

MINUTES
July 5, 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 Attorney Samuel H. Fritschner, Development Assistance Director Susan Frady, Engineering Director Brent Detwiler, Human Resources Director Jennifer Harrell, Budget and Management Analyst Adam Murr, 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 speaking to limit their remarks to about three minutes.

Ken Gordon, speaking on behalf 713 Kanuga Road, questioned the necessity of some of the NCDOT road projects.

Susan McNeil, 1275 N. Main Street, opposed the rezoning and expressed concerns about the safety of pedestrians.

Linus McKeifer, Watseka, Illinois, real estate broker, spoke on behalf of his son who lives in Hendersonville. He expressed concerns about the decline of property value in the White Street and Kanuga Road area resulting from NCDOT road projects. He prefers traffic signals over traffic circles.

Chad Anderson, spoke on behalf of 1104 Kanuga Road, expressed opposition to the entire NCDOT project. A turn lane at Kanuga Road/Erkwood Drive intersection will accomplish the goals without affecting houses.

4. Consideration of Agenda:

- A. Remove item 5B from the agenda
- B. Remove item 5C from the agenda
- C. Remove item 5G from the agenda
- D. Add item 5H to the agenda – Consideration of a proposal from ADW Architects for Architectural and Engineering Services for new Hendersonville Police Station
- E. Add item 5I to the agenda – Consideration of establishing an Utility Billing Specialist position in the Finance Department
- F. Add item 11a - Discussion regarding the proposed alternatives for the Kanuga Road and White Street intersection.
- G. Add item 14 – Consideration of an Unwind Agreement for the Grey Hosiery Mill between the City of Hendersonville and Grey Mill Ventures

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

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

A. Consideration of Minutes:

- i. June 7, 2018 Regular Meeting
- ii. June 19, 2018 Special Meeting

B. ~~Consideration of Contracts for the Construction and Contract Administration of the Grounds Maintenance Facility with Cooper Construction Company and The Tamara Peacock Company Architects~~

C. ~~Consideration of Guaranteed Maximum Price for the Building and Grounds Maintenance Facility from Cooper Construction Company~~

D. Consideration of an Agreement for the 2018 - 2020 Downtown Streetscape Maintenance between the City and Classic Garden, Inc. for the Main Street and Seventh Avenue

Districts: Downtown Economic Development Director Lew Holloway reported following an RFP process, a contractor has been identified for the landscape maintenance requirements that exist in the Main Street and Seventh Avenue Municipal Service Districts. He provided a contract for services for Council's review for the 2018-2019 and 2019-2020 fiscal years at an annual cost of \$84,195. The contracts provides for the full slate of services outlined in the Streetscape Maintenance RFP for the two districts. *[The contract is available in the office of the Downtown Economic Development Director.]*

- E. Consideration of Wash Creek Stormwater Master Plan Engineering Award:** City Engineer Brent Detwiler reported as part of the ongoing effort to identify necessary improvements to stormwater infrastructure, staff was authorized to begin a stormwater master plan in the Wash Creek area. In following the North Carolina General Statutes, the Engineering Department recently advertised a Request for Qualifications for the master plan, received six qualification statements, and determined the most qualified firm to be WithersRavenel.

Mr. Detwiler explained staff is currently scoping the project with the firm and requested Council to authorize the City Manager to execute an agreement with WithersRavenel once finalized.

- F. Consideration of the New French Broad River Intake Environmental Assessment - Amendment 1:** Mr. Detwiler reported the City received SRF funding for the French Broad River Intake project and entered into an agreement in July 2017 with Black & Veatch to complete the preliminary engineering report. This report was recently finished, and the next phase of the project involves the completion of an environmental assessment to comply with the North Carolina Environmental Policy Act.

Mr. Detwiler reported staff has received a proposal from Black & Veatch for an amendment to cover the environmental assessment work. He requested Council to authorize the City Manager to execute the amendment.

- G. ~~Consideration of an Amendment to an Existing Professional Engineering Services Agreement with McKim and Creed for the Wastewater Ultraviolet System Upgrade~~**

- H. Consideration of a proposal from ADW Architects for Architectural and Engineering Services for new Hendersonville Police Station:** Mr. Connet reported most of the property has been purchased for the new Police Station and staff is requesting to move forward with the design process. He presented the proposal from ADW Architects for Architectural and Engineering Services for the new building. He reported the total proposed fee is \$590,000 or 8 percent of the total estimated construction cost of \$7,150,000. He recommended Council's approval of the proposal in order to move forward with the project.

- I. Consideration of establishing Utility Billing Specialist position in the Finance Department:** Finance Director John Buchanan requested the reclassification and renaming of a vacant Senior Customer Service Support Specialist position (Grade 13) to Utility Billing Specialist (Grade 10). He explained the Utility Billing Specialist will be responsible for accurate and timely billing of the City's water and sewer customers. He provided a job description for the position.

Council Member Caraker moved Council to approve the items on the consent agenda as amended. A unanimous vote of the Council followed. Motion carried.

6. Appointment of Tax Collector Caitlyn Elliott and Administration of Oath of Office: Finance Director John Buchanan reported a vacancy in the Tax Collector position and recommended the appointment of Caitlyn Elliott. **Council Member Caraker moved to appoint Caitlyn Elliott as Tax Collector for a term of two years.** The Oath of Office was performed by Mayor Volk. Mrs. Elliott affirmed the Oath of Office to serve as Tax Collector.

7. Public Hearing – Consideration of Petition from Stephen Parker for the Contiguous Annexation of a Parcel Located off Old Spartanburg Road: Intern Dylan Powell reported the City received a petition for annexation from Mr. Stephen Parker for parcel 9578-42-9221 containing 0.362 acres located on Old Spartanburg Road. This annexation application is related to a sewer service request.

Mr. Powell stated the Council accepted the Clerk's Certificate of Sufficiency at their June 7, 2018 meeting and recommended a public hearing was schedule for the July 5, 2018 Council meeting.

Mr. Powell reviewed the procedures for annexation set forth in NCGS 160A-31.

Mayor Volk opened the public hearing in accordance with North Carolina General Statutes by noticed published in the Times News. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved Council to adopt an ordinance annexing the property included in the petition from Stephen Parker effective July 5, 2018. A unanimous vote of the Council followed. Motion carried.

Ordinance #18-0748

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA
Stephen Parker

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 fifth day of July 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 fifth day of July 2018.

DESCRIPTION OF PROPERTY

Beginning on an existing 1/2 inch iron pipe (with NCGS Grid Coordinates of Northing:582,193.984 and Easting: 974,816,968) located at the westernmost point of Lot 2 as shown on the Minor Subdivision Plat of Three Oaks as recorded at Plat Side 10786 and on the northern right-of-way of Old Spartanburg Road (S.R. 1722) and thence leaving said right-of-way and running N 55°34'31"E-192.37 feet to an existing 1/2 inch iron pipe; Thence S 28°28'41"E-78.37 feet to an existing 1/2 inch iron pipe; Thence S 53°15'30"W-193.34 feet to an existing 1/2 inch iron pipe on the northern right-of-way of Old Spartanburg Road; Thence along said right-of-way, N 28°28'41" W-86.23 feet to the point of beginning; The above described parcel containing 0.362 acres, more or less.

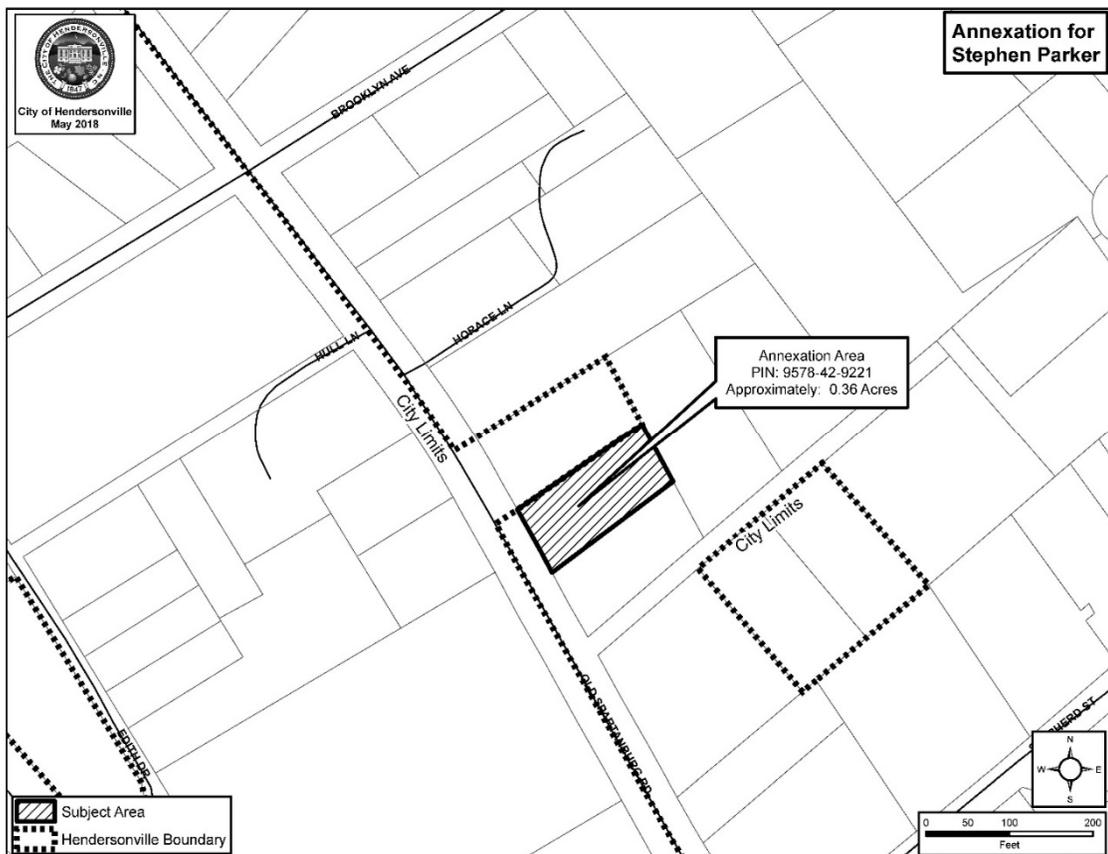
Section 2. Upon and after the fifth day of July 2018, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City 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 fifth day of July 2018.

/s/Barbara G. Volk, Mayor

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



8. Public Hearing – Consideration of Rezoning Request from William A. Pace, Jr., Pace Brothers Construction Company Inc. for a Conditional Zoning District of a 2.1-Acre Parcel Located off E. Central Street from R-15 Medium Density Residential to C-3 CZD Conditional Zoning District: City Planner, Daniel Heyman, presented the application of Williams A. Pace, Jr. for conditional zoning for an unaddressed parcel #9578-24-8681 located off E. Central Street from R-15 Medium-

Density Residential to C-3CZD Highway Business Conditional Zoning District. He explained if approved, the permitted uses would be limited to those indicated on the approved list of uses and conditions. The following are the proposed uses: business services, construction trades facilities, food processing, personal services, public and semi-public buildings, indoor recreational facilities, religious institutions, repair services, single and two-family residential, and wholesale businesses. These uses are all permitted uses in the C-3 Highway Business zoning district.

Mr. Heyman stated this issue was before the City Council previously. Concerns were raised by the neighbors about buffering and the applicant agreed to resubmit his application with a plan to address the concerns. The application was resubmitted as a conditional zoning district.

Mr. Heyman reviewed existing surrounding land uses and zoning.

Regarding the Comprehensive Plan, Mr. Heyman explained NCGS require zoning map amendments be made in accordance with a Comprehensive Plan. The 2030 Comprehensive Plan's Future Land Use Map designates the subject area as high-intensity neighborhood. He provided the primary and secondary recommended land uses for that land use category.

Mr. Heyman presented the plan showing the proposed 10,000 square foot structure and an entrance off E. Central Street. He stated the applicant has chosen to retain vegetation on the boundaries of the lot as well as install a grass berm with evergreen trees as screening.

Mr. Heyman reported a neighborhood compatibility meeting was held on May 11, 2018 and provided the report.

Mr. Heyman reviewed the factors contained in Section 11-4 of the Zoning Ordinance that must be considered by the Council prior to approving or denying amendments to the Official Zoning Map.

Mr. Heyman reported the Tree Board voted to recommend a condition be placed on the rezoning to switch Cypress trees for Arborvitae due to a Cypress canker present in the area. He also reported after review, the Planning Board voted six to one to recommend the rezoning.

Council Member Smith asked about the uses permitted and commented on the similarities to the special use zoning. Mr. Heyman explained the project may only be developed as shown on the "List of Uses and Conditions."

Mr. Pace addressed the Council and stated the dissenting vote from the Planning Board member was residential uses mixed with commercial uses. He stated the access road to the commercial structure does not pass any residential property. He stated traffic will not affect the residential properties. He stated the uses identified were passive uses that will not be making noise, equipment, outdoor storage. He stated the property is limited to 10,000 square feet in development because of septic tanks and the right-of-way for the power line.

Council Member Miller asked about the neighbor's opposition to the project. Mr. Pace said the neighbor understands the project better and has addressed his concerns.

Mayor Volk opened the public hearing at 6:13 p.m. in accordance with North Carolina General Statutes by notice published in the Times News. No one expressed a desire to speak. The public hearing was closed.

Council Member Caraker moved the City Council to adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 9578-24-8681 from R-15 Medium-Density Residential to C-3CZD Highway Business Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest. A unanimous vote of the Council followed. Motion carried.

#18-070749

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE
IN RE: FILE NO. P18-13-CZD

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

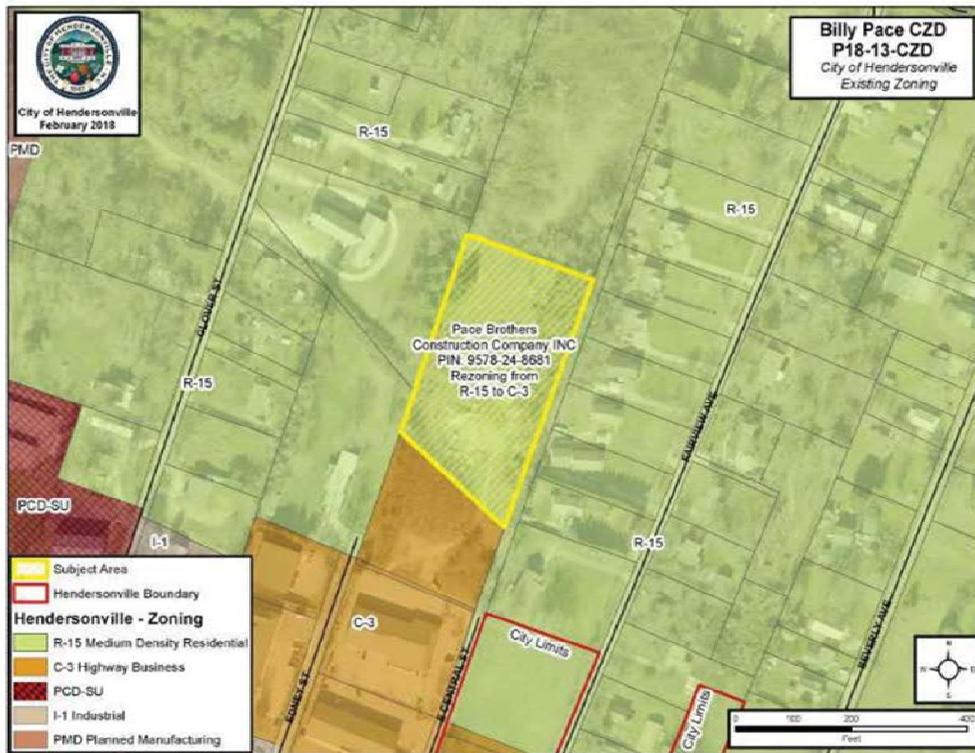
1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9578-24-8681 from City of Hendersonville R-15 Medium-Density Residential to City of Hendersonville C-3CZD, Highway Business Conditional Zoning District.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fifth day of July 2018.

/s/Barbara G. Volk, Mayor

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

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



9. Public Hearing – Consideration of Rezoning Request from TCB Development LLC for a Conditional Zoning District of a Parcel Located at 1310 N. Main Street from I-1 Industrial and R-6 High Density Residential to I-1 CZD Industrial Conditional Zoning District: City Planner Daniel Heyman presented the application from TCB Development LLC (Tarheel Paving) located at 1310 N. Main Street. The applicant proposes to rezone the parcel located at 1310 N. Main Street from I-1 Industrial and R-6 High Density Residential to I-1 CZD Industrial Conditional Zoning District. He explained two parcels, 1304 N. Main Street and 1314 were recently combined. This request, if approved, will rezone the entire parcel to I-1 CZD. The uses will be limited to

Mr. Heyman reviewed the existing land uses and zoning classifications. Regarding the Comprehensive Plan consistency, he stated according to NCGS160A-383, zoning map amendments must be made in accordance with a comprehensive plan. The 2030 Comprehensive Plan's Future Land Use Map designates the subject area as High-Intensity Neighborhood and Medium-Intensity Neighborhood. He reviewed the goal of those categories.

Mr. Heyman explained NCGS 160-383 was amended to allow the approval of map amendments, and subsequent the Comprehensive Plan amendment, for requests that are not in compliance with the Comprehensive Plan, along with an explanation of the change in conditions.

Mr. Heyman stated the only land use category included in the Comprehensive Plan that provides for industrial uses is Business Center. He reviewed the goal for that category.

Plan Review: Mr. Heyman provided the site plan showing existing structures to remain, as well as an addition to the structure on the northwest corner of the lot. The building addition is the only new development proposed on the site. Existing development on the site includes two single-family homes, two commercial buildings, and outdoor storage areas.

Mr. Heyman stated the applicant has proposed an evergreen buffer on the southeast border of the property, and along the rear of the single-family homes. There is an existing concrete retaining wall, proposed to remain, that separates the gravel parking and storage area from the single-family homes on the lot.

Mr. Heyman reported the applicant has listed the proposed uses for the site as: construction trades facilities, offices, and accessory uses. There are also two existing single-family homes to remain.

Neighborhood compatibility meeting: Mr. Heyman provided a report on the meeting and stated ten people attended the meeting. The public raised concerns about commercial and industrial activity, the potential for noise and fumes, and traffic.

Tree Board Recommendation: Mr. Heyman reported the Tree Board recommends the following conditions be placed on the rezoning: the cypress trees proposed be switched for arborvitae due to a cypress canker present in the area, and the proposed evergreen buffer be carried along the rear of the single-family homes.

Planning Board Recommendation: Mr. Heyman reported the Planning Board voted unanimously to recommend City Council adopt an ordinance amending the 2030 Comprehensive Plan Future Land Use Map, and approval of the rezoning request to benefit the area around this location and the applicant and his existing business, and for the ability of the applicant to use as needed.

In discussion, Council Member Smith asked if permission from the Council would have to be sought if the uses change. Mr. Heyman stated yes. He confirmed this conditional permit is for an additional building and for the existing structures and storage area.

Derek Pace, son of the owner of Tarheel Paving, stated they have no plans to increase their operation but are trying to operate legally within the zoning requirements. They have been transparent with their intentions for the property.

At 6:25 p.m., Mayor Volk opened the public hearing in accordance with North Carolina General Statutes by notice published in the Times News. The following addressed the Council:

Ken Fitch, 1046 Patton Street, commented the applicant withdrew the rezoning application and reapplied under conditional zoning to satisfy community concerns. It is one of the first to come under the new conditional zoning process. He asked that the extended buffer behind the residential dwellings be stated as a condition so any future owner will be required to maintain it.

No one spoke in opposition to the rezoning. The public hearing was closed at 6:29 p.m.

There was discussion of the motion and whether the extended buffer is contained in the "List of Uses and Conditions." **Council Member Smith moved the City Council to adopt an ordinance amending the official City of Hendersonville's 2030 Comprehensive Plan Future Land Use Map for 1314 N. Main Street, parcel number 9569-73-1211 from High-Intensity Neighborhood and Medium-Intensity Neighborhood to Business Center. A unanimous vote of the Council followed. Motion carried.**

Council Member Smith further moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of 1314 N Main St, parcel number 9569-73-1211, from I-1 Industrial and R-6 High Density Residential to I-1 CZD Industrial Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions including the buffer plantings from the plan review, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map amendment to Business Center, and that the rezoning is reasonable and in the public interest.

Ordinance #18-0750

AN ORDINANCE AMENDING THE 2030 COMPREHENSIVE PLAN FUTURE LAND USE MAP AND
THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE
IN RE: FILE NO. P18-11-CZD; TCB Development LLC

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

1. Pursuant to NCGS 160A-383, the City of Hendersonville's 2030 Comprehensive Plan's Future Land Use Map is hereby amended by changing the designation for the property from High-Intensity Neighborhood and Medium-Intensity Neighborhood to Business Center as necessary for the change in conditions: The community's desire to limit industrial uses in the subject area.
2. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9569-73-1211 from City of Hendersonville I-1 Industrial and R-6, High-Density Residential to City of Hendersonville I-1CZD, Industrial Conditional Zoning District.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

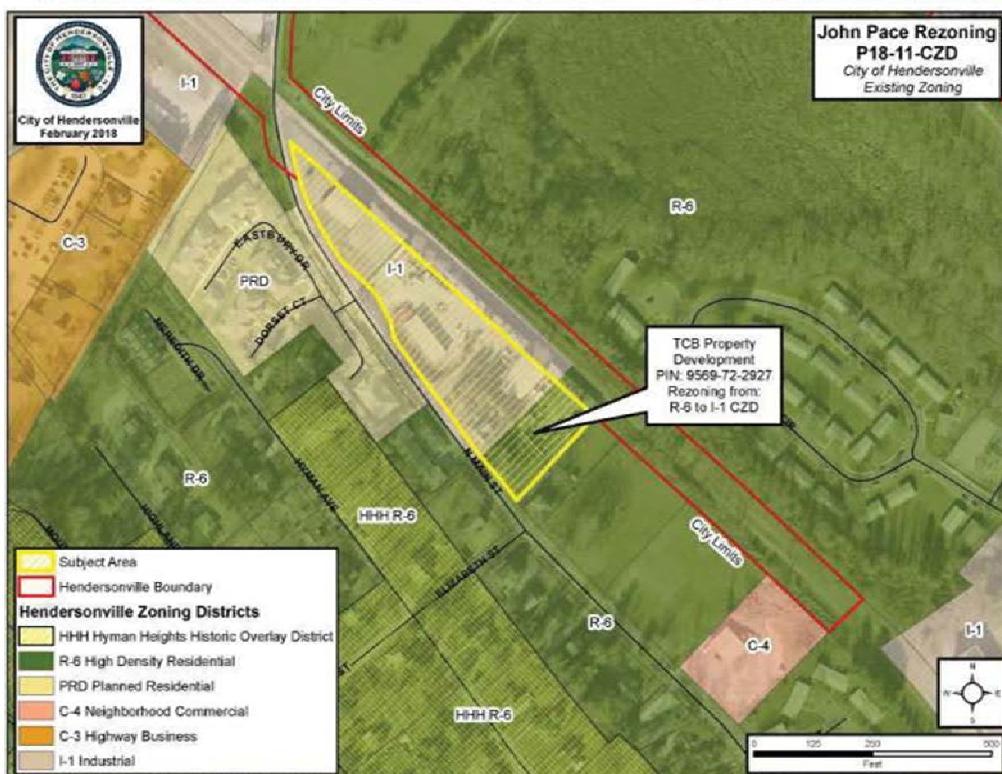
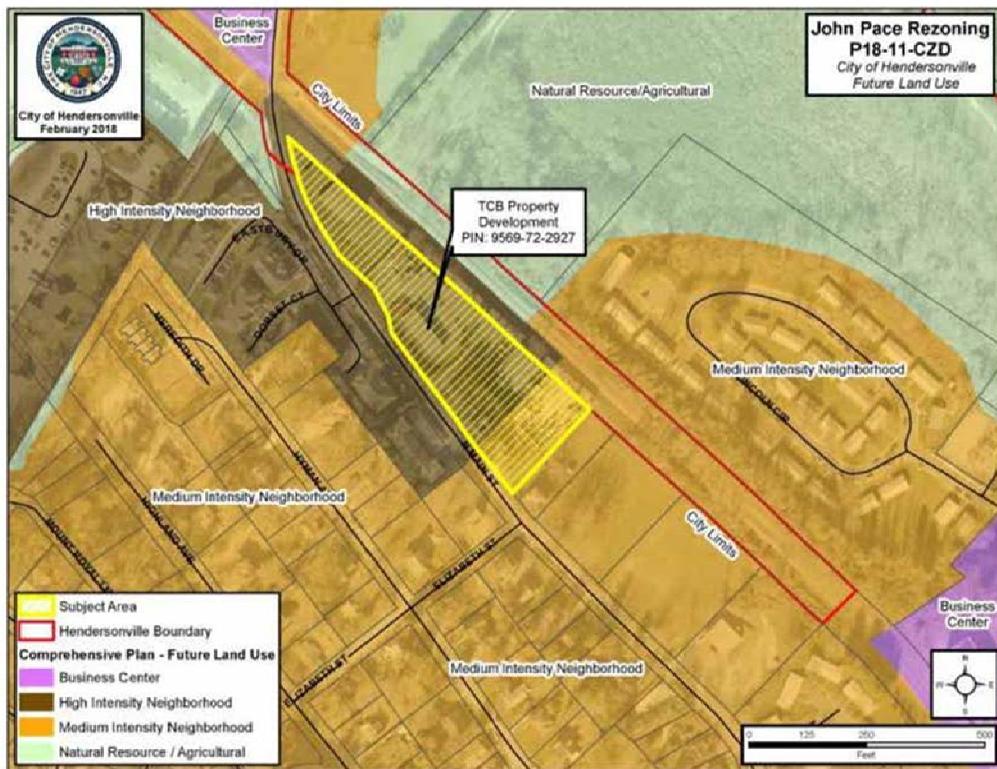
Adopted this fifth day of July 2018.

/s/Barbara G. Volk, Mayor

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

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

Council Member Miller commented Council approved this change to the Zoning Ordinance to allow conditional zoning to protect neighbors with conditions, etc.



10. Public Hearing – To Receive Citizen Input Regarding Submittal of a Grant Application to the NC Department of Commerce for a CDBG Grant: Downtown Economic Development Director Lew Holloway introduced the grants administrator from the Land-of-Sky Regional Council, Mary, Roderick. He explained this public hearing is to solicit public input on a local community development project and needs in relation to a community development block grant neighborhood revitalization fund for slum and blight conditions on a spot basis.

Mr. Holloway explained the proposed project includes the rehabilitation and historic preservation of a dilapidated and vacant hosiery mill located adjacent to Hendersonville’s Main Street and Seventh Avenue Municipal Service Districts into 35 apartments with rental rates targeted to families earning 80 to 120 percent of area median income. He stated the plan includes a Comprehensive Development Plan for the approximately two-acre site and 38,000 square foot building. The project site is located along Grove Street between Fourth and Fifth Avenues in Hendersonville. He reported the total project cost, including acquisition, is approximately \$6 million. The grant request amount is \$500,000. None of the planned activities are expected to result in displacement.

Mayor Volk opened the public hearing at 6:39 p.m. with notice published in the Times News. The following addressed the Council:

Ken Fitch, 1046 Patton Street, stated the Grey Hosiery Mill is one of Hendersonville’s unique historic properties, is on the National Register of Historic Places, has distinctive architectural features and a unique history. This project will be a key component to connect Main Street and Seventh Avenue. Other proposals for the property has failed.

No other comments were made. The public hearing was closed. **No action by the Council was necessary.**

11. Staff Request for Direction from the City Council on Reviewing Transportation Priorities and Submitting Projects to the Henderson County Transportation Advisory Committee (TAC) and French Broad Metropolitan Planning Organization (MPO): City Manager John Connet requested Council's input on reviewing transportation priorities due to the recent cancellation of the Balfour project. He asked how staff can assist the Council in identifying priorities for the future. He stated there are traffic issues with many roads, some are City streets and some are NCDOT streets. He stated there is an increase in traffic with more people moving to Hendersonville and more visitors. He asked how Council wants staff to bring information to them and the public, receive their guidance to present priorities to the TAC and MPO.

Council Member Caraker explained the duties of the TAC and MPO. He explained projects are picked to put on a study list and based on traffic counts, accidents, etc., NCDOT assigns points to the projects which move forward or back in the process. He stated this can be a lengthy process. He made a suggestion years ago to take projects to elected officials to prioritize and then took it back to the TAC then to the MPO. He stated some of the divisions compete for the same funding. He stated when the decision was made to forsake the Balfour Parkway, the funds went to another division.

Council Member Caraker gave the history of the Highway 64 West widening project through Oakdale Cemetery and stated the City saved NCDOT a lot of money on that project. He stated the key is to continue the conversation with NCDOT. He stated conversations about the Kanuga Road project were positive and affected the scope of the work. He stated the City Council needs to identify traffic issues and make sure they are put on the list for improvements. He stated the TAC has to agree to consolidate the priorities before they go to the MPO. Mayor Volk commented it is a slow process.

Council Member Caraker noted the funds were lost for the widening of Interstate 26 years ago because of concerns about the effect on the environment. He asked the Council to get more involved by identifying needs and present them for scoring. He stated the Henderson County TAC is a leader in how they communicate, get projects moving forward, etc.

Council Member Caraker commented the TAC has no control over the design process. He stated the Balfour Parkway was originally three lanes, but a different design was presented by NCDOT. He stated all profiles are not appropriate in every location. He stated when a project is submitted, the end design is not known. He stated NCDOT has proven many times that with enough controversy, they will spend funds elsewhere. He stated this may solve immediate concerns but will not solve issues long-term.

Mayor Pro Tem Stephens commented on how projects are shared with the TAC and MPO and how the City responds to NCDOT's design. He stated plans needs to be discussed with the public and work through it and come up with the best plan.

Council Member Caraker suggested that Council identify pinch points within the traffic system within the City, discuss them at a Council meeting, post for the public and invite public comment. He stated the City has received some very good ideas from the public. He offered to continue discussion with affected communities and NCDOT. Council Member Miller suggested including pinch points within the extraterritorial jurisdiction. Council Member Caraker agreed. He discussed the removal of the Balfour Parkway.

Council Member Smith asked if the Council members may present design ideas to the TAC. Council Member Caraker stated yes. Mr. Connet suggested bringing the ideas to the Council as a whole to be discussed and prioritized. **He suggested annual or semi-annual review and discussion of traffic issues and projects to increase transparency with the public. The Council agreed by consensus.**

11a. Discussion regarding the proposed alternatives for the Kanuga Road and White Street intersection: Mr. Connet reported he was contacted by an NCDOT Engineer requesting feedback from the Council regarding two intersections: White Street at Kanuga Road and Erkwood/State/Kanuga Road. He asked for Council's desire for the type of intersection improvement.

Mr. Connet reported NCDOT plans show a signalized intersection at Erkwood/State/Kanuga Road unless Council objects and a roundabout is proposed for the White Street/Kanuga Road intersection. He stated there has been some discussion of a signalized intersection at this point as well. He stated Council has not seen updated plans for the intersections.

Council Member Smith noted this discussion was not on the original agenda. He apologized that this item was overlooked and there was no attempt to slide in this discussion.

Council Member Caraker stated there may be an opportunity to decrease the size of the project, a smaller, functional roundabout. He would like to continue the conversations with NCDOT and allow Council to discuss it further. He stated it is premature to make a recommendation at this time.

Mayor Pro Tem Stephens commented he has received many phone calls, and e-mails. He agreed Council should wait to make a recommendation until a plan is presented by NCDOT. Council Member Caraker agreed stating other transportation projects may impact this project positively. Council Member Miller voiced opposition to a

roundabout because of pedestrian safety and supported a signalized intersection. Mayor Volk voiced support of roundabouts. Council Member Caraker suggested further discussions with NCDOT to mitigate changes to properties. Council Member Smith stated both intersections should be included on one map for Council's consideration/review. Council Member Caraker will attempt to obtain a plan from NCDOT. **No action was taken by the Council.**

12. Consideration of a Contract Partnership with the Education and Research Consortium (ERC) for Fiber Optic Service and the Associated Budget Amendment and Capital Project Ordinance:

Mr. Connet reported Assistant City Manager Brian Pahle has been working with ERC to bring a higher level of fiber optic service into our community and additional fiber optic cable and increased band width to City facilities to improve access to the internet.

Mr. Connet presented a proposal from ERC to bring this service to a number of City facilities and the community so they can work with private vendors to connect to private homes and businesses. He stated there is a substantial investment from the City of approximately \$690,000 but in turn will receive free internet for 12 years. He stated considering the amount paid by the City now, the payoff will be after year 7. He estimated a return of the investment of almost 100 percent after 12 years.

Mr. Connet stated the City is not getting into the fiber optic business but would like to bring that technology to the community.

In discussion, Mr. Connet explained ERC currently serves the downtown Wi-Fi and this would bring a second loop into the City for redundancy and will allow larger band width.

After discussion, **Council Member Caraker moved to adopt the budget amendment and capital project ordinance as presented and to authorize the City Manager to execute a contract with the Education and Research Consortium of Western North Carolina (ERC) for the services described in the contract agreement. A unanimous vote of the Council followed. Motion carried.**

Ordinance #18-0751

CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE FIBER INFRASTRUCTURE IMPROVEMENT PROJECT

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a City infrastructure project described as the Fiber Infrastructure Improvement Project.

Section 2: The following amounts are appropriated for the project:

Section 3: The following revenues are anticipated to be available via transfers from the General Fund and Water and Sewer Fund for project expenses:

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the General Fund and Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fifth day of July 2018.

/s/Barbara G. Volk, Mayor

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

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

Budget Amendment

Fund 10: Total Expenditure \$346,750

Fund 60: Total Expenditure \$347,250

An amendment to provide funding for the Fiber Infrastructure Improvements Project capital project ordinance (Fund 455). This project will improve fiber infrastructure between City core facilities and provide a return on investment of nearly \$670,567.

13. Consideration of an Ordinance Amending the Code of Ordinances, Chapter 52 Entitled "Utilities, Article VIII – Cross-connection and Backflow Prevention Treatment": Utilities Director Lee Smith introduced Amy Huffman, Environmental Services Coordinator. He explained she deals with pre-treatment, fats, oil and grease, and backflow cross connections.

Mr. Lee Smith presented an addition to the Chapter 52 of the Code to provide better definition for staff to enforce our responsibility, described in the general statutes, to insure that the City's water distribution is protected from cross-connection and backflow conditions that can threaten the quality of our water system. He stated staff will be investigating and identifying customers who should have backflow protection.

Council Member Caraker explained this has been a statewide program for several years and began in larger cities. He stated backflow prevention is mandated for facilities such as hospitals, government buildings and those who provide food service to the public to protect against backflows of foreign substances in the water supply. He stated the devices must be certified annually and repairs can be expensive. Ms. Huffman explained a risk assessment is done to determine the infrastructure that should be installed. Existing customers may be affected if a risk is discovered. Council Member Caraker explained when a building permit is sought or change of occupancy goes through plan review, the county will require it. There was discussion of the equipment and the possibility of identifying customers with a high risk. Council Member Miller asked that Council be notified of changes or hardships for businesses.

Council Member Caraker moved to approve the proposed addition to the City Code of Ordinance, Chapter 52 regarding cross-connection and backflow prevention, as recommended and presented by staff. A unanimous vote of the Council followed. Motion carried.

Ordinance #18-0752

AN ORDINANCE AMENDING CHAPTER 52 ENTITLED "UTILITIES, ARTICLE VIII – CROSS-CONNECTION AND BACKFLOW PREVENTION TREATMENT" OF THE CITY OF HENDERSONVILLE CODE OF ORDINANCES

WHEREAS, North Carolina State Statutes 160A-312 grants municipalities the power to regulate certain utilities; and

WHEREAS, the North Carolina Department of Environment and Natural Resources, Division of Water Quality has required the City of Hendersonville to amend the text of Chapter 52 - Utilities, Article VIII, of the Code of Ordinances.

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

Section 1. Chapter 52, Article VIII, Sec. 52 of the Hendersonville Code of Ordinances is hereby added to read in its entirety as follows:

ARTICLE VIII. CROSS-CONNECTION AND BACKFLOW PREVENTION.

Sec. 52-500. Cross connection control, backflow prevention assemblies required, program established.

Sec. 52-501. Application, purpose, authorization.

This section applies to all persons who use, or connect in any way to, the public potable water distribution system of the City of Hendersonville ("public water system"). The purpose of this article is to protect the public water system from contaminants and pollution "back flowing" into the public water system from private water systems by:

- (a) Requiring the installation of backflow prevention assemblies which will minimize the possibility of contamination by isolating the customer's private water system and those contaminants or pollutants, which could, under adverse conditions, backflow or back-siphon through uncontrolled cross connections into the public water system; and
- (b) Comply with the Federal Safe Drinking Water Act (P.L. 93-523), as so amended, the North Carolina State Administrative Code (Title 15A, Subchapter 18C), as so amended and the North Carolina State Building Code, as so amended, as they pertain to cross-connections with the public water supply systems.
- (c) Establishing a cross-connection and backflow prevention program.

Sec. 52-502. Responsibilities.

The North Carolina Department of Environmental Quality (NCDEQ), or equivalent agency, has the responsibility for promulgating and enforcing laws, rules, regulations and policies to be followed in carrying out an effective CCC program. The NCDEQ also has the primary responsibility of ensuring that the water purveyor operates the public potable water system free of actual or potential sanitary hazards, including unprotected cross connections. They have the further responsibility of ensuring that the water purveyor provides an approved water supply at the service connecting to the customer's water system, and further, that they require the installation, testing, and maintenance of an approved backflow prevention assembly on the service connection when required.

- (a) Hendersonville Water and Sewer, a department of the City, will have the responsibility to implement the ordinance. The City will request the customer to install the assemblies and may send reminders to annually test the assemblies by issuing reminder letters.
- (b) The customer/owner has the primary responsibility of preventing contaminants from entering the potable water piping system and subsequently, the public water supply system. He or she shall, as required by the City, install, test, operate, maintain and keep adequate maintenance and repair records for every backflow prevention assembly installed to provide containment.
- (c) The customer shall prevent cross-connections between the potable water piping system and any other system within his facility.

Sec. 52-503. Definitions:

- (a) Air Gap - a physical break between a supply pipe and a receiving vessel. The air gap shall be at least double the diameter of the supply pipe, measured vertically above the top rim of the vessel, in no case less than two inches.
- (b) Backflow prevention assembly ("BPA") - an assembly used to prevent backflow into the public water system from a customer's water service connection. The type of BPA required by this article to be used shall depend on whether the hazard, which can be an existing hazard or a potential hazard, presented by backflow from a particular private system is a "pollution" ("non-health") hazard or a "contamination" ("health") hazard. An "approved" backflow prevention assembly is a BPA that has been approved by the American Society of Sanitary Engineers (ASSE) or the American Water Works Association (AWWA) or USC-Foundation for Cross Connection Control and Hydraulic Research (USC-FCCCHR), whichever is most restrictive.
- (c) Certified backflow prevention assembly technician ("technician") - any person who has received from the State of North Carolina ("state") or other city approved certifying agency a certificate to install, test, repair, overhaul or maintain approved backflow prevention assemblies. A backflow prevention assembly technician certificate will be issued to any person who:
 - (1) Demonstrates knowledge of applicable laws, rules, and regulations applying to backflow prevention assemblies in the state and in the city, and
 - (2) Is a licensed plumber or has at least two years experience and is employed by a North Carolina licensed plumber or plumbing contractor, or has equivalent qualifications acceptable to the city, and

- (3) Holds a certificate of completion from a state approved training program in the installation, testing, repair, overhaul and maintenance of backflow prevention assemblies.
- (d) Check Valve (CV) - a valve that seals readily and completely; it must be carefully machined to have free moving parts and assured water tightness, for the purposes of this article, it is utilized to prevent a backflow or back-siphonage condition.
- (e) Contamination hazard - represents the type of existing or potential hazard presented by a private system and means an existing or potential impairment of the quality of the water, which creates a potential or actual hazard to the public health through the introduction of hazardous or toxic substances or waterborne health hazards in the form of physical or chemical contaminants or biological organisms and pathogens.
- (f) Cross-Connection - any unprotected actual or potential connection or structural arrangement between the city's public water system and any other pipe, conduit, source or system through which it is possible to introduce any contamination or pollution other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices or arrangements through which or because of which backflow can or may occur are considered to be cross-connections.
- (g) Customer - a water user served by Hendersonville Water and Sewer.
- (h) Degree of hazard - whether the hazard or potential hazard is a "pollution" (non-health) hazard, or a "contamination" (health) hazard. The degree of hazard shall be determined by the city from the evaluation of conditions within a private water system and the use to which a property connected to public system is put. See definitions for each below. Also, see list of hazards included in a separate document for more information regarding these hazards.
- (i) Double Check Detector Assembly (DCDA) - two single, independently acting check valves, including tightly closing shut-off valves located at each end of the assembly, suitable test connections and a by-pass assembly with a meter. This unit must be approved as a complete assembly. This assembly does not require any special installation precautions except to protect the unit from freezing, insure that the test cocks are accessible and confirm installation orientation (i.e., horizontal or vertical) is per manufacturer's specification. Adequate access to the test cocks is necessary to facilitate required testing. These are primarily utilized in fire line installations. Normal maintenance considerations should be satisfied.
- (j) Double Check Valve Assembly (DCVA) - two single, independently acting check valves, including tightly closing shut-off valves located at each end of the assembly and suitable test connections. This unit must be approved as a complete assembly. This assembly does not require any special installation precautions except to protect the unit from freezing, insure that the test cocks are accessible and confirm installation orientation (i.e., horizontal or vertical) is per manufacturer's specification. Adequate access to the test cocks is necessary to facilitate required testing. Normal maintenance considerations should be satisfied.
- (k) Dual Check Valve - this is a non-testable, backflow prevention device to be used on most residential services, unless otherwise approved by the city in writing prior to installation and these commercial, institutional and industrial services determined to be a "Non-hazardous Facility".
- (l) Hazardous Facility - a rating for a facility, building or water user in which substances would have an adverse effect on the health if introduced into the city's water system would endanger other water customers.
- (m) Health hazard - an actual or potential threat of contamination of a physical, chemical, biological, pathogenic or toxic nature to the public or private water system to such a degree or intensity that there would be a danger to health. Examples of waterborne health hazards include, but are not limited to:
- (1) Physical: Radioisotopes/radionuclides;
 - (2) Chemical: Lead, mercury and other heavy metals, organic compounds, other toxins and hazardous substances;
 - (3) Biological: Microorganisms and pathogens like *Cryptosporidium*, typhoid, cholera and *E. coli*.
- (n) Imminent hazard - a health hazard situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (o) Moderate Facility - a rating for a facility, building or water user in which substances could have an adverse effect on the health if introduced into the city's water system that may endanger other water customers.
- (p) Non-Hazardous Facility - a rating for a facility which does not have enough risk to require the installation of an acceptable backflow prevention assembly.
- (q) Owner - the owner or a person on the premises charged with the responsibility of complete knowledge and understanding of the water supply piping within the premises and for maintaining the customer's water system free from cross-connections, backflow conditions, back-siphonage conditions and other sanitary defects, as required by this local law and all other required regulations and laws.
- (r) Pollution or non-health hazard - an actual or potential threat to the quality of water of the city's public water system or a private potable water system. A non-health hazard is one that, if introduced into the public water system, could be a nuisance to water users, but would not adversely affect human health.
- (s) Private water system - that part of a water service connection to the city's public water system which is located on the customer's side of the city's water meter. A private water system may be a water service line to a single premise or structure or it may be a privately owned and maintained water distribution system, which serves more than one structure or premises. For the purpose of this article, once water from the city's public water system passes through the meter to the customer's side, that water is considered part of the private water system.
- (t) Public water system - the city's potable water system and includes all of the systems required for the provision to the public of potable water for human consumption through pipes or other constructed conveyances and includes:
- (1) Any treatment, storage or distribution facility and all appurtenance to those facilities under control of the city and used primarily in connection with the city's water system; and
 - (2) Any treatment, storage or distribution facility and all appurtenances to those facilities not under the control of the city that is used primarily in connection with the city's water system.
- (u) Reduced Pressure Detector Assembly (RPDA) - a minimum of two independently acting check valves together with automatically operated pressure differential relief valve located between the two check valves and is equipped with a by-pass assembly with a small diameter RPZ and meter. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check at less than the supply pressure. The assembly must include tightly closing shut-off valves located at each end of the assembly, and each assembly shall be fitted with properly located test cocks. This assembly must also be approved as a complete assembly. These assemblies must also be protected against freezing and the test cocks should be positioned to facilitate testing. Normal maintenance considerations must also be satisfied. Experience to date shows that an above-grade installation is required in order to satisfy adequate drainage and access.

(v) Reduced Pressure Zone Assembly (RPZ) - a minimum of two independently acting check valves together with automatically operated pressure differential relief valve located between the two check valves. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check at less than the supply pressure. The assembly must include tightly closing shut-off valves located at each end of the assembly, and each assembly shall be fitted with properly located test cocks. This assembly must also be approved as a complete assembly. These assemblies must also be protected against freezing and the test cocks should be positioned to facilitate testing. Normal maintenance considerations must also be satisfied. Experience to date shows that an above-grade installation is required in order to satisfy adequate drainage and access.

(w) Vacuum Breaker (Pressure Type and Non-Pressure Type) (VB or PVB) – any vacuum breaker which can only be used for internal plumbing control and therefore, not acceptable as a containment device.

(x) Water Supply – the water supplied by Hendersonville Water and Sewer including its piping system.

Sec. 52-504. Authority:

The utilities director ("director") for the City of Hendersonville, or authorized representative, acting for and on behalf of the director, shall inspect the connection between the city's public water supply system and the private water system in every commercial, institutional or industrial building or premises within the city's water supply system, as frequently as may be necessary to assure that such connection has been installed in such a manner as to prevent or minimize the possibility of cross-contamination of the public water supply. The director shall notify or cause to notify, in writing, the owner or authorized representative of the owner of any such building or premises to correct within a reasonable time, set by the director, any plumbing installed or existing contrary to or in violation of local, state or federal law, which, in his or her judgment, may therefore cause or create the potential of contamination of the public water supply or otherwise adversely affect the public health.

(a) Inspection - The director, or authorized representative, shall have the right of entry into any building between the hours of 8:00 am through 5:00 pm, Monday through Friday for the purpose of making an inspection of the service connection, including but not limited to, potable water connection, fire line or other fire suppression system connected either directly or indirectly to the city's public water supply system, with the proper notification to the owner or authorized representative prior to the inspection.

(b) Rating - The degree of hazard shall determine what backflow prevention assembly (BPA) that will be required for each individual facility. Three categories should be considered when determining the degree of hazard posed by a facility and making the subsequent determination of the type of protective assemblies required and they are:

(1) Use, Toxicity and Availability of Contaminants.

(2) Availability of a Supplementary Supply of Water.

(3) Fire Fighting System Evaluation.

(c) Based on these considerations, it will be possible to rate a facility as:

(1) High Hazard Facility - must be contained by the use of an RP or an air gap.

(2) Moderate Hazard Facility - must be contained by the use of a DCV or an RP.

(3) Non-Hazardous Facility - should be protected through a DCV.

Note: All fire lines are required to be protected with a fire system rated RP detection assembly.

Sec. 52-505. New unprotected cross-connections prohibited, existing cross-connections to be protected.

No contamination or pollution of public water system shall be allowed. All customers and any other person or entity receiving water from the city's public water system shall be in violation of this article if they fail to comply with any of the following:

(a) New water service connections. No new residential water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved dual check valve or approved equal. No new nonresidential and irrigation water service connections to the public water system, on or after the effective date of this article, shall be made unless equipped with an approved backflow prevention assembly, unless otherwise approved by the city prior to installation. The BPA shall be tested and properly functioning as prescribed herein prior to the issuance of a certificate of occupancy (CO) for any building. All new nonresidential construction plans and specifications shall be made available to the city for review to determine the health hazard and level (health or non-health) to the city's public water system.

(b) Existing water service connections. An approved backflow prevention assembly shall be installed on all existing cross-connections to the city's public water system upon notification of the need for installation by the city resulting from circumstances such as, but not limited to, change of use, change or ownership or modifications to facilities, etc. Upon determining that a backflow prevention assembly (BPA) is required to be installed on an existing irrigation or nonresidential water service connection the city will notify the customer in writing of:

(1) The requirement for installation;

(2) The health hazard level ("high hazard" or "moderate hazard" or "non-health hazard") which has been established for that customer by the city based upon the use of their premises;

(3) The type of approved backflow prevention assembly required;

(4) The date by which it must be installed and tested. The customer will have the following time periods within which to install and test the specified backflow prevention assembly and submit test results to the city.

(a) High Hazard – Within 14-calendar days of date of notice, unless specified otherwise by city;

(b) Moderate Hazard – Within 30-calendar days of notice;

(c) Non-Health Hazard – Within 60-calendar days of date of notice.

Sec. 52-506. Installation.

In general, backflow prevention assemblies must be protected against freezing, shall be accessible for testing and maintenance without it being necessary for the installer or tester to enter a confined space by ladder or otherwise and shall be installed in the appropriate orientation (horizontal or vertical), in accordance with the manufacturer's specification. All BPA installations are to be above ground or inside a building, but located not more than 150-feet from the city's water main, shall be equipped with appropriate drainage and shall be approved by the city in writing prior to installation. For an BPA to be installed inside a building, the customer/owner shall obtain written approval to do so from the city prior to installation. Most critical is the need to provide a gravity drain large enough to receive the maximum potential discharge of the relief valve. This drain cannot be subject to flooding. No direct connection to the assembly for the purpose of drainage is permitted which negates the inherent protection afforded by an air gap at the relief valve discharge port. All assemblies must be installed so that they are not subject to flooding. In no

case may the installation of a backflow prevention assembly include unprotected bypass piping. Closed gate valves on the bypass do not constitute protection.

Sec. 52-507. No cross-connections.

No private water system may be connected to any private well, or to any spring, or to any other water source not approved by the state as a public water supply and commissioned by the city as a public water supply source, or to any other private source of water, or to any plumbing located on private property which may be connected to any of the above. Any such connection must be terminated upon the effective date of this article. It shall also be unlawful to have plumbing cross-connected or so installed that water from the city's public water system and water from or in any private water system may in any way become intermingled.

Sec. 52-508. Compliance.

No private water system shall be connected in any manner to the city's public water system nor may any service connection be made or maintained to the city's public water system unless the requirements of this article have been satisfied.

Sec. 52-509. Timetable for installation of assemblies.

The customer/owner shall comply with submission of plans within thirty (30) days after official written notice to proceed is issued. The customer/owner shall then have forty-five (45) days after the date of plan approval to implement the installation of the approved assembly and submit certified test results to the city. Failure to comply with in the specified time frame may result in penalties, refusal or discontinuance of water services (see Section 52-515).

Sec. 52-510. Customer/Owner Responsibilities.

The customer/owner shall have each new backflow prevention assembly tested at the time of installation. Assembly shall be installed and tested prior to startup of connection to the city's water supply. All testing shall be performed by a certified backflow prevention assembly tester or technician. Annual testing shall be required of all backflow prevention assemblies to verify that each is functioning properly and shall be performed solely at the customer/owner's expense. When the assembly is tested, the customer/owner will receive a copy of the test results. A copy of the approved assembly test form shall be submitted to Hendersonville Water and Sewer with 15-days of the receipt of the test results from the tester. A backflow prevention assembly shall either pass or fail when tested. If the assembly fails, the customer/owner shall be responsible for its timely repair or replacement, at the customer/owner's expense and shall repair or replace the assembly in the following manner:

(a) For a "Hazardous Facility", the customer/owner, or their authorized representative, shall have seven calendar days from the receipt of the written notification that the assembly has failed testing; to repair or replace the assembly and to demonstrate that the assembly has been retested and has passed.

(b) For a "Moderately Hazardous Facility", the customer/owner or their authorized representative, shall have thirty calendar days from the receipt of the written notice that the assembly has failed; to repair or replace the assembly and to demonstrate that the assembly has been retested and has passed.

(c) For a "Non-Hazardous Facility" the customer/owner or their authorized representative, shall have sixty days from the receipt of the written notice that the assembly has failed to repair or replace the assembly and to demonstrate that the assembly has been retested and has passed.

Sec. 52-511. Protection of the public water system during bulk water sales.

No bulk water may be taken except as a sale from a city owned and operated bulk sales facilities. It shall be unlawful to connect any truck, tank, or receiving vessel either directly or indirectly connected to any pipe, hose or outlet to the city's public water system, unless so authorized by the city, in writing.

Sec. 52-512. Forms.

(a) Reporting - City requires the results of backflow prevention assembly testing to be submitted on city-approved forms; form is available at 305 Williams Street or can be downloaded from the city's website.

(b) Reminders - City may send reminder letters to customers, as may be required. The following types of letters may be sent:

(1) Letter informing existing customers of the need to install a backflow prevention assembly.

(2) First reminder letter.

(3) Second reminder letter.

(4) Third letter with water cut-off date.

Sec. 52-513. Notification of change in use of property.

The customer/owner shall notify the city within 10 calendar days of the date the nature of the use of any nonresidential property connected to the city's public water system changes so that the city can reassess the health hazard level of that property. If said health level is elevated due to this use change, the customer or authorized representative shall insure that the appropriate backflow prevention assembly is installed and tested in the specified period of time; test results shall be submitted to the city.

Sec. 52-514. Refusal or discontinuance of service.

(a) No water service connection to any customer shall be allowed by the city, unless the water supply is protected as required by state and federal regulations and this local law.

(b) Service of water to any customer shall be discontinued by the director, or authorized representative, if an acceptable backflow prevention assembly required by this local law is not installed, tested, and maintained; if any defects are found in an installed assembly, and not corrected within the time as set forth; if it is found that backflow prevention assembly has been removed or bypassed, and unprotected cross-connections exist on the premises; then said water service shall not be restored until such conditions or defects are corrected.

Sec. 52-515. Penalties.

The following penalties shall be applicable for a violation of this local law (see city's schedule of rates and fees currently in force for the penalty amounts):

(a) Failure to install the appropriate backflow prevention assembly within a prescribed time frame after first notice.

(b) Failure to install the appropriate backflow prevention assembly within the prescribed time frames after second notice.

(c) Failure to install the appropriate backflow prevention assembly within the prescribed time frames after third notice - termination of service.

(d) Failure to at least annually test the backflow prevention assembly - specified penalty and/or termination of water service.

(e) Failure to replace or repair a backflow prevention assembly as required - specified penalty and/or termination of water service.

(f) Falsifying records that are required to be submitted by this article - specified penalty per violation. If a certified backflow prevention assembly technician submits falsified records to the city, the city shall reserve the right to permanently revoke that certified backflow prevention assembly technician's right to test BPAs within the city's public water system.

The city may increase any civil penalty assessed by fifty percent of the maximum civil penalty associated with the violation for a second violation of the same provision within a two-year period. The city may increase any civil penalty by doubling the amount of the penalty for a third violation of the same provision within a two-year period. Water service may be terminated after a third violation of the same provision within a two-year period.

Any person violating any provision of this article shall pay to the city all expenses incurred by the city in repairing any damage to the public water system caused in whole or in part by such violation and any expense incurred by the city in investigating such violation plus 10%. All such expenses are deemed to be a part of the civil penalty assessed with the violation

Sec. 52-516. Partial invalidity.

If any section or article of this local law shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to affect, impair or invalidate the remainder thereof.

Sec. 52-517. Conflict.

All other local laws and parts of other local laws inconsistent or conflicting with any part of this local law are hereby repealed to the extent of such inconsistency or conflict.

Secs. 52-518 – 52-530. Reserved.

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

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fifth day of July 2018.

/s/Barbara G. Volk, Mayor

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

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

14. Consideration of an Unwind Agreement for the Grey Hosiery Mill between the City of Hendersonville and Grey Mill Ventures: Mr. Connet reported work is being done on the Mill Building by several design professionals. He also reported a bank is moving forward with a lending proposal.

Mr. Connet stated staff realized the Unwind Agreement was not fully developed and approved. He provided the agreement for Council's review. He stated the agreement includes the provision that the property will return to the City of Hendersonville if the project is not accomplished.

Council Member Caraker moved the City Council approve the Unwind Agreement between the City of Hendersonville and Grey Mill Ventures, LLC. A unanimous vote of the Council followed. Motion carried. [The agreement is available in the office of the City Attorney.]

15. Comments from Mayor and City Council Members: Council Member Smith stated he will not be present at the August 2 Council meeting and asked to participate electronically. **The Council agreed to his request.** City Attorney Fritschner also reported he will be attending the Municipal Attorney's Conference but is available by phone.

16. Reports from Staff:

A. Contingencies Report: In accordance with State Statute 159-13(b)(3), Mr. Connet reported the following contingency appropriation budget adjustments:

- | | |
|-----------------------|--|
| 1) Fund 10 \$420 | Worker's comp insurance coverage |
| 2) Fund 10 \$290 | Worker's comp insurance coverage |
| 3) Fund 10 \$25,000 | Various Amendments for invoices and account overages in June (End of FY) |
| 4) Fund 20 \$7,247 | Various Amendments for invoices and account overages in June (End of FY) |
| 5) Fund 60 \$5,000 | Various Amendments for invoices and account overages in June (End of FY) |
| 6) Fund 60 \$2,300 | Various Amendments for invoices and account overages in June (End of FY) |
| 7) Fund 60 \$1,905 | Various Amendments for invoices and account overages in June (End of FY) |
| 8) Fund 60 \$5,580 | Various Amendments for invoices and account overages in June (End of FY) |

17. Consideration of Appointments to Boards/Commissions

ABC Board: **Mr. Wes Kocher was appointed to an unexpired term on the Tree Board by nomination of Council Member Miller and unanimous vote of the Council. This term will expire December 2019.**

An announcement was made of board/commission vacancies.

18. New Business: There was none.

19. Request for Closed Session to Conduct a Performance Review of the City Attorney and provide direction to staff regarding the disposition of property.

Council Member Caraker moved that the City Council enter Closed Session in accordance with NCGS 143-318.11(a)(5) and (a)(6) to conduct the City Attorney's annual performance review; and to direct staff regarding the disposition of property. A unanimous vote of the Council followed. Motion carried.

The Council discussed the disposition of property and reviewed the performance of the City Attorney. No action was taken upon exit of closed session.

20. Adjournment: The meeting adjourned at 8:25 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk