspicion.** The employee shall be escorted to an approved testing facility. After the sample and results are obtained, if negative, the employee will return to work, if applicable. In the case of a negative result for reasonable suspicion, the employee will be questioned as to why he/she may be showing signs of fatigue, etc., and the department head can decide whether or not the employee should remain at work. The supervisor will use every reasonable means to insure that the employee reaches his or her destination safely.
- c. **Follow-up.** Follow-up testing takes place when a test has rendered a positive or inconclusive result.

5. **TESTING REQUIREMENTS** All drug and/or alcohol testing of employees and applicants shall be conducted in compliance with the Controlled Substance Examination Act, Article 20 of Chapter 95 of the North Carolina General Statutes.

"Follow-up" testing, if necessary shall be conducted at an approved testing facility or laboratory selected by the City. To be considered a testing site, a medical facility or lab should have the following factors:

- a. Testing procedures which ensure privacy to employees and applicants consistent with the prevention of tampering;
- b. Methods of analysis which ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
- c. Chain of custody procedures which ensure proper identification, labeling, and handling of test samples;
- d. Retention and storage procedures which ensure reliable results on confirmatory test of original samples.

6. **POSITIVE TEST RESULTS** An employee whose drug test yields a positive result shall be given a follow up test. If the confirmation test results are positive, then the employee will be notified of the positive test results and will have an opportunity to rebut verbally or explain in writing the tests results. The City may, in its discretion, take this explanation into

account in making any employment decision. A confirmation of the test results by the MRO (Medical Review Officer) shall be considered FINAL.

#### VI. Communication of Test Results

1. **NEGATIVE TEST RESULTS:** If the drug screening test result is negative, the laboratory will so advise the designated City official who will inform the employee or job applicant.
2. **POSITIVE TEST RESULTS:** If the alcohol or drug screening test result is positive, the laboratory will so advise the designated City official and the following action shall be taken:
  - a. A job applicant shall be informed of the positive test results by the Human Resources Director (or their designee) of the test results and that the Conditional Offer of Employment has been withdrawn.
  - b. A current employee shall be informed of the positive test results by the Human Resources Director (or their designee) and the Human Resources Director will also inform the City Manager.
  - c. A possible dismissal hearing between the employee, the Department Head, and the Human Resources Director will be scheduled. Protocol described in ARTICLE IX. Section 6. Possible Dismissal Hearing of the Personnel Policy will be followed.

Employees who hold a CDL will be subject to the Department of Transportation regulations for positive test results. The City will complete and submit Forms CDL-8 or CDL-9, whichever may be the case.

d. Factors to be considered by the supervisor in determining the appropriate response to a positive test result include the nature of the position to which assigned, the extent of performance deficiencies, the seriousness of accidents or incidents, the employee's work history, and existence of past disciplinary actions. Mandatory EAP referral, leave (either with or without pay), and/or disciplinary action up to and including termination may result; and if an employee has received a positive test result while employed with the City, then any subsequent positive test results, not a follow-up test, will result in termination.

e. If disciplinary action is recommended, the employee shall be notified in writing. The employee has a right to appeal the decision per the Personnel Policy, ARTICLE X. GRIEVANCE PROCEDURE AND ADVERSE ACTION APPEAL.

VII. **Failure of an Employee to Cooperate:** Employee compliance with the City of Hendersonville's Alcohol and Substance Abuse Policy is mandatory. Failure or refusal of any employee to fully cooperate and participate in the program, sign any required document or submit to a drug and/or alcohol screening test will be grounds for termination of employment unless a compelling, satisfactory reason is provided.

Employees who continue employment while undergoing counseling or rehabilitation will be required to meet all established standards of conduct and job performance. Employees who have been referred for counseling or rehabilitation under this Policy shall be required to fully cooperate and participate in their rehabilitation and the recommendations of the program administrators. This may include the requirement for regular attendance at therapy sessions.

Employees who have been referred to counseling or rehabilitation may be required to undergo drug screening tests at any time for a period of up to two years. Employees who volunteer that they have a drug abuse problem and seek counseling and/or rehabilitation under this Policy may also be tested without cause and at any time for a period of two years after referral or self-referral. If the City determines that an employee has failed to cooperate under the terms of this Substance Abuse Policy, the employee may be suspended without pay and be subject to further disciplinary action, up to and including termination. If an employee receives a subsequent positive drug test after counseling and/or rehabilitation they are subject to immediate termination.

VIII. **Time Off for Counseling and Rehabilitation and Return to Work:** Work time lost will be paid according to applicable benefit plans of the City (such as vacation, compensatory time or sick leave) to the extent available to the employee. Beyond such benefits, work time lost for counseling and rehabilitation will be without pay. An employee may return to work only after (i) he or she has been certified by the treatment facility as being free of substance abuse and fit to return to duty; and (ii) he or she has produced a negative drug test result.

IX. **Summary:** No part of this policy, nor any of its procedures, is intended nor shall be construed to affect the City of Hendersonville's right to manage its workplace, to discipline its employees or to change the "at will" nature of employment with the City. Since it is impossible to anticipate every situation which may arise under this policy, the Human Resources Director should be contacted to resolve any situation not addressed herein. This contact should be made before action is initiated, if at all practical.

#### **Drug Free Workplace Policy Employee Resources**

Employee Assistance Program (EAP) – The EAP offers assistance for personal and/or professional concerns by providing free, confidential, short-term counseling and personal consultation. The EAP has a network of counselors that are located near your home and/or work-site. They can help you improve or resolve personal difficulties whether big or small, personal or work related.

Some examples of concerns that the EAP addresses include:

Family conflict	Depression and anxiety
Relationship issues	Communication breakdowns
Grief and loss	Financial difficulties
Stress	Work related issues
Balancing work and family	Alcohol or drug use/abuse

Confidentiality is one of the most important features of the EAP. Employees can be confident that their privacy and confidentiality will be honored. No one will know that you have used this resource unless you offer that information or unless someone's safety is threatened. There is no cost to you for your phone calls or face-to-face visits with the EAP.

The EAP is provided by Employee Assistance Network, Inc. For more information on the EAP, please view their website at [www.eannc.com](http://www.eannc.com) or contact them at 828-697-2953.

**List of Safety Sensitive Employees**

1. Sworn Police Personnel
2. Telecommunications Division
3. Certified Fire Department personnel
4. Facilities Maintenance personnel
5. Water Distribution personnel
6. Wastewater collections
7. Waste Water Treatment Plant positions
8. Water Treatment Plant positions
9. Building Maintenance
10. Fleet Maintenance
11. Grounds Maintenance
12. Streets and Highway Maintenance
13. Traffic Engineering
14. Zoning/Code Enforcement Officer
15. Employees with a Commercial Driver's License (CDL)
16. Positions requiring the consistent and frequent operation of heavy equipment or motor vehicles as a primary task.
17. Positions working around large equipment or with potential for hazards.
18. Positions working with youth and/or those required to drive other persons.
19. Positions requiring the handling of hazardous materials, the mishandling of which may place the employee, fellow employees, or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace.
20. Other positions as required by law, or as designated by the Human Resources Director, due to the specific safety-sensitivity of individual jobs.

**C. Consideration of Budget Amendments:** Mr. Brian Pahle presented the following budget amendments:

- i. Funds 321, 344, Police Department Grants: Increase of \$28,175: An amendment establishing budgets for two grants received by the Police Department.
  - a) \$23,175 with no required City match by the Governor's Crime Commission,
  - b) \$5,000 with no required City match by the Governor's Highway Safety Program.

Resolution #16-1036

North Carolina Governor's Highway Safety Program

LOCAL GOVERNMENTAL RESOLUTION

WHEREAS, the City of Hendersonville Police Department (herein called the "Agency") (The Applicant Agency) has completed an application contract for traffic safety funding; and that the Hendersonville City Council (The Governing Body of the Agency) (herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract;

THEREFORE, NOW BE IT RESOLVED BY THE City Council IN OPEN MEETING ASSEMBLED IN THE CITY OF HENDERSONVILLE, NORTH CAROLINA,

THIS sixth DAY OF October 2016, AS FOLLOWS:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Mike Vesely, Lieutenant, (Name and Title of Representative) is authorized to file, on behalf of the Governing Body, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of \$5,000 (Federal Dollar Request) to be made to the Governing Body to assist in defraying the cost of the project described in the contract application; and
3. That the Governing Body has formally appropriated the cash contribution of \$0 (Local Cash Appropriation) as required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

DONE AND ORDERED in open meeting by Barbara G. Volk, Mayor

ATTESTED BY: Tammie K. Drake, City Clerk

SEAL

DATE: 10.06.16

- ii. Fund 10: Purchase of two properties: \$130,000: One property costs \$50,000 the other \$60,000. An additional \$20,000 is budgeted for demolition of existing structures and lot clearing on the purchased properties.
- iii. Fund 10: Facilities Lighting Upgrade: \$49,133: An amendment to increase budget to upgrade to LED lighting at City Ops, Fire Station #1, and the garage. The City will receive \$33,025 in rebates that will be put into City contingencies when received. The City should recoup the rest of the investment, \$16,108, in the first year after installation due to the energy and maintenance savings on the new lights.
- iv. Fund 21: Seventh Avenue Event Revenue: Increase of \$5,035: An amendment to increase the 7th Avenue Fund to reflect unforeseen revenue brought in from two events.

**D. Consideration of Budget Amendment and Establishing an Appropriation Account for the Walk of Fame Committee:** The Walk of Fame Committee requested a special appropriation of \$1,500 to help accomplish their Walk of Fame promotional and marketing objectives. Additionally, the Committee has

requested that the City hold their funds in an agency fund (Fund 821) to account for assets held solely in a custodial capacity.

Funds 10, 821: An adjustment to create and hold funds for the Walk of Fame Committee in Fund 821 and an adjustment to move \$1,500 from contingencies to the appropriation account for the Committee.

**E. Consideration of Approval for Use of Berkeley Mills Park for the 2017 Mud Run**

**Benefitting Hands On!:** Mr. Connet reported the City of Hendersonville received a request from the Hands On Children's Museum for the use of Berkeley Mills Park for the 2017 Mud Run. The event will be held on: Family Mud Fun on Friday, June 2, 2017 and the Mud Run on Saturday, June 3, 2017. The Museum is analyzing the event to increase participants but want to hold the events in the same locations. Approval of the request includes the in-kind donation of \$10,500 for staff time and mulch for the event.

**F. Consideration of Clerk's Certificate of Sufficiency for the Satellite Annexation of 5.25 Acres of Property Located at 20 Hannah Grace Way (Claystone, LLC):**

Mrs. Susan Frady reported the City received a petition from Claystone, LLC for a satellite annexation of approximately 5.25 acres of property identified as Parcel Identification Number 9579-66-3377 located at 20 Hannah Grace Way. This annexation application is related to a sewer service request. The map distance from the proposed satellite corporate limits is 238 feet from the primary corporate limits. The total area within the satellite corporate areas, including land involved in this petition, constitutes 3.7 percent of the area within the primary corporate limits.

Mrs. Frady provided the Clerk's Certificate of Sufficiency, available in Development Assistance Department File #P-16-26-A, and requested Council set November 3, 2016 as the date for the public hearing.

**G. Consideration of Acceptance of Proposal from Mattern & Craig to Complete Design, Permitting and Construction Management of the North Main Street Sidewalk Project:**

Engineering Director Brent Detwiler reported the Council selected a preferred option for extending sidewalk along North Main Street as part of the 2008 Sidewalk Bond. He presented a proposal from Mattern & Craig to complete design, permitting and construction management of the sidewalk project. He noted the proposal does not include floodway permitting required for the Mud Creek pedestrian bridge that will be completed by Wildlands Engineering under a separate contract. It also assumes City staff will provide daily construction inspection as necessary.

Mr. Detwiler requested the Council authorize the City Manager to execute a contract with Mattern & Craig to complete the design, permitting and construction management work associated with the North Main Street sidewalk project. [The proposal is available in the office of the City Engineer.]

~~**H. Consideration of Donation of "S" Permit Parking Space to Benefit the Humane Society**~~

**I. Consideration of Approval to Purchase Property on Pine Street:** Mr. Connet reported the City has reached an agreement with the seller of the property at 327 4<sup>th</sup> Avenue East. The property is directly adjacent to the Grey Hosiery Mill and the purchase of the property would assist in the redevelopment of the mill property. He requested formal approval from the City Council to purchase the property for \$60,000.

**J. Consideration of an Amendments to the City Code of Ordinances Repealing Portions of Chapter 36, Article II Respecting Loitering and Similar Offense:**

City Attorney Fritschner reported recent meetings between administration, police and legal departments sought a plan for increasing the safety and welfare of tourists, merchants and other citizens visiting the Historic Depot area at Seventh Avenue/Maple Street. As part of this review the legal department determined there are some loitering ordinances whose enforceability has been called into serious question by U.S. Supreme Court cases over the last two or three decades. He stated the following ordinances in particular are deemed invalid as vague or unenforceable or both: Section 36-4-Loitering and Section 36-123-Loitering for the purpose of engaging in drug-related activities. He presented an ordinance repealing both sections of the Code of Ordinances.

Ordinance #16-1034

**AN ORDINANCE REPEALING PORTIONS OF CHAPTER 36 ARTICLE II RESPECTING LOITERING AND SIMILAR OFFENSES**

WHEREAS, the City of Hendersonville has formerly enacted a number of ordinances respecting loitering and related offences, and

WHEREAS, the City now believes that certain of these ordinances are unnecessarily vague or otherwise of dubious enforceability, and

WHEREAS, the City wishes to ascertain always that its ordinances be generally understandable to persons of ordinary sense and understanding,

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

SECTION 1. Code of Ordinances Section 36-4 repealed.

(a) Section 36-4 of the Code of Ordinances is hereby repealed in its entirety.

SECTION 2. Code of Ordinances Section 36-123 repealed.

(a) Section 36-123 of the Code of Ordinances is hereby repealed in its entirety.

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

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

Adopted this 6th day of October 2016.

/s/Barbara G. Volk, Mayor

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

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

**K. Consideration of the Variable Frequency Drive (VFD) Preferred Brand Alternative for the Water Treatment Plant High Service Pump Station** Mr. Brent Detwiler reported the Water Treatment Plant High Service Pump Station project is nearing design completion and will soon be ready to bid. This project includes new pumps at the Water Treatment Plant as well as Variable Frequency Drives (VFDs) which will allow more effective and efficient operation of the pumps and the plant overall. NCGS 133-3 mandates and encourages free and open competition on public contracts. However, due to the size, complexities and existing conditions at the plant, the project engineer, McKim & Creed, is recommending the City establish Schneider-Electric, US Corporation (Square-D) as the preferred brand (manufacturer/supplier) alternative for VFDs with the new high service pump station upgrades.

Mr. Detwiler reported:

- New drives will be rated for two 600-HP motors and two 400 HP motors. They will utilize 18-pulse drives for the 600 Tree Board motors and 6-pulse drives for the 400 HP motors to negate the installation of active harmonic filters.
- Due to the existing space, only the preferred manufacturer's drives would actually fit in the available space. Thereby allowing the reuse of the existing underground electrical ductbank and eliminating having to make modifications to the electrical building to accommodate the drives.
- The preferred brand alternative therefore saves costs due to elimination of active harmonic filters, - utilizing existing underground electrical ductbank, and requiring no modifications to the existing electrical building.

Mr. Detwiler requested Council approve the written justification and associated performance standards for the use of variable frequency drives as supplied/manufactured by Schneider-Electric, US Corporation (Square-D), as the preferred brand of VFDs for the Water Treatment Plant High Service Pump Station project.

**L. Consideration of a Water Line Extension Agreement for a Proposed Nursing Home in Mills River:** Mr. Lee Smith presented a water line extension agreement to provide water service to Mills River Nursing Home. The Mills River Town Manager, Jeff Wells, reviewed and approved the extension of water services in Mills River for the proposed facility. The developer, Hendersonco, LLC, John Savage of St. Petersburg, FL, is paying for the cost of the extension.

Based on this information, Mr. Lee Smith stated the Water and Sewer Department has the capacity to support this additional infrastructure and associated connections and recommended approval of the project contingent upon final approval of construction plans and specifications by the Water and Sewer Department. He requested Council authorize the City Manager to execute the agreement on behalf of the City.

**M. Consideration of Amendment to Section 6-7 of the Code of Ordinances Pertaining to the Sale of Alcohol:** Mrs. Susan Frady presented an amendment to the Code of Ordinances to make Section 6-7 consistent with North Carolina General Statutes.

Ordinance #16-1035

**AN ORDINANCE AMENDING SECTION 6-7 PERTAINING TO THE SALE OF ALCOHOL NEAR SCHOOLS**

WHEREAS, the City Council has determined that it shall be unlawful for any person to offer for sale, disposal, display or otherwise use or offer for use or consumption, any beer, wine or other alcoholic beverage within the confines of the city except that such offer, use sale, disposal, display or consumption shall be in conformance with the requirements of the General Statutes of North Carolina, applying; and

WHEREAS, North Carolina General Statute 18B-901 states that whether the establishment is located within 50 feet of a church, public school or nonpublic school shall be a factor in issuing an ABC permit,

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

SECTION 1. Section 6-2 of the Hendersonville Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 6-7. – Sale near schools.

It shall be unlawful for any person to sell or offer for sale any beer, wine or alcoholic beverages within ~~250~~ 50 feet of a public or private school property in the city.

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 sixth day of October 2016.

/s/Barbara G. Volk, Mayor

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

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

**N. Consideration of an Agreement with McKim & Creed, Inc. to Provide On-Call Professional Engineering Services and to Perform Certain Identified Tasks:**

Mr. Lee Smith explained on July 11, 2013 the City executed an agreement with McKim & Creed, Inc. to provide on-call professional engineering services. This agreement had term of two years, with a provision that allowed the term to be extended if agreed upon by both parties. McKim & Creed has continued to provide engineering services to the City under the terms of this agreement. He presented a proposed amendment to the agreement and modifies the scope of services, updates their hourly rates, and extends the term of the agreement to July 1, 2018. The proposed scope of services include the following tasks:

Develop standards for duplex submersible wastewater pump stations	\$65,000
Evaluation of the WWTP filters	\$32,000
Evaluation of the WWTP back-up power supply	\$29,000
Evaluation of the WWTP plant blowers	\$7,500
Hunters Glen Water pump station electrical design for proposed rehab	\$3,500
Structural evaluation of the WTP splitter box and sedimentation basins 4 & 5	\$22,000

All tasks shall be billed in terms of time and materials. He requested Council authorize the City Manager to negotiate and execute an on-call engineering services agreement with McKim & Creed, Inc. for completion of the task order [The agreement is on file in the office of the Utilities Director.]

**Mayor Pro Tem Caraker moved approval of the remaining items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.**

**6. Introduction of Special Guest Filippo Marinoni, Council Member from Sister City Verbania, Italy:** Mr. Mike Swartzlander, President, Hendersonville Sister Cities, and Mayor Volk welcomed Mr. Filippo Marinoni, a Council Member visiting from the Sister City Verbania, Italy. He has been visiting this week exploring possibilities for cultural and student exchanges in the future. Mr. Marinoni stated it is an honor to be here. He presented a gift to Mayor Volk from Mayor Silvia Marchionini recognizing and honoring the two cities' sisterhood. Mayor Volk presented Mr. Marinoni with a Key to the City as the first official Sister City representative to visit Hendersonville.

**7. Annual Report from Hendersonville Sister Cities:** Mr. Mike Swartzlander, President, Hendersonville Sister Cities, presented an annual report from the Hendersonville Sister Cities. He expressed appreciation to the City Council for their contribution to Hendersonville Sister Cities which makes up about 20 percent of their budget. Events include:

- a library series that 50-70 people attend
- Young Artist and Author's showcase competition
- Wine event fundraiser, Fiesta
- Yoga
- Spanish dinner, Italian dinner
- Co-sponsored Carolinas Annual Sister City Conference
- Sister Bear representing Verbania – auctioned as fund raiser.

Mayor Volk expressed appreciation to Mr. Swartzlander for serving as president of Sister Cities. **No action was required or taken.**

**8. Presentation from the Environmental Sustainability Board on Focus Areas for the Board for the Upcoming Year:** Chairperson of the Environmental Sustainability Board, Ian Edwards, addressed the Council and stated in an effort to best serve the interests of the City and residents of Hendersonville, the Board identified three areas to focus their efforts over the coming year:

Bee City USA –continue to support maintaining Hendersonville as a Bee City by promoting the planting of native vegetation in the community to support pollinator populations and by coordinating the annual Pollinator Week of events in June 2017.

Solid Waste – In an effort to advance the City's waste management and reduction initiatives, they propose to utilize several strategies designed to educate and engage the public. They will promote the City's new Adopt-A-Park/Trail program toward a goal of litter reduction and beautification, and will analyze recycling and composting practices in the City in order to provide recommendations to reduce the landfill waste stream. Environmental Sustainability Board adopted the Martin Luther King, Jr. Park.

Green Business – As a tourist destination increasingly attractive to environmentally-minded travelers, they hope to help local businesses improve their sustainability practices and to recognize businesses that meet higher standards related to waste reduction and recycling, energy efficiency, sustainable material/food sourcing, etc. by supporting their certification through NC Green Travel and other related programs.

Mr. Edwards asked for feedback from the Council and asked for questions. Council Member Miller asked about textile materials going into the landfill and how the public can be encouraged or required to recycle textiles. Mr.

Edwards explained the Environmental Sustainability Board will investigate the issue. Mayor Volk expressed appreciation for the update and looks forward to hearing future projects. **The Council agreed to the projects by general consensus.**

**9. Presentation of Proclamation for Alzheimer's and Brain Awareness Day:** Mayor Volk presented a proclamation to Mr. Gary Stammer, team leader for the Alzheimer's walk locally. He stated their goal is to raise \$15,000 this year.

**10. Presentation of Proclamation for American Pharmacists Month:** Mayor Volk presented the proclamation to Mr. Angelo Boss, Doctor of Pharmacy Candidate 2018, Wingate University School of Pharmacy.

**11. Quasi-Judicial Public Hearing – Consideration of a Request to Amend a Special Use Permit from Halvorsen Development Corporation to Construct a Grocery Store on the Corner of White Street and Greenville Highway:** Mayor Volk explained the procedures for quasi-judicial public hearing stating they are required by the State of North Carolina in certain situations. Quasi-judicial hearings differ from regular public hearings in that interested persons have the following rights: to cross examine witnesses, to present evidence, to inspect documentary evidence presented against them, and to be afforded all the procedural steps set out in the pertinent ordinance and statute.

Mayor Volk explained the City Council may only consider factual information and/or expert testimony and not feelings or opinions.

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

Mayor Volk asked the members of City Council to announce any conflicts of interest they may have pertaining to this matter. There was none.

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

Mayor Volk asked those who anticipate speaking to be sworn in. Seven persons were sworn in to provide testimony.

At 6:22 p.m., Mayor Volk opened the public hearing in accordance in North Carolina General Statutes by notice published in the Hendersonville Lightning.

Mr. Dave Hazzard, Senior Planner, provided the following testimony:

The City received an application to amend a Special Use Permit from Halvorsen Development Corporation to construct a 49,098 square foot grocery store located on the corner of White Street and Greenville Highway. This project was previously approved by City Council at their regular meeting on January 7, 2016. The applicant has made the following modifications to the approved Preliminary Site Plans and variance requests:

- Modification of the area on the east side of Mud Creek in an effort to meet the requirements of FEMA's guidance for a no-rise certification. This modification includes grading; removing the required and previously proposed vegetation; and installing riprap along the eastern bank of Mud Creek.
- A variance request to remove the required bufferyards and landscaping for vehicular use area vegetation on the east side of Mud Creek.
- Modification of a previously approved variance to allow for development within the 30-foot stream buffer and 20-foot transition zone for Mud Creek.

Generally, minor modifications to approved preliminary site plans are subject only to staff review and approval. However, because the proposed changes require modifications to variances previously granted by City Council, an amended special use permit approved by City Council is required.

Items changed since the approved site plan: The site had eight buildings and their proposal is to replace those eight buildings with a 49,098 square foot grocery store. The site has 246 parking spaces proposed; the same amount is required by the City. The parcels have been rezoned to PCD, a final landscaping plan will be submitted with final site plans. A stormwater plan must be approved by the City before final site plan approval. The site plan requires a street closure of a portion of Market Street prior to final site plan approval.

*Redevelopment in the Floodway and Special Flood Hazard Area:* The entire site for this project is located in the floodway. He read Section 17-2-4 of the Zoning Ordinance that allows redevelopment to occur on existing developed sites which no longer function as natural flood plain and when such redevelopment will not result in any further loss of flood-plain functionality.

Variance Requests:

*Stream Buffers:* He read Section 17-3 Stream Buffer Protection Standards from the Zoning Ordinance. The Zoning Ordinance requires all "blue line" streams to have a thirty-foot stream buffer and a twenty-foot transition zone as measured from the top of stream bank. The thirty-foot stream buffer shall remain in natural

undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken within this area. The twenty-foot transition zone may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

Mud Creek runs along the western border of this project and Johnson Ditch runs along the southeastern border, both of which are identified as “blue line” streams on the U.S. Geologic Survey map. The site plan shows the proposed building and asphalt vehicular use area in the transition zone and a wall, asphalt vehicular use area, and riprap in the stream buffer.

The applicant is requesting a variance from Section 17-3-3. As per the variance application, “the existing developed condition within the 30-foot and 20-foot stream buffer are more impactful to the buffer than the proposed condition.” The applicant has included a stream buffer exhibit showing the pre-development and post-development conditions. He reviewed slides provided by the applicant.

*Buffering, Screening and Landscaping:* Section 15-6 Bufferyards and 15-9b Landscaping for Vehicular Use Areas. Certain land uses may create an adverse impact when developed adjacent to other less intensive land uses. A bufferyard is a permanent unit of land together with plantings and structure(s), if any, which is designed to mitigate such adverse impacts.

The western property line has approximately 115 linear feet along Mud Creek which is adjacent to either residential use or residential zoning. Section 15-6-3 of the Zoning Ordinance requires a 10-foot Type B buffer along this area. The western property line has approximately 410 linear feet adjacent to a commercial use or commercial zoning which, as per Section 15-9b of the Zoning Ordinance, requires a 5-foot planting strip. In total 16 trees and 119 shrubs would be required along the western property boundary. The applicant is requesting a variance from Sections 15-6 and 15-9b of the Zoning Ordinance to eliminate the 10-foot Type B buffer and the 5-foot planting strip along the western property boundary.

*Analysis:* Items changed since approval include the two variance requests. Another neighborhood compatibility meeting was held. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property. Approximately 10 members of the general public attended the meeting. The general public asked questions regarding the following: flooding, stormwater, stream buffer vegetation, and the height of the retaining wall.

The Planning Board unanimously recommended approval of the variances related to landscaping, buffering and approval of the amended special use permit.

Council Member Smith asked about the variances. Mr. Hazzard pointed out the area that will contain riprap instead of vegetation as previously approved.

Applicant presentation: Eric Hampton, with Kimley-Horn and Associates, representing Thomas Vincent with Halvorsen Development who could not attend. Mr. Hampton provided the following testimony:

In working through the development process with the City staff, the consultants and members of the State and at FEMA through the floodplain modeling process, they discovered the area on the backside of the project site along the western boundary at Mud Creek, the vegetation was causing an impediment to the way the flood modeling was working. A modification was necessary to allow it to work more efficiently and meet the goals of the project. The gray area on the project site along Mud Creek represents where the riprap to stabilize the bank will go. That is the area of the change. Their current plan calls for a retaining wall and delineates the boundaries. He stated the areas between the light gray and the darker solid gray has a retaining wall that runs the length. The reason it came up in the design is to create additional storage within Mud Creek and provide more efficient flow path for both lower flows and higher intensity flows that would occur in that channel. From a flow characteristic standpoint, that is a betterment from the previous condition in a lot of different ways.

There were questions from the public about the aesthetics. It will be a larger stone riprap that can withstand the velocity and flow in Mud Creek, not a drainage stone but larger to maintain the embankment and will not be susceptible to erosion like a smaller diameter material might be. It will be a block-face wall along the side. When looking back it will not be a cheaply installed wall, it will be a masonry faced wall, not brick, but probably MSC or other type of block system. That is what they are proposing and asking the Council to consider. All the other aspects of the project largely remain unchanged other than a natural evolution of design. The grocery store will be in the exact same location as Council saw it previously. The front parking fields and access points are also the same as Council saw before. The only thing that may have changed are some technical details of the old site improvements that they are working through with NCDOT. This is fine-tuning and wouldn't be noticed on a map or roadway. They are working out driveway tie-in radius, striping, lane width, etc. have been solidified as they have undergone the process with NCDOT staff.

Jason Diaz, his colleague is the FEMA expert, knows the modeling and the software. If there are technical details, he will answer them.

Council Member Stephens asked how high the wall is and if gravel will be along the creek. Mr. Hampton stated yes, but not gravel like a driveway but a large, Class A or Class B stone. He stated at the highest point, which is

the loading dock, the wall peaks at about five feet and gradually gets shorter. At the end it will be six to eight inches tall. He stated it will be no more than five or five and a half feet. Council Member Stephens asked how high it is above the parking in the back. Mr. Hampton stated there is no parking in the back, there is an asphalt perimeter drive in the rear. He stated the nearest parking to that edge is parking at the drive-through area; there is no parking along the back edge. It is an access drive predominantly for delivery vehicles.

Council Member Smith asked why the wall is tapered. Mr. Hampton stated they were able to blend back into existing grade. He stated having it as short as possible is advantageous not only from a financial standpoint. He stated they do not want the wall more than it needs to be there. They are trying to keep the gravel as low as it can be and where they had to retain is where the wall will be.

Mayor Volk asked what will keep the oil, trash, etc. from the asphalt area from flowing directly into Mud Creek. Mr. Hampton explained the existing condition system is an aged evolution of development – a lot of surface drainage, non-collected stormwater without traditional catch basins that go into storm drainage and where it does, it has a direct outfall into either Johnson's ditch that crosses Greenville Highway or Mud Creek. He stated the proposed plan, to meet erosion control requirements that were listed by Mr. Hazzard, sedimentation, construction impacts to the soil while the facility is being built, as well as a permanent condition for stormwater, all of the runoff is collected in a system on-site and is routed through a below-ground stormwater filter and retention system. He stated it complies with all the sediment and water quality removal requirements, both by the State and the City. It also attenuates the peak runoff that the current site does not because of the age of when it went in. He stated they will comply with all of the stormwater quality and rate attenuation requirements. Mayor Volk asked if the drainage will be from the back to either the front or the side and not toward Mud Creek. Mr. Hampton stated they have an outfall into Mud Creek. They have two underground storage systems, one on the back corner of the grocery store and a larger one in the front parking field. That is because the site sits on a little bit of a ridge, the western side of the site goes directly to Mud Creek and the front side or the Greenville Highway side goes into Johnson's ditch as natural drainage. They have two different systems. The water will all flow into that. The rear access drive will flow into the stormwater system and then is outfalled into the gravel area before it goes into Mud Creek so it doesn't directly outfall into the creek itself – it goes through the riprap area first.

Council Member Smith asked if there is a filter in the system. Mr. Hampton stated the technology they have specified is a stormtech large bottomless culvert system. It is HTP-arch system that doesn't have a bottom. Instead of a solid bottom, it has a gravel base of varying depth and is lined with a non-woven geotextiles fabric. He stated it ends up being a burrito of sorts whereby the stormwater will filter through riprap envelope on the bottom and is collected with underdrain system in the water quality isolator row. The first row that will receive stormwater runoff will filter through and be treated in the riprap drawdown area. Council Member Smith asked if that is for both systems. Mr. Hampton replied, yes, both systems. He stated after you get the cross sectional area, the only variable is the length of the isolated row. The length is specified based on the flow the system is receiving. It is specific to each one of the drainage areas.

Council Member Miller asked how many parking spaces would grocery anchor have assigned versus what the City requires. Mr. Hampton stated the standard operating standpoint for Publix is a five per 1,000 ratio and is fairly typical retail/tenant demand. He did not remember the City's requirements but stated they are within the parameters. He stated they are in the final process pending an approval from the Council. They will have materials into Mr. Hazzard and staff to be able to finalize. Council Member Miller stated he was asking for his own education in looking at the City's parking requirements. He stated if the City requires a higher number than are necessary, would it have better to have less parking and more green area. Mr. Hampton stated they have oscillated between 248 and 249 spaces is a Publix-driven minimum. They looked at different scenarios in different markets. They generally want to be above 4.8 per 1,000. Council Member Miller commented City requirements are not far off from those. Mr. Hazzard stated the City requires one space per 250 square feet (or four per 1,000 square feet) and allows a 20 percent reduction in parking in the Entry Corridor Overlay District. He stated some flexibility is built in the ordinance.

Council Member Smith asked if they are proposing more spaces than the City requires. Mr. Hampton stated yes, it exceeds City minimum.

Mr. Hampton highlighted the existing condition shows impervious to the edge on the south side and pervious along the Mud Creek side with no wooded area there which is what the 30 feet is intended to be in a perfect scenario. In the 30-foot zone, they have matched the existing condition of both pervious and impervious space within the 30 feet immediately adjacent to the stream embankment. In the 20 feet portion of the buffer, they have provided a small amount of wooded area on the southern tip and reduced the impervious by a small amount that is there with the existing condition. He stated it is not a negative impact area-wise to what the existing buffer is already experiencing.

Council Member Miller stated they discussed predevelopment rate relating to flood storage loss and asked how the finished product compares to what was there before the eight buildings, etc. Mr. Hampton stated from a stormwater standpoint, on the existing facility where the water is collected into a normal storm drainage system, it ultimately gets routed and directly discharges into Mud Creek or Johnson's Ditch, unattenuated or a direct point source discharge. With the two underground storm systems being in place, it treats the water: removes the sediment and trash. It attenuates the rate so it mimics existing condition so there is not a larger event that is seen today. It slows and cools the water down. There is a lot of benefit from these systems over the existing system. Council Member Miller asked Mr. Hampton if he thinks it will contribute to future flooding or help in cleaning

the water but slow flooding. Mr. Hampton stated from a site-perspective, they consider what the rate is going off-site. From a site plan, they are reducing sedimentation and reducing or mimicing a rate that the overall magnitude of the flow that leaves the site. From the flooding standpoint in working with Ms. Frady and State staff, they have no impact on the overall 100-year flooding condition based on experiences. When you look at the micro level impact from the building faces, the eight buildings going away, all the pieces that go into it, they have no increase in the 100-year flood elevation. He will defer technical questions.

Council Member Miller asked what the square footage was of the eight buildings that were torn down. Mr. Hampton did not remember. Council Member Miller commented it is a lot more organized in retention and treatment.

Mayor Volk opened the floor for comments at 6:54 p.m. The following spoke in favor of the amended special use permit:

Jim Barnett, property owner across the street, stated he is in favor of Ingles and Publix but both have problems with the flooding situation. He stated the area has many small floods and all but two since 1970 started from Johnson drainage ditch. He stated this project diverts all water to Greenville Highway. Stormwater will be deeper and faster. He asked them to consider ideas to cut the flooding situation. He stated this project is tied to the Ingles project. He discussed the Ingles project. He believes the entire creek will come down Greenville Highway which is a potential for a real problem. He asked the Council to pay attention to the flooding situation and alleviate it. He stated Publix is building a retaining wall diverting water to Greenville Highway. Council Member Miller reassured Mr. Barnett that Council is paying attention to the flooding issue.

Mayor Volk commented the Ingles project is not relevant to what Council is deciding for this project. Council is aware stormwater and flooding are concerns. She stated the Council is considering the request for this property.

Mr. Connet commented staff has been researching the southside flooding models and is scheduled to make a presentation at the next Council meeting.

Council Member Miller commented the 100-year flood is not always the problem but other heavy rains. He asked if heavy rains will be more impactful than they have been in the past or if the changes in the parking lot will help. He stated the Council cannot address the Ingles project at this hearing.

Mr. Jason Diaz with Kimley-Horn, provided the following testimony:

Mud Creek comes up as a bank now. They are putting in a bench with riprap and a wall which adds storage area. It lets the creek flow better in all storm events. Technically all that is regulated is the 100-year event and showing a no-rise in the water surface. Council Member Miller stated he understands the regulatory part of it but he is asking to take care of all of the businesses involved. Mr. Diaz stated they ran the 10-year, the 25-year and the 100-year models and all of those models show some reduction in those flood events but it's not significant. He stated it is not an increase.

Council Member Smith asked about the bank. Mr. Diaz explained Mud Creek bank comes straight up to the existing parking lot. They are putting a wall and grading to create a shelf that will lower elevation. The material will be coming out. Mayor Pro Tem Caraker commented it will increase the size of the pipe. Mayor Pro Tem Caraker commented it will move water faster and have more volume. Mr. Diaz stated vegetation actually creates more potential for snags, debris that exasperates problems during flood events. He stated if the water is able to move through more efficiently it will lessen the chance of flooding. Mayor Pro Tem Caraker commented if Council approves the variance, it will also reduce the length of a flood event because it will clear faster.

Council Member Smith asked, based on Mr. Barnett's comments, if any of the models show an increase in the amount of water that will flow over Greenville Highway. Mr. Diaz replied in the 100-year event, no it does not show an increase. Council Member Smith asked about the ten and 25-year events. Mr. Diaz stated they did not analyze that but ran the models but that is not an analysis they normally run. He stated for Federal and State guidelines is the 100-year flood. He stated he could check but if we are having a 10-year and 25-year event on the left side, but would transfer to the right side as well.

No one else expressed a desire to speak in favor of the special use permit. Mayor Volk asked if anyone wanted to speak in opposition to the special use permit There was none. She asked if anyone wants to cross-examine or question any of the witness. There was none.

Council Member Smith asked Mr. Diaz if the Council could see the 10 and 25-year analysis. Mr. Diaz agreed.

The public hearing was closed at 7:04 p.m.

**Mayor Pro Tem Caraker moved City Council approve a variance from Zoning Ordinance Section 17-3-3, to allow the proposed building and asphalt vehicular use area in the required stream transition zone and to allow a wall, asphalt vehicular use area, and riprap in the required stream buffer as shown on the Preliminary Site Plan because it moves stormwater faster and more efficiently than the previous situation. A unanimous vote of the Council followed. Motion carried.**

**Mayor Pro Tem Caraker moved City Council approve a variance from Zoning Ordinance sections 15-6-3 and 15-9(b), to eliminate the 10-foot Type B buffer and the 5-foot planting strip along the western property boundary because it facilitates variance #1. A unanimous vote of the Council followed. Motion carried.**

**Mayor Pro Tem Caraker moved City Council approve the application of Halvorsen Development Corporation for an Amended Special Use Permit for South Market Village 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 to keep the project moving forward. A unanimous vote of the Council followed. Motion carried.**

**12. Quasi-Judicial Public Hearing – Consideration of a Request to Amend a Special Use Permit from Mr. Kevin Hoover for Town Center Located at 2560 Asheville Highway:** Mayor Volk reminded the audience of the procedures for the quasi-judicial proceedings.

Mayor Volk asked the Council members to announce any contacts concerning the application that are not included in the file. There was none. Mayor Volk requested Council members to announce any conflicts of interest pertaining to the matter to be heard. There was none. Mayor Volk asked if any person present is aware of anything of value that has been given or promised in exchange for a vote to be taken on the application. There was none.

Three persons were sworn in to provide testimony.

Mr. David Hazzard, Senior Planner, provided the following testimony:

The City is in receipt of an application to amend a Special Use Permit from Kevin Hoover to add uses to the previously-approved Special Use Permit for The Town Center complex located at 2560 Asheville Highway. The Council approved the project on April 9, 2009.

Generally, minor modifications to approved Special Use Permit are only subject to staff review and approval. However because the applicant has proposed additional stipulated uses other than the uses previously granted by City Council an amended Special Use Permit approved by City Council is required.

The project is located on parcel 9660-40-2792 and is approximately 2.20 acres. The previously approved 31,780 sf building has been constructed, has a total of 8 units all of which are vacant with the exception of a fitness center. The existing zoning of this parcel is C-3SU Highway Business Special Use classifications.

The previously approved stipulated uses are: offices, business, professional and public, retail stores and fitness facilities.

The applicant is requesting the following uses be added to the list of stipulated uses: restaurant, music or art studio, and personal services.

*Parking:* The project has 89 existing parking spaces. City staff will review the existing and proposed uses before any new businesses occupying the building to ensure the site has adequate off street parking to support the proposed use.

*Analysis:* A neighborhood compatibility meeting concerning the application was held on September 2, 2016. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property. Approximately two members of the general public attended the meeting. The public asked questions regarding parking.

The Planning Board recommended approval of the amended special use permit.

The public hearing was opened at 7:12 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lighting. The following addressed the Council:

Ken Fitch, 1046 Patton Street, addressed the Council in support of the request stating the amendment will increase opportunities for occupancy. Specific additions will provide amenities and enhance the quality of life for citizens. He stated additional property is available if needed for parking.

No one expressed a desire to speak in opposition to the request. The public hearing was closed at 7:15 p.m.

**Council Member Smith moved Council approve the application of The Town Center for an amended special use permit to add: restaurant, music and art studio, and personal services to the list of stipulated uses. This approval is subject to the limitations and conditions specified on the published List of Uses and Conditions consistent with other commercial uses in the area. A unanimous vote of the Council followed. Motion carried.**

**13. Public Hearing – Consideration of a Request to Close a Portion of Market Street off of White Street:** Mayor Volk explained the applicant has been unable to complete the necessary paperwork. Mayor Volk opened the public hearing at 7:17 p.m. **Council Member Miller moved Council to continue the**

**public hearing to the November 3, 2016 Council meeting. A unanimous vote of the Council followed. Motion carried.**

**14. Public Hearing – Consideration of a Request to Close an Unopened Alley off of Seventh Avenue:** Development Assistance Director Susan Frady reported the City received an application from Jonathan Ayers, to close a portion of an unnamed alley shown on slide 10110. This unnamed alley is on property located adjacent to the proposed Stags Head Brewery on Seventh Avenue.

Ms. Frady reported the Council adopted a Resolution of Intent to close this unopened right of way at their August meeting. 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 the public hearing was advertised four times in the legal notice section of a local newspaper.

Ms. Frady reviewed the procedures in North Carolina General Statutes 160A-299 for permanently closing streets and alleys.

*Applicant presentation:* Mr. Derek Allen, attorney with Ward and Smith law firm, addressed the Council stating their firm is helping the heirs with Stagshead Brewery including the street closing petition. He stated they are not sure what the alley has been used for. He stated they communicated with their neighbors. He stated they can provide an access easement for the way they normally use it. He stated they do not intend to impact the neighbors and do not intend to build across it. He explained it is an ABC requirement that the alley be closed or the property contiguous, if they will be using it as part of their retail space. He stated their proposed solution allows the neighbors to continue to use alley as they have always used it and accomplish their purposes for the new brewery project.

Mayor Pro Tem Caraker asked if there are any construction elements in the existing alley. Mr. Allen stated there are none.

Council Member Smith asked what the alley becomes once closed. Mr. Allen stated the property is split between property owners on either side and the Ayers owns property on both sides so it will become one contiguous parcel. Council Member Stephens asked if neighbors, delivery trucks, etc. may continue to use the alley. Mr. Allen stated yes, with the proposed access easement. He stated any property owner on the stranded side can have the access easement which allows them to get in and out of their property, including their vendors, delivery vehicles, etc.

Council Member Smith asked about the easement and if it allows hard elements if the use of the property changes. Mr. Allen stated the easement only allows barriers after 5 p.m. He explained ABC law requires secure temporary fencing but no permanent structures are allowed.

Council Member Smith asked if the easement should be recorded for all property owners and future owners. Mr. Allen stated it could be. He stated it could be a non-exclusive easement which allows it to be extended to the next property.

There was discussion on who may use the alley, i.e., garbage collection.

Mayor Volk opened the public hearing at 7: 25 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following spoke in favor of the brewery and/or street closing:

Anthony Berger, Asheville, spoke regarding the benefits of breweries.

Matt Rodway, Hendersonville, stated there is a lot of interest in the brewery and beer garden by the community.

R. DelBuono, owns the property on the corner, the brewery will have a positive impact on Seventh Avenue.

Christine Carver, salon owner, supported another business on Seventh Avenue and the brewery because it will bring people to the area.

Kara Moore agreed with Ms. Carver and supported the brewery and improvements to Seventh Avenue. Property values will increase.

John Mitchell stated this will be a positive business on Seventh Avenue. It will help bring down the crime rate in the area.

Dana Wright, 2350 Bearwallow Road, voiced support of the brewery. She stated she represents food trucks and wants to promote that idea. She stated the brewery is another avenue to provide employment and sustainability with local products.

Max Vander of Hendersonville stated the City is growing is he is very proud of the progress, hard work. He supported the brewery because it will provide jobs, opportunities, and cultural enrichment.

The following spoke in opposition to the alley closing:

Donald (Red) Price, owns property to east of the brewery. He is not against the brewery. He expressed concerns about his parking lot being used as a drive-through if the alley is closed and asked how it can be prevented. He owns four buildings and allows customers of those businesses to park there. There was discussion on the use of Mr. Price's parking lot.

Sandra Walker stated she worked on Seventh Avenue for the past 20 years. She is not against the brewery but closing the alley. She stated she used that alley for 20 years and garbage trucks have used it. She stated she has to have access to her property. She just received the easement and did not have time to get an attorney to review it before the meeting. She asked the Council to protect her property. She stated there is a possibility of a business opening at night and if the alley is closed, they wouldn't have access to the property at night. She stated closing the alley will limit access to her building. She stated there is natural gas and a gas meter on the property which would have to be relocated and she shouldn't be responsible for that. She asked the Council to consider all aspects of alley closing.

There was discussion on where the alley ends.

No one else expressed a desire to speak. The public hearing was closed at 7:48 p.m.

Council Member Stephens voiced support of the brewery and questioned whether the alley may be blocked at 5:00 p.m. Mr. Allen stated that depends on the wording of the easement but it will not be blocked on daily basis. He stated they can give adjoining property owners the access that they currently have. They may block the alley for ticketed events and could notify the property owners in advance. He stated relocating a gas line is not an issue.

Mayor Pro Tem Caraker commented if the failure or success of the entity depends on the alley closing, it should have been discussed early on with the affected property owners. He stated if Ms. Walker has a tenant that wants to stay open until late evening, they should be able to do that.

Mayor Pro Tem Caraker suggested revisiting the easement before making a decision on the closing.

Council Member Stephens raised the issue of the potential impact on the Rescue Mission and residents. Mr. Allen commented that is outside of alley closing petition. Mr. Ayers stated he met with Rev. McMinn, Mr. Connet and Mrs. Frady. He stated he listened to schedules, etc. and stated there will not be music outside after 9:45 pm. He stated he is trying to work with the neighbors.

Council Member Smith asked if the easement may be executed before the street is closed. He stated he wants to protect the property owners. City Attorney Fritschner advised there is not a way to close the road conditionally statutorily. Discussion on the easement followed including not precluding future property owners access to the rear of their building. Mr. Allen stated the easement may be negotiated and is intended to be mutually beneficial.

Mayor Pro Tem Caraker commented he wants to see this go forward but wants to ensure existing property owners may use their property as they have been. Council Member Smith commented the easement should be extended to all properties along the alley.

**The Council agreed by consensus to consider the street closing at the November meeting to allow adequate time to develop the easement that is mutually beneficial.**

**15. Consideration of a Resolution Declaring the Hendersonville Railroad Depot Plaza Not to Be Open to the Public Except During Regular Depot Hours and Authorizing the Public Works Director to Post Signs Prohibiting Trespassing at Other Times:** Herbert Blake, Police Chief, reported a number of members of the Seventh Avenue community have expressed concerns about public safety in the depot area, particularly focused on persons who are congregating, sleeping, camping, etc. underneath the trees in the plaza. He stated there is a continual problem and it affects the stakeholders in that community.

Chief Blake explained the police do not have the authority at this time to ask those people to leave. He asked Council to consider granting the police the authority to charge those with second-degree trespass. He stated there have been at least 46 calls for service in that area. He presented a resolution for Council's consideration that he believes will benefit the community and the City as a whole. He stated the resolution does not prohibit the use of sidewalks for their intended purposes.

Mayor Pro Tem Caraker commented the Mission controls their clientele but other ministries do not. He prefers citing trespassers instead of arresting them.

**Mayor Pro Tem Caraker moved Council to adopt a resolution declaring the Hendersonville Railroad Depot plaza not to be open to the public except during regular depot hours and authorizing the Public Works Director to post signs prohibiting trespassing at other times. A unanimous vote of the Council followed. Motion carried.**

Mr. Connet commented the no-trespassing signs will be posted as soon as possible.

**16. Comments from Mayor and City Council Members:****17. Reports from Staff:**

**a. Announcement of Special Meeting on Tuesday, October 18, 2016, 6:00 p.m. at the Operations Center for a public presentation on the Hotel Project.** Mr. Connet made the announcement of the special meeting.

**b. Presentation of Contingencies Report:** Mr. Connet provided a report on contingencies used as required by NCGS 159-13(b)(3):

- 1) Funds 10 & 60, \$71,150, an adjustment to return funding to contingencies that was temporarily utilized to provide budget for the Pace Property purchase until Council could approve the appropriation or fund balance.
- 2) Funds 10 & 60, \$1,853, an adjustment to pay for premiums on new equipment and vehicles utilized by various departments.
- 3) Fund 10, \$18,000, an adjustment to provide funding for dangerous tree limb removal along the greenway.
- 4) Fund 60, \$13,011, to transfer funds to cover cost for contracted services with Blackboard Connect for the Water and Sewer Department.

**18. Consideration of Appointments to Boards and Commissions:** City Clerk Tammie Drake reviewed the board/commission openings.

**Walk of Fame:** Mrs. Tammie Drake, City Clerk, reminded the Council of a vacancy on the Selection Committee of the Walk of Fame Committee. **No action was taken.**

**Historic Preservation Commission:** Mayor Pro Tem Caraker nominated Martha Payton and Kristie Ogletree for a three-year term on the Historic Preservation Commission. A unanimous vote of the Council followed. **Motion carried.**

**Announcements:** Mrs. Tammie Drake, City Clerk, announced the vacant positions on the Board of Adjustment (alternate position) and upcoming reappointments/vacancies on the Planning Board, Business Advisory Committee and Hendersonville Sister Cities Board.

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

**20. Staff Request for Closed Session:** At 8:32 p.m., Mayor Pro Tem Caraker moved Council to enter a closed session: 1) in accordance with NCGS 143-318.11 (a) (3) to consult with the City Attorney regarding a potential claim against the City. A unanimous vote of the Council followed. **Motion carried.**

The Council provided direction to staff on a potential claim against the City.

**21. Adjournment:** The meeting adjourned at 8:49 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