

# AGENDA

## CITY OF HENDERSONVILLE CITY COUNCIL – REGULAR MEETING

SEPTEMBER 3, 2015 – 5:45 P.M.

### Council Chambers – City Hall

1. **Call to Order**
2. **Invocation and Pledge of Allegiance**
3. **Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda*
4. **Consideration of Agenda**
5. **Consideration of Consent Agenda:** *These items are considered routine, noncontroversial in nature and are considered and approved by a single motion and vote.*
  - A. **Consideration of Minutes:** August 6, 2015 Regular Meeting
  - B. **Consideration of an Ordinance Repealing Chapter 14, Article III Entitled Closing-Out Sales of the Hendersonville Code of Ordinances Pertaining to the Licensing of Going Out of Business**
  - C. **Consideration of a Capital Project Ordinance and Budget Amendment to Provide Funding Authority for the Bikeped Grant**
  - D. **Consideration of an Ordinance Amending Section 38-1 of the Code of Ordinances Respecting Hours of Operation of Recreational Facilities and Adding a Section Respecting Parking at Such Facilities**
  - E. **Consideration of Special Events Permit for:**
    - i. Apple Bear 5k
    - ii. Health/ Community Relations event
    - iii. Oktoberfest
    - iv. Vintage Hendo Market
  - F. **Consideration of Budget Amendments (2)**
  - G. **Consideration of an Agreement with Lamar Advertising for the Removal of Signs**

H. Consideration of Accepting the Bid for Capital Equipment Financing from Macon Bank for the rate and terms provided and Approval of the Resolution Approving Financing Terms

I. Consideration of an Ordinance Amending Portions of Chapter 50 of the Code of Ordinances Respecting Civil Penalties for Unlawful Parking

6. **Public Hearing - Application from the City of Hendersonville for a Zoning Ordinance Text Amendment of Article VII Development Review Section 7-4-3.1 Contents pertaining to Property Owner Signatures**

*Presenter: Planning Director Sue Anderson*

7. **Quasi-Judicial Public Hearing – Consideration of an Application from Skyway Towers, LLC for a Special Use Permit Amendment to Replace the Existing 100-foot Lattice-Type Telecommunication Tower with a 135-foot Monopole Telecommunication Tower at 427 Armstrong Avenue**

*Presenter: Planning Director Sue Anderson*

8. **Public Hearing – Consideration of an Application from Mr. Fred Higgins for a Zoning Ordinance Text Amendment of Article XIII Sign Regulations, Maintenance and Enforcement, Section 13-1-3 (a) Sign Location Pertaining to Painted Wall Advertising Signs**

*Presenter: Planning Director Sue Anderson*

9. **Public Hearing – Consideration of an Application from Housing Assistance Corporation for the Contiguous Annexation of Portions of PINs 9569840372 and of PIN 9569842945, Comprising Approximately 8.148 acres, Located within the Oklawaha Village Project, off North Main Street**

*Presenter: Planning Director Sue Anderson*

10. **Public Hearing – Consideration of an Application from the City Manager Requesting the Annexation of 11.34 acres of City-Owned Property Located at 632 Sugarloaf Road (Fire Station II)**

*Presenter: Planning Director Sue Anderson*

11. **Public Hearing – Consideration of an Application from the City of Hendersonville for a Zoning Ordinance Text Amendment of Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries**

*Presenter: Planning Director Sue Anderson*

12. **Consideration of an Ordinance Amending Section 20-35 Respecting the Limitation of Noise**

*Presenter: City Attorney Sam Fritschner*

13. **Comments from Mayor and City Council Members**

**14. Reports from Staff**

**15. Boards and Commissions**

*Presenter: City Clerk Tammie Drake*

a. Consideration of Appointments

b. Announcement of Vacancies/Upcoming (Re)appointments

**16. New Business**

**17. Adjournment**



**August 6, 2015**  
**Regular Meeting of the City Council**  
**Council Chambers – City Hall**  
**5:45 p.m.**

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

**Staff Present:** City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Planning Director Sue Anderson, Police Captain Doug Jones, Engineering Director Brent Detwiler, Zoning Administrator Susan Frady, Public Information Officer Tara Ledbetter, Budget Analyst Brian Pahle, Utilities Director Lee Smith, Finance Director Lisa White, Interim Fire Chief Joseph Vindigni, Public Works Director Tom Wooten

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

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

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

Barbara Barnett, 602 Water Oak Lane, Hendersonville NC, addressed the Council on behalf of Citizens for Water Quality. She requested the Council pass a resolution opposing privatization of water systems.

Jennifer Hensley, 312 Eighth Ave. W., Hendersonville NC, chiropractor, her office is located across the street from Hendersonville High School. She thanked the Council for their interest in small business. She requested approval of limited parking in front of her business for her customers.

**4. Consideration of Agenda:** The following amendments were made to the agenda:

Addition to Consent Agenda:

S. Consideration of Resolution Adopting an Order Directing the Tax Collector to Collect Taxes

Additions to Reports from Staff:

a. Implementing Voluntary Water Conservation Measures

b. Parking Ambassador

Addition to New Business:

a. Consideration of an Offer to Purchase Property Previously Occupied by a Utilities Pump Station

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

**5. Consideration of Consent Agenda:** *These items are considered routine, noncontroversial in nature and are considered and approved by a single motion and vote.*

**A. Consideration of Minutes:** July 2, 2015 Regular Meeting

**B. Consideration of a Resolution with Respect to the Taking of Official Notice of Certain City Documents at Quasi-Judicial Hearings:** In order to expedite most quasi-judicial hearings, City Attorney Fritschner presented a resolution to which Council take notices in all cases of the Zoning Ordinance, the Official Zoning Map, the Comprehensive Plan and the Transportation Plan.

RESOLUTION #15-0843

**A RESOLUTION WITH RESPECT TO THE TAKING OF OFFICIAL NOTICE OF  
CERTAIN CITY DOCUMENTS AT QUASI-JUDICIAL HEARINGS**

WHEREAS the City from time to time holds quasi-judicial hearings pursuant to applicable law, and

WHEREAS the City Council is routinely requested in the course of these hearings to take official notice of various City documents, and

WHEREAS to ensure that no defect in the official recognition of certain official documents prejudices the decisions of the City Council with respect to its quasi-judicial hearings the City Council has determined to adopt a rule officially recognizing them generally in all City Council quasi-judicial hearings,

NOW, BE IT THEREFORE RESOLVED that the City Council determines as follows:

1. For purposes of all quasi-judicial hearings the City Council takes official notice of all Hendersonville City ordinances including specifically the Zoning Ordinance, and of the Official Zoning map, the Comprehensive Plan and the Transportation Plan, and the entirety of all official departmental files maintained by any department with respect to the Special Use Permit or other application under consideration, all without the necessity of any person or entity

requesting such notice. Persons may refer to these documents without having them separately entered into evidence.

2. This resolution is effective upon its adoption.

Adopted this sixth day of August 2015.

/s/Barbara G. Volk, Mayor

Attest: Tammie K. Drake, MMC, City Clerk

**C. Consideration of Waiving the Fire Department Operational Permit Fees for the Apple Festival**

**Vendors:** Interim Fire Chief Joseph Vindigni requested the Council to waive the Fire Department operational permit fees for Apple Festival vendors for this year. He stated these fees will be re-evaluated for next year and given to the North Carolina Apple Festival Executive Director David Nicholson prior to information being sent out to vendors.

**D. Consideration of Special Event Permits for:**

**i. Mad Mountain Mud Run 2016:** Heather Boeke of The Hands On! Children's Museum, requested the use of Berkeley Mills Park June 3, 2016 for the Family Mud Run and June 4, 2016 for the Mad Mountain Mud Run. The in-kind donation of staff time and mulch for this event is \$10,500.

**ii. Seventh Avenue District Farmer's Market:** Ms. Frady reported the Special Events Committee recommends approval of this permit for a special event by the Historic Seventh Avenue District for the Historic Seventh Avenue District Farmer's Market to be held on September 6, 2015 from 9:00 A.M until 4:00 P.M. The request includes the sale of alcohol be permitted during this event. NCGS prohibit alcohol sales until after noon. Each business will be responsible for obtaining their own ABC permit and compliance with all ABC regulations. The Seventh Avenue Advisory Committee has also requested that the City Council waive the vendor fee requirement for this event. This will allow the registration fees to be utilized to support other Advisory Committee activities.

**E. Consideration of an Agreement between NCDOT and the City to Complete a Bicycle Plan:**

Ms. Anderson reported the Planning Department applied for a North Carolina Department of Transportation (NCDOT) Bicycle Planning grant in December 2014. The NCDOT Division of Bicycle and Pedestrian Transportation and the Transportation Planning Branch created an annual matching grant program, the Bicycle and Pedestrian Planning Grant Initiative, to encourage municipalities to develop comprehensive bicycle plans and pedestrian plans. This program was initiated in January 2004. She reported the grant covers 70 percent of the cost of developing a plan with a required 30% match.

Ms. Anderson reported the Planning Department received notice in April that the City has been awarded a Bicycle Planning Grant. The original grant amount was for \$49,000 from NCDOT with a required \$21,000 match. Since City Council allocated \$5,000 in the 2015-16 budget for the plan and the Blue Ridge Bicycle Club is supplementing the creation of a plan with a \$10,000 donation, the agreement was revised by NCDOT and shows \$35,000 from NCDOT with a \$15,000 match. *[The agreement is available in the office of the City Clerk.]*

**F. Consideration of an Application from the City Manager Requesting the Annexation of 11.34 acres of City-owned Property Located at 632 Sugarloaf Road (Fire Station #2):** Ms. Anderson reported the City is requesting the satellite annexation of PIN 9579657695, approximately 11.34 acres, located at 632 Sugarloaf Road. This parcel contains the new City of Hendersonville Fire Station #2, an accessory building, and an advanced metering tower. She provided the Clerk's Certificate of Sufficiency finding that the petition is valid. (The Certificate is found in PD file #P15-18-A. The next step in the annexation process is for Council to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation.

**G. Consideration of an Application from the Housing Assistance Corporation to close a portion of an unopened and unimproved right-of-way for Ochlawaha Drive and a portion of an unopened and unimproved right-of-way for Azalea Woods Drive Located within the Oklawaha Village Project off North Main Street:** Ms. Anderson reported the City received an application from The Housing Assistance Corporation to close a portion of an unopened and unimproved ROW for Ochlawaha Drive (area1) and a portion of an unopened and unimproved ROW for Azalea Woods Drive (area 2) located on PINs 9569842945 and 9569840372. These ROW's are within the previously City-approved Oklawaha Village project located on North Main Street.

Ms. Anderson explained in accordance with NC General Statute 160A-299, the City Council must first adopt a resolution declaring its intent to close the street or alley and set a date for a public hearing. At this public hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest or the property rights of any individual. The Resolution of Intent sets October 1, 2015 as the public hearing date.

Resolution #15-0844

RESOLUTION OF INTENT

A resolution declaring the intention of the City of Hendersonville City Council to consider closing a portion of an unopened and unimproved ROW for Ochlawaha Drive and a portion of an unopened and unimproved ROW for Azalea Woods Drive located on PIN 9569842945 and 9569840372

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

WHEREAS, The Housing Assistance Corporation, has petitioned the Council of the City of Hendersonville to close a portion of an unopened and unimproved ROW for Ochlawaha Drive and a portion of an unopened and unimproved ROW for Azalea Woods Drive located on parcels PIN 9569842945 and 9569840372, and

WHEREAS, the City Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of an unopened and unimproved ROW for Ochlawaha Drive and a portion of an unopened and unimproved ROW for Azalea Woods Drive located on PIN 9569842945 and 9569840372.

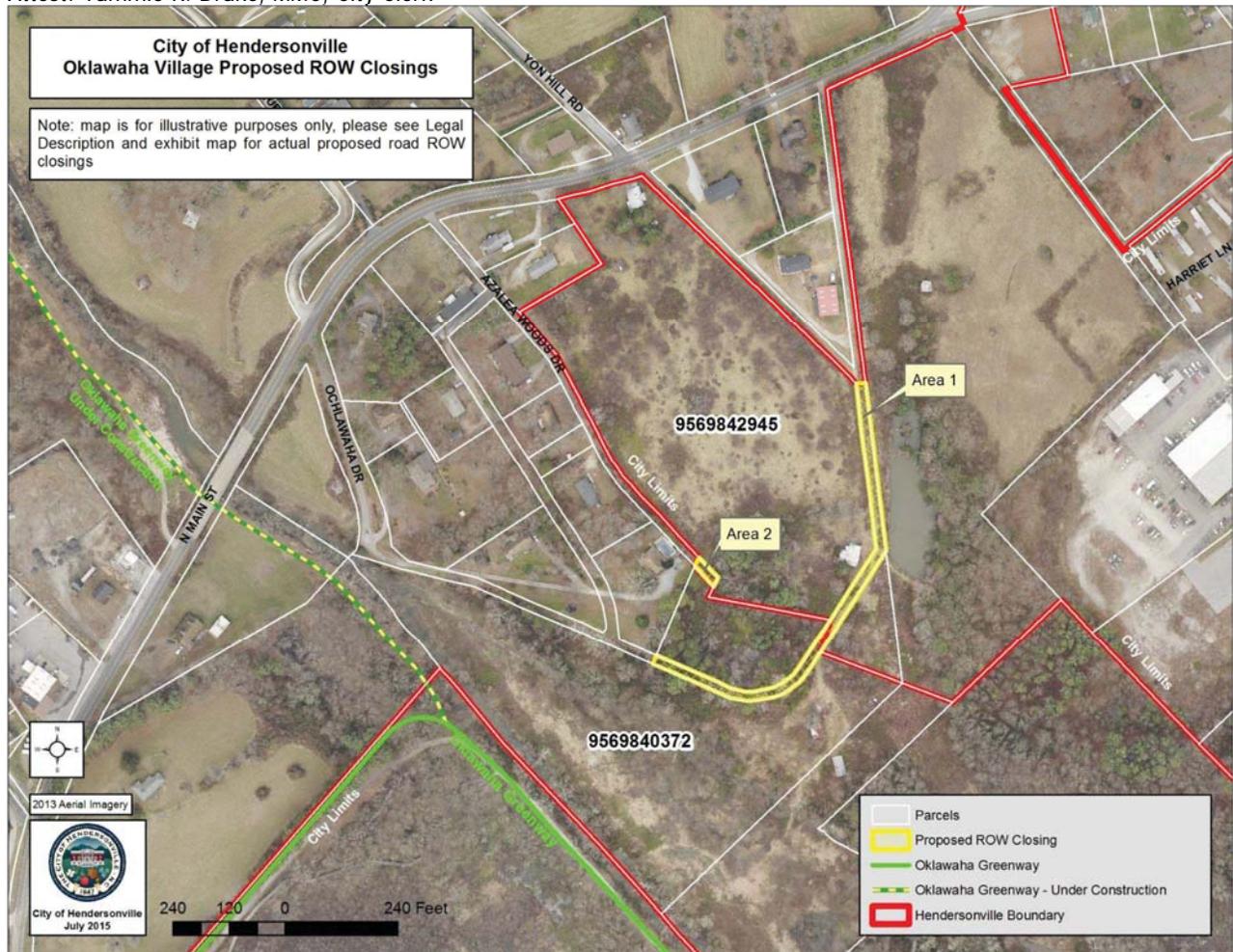
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville:

1. A meeting will be held at 5:45 p.m. on the first day of October 2015, in the Council Chambers of City Hall to consider closing a portion of an unopened and unimproved ROW for Ochlawaha Drive and a portion of an unopened and unimproved ROW for Azalea Woods Drive located on PIN 9569842945 and 9569840372.
2. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
3. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
4. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Adopted by the City Council at a meeting held on the sixth day of August 2015.

/s/Barbara G. Volk, Mayor

Attest: Tammie K. Drake, MMC, City Clerk



**H. Consideration of an Application from the Housing Assistance Corporation for the contiguous annexation of a portion of two parcels, approximately 8.148 acres, located within the Oklawaha Village Project, off North Main Street:** Ms. Anderson reported the City received a petition from The Housing Assistance Corporation for contiguous annexation of a portion of PIN 9569840372 and a portion of PIN 9569842945 that is approximately 8.148 acres. This parcel is a part of the previously approved Oklawaha Village project, located on North Main Street.

Ms. Anderson 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. *[The Certificate of Sufficiency is found in Planning Department file #P-15-28-A.]*

**I. Consideration of Approval of new Grant Fund for Berkeley Mills Ballpark, approve the transfer from Historic Preservation-General Fund Line item to new Grant Fund:** Ms. White reported the grant project will be for a total of \$6,500 of expenditures for the hiring of a consultant to prepare the necessary documentation to submit for the nomination. The project expenditures will be covered by grant revenue of \$2,500 per the agreement entered into with the North Carolina Office of Archives and History and a \$4,000 match provided by the City with a transfer from the general fund into the newly established grant fund. She reported the Historic Preservation Commission voted to direct \$4,000 of the \$10,000 budget allocated to this line towards the Berkeley Mills Ballpark nomination project.

Ordinance #15-0845

GRANT PROJECT ORDINANCE FOR THE BERKELEY MILLS BALLPARK NATIONAL REGISTER NOMINATION

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

Section 1: The City has received a grant award from the State Historic Preservation Office for a Federal grant: CFDA # 15.904, grant period June 1, 2015 and ending September 2, 2016. The grant will provide for the City of Hendersonville to hire a consultant to prepare a National Register nomination for the Berkeley Mills Ballpark.

Section 2: The officers of the City of Hendersonville are hereby directed to proceed with the grant project within the terms of the grant agreement entered into with the North Carolina Office of Archives and History; in the total amount of \$6,500, with the detail budget contained herein.

Section 3: The City Council appropriated \$10,000 in the fiscal year 2015, General Fund, Development Assistance department's operating budget for The Historic Preservation Commission. The Historic Preservation Commission voted on July 15, 2015 to contribute \$4,000 of those City appropriated funds to provide for the match on the Berkeley Mills Ballpark National Register Nomination grant project. The finance director is authorized to reduce the Historic Preservation line item budget by \$4,000 and then transfer \$4,000 from the General Fund to the newly established grant fund to provide for the City match. No in-kind services are to be included in the grant agreement.

The following revenues and match budgets are hereby established and authorized by City Council to be available to complete this grant project:

Account Number	Account Name	Total Budget
3554370 424900	Grant Revenue	2,500
3554370 998355	Transfer in From General Fund	4,000
	Total Project Funding Sources:	<u>\$ 6,500</u>

Section 4: The following expenditure amounts are appropriated for the grant project:

Account Number	Account Name	Total Budget
3554370 569000	Contracted Services	6,500
104370 549500	Historic Preservation Commission	(4,000)
109900 999355	Transfer to Berkeley Ballpark Fund	4,000
	Total Grant Project Appropriation:	<u>\$ 6,500</u>

Section 5: The Finance Director is hereby directed to establish a multi-year grant project fund and maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the grant agreements.

Section 6: Reimbursement requests shall be made in an orderly and timely manner by the Finance Department.

Section 7: The Finance Director is directed to report, at least annually, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenditures during each annual budget submission made to the Governing Board for the project duration.

Section 9: Copies of this grant project ordinance shall be furnished to the City Clerk, Finance Director, City Planning Director, Budget Analyst and City Manager for direction in carrying out this grant project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this sixth day of August 2015.

/s/Barbara G. Volk, Mayor

ATTEST: /s/Tammie K. Drake, MMC. City Clerk

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

**J. Consideration of Job Descriptions for: Administration (4), Development Assistance Department (4), Water & Sewer Department (5), Environmental Services (1), and Legal (1):** Mr. Brian Pahle, Budget and Management Analyst, presented the following job descriptions for Council's consideration/approval:

Administration: Assistant to City Manager, Downtown Economic Development Director, Promotions Coordinator, Public Information Officer

Development Assistance Department: Development Assistance Director, Deputy Fire Marshal, Planning Director, Zoning Code Enforcement Officer

Environmental Services: Environmental Services Crew Leader

Legal: Paralegal

Water/Sewer Department: Inflow and Infiltration Technician, Leak Detection Technician, Treatment Plant Operator I, Treatment Plant Operator II, Treatment Plant Operator III

*[The full job descriptions are available in the Office of the Human Resources Director.]*

**K. Consideration of Request to Create Human Resources Coordinator and Code Enforcement Officer Positions:** Mr. Connet proposed using existing funding to reclassify an existing Administrative Aide from the Development Assistance Department to Administration as a Human Resources Coordinator. This position will be responsible for coordinating our wellness, safety, and customer service training programs. This position will provide services to all City funds and in that, the salary and benefits will be split.

Mr. Connet also proposed adding a Code Enforcement Officer. This position will spend 100% of their time enforcing the Zoning Ordinance and Code of Ordinances. It will free up the Department Director's time to manage the Development Assistance Department and will serve as the Development Concierge. *[The full job descriptions are available in the Office of the Human Resources Director.]*

**L. Consideration of Tax Collector Appointment: Appoint Tammy Holland Tax Collector, and Beth Harrell Deputy Tax Collector:** Ms. Lisa White, Finance Director, reported after many years of excellent tax collection rates, the City's current tax collector, Donna Fox, has transferred to another position in the Finance Department. She requested the following person(s) be appointed: Tammy Holland as Tax Collector and Beth Harrell as Deputy Tax Collector. She stated both employees will take the courses to obtain the NC Tax Collectors Certification and/or Deputy Tax Collector Certification and once certified will complete the requirements of the NC Tax Collectors Association for continuing education.

**M. Consideration of Update to the Personnel Policy relating to the Family Medical Leave Act:** Ms. Harrell presented the following amendments to the Personnel Policy to comply with updated Federal regulations:

**Section 18. Family and Medical Leave**

The City will grant up to 12 weeks of family and medical leave per twelve months to eligible employees in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid (coordinated with the City's Vacation, Compensatory Time and Sick Leave policies), unpaid, or a combination of paid and unpaid. Unpaid leave will be granted only when the employee has exhausted all appropriate types of paid leave. Additional time away from the job beyond the 12-week period may be approved in accordance with the City's Leave without Pay policy.

To qualify for FMLA coverage, the employee must have worked for the employer 12 months or 52 weeks; these do not have to be consecutive. However, the employee must have worked 1,250 hours during the twelve-month period immediately before the date when the FMLA time begins.

Family and medical leave can be used for the following ~~reasons~~ examples:

1. the birth of a child and in order to care for that child;
2. the placement of a child for adoption or foster care;
3. to care for a spouse, child, or parent with a serious health condition;
4. the serious health condition of the employee; or
5. military exigency.

"Military Exigency" is a qualifying exigency arising out of the fact that the fact that the employee's spouse, son, daughter, or parent is a military service member (reserve or national guard) under a call or order to federal active duty in support of a contingency operation.

A serious health condition is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illness of a serious and long-term nature resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which results in a period of incapacity or more than three days would be considered a serious health condition.

If ~~a husband and wife both work for the City~~ both spouses work for the City and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (not parent-in-law) with a serious health condition, ~~the husband and wife~~ both spouses together may only take a total of 12 weeks leave under FMLA.

An employee taking leave for the birth of a child may use paid sick leave for the period of actual disability, based on medical certification. The employee shall then use all paid vacation and accrued compensatory time for the remainder of the 12-week period.

**Military Caregiver Leave:** An employee whose spouse, son, daughter, parent or next of kin is a current service member who is undergoing treatment, therapy, recuperation or outpatient treatment or has temporary disability retirement for injury or illness sustained in the line of duty, is eligible for 26 weeks of leave in a single 12-month period. During a single 12-month period, the employee is eligible for a total of 26 weeks of all types of FMLA leave.

The request for the use of leave must be made in writing by the employee and approved by the Department Head or City Manager.

An employee who takes leave under this policy will return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

**N. Consideration of Revisions to the Pay Scale Including New and Revised Positions:** Mr. Pahle presented revisions to the pay scale that includes new and revised positions. The pay scale includes a 0.5% increase recommended by the City Manager. This 0.5% increase is in line with the market adjustment provided to employees in the annual budget FY15-16. The pay scale also includes a hiring rate. *[The pay scale is available in the office of the Human Resources Director.]*

**O. Consideration of a Contract between the Hendersonville Housing Authority and the Police Department (HPD) to Provide Two Officers and associated budget amendment:** Police Chief Herbert Blake reported the Hendersonville Housing Authority (HHA) is requesting a contract with the Police Department to provide two police officers to work as housing patrol units.

Chief Blake explained the two officers will patrol housing units in Hendersonville, Fletcher and Etowah and will assist HHA with evictions, background checks, inspections, and other related duties. The total population of housing is approximately 850 persons. The contract allows the two officers to be available to assist as backup or as extra units to patrol.

Chief Blake reported the proposed contract is initially set for a two-year period with an option to renew. The proposed contract price is \$115,000 per year, paid in quarterly installments of \$28,750. The contract begins October 1, 2015 and ends September 30, 2017. *[The contract is on file in the office of the City Clerk.]*

Budget Amendment: A budget amendment to appropriate funding provided to the City by a contract with the Hendersonville Housing Authority (HHA). The HHA is providing \$115,000 this year and in return will receive police service in specified areas. This revenue will provide funding to hire two additional officers. Totals in Balance \$230,000

**P. Consideration of Revised Fee Schedule for Fiscal Year 2015-16:** Mr. Pahle provided revisions to the Fee Schedule which includes:

- a text amendment to a development assistance fee adding the terminology waiver to improve clarity
- system development fees were inadvertently left off the fee schedule
- an itinerary merchant fee was added as it did not need to be removed when privilege licenses were revoked, and
- terminology was added to clarify the new traffic enforcement fees.

*[The Fee Schedule is available in the office of the City Clerk,]*

**Q. Consideration of Budget Amendments (6):** Mr. Pahle presented the following budget amendments:

Budget Amendment: Funds: General Fund (10), Water/Sewer Fund (60), Environmental Services Fund (68)  
Holiday pay for the Public Works, Environmental Services, and Water Treatment Plant Divisions were not included in the budget. Contingency funds will be used to balance the budget: General Fund - \$6,609, Water and Sewer Fund - \$22,225, and the Environmental Services Fund - \$17,252. Totals in Balance: \$46,086.00

Budget Amendment: General Fund (10), Water/Sewer Fund (60), Environmental Services Fund (68)  
The costs of Worker's Compensation Insurance came in approximately \$5,277.93 less than estimated. These amendments are needed because certain divisions will need to pay more than what was estimated while others will pay less. Funds will be moved from one division to another. Total in Balance: \$626.00

Budget Amendment: Water/Sewer Fund (60)  
The City Council voted unanimously to provide \$50,000 to the Henderson County Partnership for Economic Development's 501(3)c. The Council directed the donation come from the Water and Sewer Fund. Totals in Balance: \$100,000

Budget Amendment: General Fund (10)  
The transfer of funds from General Fund, Fund Balance, into the Traffic Engineering, Capital Outlay Other Improvements, to pay for materials to expand the mezzanine storage area for the Traffic Department. The materials will be paid for out of the current budget and funds will be moved out of the General Fund funds that were not spent last year. Totals in Balance: \$9,191.00

Budget Amendment: General Fund (10), Water/Sewer Fund (60)  
This budget amendment is associated with the moving of the City Tax Collector position to a W/S Customer Service Representative position, the hiring of an accountant and an HR Coordinator with the remaining funds from the Tax Collector position, and the hiring of a Zoning Code Enforcement Officer with the remaining funds from the Administrative Aide position that will not be filled.  
A part-time W/S Customer Service Representative position was inadvertently left out of the adopted budget. The Water and Sewer Fund will appropriate approximately \$92,769 of fund balance to cover this recurring personnel expenditure. The General Fund stands to free up approximately \$9,737 which will be budgeted to contingencies because of the indirect costs appropriated to the Water and Sewer Fund through personnel costs splits. Totals in balance: \$121,807.00

Budget Amendment: Fund 343  
This budget amendment will formally establish funding for the grant received by the Police Motor Unit. Totals in Balance: \$171,000

**R. Consideration of Ordinance Amending Section 50-282 Respecting Days and Hour of Parking Enforcement:** Mr. Connet presented an amendment to the City's Code of Ordinances that more closely coincides with City, rather than "legal" holidays.

Ordinance #15-0846

**AN ORDINANCE AMENDING SECTION 50-282 OF THE CODE OF ORDINANCES PERTAINING TO CITY PARKING METER HOURS AND DAYS OF OPERATION**

WHEREAS, the Code of Ordinances Section 50-282 provides for hours and days of operation of City parking meters, and

WHEREAS, the said ordinance section provides for exceptions for "legal holidays," and

WHEREAS, to clarify what the said holidays are, and to ensure proper enforcement of parking hours by City personnel the City Council has determined to set the said holidays as City holidays and to enumerate the same,

WHEREAS, the City Council wishes to amend the ordinance to clarify the said intent,

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

SECTION 1. Hendersonville City Code Section 50-282 is hereby amended to read in full as follows:

Sec. 50-282. - Hours and days of operation. All parking meters installed in accordance with the provisions of this division shall be in operation between the hours of 8:00 a.m. and 6:00 p.m. every day, except Sundays, and the holidays as defined in the City's Personnel Policy.

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

Adopted by the City Council at a meeting held on the sixth day of August 2015.

/s/Barbara G. Volk

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

Approved as to form: Samuel H. Fritschner

**S. Consideration of Resolution Adopting an Order Directing the Tax Collector to Collect Taxes:**

Resolution 15-0846

RESOLUTION ADOPTING AN ORDER DIRECTING  
THE TAX COLLECTOR TO COLLECT TAXES

- Whereas, The City Council is required by G.S. 105-349 (e) to appoint a Tax Collector separate and apart from the treasurer or chief accounting officer of the City; and,
- Whereas, The Tax Collector so duly appointed by City Council shall take the oath of office as required by Article VI of the North Carolina Constitution; and,
- Whereas, The position of Tax Collector is bonded for the collection of taxes for the current year and all prior years now in the Tax Collector's hands for collection as by law required;
- Whereas, Tax receipts, upon the adoption of this order, are being simultaneously delivered to the duly appointed Tax Collector, as by law required;

NOW, THEREFORE, it is ordered that all tax receipts for the City of Hendersonville be herewith delivered to the Tax Collector and the following "Order of Collection", which is also adopted by the Council and which shall have the full force and effect of a judgement and execution against the real and personal property of all taxpayers within the City of Hendersonville shall be delivered to the Tax Collector:

ORDER OF COLLECTION  
STATE OF NORTH CAROLINA  
CITY OF HENDERSONVILLE

To the Tax Collector of the City of Hendersonville:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax records, filed in the Office of the Tax Collector for the City of Hendersonville and in the tax receipts herewith delivered to you, in the amount from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon real property of the respective taxpayers in the City of Hendersonville, and this Order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of taxpayers, for and on account thereof, in accordance with the law.

Adopted the sixth day of August 2015.

/s/Barbara G. Volk

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

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

**6. Recognition of Service Excellence Quarterly MVPs:** City Manager John Connet recognized three employees who have provided excellent customer service. These employees were selected from a group of nominations submitted by other city employees and selected by members of the Service Excellence Design Team. The quarterly nominees will have the opportunity to be chosen as the Service Excellence Employee of the Year.

Mr. Connet recognized Tammy Ledford with the Public Works Department, Larry Mundy with the Public Works Department and Troy Cornett with the Utilities Department. Mayor Volk expressed her appreciation to employees and to Mr. Connet for recognizing employees.

**7. Recognition of Ms. Babs Newton for Service on the Downtown Advisory Committee:** Mayor Barbara Volk presented Ms. Newton with a Certificate of Appreciation for her exemplary service on the Downtown Advisory Committee, including Rhythm & Brews and Friends of Downtown. She expressed her appreciation to Ms. Newton. **No action was required or taken.**

**8. Consideration of Charter for Compassion Proclamation:** Mayor Barbara Volk read a proclamation affirming the Charter for Compassion and presented it to Charlie and Pam Rogers. Mr. and Mrs. Rogers commented on the Charter that invites communities of all sizes to bring actions of compassion into all areas.

**9. Report on the Hendersonville Sister Cities:** Ms. Karen Hultin, Chairperson, provided a mid-year report of the activities toward accomplishing their 2015 goals of the Hendersonville Sister Cities. **No action was required or taken.**

**10. Consideration of a Request from Interfaith Assistance Ministry (IAM) to Waive the Tap Fees and System Development Charges for their Facility on Freeman Street:** City Manager John Connet presented a request from Interfaith Assistance Ministry (IAM) to waive the tap fees and system development charges for their new facility to be located on Freeman Street. Their request includes a two-inch tap with a 1.5-inch meter for water and associated tap fees and a four-inch sewer tap for a total amount \$14,350. He explained Mr. Cook relayed they want to move into their facility debt-free.

Mr. Connet explained the City's policy deals with waiving fees associated with low-income housing but this organization supports the same group of citizens in the community.

Mr. Connet explained the initial request was for a two-inch tap and meter. He stated staff worked with them by looking at their daily water consumption and their actual need to get their costs down. A larger meter may be installed if necessary. He stated the original estimate was \$26,000. Council Member Caraker voiced support of their request because they serve the low income of the community and is the same mission as serving low-income housing efforts. Council Member Smith commented IAM has been a great corporate partner with the City managing the H2o Assist program that assists families in need pay their water/sewer bills. More than \$17,500 has been collected by the City and distributed to customers who need help by IAM. He stated this request is tied directly to those who need help finding resources. Mayor Pro Tem Stephens also voiced support of the request as this is not an operational cost and this is a great opportunity to participate. Council Member Miller commented the Council should have good reasoning for granting the request so as not to set a precedent. Council Member Smith commented IAM is helping the City's water/sewer customers.

Mr. David Cook explained the amount given to ask clients varies. He stated they ask their clients to participate in solving their problems and provide them the resources and information so they do not have to return.

**Council Member Caraker moved the City Council waive the tap fees and system development charges for the new IAM facility on Freeman Street. A unanimous vote of the Council followed. Motion carried.**

Mr. Cook expressed appreciation to the Council.

**11. Presentation on New Safety Initiative:** Chief Blake explained this new safety initiative was submitted by Ms. Babs Newton who saw these signs in another community. He explained signs with the message "Drive Like Your Kids Live Here" will be placed in strategic locations to educate citizens and encourage them to lower their speed. He identified several areas including Third Avenue West, Fourth Avenue West, Fifth Avenue West, Blythe Street, and North Main Street near the crosswalk, where the police will be enforcing the speed limit immediately. He stated the signs may be posted in other neighborhoods as well.

Mr. Connet expressed appreciation to Chief Blake for his willingness to put this program in place. **The Council unanimously voiced support of this initiative.**

**12. Consideration of Contract Award for the Oklawaha Greenway, Phase III:** Engineering Director Brent Detwiler reported bids for this project were advertised and bids were opened on July 21, 2015. Only one bid was received. In accordance with NCGS 143-129 and 143-132, the bid was returned. he project was re-advertised and a single bid was opened on July 29, 2015: The bid received was from Trace and Company, Inc. for \$1,169,287.00.

Mr. Detwiler reported City staff reviewed the bid for completeness and accuracy. He stated two mathematical errors have been corrected as part of the bid tabulation.

Mr. Detwiler reported this project is funded through the North Carolina Department of Transportation (NCDOT). Although the City's agreement (Agreement ID #4476) with NCDOT called for \$1,100,000.00 in construction funds, City staff recently received notification from the NCDOT Project Manager that they have added an additional \$100,000.00 to the project, bringing the construction funding available through NCDOT to \$1,200,000.00, and the total grant (including design) to \$1,300,000.00.

Mr. Detwiler reported City staff recommends the tentative award of the project to Trace and Company, Inc., of Mountain Home, NC, the lowest responsive and responsible bidder for the revised project cost in the amount of \$1,169,287.00. He notes this tentative award is contingent upon the approval of the NCDOT. He provided the engineer's estimate as well as a bid tabulation showing the unit prices.

There was discussion of the completion of the project: June 2016. Easements, permit, etc. are in place.

**Council Member Caraker moved to authorize the City Manager to tentatively award and execute the contract for the construction of the Oklawaha Greenway Phase Three project to Trace and Company, Inc., the lowest responsive and responsible bidder, in the amount of \$1,169,287.00; as presented and recommended by staff. This tentative award is contingent upon the approval of the North Carolina Department of Transportation and will serve as the official award upon NCDOT's concurrence. He further moved to authorize the City Manager to execute the forthcoming grant amendment with NCDOT increasing the existing grant (Agreement ID #4476) by an additional \$100,000.00, and further to approve the budget amendment that coincides with this increase. A unanimous vote of the Council followed. Motion carried.**

Budget Amendment: Fund 390

This amendment will increase revenue by \$100,000 and expenditures by \$100,000 to reflect NCDOT's increase to the Oklawaha Greenway, Phase Three, project. Totals in balance: \$200,000

**13. Consideration of Request to Establish Two-Hour Parking on Bearcat Boulevard from Oakland to Buncombe Street:** City Manager John Connet reported Dr. Jennifer Hensley, Well Adjusted Chiropractic Clinic, requested the City establish up to three two-hour parking spaces on Bearcat Boulevard between Oakland and Buncombe Streets. These spaces currently have no time limit. He recommended limiting parking in these spaces from 8:00 a.m. to 6:00 p.m. so the spaces may also be used for events at the school.

Council Member Smith opposed the change but is willing to compromise. He commented many events at the school begin at 5:00 p.m. Dr. Hensley supported the change and commented she is very supportive of the high school. She reported her driveway is blocked at times.

In discussion, Mayor Pro Tem Stephens voiced support of the request and stated the principal at the high school also supported the change. Council Member Miller commented the spaces are not reserved just for the doctor's office but may be used by visitors to the high school as well. He supported the request stating it is a good idea and an example of people working together. Dr. Hensley agreed it will provide flexibility. Council Member Smith commented there is a School Resource Officer in the building who may issue tickets for violations.

**Mayor Pro Tem Stephens moved the City Council to approve the placement of up to three two-hour parking spaces on the south side of Bearcat Boulevard between Oakland Street and Buncombe Street, weekdays from 8:00 a.m. to 5:00 p.m. After discussion, a unanimous vote of the Council followed. Motion carried.**

**14. Consideration of Purchasing Policy:** Mr. Connet introduced Administrative Intern Adam Murr, Master of Public Administration student at Appalachian State University, who has worked for 12 weeks this summer.

Mr. Murr provided a presentation on a proposed Purchasing Policy. He gave some background information on the project stating he reviewed the policies of other cities and used findings from the UNC School of Government to determine ideal purchasing thresholds for the City. He explained a majority of cities use a \$500 threshold but they also have a purchasing department. He recommended setting the threshold for the City at \$1,500, more than 17 percent of NC municipalities operate at this threshold.

Mr. Murr reported this policy is not required by North Carolina General Statutes but is recommended. Purchasing policies are used by many cities to improve budget efficiency and ensure proper use of public funds, and to ensure IRS regulations and North Carolina General Statutes are followed in the purchasing process.

Mr. Murr explained the main objectives of the Policy are to:

- select suppliers who meet performance requirements
- purchase goods and services that comply with quality standards
- promote relations with vendors and to encourage supplier contribution
- treat all suppliers fairly and ethically, and
- conduct purchasing operations so they enhance community and employee relations.

Some highlights of the Purchasing Policy include:

*Local Buying:* The City would like to contract with vendors within the City and Henderson County whenever possible; however, the City does not make purchases based exclusively on vendor location. Effort will be made to ensure local vendors compete for City business.

*Planning:* Planning purchases is imperative. Planning should be completed to reduce small orders and last minute purchases.

*Authority:* Department heads have been delegated the authority to approve purchases made under \$1,500 and to establish lower thresholds for their staff. Department heads should only authorize purchases for goods when funds are available and documentation is provided.

Mr. Murr suggested thresholds and procedures for special purchases. He explained fuel cards (WEX cards) will be assigned to City-owned vehicles and equipment. He explained purchase cards exist for small purchases (less than \$1,500) and department heads may set a lower limit for their subordinates. He discussed how receipts must be submitted. He reviewed the unauthorized purchases and the consequences for improper use.

There was discussion of the size of cities that have a purchasing department.

Council Member Miller asked Mr. Connet if he is comfortable with the proposed policy. Mr. Connet stated yes because it provides guidelines for purchases. There was discussion of the current purchasing process.

After discussion, **Council Member Caraker moved that City Council adopt the City of Hendersonville Purchasing Policy as presented. A unanimous vote of the Council followed. Motion carried.**

#### **PURCHASING POLICY** **Administrative Policy for all City Employees**

##### GLOSSARY

*Bid:* a multi-step process required of the City by North Carolina General Statutes. Quotes from three separate vendors are required during any bid process unless the good or service to be supplied is produced by only one vendor.

*Informal Bid:* A bid on items \$30,000.00 and above. Request for quotes are not required to be advertised to the public. Purchases in this category do not need to be approved by City Council.

*Formal Bid:* A bid on items \$90,000.00 and above or on services \$500,000.00 and above. Public advertisement of the request for quote and bid process must be made, bids must be opened in public forum, and City Council must approve the winning bid.

*Quote:* a price provided by a vendor on a provided good or service.

*Informal Quote:* a quote received via verbal communication, email, website, catalog, or fax.

*Formal Quote:* A price quote received via U.S. Mail, email, fax, or hand delivery.

*Requisition:* input into the financial system by a department to request the generation of a purchase order by the Finance Department prior to a purchase.

*Purchase Order (PO):* authorization for the purchase of goods sent by the Finance Department to a vendor prior to the purchase.

*Request for Written Quotation (RFQ):* A request sent to a vendor for a written quote on a certain good or service.

*Encumbering:* to commit a given amount of money to the payment of an order.

*Purchasing/ Procurement:* interchangeable, how the City obtains needed goods and services.

*Department Head:* The individual authorized to make purchasing decisions on behalf of his/ her department.

*Vendor:* provider of a good or service.

I. FORWARD: This purchasing policy is intended for use as a guide to the City of Hendersonville's purchasing methods and practice. When used properly, the policies and procedures established herein will enable the City to obtain needed goods and services efficiently and economically. The goal of this policy is to give structure to the City of Hendersonville's procurement methods and to set guidelines for City departments.

The understanding and cooperation of all employees is essential in order for the City to maximize the value of each taxpayer dollar spent. While this manual does not answer all procurement related questions, it provides a sound foundation for City procurement methods.

The goals of the City's purchasing program are as follows:

1. To comply with legal and ethical requirements of public purchasing and procurement.
2. To assure vendors that impartial and equal treatment is afforded to all who conduct business with the City.
3. To receive maximum value for money spent by awarding purchase orders to the lowest responsible, responsive bidder, taking into consideration quality, performance, support, delivery schedule, previous performance, business location, and other relevant factors.
4. To provide City departments the required goods and services in a timely manner in the proper quantity and quality while providing necessary information to the City Finance Department.
5. To professionally administer the search for sources of supplies, the development of new sources, the selection of suppliers, negotiations, commitments, follow-ups, and adjustments.
6. To promote healthy business relationships through informed and fair purchasing practice and maintenance of ethical standards.
7. To maximize the standardization of products used by all departments in order to minimize stock levels and obtain better prices for necessary goods and services.

If the procedures and guidelines established in this manual are followed, each department will be capable of managing, controlling, and planning available resources to meet present and future needs in order to help the City meet set goals. Any questions or concerns about this manual or the established procedures should be directed to the City Finance Department.

This manual is effective immediately following City Council adoption and supersedes all previous purchasing or procurement instructions or directives.

## II. GENERAL GUIDELINES

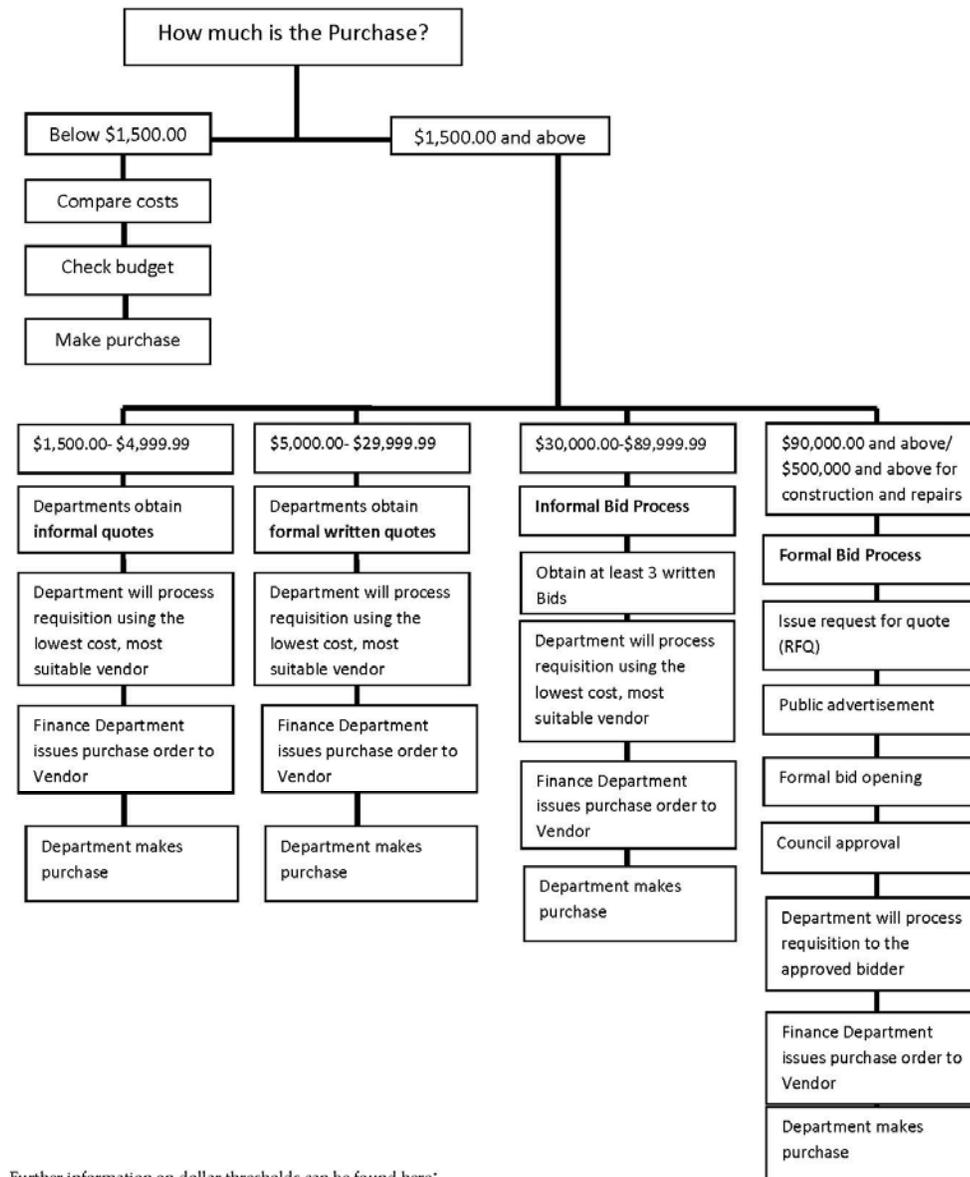
2.1 Local Buying: It is the desire of the City of Hendersonville to contract with vendors within the City and Henderson County whenever possible. The City has a responsibility to its citizens and local businesses; however, the City must ensure taxpayer money is spent with prudence. The City does not make purchasing decisions based exclusively on the location of the vendor; however, every effort will be made to encourage qualified local vendors and suppliers to compete for City business.

2.2 Planning: It is imperative that all City departments take time to properly plan purchases. Purchasing plans should be made for goods and services to be purchased in both the near and distant future; thereby minimizing small orders and last minute purchases. Planning is of highest importance to the City because proper planning reduces unnecessary clerical and supervisory time costs associated with the procurement process.

2.3 Buying Proper Quality: Quality and service are as important as price when considering goods for purchase; it is the duty of the requesting department to secure the most cost-effective good or service that will meet but not exceed the requirements for which the goods or services are intended. In some instances the lowest price does not necessarily mean the lowest cost. A higher price, higher quality product may save the City from excess expenses in the future. The requesting department should take this into consideration when making a purchase.

2.4 Authorization: Department Heads have been delegated the authority to approve purchases made under \$1,500.00. Department Heads should only authorize purchases for necessary goods when proper documentation is provided and funds are available to make the purchase. The Department Head or his designee must authorize each invoice with signature and date before forwarding to Finance for payment. This authorization verifies that the goods and or services have been received, the budgeted funds are available and the invoice has been coded to the proper account number.

PURCHASING FLOW CHART



Further information on dollar thresholds can be found here:  
<http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Dollar%20Thresholds%20Chart%202013.pdf>

III. PURCHASING PROCEDURE

3.1 Purchases less than \$1,500.00: Purchases less than \$1,500.00 do not require a Requisition or a Purchase Order (PO). These purchases may be made by utilizing the City's Procurement Card (P-Card) process, check requests, or vendor accounts. Please see the City's specific policy for acceptable P-Card expenses. Every purchase should follow a cost comparison to ensure a competitive price and quality for each good and service purchased. Issues that may override the price comparison process may include delivery time and material specifications.

ALL PURCHASES \$1,500.00 AND ABOVE REQUIRE A REQUISITION AND PURCHASE ORDER (PO).

3.2 Purchases between \$1,500.00 and \$4,999.99: Purchases in this price range may be obtained by the requesting department(s) through an informal quote process. No minimum number of quotes is required however, it is encouraged that every attempt is made to acquire at least three (3) quotes. The informal quotes may be received through verbal communications, email, or fax. Verbal quotes must be noted in typed or hand written form documenting price, date quoted, name of vendor, and name of the individual representative of the vendor. Quotes are to be scanned and submitted with the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.

3.3 Purchases between \$5,000.00 and \$29,999.99: Purchases in this price range are obtained through the formal quote process. In the formal quote process, the requesting department is required to receive at least three (3) quotes via U.S. Mail, email, fax, or hand delivery. The required three written quotes are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.

3.4 Purchases between \$30,000.00 and \$89,999.99: Purchases in this range must be obtained through informal bids. Departments are responsible for sending a request for quote (RFQ) and will allow vendors sufficient time to respond to the request based on the complexity of the request. RFQs in the informal bid range may or may not be advertised to the public. A minimum of three (3) vendors, if available, will receive the RFQ. Every effort will be made to obtain at least three (3) quotes. Quotes in the informal bid range may be submitted through U.S. Mail, email, fax, or hand delivery. No verbal quotes are acceptable in the informal bid price range. Purchases in the informal bid range do not require City Council approval. In this range, a no bid may be accepted as a bid. In accordance with N.C.G.S. § 143-131, a Request for Written Quotation will be used for purchases of \$30,000 to formal limits (3.2a) with or without advertising. The required three written informal bids are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.

3.5 Purchases \$90,000.00 and above/Services \$500,000.00 and above: Purchases in this range must be obtained through formal bids. Departments are responsible for sending a request for quote (RFQ) and will allow vendors sufficient time to respond to the request based on the complexity of the request. Every effort will be made to obtain at least three (3) bids. A newspaper advertisement must run at least seven (7) days prior to the bid opening.

Written bids in this range must be submitted in a sealed envelope and must be opened at a public bid opening. Purchases in the formal range require City Council approval. In accordance with N.C.G.S. § 143-129, invitation for formal bids will be used for purchases of \$90,000 and greater (\$500,000 and greater for construction and repairs). This will include advertising in the local newspaper and/ or other advertising media as deemed appropriate and receiving sealed bids. The supporting documentation and all bids received are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.

#### IV. VENDOR SELECTION

4.1 Selection Policy: Vendors will be selected on a competitive basis. Formal bids and informal bids will be solicited by the requesting department. Bid awards, purchase orders and/ or contracts will be issued to the lowest, responsive, responsible bidder. The City of Hendersonville will not use vendors who have been debarred by Federal, State, or Local governments.

4.2 Gifts and Gratuities: City employees are prohibited from soliciting or accepting any rebate, money, costly entertainment, gift, or gratuity (with the exception of mementos and novelties of nominal value) from any person, company, firm or corporation to which any purchase order or contract is, or might be awarded. The City will not tolerate circumstances that produce, or reasonably appear to produce, conflicts between the personal interests of an employee and the interests of the City. Accordingly, the City may terminate, at no charge to the City, any purchase order contract if it is found that substantial gifts or gratuities were offered to a City employee. The City may also take disciplinary action, including dismissal, against a City employee who solicits or accepts gifts or gratuities of any value whatsoever.

#### V. SPECIAL PROCUREMENT PROCEDURES

5.1 Blanket Purchase Order: Blanket purchase orders will be issued to selected vendors for the procurement of certain items after competitive pricing has been completed and if budgeted funds are available. Blanket purchase orders are intended to expedite the procurement of frequently needed and repetitious supplies. Blanket purchase orders should be made for goods and services when the amount of clerical or administrative work otherwise involved is impractical. Examples of items procured through a blanket purchase order include: janitorial services, maintenance service contracts, chemicals, temporary personnel services, automotive parts, and others. Blanket purchase orders will encumber the requesting department's funds for any amounts remaining on the purchase order.

Requisition for blanket purchase orders must include all required information along with the following additional information:

1. Time period the purchase order is valid
2. Items covered by the blanket purchase order
3. The Not to Exceed (NTE) amount
4. A listing of all personnel approved to purchase from the blanket purchase order

All vendor delivery tickets must be signed by an authorized City employee indicating receipt of the goods and/ or services. All delivery tickets from blanket purchase orders must be scanned and forwarded to Accounts Payable as supporting documentation for invoice processing.

5.2 Emergency Purchases: In cases of emergencies, the Department Head or his/ her designee may purchase directly from any vendor the supplies or services whose immediate procurement is essential to prevent delays in work which may affect the life, health, safety, or convenience of City of Hendersonville employees or citizens.

The user department shall exercise good judgment and use established vendors if possible when making emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related. Not anticipating needs does not constitute an emergency situation. First, determine if a true emergency does exist. Second, anticipate needs and avoid emergency situations whenever possible. Emergency orders are always costly. Vendors usually charge top prices if supplies or services must be obtained on an emergency basis.

During working hours, follow standard purchasing procedure as usual as soon as time and the situation permits.

After working hours, the following procedure should be used for emergency purchases: verify funds are available and if needed complete a Request to Transfer Funds form and forward immediately to the Budget office. The packing slip or invoice received should be coded with the account(s) to be charged and signed, scan/ attach a brief explanation of the nature of the emergency and forward to Accounts Payable with the invoice. Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures should be limited and will be monitored for abuse.

5.3 Sole Source of Supply: In the event there is only one vendor capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Finance Department. Whenever a Department Head decides to purchase goods from a sole source, he/ she shall document on the requisition why only one company or individual is capable of providing the goods required. The provisions of N.C.G.S. § 143-129 will be followed requiring Council approval for sole source exception for all purchases made at or above statute levels.

5.4 Single Brand Convenience: The City recognizes in certain scenarios it is efficient to purchase items from a single provider rather than a variety of vendors. In such cases exceptions may be made to standard purchasing procedure; given proper documentation is provided. The purchaser should note reasons buying from a certain vendor will be more efficient in the long run and attach such documentation to each requisition.

Example: One brand of printer City-wide would allow the same type of ink cartridge to be ordered and reduces time cost related to finding multiple brands. This also allows the City to buy ink cartridges in bulk from a single provider, further reducing cost.

5.5 State of North Carolina Purchase Contract: All Departments may use the State of North Carolina Department of Administration Purchase and Contract Division whenever possible for procurement of capital and non-capital items. It shall be the responsibility of Department Heads to familiarize themselves with this purchasing method and to check for needed goods and services which are available through this resource at a lower cost than many other vendors offer. This system expedites the purchase of goods, offers pricing compatible with quotes received from formal and informal bids, and satisfies North Carolina General Statutes. Examples of goods on State Contract are: law enforcement vehicles, office furniture, copiers, janitorial supplies, copier paper, light bulbs, etc. Contact the Finance Department with questions regarding goods on State Contract.

The State of North Carolina Interactive Purchasing System can be found on the web at [www.ips.state.nc.us/ips/Default.aspx](http://www.ips.state.nc.us/ips/Default.aspx).

The North Carolina E-Procurement System can be found on the web at <http://eprocmnt.nc.gov/>

5.6 Piggybacking: The department head may use the piggybacking process whenever necessary to purchase apparatus, supplies, materials, and equipment. Contracts in the informal range can be used as a tool to solicit additional bids, but no Council action is necessary. For purchases of \$90,000 and above, the provisions of N.C.G.S. § 143-129 will be followed.

5.7 Professional Services: Normal competitive procedures are difficult to use in securing professional services such as attorneys, planners, and other professionals who, in keeping with the standards of their discipline, will not enter into a competitive bidding process. When an agreement between a professional service company and the City is established, a purchase order with the proposed amount shall be issued to satisfy accounting and statutory requirements. Purchases from professionals shall otherwise follow N.C.G.S. § 143-64.31 and 64.32.

5.8 Service Contracts: All service contracts, for which the contractor will perform work while on City property, must be accompanied by a standard contract form. The contract must follow all signature procedures and contain all necessary insurance and payment options. The completed and signed contract must be reviewed by the City Attorney, signed by the City Manager, pre-audited by the Finance Director, and be filed in the office of the City Clerk. The executed contract should be scanned and attached to the department requisition that is forwarded to the Finance Department. The City will not enter into contractual agreements that are subject to automatic renewal and will attempt to structure contracts to coincide with the fiscal year.

Contracts authorized by City Council through direct award or budget authorization may be executed by the City Manager. Subsequent orders changing the original contract, which do not exceed the approved cost of the contract, will be executed by the City Manager.

City Council must approve all contracts that meet any of the following criteria:

1. Contracts subject to statutory bid thresholds
2. Contracts with terms greater than one year
3. Contracts exceeding budgetary approval, which require a budget amendment
4. Contracts suggesting a significant policy change as determined by the City Manager.

5.9 Vendors with City Accounts: The City should have accounts with certain vendors where possible in order to expedite the purchasing process for frequently needed minor items. In the event the City has an account with a certain vendor, City employees should not use purchase cards to obtain goods or services from the vendor. Proper purchasing procedures should be followed and only authorized purchases should be charged to City accounts.

## VI. DELIVERY AND PERFORMANCE

A completed and accepted purchase order by the parties concerned must produce the intended results or objectives before it can be considered a successful or completed purchase. The terms and conditions must clearly define the delivery and performance requirements of the services, supplies, or equipment.

The importance of the delivery schedule will be emphasized to the vendor. Delivery requirements will be clearly written and fully understood by all vendors. If several items are required by the purchase order, there may be a different delivery schedule for each item. It is necessary to clearly indicate the delivery location on the requisition.

6.1 Partial Deliveries: Some purchase orders may list several items. It is possible the vendor may complete timely delivery on some items, which is referred to as "partial delivery". Upon receipt of a partial delivery, photocopy the purchase order; attach a copy of the signed delivery receipt and forward to the Finance Department along with the vendor invoice indicating which lines of the purchase order are to be paid.

6.2 Non-Performance: If a vendor fails to meet any requirements(s) of the specifications or terms and conditions of the contract or purchase order, the vendor can be cited for non-performance. The seriousness of non-performance will be evaluated based upon the circumstances of each violation.

## VII. INSPECTION AND TESTING

Life and safety as well as successful operation of expensive equipment and supplies may depend upon how well a purchased item meets design and performance specifications.

Goods and materials should be checked at the time of receipt for damage or defects. The inspection shall include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) shall be rejected as outlined below.

7.1 Rejection: In order to protect the City's rights in the event of rejection, for whatever reason, the vendor shall be informed immediately. Reasons for the rejection must be documented in memo form, attached to a copy of the purchase order and forwarded to the Finance Department in a timely manner.

7.2 Damaged Goods: One of the major reasons for immediately inspecting the goods or materials upon receipt is to detect any visible damage. It is necessary that all damage including evidence of concealed damage shall be documented by memo, attached to a copy of the purchase order, forwarded to the Finance Department, reported to the vendor as soon as possible, and informs the vendor of the damaged goods. When it is apparent that the extent of the damage causes the goods to be worthless, they will not be accepted.

7.3 Latent Defects: Latent defects may be the result of damage in transit or failure of the manufacturer to conform to specifications. Consequently, it is often difficult to fix responsibility for the defective material. If specific liability for the defect cannot be determined between the carrier, the vendor, or the manufacturer, the City may file a claim against all parties. A memo attached to a copy of the purchase order must be forwarded to the Finance Department.

## VIII. VENDOR RELATIONS

Good vendor relations are valuable business assets established through mutual confidence and satisfactory business communication between buyer and seller. An important contribution toward promoting and preserving these relations is a clear understanding of the method of contract between buyer and seller. Any conflicts which may arise should be reported to the Finance Department.

## IX. SALE OF CITY PROPERTY

The City Manager has been authorized by the Hendersonville City Council to declare as surplus single asset or property or a group of items with a value of up to \$30,000.00, to set its fair market value, and to convey title to the property and to advertise electronically the sale of any personal property. The City Manager shall sign the Sale of Property Authorization form prior to the sale or disposal of any City property. The Finance Department shall keep all approved forms, which will record a description of the property sold or exchanged, and the amount of money or other considerations received for each sale or exchange. N.C.G.S. § 160A-265 through 280 should be referenced before the sale of any City property in order to ensure statutes and procedure are followed properly.

#### X. FUEL CARDS

Fuel cards will be assigned to City owned vehicles and are required to be used to purchase fuel for City vehicles, or in some instances, to purchase fuel for other job-related equipment such as: weed-eaters, lawn mowers, leaf-blowers, etc. It is not appropriate for City employees to use fuel cards to purchase fuel for any other vehicle or equipment other than which the card was issued to. Fuel cards are required to remain with the assigned vehicle and any missing cards should be reported immediately. Employees are required to use their PIN when purchasing fuel. Any unauthorized use of a PIN not assigned to the employee will result in disciplinary action up to and including termination.

#### XI. PURCHASE CARDS

Purchase cards exist to provide departments a flexible and efficient way to make small purchases. Purchase cards empower the cardholder to acquire necessary materials to conduct business and/ or deliver services in a more convenient and expeditious manner. Purchase cards should not be used to procure items or services not directly related to City business. Purchase cards cannot be used to purchase fuel for city vehicles. All city vehicles will have fuel cards which must be used.

11.1 Employee Responsibilities: No purchase over \$1,500.00 shall be made using the purchase card system without a purchase order. Purchase cards assigned to employees may have approval limits set by Department Heads below the \$1500.00 policy threshold. If an employee needs to make a purchase above the limit set by the Department Head, the employee should consult with the Department Head before making a transaction.

1. The purchase card that each cardholder receives shall only be used by the cardholder. No other person is authorized to use this card. The cardholder may make transactions on behalf of others in their department/ division; however, the cardholder is responsible for all purchases charged to their card.
2. The total value of a transaction shall not exceed a cardholder's single purchase limit. Payment for a purchase shall not be split into multiple transactions to stay within the single purchase limit.
3. The cardholder is responsible for maintaining receipts of all card transactions and scanning all receipts into the purchase card banking system. Receipts are required for all purchases. Failure to scan and attach receipts in a timely manner may result in the cardholder losing the privilege of using a City purchasing card.
4. Purchase cards may be used by for lodging and for training/ professional activities. Purchase cards cannot be used for meals during employee travel. Cardholders should consult the City's Travel Policy for more information.

11.2 Receipts and Receipt Submission: Receipts should be collected and kept for all transactions. If a detailed receipt is not obtained from the vendor, a Lost/ Missing Receipt Form and a detailed list of what was purchased will be required with the receipt. Repeated lost or missing receipts may result in a cardholder losing the privilege associated with a City purchasing card. A detailed receipt should be provided for all purchases.

Receipts should be scanned into the on-line Purchase Card Bank system and attached to their corresponding transaction. Scanning receipts to the system will streamline the accounts payable procedure and make processing transactions simpler for all parties involved.

11.3 Unauthorized Purchases: Certain items should not be purchased by City employees. Any of the following items listed below have been deemed inappropriate for purchase by City employees:

1. Personal purchases or for personal identification
2. A single purchase that exceeds the cardholder's single purchase limit
3. Cash advances
4. Gift Cards
5. Alcoholic beverages
6. Purchase of in-room movies during a hotel/ motel stay while on City business

11.4 Consequences of Improper Use: A cardholder who makes unauthorized purchases or carelessly uses a purchase card will be liable to the City of Hendersonville for the total dollar amount of such purchases plus any administrative fees charged by the bank or card company in connection with the misuse. The cardholder's employment may also be terminated and will be subject to legal action.

Cardholders are expected to obtain the best prices available on purchases. Purchase of an item above market prices where the vendor gives the employee any form of gift, bonus, or premium whether in the form of cash or merchandise is considered a kickback, is illegal, and can result in disciplinary action up to and including termination of employment and lawful prosecution. City policy strictly forbids anything in exchange for making a purchase.

For further information regarding the City's Purchasing Card Policy, review the "Credit Card Purchases" form found at <http://www.cityofhendersonville.org/index.aspx?page=91>.

#### XII. FRINGE BENEFITS

Any item purchased for an employee must be a valid business expense and not considered wages to the individual. Clothing, non-monetary awards, meals, travel, and other items may be considered wages depending on circumstances. Awards of cash or cash equivalents are always considered wages regardless of the amount awarded. All awards and purchases considered wages to an employee must be processed through payroll and will be subject to all applicable taxes. Please contact the Finance Department with any questions.

Any award of cash or cash equivalents must be pre-approved by the City Manager.

#### XIII. EXHIBITS

- Exhibit A. Items Not Requiring a Purchase Order
- Exhibit B. Vendor Performance Evaluation
- Exhibit C. Purchase Order/ Quote Form

## Exhibit D. Sale of City Property Authorization

## Items Not Requiring a Purchase Order

1. Advertising: legal ads, radio announcements, etc.
2. Specified chemicals
3. Dues
4. Claim payments (Citizens filing for damages/ reimbursement)
5. Insurance
6. Medical examinations
7. Medical supplies (Fire and Rescue)
8. Land purchases & easements
9. Petty cash & replenishing funds
10. Postage
11. Refunds
12. Building rental
13. Tuition or other fees for approved educational purposes
14. Utilities (electricity, water, sewer, cable, internet, natural gas, trash, etc.)
15. Lease purchase payments
16. Approved travel arrangements and accommodations

Mayor Volk expressed appreciation to Mr. Murr for his work.

**15. Comments from Mayor and City Council Members: There was none.****16. Reports from Staff**

**a. Voluntary Water Conservation Measures Implemented:** Mr. Connet reported the City invoked voluntary water conservation measures on August 5, 2015. He stated staff continues to monitor stream water levels, will develop contingency plans if needed, and are optimistic additional measures will not be necessary.

Mr. Connet reported the policy developed by citizens and businesses following the last drought is being followed. Mayor Pro Tem Stephens commented other supplies of water are available to the City and the odds of having to shut down businesses is small. Mr. Connet agreed stating the policy encourages customers to reduce their water usage and rationing would not be necessary unless the circumstances are very dire. Council Member Caraker agreed commenting the policy was developed to ensure businesses may remain open. Mayor Volk commented water customers should not assume they do not have to conserve water usage because the City has another source of water. Council Member Miller agreed stating water conservation measure should be practiced all the time.

Mr. Connet reported water to the fountain on Main Street has been cut off in order to lead by example. Mayor Volk suggested putting a sign nearby the fountain explaining the drought situation and why the water is off. **No action was required or taken.**

**b. Parking Ambassador:** Mr. Connet introduced Jeff Wilkins who has worked as an intern and developed the parking ambassador program, the training program for future ambassadors, and cards that explain parking rules.

Mr. Connet explained the first violation is a warning notice and the violator will receive a card explaining the parking rules to ensure a positive customer/visitor experience. He stated Mr. Wilkins is working with the Police Department. He stated habitual violators will be treated accordingly.

Mr. Connet reported Mr. Wilkins has also developed a standard lease for leased parking. He stated Mr. Wilkins also put together the parking survey and the City is getting good feedback from the survey. He stated Mr. Wilkins will also develop a schedule for future parking ambassadors. Mr. Connet expressed his appreciation to Mr. Wilkins for his work. Mr. Wilkins thanked the Council for this opportunity.

**c. Certificate of Achievement for Excellence in Financial Reporting:** Mr. Connet reported this is the twenty-sixth year in a row that the City has received a Certificate of Achievement for Excellence in Financial Reporting for the City's Comprehensive Annual Financial Report (CAFR). He congratulated Finance Department staff.

**17. Boards and Commissions:****a. Consideration of Appointments:**

**East Flat Rock Community Plan Committee (non-voting liaison position):** Mr. Connet reported Brian Pahle has volunteered to be the City's representative on this Committee. He suggested the duties be split between Mr. Pahle and Mr. Dave Hazzard, City Planner. **Upon motion of Council Member Miller, the Council voted unanimously to direct the City Manager to assign staff to fill that role.**

**Seventh Avenue Advisory Committee:** Council Member Caraker nominated Ron Kauffman to serve on the Seventh Avenue Advisory Committee in an at-large position. He commented Ms. Caldwell is presently

the liaison for the Green Meadows community. The term of Mr. Kauffman will expire April 1, 2016. Mayor Volk commented he may be considered “in district” because of his association with the Railroad Club. **A unanimous vote of the Council followed. Motion carried.**

**Downtown Advisory Committee: Council Member Caraker nominated Scott Moore to serve in the stakeholder position. This term will expire 08-01-16. A unanimous vote of the Council followed. Motion carried.**

**Environmental Sustainability Board: Council Member Miller nominated Ian Edwards to fill an unexpired term on the Environmental Sustainability Board. This term will expire 09-01-17. A unanimous vote of the Council followed. Motion carried. Council Member Caraker nominated Rhonda (Brissie) Chislaghi to an unexpired term. This term will expire 09-01-17. A unanimous vote of the Council followed. Motion carried.**

**Walk of Fame Steering Committee: Council Member Caraker nominated Mr. Tom Wooten and Mr. Tom Orr for the Walk of Fame Steering Committee. A unanimous vote of the Council followed. Motion carried.** Mr. Connet explained Mr. Wooten will not serve as the staff person for this committee. Council Member Caraker requested the City Clerk contact Mr. Orr for a suggestion for the third City representative.

b. **Announcement of Vacancies/Upcoming (Re)appointments:** There was none.

## **18. New Business:**

- a. **Consideration of an Offer to Purchase Property Previously Occupied by a Utilities Pump Station:** Mr. Connet reported as part of the Shepherd Creek/Atkinson Sewer Project, the City was able to eliminate several sewer pump stations. One of these pump stations is located at The Willows on Willow Road. The pump station was originally constructed by the developer and turned over to the City for operations and maintenance. In addition to the normal water and sewer charges, the property owners in this development paid an additional maintenance charge that most utility customers did not have to pay. Now that the pump station has been removed, the Homeowners Association has requested that the pump station property be transferred back to them. The only way the City may transfer the property is through the upset bid process. Therefore, they have submitted an offer of \$50.00. He explained if the Council accepts the offer, it will be advertised for upset bids. If no upset bids are received, the property will be transferred to The Willows for \$50.00. If an upset bid is received, we will re-advertise and follow this process until no further bids are submitted. The City Council can reject any and all bids at any time. **Council Member Smith moved the Council accept the offer of \$50 from the Willows development for the former pump station property and requested the City Clerk to advertise the surplus property in accordance with the upset bid procedures. A unanimous vote of the Council followed. Motion carried.**
- b. **Sign Identifying Edwards Park:** Council Member Miller stated Mr. Orr asked about the placement of a sign at Edwards Park. Mr. Connet reported this property belongs to Henderson County. **The Council referred this matter to staff to address.**

**19. Adjournment:** The meeting adjourned at 7:21 p.m. upon unanimous assent of the Council.

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Barbara G. Volk, Mayor

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Tammie K. Drake, City Clerk



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Tammie Drake

**Department:** Admin

**Date Submitted:** 08.25.15

**Presenter:** Tammie Drake

**Date of Council Meeting to consider this item:** 09.03.15

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05b

John Phelps of the NCLM reported that G.S. 66-77, the statute requiring licenses for closing-out sales, has been repealed effective July 1, 2015. The repeal is found in section 2 of SL 2015-103 (HB 836) and was signed into law on June 22. As a result, businesses will no longer be required to obtain a license from city clerks (or officers designated by county commissioners) to conduct closing-out sales.

**Budget Impact:** \$ N/A Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move Council's adoption of an Ordinance Repealing Chapter 14, Article III Entitled Closing-out Sales of the Hendersonville Code of Ordinances Pertaining to the Licensing of Going Out of Business

**Attachments:**

Ordinance

**AN ORDINANCE REPEALING CHAPTER 14, ARTICLE III ENTITLED CLOSING-OUT SALES OF THE HENDERSONVILLE CODE OF ORDINANCES PERTAINING TO THE LICENSING OF GOING OUT OF BUSINESS**

Pursuant to SESSION LAW 2015-103 HOUSE BILL 836; be it hereby ordained by the City Council of the City of Hendersonville:

1. Chapter 14 Article III entitled Closing-out Sales, of the Hendersonville Code of Ordinances respecting the licensing of closing-out sales is hereby repealed.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this third day of September, 2015.

\_\_\_\_\_  
Barbara G. Volk, Mayor

Attest:

\_\_\_\_\_  
Tammie K. Drake, MMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 08/20/15

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 09/03/15

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05c

A capital project ordinance and budget amendment to provide funding authority for the Bikeped grant that was approved in the August Council meeting.

**Budget Impact:** \$ 50,000 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

Partial Match \$5,000 budgeted, Bike Club Match \$10,000 donation, and Grant amount \$35,000.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve the capital project ordinance establishing a fund for the Bikeped Grant along with the associated budget amendment.

**Attachments:**

See below...

**GRANT PROJECT ORDINANCE FOR  
BIKEPED PLANNING PROJECT**

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

**Section 1:** The City has received a grant award from the North Carolina Department of Transportation for a Federal grant: CFDA # 20.205, with a twenty-four month period. The grant project consists of the planning and production of a Comprehensive Bicycle Plan.

**Section 2:** The officers of the City of Hendersonville are hereby directed to proceed with the grant project within the terms of the grant agreement entered into with the NCDOT; with expenditures in the total amount of \$50,000, and \$35,000 total grant award, with the detail budget contained herein.

**Section 3:** The City Council appropriated \$5,000 in the fiscal year 2015, in the General Fund, Development Assistance department’s operating budget for a partial grant match. The Blue Ridge Bicycle Club has committed to raising the remaining \$10,000 local grant match. The finance director is hereby authorized to reduce the Developmental Assistance Department’s Professional Services line item budget by \$5,000 and then transfer \$5,000 from the General Fund to the newly established grant fund to provide for the City match. No in-kind services are to be included in the grant agreement.

The following revenues and match budget and expenditures are hereby established and authorized by City Council to be available to complete this grant project:

Account	Account Name	Total Budget
3304370 424900	Grant Revenue	35,000
3304370 998330	Transfer in From General Fund	5,000
3304370 498207	Contribution from Bike Club	10,000
	<b>Total Project Funding Sources:</b>	<b>\$ 50,000</b>

**Section 4:** The following expenditure amounts are appropriated for the grant project:

Account Number	Account Name	Total Budget
3304370 519000	Professional Services	50,000
104370 519000	Professional Services	(5,000)
109900 999330	Transfer to Bikeped Grant Fund	5,000
	<b>Total Grant Project Appropriation:</b>	<b>\$ 50,000</b>

**Section 5:** The Finance Director is hereby directed to establish a multi-year grant project fund and maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the grant agreements.

**Section 6:** Reimbursement requests shall be made in an orderly and timely manner by the Finance Department.

**Section 7:** The Finance Director is directed to report, at least annually, on the financial status of each project element in Section 3 and Section 4.

**Section 8:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenditures during each annual budget submission made to the Governing Board for the project duration.

**Section 9:** Copies of this grant project ordinance shall be furnished to the City Clerk, Finance Director, City Planning Director, Budget Analyst and City Manager for direction in carrying out this grant project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this third day of September, 2015.

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Barbara G. Volk, Mayor

ATTEST:

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Tammie K. Drake, City Clerk

Approved as to form:

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Samuel H. Fritschner, City Attorney



NORTH CAROLINA

**LOCALLY ADMINISTERED - BIKEPED  
PLANNING PROJECT - FEDERAL**

HENDERSON COUNTY

DATE: 7/24/2015

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: M-0486D

AND

WBS Elements: PE 55201.1.4

CITY OF HENDERSONVILLE

FEDERAL-AID NUMBER: SPR-1413(016)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$35,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Hendersonville, hereinafter referred to as the "Municipality."

**WITNESSETH:**

WHEREAS, Section 52005 of the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) allows for the allocation of State Planning and Research (SP&R) funds to be available for certain specified transportation activities; and,

WHEREAS, in accordance with G.S. 133-66.2.1, the NC General Assembly requires each Municipality to develop a comprehensive transportation plan that will serve present and anticipated travel demand; and

WHEREAS, the Department has allocated state matching funds to augment the federal funds available for these activities; and,

WHEREAS, the Department's Division of Bicycle and Pedestrian Transportation (DBPT) and the Transportation Planning Branch (TPB) have created a matching grant program to encourage the development of comprehensive municipal bicycle plans and pedestrian plans, which may serve as a component of the comprehensive transportation plan; and

WHEREAS, the Municipality has requested funding for the City of Hendersonville Bicycle Plan, hereinafter referred to as the Project, in Henderson County, North Carolina; and,

WHEREAS, subject to the availability of federal and state funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$35,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

## **1. GENERAL PROVISIONS**

### **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT**

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

### **AGREEMENT MODIFICATIONS**

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

### **LOCAL PUBLIC AGENCY TO PERFORM ALL WORK**

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the

Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

#### **PERSON IN RESPONSIBLE CHARGE**

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

#### **COMPLIANCE WITH STATE/FEDERAL POLICY**

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

## FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

## 2. SCOPE OF PROJECT

The Project consists of the planning and production of a Comprehensive Bicycle Plan in accordance with the Department's policies and procedures.

The Department's funding participation in the Project shall be restricted to development of this Plan, as further set forth in this Agreement.

## 3. FUNDING

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of funds, the Department shall participate up to a maximum amount of Thirty-Five Thousand Dollars (\$35,000), as detailed below. The Municipality shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

**FUNDING TABLE**

Fund Source	Federal Funds Amount	Reimbursement Rate	Local Match \$	Local Match Rate
SP&R	\$13,125	70 %	\$15,000	30 %
State	\$21,875			
<b>Total Estimated Cost</b>		<b>\$50,000</b>		

## 4. TIME FRAME

The Municipality, and/or its agent, shall complete all work outlined in the Agreement within twenty-four (24) months of the issuance of Notice to Proceed. The Municipality shall meet milestone dates in accordance with the *NCDOT, Bicycle and Pedestrian Planning Grant Initiative Grant Recipient Administrative Procedures*. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

The Department may extend the deadline for milestone activities if, in the opinion of the Department, circumstances warrant.

## **5. AUTHORIZATION**

Upon receipt of an executed agreement, the Department will authorize funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

## **6. PROFESSIONAL AND ENGINEERING SERVICES**

### **PROCUREMENT POLICY**

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's Policies and Procedures for Major Professional or Specialized Services Contracts. Said policies and standards are incorporated in this Agreement by reference at [www.fhwa.dot.gov/legsregs/legislat.html](http://www.fhwa.dot.gov/legsregs/legislat.html) and [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

### **SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS**

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

## **WORK BY ENTITY**

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

## **7. COMPREHENSIVE PLAN**

### **CONTENT OF PLAN PACKAGE**

The Municipality, and/or its agent, shall prepare the Comprehensive Bicycle and/or Pedestrian Plan, developed in accordance with the Department's Template for Bicycle and Pedestrian Plans. The Comprehensive Bicycle and/or Pedestrian Plan will address (but not be limited to) the following:

- A) Introduction / Executive Summary
- B) Evaluating Current Conditions
- C) Existing Plans, Programs, and Policies
- D) Develop Bicycle or Pedestrian System Plan
- E) Facility Standards and Guidelines
- F) Ancillary Facilities and Programs
- G) Project Development
- H) Maps and Illustrations
- I) Recommendations for Projects, Programs and Policies
- J) Implementing the Plan

## **SUBMITTAL REQUIREMENTS**

The Municipality shall submit two copies of the final draft of the Comprehensive Bicycle (and/or) Pedestrian Plan to the Department for review and approval. The DBPT and the TPB shall review and approve said final draft and any necessary revisions within six months.

## **8. COMPLETION**

The Department shall accept completion of the Project under the following conditions;

- A. The Town Council of the Municipality shall consider the adoption of the Comprehensive Bicycle (and/or) Pedestrian Plan, as approved by the Department. If the Council requests significant changes prior to adoption, the Municipality must resubmit the Council-approved Comprehensive Bicycle (and/or) Pedestrian Plan to the Department for re-approval.
- B. The Municipality shall submit digital files and five (5) hard copies of the approved Comprehensive Bicycle and/or Pedestrian Plan, in a format compatible with Department and Municipal requirements. Geodatabases/shapefiles shall adhere to the DBPT standard format regarding nomenclature, structure and minimal attributes/variables. Photo and map design/resolution shall also meet minimum DBPT standards. The Municipality shall be responsible for the distribution of the final documents to the appropriate local agencies and interested parties.

## **9. PROJECT DOCUMENTS**

All documents, including digital files, will become the property of the Municipality and the Department. Any and all original graphics, technical drawings, photographs, maps, GIS files, and promotional items produced for the plan or for any public meetings shall be available for use by the Department in other publications, on the DBPT website and for display purposes. The Department shall be credited for its participation in all documents, publicity, announcements and materials prepared by the municipality for public meetings.

## **10. REIMBURSEMENT**

### **SCOPE OF REIMBURSEMENT**

Activities eligible for funding reimbursement for this Project shall include:

- Planning and Production of a Bicycle Plan for the City of Hendersonville

## **REIMBURSEMENT GUIDANCE**

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, cost principles and audit requirements for federal awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which are being incorporated into this Agreement by reference at [www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm) and by Title 2 Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, cost principle and audit requirements for federal awards." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

## **REIMBURSEMENT LIMITS**

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$35,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

## **BILLING THE DEPARTMENT**

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

## **11. REPORTING REQUIREMENTS AND RECORDS RETENTION**

### **PROJECT EVALUATION REPORTS**

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures that detail the progress achieved to date for the Project.

### **PROJECT RECORDS**

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

## **12. OTHER PROVISIONS**

### **REFERENCES**

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

### **INDEMNIFICATION OF DEPARTMENT**

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The

Department shall not be responsible for any damages or claims, which may be initiated by third parties.

#### **DEBARMENT POLICY**

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

#### **TITLE VI - CIVIL RIGHTS ACT OF 1964**

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

#### **OTHER AGREEMENTS**

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

#### **AVAILABILITY OF FUNDS**

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

#### **IMPROPER USE OF FUNDS**

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

## **TERMINATION OF PROJECT**

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

## **AUDITS**

In accordance with Title 2 Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, cost principles and audit requirements for federal awards," and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

## **REIMBURSEMENT BY MUNICIPALITY**

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

## **USE OF POWELL BILL FUNDS**

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

## **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

## **AUTHORIZATION TO EXECUTE**

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

## **FACSIMILE SIGNATURES**

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

## **GIFT BAN**

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

## **13. SUNSET PROVISION**

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

CITY OF HENDERSONVILLE

BY: Tammie K. Drake

BY: Barbara G. Volk

TITLE: City Clerk

TITLE: Mayor

DATE: 8-6-15

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by City Council of the City of Hendersonville as attested to by the signature of Tammie K. Drake Clerk of the Council on 08.06.15 (Date)



This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature]  
(FINANCE OFFICER)

Federal Tax Identification Number  
56-6001242

City of Hendersonville  
Remittance Address:  
145 Fifth Ave. E.  
Hendersonville NC 28792

DEPARTMENT OF TRANSPORTATION  
BY: \_\_\_\_\_  
(DEPUTY SECRETARY FOR TRANSIT)  
DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sam Fritschner

**Department:** Legal

**Date Submitted:** 20 August 2015

**Presenter:** Tom Wooten

**Date of Council Meeting to consider this item:** 3 September 2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05d

Staff has identified a potential problem with automobiles parked for hours at a time at recreational facilities (including specifically the dog park) by patrons and employees of nearby businesses. In consultation with the city manager, the police chief and the public works director I have drafted for the Council's consideration a proposed ordinance that would permit the city manger to change hours of operation for recreational facilities. The change would also permit the city manager to cause signs to be posted prohibiting parking by persons not actively using the facility.

There is also a deletion of a reference to Edwards Park, which is no longer owned by the City.

**Budget Impact:** \$0 Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council to adopt the ordinance respecting operating hours of, and parking at, recreational facilities.

**Attachments:**

Proposed ordinance

Ordinance #15-\_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 38-1 OF THE CODE OF ORDINANCES RESPECTING HOURS OF OPERATION OF RECREATIONAL FACILITIES AND ADDING A SECTION RESPECTING PARKING AT SUCH FACILITIES**

WHEREAS, the City of Hendersonville in the interest of the health, safety and welfare of its residents and visitors establishes from time certain recreational facilities including public parks and dog parks, and

WHEREAS, the City desires to protect users of the said facilities by establishing and maintaining rules respecting operational hours and use of, and parking at, such facilities,

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

SECTION 1. Section 38-1 of the Hendersonville Code of Ordinances is hereby amended to add an additional section as follows:

**Sec. 38-1. - Closing hours for public parks and other recreational facilities generally; exceptions.**

(a) Except as otherwise provided herein, All public parks and other recreational facilities within the corporate limits of the city shall be closed to the general public between the hours of 11:00 p.m. and 6:00 a.m., daily, and it shall be unlawful for any person to remain in or to enter such public parks facilities between such hours; provided, however, that the provisions of this section shall not apply to the following:

(1) Employees or others employed by the city to maintain, protect or conserve such public parks facilities in the regular performance of their duties;

(2) Any public park recreational facility or portion thereof where prior written permission has been obtained from the director of public works for an activity to extend beyond 11:00 p.m.; or

~~(3) Any person or group of persons duly involved in or participating in any of the activities of, related to, or a part of the general program of the Boy Scouts of America or the Girl Scouts of America, or any subsidiary or adjunct thereof, or the invitees and licensees of such organizations and subsidiaries thereof, or any other authorized group; provided, however, that such activity shall be, and this exception shall be limited to, the confines of that geographical area maintained by the city as a public park or place of recreation and known as Edwards Park.~~

(b) The city manager shall have the power to designate from time to time other

reasonable hours of operation and parking at all City recreational facilities including parks and dog parks.

SECTION 2. Chapter 50 of the Hendersonville Code of Ordinances is hereby amended to add an additional section as follows:

**Sec. 50-258. Parking at City Recreational Facilities; Exceptions.**

(a) It shall be unlawful for any person to permit any motor vehicle of any nature or kind whatsoever owned or operated by such person to stop, stand or park in the parking area of any City-owned or -operated recreational facility, including specifically parks and dog parks.

(b) This section shall be enforced with regard to any recreational facility only where the city manager has caused to be conspicuously placed one or more signs designating that parking at such facility is limited to active users as specified in paragraph (a) hereof.

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

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

Adopted this third day of September 2015.

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Barbara Volk, Mayor

Attest:

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Tammie K. Drake, MMC, City Clerk

Approved as to form:

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Samuel H. Fritschner, City Attorney



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 8/21/15

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 9/3/15

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05ei

On August 20, 2015, the Special Events Committee met and reviewed an application from Bruce Drysdale Elementary PTO sponsor of Apple Bear 5K & Color Run to be held October 24, 2015 from 8:00 a.m. - noon. This is a first time event.

The run will be a positive, family-friendly event which brings people to the area. The 5K Fun Run will benefit the children at Bruce Drysdale Elementary and the proceeds will go towards building a new playground.

The run will begin and end at Patton Park. The pavilions will be used for a DJ for music and entertainment and food. Either off-duty police officers or PTO volunteers will be present on each side of North Main Street where the race course crosses the street for safety.

The Special Events Committee voted unanimously to approve the Apple Bear 5K & Color

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council to approve the special event permit for Apple Bear 5K Color Run.

Attachments:



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 08/20/15

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 09/03/15

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05eii

On August 20, 2015, the Special Events Committee met and reviewed an application from Henderson County NAACP, St. Paul AME Zion Church and the Eastern Star sponsors of the Health/Community Relations event to be held on September 19, 2015 from 9 a.m. – 1 p.m. at Sullivan Park. This is a first time event.

This will be an event to distribute information to the community about health and resources for everyday living. Some of the participants will be Mainstay, the Healing Place, the Hendersonville Police Department and Blue Ridge Community Health.

The Special Events Committee voted unanimously to approve the special event permit for Health/ Community Relations event.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council approve the special event permit for the Health/Community Relations event.

**Attachments:**



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 8-20-15

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 9/3/15

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05eiii

On August 20, 2015, the Special Events Committee met and reviewed an application from Southern Appalachian Brewery sponsor of Oktoberfest to be held on Sunday, September 27, 2015 from 1-6 p.m. at the Appalachian Brewery. This is the fifth year this event has been held.

This will be a family friendly community oriented celebration of Germany's traditional Oktoberfest. The event will feature live music and games.

Locust Street will be closed from Bearcat Blvd. (8th Avenue) to the end of the Appalachian Brewery portion of the building. Locust Street will be roped off for the alcohol area. A \$10.00 gate fee will be charged and the proceeds will benefit Pardee Hospital. There will be two off-duty officers present during the entire event.

Approval of this application will include approval of the sale of alcohol in a secured area on Locust Street.

The Special Events Committee voted unanimously to approve the special event permit for Oktoberfest.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council approve the special event permit for the Oktoberfest to include the sale of alcohol.

**Attachments:**



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 8-21-15

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 09/03/15

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05eiv

On August 20, 2015, the Special Events Committee met and reviewed an application from Southern Appalachian Brewery sponsor of Vintage Hendo Market to be held on October 10, 2015 from 11 a.m. - 7 p.m. This event was held the past spring in the parking lot and drew people from all over WNC.

Vintage Hendo is a pop-up market featuring arts and crafts and vintage resale items.

Locust Street will be closed from Bearcat Blvd. (8th Avenue) to the end of the Appalachian Brewery portion of the building. There will be vendors and beer sales in the street. The area will be roped off for beer sales.

Approval of this application will include approval of the sale of alcohol in a secured area on Locust Street.

The Special Events Committee voted unanimously to approve the special event permit for the Vintage Hendo Market.

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council approve the agenda item for a special event permit for Vintage Hendo Market to include the sale of alcohol.

Attachments:



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 08/20/15

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 09/03/15

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05f

Two Budget Amendments (2) to address the following...

- 1: To lower the loan budgeted for the garbage truck. The cost of the truck came in lower than budgeted.
- 2: To move salary budget moving the department in which the I&I Tech. and Leak Det. Tech. were originally placed.

**Budget Impact:** \$ (33,850) Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Will lower the ESF budget by \$33,850.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve the attached budget amendments.

**Attachments:**

See below...

**BUDGET AMENDMENT**

(67,700.00)

FUND: 68

ACCOUNT NUMBER		DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
ORG	OBJECT			
680090	499100	Proceeds of Debt		34,850.00
684710	554000	Cap Outlay Motor Vehicles		34,850.00
		<b>TOTALS IN BALANCE</b>	<b>\$ -</b>	<b>\$ 67,700.00</b>

(67,700.00)

The Garbage Truck came in lower than budgeted. This amendment will lessen the amount borrowed and the total budget allocated to the purchase of the truck.

  
 CITY MANAGER

Date: \_\_\_\_\_

APPROVED BY CITY COUNCIL:

DATE: 9/3/2015

**BUDGET AMENDMENT**

FUND: 10, 60

ACCOUNT NUMBER			INCREASE	DECREASE
ORG	OBJECT	DESCRIPTION OF ACCOUNT		
607123	512100	Salaries & Wages Reg		71,016.00
607123	518100	FICA Tax Expense		5,892.00
607123	518200	Retirement Expense		5,136.00
607123	518300	Group Med/Life Ins		11,292.00
607126	512100	Salaries & Wages Reg	35,508.00	
607126	518100	FICA Tax Expense	2,946.00	
607126	518200	Retirement Expense	2,568.00	
607126	518300	Group Med/Life Ins	5,646.00	
607136	512100	Salaries & Wages Reg	35,508.00	
607136	518100	FICA Tax Expense	2,946.00	
607136	518200	Retirement Expense	2,568.00	
607136	518300	Group Med/Life Ins	5,646.00	
607123	518900	Retiree Ins	8,791.00	
609910	599100	Contingencies		8,791.00
607125	512100	Salaries & Wages Reg		55,491.00
607125	518100	FICA Tax Expense		4,265.00
607125	518200	Retirement Expense		3,718.00
607125	518300	Group Med/Life Ins		5,646.00
607110	512100	Salaries & Wages Reg	55,491.00	
607110	518100	FICA Tax Expense	4,265.00	
607110	518200	Retirement Expense	3,718.00	
607110	518300	Group Med/Life Ins	5,646.00	
607110	512900	Salaries & Wages P/T		2,800.00
607110	518100	FICA Tax Expense		215.00
607125	512900	Salaries & Wages P/T	2,800.00	
607125	518100	FICA Tax Expense	215.00	
104150	512900	Salaries & Wages P/T	2,320.00	
104150	518100	FICA Tax Expense	25.00	
104150	518200	Retirement Expense	22.00	
109910	599100	Contingencies		2,367.00
607110	512900	Salaries & Wages P/T	320.00	
607110	518100	FICA Tax Expense	25.00	
607110	518200	Retirement Expense	21.00	
609910	599100	Contingencies		366.00
<b>TOTALS IN BALANCE</b>			<b>\$ 83,659.00</b>	<b>\$ 83,659.00</b>

An Amendment to move three new positions created in the W/S Fund to different divisions within the Fund. They were budgeted in Facilities Maintenance however, they should be budgeted in the Line Maintenance Divisions. In addition, the Utilities Engineer is requested to be budgeted in Admin. not Shop Ops. Additionally, the GIS Intern should be budgeted in Shop Ops not Admin. There is also a new retiree, so retiree insurance will be added from contingency. Lastly, the paralegals salary was inadvertently left a couple thousand dollars short, this is a minor fix and will be drawn from contingencies.

  
CITY MANAGER

Date:

8/26/15

APPROVED BY CITY COUNCIL:

DATE:

9/3/2015



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/26/2015

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/3/2105

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05g

Staff has been working for the last three months with Lamar Advertising to develop an agreement that will allow them to maintain their billboard on City property near the I-26 interchange on Four Seasons Blvd. in exchange for removing billboards on Martin Luther King Blvd. We have reached an agreement to the following terms:

Outdoor signs on pump station property will remain on a 5+5 term with +5 option to Lamar.

Lamar will remove 5 sign faces at other locations on MLK (2 Double sided, side by side poster signs on Cooley property + square Billboard on Flowers property)

Lamar will work with NCDOT to remove and replace landscaping in front of pump station signs on DOT right of way

Rental rate will be \$5,000 per year for all 5+5 years.

The rental rate is increasing from \$2,000 per year to \$5,000 per year. Staff is recommending that these funds be allocated to the Seventh Avenue Municipal Service District for streetscape improvements.

**Budget Impact:** \$ 5,000 Is this expenditure approved in the current fiscal year budget?  No  If no, describe how it will be funded.

Increase of \$3,000 in additional revenue.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move that the City Council approve the aforementioned terms and authorize the City Manager to execute the agreement with Lamar Advertising.

## Attachments:

Proposed contract will be distributed prior to the meeting.



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Lisa White

**Department:** Finance

**Date Submitted:** 08-18-15

**Presenter:** Lisa White

**Date of Council Meeting to consider this item:** Sept 3, 2015

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05h

The Fiscal year 2016 budget provides for Capital Equipment Financing for the purchase of a garbage truck for the Environmental Services Fund in the amount of \$222,000 and in the Downtown Fund for the purchase of 7 parking kiosks -revised total of \$83,000. (the original estimate was \$114,000 for the Kiosk but due to purchasing all 7 together the City received a discount).

The Finance department issued a Request for Proposals on July 10, 2015 for a total of \$336,800. (note the loan amount will be amended to reflect the discount on the kiosks- the revised loan amount will be \$305,000).

The RFP was posted on the City website on July 10 and was emailed to 19 local bank/financial institutions.

The sealed bids were due by August 17, 2015. At 2 pm on August 17, 2015, the Finance Director and the Accounting Supervisor opened the sealed bids. The City received 7 bids. The low bidder was Macon Bank at a interest rate of 1.89% for a seven year term with no bank origination fees and no prepayment penalties.

Staff recommends that the Council accept the bid from Macon Bank for the rate and terms provided.

The attached Resolution provides approval for the City Manager and Finance Director to execute the loan documents with Macon Bank.

**Budget Impact:** \$ 305,000.00 Is this expenditure approved in the current fiscal year budget? Yes  If no, describe how it will be funded.

\$222,000 Garbage Truck Environmental Services Fund \$83,000 Parking Kiosks Downtown Fund

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move that City Council accept the bid for Capital Equipment Financing from Macon Bank for the rate and terms provided in the banks response to the Request for Proposals and that City Council pass the Resolution Approving Financing Terms.

## Attachments:

- Resolution Approving Financing Terms
- Bid Summary Sheet
- Capital Financing RFP

## Resolution Approving Financing Terms

**WHEREAS:** The City of Hendersonville (“City”) has previously approved the fiscal year budget for fiscal year 2016 which included proceeds of bank financing for capital equipment, the Finance Director has now presented a proposal for the financing of such Capital Equipment.

### **BE IT THEREFORE RESOLVED, as follows:**

1. The City hereby determines to finance the Capital Equipment through Macon Bank, in accordance with the proposal dated August 17, 2015. The amount financed shall not exceed \$305,000 the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.89%, and the financing term shall not exceed seven (7) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) shall be consistent with the foregoing terms. The City Manager and Finance Director are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Capital Equipment as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Capital Equipment Fund Agreement as Macon Bank may request.

3. The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Director is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Director shall approve, with the Finance Director’s release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document’s final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b) (3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this third day of September, 2015

\_\_\_\_\_  
Barbara G. Volk, Mayor

\_\_\_\_\_  
Tammie K. Drake, MMC, City Clerk

SEAL

<u>Lender Institution Name</u>	<u>Term</u>	<u>Interest Rate</u>	<u>Notes/Comments</u>
1 Macon Bank	7 years	1.89%	No prepayment fees ; no origination fees
2 BB&T	7 years	1.97%	No prepayment fees ; no origination fees
3 US Bancorp	7 years	2.067%	
4 First Citizens	7 years	2.13%	
5 Santander	7 years	2.295%	
6 SunTrust	7 years	2.64%	
7 Bank of North Carolina	7 years	2.68%	

CITY COUNCIL:  
 BARBARA G. VOLK  
 Mayor  
 RON STEPHENS  
 Mayor Pro Tem  
 STEVE CARAKER  
 JERRY A. SMITH, JR.  
 JEFF MILLER

# CITY OF HENDERSONVILLE

*The City of Four Seasons*

**FINANCE DEPARTMENT**  
**Lisa A. White, CPA, CGFO**  
**Finance Director**

OFFICERS:  
 JOHN F. CONNET  
 City Manager  
 SAMUEL H. FRITSCHNER  
 City Attorney  
 TAMMIE K. DRAKE  
 City Clerk

July 10, 2015

Re: Request for Proposal for Installment Financing Agreement - **DUE AUGUST 17, 2015 2 P.M.**

The City of Hendersonville, North Carolina (“the City”) desires to enter into an installment financing agreement in the principal amount not to exceed \$336,800.00 for the purpose of purchasing the capital equipment listed below. The City is currently rated AA- by Moody’s Investors Service and A+ by Standard & Poor’s Ratings Services. The City is soliciting your proposal to provide the necessary financing for this project, subject to the terms and conditions set forth in this Request for Proposal.

**A. Pertinent Information**

The items to be purchased with estimated costs are:

Quantity	Item	Description	Cost Each	Extended Totals:
1	Garbage Recycling Truck	2016 Crane Carrier/Crew Cab/Heil Model PT-1000 20 cubic yard rear loader	\$ 222,000.00	\$ 222,000.00
7	Parking Pay stations	T-2 Systems, Luke II Digital Parking Pay stations, with various components, set-up	\$ 16,400.00	\$ 114,800.00
<b>Total Amount to be Financed:</b>				<b>\$ 336,800.00</b>

The financing will be bank eligible under Section 265 of the Internal Revenue Code of 1986.

**B. Contract Specifications**

1. The desired amount of the financing is not to exceed \$336,800.00
2. The desired term of the financing is 7 years. The City desires the debt service payment schedule to reflect amortization over a 7 fiscal year period, with payments of both principal and interest beginning December 2015 and ending June, 2022. The Cities fiscal year is July 1- June 30.
3. Level installment payments are to be made semi-annually (both principal and interest), in December and June of each year for a total of 14 payments.
4. The interest rate(s) shall be fixed for the term.
5. The City requests that the lender waive any recording fees, document preparation fees, UCC fees or originations fees.

6. The interest rate(s) proposed must be guaranteed for at least forty-five (45) days from the date of the RFP due date, August 17, 2015. The City Council will consider the proposed contract with the selected bidder at its regularly scheduled meeting on Thursday, September 3, 2015. The City desires to close the transaction on or after September 10, 2015.
7. Prepayment terms may be negotiated between the City and the successful bidder. The City desires prepayment of principal at any time without penalty.
8. The City will pledge its full faith and credit and taxing power for the payments to be made. No deficiency judgment may be rendered against the City for breach of a contractual obligation under the Installment Financing Agreement.
9. The Installment Financing Agreement must not contain a non-substitution clause and there must be a non-appropriation clause in the installment financing agreement.

C. Submission of Proposal

Your written proposal must be received by **2 pm on Monday, August 17, 2015** at the office of Lisa White, Finance Director, 145 Fifth Avenue East, Hendersonville NC 28792-4328. Proposals must be submitted by mail or in person in a **sealed** envelope marked "Capital Financing RFP". **No emailed proposals will be accepted.**

Proposals must specify at a minimum the following information:

1. The term of the financing.
2. The interest rate and total interest cost.
3. The terms of repayment. Please attach a proposed amortization schedule, showing the first interest and principal payment due December 2015 and the final payment of both principal and interest due June 2022. Schedule must also show total interest cost.
4. A list of all additional costs to be associated with this transaction. State whether or not any of such fees or expenses can or will be capped or waived.
5. A statement to the effect that the bank/lender agrees to the contract specifications set forth in Part B of this Request for Proposal.

The City reserves the right to request additional information from the bidders and reserves the right to reject all proposals and to waive any irregularities or informalities. Although the selection will be based substantially on lowest total financing cost (including both interest cost and upfront fees and expenses), the City reserves the right to select the bidder that best meets the needs of the City.

Thank you in advance for your consideration of this proposal. If you have any questions please contact:  
Lisa White at [lwhite@hvlnc.gov](mailto:lwhite@hvlnc.gov)

Sincerely,



Lisa A. White, CPA  
Finance Director



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/27/2015

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/3/2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05i

The Chapter 50 of the Hendersonville City Code currently includes fines and penalties for parking offenses. These fines and penalties are inconsistent with the new fee schedule. Therefore, we are removing the fines and penalties from the City Code and changing the language to read that the fines and penalties will be established by the City Council in the Fee Schedule. This will allow us to adjust the fines and penalties without constantly amending the City Code.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move that the City Code amend the City Code to eliminate fines and penalties associated with parking regulations in Chapter 50 of the Hendersonville City Code.

**Attachments:**

Proposed City Code Amendment

Ordinance #15-\_\_\_\_\_

**AN ORDINANCE AMENDING PORTIONS OF CHAPTER 50 OF THE CODE OF ORDINANCES  
RESPECTING CIVIL PENALTIES FOR UNLAWFUL PARKING**

WHEREAS, the City of Hendersonville City Council establishes from time to time a Schedule of Fees to prescribe fees, civil penalties and the like, and

WHEREAS the City Council deems it desirable to establish from time to time civil penalties for certain parking violations within the Schedule of Fees,

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

SECTION 1. Subsection (b) of Section 50-249 of the Hendersonville Code of is hereby amended as follows.

**Sec. 50-249. - Parking in alleys; penalty for violation of section.**

(a) No person shall park a vehicle within an alley and leave the vehicle unattended. No person shall park a vehicle within an alley, while under his direct supervision and control for purposes of loading and unloading, in such a manner or under such conditions as to leave available less than ten feet of the width of the alley for the free movement of vehicular traffic. No person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.

(b) Any person violating any provisions of this section shall be ~~fined \$10.00 for~~ subject to a civil penalty for each such offense in accordance with the fees established from time to time by the City Council in the City's Schedule of Fees.

SECTION 2. Subsection (d) of Section 50-257 of the Hendersonville Code of is hereby amended as follows.

**Sec. 50-257. - Use of parking lots.**

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

Parking lot means any area within the city on which more than ten automobiles may be parked and shall include public parking lots and those parking lots which are for the

principal purpose of providing parking during business hours for shopping centers, stores, restaurants, drive-ins, theaters and other business or commercial establishments.

(b) Congregation of persons. It shall be unlawful for more than ten people to congregate on any one parking lot in the city between the hours of 12:00 midnight and 6:00 a.m., if the closest part of the parking lot is within 300 feet of a private residence, excepting any person parking a vehicle on a lot or being on such lot for the purpose of patronizing a business establishment which is actually open for business between the hours of 12:00 midnight and 6:00 a.m.

(c) Enumeration of offenses. It shall be unlawful for any person on a parking lot in the city between the hours of 12:00 midnight and 6:00 a.m., to do one or more of the following:

- (1) Talk in a loud or boisterous manner;
- (2) Drink beer or any kind of alcoholic beverage;
- (3) Throw any type of bottle, can, container, trash or paper on the parking lot;
- (4) Use profanity or cursing in such a manner that those standing in the immediate vicinity of the person may hear the profanity or cursing; or
- (5) Make such noise or disturbance that persons living in homes or other dwelling accommodations within 300 feet of such parking lot are disturbed in their place of living and deprived of their peace and quiet.

(d) Unlawful stopping, standing or parking; penalty. It shall be unlawful for any person to permit or allow any motor vehicle of any nature or kind whatsoever to stop, stand or park in any specified area of any parking areas or driveways of any hospital, shopping center, apartment house, condominium complex or commercial office complex, or any other privately owned public vehicular area, in violation of specified hours of permitted stopping, standing or parking of motor vehicles indicated by appropriate signs, posters or other displays on such premises, and provided a written request for the application of this subsection to the privately owned public vehicular area has been filed with the chief of police. The owner of any vehicle parked, stopped or standing in violation of this subsection shall be deemed to have appointed any appropriate law enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. A violation of this subsection shall ~~constitute a misdemeanor and a fine of \$10.00 shall be imposed therefor.~~ subject the violator to a civil penalty in accordance with the fees established from time to time by the City Council in the City's schedule of fees.

SECTION 3. Section 50-341 of the Hendersonville Code of is hereby amended as follows:

Sec. 50-341. - Schedule of civil penalties for stopping, standing, parking and parking meter violations.

~~(a) The following civil penalties for violations of divisions 1, 2 and 3 of this article are established:~~

~~(1) Overtime parking at metered and non-metered space .....\$ 10.00~~

~~A second or subsequent violation within a 24-hour period shall be subject to a civil penalty of \$20.00.~~

~~(2) Unauthorized parking in area indicated as reserved for handicapped persons shall be in accordance with North Carolina General Statutes which establishes minimum and maximum fines.~~

~~(3) All other violations .....10.00 — 100.00~~

~~(b) Parking violations included in this section shall be delinquent after the 15th day from the issuance of the citation. Thereafter, the following civil penalties shall apply to the parking violations enumerated in subsection (a) of this section, in addition to the stated penalty:~~

~~Delinquent Period — Additional Penalty~~

~~(1) Fifteen or more days delinquent on a violation of \$10.00 or more subject to a penalty of .....\$ 15.00~~

~~(2) Thirty or more days delinquent on a violation subject to an additional penalty of .....25.00~~

(a) Civil penalties for violations of divisions 1, 2 and 3 of this Article shall be as established from time to time by the City Council in the City's Schedule of Fees.

(e b) This violation and any delinquent penalty are not subject to the penalty provisions of G.S. 14-4, but instead constitute civil penalties to be recovered by the city in a civil action in the nature of debt when the violator does not pay the penalty within the prescribed period of time set forth, pursuant to G.S. 160A-175(c).

SECTION 4. 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 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 September 2015.

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Barbara Volk, Mayor

Attest:

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Tammie K. Drake, MMC, City Clerk

Approved as to form:

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Samuel H. Fritschner, City Attorney



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sue Anderson, Planning Director

**Department:** Development Asst Dept

**Date Submitted:** August 20, 2015

**Presenter:** Sue Anderson

**Date of Council Meeting to consider this item:** September 3, 2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 06

File # P15-31-T

Consideration of an amendment to the Zoning Ordinance regarding the content of applications for Special Use review.

Please refer to the attached memo for details.

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

See page four & five of the attached memo for suggested motions.

**Attachments:**

Memo  
Public Comment Letters

## **M E M O R A N D U M**

**TO:** Honorable Mayor and City Council

**FROM:** Development Assistance Department

**RE:** Text Amendment of Article VII Development Review Section 7-4-3.1 Contents

**FILE #:** P15-31-T

**DATE:** August 20, 2015

### **BACKGROUND**

There are two Planned Development Special Use permit projects within Hendersonville where the Special Use permit has expired. The two projects include Blythe Commons located at Blythe Street and Haywood Road and Towne Place located on Greenville Highway. The Special Use permits for these two projects expired prior to all the proposed units being completed. The expiration date of both of these projects includes the time allotted by the NC State Legislature which stopped the clock for a period of time during the recession for approved projects. Blythe Commons is zoned Planned Residential Development and has 15 or the original 20 residential units completed. Towne Place is zoned Planned Commercial Development and has 36 of the original 40 units completed.

In order to complete these projects, a new Special Use permit is required. The new Special Use permit application requires that either the property owner(s) sign the application or if the applicant is other than the record owner of the property, then the consent of the record owner to the application shall be noted on the application.

According to Section 7-4-3.1, the Planning Director has required that all property owners within both developments sign the application or provide consent of the record owners. Since these are planned developments and viewed as one development, property owner(s) signature or consent is required of the owners of the individual residential units, which also includes the land under each building, along with the owner of the common areas. In both cases, the common area includes the area where the proposed unbuilt units are to be located.

Generally in these types of situations, once the project is complete, the common areas are then turned over to a Homeowner Association.

In the case of Blythe Commons, all property owners, including individual residential unit owners have signed the application and that new Special Use permit was approved by City Council on November 6, 2014. The remaining 5 residential units are now under construction.

In the case of Towne Place, the application only contains the signature of the manager of Park Place Developers. According the Henderson County records, it appears that Park Place Developers LLC owns 6.68 acres of what may be considered common area. Also, it appears that Town Place Development LLC owns .33 acres of what may be considered common area.

The applicant has been informed that the application does not include all the required signatures and therefore is incomplete. The applicant has filed for Administrative Review and relief from my decision. These types of reviews go before the Board of Adjustment.

In conversations with the City Manager and City Attorney, it was determined to first have this issue go before the Planning Board and City Council. The applicant is willing to postpone the Administrative Review until the Planning Board and City Council have the opportunity to discuss the specific language in the Zoning Ordinance and any possible revisions to clarify the requirements.

Listed below are the references from the Zoning Ordinance regarding the application requirements.

**Section 7-4 Special Use Review.** Special use review provides an alternative to traditional zoning by coupling an application for rezoning with an application for a special use permit specifying the intended use(s) along with a conceptual site plan and any proposed conditions to be placed upon the property.

**7-4-3.1 Contents.** Applications shall include the name and address of the applicant, the name and address of the owner of each zoning lot involved, and the relationship of the applicant and property owner(s) in connection with the application. If the applicant is other than the record owner of the property, the consent of the record owner to the application shall be noted on the application or in some other fashion acceptable to the Planning Director. The application shall also designate an agent for the project to whom notice may be given by the City. The Planning Director shall prescribe any other material that may reasonably be required to determine compliance with this article, with sufficient copies for necessary referrals and records.

## CONCLUSION

Below are two possible considerations that City Council may wish to consider. The City Council may also have other suggestions for modifying the language of the Zoning Ordinance.

1. Clarify the existing language under 7-4-3.1 to include signatures from what are considered all property owners within a proposed special use development.
2. Clarify the existing language under 7-4-3.1 to include signatures from what are considered all property owners within a proposed special use development **and** provide additional language for incomplete and or expired Special Use permits that

require property owner signatures only from the property owners of undeveloped portions of a previously approved development.

### **TEXT AMENDMENT CONSIDERATIONS**

Listed below are text amendment considerations. Additions underlined and deletions ~~struck through~~.

**7-4-3.1 Contents.** Applications shall include the name, ~~and address~~ and signature of the applicant. ~~Applications shall also include the name, and address and signature of the owner of each zoning lot involved and the relationship of the applicant and property owner(s) in connection with the application.~~ at least one owner of each parcel making up any part of the property that is subject to the application. ~~If the applicant is other than the record owner of the property, the consent of the record owner to the application shall be noted on the application or in some other fashion acceptable to the Planning Director.~~ The application shall ~~may~~ also designate an agent for the project to whom notice may be given by the City. The Planning Director shall prescribe any other material that may reasonably be required to determine compliance with this article, with sufficient copies for necessary referrals and records.

For previously approved special use permit developments that are incomplete or expired or both, the application shall include the name, address and signature of at least one owner of each parcel to be developed.

### **TEXT & POLICY COMMITTEE**

The Text & Policy Committee reviewed this request on July 27<sup>th</sup>. Two of the four members of the Text & Policy Committee were present and recommend the proposed text amendment to include both clarifying the existing language under 7-4-3.1 and providing additional language for incomplete and or expired Special Use permits.

### **PLANNING BOARD RECOMMENDATION**

The Planning Board took this matter up at its regular meeting of August 10, 2015. A motion was made by the Planning Board to recommend City Council change Section 7-4-3.1 to read 75% approval by property owners instead of 100% approval. That motion failed with a vote of two for and six against.

A second motion was made to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents relating to required property owner signatures. The motion passed with a vote of seven for and one against.

### **ZONING ORDINANCE GUIDELINES**

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered

by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance:

1. Comprehensive Plan consistency. Consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. Public interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. Public facilities. Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

### **SUGGESTED MOTIONS**

#### **Approval #1:**

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents to include signatures from what are considered all property owners within a proposed special use development.

**[PLEASE STATE YOUR REASONS]**

#### **Approval #2:**

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents to include signatures from what are considered all property owners within a proposed special use development and provide additional language for incomplete and or expired Special Use permits that require property owner signatures only from the property owners of undeveloped portions of a previously approved development.

**[PLEASE STATE YOUR REASONS]**

**Approval with Modifications:**

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents relating to required property owner signatures with the following modification:

**[PLEASE STATE MODIFICATIONS]**

**Denial:**

I move City Council to not adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 Contents relating to required property owner signatures.

**[PLEASE STATE YOUR REASONS]**

**AN ORDINANCE AMENDING ARTICLE VII DEVELOPMENT REVIEW  
SECTION 7-4-3.1 CONTENTS OF THE ZONING ORDINANCE OF THE CITY OF  
HENDERSONVILLE PERTAINING TO REQUIRED PROPERTY OWNER  
SIGNATURES**

**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 desires to amend those regulations with regards to required property owner signatures.

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

1. Article VII Development Review Section 7-4-3.1 Contents is hereby amended to read as follows:

**7-4-3.1 Contents.** Applications shall include the name, ~~and address~~ and signature of the applicant. Applications shall also include the name, and address and signature of the owner of each zoning lot involved and the relationship of the applicant and property owner(s) in connection with the application. at least one owner of each parcel making up any part of the property that is subject to the application. ~~If the applicant is other than the record owner of the property, the consent of the record owner to the application shall be noted on the application or in some other fashion acceptable to the Planning Director.~~ The application shall may also designate an agent for the project to whom notice may be given by the City. The Planning Director shall prescribe any other material that may reasonably be required to determine compliance with this article, with sufficient copies for necessary referrals and records.

For previously approved special use permit developments that are incomplete or expired or both, the application shall include the name, address and signature of at least one owner of each parcel to be developed.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2015

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Barbara Volk, Mayor

Attest:

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Tammie K. Drake, CMC, City Clerk

Approved as to form:

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Samuel H. Fritschner, City Attorney

# City of Hendersonville

## PLANNING BOARD REPORT

**Project Name:** Text Amendment of Article VII Development Review Section 7-4-3.1  
Contents

**File Number:** P-15-31-T

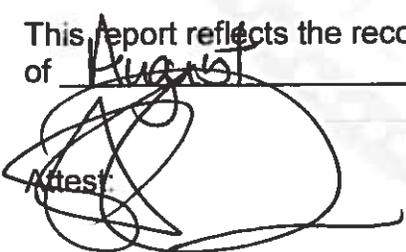
Approval – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan.

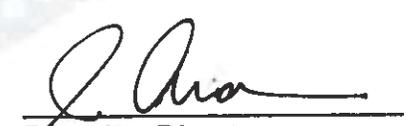
Approval With Amendment – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan. The Planning Board recommends the following amendment(s):

Denial – The text amendment is not consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and the 2030 Comprehensive Plan.

This report reflects the recommendation of the Planning Board, this the 10th day of August, 2015.

Attest:

  
\_\_\_\_\_  
Planning Board Chair

  
\_\_\_\_\_  
Planning Director

**From:** [Teresa Barrow](#)  
**To:** [Anderson, Susan](#)  
**Subject:** Towne Place  
**Date:** Friday, August 07, 2015 1:58:48 PM

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This is in reference to 7-4-3.1.....

My husband and I DO NOT want the law changed to allow Jim Ayers the opportunity to build on the parcel of land in our subdivision at Towne Place.

Ricki and Teresa Barrow  
237 Towne Place Drive  
Hendersonville, NC 28792

**From:** [Anderson, Susan](#)  
**To:** [Anderson, Susan](#)  
**Date:** Monday, August 10, 2015 1:57:31 PM

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Sue Anderson  
Planning Director  
City of Hendersonville  
145 Fifth Avenue East  
Hendersonville, N.C. 28792-4328  
Phone: 828-697-3088 Fax: 828-697-3014

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) that may be sent in response to it may be considered public record and as such are subject to request and review by third parties.

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**From:** Sharon  
**Sent:** Monday, August 10, 2015 8:17 AM  
**To:** Anderson, Susan  
**Subject:** Fwd: Delivery Status Notification (Failure)

Mime-Version: 1.0 (1.0)

Good morning Ms. Anderson

During the last year I have been to your office twice to get information about the progress of our situation. You have both times been gracious and most informative. Thank you

George James has sent you a letter that both my husband and I support with all our hearts.

There are many issues he addresses but the one that means the most to me is the idea that one individual out for monetary gain can change a "law" that has been in effect. A condition that prevented another contractor from achieving a similar goal. Regulations that exist should be upheld and enforced.

Please submit this with mr. James letter.

Respectfully,  
Sharon Borakove

Sent from my iPad

LINDA B. COOPER

August 18, 2015

City Council Members  
City of Hendersonville  
City Hall  
145 Fifth Avenue  
Hendersonville, NC 28792-4328

Re: Special Use Permit Section 7-4-3.1 Text Amendment

Dear City Council Members:

My husband would like to indicate our support for the proposed text amendment to Zoning Ordinance Special Use Permit Section 7-4-3.1 which has been recommended for approval by the Planning Board.

With all due respect, the Planning Director's current signature requirement of 100% of homeowners within the development, effectively grants as little as one homeowner the right to deny development of an incomplete area that was included in the original site plan when the original Special Use Permit was granted. The outcome of one homeowner's refusal to sign renders development impossible and effectively renders the remaining property worthless to its owner. I do not believe that outcome is the intent of the Special Use Permit process.

Indications of the intent of the Special Use Permit process are contained in section 7-4-3.2 and 7-4-4. These sections indicate the Special Use Permit applicant is to submit a conceptual plan to facilitate discussion during a neighborhood compatibility meeting. Section 7-4-4.3 indicates the relevant topics to be discussed by affected residents is compatibility and specifically states, "Questioning shall center on the proposal's compatibility as presented, **not** the question of whether the site should be developed". As previously mentioned, a 100% signature requirement allows as little as one homeowner the right to deny development, a right which was specifically refused to affected homeowners when the original Special Use Permit was granted.

My husband & I have owned a townhome in Towne Place since 2005 and made Towne Place our primary residence in August, 2014. The adoption of the text amendment will allow for a new Special Use Permit process to move forward related to the remaining undeveloped lots in Towne Place that were included in the original expired Special Use Permit. Under the Sections mentioned above, the Special Use Permit process will appropriately allow Towne Place homeowners the right to discuss compatibility and the impact to our existing community.

A community poll taken in April, 2015 indicated that a majority of Towne Place homeowners (22 of 31 respondents) support the development plan outlined by Mr. Ayers during an Open Forum session of an HOA Board meeting. Mr. Ayers' position is that only the owner of the undeveloped lots, Park Place Developers LLC, need sign the Special Use Permit application. Therefore, the lack of homeowner's signatures on Mr. Ayers' Special Use Permit application is not indicative of unanimous objection to his development plan, as other homeowner communications have suggested.

We are fortunate that only 10% of the Towne Place development is incomplete. However, if we consider the bigger picture, the current 100% signature requirement would also apply if 90% of Towne Place or any other Henderson County Special Use Permit development was left incomplete, allowing as little as one homeowner the right to deny development and dictate a worthless value to a major incomplete portion of the development. That result would be an unfortunate outcome for the development and for Hendersonville as a whole.

Unfortunately there will be other real estate market downturns in the future, other unexpected deaths of developers and other bankruptcy situations, all of which occurred at Towne Place and contributed to the incomplete development and the expired Special Use Permit. I support the text amendment that recognizes that these situations may occur and allows for a method to deal with them that is not punitive and that encourages the completion of incomplete developments approved under a previously expired Special Use Permit.

Accordingly, I respectfully request that you approve the proposed text amendment. I thank you for your time and attention and I appreciate the opportunity to voice my opinion.

Very truly yours,



Linda B. Cooper

**From:** [PJ Cramer](#)  
**To:** [Anderson, Susan](#)  
**Cc:** [Joe Cramer SR](#)  
**Subject:** Zoning Ordinance Text Amendment - For Tonight  
**Date:** Tuesday, August 11, 2015 2:51:41 PM

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Ms. Anderson:

As a property owner in the Towne Place Development, we are strongly in favor of changing any language that requires 100% approval of owners for development of previously approved permits for completion of approved plans.

While the proposed wording in the proposed calendar seems to involve specifying ownership, timing and intent, it is the **100% requirement** we are advocating for change.

We cannot make the meeting tonight but would like our input recorded for the Board's records. We are firmly against any wording in any ordinance concerning community development where the majority does not rule. Stated another way, we do not want progress held up by one dissenting vote. This kind of 'power of one' vote could spell disaster for community growth and development.

We strongly urge a change in the wording and policy that gave rise to this kind of 'tail wags the dog' thinking.

Thank you.

Peggy Cramer

August 14, 2015

RE: Use Permit #7-4-3.1

Zoning Ordinance, Text Amendment, Meeting September 3, 2015

Susan Anderson

City Council

As a resident of Hendersonville for the past 10 years I would like to comment on the above referenced Use Permit, Text Admendment. As the ordinance reads at present there is a difference of opinion as to interpetation. At the moment the ordinance is interperated that 100% of a development residents approval must be granted before further construction can begin.

This means in essence that one individual voting against an issue can stop progress.

The Council is urged to give this request special attention and amend the ordinance to read more clearly, such as "a percentage of residents, or majority of residents".

I am writing this in regard to Towne Place where a developer will complete the community as was originally planned. Completing our community would be a great benifit to our residents.

Thank you for you time and effort concerning this matter.

Respectfully,



Donald E. Downs

Hendersonville, NC 28792

George R. James

Hendersonville, NC 28792

August 6, 2015

Susan Anderson  
Planning Director  
Development Assistance Department  
City of Hendersonville  
145 Fifth Avenue East  
Hendersonville, NC 28792

Re: Zoning Ordinance Text Amendment Notification Dated August 3, 2015

Dear Susan Anderson:

This is in response to your referenced letter. I am urging the Planning Board and the City Council to reject any change to the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1. I would like to have this letter entered into the record of the Planning Board and the City Council meetings.

My reasons follow:

Section 7-4-3.1 protects the interests and investment of resident homeowners by giving them an opportunity to approve or disapprove changes by a developer in a community in which the residents have made a substantial investment.

As mentioned in the Development and Assistance Department (DAD) memorandum dated July 29, 2015, the current Section 7-4-3.1 has been applied to just two developments, Blythe Commons and Towne Place. The resident owners of Blythe Commons supported the issuance of a Special Use Permit. The resident owners of Towne Place have not. It would seem to be the very essence of arbitrary to apply the Ordinance when the resident owners support the Developer's wishes and to change the Ordinance when the resident owners reject the Developer's wishes.

As you know, consistency in zoning regulation is fundamental to the maintenance of property values. Diminishing the rights of property owners for the convenience of one developer is bad for all future developers and owners. Future owners are less willing to

Susan Anderson

August 6, 2015

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make an investment when they face a zoning regulatory environment in which their property rights are subject to changes that will threaten to reduce the value of their property. When Section 7-4-3.1 was adopted by the City, it was deemed to be proper and fair. The City should not now confiscate the rights of resident owners who relied upon the Zoning Ordinance in effect at the time they made their investment. There appears to be no significant benefit to the current resident property owners that would result from a change to Section 7-4-3.1. The benefits of a change accrue solely to the Developer and the Developer's Agents. A change to Section 7-4-3.1 will reduce the ability of all prospective property owners in communities like Towne Place and Blythe Commons to protect their investment and will grant the Developer a superior legal and economic position relative to the resident owners.

In my opinion and in the opinion of other property owners, attractive open space increases property values. The open space created by the unbuilt units has become a part of Towne Place, increases the attractiveness of Towne Place and increases property values. The open space created by the unbuilt units was landscaped at the resident's expense and was in place when every current resident owner purchased property in Towne Place. When the Special Use Permit that authorized the development of Towne Place was granted, the existing Section 7-4-3.1 was accepted and relied upon by the City, the Developer and the resident owners. The Developer knew or should have known of the deadlines to complete construction and showed no interest in constructing the four unbuilt units, creating the impression that there would be no future construction on the open space. The Developer chose to avoid the financial risk of constructing the four unbuilt units at a time of severe economic stress for everyone and allowed the original Special Use Permit to lapse even after the extension granted by the State of North Carolina. The resident owners accepted the risk of their investment with the open space in place when the Developer was unwilling to do so. Why should the City now intervene on behalf of the Developer and change the terms of an implied contract between the City, the Developer and the resident owners when the residents of Towne Place have clearly rejected the Developer's plans as evidenced by the lack of a single resident signature on the Special Use Permit application?

Towne Place is essentially a completed planned community with established landscaping and a private road that is the responsibility of the residents, not the Developer. The Developer has contributed nothing to the maintenance of Towne Place. Construction of the four units on the open land would subject roads, sidewalks and landscaping to excess damage from construction vehicles and workers with no assurance that the Developer would restore anything to its original condition. Disputes regarding the nature of the buildings to be constructed will inevitably arise. The Developer has denied all of the

Susan Anderson

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Page 3

Towne Place homeowner's association requests to remedy original exterior construction defects.

The City of Hendersonville should not intervene to give the Developer a superior legal and economic position relative to the resident owners by modifying Section 7-4-3.1

Sincerely,

George R. James

Richard P. Kauffold

Hendersonville, NC 28792

August 9, 2015

Ms. Anderson  
Planning Director  
Development Assistance Department  
City of Hendersonville  
145 Fifth Avenue East  
Hendersonville, NC 28792

Re: Zoning Ordinance Text Amendment Notification Dated August 3, 2015

Dear Ms. Anderson:

I am writing to express support and agreement for the rationale in a letter sent to you by one of my neighbors, George James of 231 Towne Place Drive, on August 6, 2015. I too am of the opinion that the current wording of the City of Hendersonville Zoning Ordinance Article VII Development Review Section 7-4-3.1 is appropriate and should not be changed in order to allow a Special Use Permit to be issued without unanimous agreement of Towne Place property owners. I would like to have this letter entered into the record of the Planning Board and the City Council meetings.

I believe the City adopted Section 7-4-3.1 for good reasons, and changing it to benefit one builder in one specific location looks to be an arbitrary action to me. There are several harmful outcomes for Towne Place owners should this ordinance be changed, including potential damage to roadways and sidewalks during construction, and the loss of an attractive common area.

I urge you and the Planning Board to consider this point of view as you deliberate the proposed changes to the ordinance.

Sincerely,

Richard P. Kauffold

August 9, 2015

Susan Anderson  
Planning Director  
Development Assistance Department  
City of Hendersonville  
145 Fifth Avenue East  
Hendersonville, NC 28792

Re: Zoning Ordinance Text Amendment Notification

Dear Ms. Anderson:

I am in receipt of your letter dated August 3, 2015 concerning a text change in process to be reviewed and considered by City Council. As a homeowner in the Towne Place Development, I urge the Planning Board and the City Council to oppose any changes to the current zoning codes already in place to protect homeowners such as myself.

As far as I know and indicated in your letter to Mr. Ayers on June 30, 2015, no unit owner had signed the application necessary to proceed with development of these two properties indicating a unanimous objection. To protect the City of Hendersonville homeowner's rights, can we rely on the Planning Director and the City Council to look out for our best interests after we have already said loud and clear through a unanimous decision of our objection? If a developer fails to comply with the zoning laws, are we to forfeit our rights as citizen's of this city to accommodate them for their monetary gain? I purposefully bought my townhome unit with the understanding that this zoning was in place and I would not be disrupted in this community by the sounds of development due to workmen, machinery and more traffic flow.

This intrusion would affect the noise level, infrastructure and traffic flow with 4-8+ more vehicles not to mention the use of the roadway for heavy utility trucks. I feel this text change will bring harbored resentment in a community that has been working together to make this a pleasant place to live. Please do not disrupt this community's infrastructure and cohesiveness by aiding the timed delinquency of Park Place Developers, LLC.

Best regards,

Deborah Neese

LINDA B. COOPER

[REDACTED]  
HENDERSONVILLE, NC 28792

August 18, 2015

The Honorable Barbara G. Volk  
Mayor City of Hendersonville  
[bvolk@hvlnc.gov](mailto:bvolk@hvlnc.gov)

Re: Special Use Permit Section 7-4-3.1 Text Amendment

Dear Mayor Volk:

My husband would like to indicate our support for the proposed text amendment to Zoning Ordinance Special Use Permit Section 7-4-3.1 which has been recommended for approval by the Planning Board.

With all due respect, the Planning Director's current signature requirement of 100% of homeowners within the development, effectively grants as little as one homeowner the right to deny development of an incomplete area that was included in the original site plan when the original Special Use Permit was granted. The outcome of one homeowner's refusal to sign renders development impossible and effectively renders the remaining property worthless to its owner. I do not believe that outcome is the intent of the Special Use Permit process.

Indications of the intent of the Special Use Permit process are contained in section 7-4-3.2 and 7-4-4. These sections indicate the Special Use Permit applicant is to submit a conceptual plan to facilitate discussion during a neighborhood compatibility meeting. Section 7-4-4.3 indicates the relevant topics to be discussed by affected residents is compatibility and specifically states, "Questioning shall center on the proposal's compatibility as presented, **not** the question of whether the site should be developed". As previously mentioned, a 100% signature requirement allows as little as one homeowner the right to deny development, a right which was specifically refused to affected homeowners when the original Special Use Permit was granted.

My husband & I have owned a townhome in Towne Place since 2005 and made Towne Place our primary residence in August, 2014. The adoption of the text amendment will allow for a new Special Use Permit process to move forward related to the remaining undeveloped lots in Towne Place that were included in the original expired Special Use Permit. Under the Sections mentioned above, the Special Use Permit process will appropriately allow Towne Place homeowners the right to discuss compatibility and the impact to our existing community.

A community poll taken in April, 2015 indicated that a majority of Towne Place homeowners (22 of 31 respondents) support the development plan outlined by Mr. Ayers during an Open Forum session of an HOA Board meeting. Mr. Ayers' position is that only the owner of the undeveloped lots, Park Place Developers LLC, need sign the Special Use Permit application. Therefore, the lack of homeowner's signatures on Mr. Ayers' Special Use Permit application is not indicative of unanimous objection to his development plan, as other homeowner communications have suggested.

We are fortunate that only 10% of the Towne Place development is incomplete. However, if we consider the bigger picture, the current 100% signature requirement would also apply if 90% of Towne Place or any other Henderson County Special Use Permit development was left incomplete, allowing as little as one homeowner the right to deny development and dictate a worthless value to a major incomplete portion of the development. That result would be an unfortunate outcome for the development and for Hendersonville as a whole.

Unfortunately there will be other real estate market downturns in the future, other unexpected deaths of developers and other bankruptcy situations, all of which occurred at Towne Place and contributed to the incomplete development and the expired Special Use Permit. I support the text amendment that recognizes that these situations may occur and allows for a method to deal with them that is not punitive and that encourages the completion of incomplete developments approved under a previously expired Special Use Permit.

Accordingly, I respectfully request that you approve the proposed text amendment. I thank you for your time and attention and I appreciate the opportunity to voice my opinion.

Very truly yours,

A handwritten signature in blue ink that reads "Linda B. Cooper". The signature is written in a cursive, flowing style.

Linda B. Cooper

August 15, 2015

RE: Use permit # 7-4-3.1

Text Admendment Meeting September 3, 2015

Susan Anderson

City Council

The following remarks concern a situation at Towne Place, Greenville Highway Hendersonville. The Developer of these Townhomes was killed in an auto accident. Four adjoining lots were not completed. Now, another developer has expressed a desire to complete the original plans to have the project completed. There is a difference of interpretation of the current ordinance that 100% of the residents of the development approval must be granted before construction begins.

Completion of this project will allow home owners monthly revenue of maintenance fees that would not be available if our endeavor is not met. And, of course City and County taxes would benefit from new residents of these units from real estate taxes.

I, along with many (after a non-binding poll concluded with 22 for out of 31 responses) are asking the City Council to please amend 7-4-3.1 zoning ordinance.

Thank you, Sincerely

  
Donald W. Szmyd,

Hedersonville, NC



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sue Anderson, Planning Director  
**Date Submitted:** August 17, 2015  
**Date of Council Meeting to consider this item:** September 3, 2015  
**Nature of Item:** Council Action

**Department:** Development Assistance Dept  
**Presenter:** Sue Anderson

## Summary of Information/Request:

**Item #** 07

File # P15-27-SUR

On September 6, 2012, City Council approved a Special Use Permit for a 100 foot lattice type telecommunication tower with a 10 foot lightning rod for a total height of 110 feet. The site is located on City owned property at 427 Armstrong Avenue and is listed as PIN 9568-25-6736. The purpose of this tower is for the Hendersonville Water & Sewer Department Advanced Metering Infrastructure (AIM) system. This site also includes the location of one of two City owned reservoirs. The other reservoir is located on a separate adjacent parcel. The approved tower is intended to accommodate five antennas for the purpose of transmitting emergency services communications and water meter communications.

On March 6, 2015, the Planning Department received a Special Use Permit amendment application from Skyway Towers, LLC. The application proposed to replace the existing 100 foot lattice type telecommunication tower with a 150 foot monopole telecommunication tower. City Council held a public hearing on this Special Use permit amendment at its regular meeting on June 4, 2015. The City Council voted unanimously to approve the variance from the requirement for a concealed tower. The City Council made a motion to approve the application for an amended Special Use Permit based on the site plan submitted by the applicant. The vote was one in favor and four opposed, therefore the motion failed and the amended Special Use permit was not approved.

On June 29, 2015, the City received a new Special Use Permit amendment application from Skyway Towers, LLC. The application proposes to replace the existing 100 foot lattice type telecommunication tower with a 135 foot monopole telecommunication tower. The applicant is also requesting a variance from the requirement for a concealed tower.

**Budget Impact:** \$0.00 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

See pages 7 & 8 of the attached memo.

**Attachments:**

Memo

## **M E M O R A N D U M**

**TO:** Honorable Mayor and City Council

**FROM:** Development Assistance Department

**RE:** Amended Special Use Permit - Armstrong Telecommunication Tower

**FILE #:** P15-27-SUR

**DATE:** July 29, 2015

### **PROJECT DESCRIPTION**

On September 6, 2012, City Council approved a Special Use Permit for a 100 foot lattice type telecommunication tower with a 10 foot lightning rod for a total height of 110 feet. The site is located on City owned property at 427 Armstrong Avenue and is listed as PIN 9568-25-6736. The purpose of this tower is for the Hendersonville Water & Sewer Department Advanced Metering Infrastructure (AIM) system. This site also includes the location of one of two City owned reservoirs. The other reservoir is located on a separate adjacent parcel. The approved tower is intended to accommodate five antennas for the purpose of transmitting emergency services communications and water meter communications.

On March 6, 2015, the Planning Department received a Special Use Permit amendment application from Skyway Towers, LLC. The application proposed to replace the existing 100 foot lattice type telecommunication tower with a 150 foot monopole telecommunication tower. City Council held a public hearing on this Special Use permit amendment at its regular meeting on June 4, 2015. The City Council voted unanimously to approve the variance from the requirement for a concealed tower. The City Council made a motion to approve the application for an amended Special Use Permit based on the site plan submitted by the applicant. The vote was one in favor and four opposed, therefore the motion failed and the amended Special Use permit was not approved.

On June 29, 2015, the City received a new Special Use Permit amendment application from Skyway Towers, LLC. The application proposes to replace the existing 100 foot lattice type telecommunication tower with a 135 foot monopole telecommunication tower. The applicant is also requesting a variance from the requirement for a concealed tower.

### **EXISTING LAND USE & ZONING**

The reservoir property is surrounded by single family homes. Adjacent properties are classified as R15 Medium Density Residential.

## COMPREHENSIVE PLAN CONSISTENCY

The reservoir property is classified as Natural Resource/Agricultural on the 2030 Comprehensive Plan's Future Land Use Map. Adjacent properties are classified as Medium Intensity Neighborhood. The goal of the Natural Resource/Agricultural category is to "create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources." Comprehensive Plan consistency is addressed under "E" on page five.

### Photo of Existing 100 Foot Lattice Type Telecommunication Tower



## PLAN REVIEW

Zoning Ordinance Section 16-4-24 has specific requirements for telecommunication towers and antennas. The requirements include submitting an application, a site development plan, an engineered tower design, proof of regulatory compliance, general standards including complying with the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) and standards for siting. The submitted plan meets the requirements of Section 16-4-24. Additional requirements for towers permitted under special use permits are listed below.

**Setback (16-4-24.4a)**

Telecommunication towers shall be set back from property lines abutting any residential district or use a distance equal to the tower height or 200 feet, whichever is greater. Towers erected on property owned by the US, state, county or municipality can have a reduced setback equivalent to the fall radius of the tower being erected or 100 feet, whichever is greater. This reduction only applies when the tower is used at least in part for the purpose of accommodating emergency services communications antennas.

Michael F. Plahovinsak, P. E., in a letter dated July 14, 2015, has stated that this monopole telecommunication tower, in the event of a failure due to extreme wind and comparable appurtenance antenna loads, will be designed so that the it would yield / buckle at the 55 foot elevation resulting in a maximum 80 foot fall radius.

According to the site layout on Sheet C-1 provided by the applicant, the proposed new tower is set back 129 feet from the nearest property line which is along Armstrong Avenue. Should City Council approve a lease, the new tower will also accommodate antennas for the purpose of transmitting emergency services communications and water meter communications.

**Screening (16-4-24.4b)**

A vegetative screen consisting of two staggered rows of evergreen shrubs on five foot centers, six feet tall at time of planting shall be planted in a 10 foot wide planting strip surrounding the required security fencing. The applicant is showing the required planting on a landscaping detail on Sheet C-2.

**Feasibility (16-4-24.4c)**

The applicant shall prove that there are no feasible collocation alternatives to meet the minimum service level necessary. A letter from Justin Jones, Project Manager of Skyway Towers, states that T-Mobile requested that Skyway find a location within a certain search area. During this search Skyway identified the existing City owned tower. T-Mobile is proposing to construct a new tower with sufficient height to meet T-Mobile's needs on a site where a tower currently exists.

**Concealment (16-4-24.4d)**

Under the Special Use Permit process, concealed towers are required unless existing topography, vegetation or other site conditions make the tower not readily visible from adjoining properties. The existing vegetation on site and the physical location make the existing tower not readily visible from adjoining properties with the exception of the adjoining reservoir property which does not include a residential use.

For the proposed monopole telecommunication tower, the applicant has submitted a variance application and supplemental information. A variance from the concealed tower standard is not required if City Council determines that existing topography, vegetation or other site conditions make the tower not readily visible from adjoining properties.

**Noise (16-4-24.4e)**

The tower shall be designed so that it is not reasonably likely to generate wind noise that is audible on adjoining properties.

**Height (16-4-24.4f)**

Maximum height for a telecommunications tower is 240 feet and maximum height for a tower requiring a special use permit is 100 feet with the exception of towers erected on property owned by the US, state, county or municipality. Towers owned by these entities can have a maximum height of 240 feet provided that such towers are used in part for the purpose of accommodating emergency services communications antennas.

The proposed new telecommunication tower is a 135 foot monopole type telecommunication tower. The property is owned by the City of Hendersonville. Should City Council approve a lease, the new tower will also accommodate antennas for the purpose of transmitting emergency services communications and water meter communications.

**ANALYSIS**

Section 7-4-10.1 of the Zoning Ordinance states, "no special use permit shall be approved by City Council unless each of the following findings is made."

- (A) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

**The communication tower at the closest point is located 129 feet from the property line and is designed so that it would yield / buckle at the 55 foot elevation resulting in a maximum 80 foot fall radius should a catastrophic failure occur. Staff has not identified any other issues concerning public health, safety and general welfare.**

- (B) There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.

**The necessary electric service is already available on the property.**

- (C) The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.

**A variance from the requirement for a concealed tower has been requested by the applicant. Zoning Ordinance Section 16-4-24.4 (d) Concealment requires telecommunication towers going through the Special Use Permit process to be concealed unless it is determined that existing topography, vegetation or other site conditions sufficiently screen the tower from adjoining properties.**

- (D) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

**A neighborhood compatibility meeting concerning the application was held on July 14, 2015. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance. Staff included both reservoir parcels when creating the mailing list. Ninety-six notification letters were sent. Two members of the general public were present for the meeting. Below is the Planning Director's Report.**

**Planning Director's Report**  
**Neighborhood Compatibility Meeting**  
Application for a Special Use Permit and Rezoning  
Armstrong Avenue Tower File #P15-27-SUR  
Tuesday July 14, 2015                      1:30 p.m.

Sue Anderson, Planning Director, convened the compatibility meeting at 1:30 pm in the Assembly Room of the City Operations Center. The following were in attendance:

<b>Name</b>	<b>Address</b>	<b>Name</b>	<b>Address</b>
Ernie Dermid	382 Armstrong Ave	Mary Snyder	442 Armstrong Ave
Brian Pearce, applicant	Greensboro, NC	Sue Anderson	City Hall
David Hazzard	City Hall	Lu Ann Welter	City Hall

Ms. Anderson opened the meeting explaining this is the first step in a three step process. She clarified this applicant had previously requested a new 150 foot tower at this location but that application was denied by City Council. The applicant has now submitted a new plan. Minutes of this meeting will be forwarded to Planning Board and City Council. She said this item will be heard at the August 10<sup>th</sup> Planning Board meeting and on September 3<sup>rd</sup> City Council will hold a public hearing. Ms. Anderson added the applicant is requesting a variance from the City's concealment requirements.

Brian Pearce, representing the applicant, explained they are requesting to build a 135 foot monopole on the City's property. This will be only 35 feet higher than the lattice type existing tower. This will allow multiple antennas by multiple carriers.

Mary Snyder asked why the signs for the property are so close to each other instead of in different areas of the City where other people could see the tower. Ms. Anderson said the Ordinance requires the site be posted. She added the City is required to mail notice of the project to property owners within 400 feet of the project, which meant around 96 letters for this project were mailed in that area. Ms. Snyder said in summer she cannot

see the current tower and in the fall she can see it a little. That could change with the new tower.

Ernie Dermid said at the first meeting on the tower the City said the tower would just be for them and emergency services. He said City Council lied when they said it would be no bigger and would not be sold. Mr. Pearce said he was not involved with that project but from his perspective, City Council can make changes to what another City Council does.

Ms. Snyder asked what this is for? Mr. Pearce said for cell phones. He added more people have cell phones and are doing more things on them so towers need to cover a smaller area to give the best coverage. Mr. Pearce said cell towers have become so common place that most people do not notice them and having coverage is important. Ms. Anderson clarified if this applicant builds this tower, other carriers must be allowed to locate there.

Ms. Snyder asked who pays for it and makes money. Ms. Anderson said the City would lease the land to the tower company who will build the tower. Other carriers would pay a leasing fee. Mr. Dermid said he isn't as concerned with the tower but feels City Council lied that the tower would not change.

With no further comments or questions, Ms. Anderson closed the meeting at 1:50 p. m.

- (E) The use or development conforms to the general plans for the physical development of the City as embodied in this Ordinance and in the *Comprehensive Plan* and the *Comprehensive Transportation Plan*.

**The 2030 Comprehensive Plan's Natural Resource/Agricultural category lists "utilities other than stormwater management" as a secondary recommended land use. The Plan recommends secondary uses be allowed on a case-by-case basis through special use procedures.**

**The Comprehensive Transportation Plan does not indicate any improvements to Armstrong Avenue and the proposed tower location is 129 feet from the right-of-way.**

## PLANNING BOARD

The Planning Board took this matter up at its regular meeting of August 10, 2015. The Planning Board voted unanimously to recommend City Council City approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment.

The Planning Board also voted unanimously to recommend that City Council approve the application for an amended Special Use Permit based on the site plan submitted by

the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions.

The Planning Board Report is included with this memorandum.

## **SUGGESTED MOTIONS**

### **Variance**

**Approval:** I move City Council to approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment finding that a literal enforcement of the dimensional and improvements standards of the Zoning Ordinance will result in practical difficulty or unnecessary hardship.

**[PLEASE STATE YOUR REASONS]**

**Denial:** I move City Council to not approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment.

**[PLEASE STATE YOUR REASONS]**

### **Amended Special Use Permit**

**Approval:** I move City Council to approve the application for an amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions for the following reasons:

- The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.
- There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.
- The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.
- The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

- The use or development conforms to the general plans for the physical development of the City as embodied in this Ordinance and in the *Comprehensive Plan* and the *Comprehensive Transportation Plan*.

[ADD, IF APPLICABLE, "AND THE FOLLOWING ADDITIONAL CONDITIONS"]

***Note: The Legal Department suggests the motion be made in the affirmative and believes this is better procedurally regardless of whether it is your intention to support or oppose the approval of the amended Special Use Permit.***

**RE: Armstrong Telecommunication Tower (File No. P15-27-SUR)**

**List of Uses & Conditions**

**I. Stipulated Uses:**

**Only the following uses are authorized for the referenced development:**

Telecommunication Tower and Antennas

Public Utility Facility (Existing)

**II. Recommended Conditions:**

- (1) Shall Be Attached to the Special Use Permit and Satisfied Prior to Issuance of Final Site Plan Approval:**

A lease agreement shall be executed between the City of Hendersonville and the appropriate party in a time frame established by City Council.

- (2) Shall Be Attached to the Special Use Permit:**

Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Zoning Ordinance.

City of Hendersonville

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

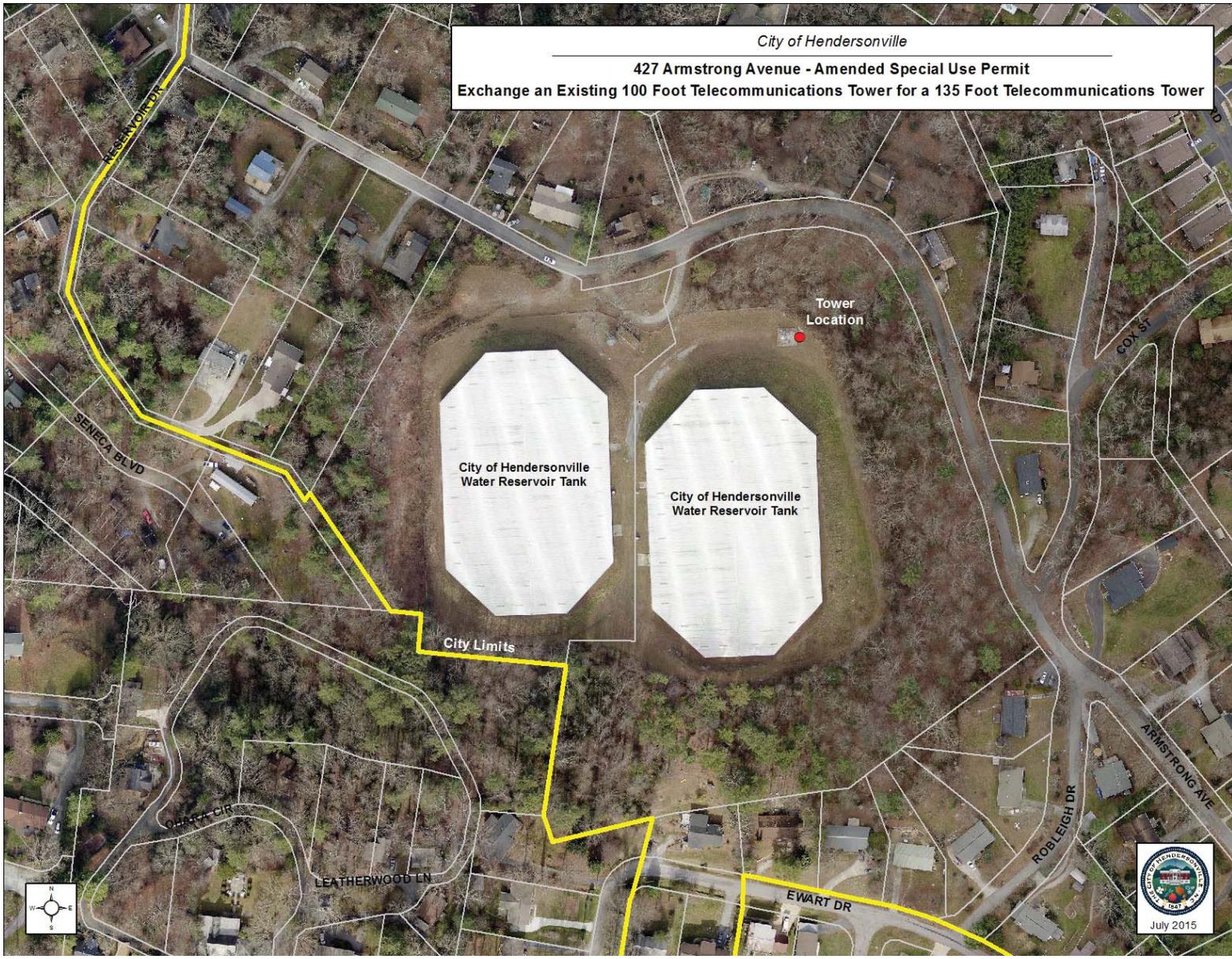
Date: \_\_\_\_\_

Nexsen - Pruet / Skyway Towers LLC

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_



City of Hendersonville  
427 Armstrong Avenue - Amended Special Use Permit  
Exchange an Existing 100 Foot Telecommunications Tower for a 135 Foot Telecommunications Tower





## APPEAL OF DEVELOPMENT DECISIONS

Section 7-13 of the Zoning Ordinance outlines the process for appeal of development decisions by City Council. The following Sections of the Zoning Ordinance apply specifically to Special Use Review:

**Section 7-13-2 (b): Preliminary site plans.** Decisions of the City Council regarding appeals from development decisions concerning applications for preliminary site plan approval may be appealed to the Superior Court by any aggrieved party. Such appeals shall be in the nature of certiorari and must be filed within 30 days after the filing of the decision in the office of the City Clerk or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk at the time of the hearing, whichever is later. The copy of the decision of the Council may be delivered to aggrieved parties either by personal service or by registered mail or certified mail return receipt requested.

**Section 7-13-2 (d): Special use review.** Judicial review of decisions regarding applications processed under the provisions of special use review, established in Section 7-4, above, require special treatment due to the fact that they involve two separate applications which, though processed simultaneously, require Council to make two separate decisions exercising two different types of decision-making authority. One application requests enactment of an ordinance amending the Official Zoning Map, and the other requests issuance of a special use permit. The first application involves a legislative decision on the part of Council, and the second a quasi-judicial decision. The quasi-judicial decision, that is, the one concerning the application for a special use permit, may be appealed to the Superior Court by any aggrieved party in the manner prescribed in paragraph b), above. Such appeal shall be in the nature of certiorari. The legislative decision, which is the one concerning the request for rezoning, may be contested, in accordance with NCGS Section 160A-364.1, by a cause of action commenced within two months of the date of the decision.

The validity of the ordinance may be challenged in accordance with North Carolina General Statute Section 160A-364.1.

### **§ 160A-364.1. Statute of limitations.**

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 891, s. 3; 1995 (Reg. Sess., 1996), c. 746, s. 7.)

# City of Hendersonville

## PLANNING BOARD REPORT

**Project Name:** Application for Issuance of an Amended Special Use Permit  
Armstrong Tower

**File Number:** P15-27-SUR

### Variance Request

Approval – Recommend City Council approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment.

Denial – Recommend City Council not approve a variance from the requirement for a concealed tower as stated in Zoning Ordinance Section 16-4-24.4(d) Concealment.

### Amended Special Use Permit

Approval – The application is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance, 2030 Comprehensive Plan and Comprehensive Transportation Plan.

Approval With Conditions – The application is not fully consistent with all of the objectives and policies for growth and development of the City of Hendersonville's Zoning Ordinance, 2030 Comprehensive Plan and Comprehensive Transportation Plan, so the following conditions are recommended in order to make it fully consistent.

Denial – The application is not consistent with all of the objectives and policies for growth and development of the City of Hendersonville's Zoning Ordinance 2030 Comprehensive Plan and Comprehensive Transportation Plan.

This report reflects the recommendation of the Planning Board, this the 10th day of August, 2015.

Attest

  
Planning Board Chair

  
Planning Director



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sue Anderson, Planning Director

**Department:** Development Asst Dept

**Date Submitted:** August 19, 2015

**Presenter:** Sue Anderson

**Date of Council Meeting to consider this item:** September 3, 2015

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 08

File # P15-26-T

The Development Assistance Department is in receipt of a Zoning Ordinance Text Amendment application from Fred Higgins which requests the removal of a requirement in Section 13-1-3 Sign Location pertaining to painted wall advertising signs.

Section 13-1-3 a) states "No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any walkway it may overhang. Painted wall advertising signs are not permitted."

The applicant is requesting the provision for not permitting painted wall advertising signs be removed from the ordinance. Removing this provision of the Zoning Ordinance will apply to properties within the city limits and the extraterritorial jurisdiction.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location removing the provision prohibiting painted wall advertising signs.

See page five of the attached memo if you wish to move to deny the application.

**Attachments:**

Memo

## **M E M O R A N D U M**

**TO:** Honorable Mayor and City Council

**FROM:** Development Assistance Department

**RE:** Text Amendment of Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location

**FILE #:** P15-26-T

**DATE:** August 19, 2015

### **PROJECT HISTORY**

The Development Assistance Department is in receipt of a Zoning Ordinance Text Amendment application from Fred Higgins which requests the removal of a requirement in Section 13-1-3 Sign Location pertaining to painted wall advertising signs.

Section 13-1-3 a) states “No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any walkway it may overhang. Painted wall advertising signs are not permitted.”

The applicant is requesting the provision for not permitting painted wall advertising signs be removed from the ordinance. Removing this provision of the Zoning Ordinance will apply to properties within the city limits and the extraterritorial jurisdiction.

Based on staff research, it appears that this provision was added to the Zoning Ordinance in July of 1970. An archived copy of the Zoning Ordinance dated November 11, 1966 does not have this provision. An archived copy of the Zoning Ordinance dated July 1970 does have this provision and a note within this ordinance states the following:

“The Zoning Ordinance is a revision of a previous ordinance adopted in 1967. It establishes zoning regulations for the City of Hendersonville and its extraterritorial area. The ordinance lists permitted and conditional uses and dimensional requirements for the eleven zoning districts. The ordinance also contains general provisions regulating signs, off-street parking, loading and unloading and non-conforming uses. The ordinance also contains provisions for enforcement and administration.”

Unfortunately, the City does not have any other archived Zoning Ordinances dated after the adoption of the November 1966 and before the adoption of the 1970 Zoning Ordinances. A review of the minutes between November 1966 and July 1970 do not reveal any ordinances relating directly to signage and the Zoning Ordinance.

## HISTORIC PRESERVATION COMMISSION

Regarding painting a sign directly on brick or stone in the Main Street Local Historic District, the Historic Preservation Commission Design Guidelines specifically states under Section 3.5.1 that “it is not appropriate to paint unpainted brick and stone, or to paint copper and bronze.” Therefore, should the City Council adopt an ordinance removing the prohibition of painted wall advertising signs, an applicant wishing to paint a wall advertising sign on unpainted brick or stone in the Main Street Local Historic District will need to go before the Historic Preservation Commission for approval. If the wall is already painted, then adding a painted wall advertising sign would only require staff approval.

Below are examples of painted wall advertising signs. Because there are limited examples within Hendersonville, photos of signage in Asheville are included.







### **TEXT & POLICY COMMITTEE**

The Text & Policy Committee reviewed this request on July 27<sup>th</sup>. Two of the four members of the Text & Policy Committee were present and recommend the proposed text amendment.

### **PLANNING BOARD RECOMMENDATION**

The Planning Board took this matter up at its regular meeting of August 10, 2015. The Planning Board voted unanimously to recommend that City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location removing the provision prohibiting painted wall advertising signs.

### **ZONING ORDINANCE GUIDELINES**

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance:

1. Comprehensive Plan consistency. Consistency with the Comprehensive Plan and amendments thereto.

2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. Public interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. Public facilities. Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

### **SUGGESTED MOTIONS**

**Approval:**

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location removing the provision prohibiting painted wall advertising signs.

**[PLEASE STATE YOUR REASONS]**

**Denial:**

I move City Council to not adopt an ordinance amending Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location removing the provision prohibiting painted wall advertising signs.

**[PLEASE STATE YOUR REASONS]**

**AN ORDINANCE AMENDING ARTICLE XIII SIGN REGULATION, MAINTENANCE AND ENFORCEMENT SECTION 13-1-3 (A) SIGN LOCATION OF THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE PERTAINING TO PAINTED WALL ADVERTISING SIGNS**

**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 desires to amend those regulations with regards to painted wall advertising signs.

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

1. Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location is hereby amended to read as follows:

No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any walkway it may overhang. ~~Painted wall advertising signs are not permitted.~~

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 \_\_\_\_\_ day of \_\_\_\_\_, 2015

---

Barbara Volk, Mayor

Attest:

---

Tammie K. Drake, CMC, City Clerk

Approved as to form:

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Samuel H. Fritschner, City Attorney

# City of Hendersonville

## PLANNING BOARD REPORT

**Project Name:** Text Amendment of Article XIII Sign Regulation, Maintenance and Enforcement Section 13-1-3 (a) Sign Location

**File Number:** P-15-26-T

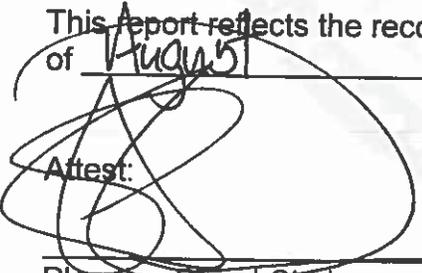
Approval – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan.

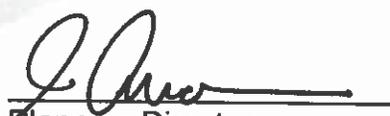
Approval With Amendment – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan. The Planning Board recommends the following amendment(s):

Denial – The text amendment is not consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and the 2030 Comprehensive Plan.

This report reflects the recommendation of the Planning Board, this the 10th day of August, 2015.

Attest:

  
\_\_\_\_\_  
Planning Board Chair

  
\_\_\_\_\_  
Planning Director



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sue Anderson

**Department:** Development Asst Dept

**Date Submitted:** August 18, 2015

**Presenter:** Sue Anderson

**Date of Council Meeting to consider this item:** September 3, 2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 09

File # P15-28-A

The City of Hendersonville has received a petition from The Housing Assistance Corporation for contiguous annexation of a portion of PIN 9569840372 and a portion of PIN 9569842945 that is approximately 8.148 acres. This parcel is a part of the previously approved Oklawaha Village project located on North Main Street.

At your meeting of August 6, 2015, you accepted the Clerk's Certificate of Sufficiency and recommended a public hearing for the September 3, 2015 City Council meeting.

At this public hearing, any person residing in or owning property in the area proposed for annexation and any resident of Hendersonville may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If City Council then finds and determines that the area described in the petition meets all of the standards set out in G.S. 160A-31, Council may adopt an ordinance annexing the area described in the petition.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council adopt an ordinance annexing the property included in the Housing Assistance Corporation petition. The effective date is September 3, 2015.

**Attachments:**

- Ordinance
- Map
- Survey
- Certificate of Sufficiency

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE  
CITY OF HENDERSONVILLE, NORTH CAROLINA  
Housing Assistance Corporation**

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

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

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the third day of September 2015, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of G.S. 160A-58.1(b), to wit:

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

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

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the third of September 2015.

**DESCRIPTION OF PROPERTY**

Being located within the Hendersonville Township - Henderson County, North Carolina and being more particularly described as follows:

Beginning at a 1-1/4" Diameter Iron Pipe (2.0' Above Adjacent Grade) located on the Northern Margin of the 20' Private Right of Way located over Oklawaha Drive (said Right of Way Recorded and Shown on Plat Cabinet B Slides 29 AND 344A); said Iron Pipe also marking the Southern Most corner of the property of Robert Ricky Ruff (As Recorded in Deed Book 638 Page 23) and further bearing NC Grid Coordinates (NAD83-Epoch 2011) of: Northing = 594,443.09' and Easting = 968,088.14'; thence following the Eastern Line of the said property of Ruff North 27°23'01" East 21.01 feet to a 1/2" Diameter Iron Pipe (0.4' Above Adjacent Grade); thence continuing with said Eastern Line of Ruff North 24°19'29" East 84.26 feet to a calculated point located on the current limits of the jurisdictional boundary of the City of Hendersonville; thence leaving the said Ruff property and following with the said current jurisdictional boundary of the City of Hendersonville South 82°17'21" East 478.04 feet to a calculated point; thence leaving the said current jurisdictional boundary and following the New Line as recorded and shown on Plat Slide 9686 the following Two Courses and Distances: 1) South 06°45'37" East 75.95 feet to a #4 Rebar with McAbee ID Cap and 2) crossing Bat Fork Creek South 46°10'53" West and passing a #4 Rebar with McAbee ID Cap at a distance of 672.47' for a total distance of 692.47 feet to a calculated point located in the center of Mud Creek; thence continuing with Mud Creek North 42°19'08" West 997.60 feet to a calculated point located at / near the confluence of Bat Fork Creek with Mud Creek; thence leaving

Mud Creek and running with a portion of the lines of Tract 4, as recorded and described in Deed Book 1453 Page 270, and also following the Southern Margin of the 20' Private Right of Way over Oklawaha Drive (said Right of Way Recorded and Shown on Plat Cabinet B Slides 29 AND 344A) the following three courses and distances: 1) South 81°07'12" East 194.49 feet to a calculated point, 2) South 71°47'12" East 81.05 feet to a calculated point and finally 3) South 64°15'13" East 407.06 feet to a #4 Rebar with McAbee ID Cap; thence turning and crossing the said 20' Private Right of Way North 25°00'33" East 20.00 feet to the Point and Place of Beginning.

Section 2. Upon and after the third day of September 2015, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

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

ADOPTED this third day of September 2015.

\_\_\_\_\_  
Barbara Volk, Mayor, City of Hendersonville

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

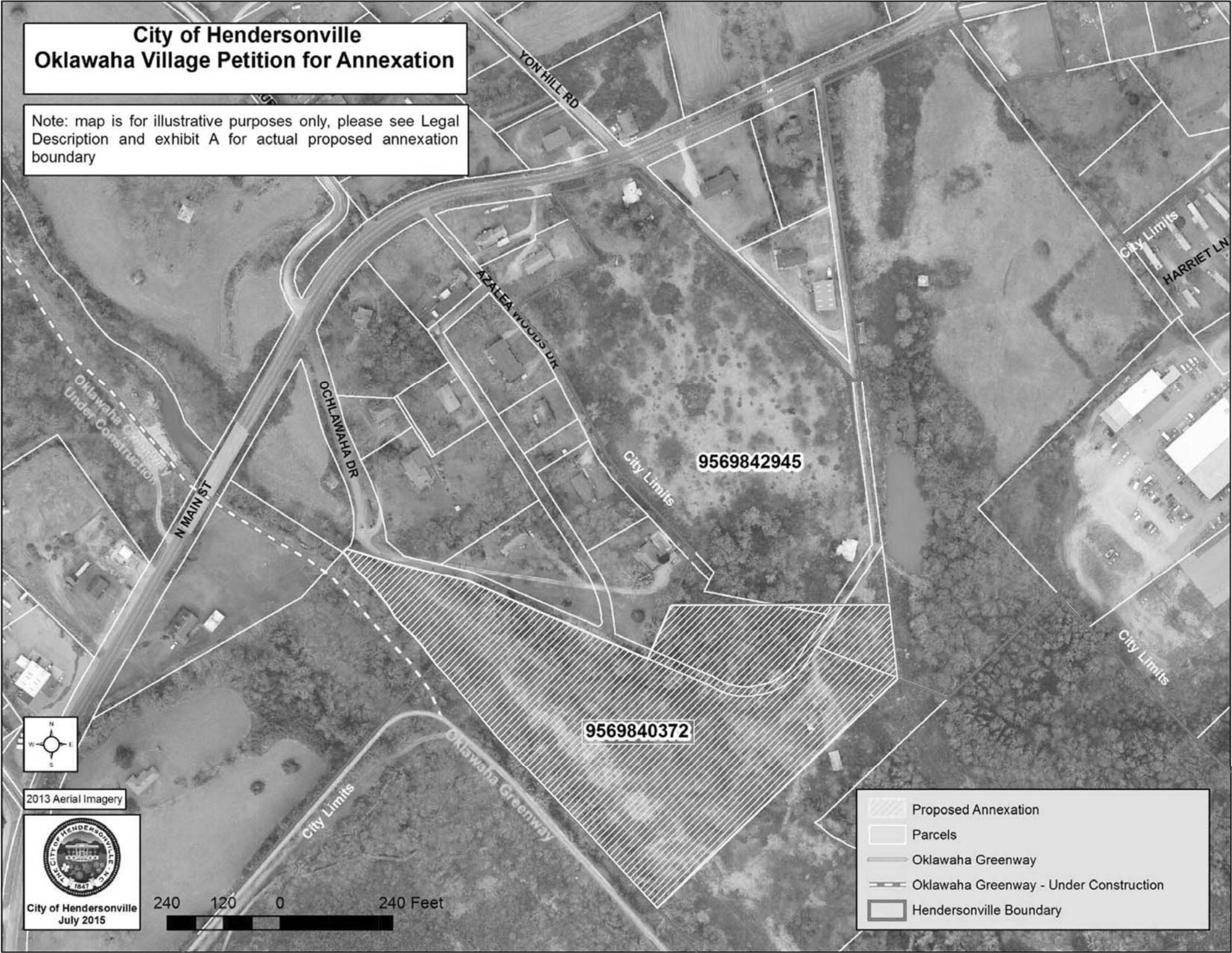
I, \_\_\_\_\_, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara Volk in her capacity of Mayor of the City of Hendersonville; Tammie K. Drake, in her capacity of City Clerk; and Samuel H. Fritschner, in his capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_, 2015.

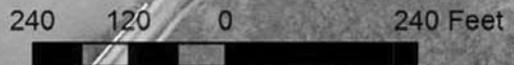
My commission expires \_\_\_\_\_

# City of Hendersonville Oklawaha Village Petition for Annexation

Note: map is for illustrative purposes only, please see Legal Description and exhibit A for actual proposed annexation boundary



2013 Aerial Imagery



- Proposed Annexation
- Parcels
- Oklawaha Greenway
- Oklawaha Greenway - Under Construction
- Hendersonville Boundary



## CERTIFICATE OF SUFFICENCY

**Re: Petition for Contiguous Annexation  
Housing Assistance Corporation, Petitioner  
File No. P15-28-A**

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the contiguous annexation of a portion of parcels, PIN 9569840372 and 9569842945 totaling 8.148 ac, located off of North Main Street.

A. According to the Planning Department, the area described in the petition meets all of the standards set out in GS160A-58.1(b).

1. The petition follows the prescribed form.
2. The petition was signed by the owners of the subject property.
3. The subject property adjoins the present city limits line.

Having made the findings stated above, I hereby certify the petition for contiguous annexation presented by the Housing Assistance Corporation is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 13 day of July, 2015.

*Tammie K. Drake*

Tammie K. Drake, MMC, City Clerk





# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sue Anderson

**Department:** Development Asst Dept

**Date Submitted:** August 18, 2015

**Presenter:** Sue Anderson

**Date of Council Meeting to consider this item:** September 3, 2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 10

File # P15-18-A

The City of Hendersonville is requesting a satellite annexation of PIN 9579657695 that is approximately 11.34 acres and is located at 632 Sugarloaf Road. This parcel contains the new City of Hendersonville Fire Station #2, accessory building, and an advanced metering tower.

At your meeting of August 6, 2015, you accepted the Clerk's Certificate of Sufficiency and recommended a public hearing for the September 3, 2015 City Council meeting.

At this public hearing, any person residing in or owning property in the area proposed for annexation and any resident of Hendersonville may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If City Council then finds and determines that the area described in the petition meets all of the standards set out in G.S. 160A-31, Council may adopt an ordinance annexing the area described in the petition.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? *N/A* If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council adopt an ordinance annexing the property included in the City of Hendersonville petition. The effective date is September 3, 2015.

**Attachments:**

- Ordinance
- Map
- Certificate of Sufficiency

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE  
CITY OF HENDERSONVILLE, NORTH CAROLINA  
632 Sugarloaf Road**

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

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

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the third day of September 2015, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. All of the proposed satellite corporate limits are less than three miles from the primary corporate limits of Hendersonville. The map distance is 717 feet.
- b. No point on the proposed satellite corporate is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
- c. The area is situated so that the City of Hendersonville, if City Council so determines, will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- d. The area proposed for annexation is not a subdivision as defined in GS 160A-376.
- e. The area within the proposed satellite corporate limits when added to the areas within all other satellite corporate limits does not exceed 10 percent (10%) of the area within the primary corporate limits of the City of Hendersonville. The total area within the satellite corporate areas, including land involved in this petition, constitutes 3.7 percent of the area within the primary corporate limits.

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

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the third of September 2015.

**DESCRIPTION OF PROPERTY**

All that real property described in that deed recorded in Deed Book 1418 at page 202, Henderson County Registry.

Section 2. Upon and after the third day of September 2015, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

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

ADOPTED this third day of September 2015.

\_\_\_\_\_  
Barbara Volk, Mayor, City of Hendersonville

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

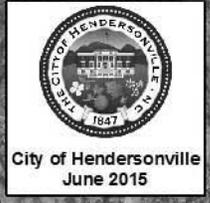
STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, \_\_\_\_\_, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara Volk in her capacity of Mayor of the City of Hendersonville; Tammie K. Drake, in her capacity of City Clerk; and Samuel H. Fritschner, in his capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_, 2015.

My commission expires \_\_\_\_\_

**632 SUGARLOAF ROAD  
ANNEXATION**  
City of Hendersonville



City of Hendersonville  
June 2015

2013 Aerial Imagery



	Proposed Annexation
	Hendersonville Boundary
	Henderson County Parcels

## CERTIFICATE OF SUFFICIENCY

**Re: Petition for Satellite Annexation  
The City of Hendersonville – 632 Sugarloaf Road  
File No. P15-18-A**

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the satellite annexation of 11.34 acres at 632 Sugarloaf Road.

- A. According to the Planning Department, the area described in the petition meets all of the standards set out in GS160A-58.1(b).
1. The map distance from the proposed satellite corporate limits is approximately 717 feet from the primary corporate limits.
  2. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
  3. The area is situated so the City will, if City Council so determines, be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
  4. The area proposed for annexation is not a subdivision as defined in GS 160A-376.
  5. The total area within the satellite corporate areas, including land involved in this petition, constitutes 3.7 percent of the area within the primary corporate limits.
- B. The petition bears the names, addresses, and signatures of all owners of the real property within the area proposed for annexation.
- C. A metes and bounds description is attached to the petition.
- D. A map showing the area proposed for annexation with relation to the primary corporate limits of Hendersonville is attached to the petition.

Having made the findings stated above, I hereby certify the petition for satellite annexation presented by John F. Connet is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 13 day of July, 2015.

Tammie K. Drake  
Tammie K. Drake, MMC, City Clerk





# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sue Anderson

**Department:** Development Assistance Dept

**Date Submitted:** 8/17/ 2015

**Presenter:** Sue Anderson

**Date of Council Meeting to consider this item:** 9/3/2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item # 11**

File #P15-33-T

In January 2015, City Council adopted a text amendment defining and adding “day centers” to the C-2 Secondary Business and CMU Central Mixed Use zoning districts as special uses subject to certain requirements contained in Section 16-4. A day center is now defined as “an establishment that provides a combination of case management, resources or a range of like services to aid persons who are primarily indigent, needy, homeless or transient.”

In February 2015, City Council adopted a text amendment adding “day centers” as a special use subject to certain requirements contained in Section 16-4 to the C-3 Highway Business and I-1 Industrial zoning districts.

In July of 2015, the Development Assistance Department received an application for the Storehouse – Food & Hygiene Pantry to relocate to 1049 Spartanburg Highway. The Storehouse functions as what is commonly referred to as a food bank or food pantry that also distributes basic hygiene products and limited clothing. Although this use may be interpreted as a “day center” based on the definition above, staff had not intended for day centers to also include stand-alone food pantries which can distribute food, clothing or other basic necessities to residents of Henderson County.

To clarify, staff is suggesting to add a new zoning category called food pantry that will include these types of establishments as a permitted use in the C-2 Secondary Business and C-3 Highway Business zoning district categories with added conditions that these facilities be separated by a minimum of 1,500 feet and no outdoor storage of items to be distributed is allowed.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries.

See page five of the attached memo if you wish to move to deny the application.

**Attachments:**

Memo

## MEMORANDUM

**TO:** Honorable Mayor and City Council

**FROM:** Development Assistance Department

**RE:** Text Amendment of Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards Pertaining to Food Pantries

**FILE #:** P15-33-T

**DATE:** August 17, 2015

### PROJECT HISTORY

In January 2015, City Council adopted a text amendment defining and adding “day centers” to the C-2 Secondary Business and CMU Central Mixed Use zoning districts as special uses subject to certain requirements contained in Section 16-4. A day center is now defined as “an establishment that provides a combination of case management, resources or a range of like services to aid persons who are primarily indigent, needy, homeless or transient.”

In February 2015, City Council adopted a text amendment adding “day centers” as a special use subject to certain requirements contained in Section 16-4 to the C-3 Highway Business and I-1 Industrial zoning districts.

In July of 2015, the Development Assistance Department received an application for the Storehouse – Food & Hygiene Pantry to relocate to 1049 Spartanburg Highway. The Storehouse functions as what is commonly referred to as a food bank or food pantry that also distributes basic hygiene products and limited clothing. Although this use may be interpreted as a “day center” based on the definition above, staff had not intended for day centers to also include stand-alone food pantries which can distribute food, clothing or other basic necessities to residents of Henderson County.

To clarify, staff is suggesting to add a new zoning category called food pantry that will include these types of establishments as a permitted use in the C-2 Secondary Business and C-3 Highway Business zoning district categories with added conditions that these facilities be separated by a minimum of 1,500 feet and no outdoor storage of items to be distributed is allowed.

Listed below are proposed changes to the Zoning Ordinance. Additions are underlined and deletions are ~~struck-through~~.

#### **Article IV Establishment of Districts Table 4-5**

Add “Food pantries” as permitted by right subject to special requirements (SR) in the C-2 Secondary Business and C-3 Highway Business Zoning Districts.

#### **Article V Zoning District Classifications Section 5-7 C-2 Secondary Business Zoning District Classification**

**5-7-1 Permitted Uses.** The following use is permitted by right in the C-2 Secondary Business Zoning District Classification, provided that this use meets all requirements of this Section and all other requirements established in this ordinance:

Food pantries, subject to special requirements contained in Section 16-4, below.

#### **Article V Zoning District Classifications Section 5-8 C-3 Highway Business Zoning District Classification**

**5-8-1 Permitted Uses.** The following use is permitted by right in the C-3 Highway Business Zoning District Classification, provided that this use meets all requirements of this Section and all other requirements established in this ordinance:

Food pantries, subject to special requirements contained in Section 16-4, below.

#### **Article VI General Provisions**

**Table 6-5-2**

<b>USES</b>	<b>PARKING SPACE REQUIREMENT</b>
<u>Food pantries</u>	<u>1 per 2 employees and volunteers at maximum staffing on a single shift</u>

#### **Article XII Definition of Terms**

##### **Section 12-2 Definition of Commonly Used Terms and Words**

**Food pantry:** A nonprofit establishment that primarily distributes food but may also distribute non-food items and other resources to needy individuals and families.

#### **Article XVI Special Requirements For Certain Uses**

**Section 16-4 Standards.** As stated herein, the following standards apply to the indicated use when such use is either a special use, a conditional use or a permitted use subject to special requirements. These standards are in addition to other applicable development standards contained in this ordinance.

**Section 16-4 Standards** is hereby renumbered as follows:

- 16-4- ~~13~~ 14 Golf Driving Ranges
- 16-4- ~~14~~ 15 Microbreweries
- 16-4- ~~15~~ 16 Mini-Warehouses
- 16-4- ~~16~~ 17 Nursing Homes
- 16-4- ~~17~~ 18 Private Clubs
- 16-4- ~~18~~ 19 Progressive Care Facilities
- 16-4- ~~19~~ 20 Public Utility Facilities
- 16-4- ~~20~~ 21 Residential Care Facilities
- 16-4- ~~21~~ 22 Rest Homes
- 16-4- ~~22~~ 23 Restaurants
- 16-4- ~~23~~ 24 Schools, Primary & Secondary
- 16-4- ~~24~~ 25 Shelter Facilities
- 16-4- ~~25~~ 26 Telecommunications Towers and Antennas

**Section 16-4 Standards** is hereby amended as follows:

**16-4-13 Food Pantries.**

- a) The parcel on which a food pantry is situated shall not be closer than 1,500 feet to any parcel on which another food pantry is situated.
- b) Storage of items for distribution shall be located entirely within the building.

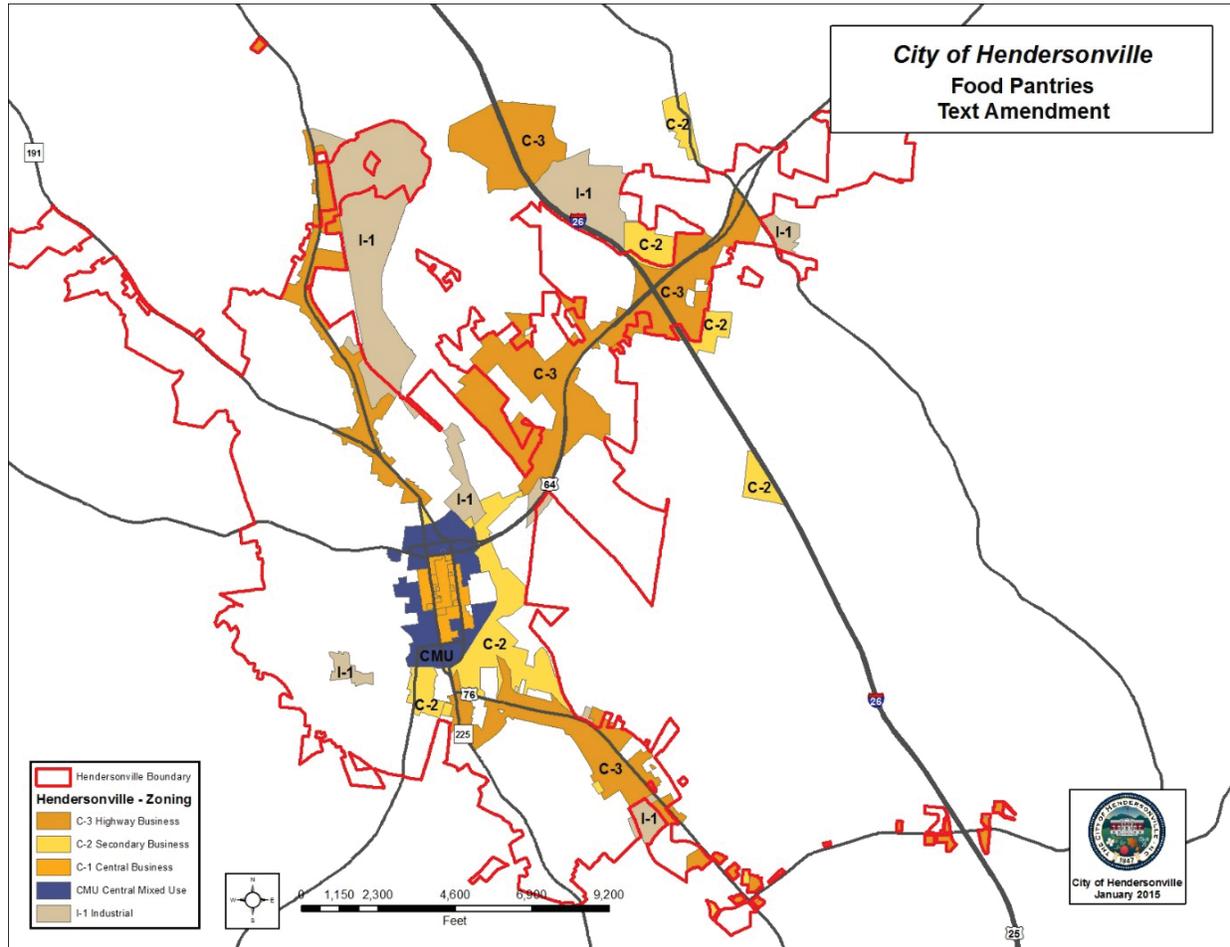
**TEXT & POLICY COMMITTEE**

The Text & Policy Committee reviewed this request on July 27<sup>th</sup>. Two of the four members of the Text & Policy Committee were present and recommend the proposed text amendment.

**PLANNING BOARD RECOMMENDATION**

The Planning Board took this matter up at its regular meeting of August 10, 2015. The Planning Board voted unanimously to recommend that City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries for the public interest and benefit.

On the following page is a map which shows the location of the downtown zoning districts, the C-2 Secondary Business district, the C-3 Highway Business district and the I-1 Industrial district.



## ZONING ORDINANCE GUIDELINES

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance:

1. Comprehensive Plan consistency. Consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. Public interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding

neighborhood, is in the public interest and promotes public health, safety and general welfare.

5. Public facilities. Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

### **SUGGESTED MOTIONS**

#### **Approval:**

I move City Council to adopt an ordinance amending the City of Hendersonville Zoning Ordinance Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries.

#### **Denial:**

I move City Council to not adopt an ordinance amending Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards pertaining to food pantries.

**[PLEASE STATE YOUR REASONS]**

**AN ORDINANCE AMENDING SECTION 4-5 CLASSIFICATION OF USES TABLE 4-5,  
SECTION 5-7-1 C-2 SECONDARY BUSINESS PERMITTED USES,  
SECTION 5-8-1 C-3 HIGHWAY BUSINESS PERMITTED USES,  
ARTICLE VI GENERAL PROVISIONS TABLE 6-5-2 PARKING,  
SECTION 12-2 DEFINITION OF COMMONLY USED TERMS AND WORDS, AND  
ARTICLE XVI SPECIAL REQUIREMENTS FOR CERTAIN USES SECTION 16-4  
STANDARDS PERTAINING TO FOOD PANTRIES**

**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 food pantries.

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

1. Article IV Establishment of Districts Section 4-5 Classification of Uses Table 4-5 is hereby amended to include the following:

Add "food pantries" as permitted by right subject to special requirements (SR) in the C-2 and C-3 Zoning Districts.

2. Article V Zoning District Classifications, Section 5-7-1 C-2 Secondary Business Permitted Uses is hereby amended to include the following permitted use:

Food pantries, subject to the special requirements contained in Section 16-4, below.

3. Article V Zoning District Classifications, Section 5-8-1 C-3 Highway Business Permitted Uses is hereby amended to include the following permitted use:

Food pantries, subject to the special requirements contained in Section 16-4, below.

4. Article VI General Provisions Section 6-5 Off-Street Parking Table 6-5-2 is hereby amended to include the following parking requirements:

USES	PARKING SPACE REQUIREMENT
<u>Food pantries</u>	<u>1 per 2 employees and volunteers at maximum staffing on a single shift</u>

5. Article XII Definition of Terms Section 12-2 Definition of Commonly Used Terms and Words is hereby amended to include the following definition:

**Food Pantry:** A nonprofit establishment that primarily distributes food but may also distribute non-food items and other resources to needy individuals and families.

6. Article XVI Special Requirements For Certain Uses Section 16-4 Standards is hereby renumbered as follows:

- 16-4- ~~13~~ 14 Golf Driving Ranges
- 16-4- ~~14~~ 15 Microbreweries
- 16-4- ~~15~~ 16 Mini-Warehouses
- 16-4- ~~16~~ 17 Nursing Homes`
- 16-4- ~~17~~ 18 Private Clubs
- 16-4- ~~18~~ 19 Progressive Care Facilities
- 16-4- ~~19~~ 20 Public Utility Facilities
- 16-4- ~~20~~ 21 Residential Care Facilities
- 16-4- ~~21~~ 22 Rest Homes
- 16-4- ~~22~~ 23 Restaurants
- 16-4- ~~23~~ 24 Schools, Primary & Secondary
- 16-4- ~~24~~ 25 Shelter Facilities
- 16-4- ~~25~~ 26 Telecommunications Towers and Antennas

7. Article XVI Special Requirements For Certain Uses Section 16-4 Standards is hereby amended to include the following uses and special requirements:

**16-4-13 Food Pantries.**

- a) The parcel on which a food pantry is situated shall not be closer than 1,500 feet to any parcel on which another food pantry is situated.
- b) Storage of items for distribution shall be located entirely within the building.

8. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
9. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

10. 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.
11. 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.
12. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Barbara Volk, Mayor

Attest:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

# City of Hendersonville

## PLANNING BOARD REPORT

**Project Name:** Text Amendment of Section 4-5 Classification of Uses Table 4-5, Section 5-7-1 C-2 Secondary Business Permitted Uses, Section 5-8-1 C-3 Highway Business Permitted Uses, Article VI General Provisions Table 6-5-2 Parking, Section 12-2 Definition of Commonly Used Terms and Words and Article XVI Special Requirements for Certain Uses Section 16-4 Standards Pertaining to Food Pantries

**File Number:** P-15-33-T

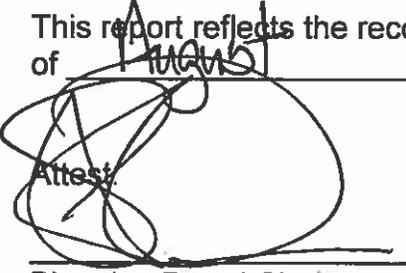
Approval – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan.

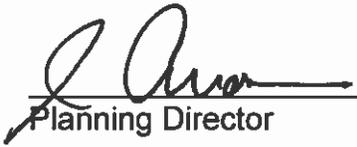
Approval With Amendment – The text amendment is consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and 2030 Comprehensive Plan. The Planning Board recommends the following amendment(s):

Denial – The text amendment is not consistent with all of the objectives and policies for growth and development contained in the City of Hendersonville's Zoning Ordinance and the 2030 Comprehensive Plan.

This report reflects the recommendation of the Planning Board, this the 10th day of August, 2015.

Attest:

  
\_\_\_\_\_  
Planning Board Chair

  
\_\_\_\_\_  
Planning Director



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Sam Fritschner

**Department:** Legal

**Date Submitted:** 18 August 2015

**Presenter:** Sam Fritschner

**Date of Council Meeting to consider this item:** 3 September 2015

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 12

At the request of the City Council and in consultation with the city manager and the chief of police I have drafted a proposed amendment to the noise ordinance. This amendment would change the ordinance from a specific decibel standard to an "unreasonable disturbance" standard.

The specific ordinance used for this amendment has resisted a constitutional challenge in the Court of Appeals and is therefore legally reliable at least until challenged in a higher court.

The proposed ordinance would permit police protection from unreasonable noise but would eliminate the requirement of determination of a precise number of decibels.

Budget Impact: \$ <sup>0</sup>\_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move the City Council adopt the ordinance amending City Code section 20-35 respecting limitation of noise.

**Attachments:**

Proposed ordinance amendment

Ordinance #15-\_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 20-35 RESPECTING THE LIMITATION OF NOISE**

**WHEREAS**, the City Council has determined that the noise levels within the City of Hendersonville affect quality of life and the health, safety and welfare of persons traveling in and persons residing within the City; and

**WHEREAS**, the Council has further determined that the maximum noise level within the Municipal Services District is in need of adjustment;

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

**SECTION 1.** Hendersonville City Code section 20-35 is hereby amended as follows:

Sec. 20-35. - Maximum permitted sound level.

~~(a) In addition to the requirements of section 20-34, above, and except as otherwise provided herein or in conjunction with special events permits, no person or group of persons shall operate or cause to be operated any source of sound level which at its peak exceeds the limits set forth herein below, when measured at the property line from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, building or wall exteriors or other physical features commonly associated with property boundaries are presumed to be at a point which is at the property line. In all cases the maximum sound level permitted by use occupancy shall be determined on the basis of the use occupancy of the property from which the sound originates and not by the use occupancy of any surrounding property. Sound level measured at any point beyond the property line is presumed to be equaled or exceeded at the property line.~~

~~(b) The following are established as maximum sound levels:~~

- ~~(1) Nighttime sound levels (after 11:00 p.m. until 7:00 a.m.) may not exceed 60 dB (A) except as noted in subsection (b)(3) below.~~
- ~~(2) Daytime/evening sound levels (between 7:00 a.m. and 11:00 p.m.) may not exceed 70 dB (A) except as noted in subsection (b)(3) below.~~
- ~~(3) Daytime/evening sound levels up to 85 db(A) may be authorized by means of a permit to exceed, pursuant to section 20-37, below.~~
- ~~(4) Except for special events authorized pursuant to section 46-84 of the Code, a permit to exceed sound levels may only be issued for the following dates and times: Fridays 5:00 p.m. to midnight, and Saturdays 10:00 a.m. to midnight.~~

~~(c) Notwithstanding the provisions of subsection (b) above, the following are established as maximum sound levels within the main street municipal service district, also known as the downtown tax district, as it may exist from time to time:~~

- ~~(1) Nighttime sound levels after 11:00 p.m. until 7:00 a.m. may not exceed 45 dB (A) except as noted in subsection (c)(3) below.~~
- ~~(2) Daytime/evening sound levels between 7:00 a.m. and 11:00 p.m. may not exceed 55 dB (A) except as noted in subsection (c)(3) below.~~
- ~~(3) Daytime/evening sound levels up to 85 db(A) may be authorized by means of a permit to exceed, pursuant to section 20-37, below.~~
- ~~(4) Except for special events authorized pursuant to section 46-84 of the Code, a permit to exceed sound levels may only be issued for the following dates and times: Fridays 5:00 p.m. to midnight, and Saturdays 10:00 a.m. to midnight. it shall be unlawful for any person or~~

group of persons, regardless of number, to willfully make, continue or cause to be made or continue any loud, raucous and disturbing noise, which term shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville. The term loud, raucous and disturbing noise shall be limited to loud, raucous and disturbing noises heard upon the public streets, in any public park, in any school or public building or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise, or upon the grounds thereof.

**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 September 2015.

\_\_\_\_\_  
Barbara Volk, Mayor

Attest:

\_\_\_\_\_  
Tammie K. Drake, MMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Tammie Drake

**Department:** Admin

**Date Submitted:** 08/20/15

**Presenter:** Tammie Drake

**Date of Council Meeting to consider this item:** 09/03/15

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 15

**WALK OF FAME STEERING COMMITTEE:** The Council approved the Charter and Bylaws for this committee at your July 2 meeting. The City may appoint three members for staggered terms and will appoint the Chair in odd-numbered years. Two members, Tom Orr and Tom Wooten were appointed at your August meeting. Council member Caraker requested I contact Mr. Orr for a possible suggestion. He suggested Dr. Amy Pace. We are hoping to receive her application before the meeting. She indicated that she would like to serve on the committee.

**Reminder: ENVIRONMENTAL SUSTAINABILITY BOARD:** The ESB consists of five City residents and up to four additional members residing outside the City may be appointed for their particular areas of expertise. The ESB has two vacant City positions.

**Announcements/Upcoming Appointments:**

**Historic Preservation Committee:** The term of three members on the Historic Preservation Committee will expire in November: Mia Freeman, Cheryl Jones, and Charles Reed. I have already heard from Ms. Freeman and Ms. Jones that they would like to continue serving and I expect to hear soon from Mr. Reed. These (re)appointments will be on your October agenda for consideration.

**Planning Board:** The term of Ben Pace will expire December 1, 2015. This will be on your November agenda for consideration.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

**Attachments:**