

MINUTES
October 3, 2019
REGULAR MEETING OF THE CITY COUNCIL
CITY HALL – COUNCIL CHAMBERS
5:45 p.m.

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

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

1. Call to Order: Mayor Volk called the regular meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with five members in attendance.

2. Invocation and Pledge of Allegiance to the Flag: There was a moment of silence for prayer followed by the Pledge of Allegiance to the Flag led Mayor Barbara Volk.

3. Public Comment Time: *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.*

Ken Fitch, 1046 Patton Street, expressed appreciation of Representative Mark Meadows for the receipt of the SAFER grant for the Fire Department and voiced support of honoring and memorializing Wes Burlingame for his work around the City. He will be deeply missed.

4. Consideration of Agenda: Council Member Caraker moved approval of the agenda. A unanimous vote of the Council followed. Motion carried.

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

A. Consideration of Minutes: September 3, 2019 Regular Meeting

B. Consideration of Budget Amendments: Mr. Adam Murr, Budget and Management Analyst, presented the following budget amendments.

1. Fund 10, increase of \$10,227
An amendment to increase account due to insurance settlement for repairs on two police department vehicles.
2. Fund 199, increase of \$1,082
An amendment to increase Special Revenue Fund for the Police Department's Motor Unit's actual revenues.

C. Consideration of Amendment to Walk of Fame Steering Committee Charter: City Clerk Tammie Drake reported Chair Kaye Youngblood of the Walk of Fame Steering requested the following amendment to the Walk of Fame Steering Committee Charter. She wants to avoid all perception that those chosen for the Walk of Fame are the ones nominated by the committee members.

The addition includes:

Article IV. QUALIFICATION AND APPOINTMENT OF SELECTION COMMITTEE
 ... No member of the Selection Committee shall nominate anyone for the Walk of Fame while serving on the Walk of Fame Steering or Selection Committee.

D. Consideration of Acceptance of Maintenance and Ownership of Streets within Oak Haven: Public Works Director Tom Wooten reported the Hendersonville Housing Assistance Corporation and Oak Haven Apartments, LP have asked the City of Hendersonville to accept a 45-foot right of way including the asphalt road, drainage infrastructure, and signage into the city's maintenance program. He stated two areas of the road were found deficient, however, they have been repaired to the city's satisfaction. He stated staff is comfortable in recommending this infrastructure be brought into the City's maintenance program and recommended approval of the resolution.

Resolution #19-1069

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL
 TO ACCEPT THE OWNERSHIP AND MAINTENANCE OF THE STREET OF
 OAK HAVEN APARTMENTS, LP**

WHEREAS, The City received a request from Housing Assistance Corporation, to accept the ownership and maintenance of the public right-of-way within the Oak Haven Apartments, LP, and

WHEREAS, A signed Certificate of Dedication and Maintenance has been received by the City along with a copy of the recorded final plat for the development, and as shown on plat slide 12104 Henderson County Registry, and

WHEREAS, Samples taken by ESC Carolina, LLP and inspections found the roads were built in accordance with NCDOT Subdivision Standards with exception to two areas however those two areas have been replaced and inspected by ESC Carolina, LLP and approved by city staff, and

WHEREAS, North Carolina General Statutes 160A-12 Exercise of corporate power, provides: A power, function, right, privilege, or immunity that is conferred or imposed by charter or general law without directions or restrictions as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the city council.

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

To accept the ownership and maintenance of the public right-of-way within the Oak Haven Apartments, LP as a public City Street and begin maintaining the infrastructure within the public right-of-way associated with the City Street.

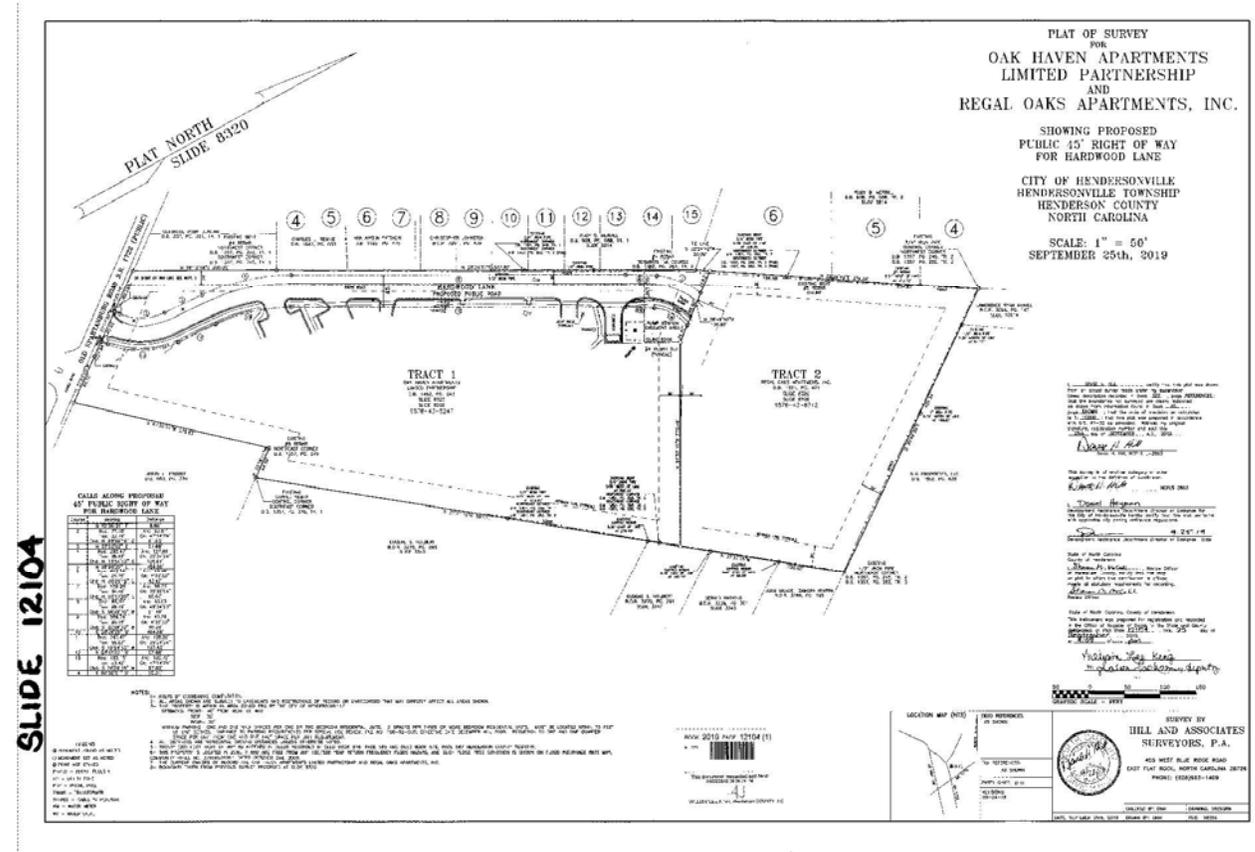
This resolution become effective as of the date of adoption.

Adopted this the third day of October 2019, a regular meeting of the Council, held at 145 5th Avenue East, Hendersonville, North Carolina.

/s/Barbara G. Volk, Mayor

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

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



E. Consideration of Amendments to the Personnel Policy: Human Resources Director Jennifer Harrell explained some employees are being promoted or reclassified and shortly thereafter they are receiving a merit and market increase with their annual performance review, while others being promoted or reclassified do not have their annual performance review until sometime later. To address this inequity issue, staff is requesting to change the employee annual performance review date to the action date for those employees promoted, demoted or reclassified. Applicable longevity pay and any applicable market increase will be based upon the employee's hire date.

Section 8. Salary Effect of Promotions, Demotions, Transfers, and Reclassifications

Promotions. A promotion is the movement of an employee to a position in a class assigned to a higher salary range. The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility. When an employee is promoted, the employee's salary shall normally be advanced to the minimum rate of the new position, or to a salary which provides an increase of at least approximately 5% over the employee's salary before the promotion, whichever is greater. In the event that an employee's salary is increased 5% but does not reach the probation completion amount for the position, that employee's salary shall be advanced to the probation completion amount. Upon promotion, the annual performance review date of the employee will change to the date of the promotion. Promoted employees may upon request of the hiring manager, serve a six-month probationary period except that employees in sworn police, entry level fire, and Department Head positions may serve a twelve-month probationary period. (Note: no pay increase is given at the end of a probationary period for a promoted employee unless promoted to the minimum rate of the pay range). If an employee does not successfully complete the probationary period, the employee may be reassigned to their original position if the position is vacant or a position of similar duties or the employee may be terminated. Longevity date and any applicable market increase will be based upon the employee's hire date. In the event of highly skilled and qualified employees, shortage of qualified applicants, or other reasons related to the merit principle of employment, the City Manager may set the salary at an appropriate rate in the range of the position to which the employee is promoted that best reflects the employee's qualifications for the job and relative worth to the City, taking into account the range of the position and relative qualifications of other employees in the same classification. In no event, however, shall the new salary

exceed the maximum rate of the new salary range. In setting the promotion salary, the City shall consider internal comparisons with other employees in the same or similar jobs.

Demotions. Demotion is the involuntary movement of an employee from one position to a position in a class assigned to a lower salary range. When an employee is demoted to a position for which qualified, the salary shall be decreased at least 5%. Salaries of demoted employees may be no greater than the maximum of the new range. The employee's annual performance review date will move to the demotion date. Longevity date and any applicable market increase will be based upon the employee's hire date.

...

Reclassifications. A reclassification is a change in a position's salary grade and title due to substantial and permanent increases or decreases in job responsibilities, complexities, duties and authorities. An employee whose position is reclassified to a class having a higher salary range shall receive a pay increase of approximately 5% or an increase to the probation completion amount of the new pay range, whichever is higher.

If the position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level until the range is increased above the employee's salary. The employee's annual performance review date will move to the reclassification date. Longevity date and any applicable market increase will be based upon the employee's hire date.

F. Consideration of Job Descriptions for GIS Technician I, II and III and Pay and Classification Schedule Amendments Relating to these Positions: City Engineer Brent Detwiler explained staff are in the process of hiring a GIS Technician to help with their growing list of mapping, GPS and other projects. He stated they have determined the current GIS Technician description needs to be expanded to three separate positions in order to better classify the experience and education level associated. He proposed splitting the GIS Technician position into three descriptions of varying experience/education requirement levels so a candidate can be hired into a classification most suited to the individual's experience and qualification level.

Staff recommended the GIS Technician I to be placed in Pay Grade 13, GIS Technician II in Pay Grade 15 and GIS Technician III in Pay Grade 17. The job descriptions are on file in the office of the Human Resources Director.

G. Consideration of Certificate of Sufficiency from the Clear Creek Investment Group for the Satellite Annexation of Approximately 72 Acres Located off Clear Creek Road: Planner Daniel Heyman presented the petition from Clear Creek Investment Group, LLC for a satellite annexation of PINs 9660-90-7491, 9660-90-2975, 9660-81-8633, and 9660-82-5607 located on Clear Creek Road which is approximately 72.2 acres.

Mr. Heyman provided the Clerk's Certificate of Sufficiency finding that the petition is valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation. A hearing to zone the property will be held simultaneously. November 7, 2019 is the date suggested for the public hearing.

H. Consideration of Awarding a Contract for the Water Treatment Facility Basin Repairs and Coatings Project: Utilities Director Lee Smith explained this project consists of concrete repairs to existing treatment structures, immersion service and exterior non-immersion service coatings systems installation, and installation of a new stop gate within an existing concrete channel to improve treatment operations. He stated the Engineer's Opinion of Probably Construction Cost for this project was approximately \$485,000.

Mr. Lee Smith reported two informal bids were received on September 16, 2019 as follows:

Crom, LLC - \$400,340.00
Superior Industrial Maintenance Company - \$643,250.00

He stated each of the bids were reviewed for accuracy and completeness. In accordance with North Carolina requirements for construction contracting, there is no minimum number of bids required for the informal bidding process(GS 143-131). As a result of this review, City staff and our consultant recommends the project be awarded to Crom, LLC, the lowest responsive and responsible bidder, in the amount of \$400,340.00.

I. Consideration of Special Event Permit for Treat Street Carnival: Development Assistance Director Susan Frady reported the Special Events Committee voted unanimously to recommend that the City Council approve this event. This event will be held Thursday, October 31. This event will include the standard downtown trick or treating with downtown businesses throughout the district, multi-ages costume party and DJ party. This year's event will include vendor trick or treat tables, inflatables and large screen Halloween movie screen. Main Street will be closed from 3:00 PM - 8:00 PM. from Allen Street to 6th Avenue.

J. Consideration of an Ordinance Amending Chapter 50, Article VII - Parades and Processions of the Code of Ordinances: City Manager John Connet presented amendments to Chapter 50 of the Code of Ordinances. He provided amendments to the ordinance for a more modern standard. He

stated the new ordinance provides much more detailed guidance to the Police Department and parade applicant.

Ordinance #19-1070

**AN ORDINANCE AMENDING CITY CODE CHAPTER 50 PERTAINING TO
PARADES AND PROCESSIONS**

WHEREAS, the City Council has determined that the current ordinance relating to parades and processions may lack clarity in certain parts; and

WHEREAS, the City Council believes that these portions of the ordinance are in need of revision,

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

SECTION 1. Those portions of Article VII. Parades and Processions, Section 50-416 of the Hendersonville Code of Ordinances defining "parades and processions" is hereby amended to read as follows:

Sec. 50-416. - Definitions. The following words, terms or phrases, when used in this article, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

Appeals official means the city manager, or his designee who shall the assistant city manager.

Athletic event means any event involving the conduct of exercises, sports or games.

Business days means those days in which city offices are open for conducting city business.

Chief of police means the Chief of Police of the City of Hendersonville, or his designee.

~~Parade means an assemblage of more than five vehicles or 20 pedestrians in a public procession along the streets and/or sidewalks of the city, but shall not include funeral processions or sightseeing groups or bands or marching groups proceeding to a point of assembly to participate in a parade. (Code 1971, § 31-142)~~

Parade means any athletic event, ceremony, pageant, march, picket, procession, motorcade or other similar activity consisting of 20 or more persons, animals, vehicles or transported things, or a combination thereof proceeding along any sidewalk or along the traveled portion of any street within the city for the primary purpose of display to others in such a manner as to interfere with the normal flow of vehicular or pedestrian traffic upon such sidewalk or street. A procession in which individuals move single file along a sidewalk shall not be regarded as interfering with the normal flow of pedestrian traffic along such sidewalk.

Parade permit means a permit as required by this article in order to conduct a parade on public street regulated by this article.

Sidewalk means that portion of the street right-of-way that is designated for the use of pedestrians and that is paved.

Street means any place or way set aside or open to the general public for purposes of vehicular traffic, including any curb, berm, shoulder, right-of-way, or median strip, but not including the sidewalk.

SECTION 2: The language in following Sections of the Hendersonville Code of Ordinances are hereby repealed and amended to read as follows:

~~50-417—Conformance to article provisions~~

~~50-418.—Hours permitted.~~

~~50-419.—Maximum number per day.~~

~~50-420.—Routes and schedules.~~

~~50-421.—Distribution of materials.~~

~~50-422.—Regulation of parking.~~

~~50-423.—Vehicle processions.~~

DIVISION 2. – PERMIT

~~Sec. 50-446.—Required.~~

~~Sec. 50-447.—Application.~~

~~Sec. 50-448.—Conditions of issuance.~~

~~Sec. 50-449.—Denials; public hearing.~~

~~Sec. 50-450.—Compliance with state and local provisions.~~

Sec. 50-417. - Permit required for parades.

(a) No parade is permitted unless a permit has been first obtained from the chief of police allowing the parade pursuant to this article.

(b) A person seeking to obtain a parade shall file an application with the chief of police on forms provided by such official.

(c) A person seeking to obtain a parade permit which requires a street closing or otherwise requires police officers to stop or reroute vehicular traffic upon any street because the participants will not comply with normal traffic regulations or controls shall file an application with the chief of police at least 10 days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter timeframes from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.

(d) A person seeking to obtain a parade permit for Main Street which requires the closing of Main Street for greater than three hours shall file an application with the chief of police at least 45 days before the time for which the parade is proposed to commence. The chief of police shall notify downtown merchants via the Downtown Advisory Committee or successor committees at least 30 days before the time for which the parade is proposed to commence. Notwithstanding the preceding sentences, the chief of police shall consider an application for a parade which is filed within any shorter time-frames from those prescribed above where the purpose of the parade is a spontaneous response to a current event, or where other good and compelling causes are shown.

(e) The application for a parade permit shall include the following:

(1) The name, address, telephone number, and email address of the person seeking to conduct the parade, and the name, address, telephone number and email address, if available, of the organization with which the person is affiliated or on whose behalf the person is applying to conduct the parade or public assembly (collectively "applicant");

- (2) The name, address, telephone number and email address, if available, for an individual who shall be designated as the "responsible planner and on-site manager" of the parade;
- (3) The requested date, time, place, and route (from starting point to ending point) of the parade including the location where and time when the parade will assemble and disband, and any requested sidewalk or street closings;
- (4) The anticipated number of persons, vehicles, and things that will constitute the parade or (including the basis on which this estimate is made), and a description of the vehicles and things that will be part of the parade;
- (5) A general description of any recording equipment and sound amplification equipment, along with a general description of the size and composition of any banners, signs, flags, or other attention-getting devices to be used in connection with the parade;
- (6) Arrangements for additional police protection and additional emergency medical services, if required under subsection 50-418(b);
- (f) A parade/assembly permit issued under this article shall include the information set out in paragraph (d) of this section, which information shall constitute conditions of the permit to the extent such information sets out the time, place, and manner of the parade or public assembly.

Section 50-418. – Police Protection.

- (a) The chief of police shall determine whether and to what extent additional police protection (including additional emergency medical services) may reasonably be necessary for the parade or public assembly for traffic control and public health and safety. The chief of police shall make this determination based on an objective consideration of the following factors (and in no case upon the speech content of the proposed parade or public assembly or upon any anticipated public reaction to such speech content):
 - (1) The size, location, duration, time and date, composition, format, configuration, and number of anticipated participants in and anticipated spectators of the proposed parade or public assembly;
 - (3) The extent to which the parade or public assembly requires the closing of any street or sidewalk or portion thereof, taking into account the general traffic conditions in the area and existing traffic control devices;
 - (4) The need to detour, reroute, or otherwise preempt normal vehicular or pedestrian traffic upon any street or sidewalk or portion thereof to accommodate the proposed parade or public assembly;
 - (5) The anticipated weather conditions at the time of the proposed parade or public assembly; and
 - (6) The extent to which the proposed parade is reasonably likely to require emergency medical services or police protection in areas contiguous to or in the surrounding vicinity of the proposed parade or public assembly.
- (b) Regularly scheduled on-duty police officers and regularly scheduled on-duty emergency medical technicians of the city will police and provide medical services for the parade or public assembly if the use of these resources would not impair or disrupt ordinary police and emergency medical services throughout the city or otherwise compromise the public's health or safety. However, if additional police officers or additional emergency medical services are deemed necessary by the chief of police for the proposed parade in light of his/her objective assessment of the factors in paragraph (a) of this section, the chief of police shall inform the applicant for the parade permit of (i) the number of additional police officers and/or additional emergency medical technicians needed for the event, (ii) the time-period when those services will be needed, and (iii) the specific reasons for why the additional police protection and/or emergency medical services are deemed necessary. The applicant then shall have the duty to hire and pay for the additional police protection and/or additional emergency medical services, or reimburse the city for the actual costs of providing those additional services, and that duty or the obligation to reimburse the city shall become part of the conditions of the parade permit.
- (c) Persons engaging in parades conducted primarily for the purpose of speech protected under the First Amendment are not required to pay for the additional police protection or additional emergency medical services set out in paragraph (b) of this section.
- (d) Notwithstanding the foregoing, the city may provide the additional police and/or emergency medical services required by paragraph (b) of this section at no cost, or at a reduced cost, to the applicant should the city desire to provide such support to the parade.

Sec. 50-419. - Permitting criteria.

- (a) The chief of police shall issue a parade assembly permit when, from a consideration of the application and from such other information as may otherwise be obtained, he/she makes all of the following findings:
 - (1) The conduct of the parade will not substantially or unnecessarily interfere with the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location; and, if such interference is likely to occur, that there are available at the time of the parade or public assembly sufficient police resources to mitigate the interference;
 - (2) There will be available at the time of the parade a sufficient number of police officers and traffic control aids to police and protect participants and non-participants at the parade and in areas contiguous to the event from traffic-related hazards in light of other demands for police protection in the city at the time of the proposed parade;
 - (3) The concentration of persons, animals, vehicles, or things at the parade or public assembly will not prevent proper fire and police protection or emergency medical services at the event or in areas contiguous to the parade;
 - (4) The parade will not interfere with the use of a sidewalk or street requested by another applicant to whom a valid parade permit application has already been granted or has been received and will be granted;
 - (5) The applicant has secured the additional police protection or additional emergency medical services required under subsection 50-418(b);
 - (6) No parade permit application for the same time but at a different location has already been granted or has been received and will be granted, and the police resources required for the prior parade are not so great that, in combination with the subsequent proposed application, the resulting deployment of police services would have an immediate and adverse effect upon the health or safety of persons or property;
 - (7) No other public event is scheduled elsewhere in the city where the police resources required for that event are so great that the deployment of police services for the proposed parade would have an immediate and adverse effect upon the health or safety of persons or property; and
 - (8) The application is fully and completely executed; and
 - (9) The application contains no material falsehood or misrepresentation.

Sec. 50-420. - Non-discrimination.

Applications for a parade shall be processed and decided upon on a first-in-time basis, and the chief of police shall consider each application upon its merits and shall not discriminate in granting or denying any permit based upon political, religious, ethnic, race, disability, sexual orientation or gender related grounds, or upon the content of any speech protected by the First Amendment or upon any anticipated public reaction to such speech content.

Sec. 50-421 - Notice of decision on application.

(a) The chief of police shall make his/her written decision granting or denying a fully completed and executed parade permit application (or granting an alternative permit under section 50-422) within three business days after the application has been received by him/her, but in no event less than 24 hours before the time for which the parade is proposed to commence. If the application under section 50-417 is filed within any shorter timeframes than those prescribed in subsection 50-417(c) and (d), then the chief of police shall make a decision on the application before the time for which the parade is proposed to commence.

(b) As soon as practicable after the written decision on the permit application has been made, the chief of police shall notify the applicant of the decision (i) by the most expeditious means practicable (i.e., by telephone or email), and (ii) by mailing a copy of the decision to the applicant by registered or certified mail, return receipt requested, which mailing shall be posted no later than the first business day after the decision has been made. If the decision is to deny the application or grant an alternative permit, the notification to the applicant shall include the written reasons for the denial of the permit or for the grant of an alternative permit.

Sec. 50-422. - Alternative permit.

(a) If the chief of police denies an application for a parade permit because he/she decides against one or more of the required findings in subparagraphs (a) (1) through (7) of section 50-419, the chief of police shall authorize the conduct of a parade on a date, at a time, at a location or over a different route from that named by the applicant. This alternative permit shall, to the extent practicable, authorize a parade that will have comparable public visibility and a similar date, time, location, or route to that of the proposed event. An applicant desiring to accept an alternative parade permit shall, within at least 24 hours before the time for which the alternative parade will commence, file a written notice of acceptance with the chief of police.

(b) An alternative parade permit shall contain the information set out in paragraph (d) of section 50-417, which information shall constitute conditions of the alternative parade/assembly permit to the extent such information sets out the time, place, and manner of the alternative parade or public assembly.

Sec. 50-423. - Appeal procedure.

(a) An applicant may appeal the denial of a parade/assembly permit in writing to the city manager's office within ten business days after notice of the denial has been received by the applicant. Within five business days (or such longer period of time agreed to by the applicant) after the city has received the written appeal, the appeals official shall hold a quasi-judicial hearing on whether to issue the permit or uphold the denial. The applicant shall have the right to present evidence at this hearing. The decision to issue the permit or uphold the denial shall be based solely on the approval criteria set forth in section 50-420, and the burden of proof to uphold the denial shall be on the chief of police by a preponderance of the evidence. The appeals official shall render a written decision on the appeal within five business days after the date of the hearing. Where the purpose of the proposed parade is a spontaneous response to a current event, or where other good and compelling causes are shown, the appeals official shall reasonably attempt to conduct the hearing and render a decision on the appeal as expeditiously as is practicable.

(b) The decision of the appeals official is subject to review in the Superior Court of Henderson County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after the applicant has received notice of the decision of the appeals official. Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five business days after the petitioner requests such a stipulation. The city shall transmit the record to the court no later than five business days after receiving the order allowing certiorari. Notwithstanding the provisions of any local rule of the reviewing court that allows for a longer time period, the city shall serve its brief upon the petitioner within 15 days after it is served with the petitioner's brief. If the petitioner serves his or her brief by mail, the city shall add three days to this time limit, in accordance with N.C.G.S. 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for serving any brief, then the shorter time period shall control.

Sec. 50-424. - Duties of applicant and responsible planner and on-site manager.

(a) The applicant and responsible planner and on-site manager of the parade shall comply with all conditions of the parade permit issued pursuant to this article and with all other applicable local, state, and federal laws.

(b) The individual designated as the responsible planner and on-site manager of the parade shall carry the parade permit upon his person during the conduct of the parade.

Sec. 50-425. - Prohibitions.

The following prohibitions shall apply to all parades:

(1) It shall be unlawful for any person to stage, present, or conduct any parade without first having obtained a permit under this article.

(2) It shall be unlawful for any person to participate in a parade for which the person knows a permit has not been granted.

(3) It shall be unlawful for any participant in a parade to knowingly fail to comply with any conditions of the parade.

(4) It shall be unlawful for any person participating in any parade to carry or possess any staff or pole, except for purposes of displaying any sign, poster, flag or banner, unless the staff or pole (i) is made of corrugated material, plastic, or wood (and not made of metal or metal alloy); (ii) is less than 40 inches in length; (iii) is one-fourth inch or less in thickness and two inches or less in width, or if not generally rectangular in shape, does not exceed three-fourths inch in its thickest dimension; and (iv) is blunt at both ends.

(5) It shall be unlawful for any person participating in any parade to carry or possess any sign, poster, flag, banner unless such sign, poster, flag, banner is constructed or made of a cloth, paper, cardboard, rubber, or plastic material.

(6) It shall be unlawful to assign or sell any parade permit granted under this article.

(7) All participants in any parade shall be subject to all other applicable local, state and federal laws.

Sec. 50-426. - Weapons

(a) With the exception of law enforcement officers acting within the scope of their duties, no firearms, or dangerous weapons of any kind, as defined by federal, state and local laws, may be possessed by an participant in a parade.

Sec. 50-427. - Public conduct during parades

(a) No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or with any person, vehicle, animal, or thing participating or used in a parade.

(b) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade. The chief of police shall post signs to that effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation of such signs.

Sec. 50-428. - Revocation of permit.

(a) The chief of police shall have the authority to revoke a parade permit instantly upon violation of any conditions of the permit or when a public emergency arises where the police resources required for that emergency are so great that deployment of police services for the parade would have an immediate and adverse effect upon the health or safety of persons or property.

(b) After a permit is revoked under paragraph (a) this section, the chief of police shall notify the applicant of the reasons for the revocation in writing by mailing a copy of the revocation to the applicant by registered or certified mail, return receipt requested, which mailing shall be posted no later than the first business day after the revocation.

Sec. 50-429. - Penalties.

A violation of any section or subsection of this article shall be subject to a civil penalty of \$500.00 to be recovered in the nature of a debt as allowed in section 1-6 of this Code or by a misdemeanor punishable by up to a \$500.00 fine as provided in G.S. 14-4.

Sec. 50-430 - Vehicle processions.

(a) *Definition.* For the purpose of this section, the term "vehicle procession" shall be deemed to mean:

(1) A group of motor vehicles;

(2) Preceded by a vehicle of a law enforcement agency with blue warning light activated;

(3) Traveling in single file with headlamps illuminated and emergency four-way flashers activated; and

(4) The lead vehicle shall bear a distinctive flag or marker.

(b) *Right-of-way; penalty for violation of section.* The operator of any motor vehicle traveling upon, along or through any public street or highway, or entering upon or leaving such street or highway, shall yield the right-of-way to a vehicle procession. A vehicle procession shall be accorded the right-of-way at any intersection, regardless of the method of traffic control at such intersection or whether or not the same shall be activated. Any operator of any motor vehicle who shall fail to yield the right-of-way to any vehicle procession shall be liable for an infraction and shall be assessed a penalty of \$35.00 and court costs for each such failure.

(c) *Driving through vehicle procession.* No vehicle not a portion of a vehicle procession shall be driven through any such procession, and the operator of any vehicle violating this subsection shall be guilty of an infraction and a fine of \$35.00 and court costs for each such violation. This subsection shall not apply to emergency vehicles as defined in G.S. 20-156 and G.S. 20-157, when operated in conformance with the provisions of G.S. 20-156 and G.S. 20-157.

(d) *Speed of vehicle procession.* A vehicle procession may proceed at a speed not in excess of 20 miles per hour and shall be driven at a rate less than the maximum stated in this section if caution and circumspection shall dictate such reduced speed.

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 third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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

K. Consideration of an Ordinance Amending Chapter 14 Businesses, Section 14-161 Pertaining to Massage Therapy:

In response to a request concerning a recently developed activity described by its developers as a form of therapy, City Attorney Fritschner provided a review of the portion of the City Code relating to massage therapy. He proposed a revision to Section 14-161 containing the definition of "massage therapy."

Ordinance #19-1071

AN ORDINANCE AMENDING CITY CODE § 14-161 PERTAINING TO MASSAGE THERAPY

WHEREAS, the City Council has determined that the current ordinance relating to massage therapy may lack clarity in certain parts; and

WHEREAS, the City Council believes that these portions of the ordinance are in need of revision,

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

SECTION 1. Those portions of Section 14-161 of the Hendersonville Code of Ordinances defining "*massage therapist*" and "*massage therapy*" are hereby amended to read as follows:

ARTICLE IV. - MASSAGE THERAPY

DIVISION 1. - GENERALLY

Sec. 14-161. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

.....

Massage therapist means any person who is engaged in the business or profession of massage therapy as herein defined, and who receives compensation for his or her services.

Massage therapy means the manipulation of soft tissue for therapeutic purposes, which term may include, but shall not be limited to, effleurage, petrissage, tapotement, compression, vibration, friction, nerve strokes and other Swedish movements, either by hand or with mechanical or electrical apparatus for the purpose of body massage. The term may also includes each of the following:

(a) the use of oil, salt glows, hot and cold packs and other recognized forms of massage therapy;

(b) any process or activity described in N.C.G.S § 90-622(3) or any successor statute as amended from time to time;

and

(c) the use of any other kind of noninvasive therapy, including Reiki, focusing as part of its therapeutic methodology on individual tissues, organs, or systems, in which as a principal part of the therapy the therapist touches or closely approaches the patient's body with some part of the therapist's body or a substance or device used or operated by the therapist.

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 third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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

~~L. Consideration of Options for the Purchase of Property for a Parking Deck and Associated Budget Amendments (moved to regular agenda for discussion)~~

~~M. Consideration of Purchase of Property for Fire Station III (moved to regular agenda for discussion)~~

Council Member Caraker requested Council move items L and M to the regular agenda. These items were added as 17a and 17b. He moved the City Council to resolve to approve the remaining items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.

6. Recognitions/Presentations/Proclamations/Introductions:

A. Proclamation for "American Pharmacist Month in Hendersonville": Mayor Volk presented a proclamation for "American Pharmacist Month in Hendersonville.

B. Proclamation for Imagine a Day Without Water: Mayor Volk presented a proclamation for "Imagine a Day Without Water" to Utilities Director Lee Smith.

C. Proclamation for Fire Prevention Week: Mayor Volk presented a proclamation for "Fire Prevention Week." Assistant Fire Marshal Michael Ostrander accepted the proclamation on behalf of the Fire Department.

7. Consideration of An Ordinance Granting A Franchise for the Operation of a Trolley Bike Tour Service (Pubcycle) Within the City: Mr. Adam Justus, co-owner of HVL Pedal & Brews, LLC, requested a franchise to operate a trolley bike. He stated this will enhance tourism and brewery hopping by creating a fun, safe, eco-friendly social outing.

Mr. Justus stated the trolley bike is a 14-person pedal-powered, electric motor assisted vehicle. Tours will be BYOB: beer, cider and wine. They will operate Thursday through Sunday with the possibility of expanding for private tours, history tours and non-alcoholic tours.

Mr. Justus stated the trolley bike will be stored at the Second Avenue location with the tours beginning and ending at Sanctuary Brewery. The storage space may be expanded in the future.

Mr. Justus reviewed the types of tours and the pricing structure.

Mr. Justus stated HVL Pedal & Brews is locally owned by Josh Israel and himself. They will not allow hard liquor on the trolley-bike. He stated no ABC permits are required because they are not selling or serving alcohol.

Mr. Justus stated the vehicle will be registered and insured in North Carolina. They will carry \$2 million commercial general liability insurance policy that also lists the City as an additional insured. They will also carry a \$1.5 million auto liability policy. Mr. Josh Israel stated the insurance policy has been submitted and approved by City Attorney Fritschner.

There was discussion of tours of the cemetery and checking to ensure there are no funerals. For historic tours on Sunday morning, Council Member Miller asked they be cautious about churches on Sundays.

Council Member Caraker moved the City Council adopt an ordinance granting a franchise agreement for the operation of a trolley bike tour service for HVL Pedal & Brews, LLC. A unanimous vote of the Council followed. Motion carried.

Ordinance #19-1072

AN ORDINANCE GRANTING A FRANCHISE FOR THE OPERATION OF A TROLLEY BIKE TOUR SERVICE (PUBCYCLE) WITHIN THE CITY OF HENDERSONVILLE

WHEREAS, the City of Hendersonville (herein "City") has the authority pursuant to G.S. 160A-296 to control the use of streets and sidewalks within the city; and

WHEREAS, the City of Hendersonville has the authority pursuant to G.S. 160A-76 to grant franchises; and

WHEREAS, HVL Pedal & Brews, LLC, a North Carolina limited liability company (Herein "the Franchisee"), proposes to operate a trolley bike tour service on the streets of the City; and

WHEREAS, the City has determined that it is in the public interest to permit the operation of said service on the City's streets, subject to certain terms and conditions; and

WHEREAS, the City considers the operation of a Pubcycle not in itself to be a violation of Hendersonville City Code Section 6-5; and

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

Section 1. HVL Pedal & Brews, LLC is hereby granted a franchise to operate a Trolley Bike Tour Service (herein "Pubcycle") on the streets of the City of Hendersonville subject to the following terms and conditions:

The Pubcycle is prohibited from operating on public streets where the speed limit is higher than thirty-five (35) miles per hour. The operation of the Pubcycle Service shall be designed so as to minimize traffic impacts upon the general circulation of vehicular and pedestrian traffic of the City.

1. Brewery Tour Route: The Pubcycle Service is allowed only in the areas highlighted on the map attached hereto as Exhibit A. The Brewery Route includes the following streets: 1st Avenue E, 5th Avenue E, 7th Avenue E, 8th Avenue E, Maple Street/Alley, Kanuga Road, Locust Street, Main Street, S. Washington Street, and W. Barnwell Street.

2. Downtown Tour Route: The Pubcycle Service is allowed only in the areas highlighted on the map attached hereto as Exhibit B. The Downtown Tour Route includes the following streets: 1st Avenue, 2nd Avenue, 3rd Avenue, 4th Avenue, 5th Avenue, 7th Avenue, 8th Avenue, Allen Street, Maple Street/Alley, Barnwell Street, Buncombe Street, Grove Street, Locust Street, Main Street, Washington Street.

3. History/Cemetery Tour Route: The Pubcycle Service is allowed only in the areas highlighted on the map attached hereto as Exhibit C. The History/ Cemetery tour route includes the following streets: 4th Avenue, 5th Avenue W. Bearcat Boulevard, Barnwell Street, Charleston/Remax Alley, Main Street, N. Church Street, Oakdale Cemetery, Valley Street, Washington Street.

4. Special Events Tour Route: The Pubcycle Service is allowed only in the areas highlighted on the map attached hereto as Exhibit D. Special Events tour route includes the following streets: 1st Avenue E, 2nd Avenue E, 5th Avenue E, 7th Avenue E, 8th Avenue E, Edwards Alley, Maple Street/Alley, E. Caswell Street, Grove Street, Kanuga Road, Locust Street.

5. Stops and Parking: Pubcycle Service stops may not exceed three minutes on any public right-of-way, except as necessary to embark and debark passengers, or with the written permission of the Development Assistance Director. Loading zones may be used for stops of this limited duration. All service stops shall be made in a way to minimize any possible disruption to the flow of vehicular traffic. It is anticipated that the Pubcycle Service will secure parking mainly in private lots when longer stops (i.e. waiting for passengers while they are in breweries) are required.

6. Operating times/frequency: The hours of operation shall be limited between 10:00 a.m. to 1:00 a.m. for nonalcoholic (historic) tours and 12:00 noon to 1:00 a.m. for alcoholic beverage consumption tours. City reserves the right to change these hours at its sole discretion, provided that the Franchisee is given a 30-day notice of such change. The Pubcycle is prohibited from operating in any City approved festival or event area where the roadways are blocked including, but not limited to, the Apple Festival, Garden Jubilee, and Art on Main except with written permission from the Development Assistance Staff.

7. Terms of Franchise/Renewal: The term of this Franchise shall be one year. The parties may consider the terms of a new franchise. This franchise is subject to the Revocation/Termination provisions of Paragraph 10 of this Ordinance.

8. Insurance: The Franchisee shall maintain Commercial General Liability insurance, including coverage for contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$1,000,000 per occurrence, and \$1,000,000 annual aggregate. The coverage shall be written on an occurrence basis. At all times during the term of this Franchise, The Franchisee shall maintain statutory Workers' Compensation insurance in accordance with the laws of North Carolina. The Franchisee shall also maintain Employers' Liability insurance with limits of not less than \$500,000 per accident and \$100,000 each employee for injury by disease. In the event of bodily injury or property damage loss caused by The Franchisee's negligent acts or omissions in connection with The Franchisee's services or operations associated with this franchise, The Franchisee's Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. The Franchisee shall submit copies of all said policies and a certificate of insurance naming the City as an additional insured for the approval of the City's Attorney. Approval from the City's Attorney shall be obtained prior to beginning any operation in the City of Hendersonville. The Franchisee shall also submit copies of said insurance policy and a certificate of insurance for approval to the City's Development Assistance Director prior to starting operations in the City of Hendersonville.

9. Indemnity: By commencing operation under this Franchise, The Franchisee agrees to indemnify and hold harmless the City against any liability for personal injury, property damage or other damage or injury arising from or in connection with any of its operations, including operation of the Pubcycle Service under this Franchise, and its insurance policy shall name the City as an additional insured to this effect.

10. Pubcycle/Trolley Bike Equipment/Condition of Vehicle: The Pubcycle or trolley bike will be a pedal-assisted motorized vehicle and shall be licensed and plated by the NC Department of Transportation as a slow-moving vehicle. The vehicle's approximate speed is 7-10 mph but has the ability to travel at speeds up to 35 mph. The vehicle is approximately 16' long, 8' wide and 9' high. Safety features of the vehicle shall include headlamps, tail lamps, stop lamps, turn signals, a Type AS-1 or AS-5 glazing windshield with wiper, reflex bumpers, parking brake, rearview mirrors, a horn, and seatbelts. The Franchisee is responsible for ensuring that all Pubcycle/trolley equipment is maintained in a safe and operable condition in accordance with applicable laws. The City reserves the right to have the vehicle inspected by the Hendersonville Police Department, appointed pursuant to city Code Sec. 54-33, and to restrict operation of any vehicles that fail inspection.

11. Standards for Drivers/Conductors: The Pubcycle/trolley bike shall have a designated driver known as the Conductor and possibly another representative of The Franchisee known as the Watchman who will assist with tours and enforcement of rules. The Franchisee shall certify in writing to the City that each driver has a valid North Carolina driver's license, is medically fit to operate the Pubcycle/trolley bike and has submitted a complete criminal background check. The Franchisee shall keep these records on file and will supply them to the City upon request. Drivers with convictions for crimes of moral turpitude, driving while impaired, controlled substance offenses and sex offenses are prohibited from operating the Pubcycle/trolley bike within the City limits.

12. Non-transferability/Amendment: This Franchise shall constitute a certificate of public convenience and necessity for the operation of the Pubcycle Service. This Franchise is not transferable, except to another entity owned by The Franchisee with written consent from the City and may not be amended except as provided in G.S. 160A-76 and G.S. 160A-304(b). This Franchise is not exclusive.

13. Revocation/Termination: The City may revoke this Franchise at any time for failure by The Franchisee to comply with any of the provisions hereof; provided, that The Franchisee shall receive 10 days' notice of said revocation during which time this franchise may only be suspended. The City may revoke this Franchise for any reason upon 30 days' notice to The Franchisee. The Franchisee shall be entitled to no compensation or payment as a result of the revocation of this franchise for any reason. The Franchisee may cease operations under this Franchise upon 30 days' notice to the City.

14. Notice: Any notices required or permitted pursuant to this franchise shall be first class mail or personal delivery to the parties as follows:

If to The Franchisee:
HVL Pedal & Brews, LLC
Attn: Adam Justus
PO Box 2652
Hendersonville NC 28793

If to City:
Hendersonville City Attorney
160 Sixth Avenue East
Hendersonville, 28792

Compliance with the formalities of this section may be waived.

The Franchisee shall designate an individual to be its agent for service of process in accordance with North Carolina law, and shall keep the City advised of any changes in said agent or its address.

15. Franchise Fee: The fee for the operation of this Franchise shall be \$1.00 per day for each day of the term of the Franchise, or \$365 annually; payable in a lump sum on or before the effective date of this Franchise and thereafter, due and payable annually on or before July 1 for the term of the Franchise. The City reserves the right to adjust this fee upon sixty (60) days' notice to The Franchisee.

Upon an increase of the fee by the City, The Franchisee shall have the right to cancel this franchise of the remainder of this term.

16. Temporary Suspension/Modification: This Franchise and any of the terms and conditions thereof, including those relating to route, stops, and scheduling are subject to temporary suspension or modification by the City as necessary for the City to exercise and maintain control over its streets and public ways. The reasons for such action may include (by way of example and not limitation), the following: (a) closing of streets for repairs; (b) closing of streets for parades and festivals; (c) change in direction of one-way streets; (d) Changes in parking configuration. Any such action shall be within the City's sole discretion without recourse by The Franchisee. The City will endeavor to provide advance notice of such action but shall not be bound to do so. Suspension or modification expected to be of more than 30 days duration will require amendment to this franchise.

17. Compliance with Laws: The Franchisee shall comply with all applicable federal, state, and local laws in the operation of its business including, but not limited to, the City of Hendersonville open container ordinance, and the State of North Carolina Alcoholic Beverage Control (ABC) laws (i.e. NCGS 188-401; NCGS 20-4.01 (27); NCGS 20-138.7; NCGS 138.2C). However, requirements of this ordinance must still be observed (i.e. passengers cannot leave the vehicle with an open container). The Franchisee shall also be responsible for obtaining all necessary licenses and permits including, but not limited to, ABC permits and licenses or permits from the NC Department of Transportation.

18. Acceptance of the terms hereof: The Franchisee's operation in substantial accordance herewith shall demonstrate the Franchisee's acceptance of all terms and conditions of this franchise, each of which shall become binding on the Franchisee as of the date hereof.

Section 2. All ordinances and clauses of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 3. That if any part of this ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this ordinance.

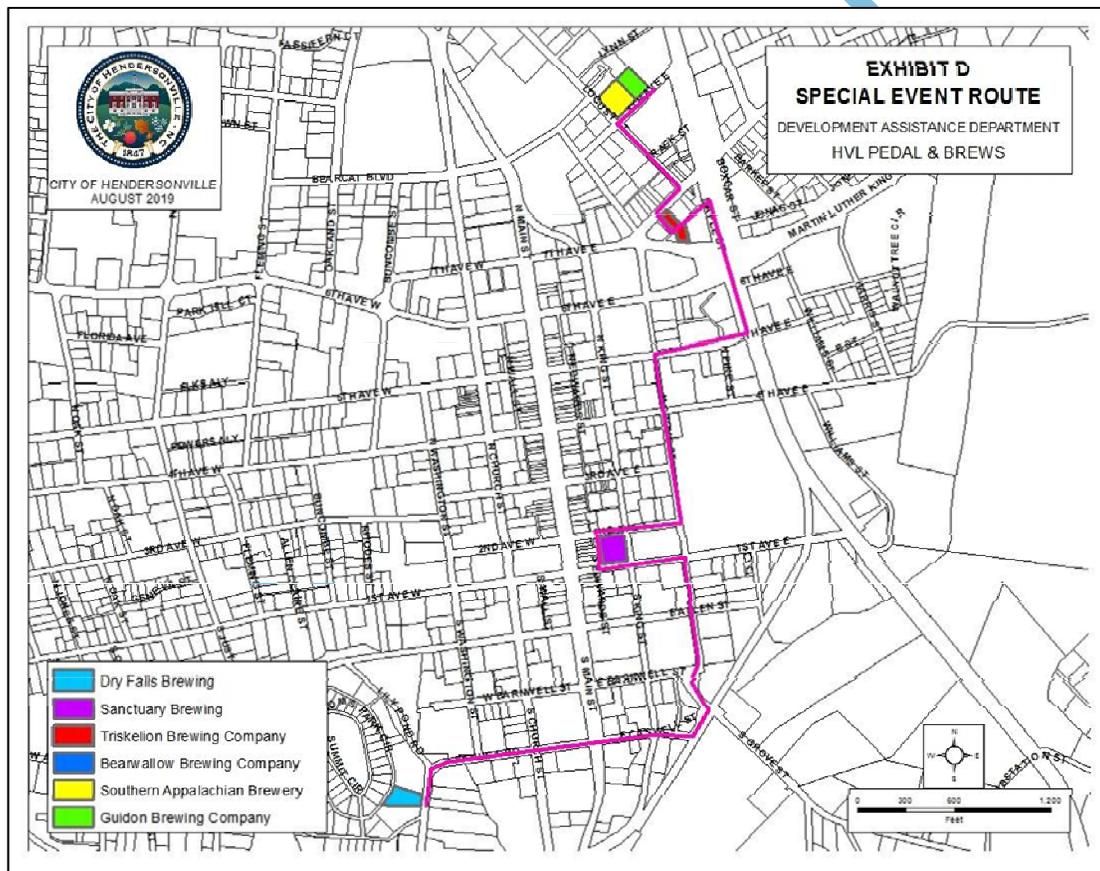
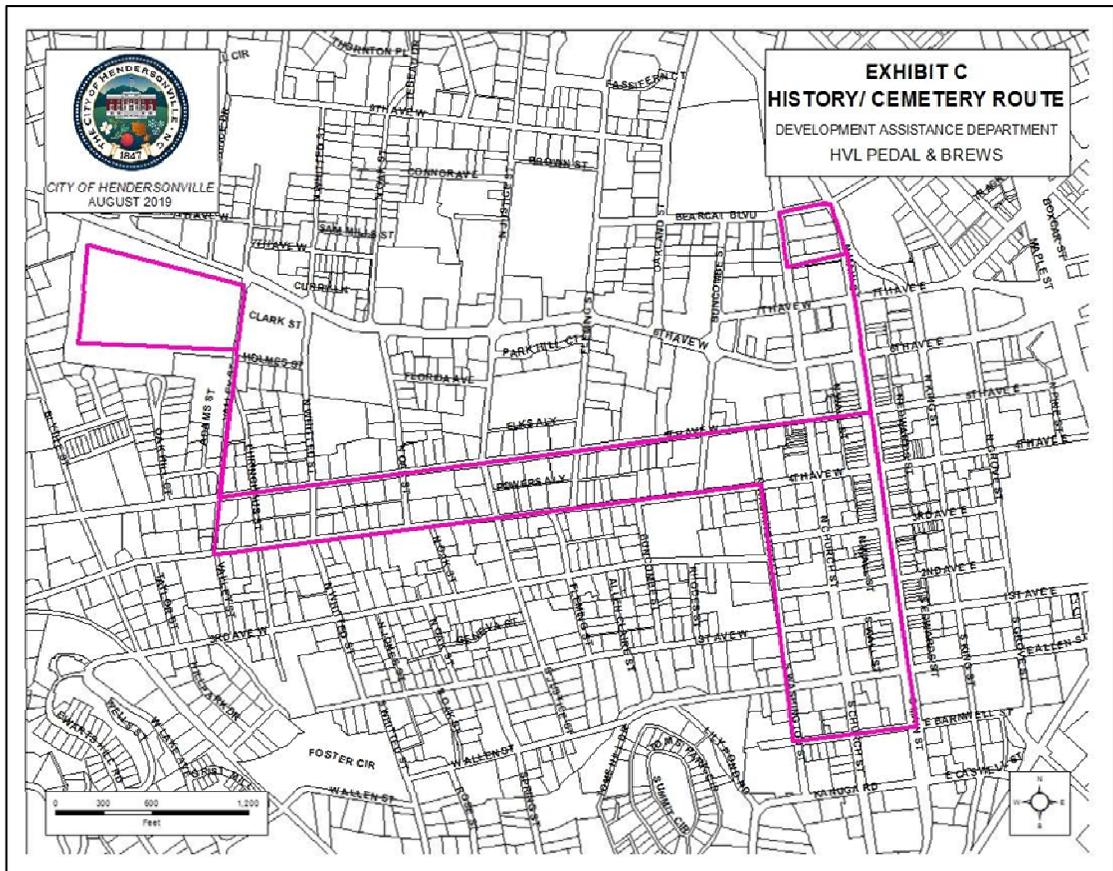
Section 4. This ordinance shall be effective upon its adoption.

Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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



8. Public Hearing -Consideration of a Petition from Dustin Beach of Tri County Construction for the Contiguous Annexation of a Parcel Located on Old Spartanburg Road:

Development Assistance Director Susan Frady presented the petition of Dustin Beach of Tri County Construction for the contiguous annexation of PIN 9578-42-9164. The parcel is approximately 0.36 acres.

Mrs. Frady stated the Council accepted the Clerk's Certificate of Sufficiency on September 5, 2019 and a public hearing was scheduled for this meeting. She reviewed the standards for annexation set out in North Carolina General Statutes 160A-31.

At 6:15 p.m., Mayor Volk opened the public hearing 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 of Tri County Construction. The effective date is October 3, 2019. A unanimous vote of the Council followed. Motion carried.

Ordinance #19-1073

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA AS A CONTIGUOUS ANNEXATION

Adopted date:	10.03.19
Effective date:	10.03.19
Total Acreage:	.36 acres
Petitioner:	Dustin Beach of Tri County Construction

WHEREAS, the City Council of the City of Hendersonville, North Carolina, has been petitioned under G.S. 160A-31 to annex the area described below; and

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

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Hendersonville, NC, at 5:45 p.m. on October 3, 2019, after due notice by publication on September 15, 2019 and September 22, 2019; and

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described contiguous territory is hereby annexed and made part of City of Hendersonville as of October 3, 2019:

METES AND BOUNDS DESCRIPTION
2017 10786 3365/546

Beginning at a new iron pin at the northeasternmost corner of lot 2 of the Three Oaks Subdivision as shown on Plat Slide 10786, and running thence South 28 degrees, 28 minutes, 41 seconds East for 77.58 feet to a new iron pin on the margin of an unnamed private gravel road, a 24' right of way as shown on Plat Slide 10786; thence South 50 degrees, 41 minutes, 48 seconds West for 194.80 feet to a new iron pin near the margin of Old Spartanburg Highway; thence North 28 degrees, 28 minutes, 41 seconds West for 86.38 feet to a new iron pin; thence North 53 degrees, 15 minutes, 41 seconds West for 86.38 feet to a new iron pin; thence North 53 degrees, 15 minutes, 30 seconds East for 193.34 feet to the point of beginning and being 0.36 acres more or less; and also being all of Lot 3 of the Three Oaks Subdivision as shown on Plat Side 10786.

Recorded in the Henderson County, NC Register of Deeds

BEING ALL of Lot 3 of the Minor Subdivision Plat of Three Oaks as shown on that Plat of Survey recorded at Plat Slide 10786, Henderson County Registry, reference to which is hereby made for a greater certainty of description.

And being a portion of the property described in deed recorded in Book 3183 , at Page 1 of the Henderson County, NC Register's Office.

Section 2. Upon and after October 3, 2019, the above described territory and its citizens and property shall be subject of all debts, laws, ordinances and regulations in force in City of Hendersonville, North Carolina. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall be delivered to the County Board of Elections, as required by G.S. 163-288.1.

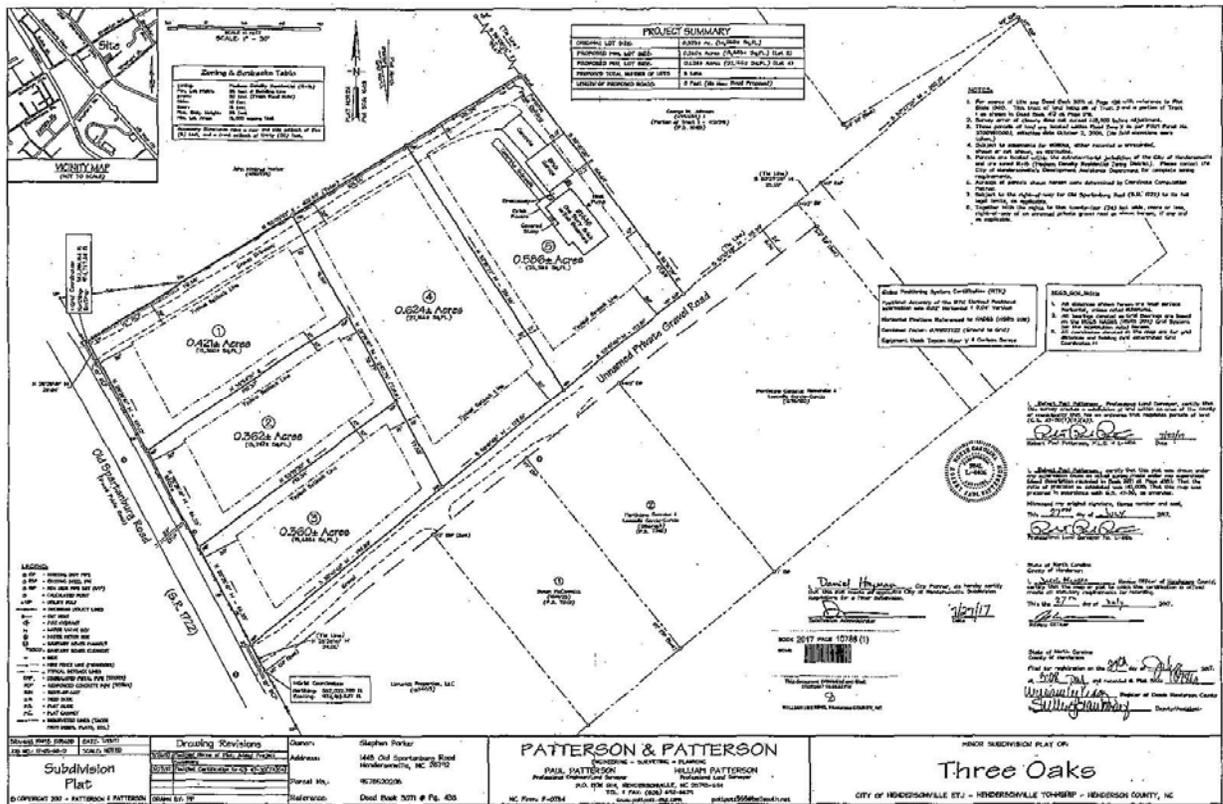
Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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

Slide 10786



9. Public Hearing - Consideration of an Application from Marilyn Gordon of Miken, LLC to Rezone Parcel #9568-64-8536 and #9568-64-8783 from R-15 Medium Density Residential to C-2 Secondary Business District: Mayor Volk opened the public hearing at 6:16 p.m. in accordance with North Carolina General Statutes by notice published in the Times News. At the request of the applicant, Council Member Caraker moved the City Council continue the public hearing for consideration of a rezoning from Miken, LLC, to the November 7, 2019 Regular City Council Meeting at the Operations Center. A unanimous vote of the Council followed. Motion carried.

10. Public Hearing - Consideration of an Application from Michael Vann of Vann Investments, LLC, for a Conditional Rezoning of a Parcel Located on the Corner of Signal Hill Road and Linda Vista Drive from PCD Planned Commercial Development to PCDCZD Planned Commercial Development Conditional Zoning District: City Planner Tyler Morrow presented the application of Michael Vann of Vann Investments, LLC for a conditional rezoning. He provided the following information:

The applicant is requesting to rezone a 3.90-acre vacant lot behind Home Depot, parcel number 9579-05-8899, in order to develop mini-warehouses. The vacant parcel is currently zoned PCD Planned Commercial Development. The applicant is requesting to be zoned PCDCZD, Planned Commercial Development Conditional Zoning District. The parcel to the south is zoned PCD and contains the Home Depot. The parcels to the west and east are zoned C-3 Highway Business and R-20 Low Density Residential and include both residential and commercial uses. Parcels to the north are zoned RCT Residential Commercial Transition, R-20 Low Density Residential and Planned Residential Development which contains Signal Ridge Apartments.

The 2030 Comprehensive Plan’s Future Land Use Map designates the subject area as Regional Activity Center. The goal of the Regional Activity Center future land use category is to “meet the largescale retail needs of Hendersonville residents while encouraging mixed-use, walkable design through redevelopment and infill projects.”

Plan Review: The site plan shows three mini warehouse buildings for a total of 57,650 square feet.

Open Space: Of the total 3.90 acres, the site plan shows 1.27 acres or 32.56 percent of the area as common open space.

Streets: The site plan shows a 24-foot two-way interior travel lane as well as 15 feet one-way travel lanes. The plan also shows a 10-foot parking lane.

Parking: The site plan shows 39 parking spaces.

Buffers/Landscaping: The landscaping plan shows a 10-foot type-B buffer along all property lines adjacent to residential uses and zoning districts. The site plan also shows a security fence running the entirety of the property. The landscaping plan further provides for parking lot landscaping including one tree and two shrubs per 4,000 square feet of vehicular use area and required buffers from the street.

Neighborhood compatibility meeting: Mr. Morrow provided a report of the meeting stating four people representing the public attended and asked questions regarding the number of units, prices and whether the business is a national chin.

Tree Board Recommendation: At their September 3, meeting, the Tree Board stated approximately 190 trees with a 12-inch or greater diameter would be removed from the property; while approximately only 60 replacement trees would be planted. The Tree Board recommended the developer install a Type B buffer along the entire perimeter. The Tree Board also recommends the developer use green infrastructure practices such as permeable pavement, tree infiltration boxes and bio retention treatment in place of the proposed underground system and retention pond.

After speaking with the developer at their October 1 meeting, the Tree Board now recommends the developer install four trees per 100 linear feet of property line at 2 ½ -inch caliper abutting the Home Depot property to mitigate this loss in addition to their landscaping plan. The Tree Board continues to recommend the developer use green infrastructure practices to supplement the proposed underground system and retention pond. Mr. Morrow stated if this is a condition on the rezoning it will need to be stated in the motion.

The Hendersonville Environmental Sustainability Board considered this matter at their regular meeting on September 19. The Board supports the recommendations of the Tree Board.

Planning Board Recommendation: The Planning Board voted unanimously to recommend City Council approve the rezoning request to change the zoning designation of the subject parcel from PCD Planned Commercial Development to PCDCZD.

Mr. Morrow reviewed the factors contained in Section 11-4 of the Zoning Ordinance that must be considered by the Council prior to adopting or disapproving an amendment to the zoning map. He stated the applicant, Michael Vann, and his engineer Nick Bowman, are in attendance for questions.

Michael Vann stated he is satisfied with the Tree Board recommendation of adding trees.

At 6:24 p.m., Mayor Volk opened the public hearing in accordance with North Carolina General Statutes by notice published in the Times News.

Council Member Smith asked if the recommendations of the Tree Board and Environmental Sustainability Board are the same. Mr. Morrow stated yes.

Council Member Smith asked the developer if they are satisfied with the recommendations of the Tree Board. Mr. Michael Vann stated yes, they are satisfied with the recommendations of the Tree Board.

At 6:24 p.m., Mayor Volk opened the public hearing in accordance with North Carolina General Statutes by notice published in the Times News. No one spoke in favor of the rezoning request. The following spoke in opposition to the application:

Ken Fitch, 1046 Patton Street, cautioned the project is located on a corridor with densely vegetated property, some identified as wildlife habitat. He stated a clear-cut of the property will have severe negative impact on this parcel. Although the project easily passed the Planning Board the number of trees being removed became a concern of the Tree Board who counter-proposed additional site tree planting to address this loss. He stated the applicant appeared before Tree Board and appeared to be sincerely trying to achieve accommodations while ensuring a viable project. He asked the Council to include the recommendation as conditions. He commended the developer and Mike Huffman.

No one expressed a desire to speak. The public hearing was closed at 6:27 p.m.

The Council engaged in conversation with Mr. Vann, the developer, about his agreement with the Tree Board to plant extra trees and installing impervious surface instead of regular asphalt. Mr. Vann agreed to the additional tree planting. Civil Engineer Nick Bowman of Davis Civil Solutions responded to the request of the Tree Board stating it will be difficult to meet the City's stormwater ordinance with only the green infrastructure so they are requesting to supplement the green infrastructure. He stated they will still have the underground retention system. He stated areas were identified as potential areas for green infrastructure. He stated the right triangular area is the best place for a rain garden or something similar. He asked the Council to consider the possibility of adding the green infrastructure instead of requiring it.

Council Member Smith stated the motion must be specific. City Engineer Brent Detwiler stated City staff anticipates the stormwater plan will have green infrastructure including rain gardens in some of the area identified.

There was discussion of the recommendations of the Tree Board for permeable pavement, not asphalt. Mr. Bowman requested approval for using the triangular area for bioretention to supplement the underground detention system and not require the use of permeable pavement.

Mr. Connet reviewed the most recent recommendations of the Tree Board including: the developer install four trees per 100 linear feet of property line at 2.5-inch caliper abutting the Home Depot Property to mitigate the loss of trees. They also recommended the developer use green infrastructure practices to supplement the proposed underground system and retention pond.

There was discussion of the areas proposed for the green infrastructure and the wording of the motion for enforceability.

Council Member Caraker moved the City Council adopt an ordinance amending the official City of Hendersonville changing the zoning designation of 9579-05-8899 from PCD Planned Commercial Development to PCDCZD Planned Commercial Development 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 the rezoning is consistent with the Comprehensive Plan Future Land Use Map and that the rezoning is reasonable and in the public interest for the following reasons: it meets the development goals of the area. And, with the condition the developer shall install four trees per 100 linear feet of property line at 2.5-inch caliper abutting the Home Depot property. The developer shall also use green infrastructure practices to supplement the proposed underground retention system, use three of the five suggested locations as recommended by the Tree Board and stormwater staff. These measures shall be approved by the City Engineer or his designee. A unanimous vote of the Council followed. Motion carried.

Ordinance #10-1074

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

IN RE: FILE NO. P19-21-CZD

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

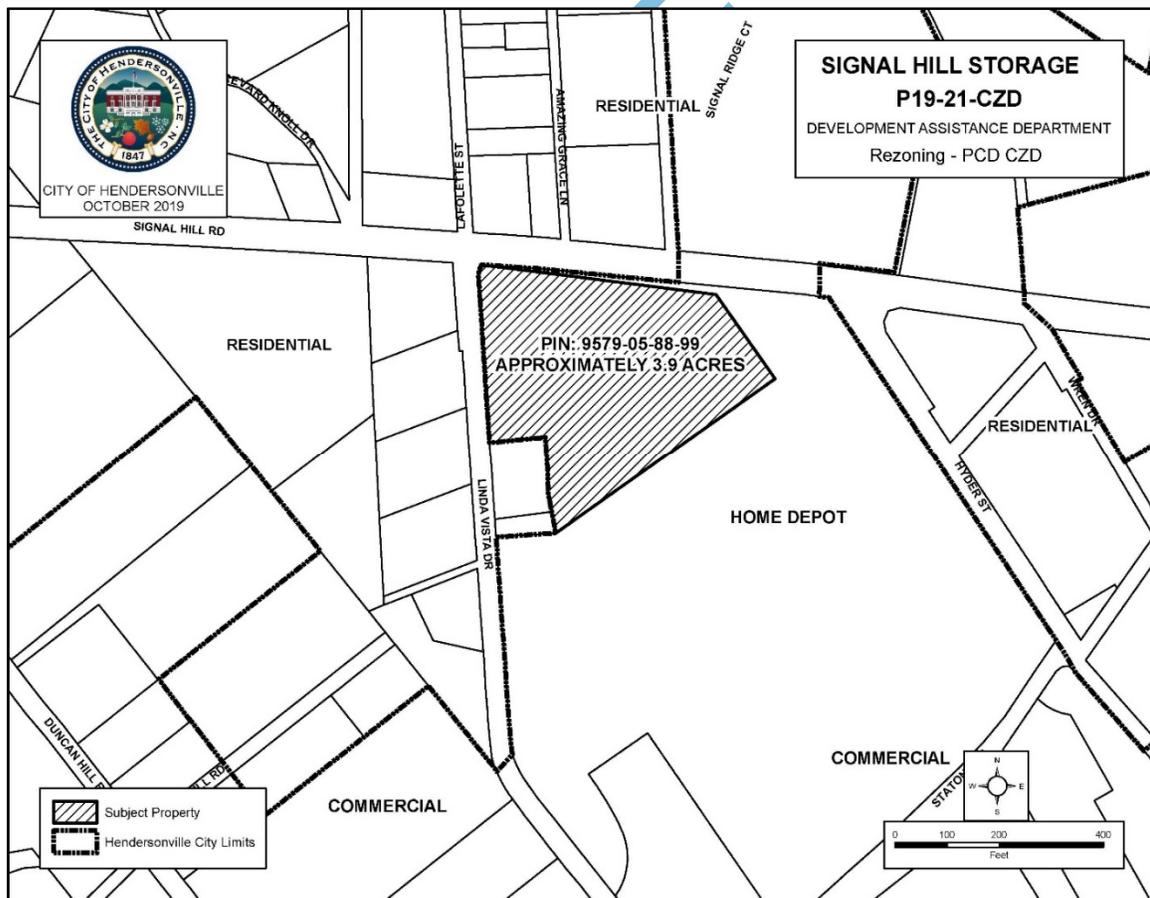
1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9579-05-8899 from PCD Planned Commercial Development to PCD-CZD Planned Commercial Development Conditional Zoning District.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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



11. Public Hearing – Consideration of Amendments to Zoning Ordinance Article VI, Section 6-18-3 and Article VII Section 7-4-5 Concerning the Submission of Traffic Impact Analysis: Planner Tyler Morrow explained the Development Assistance Department staff recommends two minor amendments to the Zoning Ordinance in order to ensure that Traffic Impact Analyses (TIA) are submitted prior to the Planning Board meeting with ample time for review by the City’s traffic consultant and NCDOT. He reviewed the proposed amendments to Article VI Section 6-18-3.

Mr. Morrow reported the Planning Board unanimously recommended approval of the Zoning Ordinance amendment.

At 6:53 p.m., Mayor Volk opened the public hearing in accordance with North Carolina General Statutes by notice published in the Times News. The following spoke in favor of the Zoning Ordinance text amendment:

Ken Fitch, 1046 Patton Street, voiced support of the amendments to the Zoning Ordinance regarding TIA requirements and urged Council's adoption.

No one else expressed a desire to speak. The public hearing was closed at 6:56 p.m.

Council Member Caraker move the City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, Article VI, Section 6-18-3 and Article VII, Section 7-4-5 concerning TIA submissions because it improves the process. A unanimous vote of the Council followed. Motion carried.

Ordinance #19-1075

AN ORDINANCE AMENDING ARTICLE VI, SECTION 6-18-3 and ARTICLE VII, SECTION 7-4-5 OF THE ZONING ORDINANCE CONCERNING TIA SUBMISSIONS

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes, and minimum housing standards and other related measures, and

WHEREAS, the General Assembly of the State of North Carolina has granted authority to municipalities to amend, supplement, change, modify or repeal zoning regulation ordinances, and

WHEREAS, the City of Hendersonville understands the need to serve all members of the community, and

WHEREAS, the City of Hendersonville supports organizations that supply services to those in need, and

WHEREAS, the City of Hendersonville desires to amend those regulations with regards to the submission of Traffic Impact Analysis (TIA).

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

1. Article VI Section 6-18-3 and Article VII Section 7-4-5 concerning TIA submissions is hereby amended to include the following:

Article VI, Section 6-18-3 TIA Submission. Three copies of the TIA, if required shall accompany the application for development authorization. The TIA shall be submitted at least 24 days prior to the Planning Board meeting in order to allow adequate time for review. The TIA shall be prepared by a licensed engineer registered to practice in the State of North Carolina who shall have traffic assessment and transportation management experience.

Article VII Section 7-4-5 Processing of Application. The completion date for the application shall be the date of receipt of all information requested by the Development Assistance Director pursuant to Section 7-3-4.3 including the TIA if required. The applicant will be scheduled for the next Planning Board meeting which is at least 24 days in the future.

2. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
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 any existing zoning violations.
6. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of October 2019

/s/Barbara G. Volk, Mayor

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

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

12. Presentation of Eagle Scout Project: Mr. Oliver Kompathoum gave some information about himself. He presented a potential Eagle Scout Project. He proposed two helmet boxes will be constructed for each of the dugouts at Berkeley Mills Park baseball field. Each box includes compartments for 16 helmets and a bin for baseball bats. The boxes will be moveable to allow for any updates to the dugouts in the future. The boxes will be painted to make them weather and element resistant.

Mr. Kompathoum gave a timeline for the project, estimated material costs and stated the final installation will be on December 7. There was discussion on how donations may be made. The Council agreed any materials left over should be donated to back to the troop for use on another project.

Council Member Smith moved the City Council to resolve to approve the Eagle Scout Project of Oliver Kompathoum to build and install helmet boxes at Berkeley Mills Park ball field. A unanimous vote of the Council followed. Motion carried. Mayor Volk thanked Mr. Kompathoum for his presentation and project.

13. Consideration of Acceptance of SAFER Grant: Chief Joseph Vindigni reported the Fire Department applied for a Staffing for Adequate Fire and Emergency Response (SAFER) grant through the Federal Emergency Management Agency (FEMA) and Department of Homeland Security (DHS). He reported the \$1.2 million SAFER grant has been awarded to the City by FEMA, effective 09/13/2019. He requested the City Council accept the grant award.

Chief Vindigni explained in the first and second years of the grant, 75 percent of the usual annual cost of a first-year firefighter at the time the grant application was submitted will be covered by the grant. In the third year, the grant will fund 35 percent of the salary and benefits for the same employees. He provided a detailed budget summary.

Chief Vindigni stated their plan is to hire 12 firefighters and staff an additional apparatus and three much needed battalion chief positions. He stated these positions will increase the fire department's availability to provide services, allow them to operation safer, and increase services to the citizens.

Council Member Caraker moved the City Council to resolve to accept the \$1,252,324.20 SAFER grant for the purpose of staffing 12 positions in the City of Hendersonville Fire Department. A unanimous vote of the Council followed. Motion carried.

14. Consideration of Request to Eliminate Timed Parking on Bearcat Boulevard from Church Street to Fleming Street and Oakland Street from 6th Avenue to US Highway 25 during the Construction of Hendersonville High School: Council Member Smith stated parking will be temporarily eliminated during the construction of the High School in the December or January time frame. He introduced the idea of Council removing some of the timed parking along one side of the street of Oakland Street and Bearcat Boulevard for approximately two years to provide parking for staff and students. He stated this will help with the parking challenge.

There was discussion on the number of businesses on Bearcat Boulevard that this will this affect. Council Member Smith stated only one business fronts on Bearcat Boulevard. Mayor Pro Tem Stephens commented he does not see full parking spaces on Church Street which is convenient parking for students.

There was also discussion of the parcel owned by Henderson County that could be used for temporary gravel parking lot. Council Member Miller suggested the City assist with grading, etc. of the County-owned parcel. Council Member Smith will ask the question about the parcel. **No action was taken by the Council.**

15. Presentation of Fourth Avenue Streetscape Design: The Council received a presentation from Civil Engineer Brendan Shanahan on the improvements of the Fourth Avenue streetscape which will coincide with the opening of the Grey Mill apartments and will improve pedestrian safety and functionality of the infrastructure, expand the downtown aesthetic beyond Main Street and improve the conveyance and treatment of stormwater. He also proposed six additional parking spaces on Fourth Avenue between King and Grove Street.

Mr. Shanahan stated traffic engineering consultants Mattern & Craig studied the intersection at Fourth Avenue and Grove Street to address pedestrian safety issues there. They recommend the installation of a traffic signal with pedestrian phasing.

Mr. Shanahan discussed the items that will improve the experience on Fourth Avenue including: improved ADA compliant curb ramps, adding paver crosswalks to the Fourth Avenue/King Street and Fourth Avenue/Grove Street intersections, the addition of decorative lamps and narrowing the sidewalks and roadway between King and Grove to allow approximately six additional street parking spaces. He also proposed a stormwater bumpout to treat some of the urban runoff while providing an additional green area. There was discussion of the semi-actuated traffic signal at Fourth Avenue/Grove Street.

Mr. Shanahan recognized and commended the Public Works Department and their skilled staff willing to take on this project which realizes a significant cost savings.

No action was required by the Council.

Timeline: Mr. Shanahan stated demolition will begin in November. He stated the construction of the project will be phased around the construction schedule of the Mill Building apartments.

16. Consideration of Amendments to Customer Service Policies and Ordinances and Fee Schedule: Finance Director John Buchanan requested Council's approval of the updated policies and ordinances related to water and sewer, environmental services and uniform customer service policies and procedures.

Revenue Supervisor Jennifer Musselwhite presented amendments to Code of Ordinances Chapters 44 and 52, updated Customer Service Policies and Procedures and amendments to the Fee Schedule that will assist in developing a formal Policies and Procedures Manual for customer services and utility billing.

Council Member Caraker moved the City Council to approve the ordinances authorizing the use of electronic signatures, amending Chapters 44 and 52 of the Hendersonville City Code, and to resolve to approve the new customer service policies and procedures and the amendments to the Fee Schedule. A unanimous vote of the Council followed. Motion carried.

Ordinance #19-1076

AN ORDINANCE ADDING A SECTION ENTITLED "AUTHORIZE THE USE OF ELECTRONIC SIGNATURES IN DOCUMENTS", 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 City of Hendersonville is to add the text of Authorize the Use of Electronic Signatures in Documents, of the Code of Ordinances.

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

Section 1: Authorize the Use of Electronic Signatures in Documents, of the Hendersonville Code of Ordinances is hereby added to read as follows:

Findings and Declarations:

- a) Electronic signature technology allows the City of Hendersonville to collect and preserve signatures on documents quickly, securely, and efficiently.
- b) The North Carolina Secretary of State has adopted regulations governing electronic signatures, which are not suitable to govern the use of electronic signatures by the City of Hendersonville.
- c) The conditions under which the City of Hendersonville will accept electronic signatures on City documents are a municipal affair, wholly within of the City Council to regulate pursuant to the City.

Electronic Signatures (Electronic Signatures) of the Hendersonville Code of Ordinances is hereby amended to read as follows:

- a) In any document accepted by the City in which a signature is required or used, the City may authorize the use of an electronic signature, so long as it complies with the requirements of this section.
 - 1) The use of an electronic signature shall have the same force and effect as the use of a "wet" or manual signature if:
 - a. The signature is capable of verification;
 - b. The signature is under the sole control of the person using it; and
 - c. The signature is linked to the data in such a manner that it is readily ascertainable if the data is changed after the signature is applied.
 - b) The City Manager shall determine acceptable technologies and vendors under this section consistent with industry best practices to ensure the security and integrity of the data and the signature. The City Manager shall further determine the documents for which the City will accept electronic signatures.

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

Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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

Ordinance #19-1077

AN ORDINANCE AMENDING CHAPTER 52 ENTITLED "UTILITIES, ARTICLE IV- CONNECTION TO WATER AND SEWER LINES" 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 City of Hendersonville is to amend the text of Chapter 52- Utilities, Article IV, of the Code of Ordinances.

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

Section 1: Sec. 52-46. Deposits required, of the Hendersonville Code of Ordinances is hereby amended to read as follows:

~~Along with the application for utility services, the applicant may be required to pay to the city a deposit as follows: in an amount equal to the charges for an average two-month period; provided, however, that if such service increases to a point where such deposit is not equal to the charges for an average two-month period, the required deposit may be increased to conform thereto.~~

- (a) The following deposits are required for all utility services inside and outside the corporate limits:
 - 1) Customers of utilities, opening accounts after the effective date of the ordinance from which this section is derived, shall make a deposit in the amount set forth by city council per the currently approved rates and fee schedule.
 - 2) The deposits heretofore or hereafter made shall be used for the purpose of ensuring the payment of utility bills and to secure the city against any loss that might be incurred in furnishing water or servicing such account, and such deposit shall be refunded after 24 consecutive months of good payment history or upon termination of service. The city may, at its option, apply the deposit, or any portion thereof, to the payment of indebtedness which may accrue against the depositor or premises for and on account of which the deposit is made.
- (b) Utility water customers who deposit or portion of deposit is used to apply to account balances will be required to restore the deposit on the account before services will be restored. All applicable charges shall be required to be paid before water service shall again be furnished to the premises in question.
- (c) The deposits required by this section to be paid to the city shall be without liability on the part of the city for profit or interest.
- (d) The City retains the right to retain deposits indefinitely to assure payment of utility charges.
- (e) Every account holder may be required to pay a deposit for each property/account with the City.
- (f) Property owners that have a landlord/tenant agreement with the City may be required to maintain a deposit on the account for each property/account.

Section 2: Sec. 52-126. To be made within 30 days after mains are ready for use, of the Hendersonville Code of Ordinances is hereby amended to read as follows:

~~Within 30 days after the time of failure of a well or a septic tank system and when any water main in any street or deeded easement is completed and ready for use, the owner of every abutting lot whereon water is supplied for any human use shall cause such lot to be connected with such water main. Within 30 days after the time when any sewer main in any street or deeded easement is completed and ready for use, if a sewer main has also been installed in such street or deeded easement, the owner of any abutting lot having thereon improvements for human occupancy shall cause the appropriate internal sewer plumbing to be installed and to be connected with the sewer main; provided, however, that the owner of the premises shall be notified in writing by the city of the installation of the water main and/or the installation of the sanitary sewer, and shall be allowed 30 days after such written notice within which to make the required connection(s).~~

Section 3. A new section entitled Correction of Errors is hereby added to read as follows:

Failure to receive a utility service fee bill is not justification for nonpayment. The owner of each parcel of land shall be obligated to pay such fee. If a customer is under-billed or if no bill is sent, the city may process a corrective bill to the owner up to two years. Adjustments shall be made to correct clerical and/or computer errors. If a customer is incorrectly billed, or not billed, or a bill is sent to the wrong party, the city may corrective bill the customer for the lesser of the actual period up to a two-years for utility charges. Similarly, in the event

customers are charged for services due to city error, a credit adjustment will be allowed only for amounts paid by the customer for charges incurred within the prior two years for utility charges.

Section 4. A new section entitled Inactive Service is hereby added to read as follows:

All utility services shall become active once the initial connection (tap and meter) to the utility system is set into place. Deactivation of accounts for simple convenience will not be permitted and all improved property will be subject to minimum base charges per the City of Hendersonville Fee Schedule. Services shall become due and payable during the billing cycle immediately following service billing activation and can include corrective billing up to 2 years. New construction and vacant lots, including demolition or condemnation, will have services activated once the connection (tap and meter) to the utility system has been made. Owners of vacant property, including demolition or condemnation, shall notify the City of Hendersonville of property status and request removal of meter in order to avoid minimum base charges.

Section 5. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption. Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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

Ordinance #19-1078

**AN ORDINANCE AMENDING CHAPTER 44 "SOLID WASTE MANAGEMENT"
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 City of Hendersonville is to amend the text of Chapter 44- Solid Waste Management, Article I, of the Code of Ordinances.

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

Section 1: Chapter- 44. Solid Waste Management, of the Hendersonville Code of Ordinances is hereby amended to read as follows:

Chapter Title: ~~Solid Waste Management~~ Environmental Services

Section 2: Sec. 44-42. Level of service, of the Hendersonville Code of Ordinances is hereby amended to read as follows:

All residential units shall be provided once-per-week curbside collection service. Commercial and industrial establishments utilizing Ez-rollum containers shall be provided once-per-week collection service by the City. Commercial and industrial establishments disposing of more than four cubic yards weekly or requiring special consideration due to health and other sanitary reasons shall contract collection service upon approval from the Public Works Director or designee.

Section 3: Sec. 44-43. Preparation and storage of residential refuse for collection, of the Hendersonville Code of Ordinances is hereby amended to read as follows:

It shall be the duty of the occupant or owner of any premises to keep all refuse pending collection and disposal as follows:

...

(11) Charges may be applied to these services based on the currently approved Fee Schedule.

Section 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption. Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

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

City of Hendersonville Billing Policy and Procedures

Introduction: The policies and procedures contained in this document are intended to define the relationship between the customer of utility services including water, wastewater, stormwater and solid waste collection and the City of Hendersonville. These policies are, by notification of and available to all customers, made part of the contract for service entered into by the customer. By contracting for service, the customer acknowledges the applicability of these policies and procedures and agrees to abide by them.

Authority: The enactment of standard utility policies requires the approval of the City Council. As fee schedules, rates and other specific policies are updated, it will be the responsibility of the Finance Department to ensure this policy manual is revised in accordance with City Council action.

Office and Service Hours: The City Customer Service Department is located at 160 6th Avenue East and is open from 9 a.m. to 5 p.m. Monday through Friday. Routine and regular service work will be performed from 8 a.m. to 5 p.m. Monday through Friday except for City holidays. Service work for unusual conditions may be arranged at other times upon customer request and may require an additional fee.

A 24-hour drop box is available for customer payments in the City Hall 6th Avenue parking lot. Payments made after 8:00 am at the drop box are posted the next business day.

Privacy: Our application/agreement requires that the potential customer provide their social security number. We request this number to verify identity, check credit worthiness, protect sensitive account information, and collect delinquent balances. There is no statutory or other authority requiring any customer to provide a social security number. However, when customer billing data is requested, the last four digits of the social security number or Tax ID Number will be used to verify identity prior to any information being given out by staff. Staff members have the authority to request other verifying information to protect the City as well as City customers against fraud. Customer billing data is not considered public information. The City will ensure that customer information, including billing data, is safeguarded against unauthorized use. (Please see the attached Customer Social Security Collection Form attached in Appendix 1.)

A. Establishing Service. All connections to the City of Hendersonville water and sewer system are required to have an active account. New service accounts are required to submit an application along with proper documentation for approval to the City of Hendersonville Customer Service Department to set up a customer account. Any connection that does not timely set up an account may be required to pay for all charges from time of connection to the most recent billing period prior to opening an account.

1. Application. A completed application for service must be received and reviewed for completeness by the Customer Service Department prior to installation of new service or releasing responsibility of prior customer if residence is sold, transferred, or leased to a new tenant. Service is conditioned on satisfaction of all previously owned (and still legally collectible) utility debts to the City.

i. As part of the application process, the City requires that the applicant provide a valid government issued identification document (driver's license, passport, state identification card, military identification

- card, etc.) and requests a social security number. A new application must be submitted for every connection, regardless of prior connections to an existing address or customer history. An application is provided in Appendix 1
- ii. Property Owners shall provide a closing statement or deed to verify ownership. Property owners may have utilities connected at more than one location if all accounts remain in good standing with the City. Any delinquency for utility services at any location may prevent a property owner from establishing new service. Property owners with rental property are required to have service automatically revert to them when a tenant requests services to be discontinued in their name. This may prevent the owner from having to apply for service with each occurrence. A separate landlord agreement must be completed before tenants may start service in their name.
 - iii. Non-Property Owners shall provide the City with a copy of a lease/rental/occupancy agreement and may be limited to one service location at any given time. The non-property owner's utility account may be set up in the name or names specified in the lease/rental/occupancy agreement. In the event any person named in the lease has any outstanding utility debt with the City, that debt shall be paid in full prior to service connection. If a lease/rental/occupancy agreement cannot be provided, an Application for Utility Services may be denied.
 - iv. Multi-Unit Residencies shall provide the City with verification of ownership listing all units by street address and unit number, if applicable. Owners of the property shall provide the City with a list of authorized agents who act upon their behalf (e.g. site managers, real estate agents). The account may not be set up in the name of the property owner, site manager, or real estate agent. A federal identification number or social security number may be requested for access to account information and use in the collection of any delinquencies owed to the City. It is required that multi-unit establishments have account responsibility automatically revert to owner establishment when a tenant requests for services to be discontinued in their name. Multi-unit residency owners or agents may have utilities connected at more than one location if all accounts remain in good standing with the City. Any prior delinquency for utility services at any location may prevent an owner from establishing new service.
 - v. Revert-To-Owner Contract for Continuous Utility Service shall provide property owners and managers the ability to maintain continuous utility service while a rental unit is vacant. A Contract must be completed and a listing of all premises (service addresses) must be completed and submitted by the Owner(s)/Property Manager(s). By signing the contract, the owner(s) or manager(s) are agreeing to be responsible for utility services and related costs between the time service to outgoing tenants is terminated and service to incoming tenants is initiated, including base charges. Upon completion of the contract, staff may attach the contract to the property owners Customer Identification number, add all service addresses to the Revert-To-Owner Property Listing, set up owner information in the utility billing system, and file accordingly. The premise visit charge may only be charged to an account if utility service has not been previously established at a premises/service address in the name of the applicant. Utility bills for all properties included in the Contract may be sent to the mailing address provided on the Contract and may not be the same as one of the properties covered in the contract. Service is to automatically revert to the owner upon notification by a tenant to discontinue service in their name. As stated in the contract, no notification may be given to the owner/manager in such situation. If service is discontinued by the City due to non-payment or interference with normal service (i.e. meter tampering), service shall not automatically revert to the owner. Once service has been terminated for non-payment or interference with normal service has occurred, service at the premises may be reinstated only if (1) arrangements are made to pay in full all amounts due on the account in accordance with these policies; or (2) proof is provided to the City of Hendersonville that the non-paying tenant no longer occupies the premises. Owner(s)/Property Manager(s)/Tenants may be denied service in the instance the Owner(s)/Property Manager(s) are delinquent at any utility service location. The contract shall be made in an initial term of twelve months and shall be automatically renewed for subsequent terms of twelve month. Termination of the contract must be provided in writing by either part. Adding a property to the Contract may not automatically activate a meter that is not in use. City staff must be notified and directed to activate meters at property that is not in use.
 - vi. Multiple Delinquencies per Service Location shall require the property owner, or their specified agent on record, to be the contracting utility customer after three (3) delinquencies on utility accounts have occurred at a specified location in an eighteen-month period (18) month period. A delinquency on a utility account is when a utility customer is indebted to the City after all deposits and payments are applied during the finalization process. Service may remain in the name of the owner or agent; however, an authorization form to release utility billing information may be completed in order to give additional persons access to account information for the purpose of payment and balance requests.
2. Reasons for Denial of Service. Applications for utility service may be denied for any one of the following reasons: - A lease/rental/occupant agreement cannot be provided - Validity of lease/rental/occupant agreement is in question and the property owner cannot be reached - There are three or more delinquencies at a service location in a eighteen (18) month period occurring after adoption of these policies resulting in services being provided to the property owner or agent on record only - Questionable Identification – inability to provide verifiable or valid identification.
3. Customer Deposit. The purpose of a customer deposit is to try to ensure that all utility charges are collected. All new customer accounts are required to pay a deposit on the most recently approved rate tier. The customer's Utility Credit Worthiness and type of service may determine the deposit tier. Upon termination of an account, the deposit may be applied to any outstanding balance. Any remaining deposit greater than \$5.00, after applying to the outstanding balance, may be refunded. As part of the application process, the Customer Service Department may determine if you may be required to pay a deposit on your account based on your credit rating. With a good credit rating, this deposit fee may be waived. The amount of the deposit shall be set from time to time by City Council (Rate & Fee Schedule).
- i. Any current customer that does not have a deposit with the City of Hendersonville whose service is involuntarily terminated for nonpayment, tampering, or other reasons more than twice in any 12-month period, may be required to pay a deposit in the amount described above.
 - ii. Any person requesting utility service who has previously had an unpaid balance to the City may be required to repay this amount, plus pay a deposit.
 - iii. The City has the right to apply the customer deposit to any unpaid utility charges after an account is more than 60 days past due. If all or any portion of a customer deposit is applied to past due charges, and the customer continues to receive utility services, the City may require the customer to replenish deposit amount that may added to bill upon approval and subject to disconnection for nonpayment.

- iv. Any customer that elects not to disclose their social security number will be considered a "high-risk," due to our inability to complete the credit check. Deposits will be calculated in the high risk tier and calculated at (2) two times the deposit amount.
 4. Refund of Deposit. The City reserves the right to retain deposits indefinitely to assure payment of utility charges. No interest may be paid upon deposited amounts. However, the City may elect to refund deposits in the following situations provided the account is at a zero balance:
 - i. Deposits on accounts within 24 consecutive months of good payment history (no late fees, insufficient funds penalties, or service disconnections) may be applied to the existing utility account; or
 - ii. Upon customer request for termination of service and City determination that either the residence or business may remain vacant or another responsible person has applied for service.
The City retains the option of effecting refunds by applying to outstanding or future utility charges. No refunds may be made for amounts less than \$5.00.
 5. Temporary/Voluntary Disconnection of Service. In the event a customer will not occupy a residence for an extended period and requests water to be turned off at the meter, utility base charges may be billed during this time by City ordinance. A premise visit may be charged to turn off the meter at each property/account.
 6. Permanent or Indefinite Disconnection of Services. In the event a residence is demolished, condemned, or court ordered abandoned, the customer/property owner or legal representative may request that the meter on the property be removed at the currently approved charge per the Fee Schedule. City approved documentation must be received before meter services may be removed. If the meter is removed, and service discontinued, the base charge may not be applied to the account. If the service is not disconnected and the customer resumes using utility services, the City retains the right to bill for past services not to exceed two years.
 7. Sanitation Disconnection. In the event a residence is demolished or condemned, or court ordered abandoned the customer/property owner or legal representative may request that the sanitation containers be removed at the currently approved charge per the Fee Schedule. City approved documentation must be received before sanitation services may be removed; Charges may discontinue effective the date of City approved documentation has been received in writing to the Customer Service Division. If the service is not disconnected and the customer resumes using sanitation services, the City retains the right to bill for past services not to exceed two years.
 8. Stormwater Disconnection. In the event a residence is demolished or condemned, and all impervious surfaces have been removed from the property, stormwater charges may be discontinued upon approval. City approved documentation must be received before stormwater services may be discontinued. Charges may be discontinued effective the date that City approved documentation has been received in writing to the Customer Service Division. The Stormwater Division or a designee must approval all discontinuance of stormwater charges. The Stormwater Division or their designee may require a site visit to the property to verify all requirements have been completed. If these requirements are not meet the City retains the right to bill for past services not to exceed two years. Additional property visits may be required, after the initial visit the City maintains the right to charge for each additional premise visits per occurrence.
 9. Meter Tampering. The City does not allow for any unauthorized person(s) to open a meter box to interfere, alter, tamper with, or bypass a meter which has been installed for the purpose of measuring the use of water or knowingly to use water passing through any such tampered meter or water bypassing a meter provided by the City for the purpose of measuring and registering the quantity of water consumed. City of Hendersonville Ordinance 52.13. Any meter or service entrance facility found to have been altered, tampered with, or bypassed in a manner that would cause such meter to inaccurately measure and register the water consumed, or which would cause the water to be diverted from the recording apparatus of the meter, shall be prima facie evidence of intent to violate and of the violation of this section by the person in whose name such meter is installed, or the person or persons so using or receiving the benefits of such unmeasured, unregistered, or diverted water. Any person(s) not authorized by the City operating any valves on the water distribution system, which included the cut off valve at the meter, hydrants, etc. shall be charged with tampering. Per North Carolina General Statute 14-151.1
 - i. Any person violating any of the provisions may be liable to the City any losses and shall also be charged for the cost to repair and or replace any damages sustained. A fine may be charged per occurrence per the most recently approved Fee Schedule.
 - a. First Occurrence-notification letter to the property owner
 - b. Second Occurrence-notification and fine
 - c. Third Occurrence-notification, fine which may include any additional civil or criminal charges including recover of water loss or damage to City property.
 - ii. If water is cut on illegally after disconnection due to nonpayment of a utility bill, this may cause the removal of the water meter and may result in additional charges. Reestablishing services may incur additional charges which may include deposits, fines and payment of all charges on the account before reconnection.
 - iii. The City may make a reasonable effort to hold tenants responsible for any damages associated, or loss recovery of water usage. However, if the tenant is not available, the landlord or property owners may be responsible for any fines, any damages associated, or loss recovery of water usage.
 10. Waste of water. Failure to repair utility services within 30 days of detection by the City or property owner, the City may disconnect utility service until the leak has been repaired. Approved City documentation must be submitted and approved before services may be restored. Certified mail notification by the City may be sent to the current owner and occupant of the property on file. Ordinance 52-6.
 - B. Utility Billing Procedures. The City of Hendersonville Revenue Department bills for Water, Sewer, Sanitation and Stormwater services. Please visit the City of Hendersonville webpage to see the bill cycle schedule.
 1. Billing
 - i. Bills shall be prepared monthly for each billing cycle. Billing cycles dates are based on service area and are as close to 30 days as practicable.
 - ii. Bills are due 15 days from the billing date. Payment may be made by check, money order, bank ACH draft, in cash at the Collections office, or by any other means offered by the City.
 - iii. All bills not paid within 25 days are subject to late penalty of \$10.00 or 5% whichever is greater of the unpaid balance. If payment is not received and receipted by the 25th day at 5 pm, a late charge may be added to the customer's account.
 - iv. All bills not paid within 45 days are subject to disconnect. If payment is not received by the 45th day before 5 pm, a Nonpayment Service Disconnection Charge, per the most recently approved Fee Schedule, may be added to the customer's account, and the account is subject to disconnection. To restore service, the entire account balance, including fees, must be paid in full.

- v. If a bill is returned to the City of Hendersonville by the post office or email as undeliverable, the Customer Service Department shall make all reasonable efforts to obtain a forwarding address and correct the address in the Utility records. In the event the bill becomes delinquent, the Revenue Department shall follow the collection efforts below. Customers are responsible for all billing regardless of receiving a monthly bill.
- vi. Payments may be applied to customer accounts in the following order; fees or miscellaneous charges, sanitation, sewer, and water charges.
- vii. Sanitation Charges - Every account within the city limits may be billed a Solid Waste Management Charge monthly. Commercial accounts meeting the criteria set by City Ordinance can contract with a private service upon approval from the Public Works Director. The charge may be waived for commercial or industrial properties upon providing documentation of such to the City. Requirements for containers and services may change based on the approved charge per the Fee Schedule.
- viii. It is the responsibility of the property owner, account holder, or authorized designee to advise the City to whom and to what address bills are to be sent (e.g. new owner or renter). A Utility Billing Change Form is available from the Customer Service Department for any changes that are necessary to an update an account. Only an account holder or authorized party can request changes to billing information and statuses.
- ix. If the City has overcharged or undercharged a customer for service, the City may correct this error subject to the following procedures:
 - a. If the City has overcharged a customer for service, the City may credit the customer's account, without interest, the excess amount and notify the customer by letter. Customers may request a refund of such excess charges if they were previously paid in full. Credit to a customer's account is subject to the following limitations:
 - b. If the time period over which the mistake occurred can be determined, the City should credit or refund the excess amount charged the account for that entire interval, provided that such time period shall not exceed the statute of limitations as set forth in the N.C. General Statutes.
 - If the time frame of the problem cannot be determined, the City should refund the excess amount charged during the previous 12 months.
 - If an overcharged customer owes a past due balance to the City, the City may deduct that past due amount from any refund or credit due the customer.
 - c. If the City has undercharged a customer for service, the City may collect the additional amount due the City by billing the account. A payment plan or other payment options may be extended to a customer for repayment of charges billed from prior billing periods. If a customer receives notice of undercharging and does not contact the City to make payment arrangement for such amount by the subsequent due date, the account may be disconnected for nonpayment in accordance with this policy.
 - d. If an undercharge has occurred because of tampering or bypassing a meter or because of other fraudulent or willfully misleading action of the customer, the City shall collect the entire undercharged amount in a lump sum and seek such other rights and remedies as are permitted by law.
2. Returned payments.
 - i. Payments returned due to insufficient funds, closed accounts, or other issue not related to a City error may be charged a fee according to the current fee schedule. If the return was due to City error, the fee may be waived.
 - ii. Customers may lose the ability to use a payment method for two years if a payment has been returned due to insufficient funds, closed accounts, or other issue not related to a City error two times in a 12-month period.
 - iii. Customers who do not make good on any returned payment and applicable fees may be considered to have not made any payment and may be subject to procedures for late charges and disconnection of service.
 - iv. The Revenue Department may also send a letter notifying the customer of these events and request replacement funds or alternative payment arrangements.
 - v. Payment return fees may be added to the account and must be paid with other past due charges to continue Utility service.
 - vi. Returned payments made by a customer to avoid disconnection on an account may be subject to immediate disconnection. All fees and account balances including a Nonpayment Service Disconnection Charge may be paid before service is reconnected.
3. Collection of Past Due Utility Charges.
 - i. Accounts 25 days past due. A cut off notice may be mailed when a bill is 25 days past due. If payment is not received by 5 pm on the 45th day, a Nonpayment Service Disconnection Charge in accordance with the fee schedule in effect at that time may be added to the customer's account. The account may then be disconnected.
 - ii. Accounts over 90 days. If payment is not received within 90 days, the City may take one or more of the following actions, as to the most optimum method of securing payment:
 - a. The Revenue Department may send the name, address, and balance due to the City's collection agency or NC Debt Setoff Program.
 - b. The terms of the nonpayment may be communicated to any or all nationally recognized credit reporting agencies.
 - c. Customer may be denied access to Utility services.
 - d. If a sewer-only account is cut-off, Operations Support staff may leave a door hanger at the service address noting the date of disconnection, which must be at least one business day after placement of the notice. Operations Support staff may use spray paint to mark the service connection location in the right-of-way for the excavation crew. If the customer wishes to reinstate service, a charge must be paid for replacement of the sewer tap, based on the schedule rates and fees currently in force, in addition to payment of all past charges.
 - e. Remaining balances on terminated accounts may be transferred to a customer's active utility account for collection of charges due. These charges may be subject to the disconnection policy and may cause the active account to be disconnected for nonpayment.
4. Extended Payment Option. Payment plans may only be available for past due balances related to leaks or accounts that are back billed for previously unbilled usage. Accounts that have past due charges related to regular monthly billing will not be eligible for payment plans. The Revenue Department will review the account to establish a payment plan for the customer. The customer will be required to sign a payment plan form specifying the terms of the payment plan. Customer must continue to pay regular monthly charges plus a portion of the payment billing or a denied leak adjustment. If a customer has any returned, missed,

or delinquent payments on the account, the payment plan may be voided, and the balance will be due immediately.

5. Payment Plan Reinstatement. Customers may apply for reinstatement one time over the course of the plan payment. Revenue Department may review the request for reinstatement. If reinstatement is granted, all missed payments including any fees must be paid to reinstate the payment plan.

6. Deceased Account Holder/ Estate Account. When an account holder is deceased, a Utility Billing Change Form or New Service Application must be completed in order to transfer an account into the name of the responsible party within 45 days. The City may request legal documentation including, but not limited to, death certificates, wills, or other legal documents to process the utility billing change request. If the City of Hendersonville receives notice or determines that an account holder is deceased, notification of account closure may be mailed to the address on record. The letter may set forth a date in which a Utility Billing Change Form must be received to continue services at the location of the deceased account holder. If the responsible party is not the property owner, an Application for Utility Services must be filled out and the application process must be completed in accordance with this policy.

An account may be transferred into the ownership of an estate. A Utility Billing Change Form is required, and the City may request legal documentation from the executor or the person responsible for administering an estate. It is the responsibility of the executor or other person administering the estate to notify the City of any changes in account status. The City of Hendersonville may allow an account to remain in the name of an estate for a period of 4 months from the date of service connection. It is the responsibility of the executor or administrator of the estate to either disconnect or transfer ownership of the account into the name of a responsible person prior to this date. If an application has not been processed to transfer ownership of the account in the timeframe specified, services may be disconnected without further notice.

7. Service Call Charge. A service call charge may be charged for services performed by City staff that is not deemed necessary by the City. Such services include, but are not limited to, re-reading of meters, checking a meter for a possible leak, shutting meter off more than two times during any single leak event while leak on the customers side is being repaired and the testing of meters for accuracy. The City may charge a service call charge for services that require multiple visits to a property. Such services include, but are not limited to, leaks, temporary disconnection for repairs or any other services.

C. Consideration of Credits and Refunds

1. Refunds. No refunds less than \$5.00 may be made on a customer's account.

2. Credits.

i. Filling Swimming Pools. The City does not allow adjustments for filling pools or spas. Customers can apply for a separate irrigation meter to fill pools or spas which may not charge for sewer usage.

ii. Leak Adjustments. The customer is responsible for leakage in the piping on his/her property on his/her side of the water meter and will be charged for water and/or sewer based on water use as indicated on the meter. This is being defined as that point at which the customer's plumbing connects either directly to the meter box or the customer's shut off valve connects directly to the meter box. The City does not repair leaks on the customer's side of the water meter. The City of Hendersonville may allow credit for utility charges resulting from leaks on the customer's side of the meter.

1. Credit may be extended to the customer's account/property only once every 24 calendar months upon approval.

2. Customer must submit a completed Leak Adjustment form within 30 days of leak detection either by the City or the customer.

3. Customer must provide to the City of Hendersonville an invoice from a licensed plumber for repairing the leak(s). This must be accompanied by a statement confirming that a leak (or multiple leaks) had been repaired, and a description describing where the leak(s) occurred.

4. A customer may make their own repairs. If a customer makes their own repairs, all receipts for parts and pictures of the leak site prior to repair and after completion are required to be sent to the City for approval.

5. Leak adjustments may be calculated based on one and one half (1 1/2) times the residential customer's average monthly consumption amount. Average monthly consumption is based on the twelve (12) month average prior to the month showing excessive use. If previous consumption is less than 12 previous months, the City may require 3 additional months of normal usage before adjustment calculation can be processed.

6. No credits or adjustments of \$ 5.00 or less may be given unless the cause for the credit or adjustment is an error by the City of Hendersonville.

17. Consideration of Request by Friends of the Oklawaha Greenway to Designate Native Plant Bed in Memory of Wes Burlingame:

Mr. Connet presented the request from Friends of the Oklawaha Greenway to memorialize Wes Burlingame. He stated the Friends of the Oklawaha Greenway recently arranged to replant and maintain the beds of native plants surrounding the Greenway's red kiosk and have requested the City Council consider designating these beds in memory of Wes Burlingame to show their deep appreciation for Wes Burlingame's many years of support for the Hendersonville Tree Board, the Greenway, and the broader Hendersonville community. Mr. Burlingame's Native Tree Walks on the Greenway were always popular, and he provided key leadership in planting its pollinator beds. He stated if Council approves, the Friends of the Oklawaha Greenway will prepare and install a suitable plaque. **Council Member Miller moved Council to resolve to approve the request of the Friends of the Oklawaha Greenway to designate the native plant bed in memory of Wes Burlingame. A unanimous vote of the Council followed. Motion carried.** Mayor Volk commented Mr. Burlingame did a lot of good work on the Greenway and this is a good way to remember his work.

17a. Consideration of Options for the Purchase of Property for a Parking Deck and Associated Budget Amendments:

Mr. Connet stated staff has been working with a prospective hotel developer on the Dogwood Parking Lot. He stated the hotel developer will purchase the Dogwood property and the City will replace the parking. He stated staff has been discussing selling the entire property for the hotel and on-site parking and locate additional property to site a parking deck for downtown businesses and visitors.

Mr. Connet reported staff has approached property owners at the corner of Fifth Avenue and Church Streets to obtain options on two properties for possible purchase. He stated the City will still have to do the due diligence

and continue through negotiations for the hotel project. He requested authorization to obtain options for the properties for the possible use of parking in downtown Hendersonville.

- i. Jackson Property:** City Attorney Fritschner reported a negotiated figure of \$10,000 was reached for an option of a lot owned by Frank B. Jackson. This sum of course would be nonrefundable but would apply toward the purchase of the lots if this occurred. The option period would last from October 4, 2019 to June 4, 2020. **Council Member Caraker moved Council adopt the resolution authorizing and directing the city manager to execute the option contract with Frank B. Jackson in the amount of \$10,000.00 and the option contract with TJJ Enterprises LLC in the amount of \$8,000.00. A unanimous vote of the Council followed. Motion carried.**

Resolution #19-1079

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPTION CONTRACT WITH RESPECT TO CERTAIN REAL PROPERTY IN HENDERSON COUNTY

WHEREAS the City Council is considering purchasing certain real property between Wall and Church Streets on the South Side of Fifth Avenue, PINs 9568-78-5480 and 9568-78-5391, for the construction of a parking garage, and

WHEREAS the city manager has provisionally agreed with the owner of the said real property that \$10,000.00 is a fair price for an option agreement on the said property, and

WHEREAS the City Council finds \$10,000.00 to be a fair and equitable price for the said option contract,

NOW, THEREFORE, BE IT RESOLVED that the city manager be and he is hereby authorized and directed to execute an option contract with the owner of the said tracts for the sum of \$10,000.00 and with such additional terms as the city manager in consultation with the city attorney finds just and reasonable.

Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

Budget Amendment: Funds 10, 410, \$10,000

An amendment to transfer \$10,000 for a property option associated with the hotel development project. A budget transfer is needed to move funds from General Fund contingencies to the Capital Projects fund.

- ii. TJJ Enterprises, LLC Property:** City Attorney Fritschner reported a negotiated figure of \$8,000 was reached for an option of a lot owned by TJJ Enterprises, LLC. This sum of course would be nonrefundable but would apply toward the purchase of the lots if this occurred. The option period would last from October 4, 2019 to June 4, 2020.

Resolution #19-1080

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPTION CONTRACT WITH RESPECT TO CERTAIN REAL PROPERTY IN HENDERSON COUNTY

WHEREAS the City Council is considering purchasing certain real property between Wall and Church Streets on the South Side of Fifth Avenue, PIN 9568-78-6365, for the construction of a parking garage, and

WHEREAS the city manager has provisionally agreed with the owner of the said real property that \$8,000.00 is a fair price for an option agreement on the said property, and

WHEREAS the City Council finds \$8,000.00 to be a fair and equitable price for the said option contract,

NOW, THEREFORE, BE IT RESOLVED that the city manager be and he is hereby authorized and directed to execute an option contract with the owner of the said tract for the sum of \$8,000.00 and with such additional terms as the city manager in consultation with the city attorney finds just and reasonable.

Adopted this third day of October 2019.

/s/Barbara G. Volk, Mayor

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

Budget Amendment: Funds 10, 410, \$8,000

An amendment to transfer \$8,000 for a property option associated with the hotel development project. A budget transfer is needed to move funds from General Fund contingencies to the Capital Projects fund.

17b. Consideration of Purchase of Property for Fire Station III: Mr. Connet reported staff has been working to identify a potential location for Fire Station III now that the SAFER Grant was received. He reported a 2.2-acre parcel near the corner of Shepherd Street and Old Spartanburg Highway has been identified. He stated several sites were reviewed but prime commercial property was avoided due to the higher cost. He stated the purchase price of the property is \$266,500.

Mr. Connet reported in due diligence, some soil issues were discovered at this location and staff is working with the architect and structural engineer who have determined the cost of the additional work will not offset the cost of other land in that area. He recommended moving forward with purchasing the property.

Council Member Caraker moved the City Council resolve to purchase Mr. George and Ann Marie Gosnell's property, PIN 9900943 located on Shepherd Street for the amount of \$266,500. A unanimous vote of the Council followed. Motion carried.

18. Reports/Comments from Mayor and City Council Members

A. Report from Councilman Smith Regarding Oak and Whitted Streets: Council Member Smith passed on comments from Council Conversations about traffic on Oak Street from Highway 64 to Ninth Avenue. He stated construction of the new Health Sciences building has generated a lot of traffic. He stated staff has visited the area to determine driver's speed.

Council Member Smith stated he received a request for a signalized intersection at Whitted or Oak Streets and Highway 64. He stated Mr. Connet sent a letter to Mr. Watkins at NCDOT. He stated Mr. Watkins will attend the City Council's November meeting to discuss various NCDOT concerns. **No action was taken by the Council.**

19. Reports from Staff:

A. Contingency Report: In accordance with North Carolina General Statute 159-13(b)(3), Mr. Connet reported the contingency appropriations:

1. Fund 10: \$3,735 - Worker's Comp. Insurance Adjustment
2. Fund 10: \$5,000 - Special Appropriation

The Council accepted the report as presented.

B. Report on Disposition of Personal Property: In accordance with Resolution #11-1051 "A Resolution Delegating the Authority for Declaring Personal Property Surplus," Mr. Connet reported the following motorcycles have been declared surplus and traded to a local motorcycle dealer for credit. Staff will ensure these items are removed from our fixed assets and insurance.

- 1) 2007 BMW, VIN WB10388047ZM19644
- 2) 2007 BMW, VIN WB10388057ZM19684

The Council accepted the report as presented.

20. Board/Commission Appointments:

Walk of Fame Steering Committee: Council Member Smith moved Council nominated Marcia Mills Kelso to serve on the Walk of Fame Steering Committee. This term will expire June 2021. A unanimous vote of the Council followed. Motion carried.

Mrs. Drake reported vacancies on the following board and presented the applications on file: Historic Preservation Commission, Business Advisory Committee and the Planning Board.

No action was taken.

21. New Business:

21a. Closed Session to discuss personnel issues: At 7:45 p.m., Council Member Caraker moved the Council to enter a closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee as provided under NCGS §143-318.11(a)(6). A unanimous vote of the Council followed. Motion carried.

No action was taken by the City Council upon exiting the closed session.

20. Adjournment: The meeting adjourned at 7:50 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk