

MINUTES
May 18, 2020
SPECIAL MEETING OF THE CITY COUNCIL [ELECTRONIC]
ASSEMBLY ROOM – OPERATIONS CENTER
5:00 p.m.

Present: Mayor Barbara G. Volk and Council Members: Jeff Miller, Jennifer Hensley

Participating Electronically: Mayor Pro Tem Smith, Council Member Lyndsey Simpson

Staff Present: City Manager John F. Connet, City Clerk Tammie Drake, Intern Bryan Gertz, Downtown Economic Development Director Lew Holloway, Communications Manager Allison Nock, Assistant Manager Brian Pahle

The purpose of the special meeting is as follows:

1. To receive a USDA Letter of Financial Conditions approving the financing for the new Hendersonville Police Department,
2. To consider the closure of Main Street during certain days and times to support the reopening of downtown businesses,
3. To consider an ordinance eliminating off-street parking requirements for restaurants for specific period to support their reopening.

Other topics may be discussed.

This meeting was held electronically to comply with the restrictions in place to avoid the spread of COVID-19. The public was given instructions on how to provide public comments, watch the City Council meeting and a listening space was provided for individuals otherwise unable to access the City Council meeting. Roll call votes were taken to meet all requirements.

1. Call to Order: Mayor Volk called the special meeting to order at 5:00 p.m. and welcomed those in attendance. A quorum was established with three members in attendance physically and two participating electronically.

2. Presentation of USDA Letter of Conditions (LOC) for Hendersonville Police Department

Headquarters: Mr. Connet introduced Pam Hysong with the USDA. Ms. Hysong reviewed the USDA's procedures for the loan and presented the Letter of Conditions under which they agree to make a loan. She stated the maximum loan is \$11,500,000 at a fixed interest rate of $2\frac{3}{8}$ percent. She stated if the interest rate lowers before the closing of the loan, the City may request a reduction, but it will not go higher. She stated any significant changes in the scope of the project will require approval.

The Council discussed the Letter of Conditions and any possible limitations on this type of financing. Mr. Connet stated the debt coverage ratio will have to be reviewed on an annual basis. There was also discussion of the required reserve fund of \$54,000/annually which may be used for the final installment or emergencies. There was also discussion of the bond on the Finance Director which may have to be increased. Because of their accounting system, two resolutions totaling \$11,500,000 is necessary.

Council Member Miller moved Council to adopt the resolution accepting the USDA letter of conditions and associated forms, as presented. A unanimous [roll call] vote of the Council followed. Motion carried.

Resolution #20-0539

RESOLUTION OF THE HENDERSONVILLE CITY COUNCIL

A RESOLUTION TO CONSIDER AND ADOPT THE USDA LETTER OF CONDITIONS DATED MAY 18, 2020

WHEREAS, the City of Hendersonville has applied for debt proceeds to design and construct a new police headquarters on Ashe Street; and

WHEREAS, the construction of this facility is in the best interest of the City and its citizens; and

WHEREAS, the issuance of a long-term low interest loan through the USDA community development loan program is the most financially feasible approach to funding said project.

THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA

That the Hendersonville City Council accepts the conditions set forth in the Letter of Conditions dated May 18th, 2020.

That Hendersonville City Council approves the budget as shown on Form RD 442-7, Operating Budget and the forms RD Loan Resolution (Public Body) in the amount of \$5,000,000 and \$6,500,000.

That the Mayor and City Clerk be authorized to execute all forms necessary to obtain a loan from Rural Development, including, but not limited to the following forms:

Form RD 400-1	Equal Opportunity Agreement
Form RD 400-4	Assurance Agreement
Form RD 442-7	Operating Budget
Form RD 1910-11	Applicant Certification—Federal Collection Policies
Form RD 1940-1	Request for Obligation of Funds (2 separate forms)
Form RD 1942-46	Letter of Intent to Meet Conditions
Form RD 1942-47	Loan Resolution (Public Body) (2 separate forms)
Form AD 1047	Certification Regarding Debarment
1940-Q, Exhibit A-1	Certification for Contracts, Grants, and Loans Unnumbered Form Certificate of Compliance

The resolution is to become a part of the official minutes of the Hendersonville City Council meeting held on May 18, 2020.

MOTION that the resolution be approved made by: _____ and seconded by: N/A.

Motion Passed 5 FOR and 0 AGAINST.
(number) (number)

Adopted this eighteenth day of May 2020 and WILL BE MADE A PART OF THE MEETING MINUTES.

/s/Barbara G. Volk, Mayor

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

USDA

Form RD 1942-47
(Rev. 12-97)

Position 5

LOAN RESOLUTION
(Public Bodies)

#20-0540

FORM APPROVED
OMB NO. 0575-0015

A RESOLUTION OF THE _____ City Council
OF THE _____ City of Hendersonville
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING
A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

New Police Station
FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the _____ City of Hendersonville
(Public Body)
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

6,500,000.00

pursuant to the provisions of _____ North Carolina General Statute 160A-20 _____; and

WHEREAS, the Association intends to obtain assistance from the Rural Housing Service, Rural Business - Cooperative Service, Rural Utilities Service, or their successor Agencies with the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U. S. C. 1983 (c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$ 10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by the Government. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established and maintained, disbursements from that account may be used when necessary for payments due on the bond if sufficient funds are not otherwise available. With the prior written approval of the Government, funds may be withdrawn for:
 - (a) Paying the cost of repairing or replacing any damage to the facility caused by catastrophe.
 - (b) Repairing or replacing short-lived assets.
 - (c) Making extensions or improvements to the facility.Any time funds are disbursed from the reserve account, additional deposits will be required until the reserve account has reached the required funded level.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain the Government's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ _____

under the terms offered by the Government; that the N/A and N/A of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the _____ City Council of the _____ City of Hendersonville has duly adopted this resolution and caused it to be executed by the officers below in duplicate on this _____ 18th day of _____ May, 2020.

(SEAL)

Attest:

By Barbara Volk
Title Mayor

Tammie Drake, City Clerk
Title _____

USDA
Form RD 1942-47
(Rev. 12-97)

Position 5
LOAN RESOLUTION
(Public Bodies)

#20-0541
FORM APPROVED
OMB NO. 0575-0015

A RESOLUTION OF THE _____ City Council
OF THE _____ City of Hendersonville
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING
A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

New Police Station
FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the _____ City of Hendersonville
(Public Body)
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

5,000,000.00
pursuant to the provisions of _____ North Carolina General Statute 160A-20 _____; and

WHEREAS, the Association intends to obtain assistance from the Rural Housing Service, Rural Business - Cooperative Service, Rural Utilities Service, or their successor Agencies with the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U. S. C. 1983 (c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$ 10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by the Government. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established and maintained, disbursements from that account may be used when necessary for payments due on the bond if sufficient funds are not otherwise available. With the prior written approval of the Government, funds may be withdrawn for:
 - (a) Paying the cost of repairing or replacing any damage to the facility caused by catastrophe.
 - (b) Repairing or replacing short-lived assets.
 - (c) Making extensions or improvements to the facility.

Any time funds are disbursed from the reserve account, additional deposits will be required until the reserve account has reached the required funded level.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain the Government's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ _____
 under the terms offered by the Government; that the N/A _____
 and N/A _____ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the _____ City Council _____ of the
 _____ City of Hendersonville _____ has duly adopted this resolution and caused it
 to be executed by the officers below in duplicate on this _____ 18th _____ day of _____ May _____, 2020 _____

(SEAL)

By Barbara Volk

Attest:

Title Mayor

Tammie Drake, City Clerk

Title

3. Consideration of the closure of Main Street during certain days and time to support the reopening of downtown businesses: Downtown Director Lew Holloway presented plans for the Open Main Street/Love Hendo Program. He presented options for waiving parking requirements and expanding outdoor dining at restaurants throughout the City including ABC permitting requirements/revisions, outdoor dining permit, etc.

Mr. Holloway presented diagrams for the expanded outdoor dining footprint on Main Street that included full closure, limited parking closures and no closures. He also presented options for restaurants on avenues. He asked for Council's feedback on the initial timing of this activity and proposed a 30-day test time frame.

The Council members discussed each of the options in length, the ABC permit situation, community support and concerns received for closing Main Street and safety considerations.

4. Consideration of a Resolution Authorizing the City Manager to Waive Off-Street Parking Requirements for Hendersonville Restaurants for a specific period to support their reopening: Mr. Connet and Mrs. Frady presented a resolution authorizing the City Manager to waive enforcement of off-street parking requirements for Hendersonville restaurants to support their reopening. The resolution authorizes the City Manager to waive the off-street parking requirements for a period of six months.

Council Member Hensley moved the City Council resolve to allow expanded dining on the sidewalks as soon as possible, to create an open street concept for the last weekend of May, and to waive certain ordinances during this emergency situation for expanded dining areas in the City to other City restaurants including approval of the resolution. A unanimous [roll call] vote of the Council followed. Motion carried.

Resolution #20-0542

**A RESOLUTION RESPECTING ENFORCEMENT OF CERTAIN CITY ORDINANCES
 DURING THE CURRENT EMERGENCY**

WHEREAS, the City Council recognizes that the pandemic caused by the spread of the COVID-19 virus has caused significant changes in various aspects of commerce within the City of Hendersonville; and
 WHEREAS the Council recognizes that the nature of these commercial changes may arise or further change suddenly and without warning; and

WHEREAS the Council recognizes that the city manager is in a unique position to track and respond to these commercial changes and the needs that arise therefrom;

NOW, THEREFORE, the City Council does resolve as follows:

I. The City Council hereby grants to the city manager the following temporary authority when in his opinion there is need to do so:

1. To temporarily open and close streets or portions thereof.
2. To refrain from enforcing regulations with respect to off-street parking for City restaurants.
3. To permit or limit restaurant service and seating within the boundaries of sidewalks and closed City streets.
4. To take other steps of similar nature to adapt to changing commercial conditions.

II. The authority granted herein shall expire six months from the date hereof unless extended or curtailed by the City Council.

III. The city manager is instructed to notify the city council upon the occurrence of any act taken in furtherance of this Resolution.

IV. This grant of authority shall take effect upon adoption of this resolution.

Adopted this 18 day of May 2020.

/s/Barbara G. Volk, Mayor

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

5. Comments by Mayor and City Council Members: There were none.

6. Adjourn. The meeting adjourned at 6:36 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk