

MINUTES
February 6, 2018
REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS – CITY HALL
5:45 p.m.

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

Staff Present: City Manager John F. Connet, City Clerk Tammie Drake, City Attorney Samuel H. Fritschner, Development Assistance Director Susan Frady, Engineering Director Brent Detwiler, Human Resources Director Jennifer Harrell, Planner Daniel Heyman, Budget and Management Analyst Adam Murr, Assistant City Manager Brian Pahle, Fire Chief Joseph Vindigni, Fire Department Administrative Aide Pam Ludwig, 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: A moment of silence for prayer was followed by the Pledge of Allegiance to the Flag.

3. Public Comment Time: *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.* Mayor Volk asked those commenting to limit their comments to four minutes.

Glen Enggram, 230 Miller Jay Drive, presented a petition with 1,042 petition signatures of those who oppose NCDOT's proposed changes to Highway 64. He stated 35-40 percent of the road is in the City of Hendersonville's jurisdiction. He referenced the Kanuga Road project that included governmental entities and the residents in the design. He would like to see a similar partnership with the Highway 64 project and asked the City Council to help make that happen.

Ken Gordon, 806 Kanuga Road, presented a petition with more than 500 signatures opposing the roundabout at White Street and Kanuga Road proposed by NCDOT. Regarding utility extensions in the county, he stated it was mentioned that large water users may pay a higher percentage of fees for that. He asked that the original charter of Water Board be examined and determine whether it is fair for users to pay to help support the county without them funding it. Regarding Fire Department inspection fees for commercial properties, he asked Council not to add that to property taxes. He questioned whether there is a dispatching problem with the fire department instead of the number of calls.

Barry Summers, 62 Ben Lippen Road, Asheville, NC, with the group Save Our Water, www.saveourwaterwnc.com, posed the question of whether there has been a fight between Asheville and Hendersonville over water and sewer issues. The response from the Council was no, not between the cities.

4. Consideration of Agenda: Council Member Caraker moved approval of the agenda as presented. 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: January 4, 2018 Regular Meeting

B. Consideration of Mid-Year Budget Report and Associated Budget Amendments (6): Mr. Brian Pahle, Assistant City Manager, presented a mid-year budget report in order to adjust the budget as deemed necessary. He provided a list of major recommended changes including:

- 1) Funds 10 and 80: The total General Fund decreases by \$ 102,154. The total Health & Welfare Fund increases by \$30,000.
- 2) Fund 10, All Departments: To cover various overages and predicted overages and does not contain salary or personnel related accounts.
- 3) Fund 20 - The total Main Street MSD Fund decreases by \$4,651.
- 4) Funds 60 and 68: 1) salaries in the Water & Sewer Fund, 2) revenues in the Water & Sewer Fund, and 3) high miscellaneous revenues in the Environmental Service Fund used to pay for higher than appropriated expenditures.
- 5) Funds 60 and 32: to fund the Water and Sewer portion of the N. Main Street sidewalk project.
- 6) Fund 60, All Departments: to optimize the Water and Sewer Fund budget and does not contain salary or personnel related accounts.

C. Consideration of Amendment to the Fee Schedule: Mr. Pahle presented the following amendments to the Fee Schedule:

- 1) Change language regarding "special use review" to "conditional use review,"
- 2) Add a rental fee for the Public Works' sidearm mower of \$125/hour, and

3) Provide language describing NCGS requirements for beer and wine licenses: **In accordance with G.S. 105-113.77 and G.S. 105-113.79 If a business has multiple locations in one county or city, that business will need to obtain separate ABC licenses for each location. City beer and wine taxes must increase by 10% for each additional license of the same type issued to the same taxpayer for use at a separate location. Furthermore, G.S. 105-236 applies penalties for failure to pay for and obtain local beer and wine license taxes. Operating a business without the required privilege license triggers a monthly penalty of 5 % of the applicable privilege license tax, up to a total of 25%. [The complete Fee Schedule is available in the office of the City Clerk.]*

D. Consideration of Resolution of Intent to Close an Unnamed Alley Located off N. Grove

Street: Development Assistance Director Susan Frady presented the petition from Mr. Joe King to close an unnamed alley located on PIN number 9568896145. This unnamed alley is located off N. Grove Street.

Mrs. Frady reviewed the procedures contained in NC General Statute 160A-299 for permanently closing streets and alleys. She presented the following Resolution of Intent setting April 5, 2018 as the public hearing date.

Resolution #18-0205

RESOLUTION OF INTENT

A resolution declaring the intention of the City of Hendersonville City Council to consider closing a portion of an unopened, unimproved, and unnamed alley off N. Grove Street located on PIN number 9568-89-6145

WHEREAS, NC General Statute (G.S.) 160A-299 authorizes the City Council to close public streets and alleys, and

WHEREAS, Joe King, has petitioned the Council of the City of Hendersonville to close a portion of an unopened and unimproved alley off of N. Grove Street located on PIN number 9568-89-6145, and

WHEREAS, the City Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of an unopened and unimproved alley off of N. Grove Street located on PIN number 9568-89-6145.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville:

1. A meeting will be held at 5:45 p.m. on the fifth day of April 2018, in the Council Chambers of City Hall to consider closing a portion of an unopened and unimproved alley off of N. Grove Street located on PIN number 9568-89-6145.
2. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
3. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
4. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Adopted by the City Council at a meeting held on the sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

E. Consideration of Accepting an Offer for Market Street Property: Mr. Connet explained the City Council closed Market Street in February 2017 to facilitate the construction of the new Publix Supermarket. Upon the closing of the street an area of 303 square feet, which was formerly right of way, reverted back to the City of Hendersonville. This small area is located within the proposed Publix Development. In 2016, Halvorsen Development Corporation offered to purchase this area for \$5,000, but due to the delay in the street closing, the offer and subsequent City Council action was never completed. He requested the City Council declare the 303 square feet of property surplus and receive Halvorsen Development Corporation's \$5,000 offer and authorize staff to advertise for upset bids. He stated the City Council reserves the right to accept or reject any and all bids. Final action on any bids will occur at your March 1, 2018 City Council meeting.

Resolution #18-0216

RESOLUTION AUTHORIZING THE DISPOSITION OF CERTAIN REAL PROPERTY BY NEGOTIATED OFFER, WITH UPSET BID PROVISIONS (N.C.G.S. § 160A-269)

WHEREAS, the City Council of the City of Hendersonville, North Carolina, desires to dispose of certain property of the City as identified herein, and

WHEREAS, the City of Hendersonville has received an offer for the purchase of the real property, and

WHEREAS, the Council desires to instruct the City Manager to initiate disposition of this real property in accordance with North Carolina General Statutes 160A-269,

NOW, THEREFORE, BE IT RESOLVED by the City Council that:

- 1) The property is described as follows:

Consisting of 303 square feet, more or less, commonly referred to as a portion of the Market Street (formerly Shepherd Avenue) public right-of-way abandonment, lying and being in the City of Hendersonville, Henderson County, NC.

- 2) Subjects to the terms of this resolution the City Manager is authorized to dispose of the described property by negotiated offer, advertisement, and upset bids (N.C.G.S. 160A-269).

3) An offer of \$5,000 has been received for this property.

4) Sale of subject property will be subject to final City Council approval. The City of Hendersonville reserves the right to accept or reject any or all bids.

Adopted this second day of February, 2018.

/s/Barbara G. Volk, Mayor

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

F. Consideration of an Ordinance Amending Code Section 50-119 Pertaining to the Use of Compression Brakes: Mr. Connet reported the City received notification from the manufacturer of "Jake Brake" compression truck brakes that the term Jake is a registered trademark and should not be used to reference compression truck brakes in our Code of Ordinances. He presented an ordinance to remove any reference to "Jake Brake" from Section 50-119 of the City Code.

Ordinance #18-0206

**AN ORDINANCE AMENDING CODE SECTION 50-119 PERTAINING TO
THE USE OF COMPRESSION BRAKES**

WHEREAS, the City Council has determined that it is unnecessary to the clarity of the term "compressions brakes" to refer to them by any other name,

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

SECTION 1. Sec. 50-119 of the Hendersonville Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 50-119 Compression brakes prohibited.

1. It shall be unlawful for any vehicle equipped with compression brakes (~~sometimes referred to as "jake brakes"~~) to downshift and release the clutch to utilize the vehicle's engine to slow, except in case of emergency. The burden in each case shall be upon the vehicle operator to establish the existence of the emergency.

2. This prohibition does not apply to the operation of vehicles that are owned or leased by governmental entities and which are being operated within the scope and purpose of a governmental use.

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 February 2018.

/s/Barbara G. Volk, Mayor

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

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

G. Consideration of a Resolution Declaring Certain Personal Property as Surplus and Authorizing the Donation of this Surplus Property to the Henderson County Public Schools System and the Fire Academy Program Pursuant To NCGS 160A-280 Entitled Donations of Personal Property to Other Governmental Units – Donating Decommissioned Engine 4: Fire Chief Joseph Vindigni reported the Fire Department recently replaced a fire engine and would like to donate the decommissioned engine along with obsolete equipment to the Henderson County Public Schools System and the Fire Academy Program located at Blue Ridge Community College for use during instruction of numerous firefighter certification courses offered at the school. He estimated the value of this vehicle is approximately \$10,000-\$15,000.

Resolution #18-0207

RESOLUTION DECLARING CERTAIN PERSONAL PROPERTY AS SURPLUS AND AUTHORIZING THE DONATION OF THIS SURPLUS PROPERTY TO THE HENDERSON COUNTY PUBLIC SCHOOLS SYSTEM AND THE FIRE ACADEMY PROGRAM PURSUANT TO NCGS 160A-280 ENTITLED DONATIONS OF PERSONAL PROPERTY TO OTHER GOVERNMENTAL UNITS

WHEREAS; The City of Hendersonville has in its possession a 1991 American LaFrance Fire Engine, VIN 1P1F106B3MA090026, with 49,951 miles and 5,511 hours, and known as Engine 4, and

WHEREAS; Engine 4 has been replaced and is hereby declared surplus property; and

WHEREAS; the City of Hendersonville Fire Department would like to donate the decommissioned engine along with other obsolete equipment to the Henderson County Public School System and the Fire Academy to be utilized in the instruction of numerous firefighter certification courses offered at Blue Ridge Community College and would help the college in that effort; and

WHEREAS; The City of Hendersonville is authorized to make such a donation pursuant to NCGS 160A-280 entitled "Donations of Personal Property to other Governmental Units" and

WHEREAS; The City of Hendersonville posted its intention to conduct such donation on January 29, 2018 in City Hall as well as on their website at www.HendersonvilleNC.gov.

BE IT RESOLVED THAT the City Council of Hendersonville, North Carolina seeks to donate and provide to Blue Ridge Community College the property listed below:

1991 American LaFrance Fire Engine, VIN 1P1F106B3MA090026 with a value of up to \$15,000 4,707 as determined by research.

Adopted this sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

H. Consideration of a Resolution Requesting the Legislative Delegation Representing Henderson County in the North Carolina General Assembly to Introduce Deannexation Legislation For a Certain Property:

Mr. Connet explained the City Council approved the satellite annexation of 7.34 +/- acres of property between Erkwood Drive and Gridley Road in September 2007. The annexation petition was submitted as part of the proposed Magnolia Creek Development and the need for sewer service. Following the annexation of the property, the developers chose not to move forward with the development and Magnolia Creek was never constructed. The annexed property is now owned by Charles and Susan Albers (6.17 acres +/-) and Charles and Christina Barrett (1.03 acres +/-). Mr. and Mrs. Albers' property is currently vacant and Mr. and Mrs. Barrett's property only includes their single family residence. Neither property is connected to sewer service or receives any city services other than fire and police protection. Mr. Barrett has refused to accept solid waste collection services and both parties have requested to be de-annexed from the City of Hendersonville. Therefore, City staff has developed a proposed resolution asking our N.C. legislative delegation to introduce legislation to de-annex the Albers and Barrett's property.

Mr. Connet stated this proposal is being brought forward for the following reasons:

1. This is a satellite annexation,
2. Neither property has connected to sewer service,
3. Neither property utilizes solid waste collection services,
4. Erkwood and Gridely Roads are NCDOT streets,
5. Law Enforcement and Fire Protection can be easily provided by County agencies, and
6. Both parties will have to petition for annexation if sewer service is required.

Resolution # 18-0208

A RESOLUTION REQUESTING THE LEGISLATIVE DELEGATION REPRESENTING HENDERSON COUNTY IN THE NORTH CAROLINA GENERAL ASSEMBLY TO INTRODUCE DEANNEXATION LEGISLATION FOR CERTAIN PROPERTIES

Whereas on September 6, 2007 the governing board of the City of Hendersonville approved the voluntary annexation of approximately 7.34 acres of property identified at the time as PIN: 9567-99-3474 and portion of PIN: 9567-99-4155; and

Whereas, this annexation was a condition of the provision of sewer service to the proposed Magnolia Creek Subdivision located between Erkwook Drive and Gridley Road; and

Whereas, Magnolia Creek Subdivision was never constructed and the aforementioned property was never connected to City sewer; and

Whereas, as of January 1, 2018, Charles and Susan Ablers are the owners of the 6.17 acres of the aforementioned vacant annexed property more properly identified as PIN 9567-99-4599; and

Whereas, as of January 1, 2018, Charles and Christina Barrett are the owners of 1.03 acres of the aforementioned annexed property more properly identified as PIN 9567-89-9251 that contains a single family home which is not connected to City sewer; and

Whereas, in addition to no connection to sewer service, neither property is receiving direct City services (solid waste collection, street maintenance or snow removal); and

Whereas, law enforcement and fire protection services are available by other agencies.

Now therefore be it resolved, the Hendersonville City Council hereby requests the legislative delegation representing Henderson County in the North Carolina General Assembly to introduce deannexation legislation for the properties identified as PINs 9567-99-4599 and 9567-89-9251.

Adopted on the sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

I. Consideration of Awarding Contract for the Construction of the North Main Street

Sidewalk Project: Mr. Brent Detwiler, Engineering Director, reported formal bids were received on December 6, 2017 for the North Main Street sidewalk project. He reported the following three bids were received:

Trace and Company - \$1,407,198.45

Buchanan and Sons Inc. - \$1,621,037.36

Cooper Construction Company - \$2,092,512.44

Mr. Detwiler reported staff reviewed each bid for completeness and accuracy. All of the bids including the lowest responsive, responsible bid were over the estimated budgeted cost of the project. Per NCGS 143-129, the City can enter into negotiations with the lowest responsible bidder and make reasonable changes in the plans and specifications to bring the contract price within the funds available. The Engineering Department and low bidder, Trace and Company, have been working to adjust the plans and specifications in order to reduce the total project cost. The negotiations have led to a bid price reduction of \$152,000.00.

City staff recommended the award of said project to Trace and Company, the lowest responsive and responsible bidder for the revised project cost for \$1,254,669.15. He provided the engineer's estimate and a bid tabulation, bid negotiation showing all the bids and unit prices.

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

6. Presentation by Representative Chuck McGrady: House Representative Chuck McGrady addressed the Council regarding the Legislative Study Committee that he chairs which is a joint committee to study rates and transfers in public enterprises. He has requested time on Asheville, Hendersonville, Henderson County and Buncombe County's agendas.

Representative McGrady stated the Study Committee started out as House Bill 718 which was a Bill related to rates and transfers. He stated an earlier draft of the Bill related to public utility commission regulation in the area. After speaking to a number of officials, he backed off that. He stated the original Bill would have prohibited counties and cities from establishing differential rates for public enterprises without the approval of the Local Government Commission. It would have also required a public enterprise to be accounted for in a separate, segregated fund and it included a study provision.

Representative McGrady stated there was a meeting of officials approximately one year ago. He stated he tried to be transparent. The Bill morphed into a study committee and he has shared the charge of that committee but is not speaking about that.

Representative McGrady stated this grew out of dealing with the water system in Asheville. When the legislation was found to be unconstitutional, he stated a process began of trying to resolve some long-standing issues between Henderson County and the City of Asheville. He hopes to avoid the need for legislation.

Representative McGrady stated one of the issues is representation. Henderson County has no representation on MSD and 40 percent of Asheville's water customers are outside the City limits. He learned nearly 70 percent of Hendersonville water customers live outside the City limits.

Representative McGrady stated the attorneys for both sides have worked out the Memorandum of Understanding between Henderson County and the City of Asheville and that the entities will resolve issues related to water.

Representative McGrady stated the Study Committee is now about a broader issue. He stated the Treasurers' Office approached him, as did the Department of Environmental Quality (DEQ), who are interested in the Study Bill because they are faced with an excess of 30 towns that are functionally bankrupt. Those are largely mill towns with water systems that ran new water lines, raised differential rates and tried to run the City with those charges. He stated the DEQ is concerned because the systems continue to need grants to upgrade the system in order to comply with environmental laws. He stated neither the Treasurers' Office nor the DEQ believe this is sustainable. He stated they would like some incentives to be put in place by the General Assembly to require or entice municipalities to feel like they do not all have to have their own water and sewer systems.

Representative McGrady stated he expects meetings of the Study Committee before and after the General Assembly convenes. They have met with the NC League of Municipalities who have concerns but are also concerned there are 30+ municipalities that are functionally bankrupt. He encouraged the City Council to stay involved. He stated the representation issue is still being looked at.

Representative McGrady stated the Study Committee will be bringing in staff from the School of Government, the Treasurer's Office, and the Department of Environmental Quality to discuss the problem. Once they determine the facts, they will try to figure out a solution for both of the State agencies. He stated he does not believe it relates to specifically how it began with Asheville and Henderson County who are apparently close to resolving their water issues and it is no longer on the table.

Representative McGrady stated as to water and sewer issues in Henderson County, there may be an opportunity here. There are the issues of: Etowah sewer, Laurel Park water, Edneyville Elementary and the Justice Center, and more recently the MSD excluding Henderson County. He asked if it is possible for a group to explore some resolution of these issues. He gave some past history and how local issues were resolved in the past. He stated with the myriad of water and sewer issues now there is the same opportunity. He stated he is willing to help and if there is a need for legislative help, just ask.

Representative McGrady stated he and his wife are residents of Hendersonville and intend to stay. He stated they are very happy with the City and its leadership. He stated the Manager is taking the right approach in dealing with the water and sewer issues in working with others but that has not always been the approach. He stated the quality of life in Hendersonville is good and some part of that relates to the forward-thinking leadership.

In response to public comments made, Representative McGrady added that he talked to Henderson County Commissioners about getting the towns and county commissioners together to discuss the extraterritorial jurisdiction issues. He stated extraterritorial jurisdictions are not needed now because Henderson County has zoning. He stated the City and County zoning largely lines up. He stated part of the problem in the transportation area is people think they are in Hendersonville or Laurel Park but are in neither. He stated local officials can work on it and the legislators are prepared to fix it but asked for solutions. He stated it will take a number of entities to pull together on that.

Representative McGrady stated he is hearing most about transportation currently. He expressed appreciation for the work done on the Kanuga Road issue.

Representative McGrady stated he is not sure how long they will be in session and are looking at redistricting, classroom size, etc. He expressed appreciation for the Council's time and asked for questions from the Council. **No action was required or taken by the Council.**

7. Recognition of Service Excellence Quarterly MVPs: Mr. Connet and Mayor Volk recognized the following employees who were selected as quarterly MVPs: Michael Fife, Tammie Drake, and Sergeant Bruce Darrah, Officers Zeffrey Childress and Michele Hoyle.

8. Recognition of Service Excellence MVP of the Year: Kemper Henderson: Mr. Connet and Mayor Volk recognized Kemper Henderson as the Service Excellence MVP of the Year. In 2017, 138 MVP nominations were submitted and each quarter three were chosen as Quarterly MVPs. From these, the Service Excellence Design Team selected Kemper Henderson as the MVP of the Year. Kemper is a Property Maintenance Worker for the Public Works Department and in 2017 received three MVP nominations.

Mr. Connet stated at the end of his shift, Kemper was driving with two seasonal employees to the Operations Center when he witnessed a pedestrian struck by the mirror of a mail truck. The man was lying on North Main Street bleeding from the head. Reacting quickly, Kemper called 911 and began giving first aid to stop the bleeding. The other City workers directed traffic. Once EMS arrived, Kemper and the employees continued to handle traffic far after their shift ended.

The Service Excellence Design Team felt Kemper's actions were far beyond the normal duties of his job. He received \$500 and his name will be added to the MVP of the Year plaque.

9. Public Hearing – Consideration of an Order to Permanently Close an Unopened, Unnamed, and Unimproved Alley off Kensington Road – Request to Continue to March 1, 2018 Meeting: Mrs. Frady reported the City Council continued the public hearing from the January meeting for a request from Robert Baumann and Robert Duffey to close an unnamed alley running between Kensington Avenue and Ridgewood Boulevard. This was to allow time for the applicant to resolve the access issue with the neighbor. She reported staff has not received any further information from the applicant. She requested this matter be continued until the March meeting. **The public hearing on the street closing request was continued until the March 1, 2018 meeting upon unanimous assent of the Council.**

10. Public Hearing – Consideration of a Petition for Annexation from Ronald Jones for Property Located at 812 Orr's Camp Haywood Road: Mrs. Frady presented a petition from Ronald Jones for contiguous annexation of parcel 9579-32-8518 containing approximately 0.31 acres located at 812 Orr's Camp Road. This annexation application is related to a sewer service request.

Mrs. Frady reported Council accepted the Clerk's Certificate of Sufficiency at their January meeting and set a public hearing for the February 6, 2018 City Council meeting.

Mrs. Frady then reviewed the standards for annexation set out in G.S. 160A-31.

At 6:19 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved the City Council adopt an ordinance annexing the property included in the petition from Ronald Jones effective February 6, 2018. A unanimous vote of the Council followed. Motion carried.

Ordinance #18-0209

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE,
NORTH CAROLINA - Ronald Jones**

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

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

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the sixth day of February 2018, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of G.S.

160A-58.1(b), to wit:

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

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

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the sixth day of February 2018.

DESCRIPTION OF PROPERTY

TRACT TWO: (PIN 9579-32-8518)

BEGINNING at a stake on the east margin of Buena Vista Avenue, said stake standing 235 feet from the north margin of Dana Road, and running thence North 1 deg. 30' East 100 feet along the east margin of said Buena Vista Avenue to a stake; thence South 82 deg. 31' East 135 feet to a stake; thence South 1 deg. 30' West 100 feet to a stake; thence North 82 deg. 31' West 135 feet to the point of BEGINNING. ALSO BEING Lots 12 and 13 of the Subdivision of J.E. Sherman's property as shown on a map of same by B.H. Waldermier in 1926.

ALSO BEING that same property described as Tract Five in Deed Book 1646, Page 674, Henderson County Registry.

Section 2. Upon and after the sixth day of February 2018, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

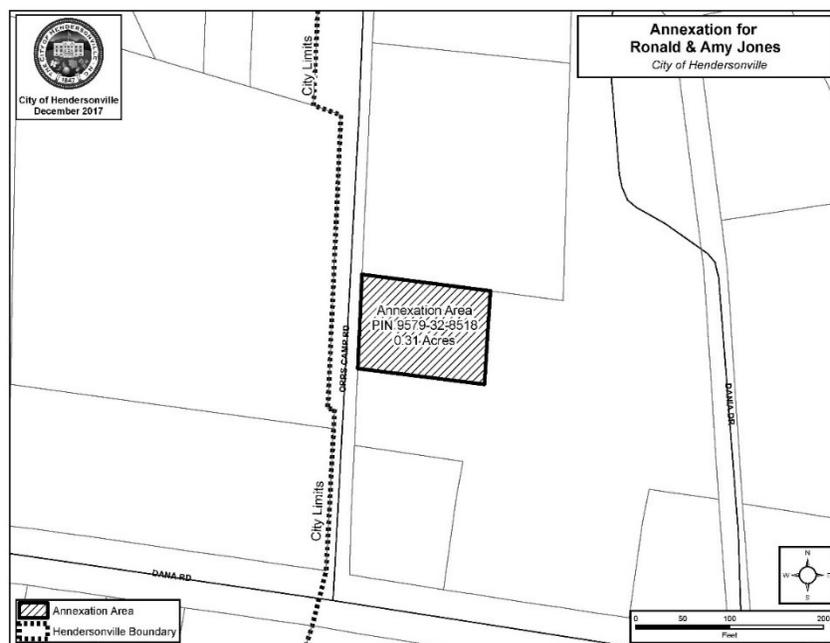
Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with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

ADOPTED this sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

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



11. Quasi-Judicial Public Hearing - Consideration of an Application for a Special Use Permit from RDV Development, LLC, for the Development of a Project Known As The Cottages at Cypress Run; the Construction of 67 single-family homes on approximately 16.6 acres Located on Howard Gap Road and to Rezone the Property from Henderson County R1 to PRD Planned Residential Development: Mayor Volk explained this application came in before amendments were made to the Zoning Ordinance and must be considered under those regulations.

Mayor Volk explained the procedures for quasi-judicial public hearing. Quasi-judicial hearings differ from regular public hearings. She explained anyone who presents information and wishes to speak must be sworn in. She explained Council may only consider evidence presented at this hearing on the application.

Nine persons were sworn in to provide testimony.

Daniel Heyman, City Planner, presented the special use permit application from RDV Development, LLC for the development of 67 single-family homes on approximately 16.6 acres. He presented the following testimony:

The project is located on Howard Gap Road on parcel # 9670-43-2161. The parcel is currently zoned by Henderson County as Residential District One (R1). The applicant is requesting to rezone the property from Henderson County R1 to PRD Planned Residential Development.

The preliminary site plan is subject to recommendation by the Planning Board and approval by City Council. The final site plan is subject to City staff approval.

Since this application was received on November 20, 2017, prior to the removal of Special Use Permits from the Zoning Ordinance, it is being processed under the Ordinance as adopted at that time.

Existing Land Use & Zoning: Parcel number 9670-43-2161 is currently zoned Henderson County R1 and is used for agriculture. The portion of the property subject to the development is largely not used for agriculture

but is somewhat wooded. Parcels to the north, east, and west are also zoned Henderson County R1. Parcels to the south are zoned R-15 Medium Density Residential, and C-2 Secondary Business by the City. He reviewed surrounding land uses and zoning districts.

Comprehensive Plan Consistency: The subject parcel is not within the planning jurisdiction of the City of Hendersonville, and the Comprehensive Plan's Future Land Use Map does not directly reference its use. The subject parcel, as well as parcels to the north, east, and west are classified as Urban Services Area by Henderson County on the 2020 County Comprehensive Future Land Use Map. The Henderson County Urban Services Area classification is defined as "the area within which most urban services and urban scale development is currently concentrated, and within which such development should generally be concentrated. Growth and development will be proactively managed through extensive planning. Much of the Urban Services Area falls within municipal planning jurisdictions and will be managed by those jurisdictions."

The parcels located to the south are classified as Medium Intensity Neighborhood on the 2030 Comprehensive Plan's Future Land Use Map. There is a section of Natural Resource along Clear Creek. He also provided the Comprehensive Plan Future Land Use Map.

Buildings: The site plan includes 67 single-family lots ranging from 5,500 square feet to 8,000 square feet on average. The applicant has indicated the homes will be about 1,480 square feet to 1,820 square feet. He provided the site plan.

Parking: The required parking is two spaces per home. The applicant will be meeting this requirement by providing a single-car garage and a driveway per home.

Buffer Plantings: As per section 15-6, no buffer is required between this parcel and adjacent parcels because the proposed use is residential. The applicant has shown street trees along the proposed public street and will preserve a small stand of trees to the north.

Stormwater: The applicant will be providing stormwater management plans to the Engineering Department as part of the final site plan submittal requirements. Proposed location of stormwater facilities is on the southern boundary of the development.

Parcel Recombination & Annexation: The lot has been created and recorded with the Register of Deeds. The applicant has made application for annexation for sewer service.

Sidewalks: Section 6-12-1 of the Zoning Ordinance requires sidewalks along the property line fronting Howard Gap Road, as well as along the proposed internal street, which are shown on the site plan.

Traffic Impact Analysis: The applicant provided estimated trip counts, which did not meet the threshold to require a traffic impact analysis. The applicant will be required to get approval from NCDOT for the entrance on Howard Gap Road.

Density: The proposed density for this project is approximately four units per acre. The Zoning Ordinance states: "The density for a planned residential development shall be established by City Council in consideration of the Comprehensive Plan, surrounding land uses and the existence of adequate private and public facilities ... the density authorized for the district shall not exceed ten units per acre." A question was posed at the Planning Board meeting about density allowed in Henderson County R1. The Henderson County Planning Department confirmed current zoning would allow eight units per acre for single-family homes. He explained Henderson County would remove the right-of-way from the land acre. Under their calculations, this will be about 4.5 units per acre.

Development in the Flood Hazard Area: A portion of the property is within the floodway, is not a part of the project, and is proposed to remain an agricultural use.

The developer must meet the requirements of Section 17-2-4 for redevelopment within a special flood hazard area. This includes the requirement that there shall be no loss of flood storage capacity on the site as a result of the redevelopment. The developer has proposed to elevate the structures within the 100-year floodplain two feet above the base flood elevation and install the required flood vents or obtain a letter of map revision from FEMA removing it from the floodplain. The application has indicated they intent to have it removed from the floodplain based on fill. Council Member Smith asked how the revision would occur. Mr. Hyman explained the applicant would submit a conditional letter of map revision based on what they intend to fill, fill it, then request that FEMA redesign the flood models based on the existing grade. Mrs. Frady reviewed the process.

Analysis: He reviewed the findings contained in [the previous] Section 7-4-10.1 of the Zoning Ordinance. He reported:

- (A) Staff has not identified any issues relating to public health, safety or general welfare.
- (B) Water and sewer service is intended to be extended to the site. The applicant has requested annexation into the City of Hendersonville. The plans have been routed to all relevant City departments for comment on the availability of City Services. The City believes they can provide those services.
- (C) No variances are requested.

(D) A neighborhood compatibility meeting concerning the application was held on December 7, 2017. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance. Nine people representing the general public attended the meeting. The public raised concerns about flooding and new development in the flood hazard area, traffic, and the impact of the nearby quarry on future residents. He provided a copy of the neighborhood compatibility report.

(E) The proposed development meets all requirements of the Zoning Ordinance. Henderson County's Urban Services Area classification is defined as "the area within which most urban services and urban scale development is currently concentrated, and within which such development should generally be concentrated. Growth and development will be proactively managed through extensive planning. Much of the Urban Services Area falls within municipal planning jurisdictions and will be managed by those jurisdictions."

The City's 2030 Comprehensive Plan does not address this area, and the designation in Henderson County's Comprehensive Plan represents the highest intensity of residential development recommended. Therefore, the proposed development conforms with the Comprehensive Plan.

The Comprehensive Transportation Plan does not indicate any new improvements to Howard Gap Road.

Planning Board: The Planning Board voted 4-2 to recommend that City Council amend the official zoning map of the City of Hendersonville changing the zoning designation of the subject parcels from Henderson County R-1 to PRD Planned Residential Development, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest for the following reasons: the proposed development is the highest and best use of the property.

The Planning Board also voted unanimously to recommend City Council approve the application of RDV Development, LLC for a Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions.

Tree Board: There was not a quorum of the Tree Board and therefore, no recommendations were approved.

At 6:35 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. She reminded those present that quasi-judicial hearings are based on competent, relevant, substantial evidence in the record which includes the application, staff analysis, the reports, testimony and documents presented at the hearing and other related documents. She stated a person in the quasi-judicial hearing has the right to cross examine witnesses.

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

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

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

Mike Anderson, Ace Engineering, thanked staff for the summary and provided the following testimony:

During the neighborhood compatibility and Planning Board meetings, they heard two main concerns: traffic and flooding in the area. Regarding flooding, flooding is a natural function of a healthy river system. Flooding in itself is not an indication of a problem. However, they heard of several incidences of the bridge on Howard Gap Road had flooded over in the past and recently. Based on those discussions, he called the Division 14 office and asked what the considerations were when the widening of Howard Gap Road was done. He stated they completed a benefit analysis and at that time decided to replace the bridge deck in same location as it was previously and that is what happened during the project. NCDOT is aware of the concern. Based on their decision they will deal with it in the future. He asked that they are not held accountable for the NCDOT decision. He stated the silver lining in a future improvement project, which is the widening of Howard Gap Road in the future to four lanes. He spoke to their engineer and the bridge supervisor about what might happen at that time. Because it is not an active project, they do not have any definitive information to share. They said in similar projects in size and scope, they have replaced bridges and raised elevation to prevent flooding in the future. They also stated the road alignment often changes in those types of widening projects so the bridge may not be in same location it is now. He stated it is a silver lining because if they build a new bridge to accommodate a four-lane road, the existing bridge would be removed and is removing an obstruction within the floodway which has the ability to lower the base flood elevations in that area. They see it as a potential benefit in the future.

As far as the residents are concerned, he stated they are not allowed to have any negative impacts though local regulations and through the permit process through FEMA. They will send an application indicating where they propose to place fill material within the flood plain. The idea is to raise the future home elevations high enough so they will not be impacted by any floodwaters. If FEMA agrees with their analysis and application,

the will grant approval of CLOMRF or conditional letter of map revision based on fill. At that point they can place the fill material within the flood plan. At the end of construction, they send out a surveyor to prove they did what they said they would do. They will then send another application to FEMA with that data. If FEMA concurs they followed the conditional letter of map revision, they produce a letter of map revision, which revises the flood map and removes the area out of flood plain.

As far as traffic along Howard Gap Road, NCDOT indicated their level of service will not be impacted by this project and feel they can comfortably handle any traffic generated by the project.

Council Member Smith commented building a structure in the floodplain will displace water elsewhere. Mr. Anderson stated in this case, it will be earth. Council Member Miller stated the water will have to go somewhere else other than where it is currently going at the edge of this field. He stated the line of houses on the southern side will be displacing earth and the water will have to go somewhere else. He stated it will flood at some point. Mr. Anderson responded that the rules they have to meet are based on the 1 percent annual chance of rainfall, and that is how they produce a 100-year flood event. He stated FEMA has models in place of how they believe that storm will affect communities. They have to make sure that they are not negatively influencing the model. They have to prove that they are not pushing water upstream or downstream, making the floodplain wider or narrower. It is on them to show they are not negatively impacting the community. He stated they cannot have an impact on the flood width. Council Member Miller stated if they make the floodplain narrower, they will push the water somewhere else. Mr. Anderson stated not necessarily. He stated FEMA has existing models that they will plug this project into and will have to show that they are not grant causing the negative impacts. Council Member Miller asked if he could say no to the question. Mr. Anderson stated FEMA will not grant a CLOMRF to them if they are causing any negative impacts.

Council Member Smith asked if they have to have the conditional letter of approval before they can dig anything. Mr. Anderson stated that is correct then they have to prove they have done what they said they would do in order to get the actual map revision.

Council Member Miller asked if the same thing was required with Publix. Mrs. Frady stated it will be the same process. Council Member Smith stated Publix used existing square footage and combined it for their building. He stated this project is bringing in square footage in a place that does not currently have it. Mr. Anderson stated they were working within the flood way in a critical flow path and they are outside of that area.

Mayor Volk asked if anyone wanted to speak in favor of the application. There was none. She asked if anyone wanted to speak in opposition to the application.

Andrew McGuinn, who resides at 16 Columbia Circle, presented some documents and photos from 2016 to the Council. He expressed concerns as residents to the location of the proposed entrance where a number of roads intersect. He stated 67 homes will result in 134 cars out of a single entrance on a busy road that floods. He stated a flood happens every year. He expressed concerns about the disruption of people turning around in their driveway. He presented concerns about the 100-year floodplain, the impact on Howard Gap Road and the neighborhood. NCDOT's project of widening Howard Gap Road is inactive. The bridge project has not resolved the flooding. The FEMA maps are ten years old and the residents know the area floods every year. He asked the Council to consider the impact. He stated people will be taking loans to buy homes in floodplain. When NCDOT fixed Howard Gap Road, the water now flows to a drain that lets out in the proposed development area. A new bridge will not fix the issue. He stated there is a creek beyond the proposed development. He asked Council to hear their concerns and see the impact on human lives in their neighborhood.

Ed Graves, 3175 Howard Gap Road. The applicant is proposed four houses per acre on a 16-acre parcel. He asked Council not to approve the project. He lives on a hill that overlooks this field. He stated the field floods. He grows vegetables in the field and plans for annual flooding. He stated this proposal hinges on statistic: a 1 percent probability of flooding over the course of 100 years. He stated flooding is happening more and more. There were two flooding events in 2017. When NCDOT widened road the water goes to the entrance of the proposed development. He stated that is the natural course of the water. He believes this development will create an obstruction in the floodway including raising the elevation of the homes. Twice this year the culvert washed out during a flooding event. He has observed dozens of cars tuck in three feet of water in Howard Gap Road. There are signs on the road indicating it may flood. He expressed a concern that annexing the property and approving the proposal could violate the City's flood ordinance particularly with creating obstructions in the floodway by raising the elevation of the homes. The reservoir proposed to handle the stormwater is essentially putting water back into the floodway. By the raising the elevation of the homes, that water will go downstream and flood Clear Creek Estates or go across the road causing problems and flood his field which is across the street. He stated it is similar to the Publix development. He asked the Council not to make the same mistakes. Referencing the flood map, he presented the 2007 flood layers. He stated more than half of the proposed development is within the flood fringe or zone AE, which is considered high risk. For flooding and traffic concerns, he recommended denial.

K.P. Whaley, 3175 Howard Gap Road, concurred with other statements of objection on issues of traffic and flooding. He lives directly across and flooding has reached the driveway. He has trouble crossing traffic every day to get to work and turning back in. He stated adding another 100 cars will affect him and everyone on Howard Gap Road and certainly for on-coming traffic. Traffic will backup to Chimney Rock Road, which is already a high traffic road. He asked the Council to consider the impact of traffic. He chose Henderson County because he

wanted to start a small farming operation. The culture of heritage of Henderson County is important to him. He provided stats on farmland that has been lost and its importance and asked Council to consider that.

In discussion, Council Member Smith expressed his appreciation to those who spoke. He agreed regardless of what FEMA says, it appears this development goes too far into the flood plain and it will push water to another place. He stated unlike Publix who used the same square footage this project is adding square footage into the flood plain.

Council Member Miller commented on Council's reliance on FEMA's standards. He expressed concerns about the driveway issue, and that the property is not in the City's extraterritorial jurisdiction. Mayor Pro Tem Caraker commented on the displacing storm water and unless the City develops their own standards, FEMA's must be followed. He commented on the issues at Biltmore Village during a recent flood event.

Council Member Miller asked how many homes would be allowed under Henderson County zoning. He stated sewer service is available. Henderson County zoning would allow four units per acre.

Mr. Anderson explained their stormwater plan for the entire site. He stated the tract was split because there is not a zoning designation that allows single-family and agriculture use together. He stated there are 13.4 acres that are not a part of this application. He stated the price of the homes will be in the \$275,000 range. There was also discussion about the cost of flood insurance.

Mayor Volk commented the property is already zoned residential. She stated she would prefer the development be closer to the City. She stated there will be an increase in traffic no matter what happens there. She stated she believes the developers have answered all of the concerns that they are required to show. Council Member Smith commented most teachers will not be purchasing the homes at a cost of \$275,000.

The public hearing was closed at 7:22 p.m.

Special Use Permit and Rezoning: Council Member Caraker moved City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of a portion of parcel 9670-43-2161 from Residential District 1 by Henderson County to PRD Planned Residential Development, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest for the following reasons: because it meets county zoning regulations.

Mayor Pro Tem Caraker further moved that City Council approve the application of RDV Development, LLC for a Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions with no additional conditions. The vote is three in favor (Caraker, Stephens, Volk) to two opposed (Miller, Smith). There was a brief recess. Upon return to session, City Attorney Fritschner informed the Council that according to NCGS 160A-381(c) the matter does not require a second vote. **The motion carried.**

Ordinance #18-0210

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

IN RE: The Cottages at Cypress Run
(File # P17-46-SUR)

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

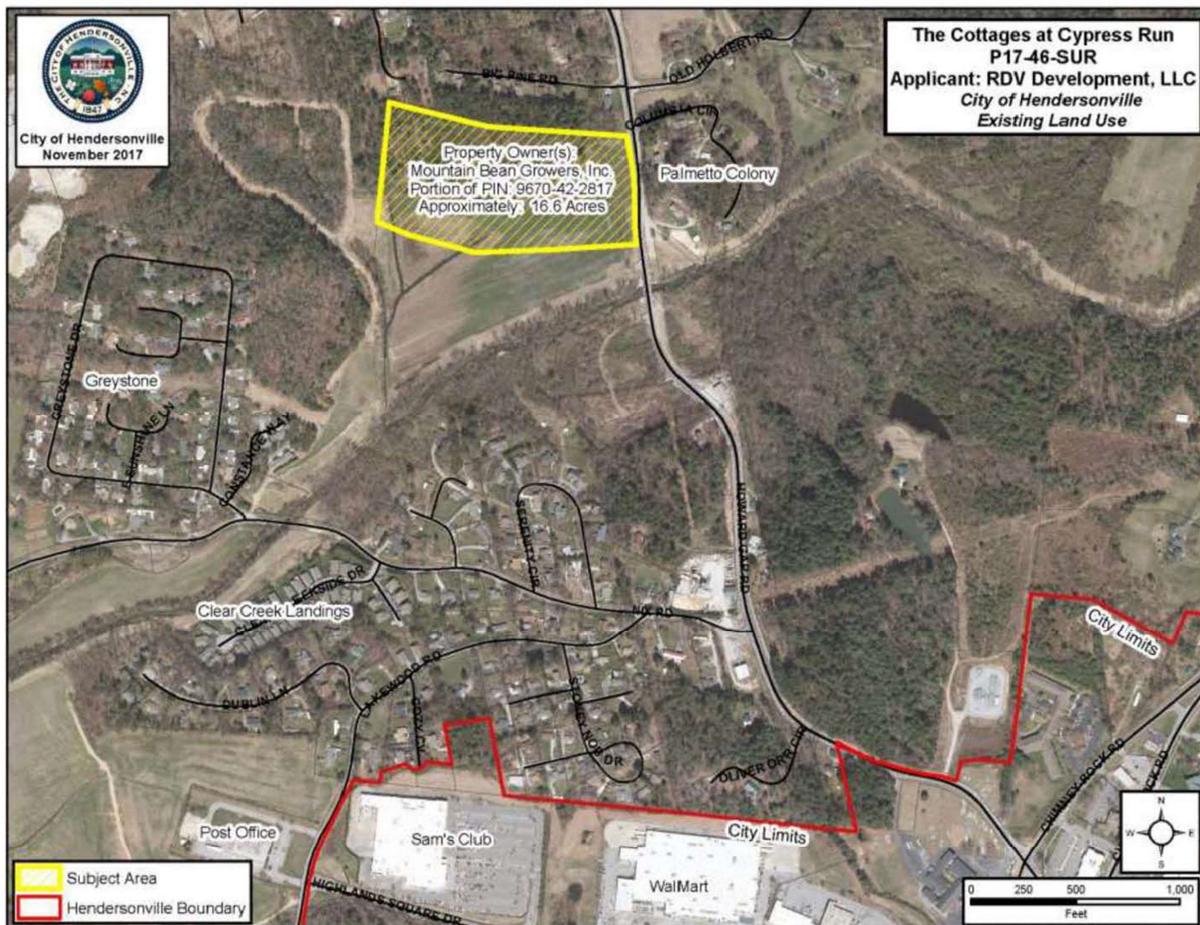
1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:
 - Rezone Parcel # 9670-43-2161 from Residential District 1 by Henderson County to PRD Planned Residential Development.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

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



12. Public Hearing - Consideration of a Petition for Satellite Annexation from Mountain Bean Growers, Inc. for Property Located at 20 Howard Gap Road: Mrs. Frady presented a petition from Mountain Bean Growers, Inc. for a satellite annexation of 16.6 acres of property identified as parcel identification number 9670-64-2817 located at 20 Howard Gap Road. This annexation application is related to a sewer service request. The map distance from the proposed satellite corporate limits is 2,250 feet from the primary corporate limits. The total area within the satellite corporate areas, including land involved in this petition, constitutes 4.3 percent of the area within the primary corporate limits.

Mrs. Frady stated Council accepted the Clerk's Certificate of Sufficiency and set a public hearing for this meeting.

Mrs. Frady reviewed the standards set out in N.C.G.S. 160A-31 for annexation.

At 7:36 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one spoke in favor of the annexation. The following spoke in favor of the annexation.

Ed Graves, 3175 Howard Gap Road, voiced opposition to the annexation because the property is in flood plain. He stated the flood maps are ten years old. He stated he does not think the residents will be well served by being part of the City or this development.

No one else expressed a desire to speak. The public hearing was closed at 7:37 p.m.

Council Member Caraker moved the City Council adopt an ordinance annexing the property included in the Mountain Bean Growers, Inc. petition effective February 6, 2018. The vote was three in favor (Volk, Caraker, Stephens), two opposed (Smith, Miller). City Attorney Fritschner explained this action will require a second vote. He stated a three-fourths majority is necessary to approve the ordinance on first consideration. **The Council will consider the second vote on Thursday, February 8, 6:00 p.m. at City Hall.**

13. Public Hearing - Consideration of A Resolution to Amend the Terms of the Sale of Certain City-owned Real Property by Authorizing the Sale of Certain Additional City-owned Real Property: Mr. Connet presented an amendment to the resolution adopted by the Council in December agreeing to the sale of the Mill Building property to Belmont-Sayre LLC. He explained upon further discussion with Belmont-Sayre, it became apparent that the value of the single Mill property was less than originally thought without the parking spaces afforded by the additional outlying properties owned by the City.

Mr. Connet stated because it was important for the completion of the project that the Mill Building site be owned by the developer (now Grey Mill Ventures, LLC) before the end of 2017, the city manager agreed with the developer, pending ratification and approval by the City Council, to include the additional outlying properties in the \$1,000,000 purchase price. He stated from the beginning it was the intent of the Council to transfer all of the property used to develop the project. He stated the outlying parcels were purchased by the City to make the project viable.

Mr. Connet presented a proposed resolution that ratifies the December contract and approves a change in the sale so that all City-owned parcels within the Mill Building block will be included in the same purchase price.

At 7:43 p.m., the public hearing was opened by Mayor Volk in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved Council adopt a resolution to amend the terms of the sale of certain city-owned real property by authorizing the sale of certain additional city-owned real property pursuant to N.C.G.S. § 158-7.1(d). A unanimous vote of the Council followed. Motion carried.

Resolution #18-0212

A RESOLUTION TO AMEND THE TERMS OF THE SALE OF CERTAIN CITY-OWNED REAL PROPERTY BY AUTHORIZING THE SALE OF CERTAIN ADDITIONAL CITY-OWNED REAL PROPERTY PURSUANT TO N.C.G.S. § 158-7.1(d)

WHEREAS the City of Hendersonville did at its regular meeting on 7 December, 2017 authorize the sale to Belmont Sayre, LLC or its assigns of that real property identified as PIN 9568-88-7974, sometimes called the "Mill Building" in this resolution, and

WHEREAS the City subsequently and before the sale so authorized entered into an agreement to include in the sale price certain additional properties adjoining the Mill Building, and

WHEREAS it appears to the City Council that the adjoining real properties, identified by the following PINs should have been included as part of the original sale: 9568-88-9495, 9568-98-0317, 9568-88-7505, 9568-88-7545, 9568-88-7586, and 9568-88-8544, which real properties are identified collectively as the "Mill Additional Properties" in this resolution, and

WHEREAS it appears to the City Council that the value of the Mill Building property is substantially less than originally thought without the addition of the Mill Additional Properties for parking purposes, and

WHEREAS the City has determined that it is desirable for the City to sell the Mill Additional Properties under certain terms and conditions that benefit the City as described herein; and

WHEREAS the City has conducted certain private negotiations respecting the sale of the Mill Additional Properties as provided in N.C.G.S. § 158-7.1(d), sometimes called "the Statute" in this resolution; and

WHEREAS the City desires to subject the property to such covenants, conditions, and restrictions as it deems to be in the public interest and necessary to carry out the purposes of the Statute; and

WHEREAS the City has held a public hearing, both noticed and held according to the terms of the Statute; and

WHEREAS the City has determined after due investigation that the probable average hourly wage to be paid to workers by the business to be located at the Mill Building is between \$10.00 and \$37.50, or probably average weekly wage at \$400.00 and \$1,500.00, varying with position; and

WHEREAS the City has determined after due investigation that the fair market value of the interest to be sold including that already sold, subject to the conditions and restrictions listed herein is \$1,000,000.00; and

WHEREAS the City received an offer to purchase the Mill Building and additional properties from Grey Mill Ventures, LLC for the sum of \$1,000,000.00 upon certain conditions securing the sale and the payment of the purchase price.

WHEREAS the City purchased the various Mill Additional Properties in 1988, 2016 and 2017 in accordance with the provisions of N.C.G.S § 158-7.1(b) upon approval by the City Council by the city's governing board after a public hearing was held.

NOW, THEREFORE, BE IT THEREFORE RESOLVED that the City Council does hereby approve the sale of the real property identified as PINs 9568-88-9495, 9568-98-0317, 9568-88-7505, 9568-88-7545, 9568-88-7586, and 9568-88-8544 to Grey Mill Ventures, LLC or Assigns to be included with the sale of the original Grey Mill Building, PIN 9568-88-7494 (the "Mill Building"), as previously approved by the City Council, for the sum of \$1,000,000.00, subject to the condition and restriction that the property as developed retain its historic character and that the facades of the 1915 and 1919 sections be preserved;

BE IT FURTHER RESOLVED that the city manager is hereby authorized to execute a deed to the Mill Additional Properties on terms established herein along with such other reasonable terms and with such supporting documents as may be determined by the city manager in consultation with the city attorney.

BE IT FURTHER RESOLVED that the City Council does hereby ratify the city manager's execution of the Purchase Agreement with respect to the sale of the Mill Building and the Mill Additional Properties on 29 December 2017.

Adopted this sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

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

14. Public Hearing to Solicit Public Input on an Application for the Small Cities Community Development Block Grant Downtown Redevelopment Fund and to Consider the Adoption of a Resolution for the City's Application for Downtown Redevelopment Fund, Community Development Block Grant Program, Funding for the Grey Mill Hotel Project:

Mr. Lew Holloway, Downtown Economic Development Director, addressed the Council and explained the purpose of this second public hearing on the Community Development Block Grant (CDBG) Downtown Redevelopment Fund project is to:

- 1) Inform citizens of the City of the funding proposal being submitted to the NC Department of Commerce.
- 2) Receive input on the application.
- 3) Adopt a resolution supporting the application to the CDBG Downtown Redevelopment Fund.

Mr. Holloway stated the City will apply for the Small Cities Community Development Block Grant (CDBG) Downtown Redevelopment Fund for infrastructure upgrades of downtown buildings. He stated the proposed project transforms a dilapidated and vacant hosiery mill, located adjacent to Hendersonville's Main Street and Seventh Avenue Municipal Service Districts, into a downtown boutique hotel.

Mr. Holloway stated the proposed Grey Mill Hotel redevelopment project includes a comprehensive development plan for the approximately 2-acre site and the associated 38,000 square foot mill building. The total project cost including property acquisition is \$8,000,000. The amount of grant funding being pursued is \$500,000. The building and site are currently vacant and none of the planned activities are expected to result in displacement.

Mr. Holloway stated the application process has been a partnership between the City and the Land-of-Sky Regional Council. He expects the application to be complete and submitted by the end of March. He stated the City will apply for the funds then enter into an agreement with the Department of Commerce and a secondary agreement with Grey Mills Ventures, LLS.

Mayor Volk opened the public hearing at 7:47 p.m. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved Council approve the resolution for the City's application for Downtown Redevelopment Fund, Community Development Block Grant program funding for the Grey Mill Hotel project. A unanimous vote of the Council followed; motion carried.

Resolution #18-0213

CDBG-DRF RESOLUTION

RESOLUTION FOR THE CITY OF HENDERSONVILLE, NC APPLICATION FOR DOWNTOWN REDEVELOPMENT FUND, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, FUNDING FOR THE GREY MILL HOTEL PROJECT

WHEREAS, the City of Hendersonville's Council has previously indicated its desire to assist in economic development efforts within the City; and

WHEREAS, the Council has held two public hearings concerning the proposed application for Downtown Redevelopment Fund funding to benefit Grey Mill Ventures, LLC; and

WHEREAS, the Council wishes the City of Hendersonville to pursue a formal application for Downtown Redevelopment Fund (Community Development Block Grant) funding to benefit Grey Mill Ventures, LLC; and, in partnership with project partners, will invest monies in the amount of \$7,500,000 into the project as committed to in the application.

WHEREAS, the Council certifies it will meet all federal regulatory and statutory requirements of the Small Cities Community Development Block Grant Program,

NOW, THEREFORE BE IT RESOLVED, by the City of Hendersonville Council that the City of Hendersonville is authorized to submit a formal application to the North Carolina Department of Commerce for approval of a Downtown Redevelopment Fund (Community Development Block Grant Program) grant for Economic Development to benefit Grey Mill Ventures, LLC.

Adopted by the City Council at a meeting held on the sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

15. Consideration of Partnership with YMCA for Operation Pool and Utilization of Patton Park:

Presenter: Public Works Director Tom Wooten reported staff has been working on an agreement for the YMCA to operate Patton Pool as well as their day camp at Patton Park. He stated staff is working on the final agreement.

Mr. Wooten explained some key components to the agreement: the YMCA will furnish the management and staff to operate the pool and concession area, the chemicals, cleaning supplies, hoses, test kits, first aid kits, and supplies for the concession area. He stated the City will pay the YMCA \$60,000/annually and provide the utilities: water, electricity, natural gas, trash collection, emergency telephone, the vacuum, signage, trash receptacles, safety equipment, chairs, and other existing furniture. The City will continue mowing and maintenance.

Mr. Wooten stated the agreement is for a term of three years and includes cancellation options for both parties. The operating schedule and hours for the pool will not change. He stated the YMCA will offer similar programming in addition to their day camp in Patton Park. He stated when they are not using the pavilions; the City will be able to rent those to the public.

Mr. Wooten stated City staff and the YMCA will hold frequent meetings to assess the operations, etc.

Council Member Miller voiced support of the agreement with the YMCA. There was discussion on the cost to operate the pool, managing staff, etc. Mr. Connet stated there is a community benefit because of its proximity to the Boys & Girls Club. **There was no objection from the Council was to proceed with an agreement between the City and the YMCA for the operation of Patton Pool and the use of Patton Park; for formal review and consideration at the regular March meeting.**

16. Consideration of a Request by the French Broad River Metropolitan Planning Organization for an Increase in the City's Contribution to Fund Transportation Corridor Studies in

Henderson County: The City Council received a report from French Broad River MPO Director Lyuba Zuyeva. She explained the life of transportation projects. She stated MPO staff perceives a currently-existing transportation planning gap between the long-range plan and when projects move into the TIP/STIP for funding.

Ms. Zuyeva stated one of the regional plans that identifies important corridors in our region that experience recurring congestion and could use more in-depth consideration is the Congestion Management Process which is being updated. She explained a number of corridors in Henderson County that are used for commuting also need attention including: US 64 through Hendersonville, Spartanburg Highway, Greenville Highway, US 25 North. She reviewed the peak/off-peak index and stated the population of Henderson County is estimated to grow by 49 percent by 2040.

Ms. Zuyeva reviewed the benefits of a corridor study including public and stakeholder outreach to identify how a corridor should be functioning and appropriate land use for corridors.

Ms. Zuyeva reviewed different scenarios in order to fund the corridor study. Under scenario 3, Henderson County's match would be \$29,209 and the match for the City of Hendersonville would be \$4,099. She stated Henderson County and the City of Hendersonville would have to agree which corridor to study.

Mr. Connet explained this will ultimately be voted on by the MPO. Council Member Caraker reported the City of Asheville and Buncombe will support the funding increase. He stated Henderson County has asked the City not to support it.

Discussion followed on the funding and what happens if an entity does not participate. Ms. Zuyeva stated the amounts are based on population. She stated jurisdictions may apply for funding studies at any time. She stated the down side is not sharing information and it would be more expensive.

The Council agreed by consensus to vote on this matter at their special meeting scheduled for Thursday, February 8. [Council Member Smith left the meeting for a brief time at 8:08 p.m.]

17. Consideration of Comprehensive Bicycle Plan: City Planner Daniel Heyman reviewed the process that was undertaken to develop the Comprehensive Bicycle Plan. He stated grant funding was received from NCDOT for the project.

Mr. Heyman presented the vision statement developed by the Steering Committee: The City of Hendersonville will have a connected bikeway system that is safe and comfortable for riders of all ages and abilities, as well as programs to encourage and educate everyone who drives, bikes, and walks.

Mr. Heyman stated the process included public engagement, a steering committee was developed and meetings were held, recommendations were then developed and the next step is adoption by the City Council and incrementally implementing the plan.

Mr. Heyman stated public input came with 40+ WikiMapping participants, 50+ workshop and planning session attendees that resulted in more than 600 data points where people are traveling, live, work and recreate.

Mr. Heyman reviewed the different bicycle facility types: mixed traffic-shared with motor vehicles, bike lanes and paved trails-shared with pedestrians.

Mr. Heyman reviewed the priority projects included in the Plan:

Street	Start	End	Type
4th Ave	Jordan St	Buncombe St	Bicycle Boulevard
7th Ave	N Grove St	Oklawaha Greenway	Bike Lane
Ashe St	7th Ave	Oriole Dr	Separated Bike Lane
Bearcat Blvd	Fleming St	Locust St	Separated Bike Lane
Fleming St	4 th Ave	9 th Ave	Shared Lane Markings
Grove St	Spartanburg Hwy	5 th Ave	Bike Lane
Locust St/Maple St	1 st Ave	North Main St	Bike Lane/Shared Use Path
Washington St	Kanuga Rd	5 th Ave	Buffered Bike Lane/Shared Lane
Whitted St	Hebron Rd	9 th Ave	Bicycle Boulevard

Mr. Hyman also presented the policies and programs recommended by the Plan.

Adopt a local Complete Streets policy.	Regularly update local street design standards to reflect national best practices.	Create a Bicycle Pedestrian Program and hire a Program Coordinator.	Create a Bicycle Pedestrian Advisory Commission.	Regularly update the City's traffic calming policy.
Require new developments to include bicycle facilities and parking.	Identify and prioritize locations for bicycle rack installation.	Incorporate bicycling safety into driver education and training courses.	Require bicycle education in schools.	Deploy bicycle patrols.
Permit bicycling on sidewalks except in downtown Hendersonville.	Become a Watch for Me NC partner community.	Establish a local Safe Routes to School program.	Conduct police training on bicycle safety.	Plan and execute an Open Streets event.
Create events to promote National Bike Month and Bike to Work Day.	Conduct regular bicycle counts.	Become a League of American Bicyclists Bicycle Friendly Community.	Create a local Bicycle Benefits program.	Distribute bike lights, helmets, and bells.

Mr. Steven Stansberry stated the Plan deals with change in responsible way. He recommends further dialogue to improve safety. There was discussion of the plan around the Hendersonville High School. Mr. Heyman stated this is a living plan that will respond to change in conditions. Mr. Sanders wants to develop a large stakeholder group to develop a bicycle plan for Bearcat Boulevard.

Mr. Stansberry stated adoption of the Plan will put the City in a better position to compete for funds across the State.

Mayor Volk expressed appreciation for the work that went into developing the Plan.

Council Member Caraker moved Council's approval of a resolution adopting the Hendersonville Bicycle Plan. A unanimous vote of the Council followed. Motion carried. *[The Hendersonville Bicycle Plan is available in the office of the City Clerk.]*

Resolution #18-0214

A RESOLUTION ADOPTING THE HENDERSONVILLE BICYCLE PLAN

WHEREAS, it is the desire of the City Council to provide comprehensive and safe bicycle infrastructure that adds to the quality of like and unique character of the City; and

WHEREAS, in 2015 the City was awarded a Bicycle Planning Grant by the North Carolina Department of Transportation to develop a comprehensive bicycle plan; and

WHEREAS, it is the intent of the City Council to promote and physically develop a bicycle network that includes shared-lane markings, bike-lanes, and greenways offering safety and connectivity to citizens and visitors by integrating and balancing the needs of pedestrians with other modes of transportation; and

WHEREAS, the City Council desires to develop and maintain a bicycle network that incentivized the choice to bike thereby enhancing community health and wellness along with improving transportation access; and

WHEREAS, the City Council of the City of Hendersonville recognizes the economic and transportation benefits of a comprehensive network of bicycle infrastructure; and

WHEREAS, the City Council understands that a duly adopted bicycle plan is necessary to evaluate and identify municipal needs for planning and implementation of bicycle improvements; and

WHEREAS, the Hendersonville Bicycle Plan does in fact identify specific goals and strategies to provide for a comprehensive and safe bicycle system in the City of Hendersonville; and

WHEREAS, it is the desire of the City Council to adopt the Hendersonville Bicycle Plan

NOW, THEREFORE, IT IS HEREBY RESOLVED:

1. That the Hendersonville Bicycle Plan prepared by Kimley-Horn and Associates, Inc. is hereby adopted by the City Council.

2. That a copy of this resolution shall be filed with the City Clerk.

Adopted the sixth day of February 2018.

/s/Barbara G. Volk, Mayor

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

18. Consideration of Amendments to Section 46-86 of the Code of Ordinance Regulating

Outdoor Dining: Downtown Economic Development Director Lew Holloway: Mr. Holloway began with a history of outdoor dining. He stated this has been an on-going conversation with the Main Street Advisory Committee (MSAC) in managing what they believe is a wonderful asset in the district.

Over the past year and a half, the MSAC has held two public input sessions with downtown restaurant owners with outdoor dining to review the proposed guidelines. They also researched components of outdoor dining, how and what regulated by other communities. The recommended amendments are a result of the input received.

Mr. Holloway reviewed each of the proposed amendments that address new requirements for applications, a change to the annual fee, furnishings and barricades, standards for the furnishings, maintenance, including maintenance of the sidewalk. [Council Member Smith returned at 8:29 p.m.]

There was discussion of sidewalk width and safety. Mr. Holloway commended the Downtown Advisory Committee members for engaging the stakeholders. Mayor Volk echoed her appreciation to the Committee who put in a lot of time on the amendments.

Council Member Smith moved Council adopt an ordinance relating to sidewalk dining; amending section 46-86 of the Code of Ordinances for the City of Hendersonville. A unanimous vote of the Council followed. Motion carried.

Ordinance #18-0215

**AN ORDINANCE RELATING TO SIDEWALK DINING;
AMENDING SECTION 46-86 OF THE CITY CODE OF HENDERSONVILLE**

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

1. Section 46-86 of the Code of Ordinances of the City of Hendersonville, concerning regulations for sidewalk dining in the central business district is hereby amended to read as follows:

Sec. 46-86. Exception; sidewalk dining in the central business district.

(a) *General.* Notwithstanding any other provisions of this code to the contrary, sidewalk cafes or sidewalk dining shall be permitted in the central business district as indicated on the official zoning map of the city and shall be subject to such regulations as are set forth in this section.

(b) *Permit required.* No restaurant owner may operate a sidewalk café without first obtaining a permit from the city manager in accordance with the requirements of this article. As used in this section, the term city manager includes his authorized representative.

(c) *Application.* Any restaurant owner desiring to operate a sidewalk café shall prepare and file an application with the city manager which shall contain the following information:

(1) The name, addresses, and telephone number of the restaurant desiring to operate a sidewalk café.

(2) The name, address, and telephone number of the restaurant operator.

(3) The type of food, beverage, or food product to be sold and served at the sidewalk café.

(4) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk café.

(5) A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk café, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed placement of tables, chairs, barricades, umbrellas, trash receptacles, and other furnishings on the sidewalk or pedestrian way.

(6) A description and images, drawings and other illustrative graphics of the barricades to be used (if any) around the sidewalk café and of the furniture to be used, i.e. tables, chairs, umbrellas, etc.

(7) ~~(6)~~ Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from operation under or in connection with the permit. Such insurance shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. Such insurance shall afford minimum limits of \$500,000.00 aggregate annually.

(8) ~~(7)~~ A copy of all the permits and licenses issued by the county, state, or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city or other governmental authority, for exterior alterations or improvements to the restaurant.

(9) ~~(8)~~ A sworn statement describing any violation by the restaurant operator of any laws, regulations, or ordinances relating to the possession, sale consumption, or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of the permit application.

(10) ~~(9)~~ Such additional information as may be requested by the city manager or his designee in order to determine compliance with this section.

(11) ~~(10)~~ An annual fee in the amount of ~~\$35.00~~ equal to \$0.50 per sq. ft. of sidewalk café area to cover the cost of processing and investigating the application, ~~and issuing the permit and additional maintenance for dining areas.~~

(d) *Issuance of permit.* No permit for the operation of a sidewalk café may be issued unless the application is complete and the following requirements are met:

(1) The sidewalk café must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, rest room facilities, and other customer convenience facilities as the restaurant. The sidewalk café must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.

(2) The operation of the sidewalk café must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk café may not be more than 50 percent of the interior seating capacity of the associated restaurant.

(3) The placement of tables, chairs and other furnishings as shown in the drawing submitted with the site plan must be done in such a manner that at least five feet of unobstructed space remains on the sidewalk or pedestrian way for the passage of pedestrians. No fire exits or lanes may be blocked and such must remain clear at all times. The pedestrian passage may not be used for the display of merchandise or for portable signs otherwise authorized pursuant to subsection 46-81(e).

(4) The restaurant seeking to operate the sidewalk café must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk café. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant, with the following exception: tables, chairs, and other furnishings café furnishings and barricades may extend up to eight feet onto adjacent property frontage in either or both directions with the written permission (provided at the time of application) of the occupant of the adjacent property.

(5) The tables, chairs and other furnishings used in the sidewalk café shall not be anchored and shall be of a type of street furniture that is easily movable. Café furnishings other than tables, chairs, trash receptacles and umbrellas are not approved for use in sidewalk café areas. Café furnishings must be constructed of metal (aluminum, steel, wrought iron, etc.). Commercial umbrellas must be made with outdoor fabric and a metal or commercial grade plastic stand and must be free of logos or other signage.

(6) Except as elsewhere permitted by the Code, the operation or furnishing of the sidewalk café shall involve no permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant.

(7) Each sidewalk café shall provide adequate trash receptacles for its patrons within the perimeter of the barricades. At the end of each business day and during operating hours, the operator shall remove all trash and debris of any sort from the area within the barricade and between it and the curb. In addition, the operator shall remove from the sidewalk alongside and abutting properties any trash or debris originating as a result of the operation of the sidewalk café.

(8) Tables, chairs and other furnishings that remain on the sidewalk at times when the business is not in operation shall be secured in a manner that allows clear access from the street equal to or exceeding half of the frontage of the associated restaurant.

(9) The leading edge of sidewalk café barricades must be perpendicular to the sidewalk direction and be a minimum height of 3' and maximum height of 4'2". The barrier must be detectable by the visually impaired. Sidewalk café barricade stanchions/posts must not be a tripping hazard. If a stanchion or other vertical element is attached to a base, that base must be flat and must measure no more than 1" above the sidewalk surface. Sidewalk café stanchions/posts must be constructed of metal (aluminum, steel, wrought iron, etc.), wood (wood must be painted or stained) or commercial grade planters. Commercial planters used as vertical support posts may not exceed 3' in height and vegetation within the planter may not exceed 6' from ground level. Sidewalk café railings must be steel chain coated with black plastic, heavy duty black plastic chain, heavy duty black rope or black velour rope.

(10) The sidewalk in and around the sidewalk café area must be kept clean and unblemished. Spills and stains from general use must be removed on a weekly basis. Café furnishings and barricades must be cleaned and properly maintained at all times. Café furnishings and barricades must receive regular maintenance of fit and finish as required by the nature of the material being used. Damaged or deteriorating furnishings, barricades or elements of either must be repaired or replaced in a timely manner. All planters must contain live plants in healthy condition.

(e) *Alcoholic beverages.* Notwithstanding any other provisions of this Code, alcoholic beverages may be served in approved sidewalk cafes provided that the following requirements are met:

(1) The sidewalk café shall be part of a restaurant and shall otherwise be authorized, permitted, or licensed under the state law and this Code to serve and sell alcoholic beverages for on-premises consumption.

(2) The sidewalk café must be included as part of the premises for which an ABC permit is issued pursuant to state law, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

(3) Signs shall be posted, visible at all exit points from the sidewalk café, that it is unlawful to remove alcoholic beverages from the premises.

(4) The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three years preceding the commencement of the sale of alcoholic beverages at the sidewalk café.

(5) No outdoor bar is allowed within the sidewalk café, nor shall outdoor preparation of alcoholic beverages be permitted except that unfortified wine may be decanted or beer poured at a table as part of a meal.

(f) *Denial.* A permit may be denied if it is found that the application does not demonstrate compliance with this section and/or that the granting of the permit would not be in the public interest. Any applicant denied a permit to operate a sidewalk café shall receive a written statement outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to city council within 15 working days after the date of the written denial, and city council may take such action as it shall find necessary. The finding and determination of city council shall constitute final action by the city.

(g) *Terms and transfer.* Permits for a sidewalk café issued in accordance with the provisions of this article shall be issued for the period beginning July 1 or thereafter and expiring June 30 of each year. If a permittee discontinues the restaurant operation or the sidewalk café, no refund of the permit fee shall be made. Permits issued pursuant to this section shall not be transferable or assignable. Permits may prohibit operation of sidewalk cafes during special events and contain other conditions and restrictions as may be necessary to protect the public health, safety and welfare.

(h) *Permit suspension.* The city manager may suspend a permit issued pursuant to this section if he finds one or more of the following conditions exist:

(1) Violation of any provision of the county health department regulations or of this section.

(2) Violation of any law, regulation, or ordinance regarding the possession, sale, transportation, or consumption of intoxicating beverages or controlled substances.

(3) Operation of the restaurant or sidewalk café in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the café area clean and free of refuse.

(4) Operation of the restaurant or sidewalk café in violation of any city, county or state law, ordinance, or regulation.

Such permit suspension shall take effect immediately upon delivery of a citation to the restaurant operator or, in his absence, the person with supervisory authority over the operation of the restaurant. The City Manager shall designate a period of time for the suspension to be in effect up to 45 days from the date of violation, and shall include the length of the suspension in the notice of suspension. In designating a suspension period pursuant to this section the City Manager shall consider the factors set forth in this subsection (h) and subsection (i) below.

Such decision of the city manager may be appealed to the city council by written notice thereof filed with the city clerk within fifteen days of the date of receipt of notice of suspension.

(I) *Permit revocation.* The city manager may revoke a permit issued pursuant to this section if he finds that the restaurant operator has:

- (1) Deliberately misrepresented or provide false information in the permit application.
- (2) Violated any provision of the county health department regulations or of this section.
- (3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation, or consumption of intoxicating beverages or controlled substances.
- (4) Operated the sidewalk café in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the café area clean and free of refuse.
- (5) Failed to maintain any health, business or other permit or license required by law for the operation of a restaurant business.
- (6) Fails to consistently maintain the sidewalk café in a neat and trash free manner.
- (7) Operated the restaurant or sidewalk café in violation of any city, county or state law, ordinance, or regulation. In the event the city manager determines good grounds exist for the revocation of a permit issued under this section, he shall provide the restaurant operator a notice to show cause, stating with particularity the grounds therefore, why the sidewalk café permit should not be revoked. The restaurant operator shall be provided an opportunity for a hearing, following which the city manager shall render an order in writing. The restaurant operator may appeal any such order by filing a written appeal with the city clerk within 15 days of receipt thereof. City council shall conduct a hearing on the appeal and render its decision thereon. The finding and determination of city council shall constitute final action by the city.

[Key: deletions are ~~struck through~~; additions are underlined]

2. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 1-6 of the City Code of Ordinances.

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

4. If any section, subsection, paragraph, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

5. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions or otherwise cure and existing violations.

This ordinance shall be in full force and effect beginning with the new permit year on July 1, 2018.

Adopted this sixth of February 2018.

/s/Barbara G. Volk, Mayor

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

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

19. Consideration of Health Insurance Broker: Mr. Connet stated a proposal was provided to the Council at their January meeting to hire an insurance broker to assist with insurance going forward. He explained a broker will be helpful in negotiating, look at claims history, and provide a comprehensive, well thought out program. He stated Council wanted to ensure fair comparisons were made with the companies.

Mr. Connet reviewed the cost comparisons with Mark III and One Digital. Mark III is proposing to provide the serve at \$25,500 for the next three years. One Digital is proposing an annual cost of \$44,000 with a 3 percent increase each year for three years, or \$30,360 without a data analysis. He stated both companies can do the job. He stated based on the cost difference, equal service, he suggested moving forward with Mark III.

Council Member Miller moved Council to partner with Mark III for health insurance broker purposes. A unanimous vote of the Council followed. Motion carried.

20. Comments from Mayor and City Council Members: Council Member Caraker reported he and Mayor Volk with meet with Henderson County Commissioner Chair Mike Edney and Commissioner Lapsley regarding sewer issues.

21. Reports from Staff: Mr. Connet provided the following reminders/report:

- A. Reminder of Special Meetings – Council Retreat on February 8, 2018 at 6:00 p.m., and February 9, 2018, 8:30 a.m.
- B. Contingencies Report
- C. Fire Department Annual Report: Fire Chief Joseph Vindigni provided a written annual report to the Council.

22. Consideration of Board/Commission Appointments:

Board of Adjustment: Mrs. Drake reported Mr. Jay Angel who has been serving as Chair is moving and no longer eligible to serve as a Henderson County representative. He would like to be considered for the vacant alternate position. **Council Member Smith nominated Mr. Jay Angel for the vacant alternate position on the Board of Adjustment. This term will expire September 2021. A unanimous vote of the Council followed. Motion carried.**

Historic Preservation Commission: Mr. Chris Barron was nominated by Council Member Miller to serve on the Historic Preservation Commission. A unanimous vote of the Council followed. Motion carried.

City Clerk Tammie Drake also reported on the vacancies on the various boards.

23. New Business: There was none.

24. Adjournment: The meeting adjourned at 8:48 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk