



AGENDA

Regular Town Board Meeting

April 4, 2022 - 6:00 PM

TOWN HALL (101 Huntersville-Concord Road)

1. Pre-meeting - 4:30 p.m.

1.A. Requests From External Agencies.

2. Call to Order

3. Invocation - Moment of Silence

4. Pledge of Allegiance

5. Staff Questions

6. Public Comments, Requests, or Presentations

7. Agenda Changes/Adoption of Agenda

8. Consent Agenda

8.A. Approve the minutes of the February 21, 2022 Regular Town Board Meeting. (*Janet Pierson*)

8.B. Call a public hearing for Monday, May 2, 2022 at 6:00 p.m at Huntersville Town Hall, on Petition #TA22-05, a request by the Huntersville Town Board to amend the Subdivision and Zoning Ordinance by removing subdivision sketch plans from a quasi-judicial process (Planning Board recommendation, Town Board decision) and making it an administrative process (staff decision). (*Jack Simoneau*)

8.C. Approve budget amendment appropriating \$37,400 from Fund Balance to the Land Account to offset some of the purchase price of 105 N. Maxwell Street. (*Pattie McGinnis*)

- 8.D. Adopt Grant Special Revenue Ordinance for the American Rescue Plan Act of 2021. *(Pattie McGinnis)*

9. Public Hearings

- 9.A. Conduct public hearing on Petition #S22-01, Birkdale Landing Special Sign District, a request by Firebirds International, LLC to create a Special Sign District Overlay for Birkdale Landing located at 16641 Birkdale Commons Pkwy, Tax Parcel 00917184. *(Kayleigh Mielenz)*
- 9.B. Conduct continuation of public hearing on Petition #TA 22-02, a Zoning Ordinance text amendment by the Huntersville Town Board affecting the Neighborhood Residential, Neighborhood Commercial, Town Center and Highway Commercial zoning districts by removing the ability to exceed 30 percent attached houses (row house, townhouse or duplex), apartment buildings and mixed-use buildings (commercial & residential in one multi-story building) in major subdivisions located within ¼ mile of designated rail transit stations (3.2.4(d)(4), 3.2.6(d)(4), 3.2.5(d)(4), 3.2.7(d)(4)(a)). *(Jack Simoneau)*
- 9.C. Conduct public hearing on Petition #TA22-03, a request by the Town of Huntersville Planning Department to amend Article 8.9.1 and 12.2.2 related to clear sight triangles in order to comply with HB 489. *(Nathan Farber)*
- 9.D. Conduct public hearing on Petition #TA22-04, a request by the Town of Huntersville Planning Department to remove the special use requirement for street facing solar panels in Article 9.54.1 and to reorganize and clean up Article 9.54 to bring the ordinance into full compliance with State Statute 160D-914. *(Nathan Farber)*

10. Other Business

- 10.A. Consider approving Interlocal Agreement with the City of Charlotte for the Huntersville Mobility Plan. *(David Hill)*
- 10.B. Consider adopting Resolution to Authorize the Disposal of ~0.78 acres of Surplus Property Located at 8840 McIlwaine Road. *(Anthony Roberts)*
- 10.C. Consider approving discount changes to the Co-Sponsorship Policy. *(Michael Jaycocks)*
- 10.D. Discussion of additional edits related to NC SB 300. *(Emily Sloop)*
- 10.E. Consider adopting changes to Huntersville Ordinances Advisory Bylaws. *(Emily Sloop)*
- 10.F. Consider adopting First Amendment to the Capital Project Ordinance for Holbrook Street and Patterson Road Extension Projects. *(Pattie McGinnis)*

10.G. Consider approving Property Tax Refund reports from Mecklenburg County. (*Pattie McGinnis*)

11. Mayor and Commissioner Reports/Closing Comments

12. Adjourn

Special Accommodations: Anyone needing special accommodations when attending this meeting and/or if this information is needed in an alternative format please contact the Town Clerk. The Clerk can be reached by phone or fax: 704-875-6541, email: clerk@huntersville.org or at 101 Huntersville-Concord Rd, Huntersville, NC 28078.

We request at least 72-hours' notice prior to the meeting to make the appropriate arrangements.

The Board reserves the right to deviate from the agenda.

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Janet Pierson

Date: April 4, 2022

Subject: Approval of Minutes

EXPLAIN REQUEST:

Consider approving the minutes of the February 21, 2022 Regular Town Board Meeting.

ACTION RECOMMENDED:

Approve Minutes

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Draft Minutes

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**February 21, 2022
6:00 p.m. – Huntersville Town Hall
101 Huntersville-Concord Road**

PRE-MEETING

The Huntersville Board of Commissioners held a Pre-meeting at Huntersville Town Hall, 101 Huntersville-Concord Road, at 5:00 p.m. on February 21, 2022.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the pre-meeting to order.

Noise Ordinance. Emily Sloop, Town Attorney, presented PowerPoint summarizing the noise ordinances of surrounding jurisdictions and information related to decibel standards. *PowerPoint attached hereto as Exhibit No. 1.*

Chief Bence Hoyle reported on decibel testing the Police Department has done. Officers tested a decibel reader during a football game. They went to seven different intersections near the stadium to test the noise level. The average decibel level at the intersections was between 60-65 decibels, with the lowest result at 55 decibels and the highest of 75 decibels. It was not clear whether the higher results were from a spike in noise from the football game or from nearby ambient noise.

Ms. Sloop reviewed recommendations: (1) include exceptions for certain activities/businesses in the ordinance; (2) before implementing decibel standards, quantify estimated cost increases associated with implementing decibel standards; and (3) determine if implementing decibel standards will have the desired effect.

Commissioner Phillips said how many calls are you getting in a year over noise. I'm concerned maybe this is a solution looking for a problem.

Chief Hoyle said we don't get a lot of noise complaints. When we get them, it's usually about Community School of Davidson (CSD). We get a lot of noise complaints about CSD. We're not going to solve that problem. You can't write 1,000 spectators a ticket for screaming at a ballgame. The stadium is right on top of houses, and you are just not going to solve that problem. If you exempt sporting events and you exempt some of the business stuff that Emily has recommended, it will cut our noise complaints probably by 90 percent. The rest of our noise complaints involve barking dogs, people having parties and officers are not going to be able to use a decibel reader for that. We usually give one or two warnings before we write a ticket anyway. We don't have a lot of noise complaints other than those special event type complaints. There are times when we went out, not just that school but other locations, where there was an issue with the PA speaker being too loud. We met with them and got them to redirect their speakers downward toward the field and not have them so far up and that helped. A combination of speakers and bands and cheering crowds especially at a competitive

ballgame, it's not just a CSD problem. You can hear it at Hopewell, you can hear it everywhere. We're just not getting complaints from those locations. To answer your question, noise is not a big problem, but it's a consistent problem.

Commissioner Kidwell said what seven intersections were readings taken at.

Chief Hoyle said this is just around CSD. We also went down to Hopewell that same night. McIlwaine Road, we took some readings not at the school, too. We were trying to measure everything. Could hear announcements, 60 to 65 decibels. Beatties Ford and Bud Henderson, 70 decibels, light traffic, no noise from the stadium. Bud Henderson and Carrington Ridge 65 decibels, little to no noise heard. That would probably be a good ambient noise reading.

Commissioner Kidwell said I live in Carrington Ridge and I'm ¼ mile as the crow flies and I can hear them in my backyard while I'm playing music over the speaker.

Chief Hoyle said here's an example, in the parking lot of the stadium was a 70 to 75 decibel reading. No music, but could hear the cheering crowds, so that was without the PA. It's all point in time when you mash that button. Is the crowd cheering, are they not cheering. Is the band playing, are they not playing. On Beatties Ford Road it was 65, no noise from the stadium. We read 65 in the parking lot. I will say that night we didn't get any complaints from anybody. It was after we tilted the speakers. There's some more review to be done. Typically, an officer would go out there, and I can tell you it would be very difficult for an officer to enforce a noise ordinance on a ballgame. There's not a person responsible. You've got 1,000 people responsible for that noise and it's very difficult.

Commissioner Munger said the end of the game is usually the exciting, loud portion. Can you tell me approximately what time football games end.

Chief Hoyle said around 10:00 p.m., but it can be loud at the very beginning. That's when all the excitement is and it's usually consistent noise all the way through the game.

Commissioner Munger said I'm just thinking loud at 6:30 – 7:00 p.m., loud at 10:00 p.m. – 10:30 p.m.

Chief Hoyle said I think that's a point Emily made, we really need to think about timeframes.

Commissioner Munger said hypothetically if we talked about doing an exemption for sporting events such as this, is that just cap off, they hit 120, 130 decibels, all good.

Ms. Sloop said it depends on whether or not you set a decibel level for the exemption or whether or not just that particular activity is exempted. We have the ability to set parameters for the exemptions, it would just be whatever the Town Board wanted us to look at and consider.

Commissioner Boone said high school football games are a pretty exciting time in everybody's life. What I'm hearing is the guy that has worked all day comes home at 7:00 p.m. he's ready to go to bed about 9:00 p.m. and he was hearing the whole football game. I think the complaint I hear more than football games are the loud cars around town and especially at Birkdale Village. How do you handle something like that.

Chief Hoyle said we can cover it under our ordinances. We can write them tickets and things like that. The difficulty with that is they are mobile. They are moving. We've got to hear them, we've got to write them citations for that. That's more difficult.

Commissioner Boone said I don't want to have to see the officers wear something else on their toolbelt that has to measure decibels.

Chief Hoyle said we would probably have four of those, one assigned to each shift. There would be a little bit of maneuvering around to make sure the decibel reader gets to the location that's complained about.

Commissioner Partee said Saturday night lights and Friday night lights is part of our culture, football. The Community School of Davidson stadium, that's ground zero for all this debate right now. Prior to their inaugural football season and building of that stadium, how many complaints have we had in the past from other schools regarding noise from games or events.

Chief Hoyle said I asked staff that question, and I haven't looked it up. I haven't pulled the numbers, but they don't recall any other noise complaints from any sporting events.

Commissioner Kidwell said as we dive into this deeper as a Board, I've done research around the state on my own of what other municipalities are doing. *Refer to spreadsheet attached hereto as Exhibit No. 2.*

REGULAR MEETING TOWN OF HUNTERSVILLE BOARD OF COMMISSIONERS

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Town Hall, 101 Huntersville-Concord Road, at 6:00 p.m. on February 21, 2022.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the meeting to order.

Mayor Bales called for a moment of silence.

Mayor Bales led the Pledge of Allegiance.

MAYOR AND COMMISSIONER REPORTS – STAFF QUESTIONS

Commissioner Boone

- Fire Chief Jim Dotoli will make presentation to the Board under Public Comments.
- Huntersville 101 starts the first week in March.

Commissioner Kovacs

- Provided update from the Lake Norman Chamber of Commerce.
- Provided update from the Huntersville Regional Chamber of Commerce.

Commissioner Kidwell

- The Charlotte Regional Transportation Planning Organization approved \$50 million to local projects, including over \$6 million in Huntersville.
- Veterans Service Officer will be at Town Hall on Wednesdays.

Commissioner Phillips

- Provided update from Visit Lake Norman.

Commissioner Partee

- Recognized Harriet Tubman as part of Black History Month.
- Toured the campuses of Lake Norman Charter Elementary, Middle and High School.
- Attended ribbon cutting at Rosedale Nature Park and Lowes Food Market.
- Attended Black History Month Forum at the Waymer Center.
- Greenway, Trail and Bikeway Commission met virtually on February 15.
- Spoke to the 7th grade Social Studies class at J. M. Alexander School.
- Commended the Huntersville Police Department Homicide Division for their outstanding investigative/solvability work.
- Huntersville Police Department offers free child safety gun locks.
- Consider supporting Cool Kids Clubhouse.

Commissioner Munger

- Next Huntersville Ordinances Advisory Board meeting is March 3.
- Attended the Black History Month event put on by BeeJay Caldwell.
- Attended the opening of the new Lowes grocery store.
- Consider supporting local non-profits.

Mayor Bales

- Next meeting of the Metropolitan Transit Commission is this Wednesday.
- Last Saturday the Town Board had a strategic planning session.
- Announced Mayor's Fitness Challenge.
- Participated in the Lake Norman Chamber of Commerce's Focus Friday.
- Attended ribbon cutting at Lowes Foods and Rosedale Nature Park.
- Announced upcoming Town Board retreat.

Mayor Bales requested staff reach out to Colonial Pipeline to request update on the gas spill.

Mayor Bales noted that an email was received this afternoon with a request that it be included in the public record of this meeting. It was my understanding we would not accept emails once we were back meeting in person.

It was the consensus of the Board to make an exception for this meeting and allow the email to be read into the record under Public Comments.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

Fire Chief Jim Dotoli presented the Board with the Huntersville Fire Department's Strategic Operations and Budget Plan for July 1, 2022 to June 30, 2023. *Refer to Exhibit No. 3.*

Chief Dotoli reviewed their budget request for 2022-2023. *Refer to PowerPoint attached hereto as Exhibit No. 4.*

Mayor Bales introduced Ms. Pearlie Cureton-Thomas, who was present by phone.

Pearlie Cureton-Thomas discussed the Mount Olive Missionary Baptist Church's historic restoration project to turn an old farmhouse into an African-American Museum of Church History. *Refer to Exhibit No. 5.*

Mayor Bales proclaimed March 2022 as Irish American Heritage Month.

**Town of Huntersville
Proclamation**

Whereas, the Town of Huntersville is proud to be the home of citizens of Irish-American descent; and

Whereas, more than 30 million Americans are of Irish-American descent and since our nation's inception and throughout our history, brave men, women and children, longing for a better life and yearning for freedom and opportunity, made the journey to the United States in search of a better life; and

Whereas, Irish-American citizens have made significant economic and cultural contributions to our nation and their influences can be found in every walk of life.

Now, Therefore, I, Melinda Bales, Mayor of the Town of Huntersville, North Carolina, do hereby proclaim March 2022 as ***Irish-American Heritage Month*** in the Town of Huntersville and commend its observance to all citizens.

In Witness Whereof, I do hereby set my hand and cause the Seal of the Town to be affixed, this the 21st day of February 2022.

BeeJay Caldwell, 14521 New Haven Drive, addressed the Board. *Refer to written comments attached hereto as Exhibit No. 6.*

Crystal Silvas, 13925 Beatties Ford Road, said Community School of Davidson – I am back 3-1/2 months later. We haven't really made progress. Still nothing has been done about the noise. If this isn't done by fall, it's going to continue to be at least 30 decibels higher during a game at all of the surrounding properties. You can hear this miles away. The lights are still on usually five nights a week. We were told that they were fixed. This is not fixed. This is still a mile away and you are not supposed to be able to even read.....it's .1 footcandles. This is clearly well over 50, which is where you would read at. Nothing is being done. I have requested what the footcandles were prior to the fixing and after, and still haven't received them. I know that I'll receive them for afterwards after the engineer is done confirming, but we as a community would like to know what they were to begin with, especially now knowing and you will see the occupancy hold details. Our town knew about this February 2020. Nothing was done after it was found to not be in compliance, but it was signed off on March 25, 2020. All of these people have been dealing with this. It has been brought multiple times by multiple people in our community and nothing has been done until I brought physical pictures, despite the fact that our town knew. Further, this is a stadium. I have gone through all of our ordinances and I've given you the definitions right from our ordinances. This has permanent seating. It was allowed under Outdoor Recreation, which it also does not comply with because that is supposed to be operated with a commercial or membership basis, which it's not. This was allowed without any input from any of the surrounding communities when really it did not comply with the zone. I'm asking that you guys please get back with us. We understand there's nothing that can be done now as far as them being there, but they can bring their structure,

bring their games into compliance with our ordinance instead of just telling the cops to leave. *Hand-out attached hereto as Exhibit No. 7.*

Kim Strickland, Public Information Officer, read email from Gateway Campbell, 104 Interlaken Place, into the public record. *Refer to email attached hereto as Exhibit No. 8.*

AGENDA CHANGES

Commissioner Munger made a motion to adopt the agenda with no changes.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

PUBLIC HEARINGS

None

CONSENT AGENDA

Approval of Minutes. Commissioner Kidwell made a motion to approve the minutes of the January 25, 2022 Special Town Board Meeting.

Commissioner Munger seconded motion.

Motion carried unanimously.

OTHER BUSINESS

Petition #SUP-21-06. Petition #SUP21-06 is a request by RSRV Power on behalf of Karen Butler of Parcel 01533303, to allow solar panels on the front roof slope of the home.

Mayor Bales said this is a quasi-judicial hearing on the application submitted for Special Use Permit #21-06, solar installation.

Quasi-judicial hearings are evidentiary in nature. Only parties with standing including the applicant, property owner, local government, and individuals who can show they will suffer special damages have the right to participate fully in the hearing. Special damages must be particularized, separate and distinct from damages to the public at large. Special damages are a fact specific inquiry. While proximity may bear weight in the determination of special damages, proximity in and of itself is insufficient to grant standing.

Parties may present evidence, call witnesses, and make legal arguments. Other individuals may, but are not required to, speak as a witness, however, they will not be allowed to participate fully as a party, such as by questioning other witnesses or by calling other persons to testify.

Witnesses must swear or affirm their testimony. General witness testimony is limited to facts, not personal preferences or opinions. Certain topics require expert witnesses including projections about impacts on property values and traffic impacts.

Individuals providing expert opinion testimony must be qualified as experts and provide the factual evidence upon which they base their expert opinion. Mere conclusionary testimony lacking the foundation of the expert's opinion is insufficient to establish the existence or nonexistence of a fact or conclusion.

The Board must base quasi-judicial decisions upon competent material and substantive evidence in the record.

Competent evidence is evidence that is sufficiently trustworthy and reliable, and that is legally fit and acceptable for consideration by the Board. Speculative, irrelevant or vague evidence, non-expert opinions as to something that requires an expert, and non-expected hearsay evidence will likely not be competent evidence.

Material evidence is evidence that shows that the standards will or will not be met.

Evidence is substantial if it is relevant and regarded by a reasonable person as sufficient to support a specific conclusion. Speculation, unsubstantiated fears of the community, or vague assertions do not constitute substantial evidence. Quasi-judicial hearings are constrained by the standards in the ordinance and the facts presented.

Even though the Board may hear other evidence if it is not objected to, the Board should rely on competent, material, and substantial evidence in making its decision.

The Board will recognize the applicant as a party, as well as the property owners.

Is the applicant here?

The applicant was present.

Mayor Bales said are there other persons who believe they have standing to participate fully as a party?

There being none, do you intend to call witnesses this evening?

The Applicant said I do not.

Mayor Bales said the parties in this case are entitled to an impartial Board. A Board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter, or a close relationship with an affected person. Does any Board member have any conflicts of interest to offer at tonight's meeting?

Seeing none, I'd like to call on Planning staff for the presentation of their staff report.

Mayor Bales swore in Nathan Farber and the Applicant.

Mayor Bales said to the Applicant, do you wish to speak or testify this evening.

The Applicant said if necessary.

Nathan Farber, Planner I, submitted the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 9.* This special use permit is a request to place solar panels on the front roof slope at 11913 Henderson Hill Road. Minor residential solar energy facilities facing a public street or common open space are allowed within the Rural district with the issuance of a special use permit.

Here's just a quick aerial overview of the property and then this is where the solar panels would be placed on the roof.

Planning staff recommends approval of the special use permit.

Mayor Bales said does the Board have any questions for the parties or witnesses.

Commissioner Kidwell said are we moving forward with becoming compliant with the state legislation so this does not have to come in front of us again?

Emily Sloop, Town Attorney, said yes, there's a proposed text amendment that's going to be on the HOAB agenda for March.

Commissioner Boone said I have a question for the applicant. Have you had any complaints from your HOA or any neighbors?

The Applicant said no, sir.

Commissioner Boone said can you please give me your name.

The Applicant said Justin Mikkelsen.

Mayor Bales said does the Board have any more questions for the parties before we move into deliberation?

Mayor Bales said hearing no additional questions or presentation of relevant facts, the Board will now begin deliberation. The evidentiary hearing remains open so that the Board may ask clarifying questions, if needed. As a reminder, this Board is tasked with deciding if, based on competent, material, substantive evidence presented at the hearing before this Board, this proposal meets the applicable standards.

If the applicant meets their burden of producing competent, material and substantial evidence that the standards in the ordinance will be met, the burden shifts to other parties. Since we have no other conflicting parties, we can move on. Is there a motion on the floor?

Commissioner Phillips made a motion in considering the Special Use Permit #SUP21-06, Solar Panels for 11913 Henderson Hill Road, we, the Town Board, find the request meets all the required criteria for granting a Special Use Permit for minor residential solar energy facilities facing a public street or common access space, as outlined in the Zoning Ordinance. The Town Board grants #SUP21-06 and the applicant has acknowledged that all required approvals and permits will be obtained. Staff will follow-up with the applicant to ensure all applicable permits are obtained. The solar energy facility will not be considered roof-top equipment and screening, or architectural standards are not required. The applicant has provided documentation stating that the solar panels have an anti-reflective coating as

such staff believes that the minor solar energy facility will not cause potentially injurious effect on adjacent properties or pedestrian and vehicular traffic.

Commissioner Munger seconded motion.

Ms. Sloop said can you refer to Part 8 at Page 5 of this. We do need to add on some language if you are adopting Staff's findings of fact for the standards to grant it. We just need to add that on.

Commissioner Phillips said the incorporate staff findings part?

Ms. Sloop said yes, if that's what you are basing it on.

Commissioner Phillips said do I have to re-read the whole thing.

Ms. Sloop said no, you can just add that you are incorporating staff's findings.

Commissioner Phillips said incorporate staff findings of fact the standards to grant SUP21-06, incorporate staff findings of fact numbers, specifically which one.....

Ms. Sloop said just A.

Commissioner Phillips said alright.

Mayor Bales said there is a motion on the floor. Do I have a second?

Commissioner Munger seconded motion.

Mayor Bales called for the vote to approve Petition #SUP21-06.

Motion carried unanimously.

Petition #R21-15. Petition #R21-15 is a request by TLO Properties LKN, to rezone 14520 Beatties Ford Road (Parcel #01540105) from the Rural – Conditional and Transitional Residential Districts to the Rural District.

Nathan Farber, Planner I, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 10.*

Rezoning #R05-13 Nassar-Gordon consisted of a 60-lot residential subdivision on a total of 64 acres. At that time, the entire proposed subdivision consisted of two lots. The applicant is proposing a general rezoning to remove Rural Conditional District rezoning and Transitional Residential associated with the R05-13 Nassar Gordon rezoning so that the entire parcel will be zoned Rural. Because this is a General Rezoning, the application does not have a site plan or any conditions associated with the request. If approved, all uses allowed in the Rural district will be permitted as described in the ordinance.

Commissioner Boone made a motion in considering the proposed Rezoning Petition #R21-15, 14520 Beatties Ford Road, the Town Board finds the rezoning is consistent with the Huntersville Zoning Ordinance Articles 11.4.7d and 11.4.7e and the Huntersville 2040 Community Plan Policies LU-2.2, LU-3.1 as outlined in Part 4 of the Staff Report. It is reasonable and in the public interest to rezone this

property because the Rural zoning will be consistent with the character and uses adjacent to the subject property and the entire property will have one zoning district instead of three.

Commissioner Kovacs seconded motion.

Mayor Bales called for the vote to approve Petition #R21-15.

Motion carried unanimously.

Petition #TA21-14. Petition #TA21-14 is a request by the Huntersville Planning Department to amend the following articles of the Huntersville Subdivision Ordinance: Sections 2.100: Definitions; Section 6.300: Sketch Plan Required for Major Subdivisions; Section 6.310: Sketch Plan Not Required for Minor Subdivisions; and Section 6.520: Exceptions: When Preliminary Plan Not Required.

Brad Priest, Principal Planner, reviewed the Staff Report. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 11.*

This amendment will provide clarity regarding what is and is not considered a major subdivision. The way the Subdivision Ordinance currently reads, improvement to existing street right-of-way and extension of right-of-way easements for Charlotte Water are considered a major subdivision which requires approval by the Town Board and is a 3-month process. With this amendment, expansion of existing street right-of-way and Charlotte Water water/sewer utility easements will be considered a minor amendment requiring staff approval. The definition of a major subdivision will still include the creation of any new public street.

Staff is also proposing to condense the definition of a minor subdivision. Staff is proposing the definition of a minor subdivision simply state that if a subdivision does not meet the major subdivision definition or the exempt definition, then it is a minor subdivision.

The Subdivision Ordinance nor the Zoning Ordinance specifies the requirements for a Farmhouse Cluster Plan. The Zoning Ordinance currently states in Articles 3.2.1 (e)(11) and 3.2.2 (e)(11), "A Farmhouse Cluster requires an approved Farmhouse Cluster subdivision plan, according to the requirements of the Huntersville Subdivision Ordinance including approval by the Town Board and shall meet all other requirements for review and approval, which may include preliminary plan approval prior to approval of a final plat." However, the only reference to the Farmhouse Cluster plan in the Subdivision Ordinance is in the definition of a minor subdivision and the language still does not specify the required information for a Farmhouse Cluster plan. Farmhouse Clusters are generally not common submittals; however, in the past year there were three Farmhouse Clusters submitted for review. This brought to Staff's attention that the plan requirements for a Farmhouse Cluster need to be specified in the Subdivision Ordinance.

Staff recommends approval. The Huntersville Ordinances Advisory Board unanimously recommended approval on November 4. The Planning Board unanimously recommended approval on January 25.

Commissioner Boone made a motion in considering the proposed amendment TA21-14 to amend Section 2.100, Section 6.300, Section 6.310 and Section 6.520 of the Subdivision Ordinance, the Town Board recommends approval based on the amendment being consistent with Policies EV-1.4, LU-9, LU-9.2 and LU-10. It is reasonable and in the public interest to amend the Zoning Ordinance for the following reasons: (1) it cleans up the approval process while ensuring that items are addressed and

rules are met; (2) it establishes a proper path forward for farmhouse clusters that ensures all those processes and requirements are met; (3) it encourages in-fill development which often brings with it diverse housing options.

Commissioner Partee seconded motion.

Mayor Bales called for the vote to approve Petition #TA21-14.

Motion carried unanimously.

Petition #R20-04. Petition #R20-04 is a request by Palillo Holdings, LLC to revise the phasing to committed road improvements for Statesville Road Mixed Use Rezoning #R20-04.

Stephen Trott, Director of Engineering, reviewed the request. *Refer to Staff Report and Staff PowerPoint attached hereto as Exhibit No. 12.* The applicant, Palillo Holdings, LLC is requesting to add a phase or subphase (going from two phases to three phases) for the TIA improvements approved as part of #R20-04 Statesville Road Mixed Use.

Engineering and Planning staff have reviewed the TIA Revision submittal and determined that it is consistent with the requirements of Article 14 of the Zoning Ordinance (it is mitigating what must be mitigated for each cumulative phase).

Commissioner Boone made a motion in considering Petition #R20-04, Statesville Road Mixed-use Rezoning, the Town Board approves the Palillo Holdings LLC request to add Phase 3 to the TIA requirements approved as part of #R20-04 Statesville Road Mixed Use Rezoning. The Town's Engineering and Planning Departments have reviewed the TIA revised submittal and determined that it's consistent with the requirements of Article 14 of the Zoning Ordinance.

Commissioner Kidwell seconded motion.

Mayor Bales called for the vote to approve Petition #R20-04.

Motion carried unanimously.

Resolution – Waive Rights for City of Concord Annexation. The Town received a notice from the City of Concord of their intent to annex lands owned by Larry Stinson and Myra Stinson. The Town's annexation agreement with the City of Concord requires the Town Board to waive its right to annex properties within the Town's area of consideration after receiving notice of annexation by another municipality.

Commissioner Kovacs made a motion to adopt a Resolution to waive rights for the City of Concord to annex lands owned by Larry Stinson and Myra Stinson.

Commissioner Munger seconded motion.

Mayor Bales called for the vote to adopt Resolution to waive rights for the City of Concord to annex lands owned by Larry Stinson and Myra Stinson.

Mayor Bales called for the vote to adopt Resolution.

Motion carried unanimously.

Resolution attached hereto as Exhibit No. 13.

Two Pole Building – Seagle Street. This project includes two pole buildings that will be built at the Seagle Complex. One building will serve the Police Department's storage needs and workspace and the other building will serve the Parks & Recreation Department's storage needs and workspace. The Police Building will be a five-bay building (2,520 sq ft.) with two bays being enclosed. The Parks & Recreation Building will be a six-bay building (3,024 sq. ft.) with three bays being enclosed.

Commissioner Boone made a motion to adopt Resolution and Construction Contract with DanForth Construction Group LLC to construct a Two Pole Building at Seagle Street in the amount of \$438,490 which will come from Fund Balance funds approved for FY22 that has been budgeted.

Commissioner Munger seconded motion.

Mayor Bales called for the vote to adopt Resolution.

Motion carried unanimously.

Resolution attached hereto as Exhibit No. 14.

North Meck Park Synthetic Turf Agreement – Carolina Miners Lacrosse. This synthetic turf agreement with the Carolina Miners Lacrosse will give them priority usage on one of the two soccer fields at North Mecklenburg Park. Carolina Miners Lacrosse would pay between \$73,800 per year to \$90,200 per year pending final cost (82 percent of the overall cost). This agreement is for 10 years. The Parks & Recreation Commission unanimously approved this agreement at their December 15 meeting. The yearly maintenance savings per field per year is estimated at \$20,000 to \$25,000 or \$200,000 to \$250,000 over the length of the 10-year agreement.

Commissioner Phillips made a motion to approve the North Mecklenburg Park Synthetic Turf Agreement with Carolina Miners Lacrosse.

Commissioner Boone seconded motion.

Commissioner Kidwell expressed concern that by approving this item and the next item on the agenda we are setting the tone that we only have one soccer club for the Town of Huntersville and no one else can come forward. I can't approve this agreement on that idea.

Mayor Bales called for the vote to approve North Meck Park Synthetic Turf Agreement with Carolina Miners Lacrosse.

Motion carried 5 to 1, with Commissioner Kidwell opposed.

Agreement attached hereto as Exhibit No. 15.

North Meck Park Synthetic Turf Agreement – Charlotte Independence. This synthetic turf agreement with the Charlotte Independence Soccer Club (CISC) will give them priority usage on one of the two soccer fields at North Mecklenburg Park. CISC would pay between \$73,800 per year to \$90,200 per year pending final cost (82 percent of the overall cost). This agreement is for 10 years. The Parks & Recreation Commission unanimously approved this agreement at their December 15 meeting. The yearly maintenance savings per field per year is estimated at \$20,000 to \$25,000 or \$200,000 to \$250,000 over the length of the 10-year agreement.

Commissioner Partee made a motion in consideration of North Mecklenburg Park Turf Agreement with the Charlotte Independence Soccer Club, the Town Board recommends approval of the field use in the Turf Agreement contract.

Commissioner Phillips seconded motion.

Commissioner Munger asked if there were any other field locations within Huntersville that provide opportunities for soccer clubs other than Charlotte Independence to practice and play.

Mr. Jaycocks listed Waymer Park, Huntersville Athletic Park and all of our school joint use agreements (Alexander Middle, Bradley Middle) as options. If Independence does not use fields, Lacrosse tournaments, flag football tournaments and other rentals use those fields.

Mayor Bales called for the vote to approve North Mecklenburg Park Turf Agreement with the Charlotte Independence Soccer Club.

Motion carried 5 to 1, with Commissioner Kidwell opposed.

Agreement attached hereto as Exhibit No. 16.

Purchase Agreement – 105 N. Maxwell Street. The Town has received an Agreement for Purchase and Sale of Improved Real Property from Jeffrey D. Howard, Trustee of the Jeffrey D. Howard Revocable Trust and Michael and Evan Athanas, as sellers, for the purchase of 105 N. Maxwell Street, Huntersville, NC. If the Board moves forward, the closing will be 60 days from February 21. The reason for purchasing this property is to meet the need in the 2006 Downtown Master Plan and also for potential Town Hall expansion.

Commissioner Kovacs made a motion to approve the Agreement for Purchase of Real Property at 105 N. Maxwell Street.

Commissioner Partee seconded motion.

Mayor Bales called for the vote to approve the Agreement.

Motion carried unanimously.

Agreement for Purchase and Sale attached hereto as Exhibit No. 17.

Audit Contract. Staff recommends that we re-engage Martin Starnes & Associates for the 2021-2022 Financial Audit. The contract has increased 5 percent due to new standards such as GASB 87 for Lease

accounting. In addition, there is a \$3,500 fee associated with the Single Audit for additional testing due to Uniform Guidance associated with the Federal programs.

Commissioner Munger made a motion to approve the contract to re-engage Martin Starnes & Associates for the 2021-2022 Financial Audit.

Commissioner Kidwell seconded motion.

Mayor Bales called for the vote to approve Audit Contract.

Motion carried unanimously.

Contract attached hereto as Exhibit No. 18.

HOAB Appointments. Four individuals need to be appointed to the Huntersville Ordinances Advisory Board.

Mayor Bales called for nominations.

Commissioner Boone nominated Matt Jones, Jacob Palillo, Joseph Kluttz, Amy Hallman.
Commissioner Kovacs nominated Matt Jones, Amy Hallman, Harrison Whitaker, Edward Montague.
Commissioner Kidwell nominated Matt Jones, Amy Hallman, Bianca Marple, Christopher Price.
Commissioner Phillips nominated Matt Jones, Amy Hallman, Joseph Kluttz, Jacob Palillo.
Commissioner Partee nominated Matt Jones, Amy Hallman, Joseph Kluttz, Harrison Whitaker.
Commissioner Munger nominated Matt Jones, Edward Montague, Jacob Palillo, Harrison Whitaker.

Matt Jones received six nominations and Amy Hallman received five nominations.

There was the three-way tie between Joseph Kluttz, Jacob Palillo and Harrison Whitaker. Mayor Bales called for nominations of two names from those three.

Commissioner Boone nominated Joseph Kluttz and Jacob Palillo.
Commissioner Kovacs nominated Joseph Kluttz and Harrison Whitaker.
Commissioner Kidwell nominated Joseph Kluttz and Harrison Whitaker.
Commissioner Phillips nominated Jacob Palillo and Joseph Kluttz.
Commissioner Partee nominated Joseph Kluttz and Harrison Whitaker
Commissioner Munger nominated Jacob Palillo and Harrison Whitaker.

Joseph Kluttz received five nominations and Harrison Whitaker received four nominations.

Commissioner Partee made a motion to appoint Matt Jones, Amy Hallman, Joseph Kluttz and Harrison Whitaker to the Huntersville Ordinances Advisory Board.

Commissioner Kovacs seconded motion.

Motion carried unanimously.

Planning Board Appointment. The Planning Board seat filled by Jennifer Davis is now vacant with a partial term remaining through June 30, 2024.

Mayor Bales called for nominations.

Commissioner Munger nominated Jay Henson.
Commissioner Partee nominated Vincent Flowers.
Commissioner Phillips nominated Jay Henson.
Commissioner Kidwell nominated William Haigler.
Commissioner Kovacs nominated Patrick Thomas.
Commissioner Boone nominated Jay Henson.

Commissioner Phillips made a motion to appoint Jay Henson to the Huntersville Planning Board effective through the remaining term of June 30, 2024.

Commissioner Munger seconded motion.

Motion carried unanimously.

Amend Huntersville Board of Commissioners Rules of Procedures. Commissioner Kidwell made a motion to amend the Town of Huntersville Board of Commissioners Rules of Procedures Rule 6, to amend the order of the agenda and would like to break up Commissioner Reports and Staff Questions.

Commissioner Phillips seconded motion.

Commissioner Kidwell expressed appreciation to fellow Board members for working on a compromise to bring more transparency to the process.

Commissioner Munger expressed concern about moving Commissioner Reports to the end. I'm not going to be opposed to this, but want us to keep an open mind at the possibility of moving the reports back up at a later date.

Commissioner Phillips indicated she requested the reports be moved to the end out of respect for citizens' time. I think it's a good opportunity for us to start inviting the people who we sit on the committees with to come do the presentations themselves.

Mayor Bales called for the vote to approve amending the Town of Huntersville Board of Commissioners Rules of Procedure, Rule 6 – Order of Business.

Motion carried unanimously

Amended Rules of Procedure attached hereto as Exhibit No. 19.

Call for Public Hearing – Historic Designation “Huntersville School #2.” Commissioner Phillips made a motion to call a public hearing for Monday, March 21, 2022 at 6:00 p.m. at Huntersville Town Hall on the question of designating as a historic landmark the property known as the “Huntersville School #2” also known as the Dellwood Center (including the exterior of the building and the approximately 2.787 acres of land listed under tax parcel 01908102 in the Mecklenburg County Tax Office) located at 508 Dellwood Drive.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

CLOSING COMMENTS

Mayor Bales commended the Board for their work this evening.

There being no further business, the meeting was adjourned.

Approved this the ____ day of _____, 2022.

DRAFT

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Jack Simoneau

Date: April 4, 2022

Subject: Call for Public Hearing for #TA22-05.

EXPLAIN REQUEST:

Call a public hearing on May 2, 2022 at 6PM, Huntersville Town Hall, for TA22-05, a request by the Huntersville Town Board amending the Subdivision and Zoning Ordinance by removing subdivision sketch plans from a quasi-judicial process (Planning Board recommendation, Town Board decision) and making it an administrative process (staff decision).

ACTION RECOMMENDED:

Call public hearing for May 2, 2022

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

None

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Pattie McGinnis

Date: April 4, 2022

Subject: Budget Amendment to transfer funds to offset some of the purchase price of 105 N. Maxwell Street.

EXPLAIN REQUEST:

In the FY 2022 budget, there was \$1,000,000 budgeted for the new Town Hall and spending to date has been \$242,400 on architectural costs with \$757,600 remaining. Staff is recommending that the \$757,600 be transferred to offset some of the purchase price of land at 105 N. Maxwell Street, Huntersville. This amendment adds an additional \$20,000 of supplemental closing cost such as surveys. The net impact is use of fund balance of \$37,400 to purchase the land. Appropriate \$37,400 to fund balance (103890.9999) and expense to the land account (105400.0550).

ACTION RECOMMENDED:

Approve Budget Amendment

FINANCIAL IMPLICATIONS:

Decrease in fund balance of \$37,400.

ATTACHMENTS:

None

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Pattie McGinnis

Date: April 4, 2022

Subject: Grant Special Revenue Ordinance for the American Rescue Plan Act of 2021.

EXPLAIN REQUEST:

Approve the Grant Special Revenue Ordinance for the American Rescue Plan Act of 2021. This ordinance has been adapted by the Institute of Government. Appropriate \$2,404,533 to the ARPA revenue account (403404.9999.21014) and various expense accounts in the Grant fund.

ACTION RECOMMENDED:

Approve Budget Amendment

FINANCIAL IMPLICATIONS:

Increase revenue of \$2,404,533.

ATTACHMENTS:

1. Grant project ordinance - ARPA

Grant Project Ordinance
Town of Huntersville
American Rescue Plan Act of 2021: Coronavirus State and Local Fiscal Recovery Funds

BE IT ORDAINED by the Town Board of Commissioners of the Town of Huntersville, 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: This ordinance is to establish a budget for a project to be funded by the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF). The Town of Huntersville (Town) has received the first tranche in the amount of \$2,404,533 of CSLFRF funds. The total allocation is \$4,809,066, with the remainder to be distributed to the Town within 12 months. These funds may be used for the following categories of expenditures, to the extent authorized by state law.

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Section 2: The Town has elected to take the standard allowance, as authorized by 31 CFR § 35.6(d)(1) and expend all its ARP/CSLFRF funds for the provision of government services.

Section 3: The following amounts are appropriate for the project and authorized for expenditure:

Internal Project Code	Project Description	Expenditure Category (EC)	Cost Object	Appropriation of ARP/CSLFRF Funds
001	Law enforcement services for period of July 1, 2022 through December 31, 2024	6.1	Salaries	\$4,809,066
		Total		\$4,809,066

Section 4: The following revenues are anticipated to be available to complete the project:

ARP/CSLFRF Funds:	\$4,809,66
General Fund Transfer:	\$0
Total:	\$4,809,066

Section 5: The Finance Officer is hereby directed to maintain sufficient specific detailed accounting records to satisfy the requirements of the grantor agency and the grant agreements, including payroll documentation and effort certifications, in accordance with 2 CFR §§ 200.430-431 and the Town's Uniform Guidance Cost Principles Policy.

Section 6: The Finance Officer is hereby directed to report the financial status of the project to the governing board on a quarterly basis.

Section 7: Copies of this grant project ordinance shall be retained by the Finance Officer with copies to the Clerk to the Town Board.

Section 8: This grant project ordinance expires on December 31, 2026, or when all the ARP/CSLFRF funds have been obligated and expended by the Town, whichever occurs sooner.

Adopted the 4th day of April 2022, by the members of the Board of Commissioners of the Town of Huntersville, Mecklenburg County, North Carolina.

Janet Pierson, Town Clerk

Approved as to form:

Emily Sloop, Town Attorney

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Kayleigh Mielenz, Planner I

Date: April 4, 2022

Subject: Public Hearing on Petition #S22-01.

EXPLAIN REQUEST:

Conduct a public hearing on petition S22-01 Birkdale Landing Special Sign District, a request by Firebirds International, LLC to create a Special Sign District Overlay for Birkdale Landing located at 16641 Birkdale Commons Pkwy, Tax Parcel 00917184. This request is to remove the Planned Development Flexibility Option and establish a Special Sign District so Firebirds can amend the Master Sign Plan to designate a specific wall as eligible for additional signage.

ACTION RECOMMENDED:

Conduct the Public Hearing

FINANCIAL IMPLICATIONS:

n/a

ATTACHMENTS:

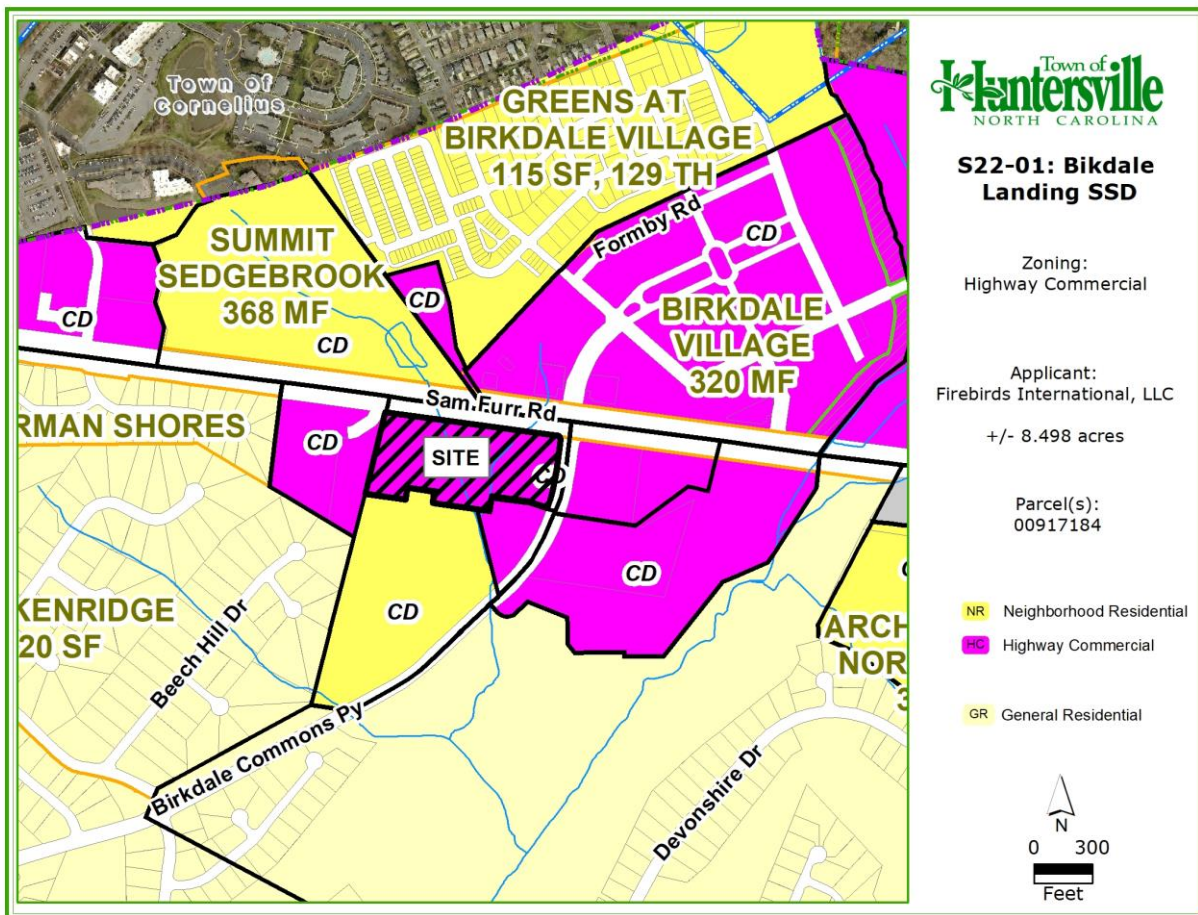
1. Birkdale Landing SSD Staff Report
2. SSD Application
3. Minutes of Birkdale Landing Neighborhood Meeting
4. Article 10.11 - Master Signage Programs _ Huntersville, NC
5. Proposed Birkdale Landing Master Signage Plan
6. Current Birkdale Landing Master Signage Plan_11.02.21

Birkdale Landing Special Sign District Overlay

PROJECT DESCRIPTION

Firebirds International, LLC is requesting on behalf of the property owner, Fairway Investments, LLC, to create a Special Sign District Overlay Zone per Article 10.11.1 for the Birkdale Landing development. A Special Sign District is intended to impose sign regulations which provide greater latitude or more stringent limitations than those provided in Article 10 of the Zoning Ordinance.

Birkdale Landing is located at the intersection of Sam Furr Rd (Hwy 73) and Birkdale Commons Parkway. The subject property is zoned Highway Commercial Conditional District (HC-CD).



Birkdale Landing is currently utilizing the Planned Development Flexibility option, which is administratively approved. The Planned Development Flexibility option requires a master sign plan, this was approved for Birkdale Landing in February 2020 and amended in January and November 2021.

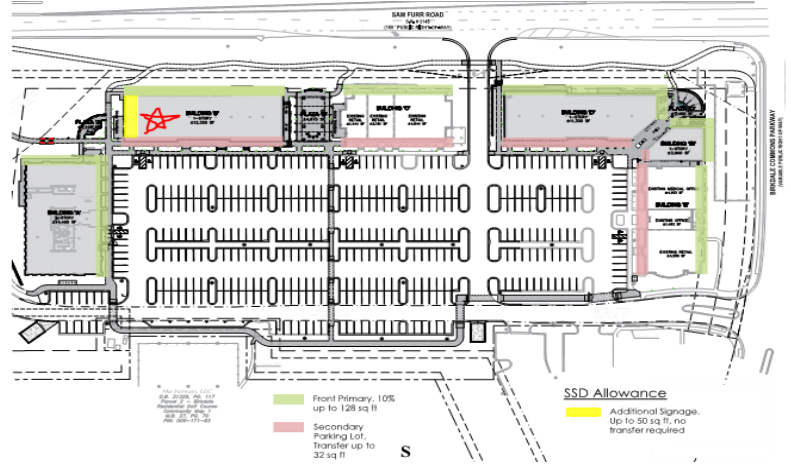
SPECIAL SIGN DISTRICT DETAILS

Below are the major highlights of the proposed Special Sign District.

Birkdale Landing non-street fronting wall sign. Firebirds International, LLC is requesting to designate an exterior wall of their tenant space that fronts on a plaza and a required buffer as a wall eligible for an additional tenant wall sign, up to 50 square feet. The sign would be classified as an additional sign and would not be a primary or secondary sign (a primary sign would be allowed 10% of the wall area, up to 128 SF & a secondary sign would be allowed up to 32 SF and require a square footage transfer). Firebirds is proposing a 42 SF additional wall sign.



Patio Elevation



STAFF RECOMMENDATION

Birkdale Landing non-street fronting wall sign. Staff supports the request to allow a non-street fronting wall on the Firebirds unit to be eligible for an additional tenant wall sign that's up to 50 square feet.

In considering the proposed rezoning petition S22-01, Birkdale Landing Special Sign District, Staff recommends approval based on the Master Sign Plan being consistent with the Huntersville 2040 Community Plan policies:

Policy LU-7: Require new development to follow design principles that reinforce the vision for the Town as expressed in this plan and other adopted plans. The town has committed to traditional town planning and urban design principles that are meant to preserve the character of the town. This commitment is noted in adopted plans and the zoning ordinance, and has been expressed in new development over the last 25 years.

LU 7.2: Consider updates to the Huntersville Design Guidebook and/or Zoning Ordinance as needed to improve the commercial and multi-family design.

Policy LU-8: Emphasize form and flexibility in Mixed-Use Centers, Employment Centers, the Town Core, and Activity Centers.

LU 8.1: Continue to emphasize form and flexibility in development regulations for these areas.

- The current zoning ordinance has basic form based standards with flexibility built-in. Key elements include allowing multiple types of land uses, a mix of uses, minimal setbacks, and parking requirements.

It is reasonable and in the public interest to approve the Special Sign District because it is consistent with the greater flexibility in form, style, and design desired by the 2040 Community Plan.

NEIGHBORHOOD MEETING

The Applicant held a virtual Neighborhood Meeting on 03/03/22 at 6 pm. No one from the public attended.

PUBLIC HEARING

April 4, 2022

PLANNING BOARD RECOMMENDATION

Scheduled for April 26, 2022

TOWN BOARD DECISION

Scheduled for May 16, 2022

ATTACHMENTS

1. Application & Sign Example
2. Neighborhood Meeting Minutes
3. Zoning Ordinance Article 10.10
4. Birkdale Landing Sign Plan for SSD (Proposed)
5. Birkdale Landing Sign Plan for Flexibility Option (Current)

STATEMENT OF CONSISTENCY

Planning Department	Planning Board	Board of Commissioners
APPROVAL: In considering the proposed rezoning petition S22-01, Birkdale Landing Special Sign District, Staff recommends approval based on the Master Sign Plan being consistent with Huntersville 2040 Community Plan policies LU-7, LU 7.2, LU-8, and LU 8.1. It is reasonable and in the public interest to approve the Special Sign District because it is consistent with the greater flexibility in form, style, and design desired by the 2040 Community Plan.	APPROVAL: In considering the proposed rezoning petition S22-01, Birkdale Landing Special Sign District, the Planning Board recommends approval based on the Master Sign Plan being consistent with <u>(insert applicable plan reference)</u>. <u>It is reasonable and in the public interest to approve the Special Sign District Plan because... (Explain)</u>	APPROVAL: In considering the proposed rezoning petition S22-01, Birkdale Landing Special Sign District, the Town Board recommends approval based on the Master Sign Plan being consistent with <u>(insert applicable plan reference)</u>. <u>It is reasonable and in the public interest to approve the Special Sign District Plan because... (Explain)</u>
	DENIAL: In considering the proposed rezoning petition S22-01, Birkdale Landing Special Sign District, the Planning Board recommends denial based on the Master Sign Plan being <u>(consistent OR inconsistent) with (insert applicable plan reference)</u>. <u>It is not reasonable and in the public interest to approve the Special Sign District Plan because... (Explain)</u>	DENIAL: In considering the proposed rezoning petition S22-01, Birkdale Landing Special Sign District, the Town Board recommends denial based on the Master Sign Plan being <u>(consistent OR inconsistent) with (insert applicable plan reference)</u>. <u>It is not reasonable and in the public interest to approve the Special Sign District Plan because... (Explain)</u>



General Application

INCOMPLETE SUBMISSIONS WILL NOT BE ACCEPTED. PLEASE CHECK ALL ITEMS CAREFULLY.

1. Application Type

Please indicate the type of application you are submitting. In addition to the application, the submission process for each application type can be found at <https://www.huntersville.org/528/Permits-Process>

- ☐ Change of Use
- ☐ Commercial Site Plan
- ☐ Conditional Rezoning
- ☐ General Rezoning
- ☒ Master Signage Program
- ☐ Special Use Permit
- ☐ Revision to
Original Project # _____
- ☐ Other _____

- SUBDIVISION CATEGORIES:** Per the Huntersville Subdivision Ordinance
- ☐ Sketch Plan
 - ☐ Preliminary Plan
 - ☐ Final Plat (Includes Minor Subdivision)
 - ☐ Exempt Subdivision
 - ☐ Final Plat Revision
 - ☐ Farmhouse Cluster

2. Project Data

Date of Application January 20, 2022

Name of Project Birkdale Landing Phase # (if subdivision) _____

Project Address 16641 Birkdale Commons Parkway, Huntersville, NC 28078

Parcel Identification Number(s) (PIN) 00917184

Current Zoning District HC(CD) Proposed District (for rezoning only) HC(CD)

Property Size (acres) 8.48 Street Frontage (feet) 894.47 Hwy 73 (0.17 miles) 371.15 Birkdale Commons Pkwy

Current Land Use retail establishments – applicant being a polish casual restaurant

Proposed Land Use(s) same as above

Is the project within Huntersville's corporate limits?
Yes ☒ No ☐ If no, does the applicant intend to voluntarily annex? _____

3. Description of Request

Explain the nature of this request. If a separate sheet is necessary, please attach to this application.

Please see Exhibits A, B and C attached hereto and incorporated by reference for complete details.

4. Site Plan Submittals

Consult the particular type of *Review Process* for the application type selected above. These can be found at <https://www.huntersville.org/528/Permits-Process>.

5. Outside Agency Information

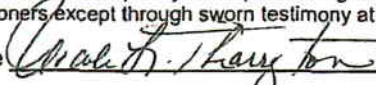
Other agencies may have applications and fees associated with the land development process. The *Review Process* list includes plan documents needed for most town and county reviewing agencies. For major subdivisions, commercial site plans, and rezoning petitions please enclose a copy of the Charlotte-Mecklenburg Utility *Willingness to Serve* letter for the subject property.

6. Applicant

Printed Name Firebirds International, LLC d/b/a Firebirds Wood Fired Grill Phone 704-944-5180

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

- ☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name: Nicole Tharrington

Title VP and General Counsel Email Ntharrington@fbgrill.com

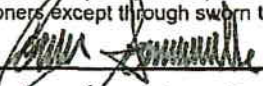
Address of Applicant 13850 Ballantyne Corporate Place, Suite 450, Charlotte, NC 28277

7. Property Owner (if different than applicant)

*Printed Name Fairway Investments, LLC Phone 205-802-7202

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

- ☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name Connor Somerville

Title Development and Asset Manager Email connor@fairwayinvestments.com

Address of Property Owner 728 Shades Creek Parkway Suite 210, Birmingham, AL 35209

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this application MUST be accompanied by a notarized Limited Power of Attorney signed by the property owner (s), specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.

8. Development/Design Firm Contact Information

Development Firm	Name of Contact	Phone	Email
------------------	-----------------	-------	-------

Design Firm	Name of Contact	Phone	Email
-------------	-----------------	-------	-------

Contact Information

Town of Huntersville	Phone:	704-875-7000
Planning Department	Fax:	704-992-5528
PO Box 664	Physical Address:	105 Gilead Road, Third Floor
Huntersville, NC 28070	Website:	https://www.huntersville.org/228/Planning-Department

Adjacent property owners and addresses within 100 feet of 16623, 16627, 16633, 16639, 16641, and 16647 Birkdale Commons Parkway, Huntersville, NC 28078 (per the Polaris 3G) – designated as Mecklenburg County Tax Parcel Number 01917184:

TAX PARCEL NUMBER	OWNER	ADDRESS
00921118	Fairway – Birkdale, LLC, an Alabama limited liability company	728 Shades Creek Parkway, Suite 200 Birmingham, AL 35209-4453
00921116	Fairway – Birkdale, LLC, an Alabama limited liability company	728 Shades Creek Parkway, Suite 200 Birmingham, AL 35209-4453
00917183	Mar Fairways, LLC, a Delaware limited liability company, converted to NREA SE3 Fairways, DST, a Delaware statutory trust	5429 LBJ Freeway, Suite 800 Dallas, TX 75240
00917185	SmileVision, LLC, a North Carolina limited liability company	16525 Birkdale Commons Parkway Huntersville, NC 28078
00914136	Romspen Birkdale LLC, a Delaware limited liability company	162 Cumberland Street, Suite 300 Toronto, Ontario, XX M5R 3N5
00914137	BOBs, LLC, a North Carolina limited liability company	19824 W. Catawba Avenue, Suite G Cornelius, NC 28031
00914138	Gemini Investment Group, LLC, a North Carolina limited liability company	16600 Birkdale Commons Parkway, Suite A Huntersville, NC 28078-6181
00914139	BOBs, LLC, a North Carolina limited liability company	19824 W. Catawba Avenue, Suite G Cornelius, NC 28031

Tax maps:





Customer:
Firebirds - Huntersville, NC

16639 Birkdale Commons Pkwy
Huntersville, NC 28078

Drawing #:
300615

Date:
01/31/2020

Revision:
02/12/2020tn
11/03/2021DM
01/21/2022DM

Customer Approval:

Date:

Sales:
D. Martin

Design: Check by:
Darin M.

This design is the property of CASCO SIGNS, Inc. and remains our property until sign is purchased. Any attempt to reproduce this design or use by others for any purpose, without written consent is subject to prosecution to the fullest extent allowed by law.

All components & installations are approved & listed by UNDERWRITERS LABORATORIES

Drawing Type:
Sales



Patio Elevation

Scale: 3/32" = 1'-0"

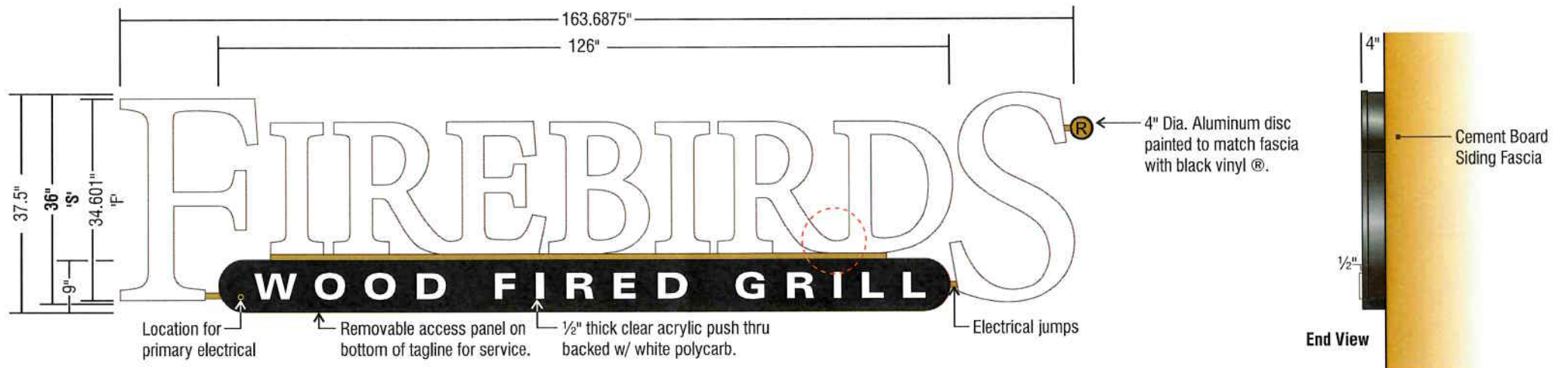
Sign Notes

Lighted channel letters fabricated from aluminum (.040" returns [4" deep], 3mm ACM backs) with returns finished Black. Letters to have 3/16" white acrylic faces secured to returns via 1" Black trim cap. Letters internally lighted via Samsung Luna White LEDs. 'IREBIRD' letters will mount on top of a 1" x 3" aluminum tube that will house wiring and is painted to match the fascia. 'F' & 'S' letters will be jumped from tagline via low voltage wiring and conduit.

Tagline cabinet fabricated from aluminum (.090" face, .063" welded returns [4" deep]), all painted black. Face to have routed out 1/2" clear acrylic push thru copy backed with 1/8" white polycarb. Cabinet internally lighted via Samsung Luna White LEDs. Cabinet & letters will mount flush to the fascia via approved hardware. All power supplies & secondary wiring will come from inside the tagline cabinet.

Color Notes

- 1/2" Clear acrylic - push thru copy (tagline)
- 2447 White acrylic - letter faces
- 7328 White polycarb - push thru backer panel (tagline)
- Black (vinyl) - ®
- Black coil stock - letter returns
- Black jewelrite - letter trim cap
- Black (gloss) - tagline cabinet
- SW 6356 Copper Mountain(satin) - ® disc, electrical jumps & connecting tube wireway



B2 (1) Readings of Flush Mounted Channel Letters (FB-FM-WT 36)
Scale: 1/2" = 1'-0" 37.5" x 163.6875" = 42.6 Sq. Ft.

**Minutes of Birkdale Landing Neighborhood Meeting
Held March 3, 2022 @ 6 pm
Submitted by Nicole Tharrington**

I. Individuals in Attendance:

On Behalf of Firebirds of Huntersville, LLC d/b/a Firebirds Wood Fired Grill:

- **Steve Kislow – Chief Executive Officer**
- **Marie Collins – Director of Administration and Licensing**
- **Nicole Tharrington – Vice President and General Counsel**

On Behalf of Huntersville:

- **Kayleigh Mielenz – Planner I, Town of Huntersville**
- **Brian Richards – Assistant Planning Director, Huntersville Planning Dept.**

On Behalf of the Developer/Landlord:

- **Sara Haight – Senior Property Manager, Fairway Management**

II. After introductions and rollcall, the meeting was called to order.

III. The attached PowerPoint was presented and discussed during which it was confirmed that all Birkdale Landing tenants were notified by Firebirds of its application for an amendment to the Birkdale Landing Master Sign Program in favor of a Special Sign District. It was further confirmed that no objections or other revisions were received. Additionally, Firebirds confirmed that Birkdale Landing tenants were invited to this meeting although none attended.

IV. Following the presentation and being there were no further questions, the meeting was adjourned at 6:20 pm.

Article 10.11 - Master Signage Programs

Master signage programs establish two alternatives in providing latitude to develop appropriate signage designs for new or existing areas with special unifying features. The alternatives are the Special Sign Districts and the Planned Development Flexibility option. Special Sign Districts require approval by the Board of Commissioners following review and recommendation by the Huntersville Planning Board.

10.11.1 Special Sign Districts

For the purpose of establishing, enhancing, preserving, and developing the character, quality, and property values of areas of unique character and special development potential, districts in which signs are regulated by special provisions may be established subject to the following conditions:

.1 As a prerequisite to the establishment of such a special sign district, it must be determined that the modified rules established for said district shall:

- a) Preserve and enhance the special character of the particular area; and
- b) Not contravene the intent of this ordinance; and
- c) Cause no disturbance to neighboring property lying outside the proposed district.

.2 Without changing the basic structure of this ordinance, the modified rules for a special sign district may impose sign regulations which provide greater latitude or more stringent limitations than those provided elsewhere in this ordinance.

.3 The special sign district constitutes an overlay district and shall conform to the procedures of Article 11 for purposes of adoption and administration. Districts for which special sign regulations may be imposed include, but shall not be limited to the Town Center District, the Neighborhood Center District, the TND-U and TND-R districts.



10.11.2 Planned Development Flexibility Option

For the purpose of providing flexibility and incentives for coordinated, well-designed sign systems for large-scale development, special provisions varying the standards of this ordinance may be approved by the Zoning Administrator, subject to the following:

.1 The development is: a planned residential, nonresidential, or mixed-use development, 10 acres or greater in size; a hospital or other large-scale institutional complex; a large-scale cultural, civic or recreational facility; or a similar large-scale development.

.2 A Master Sign Program that includes the following information in booklet form is submitted:

- a) Detailed designs of all proposed signs including the size, height, copy, materials, and colors of such signs.
- b) Proposed number and location of signs.
- c) Sign Illumination Plans.
- d) Plans for landscaping or architectural features to be used in conjunction with such plans.

.3 The proposed signs meet the following criteria:

- a) All signs are coordinated in terms of design features.
- b) The maximum amount of allowable wall mounted signage per individually constructed tenant space of one non-street fronting wall shall not exceed 25% of the area of the street fronting sign, up to a maximum of 32 square feet. This 25% increase may only be used on one non-street fronting wall.
- c) Marquee and Hanging/Blade Signs may be increased by 25%, however they may project no more than 4 feet from the building wall, and no more than 3 feet over a sidewalk in a town maintained right-of-way.
- d) The maximum size of detached signs is not increased by more than 25%.
- e) The number of detached signs along a street frontage does not exceed 3.
- f) The maximum height of a detached sign does not exceed 12 feet.
- g) Multi-information directional signs are no greater than 16 square feet and are located in the interior of a development.



Table of Contents

Birkdale Landing Special Sign District

Master Signage Program



March 2022

Master Signage Program
Birkdale Landing
Huntersville, NC

INTRODUCTION/OVERVIEW

In an effort to create a visual conformity for the shoppes at Birkdale Landing, an overall Master Signage Program is proposed to safely inform and direct visitors to and within the Shopping Center. Well designed, creative graphics are important elements for attracting customers. The goal is to promote consistent, high quality signage, while maintaining tenant freedom.

Tenants are required to select signage options from the indicated options and submit design drawings prepared by a sign manufacturer or signage designer for approval by the Developer.

Developer must approve all signage to insure consistency in style, scale, materials, colors and graphics as well as locations and quantities, while allowing for a varied, exciting and interesting streetscape.

Signage shall be limited to types and locations indicated in this manual or as other approved by the Developer as long as other options comply with the Town of Huntersville sign ordinance.

No exposed neon type tubing shall be permitted on outside signs. Neon signs may be used inside of windows. No sky-facing lighting is permitted on outdoor signs.

Permanent signs requiring a permit must have sign permit approved by Town of Huntersville and Mecklenburg County Land Use and Environmental Service Agency (LUESA).

CONTENTS/SUMMARY

- I. Directory Sign
- II. Tenants (less than 5,000 sf)
- III. Tenants (5,000 sf and greater)
- IV. Multi-Story Building
- V. ATM/Kiosk
- VI. Window and Door Graphics
- VII. Tenant Addresses
- VIII. Building Addresses
- IX. Other Signs
- X. Signage Criteria

SECTION I - DIRECTORY SIGN

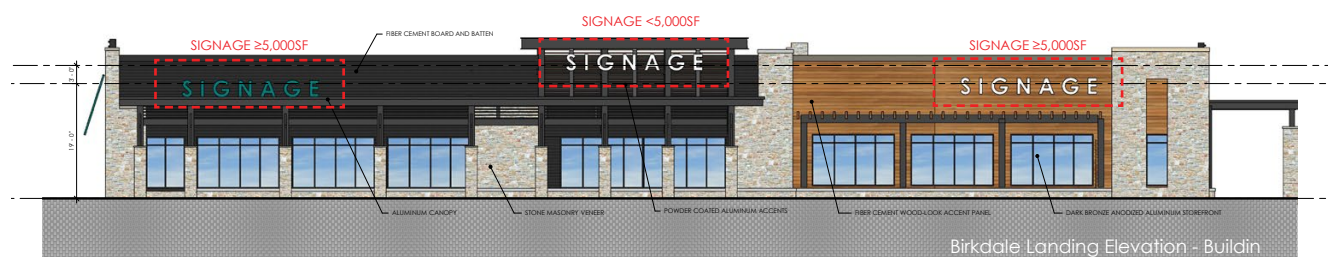
One directory sign will be allowed per street frontage. A total of two directory signs will be allowed as long as the separation distance exceeds 1000' and the signs are located within 50' of their primary street frontage. The exact placement of the directory sign has not been determined, however it will be located at least 5' behind the right-of-way and out of the intersection sight distance. The directory sign will have a maximum sign face area of 120 sq ft and a maximum height of 12' (excluding sign cap). The directory sign will be similar to the examples below, provided however the exact tenant panel layout, materials and color are subject to final Developer design and Town approval.



SECTION II - TENANTS (Less than 5,000 sq ft)

A. Primary Signs

- Primary tenant signs to be located on street side of lease space below the parapet.
- Individual channel letters (48" maximum for single line signs) mounted to wall on a raceway illuminated individually.
- If tenant desires more than one line, then the max letter height will be of the discretion of the Landlord
- Font style, color graphics and materials to be approved by Developer.
- Tenant's logo may be permitted on the signs subject to Developer's approval.
- Surface mounted raceway to be painted to match the color of the adjacent wall surface.
- The Maximum Signage area shall be 10% of the tenant's wall face fronting a street (not to exceed 128 sq ft).



B. Secondary Signs

Tenants may elect to use any of the following sign options:

- Where applicable and approved by the Developer, tenants may install a secondary sign at the back of the building (parking lot side). The maximum size of all parking lot secondary signs shall be up to 25% of the total square footage of the signage allowed on the street side (primary sign) of the building, and in no case shall the sign exceed 32 SF. A parking lot secondary sign requires a square footage transfer from the primary sign.
- Where applicable and approved by the Developer, tenants that occupy corner/end cap spaces that face a plaza space may have a sign on the side of the building, allowed in addition to parking lot secondary sign. The maximum size of all side secondary signs located on a corner/end cap space shall be up to 25% of the total square footage of the signage allowed on the street side (primary sign), and in no case shall the sign exceed 32 SF. A side secondary sign requires a square footage transfer from the primary sign.
- The combined SF of all secondary signs for an individual tenant shall not exceed 32 SF.
- All specifications including, but not limited to font style, color, graphics, materials, raceway, etc. shall be same as the "Primary Signs".



C. Blade Signs

- Each tenant may, subject to Developer's discretion, have one blade sign per business bay for pedestrian visibility.
- Tenant's double-faced blade sign is to attach beneath the canopy, on building columns and/or exterior horizontal ceilings
- Overall area of blade sign can not exceed 12 sq ft.
- A minimum 8' clearance between the bottom of the blade sign and the sidewalk must be maintained.
- Blade sign may project no more than 4' from the building wall.
- Blade sign may project up to 3' over a sidewalk to the R-O-W.
- Metal support elements and decorative metal framework, colors and materials to be approved by the Developer.
- Blade signed may be illuminated via a concealed lighting trough installed in the mounting bracket.
- External lighting is not allowed.



D. Shipping & Employee Entrance Identification

- Shipping and employee entrance identification signage at rear entrance to store - standard 24" x 24" painting 1/8" aluminum plate with 4" vinyl letters. Must be mounted conspicuously near rear door for easy identification.

SECTION III - TENANTS (5,000 sq ft and greater)

A. Primary Signs

- Primary tenant signs to be located on street side of lease space below the parapet.
- Individual channel letter (48" maximum for single line signs) mounted to wall on a raceway and illuminated individually. If tenant desires more than one line, then the max letter height will be of the discretion of the Developer.
- Font style, color, graphics and materials to be approved by Developer.
- Tenant's logo may be permitted on the sign subject to Developer's approval.
- Surface mounted raceway to be painted to match the color of the adjacent wall surface.
- The maximum signage area shall be 10% of tenant's wall face fronting a street (not to exceed 128 sq ft)



B. Secondary Signs

- Tenants may elect to use any of the following sign options. The combined SF of all secondary signs for an individual tenant shall not exceed 32 SF.
- Where applicable and approved by the Developer, tenants may install a secondary sign at the back of the building (parking lot side). The maximum size of all parking lot secondary signs shall be up to 25% of the total square footage of the signage allowed on the street side (primary sign) of the building, and in no case shall the sign exceed 32 SF. A parking lot secondary sign requires a square footage transfer from the primary sign.
- Where applicable and approved by the Developer, tenants that occupy corner/end cap spaces that face a plaza space may have a sign on the side of the building, allowed in addition to parking lot secondary sign. The maximum size of all side secondary signs located on a corner/end cap space shall be up to 25% of the total square footage of the signage allowed on the street side (primary sign), and in no case shall the sign exceed 32 SF. A side secondary sign requires a square footage transfer from the primary sign.
- All specifications including, but not limited to, font style, color, graphics, materials, raceway, etc. shall be the same as the "Primary Signs".
- Additional signage may display the names of other secondary tenants operating within this tenant's leased premises, such as, but not limited to, a bank or a coffee shop.



C. Blade Signs

- Each tenant may, subject to Developer's discretion, have one blade sign per business bay for pedestrian visibility.
- Tenant's double-faced blade sign is to attach beneath the canopy, on building columns and/or pedestrian visibility.
- Overall area of blade sign can not exceed 12 sq ft.
- A minimum 8' clearance between the bottom of the blade sign and the sidewalk must be maintained
- Blade sign may project no more than 4' from the building wall.
- Blade sign may project up to 3' over a sidewalk on the R-O-W.
- Metal support elements and decorative metal framework, colors and materials to be approved by Developer.
- Blade signs may be illuminated via a concealed lighting trough in the mounting bracket. External lighting is not allowed.



D. Shipping & Employee Entrance Identification

- Shipping and employee entrance identification signage at rear entrance to store - standard 24" x 24 " painted 1/8" aluminum plate with 4" vinyl letters. Must be mounted conspicuously near rear door for easy identification.

SECTION IV - MULTISTORY BUILDING

1. First Floor Tenants

- All first floor tenants are subject to the same signage requirements as outlined in Section II (A-D) and Section III (A-D) of this Master Signage Program.

2. Upper Floor Tenants

A. Primary Signs

- Primary tenant signs must be on street side of lease space.
- Individual channel letters (48" maximum for single line signs) mounted to wall on a raceway and illuminated individually.
- If tenant desires more than one line, then the max letter height will be of the discretion of the Developer.
- Font style, color, graphics and materials to be approved by Developer.
- Tenant's logo may be permitted on the sign subject to Developer's approval.
- Surface mounted raceway to be painted the color of the adjacent wall surface.
- Sign to be located above windows of upper level lease space.
- The maximum signage area shall be 10% of any tenant's face fronting a street (not to exceed 128 sq ft).

B. Secondary Signs

- Tenants may elect to use any of the following sign options.
- Secondary sign at the back of building (parking lot side) is permitted subject to limitations described in this Master Signage Program.
- Tenants that occupy corner/end cap spaces may have, in addition to a secondary sign on the back of the building, a sign on the side of the building.
- The size of all secondary signs shall be the same as outlined in Section II (B) and Section III (B) of this Master Signage Program.
- Individual aluminum cut (pin) letter mounted on a metal frame. Metal frame color to match the adjacent wall surface. Signs will not be illuminated.

C. Internal Directory/Signage

- Developer will provide a tenant directory indicating each tenant name and suite number. The tenant directory sign will be located inside the main entrance on the first floor of the multi-story building.
- Developer will also have tenant names and suite numbers displayed outside of each individual upper level suite.
- All on premise directional signs shall comply with the Town of Huntersville zoning ordinance.



D. Blade Signs

- Each tenant may, subject to Developer's discretion, have one blade sign per business bay for pedestrian visibility.
- Tenant's double-faced blade sign is to attach beneath the canopy, on building columns and/or pedestrian visibility.
- Overall area of blade sign can not exceed 12 sq ft.
- A minimum 8' clearance between the bottom of the blade sign and the sidewalk must be maintained
- Blade sign may project no more than 4' from the building wall.
- Blade sign may project up to 3' over a sidewalk on the R-O-W.
- Metal support elements and decorative metal framework, colors and materials to be approved by Developer.
- Blade signs may be illuminated via a concealed lighting trough in the mounting bracket. External lighting is not allowed.

SECTION V - ATM/KIOSK

ATM/Kiosk tenants shall be allowed signage (not to exceed 16 square feet) that will be substantially similar to the examples shown.



SECTION VI - WINDOW AND DOOR GRAPHICS

- Permanent tenant identification information may appear on storefront windows and glass doors as additional signage.
- The overall dimensions of all graphics on storefront windows and doors must be less than 10% of area storefront glass area facing the street.
- Window graphics are to be made of cut vinyl applied to inside of window. Colors be approved by Developer.
- Temporary signage in window area to be approved by Developer.



SECTION VII- TENANT ADDRESSES

- The following Tenant Addressing criteria applies to all tenants occupying retail/office space. This signage is provided by the Developer
- Letters and/or Numerals must be the least of the height required by the Fire Marshal and be made of a reflective material (for easy nighttime viewing) and must appear on the front of the building in a location that is clearly visible from the street when traveling at the posted speed limit.
- Address information may appear directly on the front door as long as the door is not to remain ajar for any length of time.
- Address information must appear close to the front entrance but be as conspicuously visible as possible.
- Tenant address is limited to a maximum area of 3 sq ft, if not located in a window.

SECTION VIII- BUILDING ADDRESSES

- The following Building Addressing criteria applies to buildings within Shoppes at Birkdale Crossing, and are provided by Developer.
- Letters and/or Numerals must be the least of the height required by the Fire Marshal and be made of a reflective material (for easy nighttime viewing) and must appear on the front the building in a location that is clearly visible from the street when traveling at the posted speed limit.
- Address information must appear on the street side of the building and be as conspicuously visible as possible.
- Building address is limited to a maximum area of 3 sq ft.

SECTION IX - OTHER SIGNS

Any sign that is not mentioned in this Master Signage Program, must comply with the Town of Huntersville zoning ordinance.

SECTION X - SIGNAGE CRITERIA

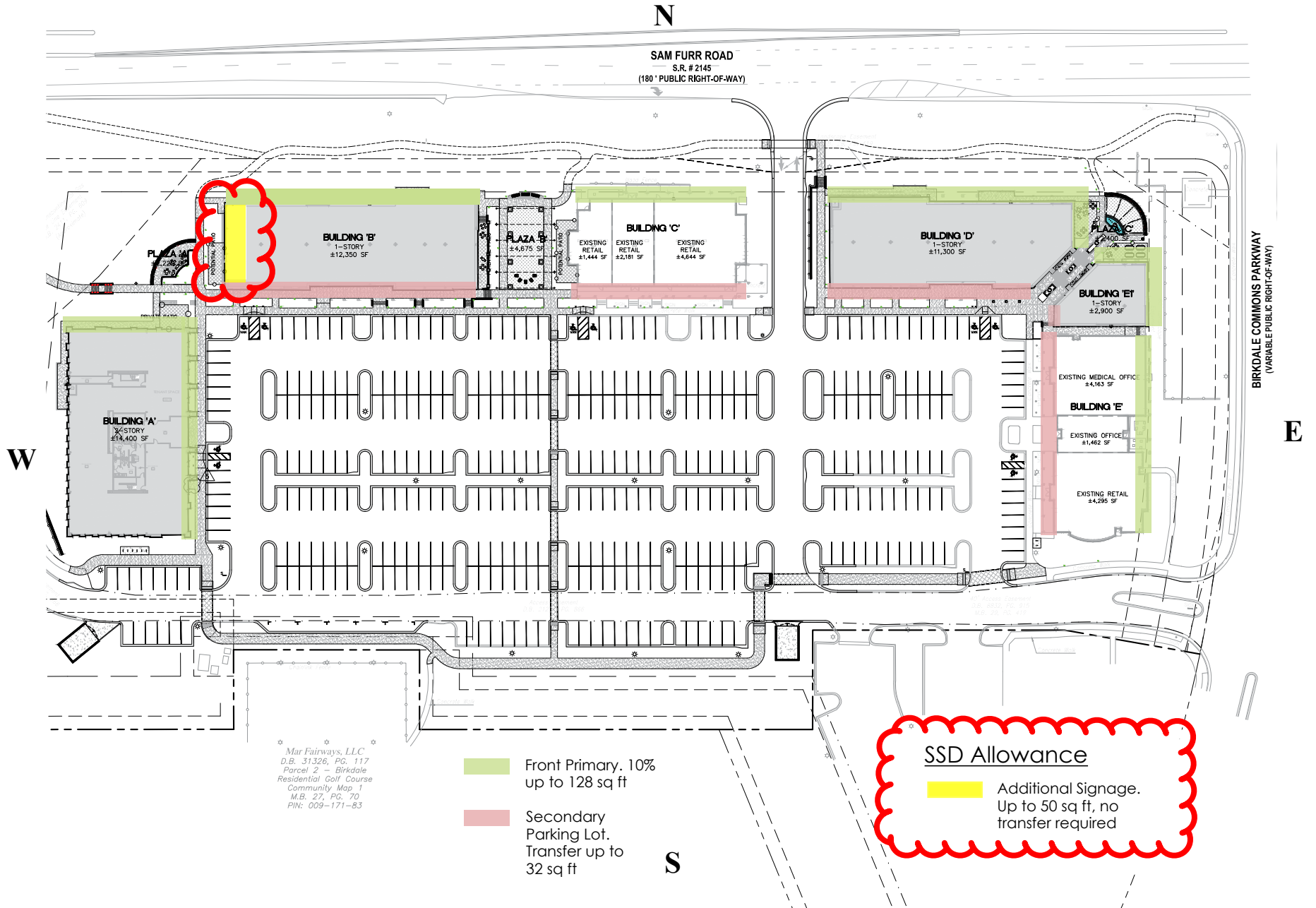
The purpose of the Graphic & Signage Criteria is to promote consistent, high quality signage, while allowing the Tenant freedom to create unique graphics that are consistent with the overall store design.

1. All signs and location of those signs are subject to the approval of the Landlord and all applicable codes and ordinances having jurisdiction over the Shopping Center, including but not limited to, Underwriters Laboratories' Standard for Electric Signs (UL 2161), the National Electric Code and local building codes. Landlord's approval does not constitute a warranty or representation that the sign is safe or otherwise in compliance any applicable codes or ordinances.
2. Tenant is solely responsible for any permits and/or fees, design, construction and installation required or otherwise associated with Tenant's signs.
3. Tenant's sign contractor shall provide Landlord a written Certificate of Liability Insurance with a minimum of \$1,000,000 coverage and Landlord named as the insured before installation of the sign. Tenant's sign contractor cannot work on the premises of the Shopping Center without proof of liability insurance.
4. Tenant is required to submit one set of shop drawings to the Landlord for approval prior to fabrication of sign work. Such drawing should include a section through letter as well as an elevation view of the storefront drawn to scale, indicating the proposed sign location. This drawing is to indicate size, design, color and construction of letters. Consideration of signs which do not conform to the above restrictions will be given only upon submittal of a sign shop drawing. No sign shall be erected without written approval of Landlord.
5. The advertising content of all signs shall be limited to letters designating the store name or type of store only. All designations of the store type shall be by general descriptive terms and shall not include any specification of the merchandise offered for sale therein.
6. All Tenant signs are to be individually lit channel letters, mounted on a single (or double) metal raceway, approved by Landlord, and shall consist of the store name/logo only. All letters are to be internally lit with neon, have no exposed neon. Exterior letter returns and trim caps shall be black.
7. Signage shall be structurally sound construction for its intended use as a fascia sign. All corners shall be fabricated, welded and ground smooth. Returns of letters shall be fabricated from .040 aluminum and .063 aluminum backs. Return depths shall be 4 ½". Attach letters to a raceway that shall be fabricated from .063 aluminum with angle iron headers. No exposed wiring, conduit or junction boxes are allowed. All primary electrical connections must be made behind the building. Raceway shall house all secondary wiring. Raceway shall not extend

more than 8" from the face of the building and be no taller than 8" without prior approval by Landlord. Color of the raceway shall be consistent with the EIFS system installed on the face of the Shopping Center.

8. The translucent colored acrylic shall be Plexiglass G sheet or equivalent. The acrylic shall be 3/16" thickness. No transparent letter faces are permitted.
9. Hardware for fabrication and installation shall be of non-corrosive type or plated.
10. Signage shall be centered above storefront, unless prior approval has been granted by landlord. The maximum length of tenants lettering may be 70% of the frontage width, projected from the sidewalls of each lease.
11. The sign contractor shall remove all debris accumulated due to his work from the Shopping Center. Any damage to the Landlord's premises during sign installation and/or maintenance shall be Tenant's sole responsibility. Sign contractor or Tenant shall promptly reimburse the Landlord for all expenses incurred as a result of such damage.
12. No rooftop or other signs will be permitted on the building
13. Tenant lettering on doors, windows, or show windows may not be illuminated and may not exceed 2" in height. Lettering to be black. No decal, symbol, etc shall be affixed to Tenant's doors, windows, or show windows except with special written permission of the Landlord.
14. Tenant shall not employ paper signs to be applied to the interior or exterior faces of the store front glass or other materials.
15. Tenant shall not employ any flashing action, moving action or audible signs.
16. Any sign, notice, or graphic, located within the interior of the Premises and easily legible from the storefront requires the prior written approval of Landlord.
17. Light leaks in sign letters will not be allowed and must be repaired promptly by the Tenant.
18. If the Tenant has a rear exit/service door, this doorway shall be identified with Tenant's name, per Landlord's specifications, using 2" high vinyl helevetic medium letters, indicating the Tenant's name and address.
19. Each Tenant shall be permitted to place upon each entrance not more than 144 square inches of gold leaf or decal lettering, indicating hours of business, emergency telephone numbers, etc. Size of letters not to exceed 1" in height.
20. Tenant shall be responsible for all work associated with the installation of the sign, including permits for sign, and shall execute such work in accordance with applicable codes and to the reasonable satisfaction of the Landlord.

BIRKDALE LANDING SIGNAGE LOCATIONS



Birkdale Landing

Master Signage Program



February 2020

MASTER SIGN PROGRAM APPROVED AS NOTED

11/02/2021

Agency: Town of Huntersville, Planning Department
Note: This review was completed based on the information provided by the applicant. This review was done using the minimum acceptable standards of the applicable Town Ordinances.



Kayleigh Hilary

Master Signage Program
Birkdale Landing
Huntersville, NC

INTRODUCTION/OVERVIEW

In an effort to create a visual conformity for the shoppes at Birkdale Landing, an overall Master Signage Program is proposed to safely inform and direct visitors to and within the Shopping Center. Well designed, creative graphics are important elements for attracting customers. The goal is to promote consistent, high quality signage, while maintaining tenant freedom.

Tenants are required to select signage options from the indicated options and submit design drawings prepared by a sign manufacturer or signage designer for approval by the Developer.

Developer must approve all signage to insure consistency in style, scale, materials, colors and graphics as well as locations and quantities, while allowing for a varied, exciting and interesting streetscape.

Signage shall be limited to types and locations indicated in this manual or as other approved by the Developer as long as other options comply with the Town of Huntersville sign ordinance.

No exposed neon type tubing shall be permitted on outside signs. Neon signs may be used inside of windows. No sky-facing lighting is permitted on outdoor signs.

Permanent signs requiring a permit must have sign permit approved by Town of Huntersville and Mecklenburg County Land Use and Environmental Service Agency (LUESA).

CONTENTS/SUMMARY

- I. Directory Sign
- II. Tenants (less than 5,000 sf)
- III. Tenants (5,000 sf and greater)
- IV. Multi-Story Building
- V. ATM/Kiosk
- VI. Window and Door Graphics
- VII. Tenant Addresses
- VIII. Building Addresses
- IX. Other Signs
- X. Signage Criteria

SECTION I - DIRECTORY SIGN

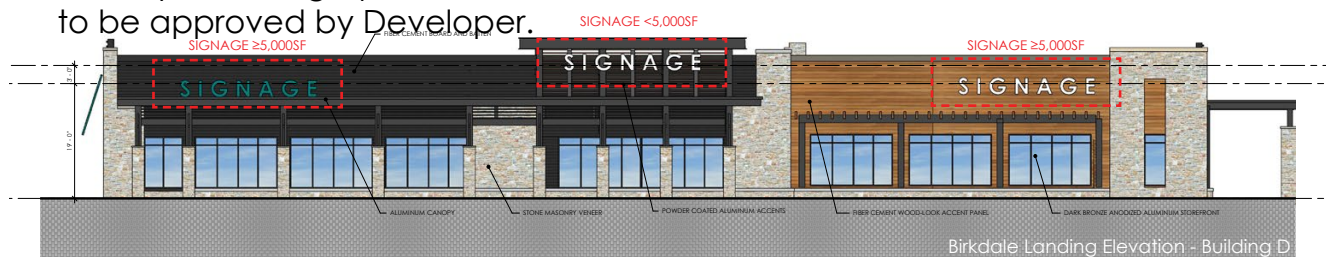
One directory sign will be allowed per street frontage. A total of two directory signs will be allowed as long as the separation distance exceeds 1000' and the signs are located within 50' of their primary street frontage. The exact placement of the directory sign has not been determined, however it will be located at least 5' behind the right-of-way and out of the intersection sight distance. The directory sign will have a maximum sign face area of 120 sq ft and a maximum height of 12' (excluding sign cap). The directory sign will be similar to the examples below, provided however the exact tenant panel layout, materials and color are subject to final Developer design and Town approval.



SECTION II - TENANTS (Less than 5,000 sq ft)

A. Primary Signs

- Primary tenant signs to be located on street side of lease space below the parapet.
- Individual channel letters (48" maximum for single line signs) mounted to wall on a raceway and illuminated individually.
- If tenant desires more than one line, then the max letter height will be of the discretion of the Landlord
- Font style, color graphics and materials to be approved by Developer.
- Tenant's logo may be permitted on the signs subject to Developer's approval.
- Surface mounted raceway to be painted to match the color of the adjacent wall surface.
- The Maximum Signage area shall be 10% of the tenant's wall face fronting a street (not to exceed 128 sq ft).



B. Secondary Signs

Tenants may elect to use any of the following sign options:

- Tenants may install a secondary sign at the back of the building (parking lot side), subject to the requirements under "Primary Signs". The maximum size of all secondary signs located on the back of the buildings (where applicable and approved by the Developer) shall not be greater than 25% of the total square footage of the signage allowed on the street side (front) of the building or 16 square feet. The sign shall not exceed 32 square feet.
- Tenants that occupy corner/end cap spaces that face a parking lot or plaza space may have, in addition to a secondary sign on the back of the building, a sign on the side of the building subject to the requirements under "Primary Signs". The maximum size of all secondary signs located on the side of a building that faces a parking lot (where applicable and approved by the side of the building that faces a parking lot (where applicable and approved by the Developer) shall not be greater than 25% of the total square footage of the signage allowed on the street side (front) of the building or 16 square feet. The sign shall not exceed 32 square feet.
- All specifications including, but not limited to font style, color, graphics, materials, raceway, etc. shall be same as the "Primary Signs".



C. Blade Signs

- Each tenant may, subject to Developer's discretion, have one blade sign per business bay for pedestrian visibility.
- Tenant's double-faced blade sign is to attach beneath the canopy, on building columns and/or exterior horizontal ceilings
- Overall area of blade sign can not exceed 12 sq ft.
- A minimum 8' clearance between the bottom of the blade sign and the sidewalk must be maintained.
- Blade sign may project no more than 4' from the building wall.
- Blade sign may project up to 3' over a sidewalk to the R-O-W.
- Metal support elements and decorative metal framework, colors and materials to be approved by the Developer.
- Blade signed may be illuminated via a concealed lighting trough installed in the mounting bracket.
- External lighting is not allowed.



Manhattan Storefront



Charlotte Storefront

D. Shipping & Employee Entrance Identification

- Shipping and employee entrance identification signage at rear entrance to store - standard 24" x 24" painting 1/8" aluminum plate with 4" vinyl letters. Must be mounted conspicuously near rear door for easy identification.

SECTION III - TENANTS (5,000 sq ft and greater)

A. Primary Signs

- Primary tenant signs to be located on street side of lease space below the parapet.
- Individual channel letter (48" maximum for single line signs) mounted to wall on a raceway and illuminated individually. If tenant desires more than one line, then the max letter height will be of the discretion of the Developer. Font style, color, graphics and materials to be approved by Developer.
- Tenant's logo may be permitted on the sign subject to Developer's approval.
- Surface mounted raceway to be painted to match the color of the adjacent wall surface.
- The maximum signage area shall be 10% of tenant's wall face fronting a street (not to exceed 128 sq ft)



B. Secondary Signs

- Tenants may elect to use any of the following sign options.
- Tenants may install a secondary sign at the back of the building (parking lot side), subject to the requirements under "Primary Signs". The maximum size of all secondary signs located on the back of the building (parking lot side), subject to the requirements under "Primary Signs". The maximum size of all secondary signs located on the back of the building (where applicable and approved by the Developer) shall not be greater than 25% of the total square footage of the signage allowed on the street side (front) of the building or 32 square feet. The sign shall not exceed 32 square feet.
- Tenants that occupy corner/end cap spaces that face a parking lot or plaza may have, in addition to a secondary sign on the back of the building, a sign on the side of the building subject to the requirements under "Primary Signs". The maximum size of all secondary signs located on the side of the building that faces a parking lot (where applicable and approved by the Developer) shall not be greater than 25% of the total square footage of the signage allowed on the street side (front) of the building or 16 square feet. The sign shall not exceed 32 square feet.
- All specifications including, but not limited to, font style, color, graphics, materials, raceway, etc. shall be the same as the "Primary Signs".
- Additional signage may display the names of other secondary tenants operating within this tenant's leased premises, such as, but not limited to, a bank or a coffee shop.



C. Blade Signs

- Each tenant may, subject to Developer's discretion, have one blade sign per business bay for pedestrian visibility.
- Tenant's double-faced blade sign is to attach beneath the canopy, on building columns and/or pedestrian visibility.
- Overall area of blade sign can not exceed 12 sq ft.
- A minimum 8' clearance between the bottom of the blade sign and the sidewalk must be maintained
- Blade sign may project no more than 4' from the building wall.
- Blade sign may project up to 3' over a sidewalk on the R-O-W.
- Metal support elements and decorative metal framework, colors and materials to be approved by Developer.
- Blade signs may be illuminated via a concealed lighting trough in the mounting bracket. External lighting is not allowed.



D. Shipping & Employee Entrance Identification

- Shipping and employee entrance identification signage at rear entrance to store - standard 24" x 24 " painted 1/8" aluminum plate with 4" vinyl letters. Must be mounted conspicuously near rear door for easy identification.

SECTION IV - MULTISTORY BUILDING

1. First Floor Tenants

- All first floor tenants are subject to the same signage requirements as outlined in Section II (A-D) and Section III (A-D) of this Master Signage Program.

2. Upper Floor Tenants

A. Primary Signs

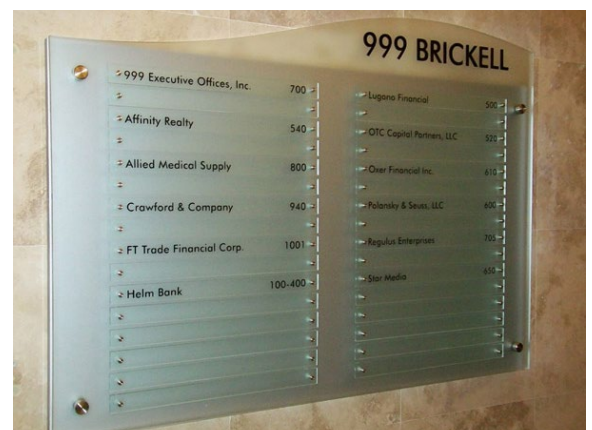
- Primary tenant signs must be on street side of lease space.
- Individual channel letters (48" maximum for single line signs) mounted to wall on a raceway and illuminated individually.
- If tenant desires more than one line, then the max letter height will be of the discretion of the Developer.
- Font style, color, graphics and materials to be approved by Developer.
- Tenant's logo may be permitted on the sign subject to Developer's approval.
- Surface mounted raceway to be painted the color of the adjacent wall surface.
- Sign to be located above windows of upper level lease space.
- The maximum signage area shall be 10% of any tenant's face fronting a street (not to exceed 128 sq ft).

B. Secondary Signs

- Tenants may elect to use any of the following sign options.
- Secondary sign at the back of building (parking lot side) is permitted subject to limitations described in this Master Signage Program.
- Tenants that occupy corner/end cap spaces may have, in addition to a secondary sign on the back of the building, a sign on the side of the building.
- The size of all secondary signs shall be the same as outlined in Section II (B) and Section III (B) of this Master Signage Program.
- Individual aluminum cut (pin) letter mounted on a metal frame. Metal frame color to match the adjacent wall surface. Signs will not be illuminated.

C. Internal Directory/Signage

- Developer will provide a tenant directory indicating each tenant name and suite number. The tenant directory sign will be located inside the main entrance on the first floor of the multi-story building.
- Developer will also have tenant names and suite numbers displayed outside of each individual upper level suite.
- All on premise directional signs shall comply with the Town of Huntersville zoning ordinance.



D. Blade Signs

- Each tenant may, subject to Developer's discretion, have one blade sign per business bay for pedestrian visibility.
- Tenant's double-faced blade sign is to attach beneath the canopy, on building columns and/or pedestrian visibility.
- Overall area of blade sign can not exceed 12 sq ft.
- A minimum 8' clearance between the bottom of the blade sign and the sidewalk must be maintained
- Blade sign may project no more than 4' from the building wall.
- Blade sign may project up to 3' over a sidewalk on the R-O-W.
- Metal support elements and decorative metal framework, colors and materials to be approved by Developer.
- Blade signs may be illuminated via a concealed lighting trough in the mounting bracket. External lighting is not allowed.

SECTION V - ATM/KIOSK

ATM/Kiosk tenants shall be allowed signage (not to exceed 16 square feet) that will be substantially similar to the examples shown.



SECTION VI - WINDOW AND DOOR GRAPHICS

- Permanent tenant identification information may appear on storefront windows and glass doors as additional signage.
- The overall dimensions of all graphics on storefront windows and doors must be less than 10% of area storefront glass area facing the street.
- Window graphics are to be made of cut vinyl applied to inside of window. Colors be approved by Developer.
- Temporary signage in window area to be approved by Developer.



SECTION VII- TENANT ADDRESSES

- The following Tenant Addressing criteria applies to all tenants occupying retail/office space. This signage is provided by the Developer
- Letters and/or Numerals must be the least of the height required by the Fire Marshal and be made of a reflective material (for easy nighttime viewing) and must appear on the front of the building in a location that is clearly visible from the street when traveling at the posted speed limit.
- Address information may appear directly on the front door as long as the door is not to remain ajar for any length of time.
- Address information must appear close to the front entrance but be as conspicuously visible as possible.
- Tenant address is limited to a maximum area of 3 sq ft, if not located in a window.

SECTION VIII- BUILDING ADDRESSES

- The following Building Addressing criteria applies to buildings within Shoppes at Birkdale Crossing, and are provided by Developer.
- Letters and/or Numerals must be the least of the height required by the Fire Marshal and be made of a reflective material (for easy nighttime viewing) and must appear on the front the building in a location that is clearly visible from the street when traveling at the posted speed limit.
- Address information must appear on the street side of the building and be as conspicuously visible as possible.
- Building address is limited to a maximum area of 3 sq ft.

SECTION IX - OTHER SIGNS

Any sign that is not mentioned in this Master Signage Program, must comply with the Town of Huntersville zoning ordinance.

SECTION X - SIGNAGE CRITERIA

The purpose of the Graphic & Signage Criteria is to promote consistent, high quality signage, while allowing the Tenant freedom to create unique graphics that are consistent with the overall store design.

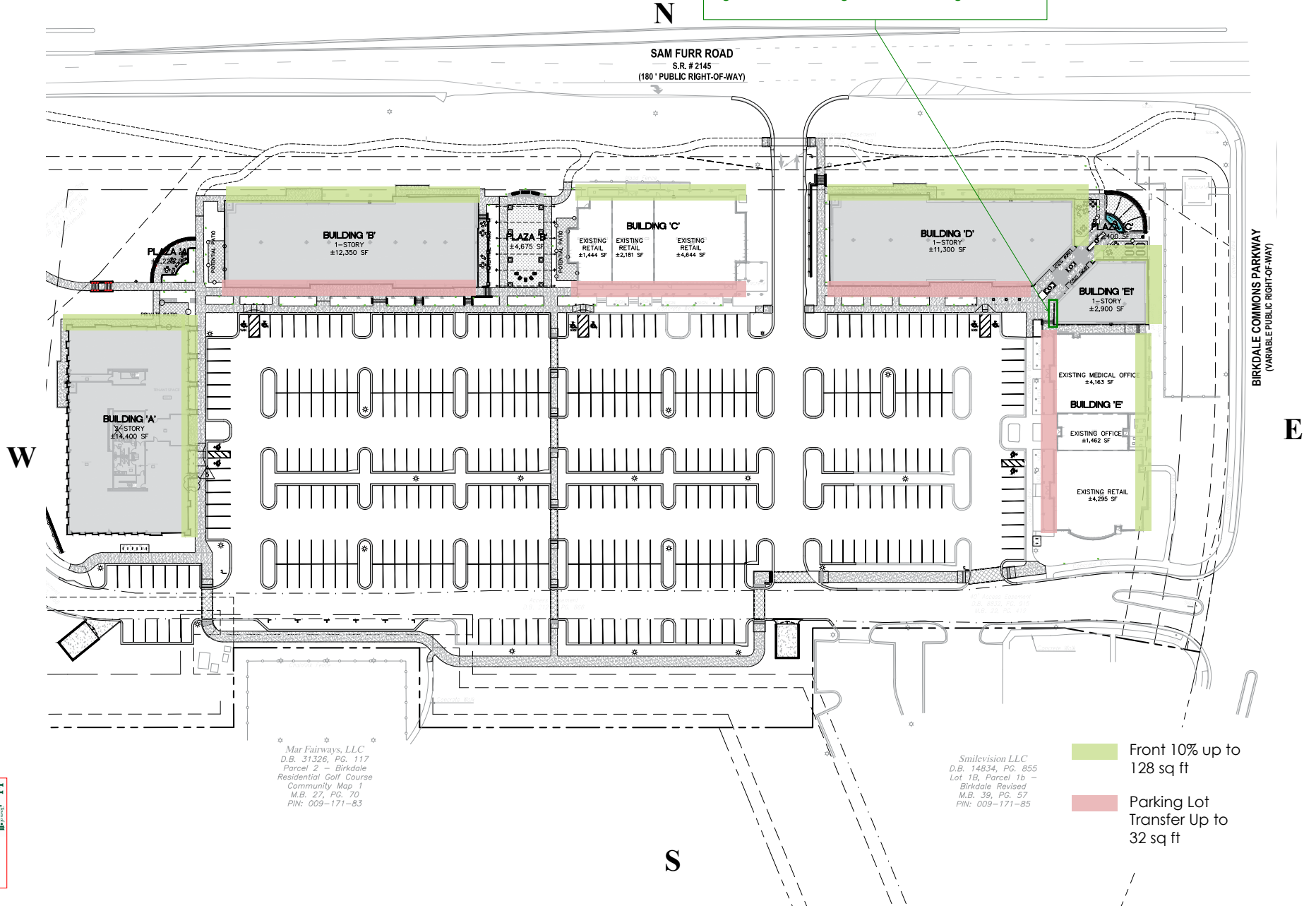
1. All signs and location of those signs are subject to the approval of the Landlord and all applicable codes and ordinances having jurisdiction over the Shopping Center, including but not limited to, Underwriters Laboratories' Standard for Electric Signs (UL 2161), the National Electric Code and local building codes. Landlord's approval does not constitute a warranty or representation that the sign is safe or otherwise in compliance any applicable codes or ordinances.
2. Tenant is solely responsible for any permits and/or fees, design, construction and installation required or otherwise associated with Tenant's signs.
3. Tenant's sign contractor shall provide Landlord a written Certificate of Liability Insurance with a minimum of \$1,000,000 coverage and Landlord named as the insured before installation of the sign. Tenant's sign contractor cannot work on the premises of the Shopping Center without proof of liability insurance.
4. Tenant is required to submit one set of shop drawings to the Landlord for approval prior to fabrication of sign work. Such drawing should include a section through letter as well as an elevation view of the storefront drawn to scale, indicating the proposed sign location. This drawing is to indicate size, design, color and construction of letters. Consideration of signs which do not conform to the above restrictions will be given only upon submittal of a sign shop drawing. No sign shall be erected without written approval of Landlord.
5. The advertising content of all signs shall be limited to letters designating the store name or type of store only. All designations of the store type shall be by general descriptive terms and shall not include any specification of the merchandise offered for sale therein.
6. All Tenant signs are to be individually lit channel letters, mounted on a single (or double) metal raceway, approved by Landlord, and shall consist of the store name only. All letters are to be internally lit with neon, have no exposed neon ~~and be no more than 24" in height. In the event the tenant desires to use more than one line, the maximum letter size of any letter will then be reduced to 12" high.~~ Exterior letter returns and trim caps shall be black.
7. Signage shall be structurally sound construction for its intended use as a fascia sign. All corners shall be fabricated, welded and ground smooth. Returns of letters shall be fabricated from .040 aluminum and .063 aluminum backs. Return depths shall be 4 ½". Attach letters to a raceway that shall be fabricated from .063 aluminum with angle iron headers. No exposed wiring, conduit or junction boxes are allowed. All primary electrical connections must be made behind the building. Raceway shall house all secondary wiring. Raceway shall not extend

more than 8" from the face of the building and be no taller than 8" without prior approval by Landlord. Color of the raceway shall be consistent with the EIFS system installed on the face of the Shopping Center.

8. The translucent colored acrylic shall be Plexiglass G sheet or equivalent. The acrylic shall be 3/16" thickness. No transparent letter faces are permitted.
9. Hardware for fabrication and installation shall be of non-corrosive type or plated.
10. Signage shall be centered above storefront, unless prior approval has been granted by landlord. The maximum length of tenants lettering may be 70% of the frontage width, projected from the sidewalls of each lease, but no letter shall be nearer than 3' to the corner of the tenants limit line.
11. The sign contractor shall remove all debris accumulated due to his work from the Shopping Center. Any damage to the Landlord's premises during sign installation and/or maintenance shall be Tenant's sole responsibility. Sign contractor or Tenant shall promptly reimburse the Landlord for all expenses incurred as a result of such damage.
12. No rooftop or other signs will be permitted on the building.
13. Tenants whose stores who face solely on the front of the shopping center shall have one sign on the face of the canopy. Tenants located on the end of the shopping center may have one additional sign on the end.
14. Tenant lettering on doors, windows, or show windows may not be illuminated and may not exceed 2" in height. Lettering to be black. No decal, symbol, etc., shall be affixed to Tenant's doors, windows, or show windows except with special written permission of the Landlord.
15. Tenant shall not employ paper signs to be applied to the interior or exterior faces of the store front glass or other materials.
16. Tenant shall not employ any flashing action, moving action or audible signs.
17. Any sign, notice, or graphic, located within the interior of the Premises and easily legible from the storefront requires the prior written approval of Landlord.
18. Light leaks in sign letters will not be allowed and must be repaired promptly by the Tenant.
19. If the Tenant has a rear exit/service door, this doorway shall be identified with Tenant's name, per Landlord's specifications, using 2" high vinyl helevetic medium letters, indicating the Tenant's name and address.
20. Each Tenant shall be permitted to place upon each entrance not more than 144 square inches of gold leaf or decal lettering, indicating hours of business, emergency telephone numbers, etc. Size of letters not to exceed 1" in height.
21. Tenant shall be responsible for all work associated with the installation of the sign, including permits for sign, and shall execute such work in accordance with applicable codes and to the reasonable satisfaction of the Landlord.

BIRKDALE LANDING SIGNAGE LOCATIONS

See emails between Staff and Fairway Investments between 1/18/2021 and 1/19/2021. This facade is allowed to receive a transfer of sign area for wall signs not exceeding 32 sf.



**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Jack Simoneau

Date: April 4, 2022

Subject: Conduct continuation of public hearing on Petition #TA 22-02.

EXPLAIN REQUEST:

Conduct continuation of public hearing on TA 22-02, a Zoning Ordinance text amendment by the Huntersville Town Board affecting the Neighborhood Residential, Neighborhood Commercial, Town Center and Highway Commercial zoning districts by removing the ability to exceed 30 percent attached houses (row house, townhouse or duplex), apartment buildings and mixed-use buildings (commercial & residential in one multi-story building) in major subdivisions located within ¼ mile of designated rail transit stations (3.2.4(d)(4), 3.2.6(d)(4), 3.2.5(d)(4), 3.2.7(d)(4)(a)).

ACTION RECOMMENDED:

Continue Public Hearing

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. TA22-02 Staff Report Continued PH
2. TA 22-02 Amendment Application
3. TA 22-02

TA 22-02 – Town of Huntersville: Housing Near Transit Stations

PART 1: DESCRIPTION

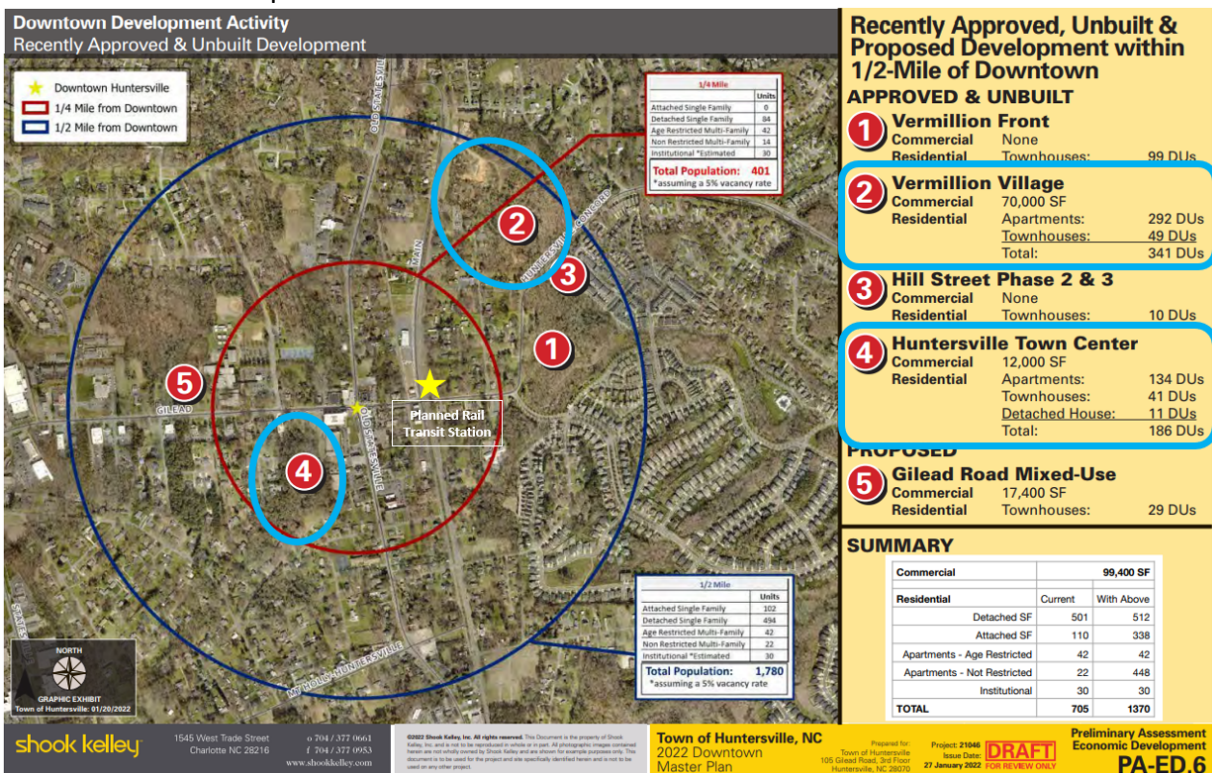
TA 22-02 is a Zoning Ordinance text amendment sponsored by the Huntersville Town Board affecting the Neighborhood Residential, Neighborhood Commercial, Town Center and Highway Commercial zoning districts by removing the ability to exceed 30% attached houses (row house, townhouse or duplex), apartment buildings and mixed-use buildings (commercial & residential in one multi-story building) in major subdivisions located within ¼ mile of designated rail transit stations.

PART 2: BACKGROUND

In the Neighborhood Residential, Neighborhood Commercial, Town Center and Highway Commercial zoning districts, major subdivisions are limited to 30% attached houses, apartment buildings and mixed-use buildings. However, there is also a provision where the 30% cap can be exceeded in major subdivisions within ¼ mile of designated rail transit stations. These provisions have been in the ordinance since 1996.

The first development to be approved under these provisions was Vermillion Village in 2017 (#2 below) followed by Huntersville Town Center/North State Development in 2021 (# 4 below). Both properties are zoned Town Center-CD. *Please note the map below is from the first public forum for the downtown plan currently underway. The red and dark blue circles represent ¼ mile and ½ mile from the center of downtown (intersection of Gilead Road and NC 115), not the planned rail station. Further, developments 1 and 3 were approved as part of Vermillion rezoning in 1999. Development 5 is a proposed TND-CD rezoning currently going through the process*

Since rail transit may not come or if it does, will be far into the future, the Town Board requested text amendment TA 22-02 be processed for consideration.



PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN

Policy LU-2: Encourage residential development that follows the pattern outlined in the future land use map.

LU 2.1: Higher intensity residential uses will be focused generally within two miles of the I-77/ NC-115 corridor and future activity centers in the eastern and western areas of Huntersville’s zoning jurisdiction.

COMMENT: If TA 22-02 is approved, there will still be an ability for higher intensity residential uses within 2 miles of I-77/NC 115 with one building on one lot or through rezoning.

Policy LU-5: Focus more intense development in locations that can support growth.

LU 5.1: Allow more intense development only where transportation infrastructure and utilities already exist.

COMMENT: Since rail transit will not occur anytime in the foreseeable future, removing the ability to exceed the 30% cap on attached housing, apartment buildings and mixed-use buildings within ¼ mile of designated rail transit stations will allow the Town to better allocate density with the availability of transportation options.

Policy LU-10: Encourage a diversity of housing options.

LU 10.1: Align housing options with resident needs and promote attainable housing options.

COMMENT: While TA 22-02 could have some impact on housing varieties, other options exist to allow a variety of housing choices.

Policy LU-11: Protect Existing Housing Stock.

LU 11.1: Protect and enhance the unique character of Huntersville’s neighborhoods by using planning tools to safeguard from potentially negative impacts of development and redevelopment.

COMMENT: If TA 22-02 is approved, allowing more than 30% attached houses, apartment buildings and mixed-use buildings could occur through a rezoning providing a higher-level review by the Town than would occur with a by-right land use.

Policy DT-1: Encourage future development in the Downtown area to adhere to the Regulating Plan. (see page 73)

DT 1.1: Encourage vertical mixed-use development with active visual engagement between the street and the ground and upper floors along Active Frontages

- Shopfronts are encouraged along key frontages.
- Active uses are required on the ground floor (in new development only) and include retail, restaurants, and other uses that generate many visits over an extended period of the day.
- Upper story residential units should have balconies when feasible.
- Active frontages should use design features such as a high level of building transparency, frequent pedestrian access points, and facade articulation.

DT 1.2: In Tier 1 areas, encourage multistory buildings and allow for a mix of uses, including commercial, office, and residential.

- Building types allowed include urban workplaces, multifamily, attached, and detached residential.

DT 1.3: In Tier 2 areas, create a transitional area from the core of Downtown to surrounding residential neighborhoods.

- This area contains mostly residential uses with some office and commercial space at lower intensities than Tier 1.

COMMENT: While TA 22-02 could have some impact on limiting mixed-uses, other options exist to allow mixed-uses.

Policy DT-2: Step down in intensity and density near established residential neighborhoods.

- Housing types that provide good transitions include townhomes, duplexes, triplexes, and other small-scale products.
- Design features such as setbacks, step backs, tree preservation, and open space placement can help provide transitions.

COMMENT If TA 22-02 is approved, allowing more than 30% attached houses, apartment buildings and mixed-use buildings could occur through a rezoning providing a higher-level review by the Town than would occur with a by-right land use.

Policy DT-11: Promote Residential Development in Downtown Huntersville.

DT 11.1: Allow and encourage residential development in Downtown Huntersville, including for-sale and rental housing integrated with commercial uses.

DT 11.2: Work with developers to ensure a mix of housing typologies and price points in future developments.

COMMENT: Approval of TA 22-02 could limit residential development in Downtown Huntersville but will not stop it.

PART 4: STAFF RECOMMENDATION

Staff recommends approval of TA 22-02 (see Part 9).

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

The Huntersville Ordinances Advisory Board (HOAB) recommended (7-1) approval on March 3, 2022.

PART 6: PUBLIC HEARING

March 7, 2022 (go to: <https://www.facebook.com/HuntersvilleNCTownGovernment/videos/town-board-meeting-3-7-22/403071374820722> starting at 1:28:22)

PART 7: PLANNING BOARD RECOMMENDATION

On March 22, 2022 the Planning Board recommended approval.

PART 8: ATTACHMENTS

1. Text Amendment Application
2. Text Amendment Language

PART 9: STATEMENT OF CONSISTENCY – TA20-01

<i>Planning Department</i>	<i>Planning Board</i>	<i>Board of Commissioners</i>
APPROVAL: In considering the proposed amendment TA22-02, Planning Staff recommends approval based on consistency with LU 2, 5, 10, 11 and DT 1, 2 and 11 of the Huntersville 2040 Community Plan. <i>It is reasonable and in the public interest to amend the Zoning Ordinance because a variety of residential building types are still allowed by the ordinance.</i>	APPROVAL: In considering the proposed amendment TA22-02, Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> <i>It is reasonable and in the public interest to amend the Zoning Ordinance because... (Explain)</i>	APPROVAL: In considering the proposed amendment TA22-02, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> <i>It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)</i>
DENIAL: N/A	DENIAL: N/A In considering the proposed amendment TA22-02, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>. <i>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)</i>	DENIAL: In considering the proposed amendment TA22-02, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>. <i>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)</i>



Text Amendment Application

Date of Application 1-31-22

Fee

See Current Town of Huntersville Fee Schedule for Text Amendment to the Zoning/Subdivision Ordinance

Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

☒ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change

Proposed text amendment will affect the following:

Ordinance(s): Zoning Article(s): 3 Section(s): See attached

See attached

Current Ordinance

See Attached

Proposed Text

**Reason for Proposed
Change**

To remove the ability to exceed 30% attached houses, apartment buildings and mixed use buildings in major residential subdivisions at designated transit stations because rail transit will not occur anytime in the foreseeable future

Attach additional pages if needed.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Applicant

Printed Name Huntersville Town Board

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☒ Other: _____

Signature Jackie Huffman Date 1-31-2022

Title Assistant Town Manager Email jhuffman@huntersville.org

Address of Applicant PO Box 664, Huntersville NC 28070

Property Owner (if different than applicant)

* Printed Name N/A

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature _____ Date 1-31-22

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Contact Information

**Town of Huntersville
Planning Department**
PO Box 664
Huntersville, NC 28070

Phone: 704-875-7000
Fax: 704-875-6546
Physical Address: 105 Gilead Road, Third Floor, Huntersville, NC 28078
Website: <https://www.huntersville.org/228/Planning-Department>

Date Received By Planning Department: 1-31-2022

Staff Initials: JS

AN ORDINANCE AMENDING ARTICLE 3.2.4(d)(4), 3.2.5(d)(4), 3.2.6(d)(4) AND 3.2.7(d)(4)(a) OF THE ZONING ORDINANCE REMOVING THE ABILITY TO EXCEED 30% ATTACHED HOUSES, APARTMENT BUILDINGS AND MIXED USE BUILDINGS IN MAJOR SUBDIVISIONS WITHIN ¼ MILE OF DESIGNATED RAIL TRANSIT STATIONS

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.4(d)(4) and 3.2.6(d)(4) of the Zoning Ordinance be deleted as follows and the remaining sections be renumbered:

- 4) ~~Notwithstanding the limitations of 3), above, in any section of a major subdivision located within ¼ mile of a designated rail transit station, the percentage of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings is not limited. Higher overall density is encouraged within ¼ mile of rail transit stations. Rail transit stations are those locations designated by resolution adopted by the Board of Commissioners of the Town of Huntersville.~~

Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.5(d)(4) of the Zoning Ordinance is hereby amended as follows:

- 4) ~~Notwithstanding the limitations of 3), above, in any section of a major subdivision located within ¼ mile of a designated rail transit station, the percentage of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings is not limited. Higher overall density is encouraged within ¼ mile of rail transit stations. Rail transit stations are those locations designated by resolution adopted by the Board of Commissioners of the Town of Huntersville. Further, the percentage of dwelling units contained in attached houses, apartment buildings and mixed-use buildings is not limited when the dwellings are part of a mixed-use (office and/or commercial, residential) project provided that no more than 45% of the habitable floor area within the planned development project is for residential use.~~

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.7(d)(4)(a) of the Zoning Ordinance be deleted as follows and the remaining sections be renumbered:

- (4)(a) ~~Notwithstanding the limitations of 3), above, in any section of a major subdivision located within ¼ mile of a designated rail transit station, the percentage of dwelling units contained in attached houses, apartment buildings, and mixed-use buildings is not limited. Higher overall density is encouraged within ¼ mile of rail transit stations. Rail transit stations are those locations designated by resolution adopted by the Board of Commissioners of the Town of Huntersville.~~

Section 4. That these amendments shall become effective upon approval by the Town Board of Commissioners.

HUNTERSVILLE ORDINANCE ADVISORY BOARD: March 3, 2022

PUBLIC HEARING DATE: March 7, 2022 & April 4, 2022

PLANNING BOARD MEETING: March 22, 2022

TOWN BOARD DECISION: April 18, 2022

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Nathan Farber

Date: April 4, 2022

Subject: Public Hearing on Amendment #TA22-03.

EXPLAIN REQUEST:

Conduct Public Hearing on amendment #TA22-03, a request by the Town of Huntersville Planning Department to update Article 8.9.1 and 12.2.2 to comply with HB 489.

ACTION RECOMMENDED:

Conduct Public Hearing

FINANCIAL IMPLICATIONS:

NA

ATTACHMENTS:

1. TA22-03 Staff Report PH
2. Attachment 1 Text Amendment Application
3. Attachment 2 Ordinance Language

TA 22-03 – Clear Sight Triangle at Street Intersection

PART 1: DESCRIPTION

TA 22-03 is a request by the Huntersville Planning Department to amend the Huntersville Zoning Ordinance Articles 8.9.1 and 12.2.2 relating to sight distance triangles. The purpose of the amendment is to comply with the state HB 489 changes to 160A-306 of the State Statutes.

PART 2: BACKGROUND

The North Carolina General Assembly passed House Bill 489 in 2021 amending Chapter 160A-306 Building Setback Lines which now reads as follows:

§ 160A-306. Building setback lines.

(b) Any setback line shall be designed:

- (1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between buildings, and buildings.*
- (2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.*
- (3) To provide that, notwithstanding subsection (a) of this section, measurements for sight distances at street intersections, including sight triangles, must begin within the roadway or edge of pavement of a proposed or existing street.**

The updated language serves to define where sight distances at street intersections will be measured from. This language will not change the way the Town currently measures a sight triangle at intersections. To align with House Bill 489 Town Staff has included the new language

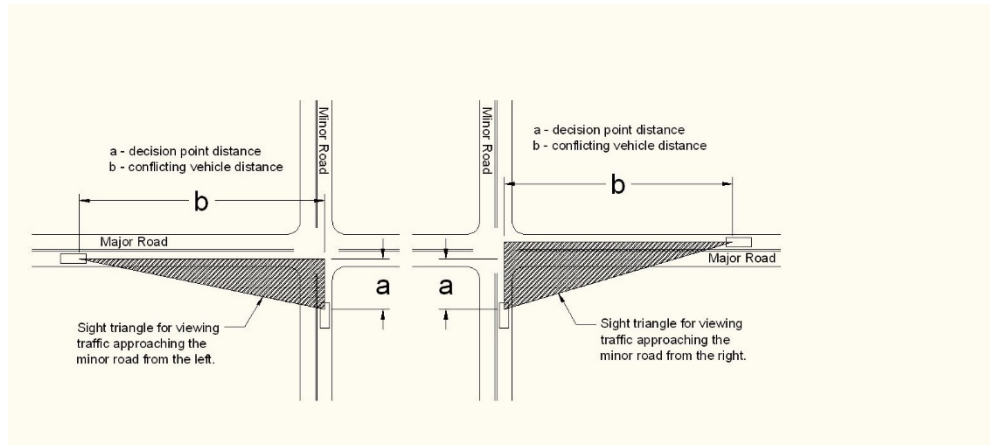


Figure 1 Example from Article 8.9.1

into Article 8.9.1-Clear Sight Triangle at Intersections and into the Sight Distance Triangle definition within Article 12.2.2- Sign Definitions.

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN

TA22-03 is consistent with Policy T-4 of the Huntersville 2040 Community Plan

Policy T-4: Improve safety for bicyclists, pedestrians, and motorists.

PART 4: STAFF RECOMMENDATION

Staff recommends approval of TA22-03 (see Part 3).

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

The Huntersville Ordinances Advisory Board (HOAB) will consider the request on April 7, 2022.

PART 6: PUBLIC HEARING

April 4, 2022

PART 7: PLANNING BOARD RECOMMENDATION

April 26, 2022

PART 8: ATTACHMENTS

1. Text Amendment Application
2. Ordinance Language

PART 9: STATEMENT OF CONSISTENCY – TA22-03

<i>Planning Department</i>	<i>Planning Board</i>	<i>Board of Commissioners</i>
APPROVAL: In considering the proposed amendment TA22-03, Planning staff recommends approval based on the amendment being consistent Policy T-4 of the 2040 Huntersville Community Plan. <i>It is reasonable and in the public interest to amend the Zoning Ordinance because it is necessary to maintain land development regulations in compliance with State Statutes.</i>	APPROVAL: In considering the proposed amendment TA22-03, Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> <i>It is reasonable and in the public interest to amend the Zoning Ordinance because... (Explain)</i>	APPROVAL: In considering the proposed amendment TA22-03, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> <i>It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)</i>
DENIAL: N/A	DENIAL: N/A In considering the proposed amendment TA22-03, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>. <i>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)</i>	DENIAL: In considering the proposed amendment TA22-03, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>. <i>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)</i>



Text Amendment Application

Date of Application 2/1/2022

Fee

See Current Town of Huntersville Fee Schedule for Text Amendment to the Zoning/Subdivision Ordinance

Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

☐ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change

Proposed text amendment will affect the following:

Ordinance(s): Zoning Article(s): 8.9 & 12.2 Section(s): 8.9.1 & 12.2.2

Current Ordinance

Please see attached

Proposed Text

Please see attached

Reason for Proposed Change

To update article 8.9.1 and 12.2.2 to comply with HB 489. HB 489 has added new language to state statutes 160A-306 Building setback lines.

Attach additional pages if needed.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Applicant

Printed Name Jack Simoneau

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature Jack Simoneau Date 2-1-22

Title Planning Director Email jsimoneau@huntersville.org

Address of Applicant PO Box 664 Huntersville NC 28070

Property Owner (if different than applicant)

* Printed Name _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature _____ Date _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Contact Information

**Town of Huntersville
Planning Department**
PO Box 664
Huntersville, NC 28070

Phone: 704-875-7000
Fax: 704-875-6546
Physical Address: 105 Gilead Road, Third Floor, Huntersville, NC 28078
Website: <https://www.huntersville.org/228/Planning-Department>

Date Received By Planning Department: _____

Staff Initials: _____

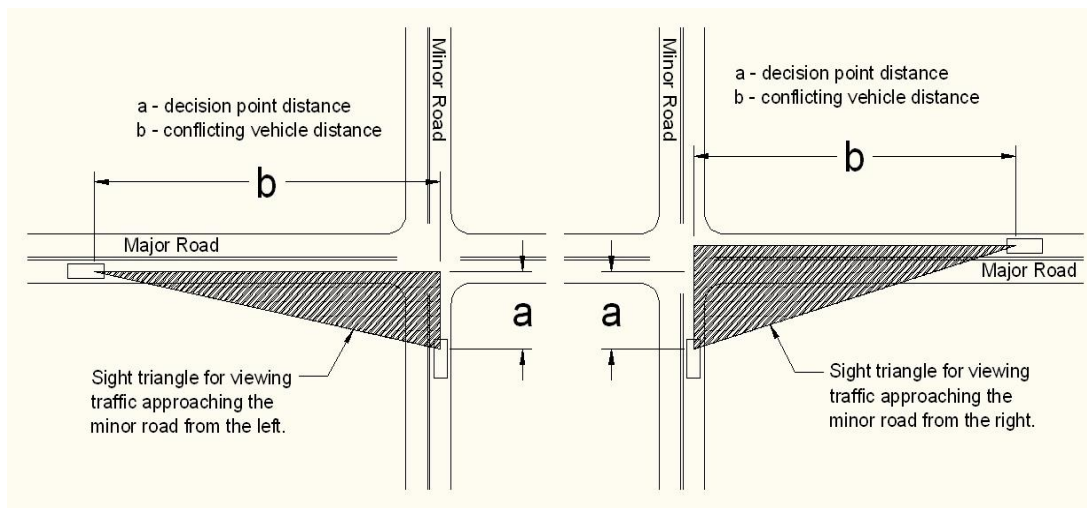
AN ORDINANCE TO AMEND THE TOWN OF HUNTERSVILLE

ZONING ORDINANCE

Section 1. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 8.9.1, Clear Sight Triangle at Street Intersection, is hereby amended as follows:

8.9 Clear Sight Triangle at Street Intersection

.1 A clear view at each corner of an intersection of public or private streets or driveways shall be maintained by establishing a “sight triangle” that is free of obstructions that may block a driver’s view. The extent of the required sight triangle varies according to the posted speed and traffic control device(s) of the streets forming the intersection. Below is a general figure from the American Association of State Highways and Transportation Officials (AASHTO) “A Policy on Geometric Design of Highways and Streets” which depicts the required sight triangle area to be free of obstructions at an intersection. **Measurements for sight distances at street intersections, including sight triangles, shall begin within the roadway or edge of pavement of a proposed or existing street.** Additional information on the required sight triangles can be found in the Town’s Engineering Standards and Procedures Manual.



A sight triangle easement may need to be recorded on the property plat if the sight triangle does not fall completely within the recorded right-of-way. Should the sight triangle cross private property, the developer shall secure permanent sight triangle easement or right-of-way from all private property owners within the sight triangle prior to preliminary/construction plan approval.

Section 2. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that 12.2.2, Sign Definitions, is hereby amended as follows:

Sight Distance Triangle. The triangular area formed by the point of intersection of two street right-of-way lines and a point located along each right-of-way line at a distance of 35 feet from the point of

intersection. **Measurements for sight distances at street intersections, including sight triangles, shall begin within the roadway or edge of pavement of a proposed or existing street.**

Section 3. Effective Date.

This ordinance shall become effective upon the date of adoption.

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: Nathan Farber

Date: April 4, 2022

Subject: Public Hearing on Amendment #TA22-04.

EXPLAIN REQUEST:

Conduct public hearing on Petition #TA22-04, a request by the Town of Huntersville Planning Department to remove the special use requirement for street facing solar panels in Article 9.54.1 and to reorganize and clean up Article 9.54 to bring the ordinance into full compliance with State Statute 160D-914

ACTION RECOMMENDED:

Conduct Public Hearing

FINANCIAL IMPLICATIONS:

NA

ATTACHMENTS:

1. TA22-04 Staff Report Public Hearing
2. Attachment 1 Application
3. Attachment 2 Ordinance Language
4. Attachment 3 160D-914

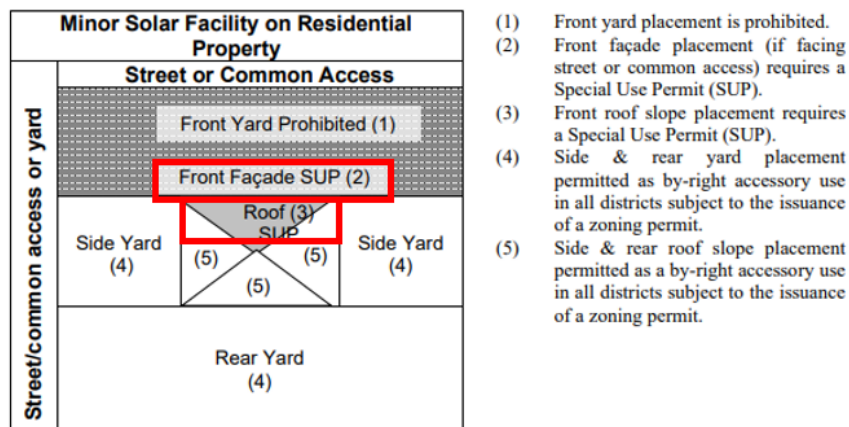
TA 22-04 – Article 9.54 Solar Energy Facilities

PART 1: DESCRIPTION

TA 22-04 is a request by the Huntersville Planning Department to amend the Huntersville Zoning Ordinance Articles 9.54. The purpose of the amendment is to remove all special use permit requirements from Article 9.54.1 Minor Solar Energy facilities. Town staff has also worked with the Town Attorneys to reorganize and clean up language while also bringing language into full compliance with 160D-914.

PART 2: BACKGROUND

Minor solar energy facilities/solar panels **fronting a public street for both residential and commercial properties** require a Special Use Permit approved by the Huntersville Town Board with a recommendation from the Planning Board. Other minor solar facilities, such as those that are built on the side or rear of the home, are approved administratively by staff (below). Since adoption of solar energy provisions in 2013, only three special use permits have been applied for, though two of those have occurred within the past three months (all approved). Staff has seen an increased interest in solar panels that will likely continue.



In addition to more interest in solar panel installations, there can be situations where one house has solar panels placed on side facing roofs (approved by staff) AND front facing roofs (requires special use permit) as can be seen in the photo below. Changing the special use permit requirement to an administrative staff approval will remove the unnecessary burden that the special use permit process places on applicants (three-month approval process for a special use permit; three-business days approval for zoning permit).



Town staff has also worked with the Town Attorney to reorganize and clean up language while also bringing language into full compliance with State Statute 160D-914. The requirements of Article 9.54.2 Major Solar Energy Facilities will stay the same, keeping the special use permits requirement, while reorganizing the section to separate residential and commercial facilities.

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN

EOS-9.1: Promote the use of energy efficient building design and neighborhood design.

Comment: The proposed text amendment would make it easier on applicants to apply for minor solar energy facilities within the Town of Huntersville.

PART 4: STAFF RECOMMENDATION

Planning Staff recommends approval of the proposed text amendment TA22-04 (see Part 9).

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

The Huntersville Ordinances Advisory Board (HOAB) considered the request on March 3, 2022.

PART 6: PUBLIC HEARING

April 4, 2022

PART 7: PLANNING BOARD RECOMMENDATION

April 26, 2022

PART 8: ATTACHMENTS

1. Text Amendment Application
2. Ordinance Language
3. State Statutes 160D-914

PART 9: STATEMENT OF CONSISTENCY – TA22-04

<i>Planning Department</i>	<i>Planning Board</i>	<i>Board of Commissioners</i>
APPROVAL: In considering the proposed amendment TA22-04, Planning Staff recommends approval based on the amendment being consistent with EOS-9.1 of the Huntersville 2040 plan and bringing the ordinance into full compliance with 160D-914. <i>It is reasonable and in the public interest to amend the Article 9.54 because it removes the unnecessary burden that the special use permit places on the applicant.</i>	APPROVAL: In considering the proposed amendment TA22-04, Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> <i>It is reasonable and in the public interest to amend the Zoning Ordinance because... (Explain)</i>	APPROVAL: In considering the proposed amendment TA22-04, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> <i>It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)</i>
DENIAL: N/A	DENIAL: N/A In considering the proposed amendment TA22-04, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>. <i>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)</i>	DENIAL: In considering the proposed amendment TA22-04, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>. <i>It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)</i>



Text Amendment Application

Date of Application 2/1/2022

Fee

See Current Town of Huntersville Fee Schedule for Text Amendment to the Zoning/Subdivision Ordinance

Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

☒ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change

Proposed text amendment will affect the following:

Ordinance(s): Zoning Article(s): 9.54 Section(s): .1 & .2

Current Ordinance

Please see attached

Proposed Text

Please see attached

Reason for Proposed Change

To remove all special use permit requirements from Article 9.54.1 Minor Solar Energy facilities. Town Staff has also worked with the Town Attorneys to reorganize and clean up language while also bring the language into full compliance with 160D-914.

Attach additional pages if needed.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Applicant

Printed Name Jack Simoneau

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature Jack Simoneau Date 2-1-22

Title Planning Director Email jsimoneau@huntersville.org

Address of Applicant PO Box 664 Huntersville NC 28070

Property Owner (if different than applicant)

* Printed Name _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature _____ Date _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Contact Information

**Town of Huntersville
Planning Department**
PO Box 664
Huntersville, NC 28070

Phone: 704-875-7000
Fax: 704-875-6546
Physical Address: 105 Gilead Road, Third Floor, Huntersville, NC 28078
Website: <https://www.huntersville.org/228/Planning-Department>

Date Received By Planning Department: _____

Staff Initials: _____

AN ORDINANCE TO AMEND ARTICLE 9.54 OF THE ZONING ORDINANCE TO REMOVE SUP REQUIREMENTS FROM MINOR SOLAR ENERGY FACILITIES AND TO BRING THE ARTICLES LANGUAGE INTO COMPLIANCE WITH 160D-914

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that article 9.54 of the Zoning Ordinance is hereby amended as follows:

Any major or minor solar energy facility shall require approval from all applicable state and federal agencies as well as the affected energy provider.

~~.1 Minor Solar Energy Facilities:~~

~~a. Residential Property (refer to illustration):-~~

- ~~1. Residential Property (refer to illustration): Minor solar facilities shall be allowed in accordance with the provisions below. However, these conditions will be waived if they prevent reasonable use of solar collectors as provided in GS 160D-914.~~

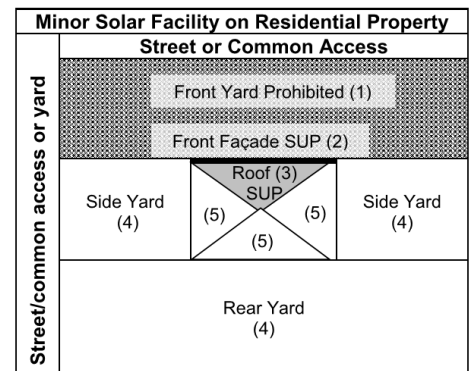
~~(1) Front yard placement is prohibited.~~

~~(2) Front façade placement (if facing street or common access) requires a Special Use Permit (SUP).~~

~~(3) Front roof slope placement requires a Special Use Permit (SUP)~~

~~(4) Side and rear yard placement permitted as by-right accessory use in all districts subject to the issuance of a zoning permit.~~

~~(5) Side and rear roof slope placement permitted as a by-right accessory use in all districts subject to the issuance of a zoning permit.~~



~~b. Non-Residential Property:~~

~~(1) Minor free-standing solar facilities on non-residential property shall require a Special Use Permit (SUP).~~

~~(2) Minor rooftop solar facilities on non-residential property: Facilities on flat roofs, facilities on roof slopes not facing a street and building integrated solar panels on roof slopes facing the street that are not noticeable are permitted by right in any zoning~~

district. All other roof mounted solar panels facing street shall require a Special Use Permit (SUP).

c. Minor free-standing facilities must comply with accessory structure setbacks and spacing.

d. Minor free-standing facilities shall be a maximum of 5 feet in height as measured from the grade at the base of the structure to the apex of the structure.

e. Minor rooftop solar energy facilities shall not be considered as rooftop equipment on any building type and therefore, do not require screening and are not subject to any architectural standards that would prohibit reflective materials.

.2 Major Solar Energy Facilities

a. Shall require the issuance of a Special Use Permit and in addition to the Special Use Permit requirements found in [Article 11.4.10](#) shall include the following:

(1) An existing features plan as described in the Subdivision Ordinance [Article 6.300.1.14](#) is required. Placement of solar panels shall be based on preserving existing features to the extent practical.

(2) Major solar energy facilities are exempt from any parking requirements in the Huntersville Zoning Ordinance if there is no commercial or office building component.

(3) Setbacks:

i. Shall meet the minimum required setbacks for the underlying zoning district for installations in the R and TR zoning districts.

ii. Shall be a minimum of 20 feet from any property line in the SP zoning district.

(4) Height:

i. Free standing major solar facilities shall be a maximum of 8 feet in height as measured from the grade at the base of the structure to the apex of the structure.

(5) The minimum lot size requirement for major solar facilities is 10 acres.

b. Town of Huntersville to be given copies of any lease agreement and plan for removal of facility/equipment.

c. Glare resistant solar panels shall be used if the solar facility is adjacent to any airport.

d. Rooftop major solar energy facilities should not be considered as rooftop equipment on any building type and therefore, do not require screening and are not subject to any architectural standards that would prohibit reflective materials.

Any major or minor solar energy facility shall require approval from all applicable state and federal agencies as well as the affected energy provider.

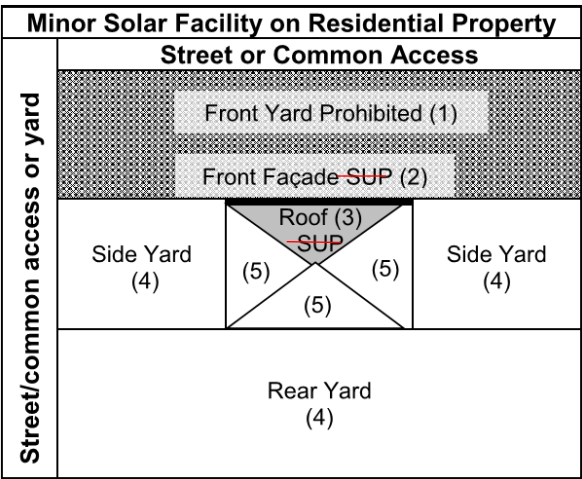
.1 Minor Solar Energy Facilities.

a. General Requirements for Minor Solar Energy Facilities.

- 1. All minor free-standing facilities must comply with accessory structure setbacks and spacing as set forth in Article 8.8.
- 2. All minor free-standing facilities shall be a maximum of five (5) feet in height as measured from the grade at the base of the structure to the apex of the structure. This provision shall be waived for minor-free standing facilities on residential property if its application would prevent the reasonable use of a solar collector for the residential property.

All minor rooftop solar energy facilities shall not be considered as rooftop equipment on any building type, and therefore, do not require screening and are not subject to any architectural standards that would prohibit reflective materials.

b. Residential Property (refer to illustration).



- 1. Front yard placement, as depicted by area (1) in the above illustration, is prohibited pursuant to N.C.G.S. § 160D-914(c)(3) when the placement would cause the solar facility to be visible by a person on the ground.

2. Placement on the façade of a structure that faces areas open to common or public access, as depicted by area (2) in the above illustration, is permitted as a by-right accessory use in all districts subject to the issuance of a zoning permit.
3. Front roof slope placement that slopes downward, as depicted by area (3) in the above illustration, is permitted as by-right accessory use in all districts subject to the issuance of a zoning permit.
4. Side and rear yard placement as depicted by area (4) in the above illustration, is permitted as by-right accessory use in all districts subject to the issuance of a zoning permit.
5. Side and rear roof slope placement, as depicted by area (5) in the above illustration, is permitted as a by-right accessory use in all districts subject to the issuance of a zoning permit.

c. Non-Residential Property.

1. Front yard placement, as depicted by area (1) in the above illustration, is prohibited pursuant to N.C.G.S. § 160D-914(c)(3) when the placement would cause the solar facility to be visible by a person on the ground.
2. Placement of minor free-standing solar facilities on non-residential property in locations other than the front yard as depicted by area (1) in the above illustration, is permitted as a by-right accessory use in all districts subject to the issuance of a zoning permit.
3. Minor rooftop solar facilities on non-residential property are allowed on:
 - (1) flat roofs
 - (2) roof slopes not facing a street and building; and
 - (3) roof slopes facing the street when using integrated panels.

.2 Major Solar Energy Facilities.

a. General Requirements for Major Solar Energy Facilities.

1. The minimum lot size requirement for major solar facilities is 10 acres.
2. Setbacks for major solar energy facilities shall:
 - (1) meet the minimum required setbacks for the underlying zoning district for installations in the R and TR zoning districts.
 - (2) be a minimum of 20 feet from any property line in the SP zoning district.
3. Free standing major solar facilities shall be a maximum of eight (8) feet in height as measured from the grade at the base of the structure to the apex of the structure. This provision shall be waived for major-free standing facilities on residential property if its

application would prevent the reasonable use of a solar collector for the residential property.

Major Solar Energy Facilities shall be exempt from any parking requirements in the Huntersville Zoning Ordinance if there is no commercial or office building component.

b. Residential Property

Major solar energy facilities on residential property shall require the issuance of a Special Use Permit in accordance with the requirements set forth in [Article 11.4.10](#).

An existing features plan as described in Article 6.300.1.14 of the Subdivision Ordinance must be submitted with the application for the above-described Special Use Permit. Placement of solar panels shall be based on preserving existing features to the extent practical.

1. Front yard placement, as depicted by area (1) in the above illustration, is prohibited pursuant to N.C.G.S. § 160D-914(c)(3) when the placement would cause the solar facility to be visible by a person on the ground.
2. Placement on the façade of a structure that faces areas open to common or public access, as depicted by area (2) in the above illustration, is prohibited pursuant to N.C.G.S. § 160D-914(c)(1) when the placement would cause the solar facility to be visible by a person on the ground.
3. Front roof slope placement that slopes downward, as depicted by area (3) in the above illustration, is prohibited pursuant to N.C.G.S. § 160D-914(c)(2) when the placement would cause the solar facility to be visible by a person on the ground.
4. Side and rear yard placement as depicted by area (4) in the above illustration, is permitted as by-right accessory use in all districts subject to the issuance of a zoning permit.
5. Side and rear roof slope placement, as depicted by area (5) in the above illustration, is permitted as a by-right accessory use in all districts subject to the issuance of a zoning permit.

Notwithstanding this subsection, a Special Use Permit shall be granted if the regulations have the effect of preventing the reasonable use of a major solar energy facility on a residential property, except as provided in N.C.G.S. § 160D-914.

c. Non-Residential Property.

Major solar energy facilities on non-residential property shall require the issuance of a Special Use Permit in accordance with the requirements set forth in [Article 11.4.10](#).

An existing features plan as described in Article 6.300.1.14 of the Subdivision Ordinance must be submitted with the application for the above-described Special Use Permit. Placement of solar panels shall be based on preserving existing features to the extent practical.

Section 4. That these amendments shall become effective upon approval by the Town Board of Commissioners.

HUNTERSVILLE ORDINANCE ADVISORY BOARD: January 6, 2021

PUBLIC HEARING DATE: April 4, 2022

HUNTERSVILLE ORDINANCES ADVISORY BOARD: Approval March3, 2022 (8-0)

PLANNING BOARD MEETING: April 26, 2022

TOWN BOARD DECISION: May 16, 2022

§ 160D-914. Solar collectors.

(a) Except as provided in subsection (c) of this section, no local government development regulation shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a local government to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit a development regulation regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the regulation does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit a development regulation that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground and that are any of the following:

- (1) On the facade of a structure that faces areas open to common or public access.
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces.
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**Town of Huntersville
Town Board
April 4, 2022**

To: Town Board

From: David Hill

Date: April 4, 2022

Subject: Charlotte / Huntersville Interlocal Agreement (Mobility Plan).

EXPLAIN REQUEST:

Approval by the Town Board to enter into an Interlocal Agreement with the City of Charlotte through the Charlotte Regional Transportation Planning Organization (CRTPO) is requested. The agreement describes terms and conditions that the Town of Huntersville must follow to use grant funds for development of a town-wide Mobility Plan. The grant award is federally funded and includes several specific requirements related to performance, reporting, and accounting.

ACTION RECOMMENDED:

Staff recommends approval to enter into the Interlocal Agreement.

FINANCIAL IMPLICATIONS:

The CRTPO grant for the Mobility Plan is an amount not to exceed \$128,000 (80%). The Town of Huntersville will be responsible for \$32,000 (20%) in local matching funds. The Town's FY 2021-22 budget allocated \$100,000 toward the Mobility Plan. CRTPO funding will not be available until July 1, 2022. Until consultant selection occurs, and a scope of work is completed, the actual cost of the Mobility Plan is unknown.

ATTACHMENTS:

1. Mobility Plan - Huntersville Interlocal Agreement 02232022
2. PL Award Letter Huntersville - Feb 2022

THE STATE OF NORTH CAROLINA

INTERLOCAL AGREEMENT

COUNTY OF MECKLENBURG

This **AGREEMENT** is made and entered into this _____ day of _____, 2022 (the “Effective Date”) by and between the **CITY OF CHARLOTTE**, (the “City or Subgrantee”) through the Charlotte Regional Transportation Planning Organization (“CRTPO”) and the **TOWN OF HUNTERSVILLE**, (the “Awardee” or “Huntersville”) (collectively, the “Parties”) for the use of Planning Funds for the **Town of Huntersville Mobility Study**.

GENERAL RECITALS

WHEREAS, CRTPO is the regional planning organization, designated by the North Carolina Department of Transportation (NCDOT) to undertake planning responsibilities in the planning area; and,

WHEREAS, the City has been designated the Lead Planning Agency of CRTPO; and,

WHEREAS, federal funds for planning activities are allocated by the Federal Highway Administration (the “FHWA”) through the NCDOT to CRTPO; and,

WHEREAS, the City is the “designated recipient” of funds with the responsibility of selecting projects that meet the funding criteria; and,

WHEREAS, the CRTPO conducted a competitive Call for Projects from August 15, 2021 to October 29, 2021 to award federal funds (the “Grant Funds”); and,

WHEREAS, the Awardee applied for Grant Funds through CRTPO and is an eligible Awardee for their planning project for the Town of Huntersville Mobility Study; and

WHEREAS, subject to the availability of Grant Funds, the Awardee shall comply with the rules and regulations of the CRTPO, NCDOT, and FHWA; and

WHEREAS, the Parties desire to secure and utilize Grant Funds for the Town of Huntersville Mobility Study.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the City and Awardee agree as follows:

AGREEMENT

1 Purpose

The purpose of this Agreement is to provide for the undertaking of planning projects, as described in the Project application (Exhibit A), and to state the terms and conditions as to the manner in which the Project will be undertaken and completed. 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. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large. The Awardee shall use the Grant Funds only for the purposes of the Project and for no other purpose. Any amendment to this Agreement shall be done in writing and only by mutual consent of the Parties.

2 Incorporation of Exhibit

The following Exhibit is attached to this Agreement and are incorporated into and made a part of this Agreement:

Exhibit A: Project Application

3 Availability of Grant Funds

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

4 Project Implementation.

The Awardee shall undertake and complete the Project in accordance with the procedures and guidelines set forth in in this Agreement, and in the following documents:

- a. OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR Part 200);
- b. NCDOT Local Programs Management Handbook available at <https://connect.ncdot.gov/municipalities/Funding/Pages/LPM%20Handbook.aspx>.
- c. CRTPO Supplemental Guide for Planning Projects: https://crtpo.org/PDFs/Resources/DiscretionaryProjects/Supplemental_Guide_for_Planning_Projects.pdf

5 Relationship of the Parties

The relationship of the parties established by this Agreement is the CRTPO as recipient and the Town of Huntersville as the Awardee of the Grant Funds. With the exception of the required administrative oversight of the Project by the CRTPO, nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose, and neither party has the power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

6 Period of Performance

This Agreement shall commence upon the date of execution with a period of performance for all expenditures from **July 1, 2022, to June 30, 2023**. Any requests to extend the Period of Performance must be made in accordance with the policies and procedures established by the NCDOT, CRTPO, and FHWA and be approved by the CRTPO Board. The Awardee shall commence, carry on, and complete the approved Project in a sound, economical, and efficient manner.

The Awardee shall be responsible for all costs to the Project that is outside of the Period of Performance.

7 Scope of Project

The scope of project is to create a Mobility Study for the Town of Huntersville (Exhibit A - Application for funds from the Town of Huntersville).

8 Reimbursement of the Project

Grant Funds for the Project is detailed in the following table. The total reimbursable amount of the Project approved by the CRTPO is not to exceed **\$128,000**. The CRTPO shall provide, from Grant Funds, up to 80% of the actual net cost of the Project, not in excess of the identified amounts for eligible administrative, operating, and capital expenses.

The Awardee hereby agrees that it will provide the percentages of the actual net cost of the Project, and any amounts in excess of the CRTPO's maximum contribution. The net cost is the price paid minus any refunds, rebates, or other items of value received by the Awardee which have the effect of reducing the actual cost.

Funding Source	Total Project Cost	Reimbursement from CRTPO to the Town of Huntersville (not to exceed)	Non-Federal Match by the Town of Huntersville
80% Federal 20% Local Match	\$160,000	\$128,000	\$32,000

9 Project Expenditures and Payments

9.1 General.

The CRTPO is utilizing available Grant Funds, and shall reimburse the Awardee, at the rate described above, for allowable costs for work performed during the Performance Period and under the terms of this Agreement.

9.2 Reimbursement Procedures.

The Awardee shall submit for reimbursement all eligible costs incurred within the

agreement Period of Performance.

- a. The Awardee's claims for reimbursement shall be made no more than monthly or less than quarterly, using the CRTPO and the City's invoice form.
- b. All requests for reimbursement must be submitted within (30) days following the end of the project's reporting period.
- c. Before reimbursement, the Awardee shall provide supporting documentation for proof of payment. The documentation is required with each reimbursement request. The Awardee must show it has met its proportionate share of the project costs. Any costs for work not eligible for CRTPO and Federal participation shall be financed one hundred percent (100%) by the Awardee.
- d. The Awardee shall email invoices and required documentation to:

Temekia.Dae@charlottenc.gov, tthomson@charlottenc.gov, and jennifer.stafford@charlottenc.gov.
- e. Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and it shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the CRTPO:

Robert W. Cook
Assistant Planning Director
City of Charlotte – CRTPO
600 East Fourth Street – 8th Floor
Charlotte, NC 28202
704-336-8643
rwcook@charlottenc.gov

For the Awardee:

Dave Hill
Senior Planner
Town of Huntersville
101 Huntersville-Concord Road, Huntersville, NC 28078
704-875-6541
dhill@huntersville.org

9.3 Allowable Costs.

Expenditures made by the Awardee shall be reimbursed as allowable costs under the FTA and FHWA programs and the provisions of 2 CFR Parts 200 and 1201, and to the extent, they meet all the requirements set forth below. They must be:

- a. Consistent with the Project description as submitted to CRTPO, and consistent with the Project budget and all other provisions of this Agreement.
- b. Necessary in order to accomplish the Project.
- c. Reasonable in amount for the goods or services purchased.
- d. Actual net costs to the Awardee, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to NCGS 105- 164.14), rebates, or other items of value received by the Awardee that have the effect of reducing the cost actually incurred.
- e. Incurred (and be for work performed) within the period of performance and period covered of this Agreement unless specific authorization from the CRTPO to the contrary is received.
- f. Satisfactorily documented.
- g. Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the CRTPO or Federal requirements.

9.4 Excluded Costs.

The Awardee understands and agrees that except to the extent the CRTPO determines otherwise in writing, the CRTPO will exclude:

- a. Any Project cost incurred by the Awardee before the period of performance of the Agreement.
- b. Any cost that is not included in the latest CRTPO Board approved Budget.
- c. Any cost for Project property or services received in connection with a third-party contract, sub-agreement, lease, or other arrangements that is required to be, but has not been, concurred in or approved in writing by the CRTPO.
- d. Any cost ineligible for FTA/FHWA/CRTPO participation as provided by applicable Federal or State laws, regulations, or directives.

9.5 Final Allowability Determination.

The Awardee understands and agrees that payment to the Awardee on any Project cost does not constitute the CRTPO, Federal, State (NCDOT) Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Awardee of the terms of this Agreement. The Awardee acknowledges that the CRTPO, Federal, or State (NCDOT) Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the CRTPO, Federal or State (NCDOT) Government determines that the Awardee is not entitled to receive any portion of the CRTPO/Federal assistance the Awardee has requested or provided, the CRTPO will notify the Awardee in writing, stating its reasons. The Awardee agrees that Project closeout will not alter the Awardee's responsibility to return any funds due the CRTPO as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the CRTPO, Federal or State (NCDOT) Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal or State law or regulation, the CRTPO, Federal or State (NCDOT) Government may recover any Federal or State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the CRTPO may have against the Awardee.

9.6 Excess Payments, Disallowed Costs, Including Interest.

- a. *Awardee's Responsibility to Pay.* Upon notification to the Awardee that specific amounts are owed to the CRTPO, Federal or State Government, whether for excess payments of Federal or State assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Awardee agrees to remit to the CRTPO promptly the amounts owed, including applicable interest and any penalties and administrative charges within 90 days of notification.
- b. *De-obligation of Grant Funds.* The Awardee agrees that the CRTPO may de-obligate unexpended Grant Funds for the Project that are inactive for six months or more.
- c. *Project Closeout.* Project closeout occurs when the CRTPO issues the final project reimbursement or acknowledges that the Awardee has remitted the proper refund. The Awardee agrees that Project closeout by the CRTPO does not invalidate any continuing requirements imposed by this Agreement.

9.7 Accounting Records

- a. *Establishment and Maintenance of Accounting Records.* The Awardee shall establish and maintain separate accounts for the Project program, either independently or within the existing accounting system. All costs charged to the program shall be in accordance with the most current approved Project budget.

- b. *Documentation of Project Costs.* All costs charged to the Project, including any approved services performed by the Awardee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.

9.8 Reporting, Record Retention, and Access

- a. *Progress Reports.* The Awardee shall advise the CRTPO regarding the progress of the Project at a minimum quarterly, and at such time and in such a manner as the CRTPO may require. Such reporting and documentation may include, but not be limited to operating statistics, meetings, progress reports, and monthly performance reports. The Awardee shall collect and submit to the CRTPO such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the CRTPO. Reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the CRTPO.
- b. *Record Retention.* The Awardee and its third-party Awardees shall retain all records pertaining to this Project for a period of five (5) years from the date of final payment to the Awardee, or until all audit exceptions have been resolved, whichever is longer.
- c. *Project Closeout.* The Awardee agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.
- d. *State Auditor Oversight.* The Awardee agrees to audit oversight by the North Carolina Office of the State Auditor and/or the CRTPO, to provide auditors with access to accounting records, and to make available any audit work papers in the possession of any auditor of the Awardee.
- e. *Third Party Loans.* Within 30 days of receipt, the Awardee shall disclose to the CRTPO any loans received from a local government entity or other entity not party to this Agreement.
- f. *Audit Costs.* Unless prohibited by law, the costs of audits made in accordance with Title 2 CFR 200, Subpart F "Audit Requirements" are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in Title 2 CFR 200, Subpart E "Cost Principles." The cost of any audit not conducted in accordance with Title 2 CFR 200 and NCGS§ 159 34 is unallowable and shall not be charged to State or Federal grants.

- 9.9 Compliance with Laws and Regulations
- a. No terms herein shall be construed in a manner that conflicts with the rules and regulations of the CRTPO or with state, specifically NCDOT, or federal law.
 - b. The Awardee agrees to comply with all applicable state and federal laws and regulations.
- 9.10 Conflicts of Interest Policy
- The Awardee agrees to file with the CRTPO a copy of the Awardee's policy addressing conflicts of interest that may arise involving the Awardee's management employees and the members of its board of directors or other governing body. The Awardee's policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Awardee's employees or members of its board or other governing body, from the Awardee's disbursing of State funds, and shall include actions to be taken by the Awardee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The conflicts of interest policy shall be filed with the CRTPO prior to the CRTPO disbursing Grant Funds to the Awardee.
- The Awardee affirms that it has not paid and will not pay any bonus or commission to any party related to this Project.
- 9.11 Assignment
- a. Unless otherwise authorized in writing by the CRTPO, the Awardee shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the CRTPO.
 - b. The Awardee agrees to incorporate the terms of this Agreement and any applicable State or Federal requirements into written third-party contracts, sub-agreements, and leases, and to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and State laws, regulations, and directives affecting their performance.
- 9.12 Hold Harmless
- Except as prohibited or otherwise limited by law, the Awardee agrees to indemnify, save, and hold harmless the CRTPO, the City, the State of North Carolina and the United States of America and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Awardee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project.

9.13 Real Property, Equipment, and Supplies.

Federal or State Interest. The Awardee understands and agrees that the Federal or State Government retains an interest in any real property, equipment, and supplies financed with Federal or State assistance (Project property) until, and to the extent, that the Federal or State Government relinquishes its Federal or State interest in that Project property. With respect to any Project property financed with Federal or State assistance under this Agreement, the Awardee agrees to comply with all Federal, State and CRTPO provisions. The Awardee agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a lease), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal and State interest in that Project property.

10 Termination

Either party may terminate the Agreement by providing 60 days written notice to the other party, or as otherwise permitted by law.

Should the Awardee terminate the Agreement without the concurrence of the CRTPO, the Awardee shall reimburse the CRTPO one hundred percent (100%) of all costs expended by the CRTPO and associated with the work.

10.1 Additional Repayment Requirements and Remedies

- a. The repayment requirements and remedies addressed in this Paragraph are in addition to those repayment requirements and other remedies set forth elsewhere in this Agreement, including the requirements to repay unspent funds. No remedy conferred or reserved by or to the CRTPO is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- b. If there is a breach of any of the requirements, covenants or agreements in this Agreement (including, without limitation, any reporting requirements), or if there are any representations or warranties which are untrue as to a material fact in this Agreement or in relation to the Project (including the performance thereof), the Awardee agrees that the CRTPO may require repayment from the Awardee of an amount of funds to be determined in the CRTPO's sole discretion but not to exceed the amount of funds the Awardee has already received under this Agreement.

11 Civil Rights and Equal Opportunity

Under this Agreement, the Awardee shall at all times comply with the requirements included as part of this Agreement in the Federal Terms and Conditions.

12 Choice of Law and Venue

This Agreement is to be interpreted according to the laws of the State of North Carolina. The Parties hereby agree that the proper venue for any claims filed as a result of this Agreement shall be the Superior Court of Mecklenburg County, North Carolina.

13 Severability

If any provision of this Agreement for the Project is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal or State laws or regulations.

14 Incorporated Terms and Conditions

In addition to the Terms and Conditions contained in this Agreement, additional terms and conditions incorporated by reference into this Agreement are checked below.

14 Federal Terms and Conditions

- a. Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200 (2 CFR 200)
The Code of Federal Regulations (2 CFR 200) (<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>) and subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the CRTPO. Nothing shall be construed under the terms of this Agreement by the CRTPO or the Awardee that shall cause any conflict with CRTPO, State, or Federal statutes, rules, or regulations.
- b. Federal State Management Plan.
The State Management Plan for Federal and State Transportation Programs and any subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the CRTPO. Nothing shall be construed under the terms of this Agreement by the CRTPO or the Awardee that shall cause any conflict with CRTPO, State, or Federal statutes, rules, or regulations.
- c. No Federal Government Obligations to Third Parties.
The Awardee acknowledges and agrees that, notwithstanding any concurrence by the CRTPO or the NCDOT in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the CRTPO or the NCDOT are not a party to this Agreement and shall not be subject to any obligations or liabilities to the Awardee or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

The Awardee agrees to include the above clause in each contract financed in whole or in part with Federal assistance provided by the CRTPO and NCDOT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

d. C Program Fraud and False or Fraudulent Statements or Related Acts.

The Awardee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this project. Upon execution of the underlying Agreement, the Awardee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the CRTPO assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Awardee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Awardee to the extent the Federal Government deems appropriate.

The Awardee also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the CRFTA under the authority of NCDOT, reserves the right to impose the penalties of 18 USC§ 1001 and 49 USC § 5323(1) on the Awardee, to the extent the Federal Government deems appropriate.

The Awardee agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

e. D Federal Changes.

The Awardee agrees to comply with all applicable federal requirements and federal guidance. All the standards or limits included in this Agreement are minimum requirements. The federal requirements and guidance that applied at the time of the award this Agreement may be modified from time to time, and the modifications will apply to the Awardee.

f. E Civil Rights and Equal Opportunity.

Under this Agreement, the Awardee shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

g. *Nondiscrimination*. In accordance with Federal transit law at 49 USC § 5332, the Awardee agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Awardee agrees to comply with applicable Federal implementing regulations and other implementing requirements.

h. *Race*. Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC§ 2000e et seq., and Federal transit laws at

49 USC§ 5332, the Awardee agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC§ 2000e note. The Awardee agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Awardee agrees to comply with any implementing requirements FTA may issue.

i. *Age.* In accordance with the Age Discrimination in Employment Act, 29 USC §§ 621634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR part 1625, the Age Discrimination Act of 1975, as amended, 42 USC§ 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR part 90, and Federal transit law at 49 USC § 5332, the Awardee agrees to refrain from discrimination against present and prospective employees for reason of age.

j. *Disabilities.* In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC§ 794, the Americans with Disabilities Act of 1990, as amended, 42 USC§ 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 USC§ 4151 et seq., and federal transit law at 49 USC§ 5332, the Awardee agrees that it will not discriminate against individuals on the basis of disability. In addition, the Awardee agrees to comply with any implementing requirements FTA or FHWA may issue.

k. **F Disadvantaged Business Enterprises.**

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Grant Funds. The Awardee is also encouraged to give every opportunity to allow DBE participation in contracts. The Awardee, subconsultant, and subcontractor shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Awardee shall comply with applicable requirements of 49 CFR Part 26 in the award and administration of federally assisted contracts. Failure by the Awardee to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the CRTPO deems necessary.

When payments are made to Disadvantaged Business Enterprise (DBE) Awardees, including material suppliers, Awardees at all levels (Awardee, Subconsultant or Awardee) shall provide the Contract Administrator with an accounting of said payments. The accounting shall be listed on the NCDOT's Awardee Payment Information Form (Form DBE-IS). In the event the Awardee has no DBE participation, the Awardee shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed. Form DBE-IS may be accessed on the website at: <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

A responsible fiscal officer of the payee Awardee who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the NCDOT. This information shall be submitted as part of the requests for payments made to the Department.

l. G Incorporation of Federal Terms

Provisions of this Agreement include, in part, certain standard terms and conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1, as amended, are incorporated by reference. Anything to the contrary herein notwithstanding, all Federal mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Awardee shall not perform any act, fail to perform any act, or refuse to comply with any CRTPO or NCDOT's request, which would cause the CRTPO or NCDOT to be in violation of Federal terms and conditions shall prevail and be the instrument governing the receipt of Federal assistance.

m. H Energy Conservation

The Awardee agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

n. I Debarment Suspension, Ineligibility and Voluntary Exclusion.

The Awardee shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. As such, the Awardee shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded Agreement and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally-assisted Award;
- b) Suspended from participation in any federally-assisted Award;
- c) Proposed for debarment from participation in any federally-assisted Award;
- d) Declared ineligible to participate in any federally-assisted Award;
- e) Voluntarily excluded from participation in any federally-assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

THIS AGREEMENT, entered into as of the day and year first written above for the Town of Huntersville Mobility Study, in an amount not to exceed **\$128,000**.

AWARDEE:
TOWN OF HUNTERSVILLE
101 Huntersville-Concord Road
Huntersville, NC 28078

By: _____

Signature

Attest Signature

Print Name

Attest Date

Title

Approved as to Form

Date

Title and Date

CITY OF CHARLOTTE:
600 East Fourth Street
Charlotte NC 28202

By: _____

Signature

Attest Signature

Print Name

Title

Date

Attest Date

Exhibit A – Planning Funds Application

PLANNING PROJECTS

Submittal Guide and Grant Application Package



Charlotte Regional Transportation Planning Organization Discretionary Projects Program

**Call for Project Submissions
Fall 2021**

GRANT APPLICATION PACKAGE FOR PLANNING PROJECTS

PLANNING PROJECTS

Submittal Guide and Grant Application Package

All project sponsors are required to attend a remote meeting with CRTPO staff prior to October 15, 2021 BY 5:00 p.m. This is a mandatory pre-submittal meeting to review application requirements, estimates and answer questions. Your application will not be accepted without your attendance at this meeting.

All project sponsors **must** submit a complete application package including all attachments that are due by 5:00 p.m. on October 29. The project sponsor must be a full-time employee of a CRTPO member jurisdiction.

Please complete the following application. **Remember to submit the entire guide and application.**

To schedule meetings, ask questions, and send attachments, please contact Jennifer Stafford at Jennifer.Stafford@charlottenc.gov.

~~~~~

### PLANNING PROJECT INFORMATION

#### Locally Administered Projects

By submitting a project for funding, the municipality (or municipalities) or local government entity (or entities) are committing funds to sponsor the said project. The applicants (if awarded) shall be responsible for all federal and state reporting requirements associated with federal funding. An inter-local agreement between the City of Charlotte, the lead agency for CRTPO, and the designated recipients will outline a reimbursement schedule; local sponsors will be required to pay all costs upfront, invoice CRTPO, and seek subsequent reimbursement for the federal percentage dedicated to the project.

The FHWA and NCDOT allocate Planning funds (PL) to MPOs in North Carolina each year based on a formula approved by NCDOT and FHWA with amounts based on MPO population.

Eligible planning projects include, but are not limited to:

- Corridor Studies
- Access and Mobility Analyses
- Traffic, Alignment Alternatives and Feasibility Studies
- Bicycle and Pedestrian Planning Initiatives

Some planning project requirements include:

- Public outreach efforts must meet Title VI requirements (<https://www.crtpo.org/title-vi>)
- If using consultant services, procurement of consultants must be chosen in compliance with state and federal regulations
- CRTPO requires that documentation of the planning initiative be provided as project deliverables.
- CRTPO staff participation is required on any technical team developed to guide the project
- Engineering, design, and construction projects are not eligible for these funds

Projects using PL funds are reimbursable at a fixed 80 percent rate for the amount requested for the transportation planning activities local match of 20 percent for that respective amount. For example, if a jurisdiction wants to move forward with a project for which the PL-funded transportation planning component will cost \$60,000, it must provide \$12,000 (or 20 percent) of that total budget cost. The federal reimbursable PL funds would cover the remaining \$48,000.

## PLANNING PROJECTS

### Submittal Guide and Grant Application Package

Planning funds must be expended within one fiscal year. Projects awarded with planning funds will start July 1, 2022 with all reimbursable work completed by June 30, 2023. Any work that is performed prior to that date is not reimbursable.

The Project Sponsor must be prepared to fulfill all of the following requirements for using PL funds:

1. If hiring a consultant, submit a Request for Letter of Interest/Request for Qualifications (RFLOI/RFQ) for approval by NCDOT's Transportation Planning Division.
2. Solicit consultants
3. Check consultant's NCDOT pre-qualifications
4. Form a Selection Committee to select the most qualified company
5. The Selection Committee must include an NCDOT member
6. The project sponsor must form and facilitate a selection committee
7. Request NCDOT concurrence with fees and the contract terms
8. Finalize the consultant's contract and issue a Notice to Proceed (after July 1, 2022)
9. Quarterly progress reports must be submitted that briefly describes the progress made on the project. Progress reports must include:
  - a rolling total of the project cost, reflecting quarterly reimbursement requests showing the drawdown of the total for each reimbursement request
  - total amount expended for the current quarter's submission, and a breakdown of the amount being requested less the 20 percent local share applied to the total
  - a bulleted list of accomplishments during the quarter
  - invoices submitted by consultants
  - proof that the consultants' invoices submitted for reimbursement have been paid (copy of the cashed check; report from your financial system showing payment)

Planning projects are reimbursement projects through CRTPO, unlike capital projects where the sponsor organization is reimbursed through NCDOT. After you hire a consultant, your organization will receive the invoices. You will pay 100% of their invoice. Then your organization will request an 80% reimbursement from CRTPO/City of Charlotte. Reimbursement is typically quarterly.

Scheduled Quarterly Reporting and Invoicing:

| Quarter | Quarter Duration        | Quarterly Reporting and Invoicing Form Due Date |
|---------|-------------------------|-------------------------------------------------|
| 1       | July 1 - September 30   | October 30, 2022                                |
| 2       | October 1 - December 31 | December 30, 2022                               |
| 3       | January 1 - March 31    | April 30, 2023                                  |
| 4       | April 1 - June 30       | July 10, 2023                                   |

*Continue to next page to start the planning funds application process.*

## APPLICATION FOR PLANNING FUNDS

### CONTACT INFORMATION

Applicant / Lead Agency: *Town of Huntersville. NC*

Contact Name and Title: *Dave Hill, Sr. Planner*

Contact Email and Phone Number: *dhill@huntersville.org*

CRTPO Member Jurisdiction: *Town of Huntersville*

Secondary Applicant Name and Email (or N/A): *N/A*

Briefly describe the project management experience in managing federally funded projects:

*Sr. Planner has administered EPA, FHWA, FTA, and HUD grants.*

### PROJECT INFORMATION

Project Name: *Town of Huntersville Mobility Plan*

Provide a summary of the project, including the location, purpose and need:

*The Town of Huntersville intends to prepare and adopt its first town-wide Mobility Plan, which will encompass the corporate limits of the Town and its ETJ. The Mobility Plan is needed to address significant impacts related to growth and development in Huntersville, and the impacts of planned and programmed transportation system improvements.*

*Development of the Mobility Plan is a high priority of the recently adopted (Dec 2020) Huntersville 2040 Community Plan, found at <https://www.huntersville.org/2619/Long-Term-PlanHuntersville-2040>.*

*The primary objectives of the Mobility Plan are to:*

- Proactively prepare for changes that will significantly impact the Town's character & livability.*
- Address transportation interaction between state/federal facilities and the Town's local systems.*
- Create an organized system to address a very complex topic involving several organizations.*
- Coordinate adopted local plans; reflect the Huntersville 2040 Community Plan.*
- Assess the Town's transportation system capacity.*
- Prioritize improvements for capital funding.*
- Enhance funding application readiness.*
- Establish / refine Town transportation policies.*
- Integrate regional plans.*

*Continued consultation with other agencies will occur as the Scope of Work is refined.*

## APPLICATION FOR PLANNING FUNDS - *continued*

### PROJECT INFORMATION *(continued)*

Project Name: *Town of Huntersville Mobility Plan*

Describe how the project meets one or more CRTPO goals/objectives as listed in the MTP, which can be referenced at [https://www.crtpo.org/PDFs/MTP/2045/2045\\_MTP\\_02.pdf](https://www.crtpo.org/PDFs/MTP/2045/2045_MTP_02.pdf):

*1) Provide, manage, and maintain a safe, efficient, and sustainable transportation system for all modes, intended to serve all segments of the population.*

*The Huntersville Mobility Plan will address all aspects of transportation in the Town.*

*2) Encourage walking, bicycling and transit options, integrated with motor vehicle transportation, by providing a transportation system that serves the public with mobility choices.*

*The Mobility Plan will coordinate several systems in various stages of planning and implementation, including the Town's Greenway Plan and Bike Plan. Coordination with Park & Ride facilities and the current North Corridor BRT study will also be part of the Plan.*

*3) Provide a sustainable transportation system that improves the quality of life for residents, promotes healthy living and is sensitive to significant features of the natural and human environments.*

*The Plan will address multi-modal connectivity intended to reduce vehicle trips and provide environmentally beneficial options that promote healthy living. Sensitivity and access to environmental resources will very much be part of the Plan.*

*4) Promote equitable transportation options for low income and minority neighborhoods, as well as the aging population.*

*Transportation options for all categories of the Town's population will be considered. A robust public engagement process is envisioned that will reach out to people who might not normally participate in the planning process.*

*5) Encourage regional collaboration and linkages between transportation and land use planning.*

*The Mobility Plan will reflect land use changes found in the recently adopted 2040 Community Plan. Consultation and coordination with NCDOT and neighboring communities will happen. An example is the NC 73 Corridor, which will require regional input.*

*6) Support economic competitiveness by making investment decisions for transportation modes that make the most efficient use of limited public resources and enhance system performance, as well as by pursuing sustainable funding possibilities.*

*System capacity coordinated with land use will explore cost effectiveness.*

*7) Maximize transportation opportunities for the movement of goods.*

*The Plan will address existing rail and freight mobility, including the Red Line Corridor.*

## APPLICATION FOR PLANNING FUNDS - *continued*

### PROJECT INFORMATION *(continued)*

Project Name: *Town of Huntersville Mobility Plan*

Provide details of anticipated deliverables and final products:

#### *Expected Outcomes*

- *Interactive GIS-based Plan covering the entire Town & ETJ*
- *Collective funding & implementation priorities covering all transportation modes*
- *Automatically updated when related plans are adopted or updated; conflicts must be resolved prior to adoption of any system plan*
- *Integration of Local Plans – Greenways, Bikes, Sidewalks, Small Area Plans*
- *Integration of Regional Plans – CTP, MTP, Transit, Greenways*
- *Integration of State Plans – SPOT, TIP*
- *Amendments must reconcile potential conflicts with type of facility, siting, ROW cross sections*
- *Multi-modal capacity analysis linking adopted 2040 Future Land Use Plan with planned improvements*
- *Focused attention on specific areas of interest - NC 73 Corridor & Downtown Huntersville*

## APPLICATION FOR PLANNING FUNDS - *continued*

### PROJECT INFORMATION *(continued)*

Project Name: *Town of Huntersville Mobility Plan*

Have CRTPO planning funds been previously used to fund a planning study on this project? (yes or no) *No* If yes, explain below.

*N/A*

The planning funds that you are applying for need to be spent from July 1, 2022 to June 30, 2023. Please describe your schedule to meet the deadline.

1. *Town Board Budget Approval (Max. \$100,000) June 2021*
2. *CRTPO Call for DA Planning Projects Aug 2021*
3. *CRTPO Application Deadline Oct 29th, 2021*
4. *CRTPO Board Project Awards Mar 2022*
5. *Draft RFQ / RFLOI Apr 2022*
6. *Submit RFQ / RFLOI for NCDOT Approval May 2022*
7. *Form Consultant Selection Committee May 2022 (1 CRTPO, 2 NCDOT, 2+ Local)*
8. *Advertise RFQ / RFLOI May / June 2022 (Advertise 3-4 weeks)*
9. *Consultant Selection June 2022*
10. *NCDOT / NC OIG Contract Approval July 2022*
11. *Consultant Contract Execution July / Aug 2022 (No earlier than July 1st)*
12. *Project Start July 2022*
13. *Project Finish June 2023 (Possible Contract Extension)*



## APPLICATION FOR PLANNING FUNDS - *continued*

### PLANNING PROJECT FUNDING PROPOSAL

Project Name: *Town of Huntersville Mobility Plan*

Reference the example below to assist the project sponsor in completing the required charts within this section.

Example:

| Planning Project                                                                                    | Total Project Cost | Reimbursement from CRTPO (80%) to your town/city | Non-Federal Match by the town/city (20%) |
|-----------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------|------------------------------------------|
| Happy Valley Critical Intersection Analysis Project<br>Planning Funds<br>80% CRTPO/ 20% Local Match | \$60,000           | \$48,000<br>(not to exceed)                      | \$12,000                                 |

| Planning Project                                                                          | Total Project Cost | Reimbursement from CRTPO (80%) to your town/city | Non-Federal Match by the town/city (20%) |
|-------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------|------------------------------------------|
| <i>Town of Huntersville<br/>Mobility Plan<br/>Planning Funds<br/>80% CRTPO /20% Local</i> | <i>\$160,000</i>   | <i>\$128,000<br/>(not to exceed)</i>             | <i>\$32,000</i>                          |

### SUPPORTING DOCUMENTATION

Please email all supporting documentation to [Jennifer.Stafford@charlottenc.gov](mailto:Jennifer.Stafford@charlottenc.gov). Please apply a read and delivery receipt when you send the email.

List sent documentation (maps, letters of support, etc.):

- 1.
- 2.
- 3.
- 4.

## APPLICATION FOR PLANNING FUNDS - *continued*

### ACKNOWLEDGEMENTS

Project Name: *Town of Huntersville Mobility Plan*

- ☒ Acknowledgement of availability of local match at the start of this project
- ☒ Acknowledgement to follow federal and state requirements for procuring a consultant (if applicable) and spending ANY funds associated with this project.
- ☒ Acknowledgement that your staff has availability to complete this project within one year (July 1, 2022 to June 30, 2023).
- ☒ Acknowledgement that Planning funds must be requested from CRTPO to reimburse local jurisdictions for (non-match) project costs.
- ☒ Acknowledgement of the requirement to submit reporting forms to CRTPO.
- ☒ Acknowledgement that you have authority to submit this application on behalf of your town/city.

Applicant Name: *Dave Hill*

Application Date: *10/14/2021*

*End of Application for Planning Funds*

February 18, 2022

**MEMORANDUM**

**To:** Dave Hill, Sr. Planner  
Town of Huntersville

**From:** Jennifer Stafford  
Charlotte Regional Transportation Planning Organization (CRTPO)

**Subject:** CRTPO Local Planning Project Funding Award

Thank you for submitting your project for planning funds through CRTPO. We are pleased to inform you that the CRTPO Board approved funding for the following project:

| Planning Project Submittals                                                              | Total Project Cost | Reimbursement from CRTPO (80%) to the Town of Huntersville | Non-Federal Match by the Town of Huntersville (20%) |
|------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------|-----------------------------------------------------|
| Town of Huntersville<br>Mobility Plan<br><br>Planning Funds<br>80% CRTPO 20% Local Match | \$160,000          | \$128,000<br>(not to exceed)                               | \$32,000                                            |

Please find an interlocal agreement attached. Please review the draft agreement and let me know if you need changes. If the agreement is ok, please execute it and return it to me – hopefully before June 30, 2022.

A Supplemental Guide for Planning Projects has been created for your convenience and is located at: [https://crtpo.org/PDFs/Resources/DiscretionaryProjects/Supplemental\\_Guide\\_for\\_Planning\\_Projects.pdf](https://crtpo.org/PDFs/Resources/DiscretionaryProjects/Supplemental_Guide_for_Planning_Projects.pdf). The guide will help you through the procurement process.

The funds were approved through the discretionary process and are federal direct attributable for the CRTPO. The CRTPO and the Town of Huntersville must follow the federal procurement process because the Federal Highway Administration (FHWA) allocates these funds to MPOs.

The planning funds should be used within one fiscal year, starting July 1, 2022, and with all reimbursable work completed by June 30, 2023. Any work that is done before that date will not be reimbursable. However, to get a project completed in a year, it is advisable to draft the scope of work for your planning project and even work on the Request for Letters of Interest (RFLOI) as described below.



Dominique Boyd is your NCDOT Transportation Planning Branch representative, and he can be reached at [dlboyd1@ncdot.gov](mailto:dlboyd1@ncdot.gov) or 919-707-0932. Please involve him in each procurement step (see Supplemental Guide, pages 5-6 for steps when to include Dominique).

Planning projects are reimbursement projects through CRTPO, unlike capital projects where the sponsor organization is reimbursed through NCDOT. All planning projects are required to have a 20% local match. After you hire a consultant/professional services firm, your member jurisdiction will receive the invoices. Your organization will pay 100% of their invoice. Then your organization will request an 80% reimbursement from CRTPO/City of Charlotte. We typically reimburse quarterly, but we can reimburse monthly if you need cash flow.

Any work throughout the year that does not follow the federal process, NCDOT process, or CRTPO process may be rejected for reimbursement. When in doubt, please reach out, and please let me know if I can be of further assistance to aid in the success of your project!

Jennifer Stafford, RLA, CPCM  
Project Development Planner  
Charlotte Regional Transportation Planning Organization  
704-336-3369 | [jennifer.stafford@charlottenc.gov](mailto:jennifer.stafford@charlottenc.gov)

**Town of Huntersville  
Town Board  
April 4, 2022**

**To:** Town Board

**From:** Anthony Roberts

**Date:** April 4, 2022

**Subject:** Consider Adopting Resolution to Authorize the Disposal of ~.78 acres of Surplus Property Located at 8840 McIlwaine Rd.

---

**EXPLAIN REQUEST:**

The Town Board has received an offer to purchase approximately .78 acres of property located at 8840 McIlwaine Road. If approved for disposal, the property will be advertised for upset bids subject to the terms and conditions of the draft purchase agreement.

**ACTION RECOMMENDED:**

**FINANCIAL IMPLICATIONS:**

**ATTACHMENTS:**

1. scan
2. R-2022-12 Upsetbid Resolution for .78 acres 3-8-22



REALTOR® North Carolina Association  
of REALTORS®

## AGREEMENT FOR PURCHASE AND SALE OF LAND

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

a(n) Bowman Acquisitions / Hansen Trust ("Buyer"), and  
(individual or State of formation and type of entity)

a(n) Town of Huntersville ("Seller").  
(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Terms and Definitions:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** (Address) being approximately .78 acre as part of 8824 McIlwaine Road owned by the Town of Huntersville.  
See Exhibit A

Plat Reference: Lot(s) \_\_\_\_\_, Block or Section \_\_\_\_\_, as shown on Plat Book or Slide  
M63 at Page(s) 61, Mecklenburg County, consisting of 9.51 acres.

☒ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference.

(For information purposes: (i) the tax parcel number of the Property is: 015-121-15;  
and, (ii) some or all of the Property, consisting of approximately .78 acre acres, is described in Deed Book  
30556, Page No. 856, Mecklenburg County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto.

\$ 78,000.00 (b) **"Purchase Price"** shall mean the sum of Seventy-Eight Thousand Dollars,  
or, if this box is checked ☐, Purchase Price shall mean the sum of \$ \_\_\_\_\_ per gross  
acre ("Price Per Acre") as determined by a survey obtained by Buyer prior to the expiration of the  
Examination Period ("Survey"). Buyer shall provide a copy of the Survey to Seller not later than the  
expiration of the Examination Period. The purchase price shall be determined by multiplying the Price  
Per Acre by the number of gross acres as determined by the Survey. Adjustments to the amounts due  
under Sections 1(b)(ii) - 1(b)(iii) shall be made, as applicable, to reflect any adjustment in the  
Purchase Price in accordance with this provision. The Purchase Price shall be payable on the  
following terms:

\$ 1,000.00 (i) **"Earnest Money"** shall mean One Thousand Dollars  
or terms as follows: \_\_\_\_\_

The Earnest Money shall be deposited in escrow with

Page 1 of 9



This form jointly approved by:  
North Carolina Bar Association  
North Carolina Association of REALTORS®, Inc.

STANDARD FORM 580L-T  
Adopted 7/2020  
© 7/2021

Buyer Initials [Signature] Seller Initials \_\_\_\_\_

The Knox Group, Inc., P. O. Box 2008 Cornelius NC 28031  
Gary Knox

Phone: 7048961911 Fax: 7046550541  
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 [www.lwolf.com](http://www.lwolf.com)

8824 McIlwaine

Town of Huntersville (name of person/entity with whom deposited- "Escrow Agent") within five (5) calendar days of the Contract Date, to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. Should Buyer fail to deliver the Earnest Money by the date required hereunder, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

☐ ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

☐ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: \_\_\_\_\_)

☐ ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ \_\_\_\_\_ (ii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of \_\_\_\_\_ Dollars

being payable over a term of \_\_\_\_\_ years, with an amortization period of \_\_\_\_\_ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum in the amount of \$ \_\_\_\_\_, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on Exhibit B. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ 77,000.00 (iii) **Cash**, balance of Purchase Price, at Closing in the amount of Seventy-Seven Thousand Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. (Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)

(c) "Closing" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before \_\_\_\_\_ see addendum. at or Exhibit B.

Buyer Initials JAC Seller Initials \_\_\_\_\_

Page 2 of 9

STANDARD FORM 580L-T  
Adopted 7/2020  
© 7/2021



(d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **"Examination Period"** shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on

15days from the effective date of the contract.

**TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.**

(f) **"Broker(s)"** shall mean:

\_\_\_\_ ("Listing Agency"),  
\_\_\_\_ ("Listing Agent" - License # \_\_\_\_\_)

Acting as: ☐ Seller's Agent; ☐ Dual Agent  
and **The Knox Group, Inc.** ("Selling Agency"),

**Gary Knox** ("Selling Agent" - License # \_\_\_\_\_)  
Acting as: ☒ Buyer's Agent; ☐ Seller's (Sub) Agent; ☐ Dual Agent

(g) **"Seller's Notice Address"** shall be as follows:

**P.O. Box 644 Huntersville NC 28078**

e-mail address: \_\_\_\_\_ fax number: \_\_\_\_\_

except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:

**13815 Cinnabar Place Huntersville NC 28078**

e-mail address: **robertbowman15@gmail.com** fax number: \_\_\_\_\_

except as same may be changed pursuant to Section 12.

- ☐ (i) If this block is marked, additional terms of this Agreement are set forth on Exhibit B attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)
- ☐ (j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.
- ☐ (k) If this block is marked, additional terms of this Agreement are set forth on the Back Up Agreement Addendum (Form 581A-T) attached hereto and incorporated herein by reference.

**Section 2. Sale of Property and Payment of Purchase Price:** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

**Section 3. Proration of Expenses and Payment of Costs:** Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), and other conveyance fees or taxes required by law, any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Agreement other than those fees required to be paid by Buyer in this Section 3 below, and the following:

\_\_\_\_\_  
Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant compliance, and the following:

\_\_\_\_\_  
Each party shall pay its own attorney's fees.

Buyer Initials     *JB*     Seller Initials \_\_\_\_\_

Page 3 of 9

**STANDARD FORM 580L-T**

**Adopted 7/2020**

**© 7/2021**

Deferred/Rollback Taxes: Buyer ☐ intends to continue ☒ does not intend to continue the existing present use valuation property tax deferral(s) relating to the Property. In the event the Buyer intends to continue the existing present use valuation property tax deferral(s) relating to the Property, Buyer shall be responsible for making all necessary applications for continuation of the existing present use valuation property tax deferral(s) relating to the Property and shall be responsible for payment of any deferred/rollback taxes applicable to the Property.

If Buyer does not intend to continue the existing present use valuation property tax deferral(s) relating to the Property, ☐ Seller ☐ Buyer shall be responsible for payment of any deferred/rollback taxes applicable to the Property

**Section 4. Deliveries:** Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: information regarding matters detailed on Form 502- Land Information Worksheet, title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

**Section 5. Evidence of Title:** Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 6. Conditions:** This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Buyer Initials



Seller Initials

Page 4 of 9

STANDARD FORM 580L-T  
Adopted 7/2020  
© 7/2021

(c) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of investigating matters such as those detailed on Form 502-Land Information Worksheet, conducting timber cruises, and examining and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(a) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

**Section 7. Leases (Check one of the following, as applicable):**

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases") and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**. Seller represents and warrants that as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 3 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 3. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) During the Examination Period, Buyer and Seller shall cooperate in good faith to determine if any Lease shall be terminated prior to Closing or shall continue after Closing. As to any Lease determined to continue after Closing, Seller shall deliver an assignment of Seller's interest in such Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver such assignment of Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

Buyer Initials



Seller Initials

Page 5 of 9

STANDARD FORM 580L-T

Adopted 7/2020

© 7/2021

(c) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

**Section 8. Environmental/Physical Aspects of Property:** Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within any structures on the Property or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

**Section 9. Risk of Loss/Damage/Repair:** Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

**Section 10. Earnest Money Disbursement:** In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(c) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

**NOTE:** In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, the broker or attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A- 12.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

**Section 11. Closing:** At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on **Exhibit B** and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

**Section 12. Notices:** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail,





registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

**Section 13. Counterparts; Entire Agreement:** This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

**Section 14. Enforceability:** This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

**Section 15. Adverse Information and Compliance with Laws:**

(a) **Seller Knowledge/Assessments:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments or (v) any caves, mineshafts, tunnels, fissures, open or abandoned wells, gravesites, pet cemeteries, animal burial pits or landfill operations (past or present) located at the Property, except as follows (Insert "None" or the identification of any matters relating to (i) through (v) above, if any):

---

**Note:** For purposes of this Agreement: (i) a "special assessment" is defined as a charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property; a special assessment may be either pending or confirmed; (ii) a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association:** If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments (dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management

Buyer Initials \_\_\_\_\_



Seller Initials \_\_\_\_\_

Page 7 of 9

STANDARD FORM 580L-T

Adopted 7/2020

© 7/2021

company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

**Section 16. Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

**Section 17. Applicable Law:** This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

**Section 18. Assignment:** This Agreement is freely assignable unless otherwise expressly provided on **Exhibit B**.

**Section 19. Tax-Deferred Exchange:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

**Section 20. Memorandum of Contract:** Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

**Section 21. Authority:** Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

**Section 22. Brokers:** Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

**Section 23. Attorneys Fees:** If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Buyer Initials



Seller Initials

Page 8 of 9

STANDARD FORM 580L-T

Adopted 7/2020

© 7/2021

BUYER:

Individual

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

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

Business Entity

Bowman Acquisitions LLC  
(Name of Entity)

By: [Signature]

Name: Robert Bowman

Title: MANAGER

Date: 3/16/22

SELLER:

Individual

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

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

Business Entity

Town Of Huntersville  
(Name of Entity)

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

### WIRE FRAUD WARNING

**To Buyers:** Before sending any wire, you should call the closing agent's office to verify the instructions. If you receive wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent. Do not send any funds and contact the closing agent's office immediately.

**To Sellers:** If your proceeds will be wired, it is recommended that you provide wiring instructions at closing in writing in the presence of the closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent's office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent's office to provide the wire instructions. The wire instructions should be verified over the telephone via a call to you initiated by the closing agent's office to ensure that they are not from a fraudulent source.

Whether you are a buyer or a seller, you should call the closing agent's office at a number that is independently obtained. To ensure that your contact is legitimate, you should not rely on a phone number in an email from the closing agent's office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Town of Huntersville  
(Name of Escrow Agent)

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

By: \_\_\_\_\_

Escrow Agent's contact/notice information is as follows:

e-mail address: \_\_\_\_\_ fax number: \_\_\_\_\_

except as same may be changed pursuant to Section 12.



The screenshot displays the 'Advanced Search Market Analysis' web application. The main map area shows a large, grey-shaded triangular parcel labeled '0.78 acres'. This parcel is situated near 'McIlwaine Rd'. Surrounding areas include other parcels with numbers like '01512108', '01512120', and '01512143'. The left sidebar features a search bar with the placeholder 'Enter address / parcel# / owner / landmark', a search icon, and a list of filters: 'Streets', 'Aerials', 'Hybrid', and 'Topography'. Below the filters, a 'Click to start drawing' button is visible. The bottom of the screen contains a toolbar with various drawing and editing tools, including a selection tool, a line tool, a polygon tool, an eraser, a text tool, and a delete tool. A small 'Area Measure' pop-up window shows the selected area's details: '0.78 acres (33871.66 sq ft)'.

Purchase and Sale Agreement for .78 acre as part of 8824 McIlwaine Rd, Huntersville NC 28078

Buyer: Bowman Acquisitions

Seller: Town of Huntersville

Exhibit B

Section 1 (c) Closing:

"Closing shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before 30 days after the contract date, subject to approval by the Town of Huntersville Board of Commissioners."

 \_\_\_\_\_ (seal)      Date 3/16/22  
Robert Bowman  
Bowman Acquisitions

\_\_\_\_\_  
Name: \_\_\_\_\_ (seal)      Date \_\_\_\_\_  
Town of Huntersville



## **RESOLUTION AUTHORIZING UPSET BID PROCESS**

**WHEREAS**, the Town of Huntersville, North Carolina owns certain property, approximately .78 acres, consisting of a portion of PIN 01512115 (the "Property"); and

**WHEREAS**, North Carolina General Statute § 160A-269 permits the Town of Huntersville to sell property by upset bid, after receipt of an offer for the property; and

**WHEREAS**, the Town of Huntersville has received an offer to purchase the Property (attached hereto and incorporated herein by reference as **Exhibit A**), in the amount of Seventy-Eight Thousand Dollars (\$78,000.00), submitted by Bowman Acquisitions; and

**WHEREAS**, Bowman Acquisitions has paid the required five percent (5%) deposit on his offer.

### **NOW THEREFORE, THE BOARD OF COMMISSIONERS OF THE TOWN OF HUNTERSVILLE AS FOLLOWS:**

1. The Town Board of Commissioners authorizes sale of the property described above through the upset bid procedure of North Carolina General Statute § 160A-269.
2. The Town of Huntersville clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer and shall state the terms under which the offer may be upset.
3. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Town of Huntersville clerk within 10 days after the notice of sale is published. At the conclusion of the 10-day period, the Town of Huntersville clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
4. If a qualifying higher bid is received, the Town of Huntersville clerk shall cause a new notice of upset bid to be published and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Town of Huntersville Board of Commissioners.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check. The Town of Huntersville will return the deposit on any bid not accepted and will return the deposit on an offer subject to upset if a qualifying higher bid is received.

7. The terms of the final sale for any new qualifying upset bid are that:
  - a) the buyer is subject to all terms contained in Exhibit A;
  - b) the Town of Huntersville Board of Commissioners must approve the final high offer before the sale is closed, which it will do within 30 days after the final upset bid period has passed;
  - c) the buyer must pay for all closing costs at their sole expense;
  - d) the buyer must pay with cash at the time of closing; and
  - e) the buyer must pay for the cost of obtaining a survey, which includes a legal description for the Property, at their sole expense.
8. The Town of Huntersville reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject at any time all bids.
9. If no qualifying upset bid is received after the initial public notice, the offer set forth above is hereby accepted. The Town Manager of the Town of Huntersville is authorized to execute the instruments necessary to convey the property to Bowman Acquisitions.

Ordered this 4<sup>th</sup> day of April, 2022.

ATTEST:

---

Janet Pierson, Town Clerk

---

Melinda Bales, Mayor

APPROVED AS TO FORM:

---

Emily Sloop, Town Attorney

**Town of Huntersville  
Town Board  
April 4, 2022**

**To:** Town Board

**From:** Michael Jaycocks

**Date:** April 4, 2022

**Subject:** Discount Changes to the Co-Sponsorship Policy.

---

**EXPLAIN REQUEST:**

The Parks and Recreation Commission unanimously approved the recommendation to decrease the co-sponsorship discount rate from 75% to 65%. The discount rate hasn't been changed since the policy was formed. The fees generated from the co-sponsor fees go into a capital reserve fund to be used in the parks for repairs to existing facilities or to build new facilities.

**ACTION RECOMMENDED:**

Consider approving discount changes to the co-sponsorship fees.

**FINANCIAL IMPLICATIONS:**

Increased revenues into the Capital Reserve Fund

**ATTACHMENTS:**

1. Co-sponsorship Policy Recommended Changes 2022

# **Town of Huntersville Parks and Recreation Department Co-sponsorship Policy**

Revised and Approved: June 16, 2014 **(PRC Recommended changes in red)**

The main objective of Huntersville Parks and Recreation Department is to offer varied, quality leisure services and recreational facilities to its citizens ensuring that all citizens have equal opportunity and participation opportunity. The Town and the Department recognize that recreational services of benefit to Town citizens are also provided by independent or outside organizations.

In consideration of those independent organizations that address the same objective as stated above, the Town Board of Huntersville and the Parks and Recreation Commission has adopted the following policies on co-sponsoring programs for the citizens of the Town.

## **A. Guidelines for becoming a co-sponsor program**

1. A 'co-sponsor group' is defined as a group, designated as such by the Huntersville Parks and Recreation Commission and Huntersville Town Board, sharing the basic objectives of the Parks & Recreation Department as stated previously and that requests either financial or advertising assistance, or use of Park and Recreation facilities for meeting or events which the Department believes will be mutually compatible with its goals and will further the recreation needs of the Huntersville community in general. Co-sponsor groups must offer a recreational component or offer a recreational service unique in manner to the citizens of Huntersville.
2. Such programs and organizations shall be open to the public and enrollment shall not be unreasonably denied.
3. Co-sponsorship will be considered an enduring relationship. Co-Sponsorship status will not be granted to any organization as a short-term relationship.
4. All new co-sponsors will serve a 3 year probationary period before being eligible to become a fully recognized co-sponsor group. At the end of the 3 year probationary period The Parks and Recreation Commission would review the organization's success during that period and will either recommend the group become a fully recognized co-sponsor, extend probationary period or be dismissed. Probationary groups will get a 50% discount on reservations until successful completion of probationary status.
5. No more than two co-sponsors per sport per season if its determined that field space is at capacity based on the field allocation formula. If an applicant for co-sponsorship has more Huntersville residents than one of the two existing co-sponsors in that sport that existing co-sponsor may be replaced by the new applicant.

## **B. Duties of Co-sponsoring group**

1. Abide by all Mecklenburg County, Town of Huntersville and Parks and Recreation rules and regulations pertaining to recreation facilities, **including the Department's Facility Usage Policies.** Notify all participants, spectators and visitors of such rules and regulations.
2. Parks and Recreation staff will allocate facility/field time to co-sponsor and other Group's based on number of Huntersville residents served per group during that particular season and any other considerations that staff deems appropriate. Groups are expected to abide by decisions of staff.
3. The Parks and Recreation logo shall be displayed prominently on all brochures, flyers, registration forms and other advertising materials, not to exclude advertisements in the news media.
4. In addition to the Parks and Recreation Department logo being displayed, the Parks & Recreation Department shall be mentioned in all communications as a co-sponsoring organization.
5. Co-sponsoring organizations shall submit an annual financial report along with an annual program report. The annual report should include all fields and courts that the organization used outside of the fields and courts that the group was allocated by the town. The report should also show the program breakdown of the organization by the different levels offered. The organization shall also give information related to how many participants on average are on each

team for each level offered. If there was a waiting list it should be included in the annual report. The annual report should also include successes and issues that the organization experienced that year. The annual report should also include goals for the upcoming year. The annual report and the financial report should be submitted to the Parks and Recreation Director by January 15.

6. Co-sponsoring organizations will submit complete rosters or program registrations for the records of the department as follows:
  - a. A program registration list or complete rosters- including names, ages and physical addresses of participants must be submitted with a group's facility usage request
  - b. Any and all teams or groups that are a sub-component of a co-sponsor group will be clearly identified in writing at the time of any facility usage request. Complete rosters will be submitted by the first day of the program or league play. Teams that are not-recreational level teams must be identified in writing as such. The league that each team plays in must be clearly identified in writing. These teams or groups may be considered a non-co-sponsor at the discretion of the department.
  - c. Practice schedules, coach's names, physical addresses, and compliance with background check form (provided by HPRD) should be submitted prior to the first practice; Game schedules should be submitted prior to the first game.
7. Co-sponsored athletic organizations must have **background checks** performed on all coaches. Background checks will be obtained by the co-sponsor organization. Certification of compliance with this requirement will be a component of the co-sponsorship agreement.
8. Any and all signage at facilities or programs, including advertisements, etc. must be approved by Parks and Recreation prior to installation.
9. Limited number of facility keys may be made available to co-sponsoring organizations; keys must be obtained at the HPRD administrative office where a list will be kept of keys given out. Co-sponsor representatives must present drivers license to obtain a key. HPRD reserves the right to deny access to any keys if deemed necessary. Keys must be returned at the end of each season.
10. Organizations shall agree no additional keys to any lock at any Town facility shall be made or assigned without prior knowledge and written approval of HPRD.
11. Co-sponsoring organizations shall utilize HPRD systems in reporting any accidents or incidents. Copies will be provided to each co-sponsor group contact person; that person should copy the form and instructions for use to each coach.
12. Co-sponsoring organizations shall notify HPRD of any damages, hazards, unsafe conditions or significant incidents that occur at any program or facility.
13. Co-sponsoring organizations shall ensure all vehicles are parked in designated parking spaces.
14. No responsibility, expectations or duty assigned to a co-sponsoring group through this policy shall be contracted or conveyed to another individual or organization without prior approval of HPRD.
15. All Co-sponsor organizations must supply the town proof of General Liability Insurance. Lapse in liability insurance may result in loss of co-sponsorship status.

**C. Program Registration**

1. Co-sponsor groups should provide HPRD with registration information prior to advertisement so the department can answer questions of callers and interested participants.

**D. Facility Maintenance**

1. All facility maintenance, including but not limited to HVAC needs, janitorial services, major and minor repair work, and facility upgrades, will be handled by Parks and Recreation.
2. Athletic fields will be prepped and lined for game situations only. However, all fields will be kept in a safe, playable condition.

**E. Special Town Appropriations**

1. A co-sponsor group may be approved for additional Town funding through the Town's External Non-Profit and Government Agency Appropriations Program. Any group interested in applying for these funds should contact Town Hall for procedure information.



- I. The philosophy of the Huntersville Parks and Recreation Department is that no child shall be turned away or denied participation in an activity due to lack of ability to pay. Any group that receives the above-listed special funds shall use a minimum of 50% or more of that funding for scholarships. This may be reconsidered/waived if the organization provides adequate documentation and proof (in the judgment of the Parks and Recreation Advisory Commission) of promoting/offering scholarship opportunities without response. The remaining 50% shall be utilized for supplies or the like. Any monies from the 50% not utilized for scholarships shall not go to capital improvements.
2. All monies shall be accounted for through the required financial reports.
3. The organization shall provide a financial report at any time requested by the Town's Finance Director (in addition to the annual financial report required in B.4 of this policy)

**F. Revenue from co-sponsored programs**

1. The Town of Huntersville will ask each co-sponsor user group to pay a "user fee" for Parks and Recreation facilities used per the Revenue and Pricing Policy established by the Department. The policy states that the user fee will be ~~25%~~ 35% of the current fee schedule. Exceptions: (1) concession stand usage, which has its own fee schedule and (2) tournaments hosted/held where the minimum 55% of participants (players) are not Huntersville residents\*. Such tournaments also require a different contract/agreement. The user fee shall be considered a ~~75%~~ 65% discount for co-sponsor groups and is charged to help the Town recover a portion of the direct and indirect costs to the Town for this program.
2. Co-sponsor groups will be required to pay a pre-determined concession stand usage fee per the Revenue and Pricing Policy established by the Department. Requests for use of the concession stand should be included with the facility request submitted to the department (see Item G. 6 below). Any changes in co-sponsor plans for using concession stand should be given to the department prior to contract start.
3. An itemized invoice will be sent following the expiration of each contract to each co-sponsor group asking for payment of this user fee(s). The invoice will account for time requested at all facilities. Invoice dates will correspond with facility request dates and incorporate changes and/or time turned back in by the co-sponsor group within the timeframe established by when such dates can be turned back to the HPRD (see G. 5) Invoices should be paid by the co-sponsor group within 30 days of receipt.
4. Fees recovered by the HPRD may be placed in a Capital Reserve Fund to be used to make improvements on Parks and Recreation facilities
5. Records will be kept by the Parks and Recreation Department as to the amounts each co-sponsor group has contributed to the fund.

**G. Availability of Town Facilities**

1. Priority for usage of Town parks and recreation facilities is as follows:
  1. Huntersville Parks and Recreation Department programs
  2. Huntersville Co-sponsor groups
  3. General Public Youth (based on group's Huntersville participants if space is limited)
  4. General Public Adults (based on group's Huntersville participants if space is limited)
2. Past usage of HPRD facilities is no guarantee of future use or availability of Town facilities.
3. Remaining space in facilities will be available for other user groups that are not co-sponsored programs, after co-sponsoring groups and programs needs have been fulfilled.
4. Co-sponsored groups will be assigned space in facilities based on number of participants that are Huntersville residents. The amount of field time allocated will be determined by the formula in section K. After all co-sponsors are allocated their amount of field/gym time based on the formula the following list of groups will be eligible to reserve fields based on the same formula. If a group does not have enough residents to acquire at least 30 minutes of field/gym time they would be skipped in this process, but may still have an opportunity to reserve time after all other groups are served. All field allocations will be rounded up from 30 minutes.

Priority list for allocation of field/gym time after co-sponsors are given what the formula allows.

1. General Public youth groups (based on group's Huntersville participants if space is limited)
  2. General Public adult groups (based on group's Huntersville participants if space is limited)
  3. Give co-sponsor groups the additional time they requested.
  4. General Public youth groups (based on group's Huntersville participants if space is limited)
  5. General Public adult groups (based on group's Huntersville participants if space is limited)
5. a) Co-sponsor groups who reserve field space and then determine they do not need fields for any of the times the space is reserved, shall make this known to Parks and Recreation and return those field times for use by other groups and the general public within 4 weeks of the start date of that co-sponsor's contract.
- b) Co-sponsors who have reserved facility time must give 72-hours notice to the Parks and Recreation Department if they will be unable to actually use any or all of the reserved time (legitimate emergencies and Department/CMS-oriented closures excepted). Cosponsor groups who fail to do this will be charged regular rates (not cosponsor rates) for their full amount of unused reserved time. Thirty-one (31) minutes of the hour would constitute full use of that hour.
6. Co-sponsor groups will not reserve space for, or give previously reserved space to, "non-co-sponsor" groups that are sub-components of the co-sponsor group, or not a part of the co-sponsor's organization. All groups that want to reserve space, whether a co-sponsor group or not, need to complete a facility reservation application. Space reserved to 'non-co-sponsored' groups will be invoiced at the retail rate. The department reserves the right to cancel any reservations for groups or teams that are sub-components of a co-sponsor's organization.
7. Facility requests, including practices, games, concession stand and all tournament usage, should be submitted in writing to the HPRD on a per-season basis. HPRD staff will notify co-sponsor groups in writing of deadline dates by which requests are due, the usage time period requests should cover, and date by which co-sponsor group will receive confirmation. HPRD staff will make all efforts to establish such dates to give co-sponsor groups ample notice and time to plan their programs and schedules. Registration lists including names and addresses of participants must accompany facility requests for season/sport for which usage involves. Co-sponsors are encouraged to schedule their registration so that complete lists may be turned in at the time of field/facility requests.
8. All facility requests shall be confirmed in writing. **No verbal authorization shall be considered a confirmation.**
9. HPRD may schedule tournaments or events at any of its facilities at any time prior to confirming usage with co-sponsor or other groups. For example: Prior to confirming a facility request, HPRD may schedule a revenue-generating tournament at a time that falls during the co-sponsor group's season/request period. If so, the co-sponsor group schedule will have to be adjusted to allow for the tournament. This will be included in the confirmation letter to the co-sponsor group so that proper notice is provided to the co-sponsor group. Once the co-sponsor group has a confirmation of its facility requests, the schedule will not be changed to allow for a revenue-producing activity.

#### **H. Marketing for co-sponsoring organizations**

2. The Huntersville Parks and Recreation Department (HPRD) may produce program brochures during the fiscal year. If organizations wish to take advantage of marketing from the department, the co-sponsoring organization's representative should contact the department for deadlines for information to be provided.
3. A proof copy of the brochure information will be forwarded to the organization for final approval.
4. Co-sponsoring organizations that take advantage of the brochure deadlines will also have other marketing privileges, such as flyers and news releases.

#### **I. Event Security/Police**

1. The Town reserves the right to require police/security for functions as deemed appropriate. Co-sponsor group/User is responsible for arranging and funding police/security and is encouraged to use off-duty Huntersville Police Department Officers.

**J. Change of Co-sponsorship Status**

1. The decision to terminate or to put on probationary status will require, in part, a simple majority vote of the quorum of the Parks and Recreation Commission. Terminations must have the written recommendation of the Parks and Recreation Director, the Parks and Recreation Commission, and the Town Manager.
2. Reasons may include but are not limited to non-compliance with this agreement, at the written request of the co-sponsor group, or a change in the philosophy of the co-sponsoring organization.

**K. Formula for Field Allocations**

Field allocation formula per week. All field allocations will be rounded up from 30minutes.

**Monday – Friday**

|                    |                          |
|--------------------|--------------------------|
| Baseball/Softball- | 18 minutes per resident  |
| Soccer-            | 9 minutes per resident   |
| Lacrosse-          | 9 minutes per resident   |
| Football-          | 6 minutes per resident   |
| Basketball-        | 3.5 minutes per resident |

**Saturday**

|                    |                          |
|--------------------|--------------------------|
| Baseball/Softball- | 7 minutes per resident   |
| Soccer-            | 3 minutes per resident   |
| Lacrosse-          | 3 minutes per resident   |
| Football-          | 3 minutes per resident   |
| Basketball-        | 5.5 minutes per resident |

**Sunday**

|                    |                        |
|--------------------|------------------------|
| Baseball/Softball- | 2 minutes per resident |
| Soccer-            | 1 minute per resident  |
| Lacrosse-          | 1 minute per resident  |
| Football-          | 1 minute per resident  |
| Basketball-        | 1 minute per resident  |

**\*Resident= (1) has Huntersville address and/or (2) is a Huntersville taxpayer and/or (3) lives within the Huntersville ETJ**

**Co-Sponsorship Agreement**  
**Signature page**

I have reviewed, on behalf of the organization named below, the Co-Sponsorship Policy of the Town of Huntersville Parks and Recreation Department.

In signing this agreement, I signify that our organization will comply with all procedures and requirements stated in the policy and that I am authorized to sign on behalf of this group.

I also understand that our organization's submitted rosters and reports, as required within the Co-Sponsorship Policy, will be reviewed at least once annually to determine if our organization continues to meet the objectives and criteria of the Policy. I further understand that non-compliance with the Co-Sponsorship Policy is grounds for termination of co-sponsorship status.

---

Name of Organization

---

Authorized Representative

---

Date

\*\*\*\*\*

---

Parks and Recreation Director

---

Date

**Background Certifications for Coaches  
of Co-sponsor Groups**

In accordance with the Town of Huntersville Parks and Recreation Department's Co-sponsorship Policy under section B. No.7 effective Spring Season of 2003, co-sponsored Athletic organizations must have background checks performed on all coaches.

By signing this agreement, I hereby certify that the Co-sponsor group (named below) has conducted background checks on all coaches who are assisting during the season indicated below. I further certify that checks on all coaches associated with this Co-sponsor group during the season indicated below were satisfactory resulting in those coaches participating in our leagues.

\_\_\_\_\_  
Co-sponsor Group

\_\_\_\_\_  
Co-sponsor Representative Signature / (Title)

\_\_\_\_\_  
Date

Season/sport for which background check was conducted:

\_\_\_\_\_ Spring Baseball/Softball

\_\_\_\_\_ Fall Basketball

\_\_\_\_\_ Spring Soccer

\_\_\_\_\_ Fall Soccer

\_\_\_\_\_ Spring Lacrosse

\_\_\_\_\_ Fall Baseball/Softball

\_\_\_\_\_ Spring Basketball

\_\_\_\_\_ Winter Basketball

\_\_\_\_\_ Fall Lacrosse

\_\_\_\_\_ Football

**Town of Huntersville  
Town Board  
April 4, 2022**

**To:** Town Board

**From:** Emily Sloop

**Date:** April 4, 2022

**Subject:** Discussion of Additional Edits Related to NC SB 300.

---

**EXPLAIN REQUEST:**

The Town recently updated several of its ordinances to remove criminal penalties from ordinances that can no longer be criminally enforced as the result of NC SB 300. The updated language of 160A-175(b) also requires that criminal penalties be specifically sited in the ordinance language for ordinances that the Town still wishes to enforce criminally and which are legally allowed to be enforced criminally. As such, these additional edits are to incorporate criminal penalties in specific sections of the Town Code of Ordinances that may still be criminally enforced v.s. relying on the blanket penalty at Section 10.99 for those sections. Pursuant to updated language of N.C.G.S. 160A-175(b), the addition of criminal penalties in ordinances require the proposed edits to come before the Town Board twice, with enactment at the second setting. Thus, these proposed edits are only for discussion on this agenda and will be voted on at the 4/18 meeting.

Additionally, the attached edits remove in its entirety Chapter 112, entitled Cable Communications. In 2006, there was a legislative change that preempted the franchising authority for municipalities regarding cable services effective January 1, 2007. "After this date, a county or city may not award or renew a franchise for cable service." (Session Law 2006-151, N.C.G.S. 66-351, 66-355).

**ACTION RECOMMENDED:**

**FINANCIAL IMPLICATIONS:**

**ATTACHMENTS:**

1. Additional SB 300 Revisions Redline 3-29-22
2. Additional SB 300 ordinance Revisions 3-29-22

## **Sec. 10.99 - General penalty.**

- In accordance with G.S. § 160A-175, and unless this code of ordinances provides otherwise or as otherwise prohibited by law, violation of any provision hereof shall be a Class 3 misdemeanor as provided in G.S. § 14-4, punishable upon conviction by a fine not exceeding \$50.00 or by imprisonment not exceeding 30 days. An ordinance may provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. 14-4.
- ~~By express statement, a~~An ordinance contained herein may ~~be provide for its enforcedment~~ by other remedies, as authorized in G.S. § 160A-175, including the imposition of civil fines, the ordering of appropriate equitable relief, including injunctions, or a combination of remedies.
- An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

## **Sec. 98.99 - Penalty.**

This chapter may be enforced by any or both of the following ways as provided by law:

- Anyone violating this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$100.00 or imprisoned for not more than 20 days.
- A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$100.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

## **Sec. 910.99 - Penalty.**

This chapter may be enforced by any or both of the following ways as provided by law:

- Anyone violating this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$100.00 or imprisoned for not more than 20 days.
- A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$100.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.



### Sec. 111.99 - Penalty.

This chapter may be enforced by any of the following ways as provided by law:

(A) A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$100.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

## ***CHAPTER 112 CABLE COMMUNICATIONS***

### ***ARTICLE I. GENERAL PROVISIONS***

#### **Sec. 112.001 Purpose.**

- ~~(A) The Town of Huntersville finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of Huntersville. Because of the complex and rapidly changing technology associated with cable television, the town further finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers, which may be vested in the town or such persons as the town shall designate.~~
- ~~(B) Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the town's residents but can also provide a variety of broadband, interactive communications services to institutions and individuals.~~
- ~~(C) For these purposes, the following goals underlie the regulations contained herein:~~
- ~~(1) Where economically feasible, communications services should be available to the maximum number of town residents, as provided for herein;~~
  - ~~(2) The cable television systems should be capable of accommodating both the present and reasonably foreseeable future communications needs of the town;~~
  - ~~(3) The cable television systems should be maintained as necessary during the franchise term so that the new facilities, if any, may be integrated to the maximum extent possible with existing facilities;~~
  - ~~(4) The communications systems authorized by this chapter shall be responsive to the needs and interests of the local community.~~
- ~~(D) The public, educational and governmental needs for reasonable access to the cable system shall be met.~~

~~(Ord. passed 3-20-00)~~

### **Sec. 112.002 Title.**

- (A) This chapter shall be known and may be cited as the "Huntersville Cable Communications Regulatory Ordinance," and it shall become a part of the ordinances of the Town of Huntersville.
  - (B) This chapter shall take effect and be in force from and after the date as established herein.
  - (C) All ordinances or parts of ordinances in conflict with the provisions of this chapter are repealed.
- (Ord. passed 3-20-00)

### **Sec. 112.003 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*Additional services* means programming or services for which an additional charge is made beyond the charge for basic subscriber services, including, but not limited to movies, concerts, variety acts, sporting events, pay per view programs, interactive services and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this chapter.

*Basic cable service* means any service tier which includes the retransmission of local television broadcast signals and public, educational and government access channels.

*Cable Act or Communications Policy Act* means the Cable Communications Policy Act of 1984, 47 USC 521 *et seq.*, and the Telecommunications Act of 1996, which amends various sections of Titles 15, 18, and 47, as they may be amended or succeeded.

*Cable service* means the one-way transmission to subscribers of video programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

*Cable television system (system)* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves only subscribers in one or more multiple dwelling unit dwellings under common ownership, control or management, unless such facility or facilities uses any public rights-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provision of Title 11 of the Cable Act, except that such facility shall be considered a cable system other than for purposes of Section 621(c) of the Cable Act to the extent such facility is used in the transmission of video programming directly to subscribers; or
- (4) Any facilities of any electric utility used solely for operating its electric utility systems.

*Channel* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

*Closed-circuit or institutional service* means such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

*Commence operation* means that time and date when operation of the cable communications system is considered to have commenced, which shall be when the system is fully constructed.

*Commercial subscriber* means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

*Commission* means the Town of Huntersville Board of Commissioners.

*Converter* means an electronic device which converts signals to a frequency receivable by a subscriber television receiver and any channel selector which permits a subscriber to view all signals at designated converter dial locations at the set or by remote control.

*Dedicated institutional access channels* means broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit-making organizations that may be qualified by the Commission.

*Discrete channel* means a channel which can only be received by the person and/or institution intended to receive signals on such channel.

*Drop* means a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

*Educational channel or educational access channel* means any analog channel designated for noncommercial educational access programming.

*External incremental cost* means only the incremental material costs for additional fibers within common cable sheaths and includes no labor costs for construction of such common cable sheaths.

*Fair market value* means the price that a willing buyer would pay to a willing seller for a going concern.

*FCC* means the Federal Communications Commission or any legally appointed or elected successor.

*Franchise* means the nonexclusive rights, granted pursuant to this chapter, to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the town. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the town, as required by other ordinances and laws of the town.

*Franchise agreement* means a contract entered into voluntarily by the town and the grantee, containing the specific provisions of the franchise granted including applicable referenced specifications, franchise proposals, applications and other related material.

*Franchise area* means the entire town, or portions thereof, for which a franchise is granted under the authority of this chapter. If not otherwise stated in the franchise agreement, the franchise area shall be the limits of the town.

*Franchise fee* means an amount, as specified by the town, of the grantee's gross receipts from the operation of the system pursuant to the franchise agreement.

*Franchisee or grantee* means the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s) or organization(s) of any kind which has been legally granted a franchise by the town and its lawful successor, transferee or assignee.

*Government channel or government access channel* means any channel specifically designated or dedicated for government use.

*Grantor* means the Town of Huntersville as represented by the Board of Commissioners acting within the scope of its jurisdiction.

*Gross annual revenues* means all revenue received directly or indirectly by the grantee, its affiliates, subsidiaries and any person in which the grantee has a financial interest derived from the operation of the system hereunder; or as further defined in a franchise agreement.

*Incremental material cost* means only that portion of the costs incurred in the installation of facilities which exceed the construction capital cost of the cable television system and, but for the additional capacity provided upon request of the town, which would be incurred in the normal course of providing facilities of the grantee's own use and purpose.

*Installation* means the connection of the system from feeder cable to an outlet in a subscribers home.

*Leased access channel or commercial leased channel* means any channel designated or dedicated for use by persons unaffiliated with the grantee in accordance with the Cable Act.

*Monitoring* means observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

*Person* means an individual, partnership, association, organization, corporation or any lawful successor or transferee of said individual, partnership, association, organization or corporation.

*Plant mile* means a linear mile of strand bearing cable as measured on the street or easement from pole or pedestal to pedestal.

*Programmer* means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.

*Public access channel or community access channel* means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a nondiscriminatory basis.

*Public buildings* means buildings so designated by the town that shall not be used for commercial purposes.

~~*Public property* means any real property owned by the town, other than street.~~

~~*Public way or public rights-of-way* means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, waterways, utility easements or other public right-of-way hereafter located within the town which shall entitle the town and the grantee to the use thereof for the purpose of installing and maintaining a cable television system.~~

~~*Reasonable notice* means written notice addressed to either town or grantee at its respective principal office within the town or such other office as the party has designated to the other as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven days, holidays recognized by the town shall be excluded.~~

~~*Resident* means any person residing in the town, as otherwise defined by applicable law.~~

~~*Residential subscriber* means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.~~

~~*Sale* means any sale, exchange, barter or offer for sale.~~

~~*School* means any public, private or nonprofit educational institution, including primary and secondary schools, colleges and universities.~~

~~*Service or Cable service* means~~

~~(1) The one-way transmission to subscribers of:~~

~~(a) Video programming; or~~

~~(b) Other programming service.~~

~~(2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.~~

~~*Service area* means the entire geographic area within the franchise territory.~~

~~*Signal* means any transmission of radio frequency energy or optical information.~~

~~*State* means the State of North Carolina.~~

~~*Street* means such of the following, which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the town limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the town shall permit to be included within the definition of street from time to time.~~

~~*Subscriber* means any person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with a cable communications system.~~

~~*System facilities* means the cable communications system constructed for use within the town, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property, security systems, equipment or facilities located within the~~

corporate limits of the town, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the town and any other equipment or facilities located within the corporate limits of the town intended for the use of the system; provided, however, such system facilities exclude buildings, contacts, facilities and equipment where primary use is for providing service to other system facilities located outside the town limits.

*Transfer* means the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except publicly traded issue, not in control of the grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five percent or more at one time of the ownership or controlling interest in the system or 20 percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association or person or group of persons acting in concert.

*Trunk line* means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

*Upstream signal* means a signal originating from a terminal to another point in the cable television system, including video, audio or digital signals for either programs or other uses such as security alert services and the like.

*User* means a person or organization utilizing channel or equipment and facilities for the purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

(Ord. passed 3-20-00)

#### **Sec. 112.004 Performance bond.**

(A) *Bond.* Not later than 45 days after the effective date of the franchise, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the town a corporate surety bond or letter of credit, in an amount specified in the franchise agreement, to guarantee the faithful performance of the grantee of all its obligations provided under this section and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation of this section.

(B) *Conditions.* The performance bond shall provide the following conditions:

- (1) There shall be recovered by the town, jointly and severally from the principal and surety, any and all fines and penalties due to the town and any and all damages, losses, costs and expenses suffered or incurred by the town resulting from the failure of the grantee to faithfully comply with the provisions of this section and the franchise applicable orders, permits and directives of any town agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the town which arise by reason of the construction, operation, maintenance or repair of the cable system;

- (2) ~~The total amount of the bond shall be forfeited in favor of the town in the event:~~
- ~~(a) The grantee abandons the cable system at any time during the term of the franchise or any extension thereto;~~
  - ~~(b) The grantee assigns the franchise without the express written consent of the town.~~
- (C) ~~*Reduction of bond.* Upon written application by the grantee, the town may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the town's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within 90 days of any prior application.~~
- (D) ~~*Use of performance bond.* Prior to drawing upon the performance bond for the purposes described in this section, the town shall notify the grantee in writing that payment is due, and the grantee shall have ten days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the grantee does not make the payment within ten days, the town may withdraw the amount thereof from the performance bond.~~
- (E) ~~*Notification.* Within three days of a withdrawal from the performance bond, the town shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.~~
- (F) ~~*Replenishment of performance bond.* No later than 30 days after receipt by the grantee of certified mail notification of a withdrawal pursuant to division (E) of this section, the grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this section.~~
- (G) ~~*Non-renewal, alteration or cancellation of performance bond.* The performance bond required herein shall be in a form satisfactory to the town and shall require 30 days written notice of any non-renewal, alteration or cancellation to both the town and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premium for and file with the town written evidence of the issuance of a replacement bond within 30 days following receipt by the town or the grantee of any notice of cancellation.~~

(Ord. passed 3-20-00)

#### **Sec. 112.005 Liability and insurance.**

- (A) ~~*Insurance amounts.* As of the effective date of this section, the grantee shall file with the town a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of the grantee, a comprehensive general liability insurance policy, naming the town as additional insured, written by a company authorized to do business in the State of North Carolina, protecting the town against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the cable communications system by the grantee in the following minimum amounts:~~



- (1) ~~One million dollars combined single limited, bodily injury and for property damage in any one occurrence;~~
- (2) ~~One million dollars aggregate.~~
- (B) ~~*Automobile liability.* The grantee shall also file with the town a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the State of North Carolina for all owned, non-owned, hired and leased vehicles operated by the grantee, with limits no less than \$1,000,000.00 each accident, single limit, bodily injury and property damage combined, or evidence of self insurance.~~
- (C) ~~*Worker's compensation and employer's liability insurance.* The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of the statutory limit for worker's compensation and \$500,000.00 for employer's liability.~~
- (D) ~~*Term and endorsements.*~~
- (1) ~~All liability insurance required in this section shall be kept in full force and effect by the grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures installed by the grantee incidental to the maintenance and operation of this section.~~
- (2) ~~All policies shall be endorsed to give the Town of Huntersville 30 days written notice of the intent to amend, cancel or non-renew by either the grantee or the insuring company.~~
- (E) ~~*Liability and insurance.* The grantee agrees and binds itself to indemnify, keep and hold free and harmless the town from any and all liability or costs, including attorneys' fees and court costs pertaining thereto, arising from any activities herein authorized, in that the grantee shall pay, and by its acceptance of the franchise the grantee specifically agrees that it will pay, all damages and penalties which the town may be legally required to pay as a result of the franchise, provided that the town provides grantee timely notice of any such damages and penalties and tender promptly any cases for which is seeks indemnification. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this section.~~
- (F) ~~*No limitation on liability.* None of the provisions of this chapter or any insurance policy required herein, or any damages recovered by the town hereunder, shall be construed to excuse the faithful performance by or limit the liability of grantee under this chapter or the franchise agreement for damages either to the limits of such policies or otherwise.~~
- (Ord. passed 3-20-00)

**Secs. 112.006—112.019 Reserved.**

## *ARTICLE II. GRANT OF FRANCHISE*

## **Sec. 112.020 Grant of franchise; territory.**

### **~~(A) Grant of franchise.~~**

- ~~(1) In the event that the town shall grant to the grantee a nonexclusive, revocable for-cause, as provided herein, franchise to construct, operate and maintain a cable communications system within the town, the franchise shall constitute both a right and an obligation to provide the services of a cable communications system, as regulated by the provisions of this chapter and the franchise agreement.~~
- ~~(2) The franchise agreement shall include by reference those provisions of the grantee's application for franchise that are finally negotiated and agreed to by the town and grantee.~~

### **~~(B) Terms/conditions.~~** The franchise shall be granted under the terms and conditions contained herein, consistent with the other applicable statutory requirements. In the event of conflict between the terms and conditions of this chapter, the franchise agreement or the terms and conditions on which the town may grant a franchise, statutory requirements shall control.

### **~~(C) Ordinance provisions.~~** Any franchise granted by the town is made subject to the applicable general ordinance provisions of the town now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the town regarding permits, fees to be paid or manner of construction.

### **~~(D) Franchise territory.~~** The franchise territory shall be the entire town, or portions thereof, for which a franchise is granted under authority of this chapter. The service area shall be the entire territory defined in the franchise agreement.

~~(Ord. passed 3-20-00)~~

## **Sec. 112.021 Use of public streets and ways, town and grantee facilities.**

### **~~(A) Public streets and ways.~~** For the purpose of operating and maintaining a cable communications system in the town, the grantee may erect, install, construct, repair, replace, reconstruct and/or retain in, on, over, under, upon, across and along the public streets and ways within the town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications system; provided, however, that the grantee complies with all design, construction, safety and performance provisions contained in this chapter, the franchise agreement and other applicable regulations.

### **~~(B) Town facilities.~~** At the town's option, the town may require a grantee to utilize town-owned conduit or other facilities for any portion of its cable communications system which is being newly constructed or rebuilt. The consideration, if any, for the use of town conduit or other facilities shall be as stated in the franchise agreement. A reasonable fee, if any, for the use of town facilities established in the franchise agreement may be adjusted at the periodic performance evaluations.

### **~~(C) Grantee facilities.~~** No poles shall be erected by the grantee without prior approval of the appropriate governing authorities with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right, and

---

such poles shall be removed or modified by the grantee at its own expense whenever the appropriate governing authority determines that the public convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits, where possible. The town shall have the right, during the life of the franchise, to install and maintain upon the poles owned by the grantee, at fair market value, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the grantee.

(Ord. passed 3-20-00)

**Sec. 112.022 Franchise required; term, acceptance.**

- (A) ~~Required.~~ No cable communications system shall be allowed to occupy or use the streets of the town or be allowed to operate without a franchise.
- (B) ~~Term.~~ The term of any franchise granted pursuant to this chapter shall be ten years, unless otherwise stated in the franchise agreement.
- (C) ~~Acceptance.~~
- (1) ~~Following approval by the town, any franchise granted pursuant to this chapter and the rights, privileges and authority granted thereunder shall take effect and be in force from and after the date on which the grantee accepts, signs and affixes its corporate seal to the franchise agreement.~~
  - (2) ~~By accepting the franchise, the grantee agrees to be bound by all the terms and conditions contained in this chapter and said franchise. The grantee also agrees to provide all services specifically set forth in its application to provide cable television service within the confines of the town, and by its acceptance of the franchise, the grantee specifically acknowledges and agrees that its application is thereby attached and incorporated by reference and made a part of the franchise.~~
  - (3) ~~By accepting the franchise, the grantee acknowledges that it does so relying upon its own investigation and understanding of the town in connection with the system and the franchise.~~
  - (4) ~~By accepting the franchise, the grantee acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement not expressed therein, whether oral or written, concerning any term or condition of the franchise, regardless of whether such statement was made by or on behalf of the town.~~
  - (5) ~~By accepting the franchise, the grantee acknowledges that it has carefully read the terms and conditions of the franchise agreement.~~
- (D) ~~Nonexclusive.~~ Any franchise granted hereunder shall be nonexclusive. The town specifically reserves the right to grant at any time such additional franchises containing substantially equivalent standards, terms and conditions to those previously granted hereunder for a cable communications system as it deems appropriate.
- (E) ~~Time of the essence.~~ Whenever the franchise agreement shall set forth any time for an act to be performed by or on behalf of either party, such time shall be deemed of the essence, and

any failure of the party to perform within the time allotted shall always be sufficient ground for the other party to invoke an appropriate penalty.

(F) ~~North Carolina law governs.~~ In any controversy or dispute under this chapter, the law of the State of North Carolina shall apply to the extent such law has not been superseded or preempted.

(G) ~~Severability.~~ If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state, county or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.

(Ord. passed 3-20-00)

### **Sec. 112.023 ~~Transfer of ownership or control.~~**

(A) ~~Transfer/sale/lease/assignment.~~ Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to by force or voluntary sale, receivership or other means, without the prior consent of the town and then under such reasonable conditions as the town may establish.

(B) ~~Notice.~~ The grantee shall promptly notify the town of any actual or proposed change in, transfer of or acquisition by any other party of control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five percent or more at one time of the ownership or controlling interest in the system or 20 percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association or person or group of persons acting in concert.

(C) ~~Franchise subject to cancellation.~~ Every change, transfer or acquisition of control, as defined in division (B) of this section, of the grantee shall make the franchise subject to cancellation unless and until the town shall have consented thereto, which consent will not be unreasonably withheld.

(1) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the town may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the grantee shall assist the town in any such inquiry.

(2) Failure to provide all information reasonably requested by the town as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.

(D) ~~Pledge of franchise.~~ The town agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the town that it, or its designees satisfactory to the town, will take control and operate the cable television system.

- ~~(1) Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system.~~
  - ~~(2) The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the town at its discretion, and during said period of time it shall have the right to petition for transfer of the franchise to another grantee.~~
  - ~~(3) If the town finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant, is satisfactory, the town will transfer and assign the rights and obligations of such franchise as are in the public interest.~~
  - ~~(4) The consent of the town to such transfer shall not be unreasonably withheld.~~
  - ~~(E) *Town consent.* The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town or other governmental entity in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this chapter and the franchise agreement.~~
  - ~~(F) *Non-approval.* In the absence of extraordinary circumstances, the town will not approve any transfer or assignment of the franchise prior to completion or rebuild of construction of the proposed system.~~
  - ~~(G) *Controlling party signatory.* Any approval by the town of transfer of ownership or control or rebuilds of the cable system shall be contingent upon the prospective controlling party becoming a signatory to the transfer amendment with the town.~~
  - ~~(H) *Town rights reserved.* The town reserves the right of first purchase in any sale, transfer, lease, assignment or disposal of the system at a cost at least equal to a bona fide offer otherwise acceptable to the grantee.~~
- ~~(Ord. passed 3-20-00)~~

**Sec. 112.024 Franchise renewal; police powers.**

- ~~(A) *Renewal.* Upon completion of the term of any franchise granted under this chapter, the town may grant or deny renewal of the franchise of the grantee in accordance with the provisions of the Cable Act.~~
- ~~(B) *Police powers.*~~
  - ~~(1) In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the police powers of the town to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the town pursuant to such power.~~
  - ~~(2) Any conflict between the provisions of this chapter or the franchise and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable communications systems,~~

---

which contains provisions inconsistent with this chapter shall prevail only if, upon such exercise, the town finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

(Ord. passed 3-20-00)

#### **Sec. 112.025 Franchise fees.**

- (A) ~~*Fee amount.* A grantee of any franchise hereunder shall pay to the town an annual fee in an amount as designated in the franchise agreement.~~
- (1) ~~The quarterly franchise payment shall commence as of the effective date of the franchise.~~
- (2) ~~The town shall be furnished a statement of said payment by a certified public accountant, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.~~
- (B) ~~*Payment additional.* This payment shall be in addition to any other tax or payment owed to the town or other taxing jurisdiction by the grantee.~~
- (C) ~~*Acceptance not release.* No acceptance of any payment by the town shall be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable as a franchise fee under this chapter.~~
- (D) ~~*Interest.* In the event that any undisputed franchise payment is not made on or before the dates specified herein, the grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date.~~
- (E) ~~*Payable quarterly.* The franchise fee and any other cost or damages assessed shall be payable quarterly to the town and submitted to the Town Finance Officer or other designee. Payment date is the last day of the month following the month in which payment is due.~~
- (F) ~~*Audited financials.* Grantee agrees to provide to the town an independently audited annual financial statement, including a balance sheet and income statement which details all gross revenues, in addition to a copy of the annual audit report of the grantee's parent company.~~
- (G) ~~*Right to inspect.* The town shall have the right upon reasonable notice to inspect the grantee's income records and to re-compute any amounts determined to be payable under this chapter. Any undisputed additional amount due to the town as a result of the audit shall be paid within 90 days following written notice to the grantee by the town, which notice shall include a copy of the audit report.~~

(Ord. passed 3-20-00)

#### **Sec. 112.026 Forfeiture or revocation.**

- (A) ~~*Revocation.* The Commission reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following~~

circumstances, each of which shall represent a default and breach under this chapter or the franchise agreement:

- (1) ~~If the grantee shall default in the performance of any of the material obligations under this chapter or under such documents, contracts and other terms and provisions entered into by and between the town and the grantee;~~
  - (2) ~~If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to the franchise agreement;~~
  - (3) ~~If the grantee's construction schedule is delayed later than the schedule contained in the franchise agreement, if any, or beyond any extended date set by the Board of Commissioners;~~
  - (4) ~~If the grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt;~~
  - (5) ~~If the grantee fails to restore service after 96 consecutive hours of interrupted system-wide service, except when such service interruption is caused by forces beyond the grantee's control (including but not limited to actions of subscribers) or when approval of such interruption is obtained from the Town Manager or his or her designee;~~
  - (6) ~~If there has been material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.~~
- (B) ~~*Force majeure.* The grantee shall be not liable for any failure or delay in the performance of its obligations pursuant to this chapter and the franchise and such failure or delay shall not be deemed a default of this chapter and the franchise or grounds for termination hereunder if any of the following conditions are satisfied:~~
- (1) ~~If such failure or delay:~~
    - (a) ~~Could not have been prevented by reasonable precaution; and~~
    - (b) ~~Cannot reasonably be circumvented by the grantee through the use of alternate sources, work-around plans or other means; or~~
  - (2) ~~If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.~~
- (C) ~~*Force majeure event.* Upon the occurrence of an event which satisfies any of the conditions set forth above (a force majeure event) the grantee shall be excused from any further performance of those of its obligations pursuant to this chapter and the franchise affected by the force majeure event for as long as:~~
- (1) ~~Such force majeure event continues; and~~
  - (2) ~~The grantee continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.~~
- (D) ~~*Notice.* Upon the occurrence of a force majeure event, the grantee shall immediately notify the town by telephone, to be confirmed by written notice, of the occurrence of a force majeure event and shall describe in reasonable detail the nature of the force majeure event.~~
- (E) ~~*Procedure prior to revocation.*~~



- ~~(1) The town shall make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation.~~
  - ~~(a) If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the town shall place its request for revocation of the franchise upon a regular Commission meeting agenda.~~
  - ~~(b) The town shall cause to be served upon the grantee, at least seven days prior to the date of such Commission meeting, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the Town Clerk at least twice, seven and 14 days respectively, before such meeting, in a newspaper of general circulation within the town.~~
- ~~(2) The Commission shall hear any persons interested therein, including the grantee, and shall determine in its discretion whether or not any failure, refusal or neglect by the grantee was with just cause.~~
- ~~(3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the town, the Commission shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.~~
- ~~(4) If the Commission shall determine such failure, refusal or neglect by the grantee was without just cause, then the Council shall, by resolution, declare that the franchise of the grantee shall be revoked and bond shall be forfeited, unless there is compliance by the grantee within 90 days.~~
- ~~(F) *Termination.* In the event a franchise is revoked or otherwise terminated, the town may, in its sole discretion, do any of the following:~~
  - ~~(1) Purchase the system under the procedures set forth in this chapter;~~
  - ~~(2) Effect a transfer of ownership of the system to another party for good and sufficient considerations, which shall be an amount at least equal to the fair market value of the system under the original grantee's operation, in accordance with the Cable Act;~~
  - ~~(3) Order the removal of all system facilities from the town within a reasonable period of time.~~
- ~~(G) *Facilities removal.* In removing its system facilities, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, normal wear and tear excepted, as was prevailing prior to the grantee's removal of system facilities.~~
  - ~~(1) The town shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal.~~
  - ~~(2) The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this paragraph, this chapter and the franchise agreement is reached.~~
- ~~(H) *Performance failure.*~~

- (1) ~~In the event of a failure by the grantee to complete any work required by this subchapter or Sections 112.060~~*et seq.* of any other work required by town law or ordinance, and upon reasonable notice to the grantee, the town may cause such work to be done and grantee shall reimburse the town the reasonable costs thereof within 30 days after verification of an itemized list of such costs.
- (2) ~~The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.~~

~~(Ord. passed 3-20-00)~~

#### **Sec. 112.027 Receivership and foreclosure.**

- (A) ~~*Receivership.* The franchise shall, at the option of the town, cease and terminate 120 days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:~~
  - (1) ~~Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees, within said 120 days, shall have remedied all defaults under the franchise agreement; and~~
  - (2) ~~Such receivers or trustees shall, within said 120 days, execute an agreement, duly approved by the court having jurisdiction of the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provisions and limitation of this chapter and the franchise agreement.~~
- (B) ~~*Foreclosure.* In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof, including or excluding the franchise, the town may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of such notice unless:~~
  - (1) ~~The town shall have approved the transfer of the franchise in the manner this chapter provides; and~~
  - (2) ~~Such successful bidder shall have covenanted and agreed with the town to assume and be bound by all the terms and conditions of the franchise.~~

~~(Ord. passed 3-20-00)~~

#### **Sec. 112.028 Equal opportunity.**

~~The grantee shall be an equal opportunity/affirmative action employer, adhering to all federal, state, county or municipal laws and regulations related thereto.~~

- (A) ~~*Maintenance.* The grantee shall establish and maintain equal opportunity in employment, and no person shall be discriminated against in employment by the grantee because of race, religion, color, sex, national origin, age or physical disability.~~

- (B) ~~Implementation.~~ Implementation, administration and review of all Equal Employment Opportunity (EEO) and affirmative action policies and programs shall be the direct responsibility of the chief executive officer of the cable communications system. All officers, executives, managers and administrative and supervisory personnel of the grantee shall be directed to participate in the grantee's affirmative action efforts.
- (C) ~~Affirmative action plan.~~ Any significant subcontractor of the Grantee or a parent, subsidiary or affiliate of the Grantee which does not already have an affirmative action plan which would cover its activities in the Town of Huntersville shall submit to the town a plan for its operations on behalf of the grantee, consistent with the spirit of this section.
- (D) ~~Records.~~ The grantee shall prepare and maintain records of promotions, demotions, terminations and transfers.
- (E) ~~Federal law compliance.~~ The grantee shall assure that it constructs all facilities so that they are in compliance with applicable federal law pertaining to service to the disabled.
- (F) ~~M/WBD enterprises.~~ The grantee shall make a good faith effort to utilize minority/women business enterprises in construction and purchase contracts.

(Ord. passed 3-20-00)

#### **Sec. 112.029 Local office; enforcement; waiver of provisions.**

- (A) ~~Local office.~~ The grantee shall maintain, within 30 miles of the corporate limits of the town, an office and local telephone number for the conduct of business related to the franchise during normal business hours. The grantee shall be required to advise the town of such address and telephone numbers and any changes thereof.
- (B) ~~Failure of town to enforce the franchise is no waiver of the terms thereof.~~ The grantee shall not be excused from complying with any of the terms and conditions of this chapter or the granted franchise by any failure of the town upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

(Ord. passed 3-20-00)

#### **Sec. 112.030 Rights reserved to the grantor.**

- (A) ~~Right to purchase.~~

- (1) In the event the town revokes the franchise pursuant to provisions of this chapter, or at the normal expiration of the franchise term, the town shall have the right, directly or as an intermediary, to purchase the cable communications system. The purchase price shall be based upon the value of the system determined pursuant to this section. In no event shall the town, when acting as an intermediary or effecting the transfer or ownership of the system to another person, be paid any consideration by any party for such activities.

- ~~(2) The date of valuation shall be no earlier than the day following the date of expiration or revocation and no later than the date the town makes an appropriate offer for the system.~~
- ~~(3) The value of the cable system shall be determined by a qualified appraiser appointed by the town and in accordance with the Cable Act. The appraiser shall determine the worth of the assets as follows:
  - ~~(a) If a franchise held by the grantee is revoked for cause and the town acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition shall be at an equitable price; or~~
  - ~~(b) If a renewal of a franchise held by the grantee is denied and the town acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value.~~~~
- ~~(4) Upon receipt of reasonable notice of the town's intent to purchase the system at the value established above, the grantee shall have 30 days within which to accept that valuation as the purchase price of the system. In the event that purchase price is not acceptable, the parties shall have 120 days in which to negotiate an acceptable purchase price.~~
- ~~(5) Upon exercise of this option and the payment of the agreed upon sum by the town and its service of reasonable notice of such action upon the grantee, the grantee shall immediately transfer to the town possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the town in lieu of some portion of the purchase price set forth above; and the grantee shall execute such warranty, deeds or other instruments of conveyance to the town as shall be necessary for this purpose.~~
- ~~(6) In the event the town and the grantee are unable to agree upon the value of the cable communications system within the time limits set forth above, either party may require by reasonable notice to the other that the value of the cable communications system be submitted to arbitration in the following manner:
  - ~~(a) The town and the grantee shall each, within 15 days after such notice, select an arbitrator who shall be a disinterested person with reasonable knowledge and experience relative to the subject to be arbitrated. The two arbitrators thus selected shall immediately thereafter select a third arbitrator who shall likewise be a disinterested person having reasonable knowledge and experience relative to the subject to be arbitrated;~~
  - ~~(b) Within 30 days after appointment of all arbitrators and upon ten days written notice to the parties, the panel of arbitrators shall commence a hearing on the issue of valuation and shall receive all relevant information from the parties. The value of the system as determined by the arbitration panel shall be in accordance with this section;~~
  - ~~(c) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter~~~~

~~publicly stated, except that, at the request of either of the parties, debate and deliberations may be held in closed session;~~

- ~~(d) Within 30 days after the close of the hearing, the panel of arbitrators shall prepare findings and a decision agreed upon by a majority of the panel, which shall be filed with the town and served by mail immediately upon the grantee. Should there be no majority decision, the proceedings shall be started anew, unless the parties extend by mutual agreement the time in which the panel of arbitrators may make a decision.~~
- ~~(e) Either party may seek judicial relief in the following circumstances:
  - 1.— A party fails to select an arbitrator;
  - 2.— The arbitrators fail to select a third arbitrator;
  - 3.— One or more arbitrators is unqualified in either party's opinion;
  - 4.— Designated time limits have been exceeded;
  - 5.— The decision was procured by corruption, fraud or undue means;
  - 6.— There was evident partiality on the part of the independent arbitrator who represents neither the grantee nor the town;
  - 7.— The arbitration panel exceeded the authority granted hereunder;
  - 8.— Based upon the record, the panel abused its discretion.~~
- ~~(f) In the event a court of competent jurisdiction determines that judicial relief is appropriate to the circumstances set forth above, the court in its discretion may order the arbitration procedure repeated and issue findings, orders and directions.~~
- ~~(g) The expenses of the arbitrators selected by each party shall be borne by that party, and the expenses of the third arbitrator and those expenses incurred by the panel as a whole shall be borne equally by the parties.~~
- ~~(h) Upon receipt of the decision of the arbitration panel, the town shall have 30 days in which to notify the grantee of its intent to exercise its option to purchase the system. The purchase price shall be the value of the system as determined by the arbitration panel in accordance with this section.~~
- ~~(7) At any time prior to the actual transfer to the town of possession and title of the system hereunder, the grantee may operate the system, using its good faith judgment in all matters, and be compensated therefor in an amount appropriate to be paid to an independent party providing the same management services. Revenues collected by the grantee during such a period shall be considered revenues of the town or other person to whom the town intends to transfer ownership.~~
- ~~(B) *Right to inspect.* The town shall have the right, at its expense, to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this chapter, the franchise agreement and other pertinent provisions of the law.~~
- ~~(C) *Right to intervene.* The town shall have the right of intervention in any suit of proceeding to which the grantee is party.~~

(Ord. passed 3-20-00)

**Secs. 112.031—112.044 Reserved.**

*ARTICLE III. REGULATION OF FRANCHISE*

**Sec. 112.045 Regulatory authority.**

- (A) *Regulation.* The town may exercise appropriate regulatory authority under the provisions of this subchapter and applicable law. This authority shall be vested in the Commission and administration through the Town Manager or his or her designee in order to provide day-to-day administration of this subchapter and any franchise granted hereunder.
- (B) *Legal compliance.* Notwithstanding any other provisions of this subchapter to the contrary, the grantee shall at all times comply with all applicable laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the town under this subchapter or the franchise; or if in compliance with any local, state or federal law or regulation, the grantee finds conflict with the terms of this subchapter, the franchise, or any law or regulation of the town, then as soon as possible following knowledge thereof, the grantee shall notify the town of the point of conflict believed to exist between such law or regulation and the laws or regulations of the town, this subchapter and the franchise. The town shall have the right to modify any provisions of this subchapter to such reasonable extent as may be necessary to carry out the intent and purpose of this subchapter.
- (C) *Plenary authority.* The town reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the town, the town may, without the approval of the grantee, legislate any such additional regulation as may then be permissible, whether or not contemplated by this subchapter.

(Ord. passed 3-20-00)

**Sec. 112.046 Regulation responsibilities and functions.**

- (A) *Responsibilities.* The town shall have the following regulatory responsibilities:
- (1) Administration and enforcement of the provisions of this subchapter and any franchise granted hereunder;
  - (2) Award renewal, extension or termination of a franchise pursuant to the provisions of this subchapter, the franchise and other applicable law;
  - (3) Consent prior to sale or transfer of any franchise granted hereunder;
  - (4) Performance evaluations pursuant to this subchapter and the franchise.
- (B) *Functions.* The town also reserves the right to perform the following functions:

- 
- ~~(1) Develop objectives and coordinate activities related to the operation of government channels;~~
  - ~~(2) Provide technical, programming and operational support to public agency users such as town departments, schools and health care institutions;~~
  - ~~(3) Coordinate plans for interconnection of cable services;~~
  - ~~(4) Analyze the possibility of integrating cable communications with other town, state or regional telecommunications networks;~~
  - ~~(5) Formulate and recommend long range telecommunications policy for the town and provide for the determination of future cable related needs and interests of the community;~~
  - ~~(6) Provide the administration effort necessary for the conduct of performance evaluations pursuant to this subchapter and the franchise and any other activities required for the administration of the franchise;~~
  - ~~(7) Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints;~~
  - ~~(8) Monitor the grantee's adherence to operational procedures and line extension policies;~~
  - ~~(9) Assure compliance with applicable laws and ordinances;~~
  - ~~(10) Arrange tests and analyses of equipment and performance, pursuant to this subchapter and franchise, to ensure compliance with this subchapter and the franchise;~~
  - ~~(11) Provide for reasonable continuity in service;~~
  - ~~(12) Receive for examination all data and reports required by this subchapter.~~
- ~~(Ord. passed 3-20-00)~~

**Sec. 112.047 Rates and charges.**

- ~~(A) *Rate regulation.* The town may regulate basic cable service tier rates and related equipment, installation and service charges of any cable television system operating in the Town of Huntersville pursuant to existing federal law and FCC regulations, notwithstanding any different or inconsistent provisions in the franchise.~~
- ~~(B) *Views considered.* In connection with such rate regulation, the town shall ensure a reasonable opportunity for consideration of the views of interested parties.~~
- ~~(C) *FCC forms.* The Town Manager, or his or her designee, is authorized to execute on behalf of the town and file with the FCC such certification forms or other instruments as may be required by federal law or FCC regulations in order to enable the town to regulate rates and charges.~~
- ~~(D) *Rate/schedules.* The grantee shall file with the town schedules which shall describe all services offered, all rates and charges of any kind and all terms and conditions relating thereto.~~

(Ord. passed 3-20-00)

**Sec. 112.048 Performance evaluation.**

- (A) ~~*Performance evaluations.*~~ The town and the grantee shall, at the discretion of the town, hold scheduled performance evaluation sessions every third year during the term of the franchise.
- (B) ~~*Special evaluations.*~~ Special evaluation sessions may be held at any time during the term of the franchise at the request of the town.
- (C) ~~*Public notice.*~~ All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with the public notice provisions of this chapter. The grantee shall notify subscribers of all such evaluation sessions by announcement on the designated local origination channel on the system at such various times and frequencies so as to ensure comprehension between the hours of 11 a.m. and 9 p.m. for five consecutive days preceding each session.
- (D) ~~*Topics.*~~ Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance, grantee compliance with this subchapter and the franchise, customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC filings and line extensions.
- (E) ~~*Grantee cooperation.*~~ During the review and evaluation by the town, the grantee shall cooperate with the town and shall provide such information and documents as the town may need to reasonably perform its review.

(Ord. passed 3-20-00)

**Sec. 112.049 Schedule of liquidated damages.**

- (A) ~~*Willful violation.*~~ For the willful violation of any of the following provisions of this subchapter, the town shall notify the grantee in writing of the violation, and the grantee shall be allowed 30 days, or such greater amount of time as the town may specify to correct such violation.
- (B) ~~*Chargeable to bond.*~~ Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by the grantee within the aforesaid period of time.
- (C) ~~*Hearing.*~~ The grantee may request a hearing before the Commission in writing within seven business days of receiving notice of violation from the town. The time frame specified in the notice for correction of the violation shall be tolled from the date of receipt of a request from the grantee for a hearing until the day after the hearing.
- (D) ~~*Damages, penalties.*~~ These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this subchapter, including penalties or revocation, or other statutorily or judicially imposed penalties.



- (1) ~~No decision by the town to invoke any remedy under this subchapter, the franchise agreement or any statute, law or ordinance shall preclude the availability of any other such remedy.~~

**Issue**

**Liquidated Damages**

|                                                                                                                     |                                                                                   |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Failure to render payment of the reimbursement of the town's franchise expenses, franchise fee or penalty payments: | <del>\$500.00 per day from time due until paid.</del>                             |
| Failure to file reports:                                                                                            | <del>\$100.00 per day from time due until report(s) are filed.</del>              |
| Failure to complete system construction:                                                                            | <del>\$1,000.00 per day from time due until construction is complete.</del>       |
| Failure to comply with material provisions of this chapter or the franchise agreement                               | <del>\$200.00 per day until grantee is in compliance with the provision(s).</del> |
| Failure to provide access funds, equipment, facilities or services                                                  | <del>\$500.00 per day from time due until paid or provided.</del>                 |

- (2) ~~The town retains the right at its sole option to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the grantee are deemed to exist. The Town Manager or his or her designee shall determine the town's willingness to reduce or waive any of the above-listed penalties.~~

(Ord. passed 3-20-00)

**Secs. 112.050—112.059 Reserved.**

*ARTICLE IV. DESIGN AND CONSTRUCTION*

**Sec. 112.060 Authority to construct.**

(A) ~~Authorization to commence new construction and application procedures.~~ Within 30 days of the acceptance by the grantee of a franchise, the grantee shall register the system with the FCC and apply for contracts for use of poles.

- (1) ~~Within 30 days after completion of the make-ready survey identifying the routes of the system facilities, the grantee shall apply for all additional licenses from the state, town or other necessary parties, such as the railroads, for crossing under or over their property.~~
- (2) ~~In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction schedule as outlined in the franchise.~~
- (3) ~~Failure to make such timely application and timely filing shall constitute a substantial violation of this subchapter.~~

(B) ~~Power to contract.~~ Upon grant of the franchise and in order to construct, operate and maintain a cable system in the town, the grantee may enter into contracts with any public

utility companies or any other owner or lessee of any poles or underground areas located within or without the town, obtain right-of-way permits from appropriate city, county, state or federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a city, county, state or federal agency may require.

(Ord. passed 3-20-00)

**Sec. 112.061 Construction and technical standards.**

**(A) *Compliance with construction and technical standards.***

- (1) The grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements and FCC technical standards, which standards are incorporated by reference herein.
- (2) The system shall be designed, constructed, operated and maintained for 24 hours-a-day continuous operation.

**(B) *State of the art.*** The grantee shall construct, install, operate and maintain its system in accordance with, but not limited to, the following:

- (1) The system will be designed to permit a minimum of 750 MHZ operation;
- (2) Where economically feasible, the system will utilize home terminals which will make the system adaptable for the development of future services;
- (3) The grantee shall maintain its system facilities in a manner which will continue to enable to add new services and associated equipment as they are developed, available and proved economically feasible and marketable to subscribers.

**(C) *Facility installation/construction.*** Prior to the erection or installation by the grantee of any towers, poles or fixtures of five feet by five feet by four feet or larger for use in connection with the installation, construction, maintenance or operation of the cable communications system under this subchapter, the grantee shall first submit to the town and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. If required for town approval, pursuant to this chapter, grantee shall also provide such description and drawings for underground construction.

**(D) *Contractor qualifications.*** Any contractor proposed for work of construction, reconstruction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the state and all local ordinances.

**(E) *Map accuracy.*** The town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.

- (F) ~~Work performance.~~ Construction, reconstruction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner in accordance with then-current technological standards.
- (1) ~~All cables and wires shall be installed, where possible, parallel with electric and telephone lines.~~
  - (2) ~~Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.~~
- (G) ~~Compliance by grantee.~~ Grantee shall at all times comply with:
- (1) ~~Occupational Safety and Health Administration (OSHA) regulations;~~
  - (2) ~~National Electric Code;~~
  - (3) ~~National Electrical Safety Code (NESC);~~
  - (4) ~~AT&T Manual of Construction Procedures (Blue Book);~~
  - (5) ~~Bell Telephone Systems Code of Pole Line Construction;~~
  - (6) ~~All federal, state, town and municipal construction requirements, including FCC rules and regulations, utility construction and requirements;~~
  - (7) ~~All building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.~~
- (H) ~~Antennas.~~ Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure standards as required by federal and state laws or regulations.
- (I) ~~Work facilities, conditions and procedures.~~ All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.
- (J) ~~RF leakage.~~ RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible.
- (1) ~~Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern.~~
  - (2) ~~FCC rules and regulations shall govern.~~
  - (3) ~~The system shall cause no measurable interference in television signal reception to any operating receiver not connected to and serviced by the system.~~
- (K) ~~Standby power.~~ The grantee shall maintain equipment capable of providing standby power for a minimum of four hours for the headend and all fiber optic nodes.
- (L) ~~Health/safety.~~ If, at any time, it is reasonably determined by the town or any other agency or authority of competent jurisdiction that any part of the system, including without limitation, any means used to distribute signals over or within the system, is harmful to the health or safety of any person, then the grantee shall, at its own cost and expense, promptly correct all such conditions.

~~(M) *Town not liable.* Except for acts of willful misconduct or gross negligence, neither the town nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the grantee or any affiliated person for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration or relocation of any part of the system by or on behalf of the grantee or town in connection with any emergency, public work, public improvement, alteration or any municipal structure, any change in the grade or line of any street or the elimination, discontinuation and closing of any street.~~

~~(Ord. passed 3-20-00)~~

#### **~~Sec. 112.062 System construction schedule.~~**

~~(A) *Service availability.* The grantee must make cable television service available to every dwelling unit within the franchise service area in accordance with the terms of the franchise agreement and this subchapter.~~

~~(B) *Dedicated access.*~~

~~(1) It is the intent of the town that dedicated access channels shall be constructed concurrently with any franchised cable communications system to take advantage of the cost reduction inherent in concurrent construction.~~

~~(2) The requirements for dedicated institutional access channels shall be stated in the franchise agreement.~~

~~(Ord. passed 3-20-00)~~

#### **~~Sec. 112.063 Extension of service.~~**

~~(A) *Density.* The grantee shall provide service to any new residential dwelling units or commercial subscribers within the initial service area and any additional areas annexed to the town where there are at least 18 potential subscribers or residential dwelling units per proposed cable plant mile for residentially zoned areas and at least 50 subscribers per proposed cable plant mile for commercially zoned areas, except where served by another cable company.~~

~~(B) *Lack of density.* In other areas with less than 18 residential dwelling units or 50 commercial subscribers per proposed cable plant mile, the grantee shall offer a cost-sharing arrangement with residents. The cost-sharing arrangement shall consist of the following:~~

~~(1) On the request of one or more potential subscribers desiring service, the grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of plant extension required to provide service to each subscriber from the closest point where available quality signals exist;~~

~~(2) The cost of construction shall be allocated based on the following formula: if a request for extension of service into a residential area requires the construction of cable plant which does not pass at least 18 potential subscribers per strand or trench mile, the grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are nine subscribers per strand mile or trench mile, the grantee's~~

---

share will equal 9/18 or one-half of construction cost. The remaining cost will be shared equally by each subscriber;

- (3) ~~The average cost of line extension shall be recalculated annually and based upon then-current costs for labor and materials.~~

(C) ~~*New construction.* In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of such construction or development and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults and laterals to be provided at the grantee's expense.~~

- (1) ~~The grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner.~~

- (2) ~~Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the town of a preliminary plant request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plant request.~~

(Ord. passed 3-20-00)

#### **Sec. 112.064 Use of streets.**

(A) ~~*Underground installations.* All installations shall be underground in those areas of the town where public utilities providing telephone and electric service are underground at the time of installation.~~

- (1) ~~In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the town or are placed underground, the grantee shall likewise place its services underground without additional cost to the town or to the individual subscriber so served.~~

- (2) ~~Where not otherwise required to be placed underground by this subchapter or the franchise agreement, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request.~~

- (3) ~~All new cable passing under the roadway shall be installed in conduit or PVC sheathing no less than 18 inches from the top of the conduit to the surface of the ground.~~

(B) ~~*Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:~~

- (1) ~~Not endanger or interfere with the health, safety or lives of persons;~~

- ~~(2) Not interfere with any improvements the city, county or state may deem proper to make;~~
- ~~(3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;~~
- ~~(4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and~~
- ~~(5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the town.~~

~~(C) *Restoration to prior condition.*~~

- ~~(1) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the town, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the town.~~
- ~~(2) The restoration shall be undertaken within no more than ten days after the disturbance is incurred and shall be completed as soon as possible thereafter.~~

~~(D) *Restoration of the facilities.* In the event that at any time during the period of this franchise the city, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.~~

~~(E) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wire to permit the moving of buildings.~~

- ~~(1) The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance.~~
- ~~(2) The grantee shall be given not less than 15 working days advance notice to arrange for such temporary wire changes.~~

~~(F) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing town ordinances, to trim any trees upon and overhanging public rights-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the town, such trimming may be done by it or under its supervision and direction at the expense of the grantee.~~

~~(G) *Easements.*~~

- ~~(1) All necessary easements over and under private property shall be arranged for by the grantor.~~

- (2) ~~Any easements over or under property owned by the town other than the public rights-of-way shall be separately negotiated with the town.~~
- (H) ~~Work within right-of-way.~~ The closing of any part of a publicly maintained street or right-of-way must be approved by the town or state and shall not unreasonably impede traffic flow.
  - (1) ~~During repairs or improvements traffic on streets must be maintained.~~
  - (2) ~~Where full closing of the street is required, the request for approval must be submitted at least ten days in advance.~~
  - (3) ~~Closings will not be permitted in the central business district during the holiday shopping season.~~
  - (4) ~~Where emergency closings are necessary, the town is to be notified as soon as possible.~~
  - (5) ~~All closings are to be protected and signed.~~
- (I) ~~Removal of town or state property.~~ No town or state property is to be removed from a right-of-way, including signing on utility poles, without proper permission from the town.
- (J) ~~No burden on public rights-of-way.~~
  - (1) ~~Grantee shall not erect, install, construct, repair, replace or maintain its cable system in such a fashion as to unduly burden the present or future use of the streets or public rights-of-way.~~
  - (2) ~~If the town, in its reasonable judgment, determines that any portion of the cable system is an undue burden, the grantee at its expense shall modify its cable system or take such other actions as the town may determine is in the public interest to remove or alleviate the burden and grantee shall do so within the time period established by the town.~~
- (K) ~~Barriers.~~ While any portion of the streets or public rights-of-way are open, grantee shall maintain reasonable barriers, lights at night and other warnings to the users of the streets or public rights-of-way in compliance with applicable government regulations requiring and pertaining to such barriers.
- (L) ~~Soil erosion.~~
  - (1) ~~All construction shall be in accordance with state and local laws and regulations regarding soil erosion.~~
  - (2) ~~Grantee or grantee's contractor shall correct any violation at the direction of the town and at grantee's expense.~~
- (M) ~~Utility crowding.~~
  - (1) ~~In areas of the town where the town or state finds that the public rights-of-way will not accommodate further underground facilities, the town or state may require that the grantee's conduits be oversized, duplicated or placed in multiple configurations, and the grantee shall share the use of its underground conduits and multiple configurations at such locations at reasonable rates.~~

- (2) ~~Such rates shall be determined by the town or state if grantee and third parties cannot agree on same.~~
- (N) ~~Removal of obsolete facilities/cooperation.~~ When grantee opens a trench, accesses a conduit or boring or is working on aerial locations, it shall remove all obsolete cable system facilities from such locations.
- (1) ~~When grantee opens a trench or access to underground bores, it shall notify all other grantees and permittees in advance of such work, so that they may remove their obsolete facilities from such locations. Grantee shall cooperate with such persons in such activities.~~
- (2) ~~When grantee receives notification from another grantee or permittee that it is opening a trench or access to underground bores, grantee shall remove all of its obsolete facilities from such location while they are opened.~~
- (O) ~~Vacating of rights-of-way.~~ If a public right-of-way is vacated, eliminated, discontinued or closed, all rights of grantee under its franchise to use same shall terminate and grantee at its expense shall immediately remove the cable systems from such public right-of-way unless grantee obtains any necessary easements from the affected property owners to use the former public right-of-way.
- (P) ~~Acquisition of right-of-way.~~ In acquiring or widening public right-of-way, the town or state shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.
- (Q) ~~Pavement cut coordination/additional fees.~~ Grantee shall coordinate its construction program and all other work in the public rights-of-way with town's or state's program for street construction, rebuilding, resurfacing and repair (hereinafter collectively referred to as street resurfacing). Grantee shall meet with the official of the town responsible for such program at least twice per year to this end.
- (1) ~~The goals of such coordination shall be to require grantee to conduct all work in the public rights-of-way in conjunction with or immediately prior to any street resurfacing planned by the town. Grantee shall provide timely notice to the town prior to such work and grantee shall have applied for permits as required.~~
- (2) ~~In addition to any other fees or payments required by this chapter and the franchise, grantee shall pay to the town any costs required under local ordinances. This fee is in addition to and not in lieu of the obligation to restore the public rights-of-way.~~

(Ord. passed 3-20-00)

#### **Sec. 112.065 Erection, removal and common use of poles.**

- (A) ~~Approval required.~~ No poles shall be erected by the grantee without prior approval of the town or state with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire holding structure of the grantee shall give rise to a vested interest, and such poles or structures shall be removed or modified by the grantee at its own



---

expense whenever the town determines that the public convenience would be enhanced thereby.

- (B) ~~Utilization of existing poles.~~ Where poles already in existence for use in serving the town are available for use by the grantee, the town or state may require the grantee to use such poles and structures, if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.
- (C) ~~Permitting.~~ Where a public utility serving the town desires to make use of the poles or other wire holding structures of the grantee, but agreement therefor with the grantee cannot be reached, the town may require the grantee to permit such use for such consideration and upon such terms as the town shall determine to be just and reasonable, if the town determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operation.

(Ord. passed 3-20-00)

#### **Sec. 112.066 Construction reporting requirements.**

The grantee shall provide the town with a written progress report detailing construction work completed as specified in the franchise.

(Ord. passed 3-20-00)

#### **Sec. 112.067 Tests and performance monitoring.**

- (A) ~~Technical performance.~~ Not later than 90 days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and thereafter on the third anniversary of the effective date of the franchise, the grantee shall conduct technical performance tests to demonstrate substantial compliance with all technical standards contained in this subchapter and the franchise agreement and the applicable technical standards and guidelines of the FCC.

(B) ~~Supervision/reporting.~~

- (1) ~~Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience.~~
- (2) ~~A copy of said engineer's report shall be submitted to the town, describing test results, instrumentation, calibration and test procedures and the qualification of the engineer responsible for the tests.~~

(C) ~~Monitor test points.~~

- (1) ~~System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line at or near trunk line extremities.~~
- (2) ~~Such periodic tests shall be made at the test points as shall be required by the FCC and/or the franchise agreement.~~

~~(D) *FCC tests.* In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the town within 60 days of completion.~~

~~(E) *Complaint response.*~~

~~(1) Whenever there have been similar complaints made within one year from more than ten percent of the subscribers to the grantee's system, or when there exists other substantial evidence which, in the judgement of the town, casts doubt on the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze and report on the performance of its system.~~

~~(2) Reports on such tests shall be delivered to the town no later than 30 days after the town reasonably notifies the grantee and shall include the following information:~~

~~(a) The nature of the complaints which precipitated the special tests;~~

~~(b) What system component was tested;~~

~~(c) The equipment used and procedures employed in said testing;~~

~~(d) The results of such tests; and~~

~~(e) Methods by which said complaints were resolved.~~

~~(3) The tests and analyses shall be supervised by a qualified technician who shall sign all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions, if any, should be taken by the grantee or town.~~

~~(F) *Consultants.* The town shall have the right to employ, at the town's expense, qualified consultants if necessary or desirable to assist in the administration of this or any other section of this subchapter or the franchise agreement.~~

~~(Ord. passed 3-20-00)~~

**~~Secs. 112.068—112.079 Reserved.~~**

## *ARTICLE V. SERVICE*

**~~Sec. 112.080 Services to subscribers and users.~~**

~~(A) *Services.* Concurrently with the activation of the cable communications system in the town, the grantee shall provide those services to subscribers as described in the franchise agreement or services of similar mix, quality and level.~~

~~(1) The system shall carry the programming and services as indicated in the franchise agreement.~~

~~(a) Should the grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its best efforts to maintain the mix, quality and level of services provided over the system.~~

- ~~(b) Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise agreement and shall be reported to the town at least 30 days prior to the proposed implementation when possible.~~
  - ~~(c) The grantee shall use its best efforts to ensure diversity of programming.~~
- ~~(2) A basic service tier shall be offered to subscribers throughout the term of this franchise.~~
- ~~(3) The grantee shall provide and maintain access channels pursuant to the terms defined under the franchise agreement.~~
- ~~(4) The grantee shall provide and maintain an institutional network or provisions for such services pursuant to the terms defined under the franchise agreement.~~
- ~~(5) The grantee shall make available leased access channels to assure that the widest possible diversity of information sources are made available to subscribers.~~
  - ~~(a) Such channels shall be especially designated for leased access use by persons unaffiliated with the grantee on terms, rates and conditions which are in accordance with federal regulation.~~
  - ~~(b) The number of such channels shall be determined by the provisions of federal regulation.~~
  - ~~(c) The grantee shall advertise periodically the availability of such channels.~~
  - ~~(d) The grantee shall not exercise any editorial control over any programming provided over such channels, except as permitted in accordance with the provisions of federal regulation.~~
- ~~(6) Grantee shall install and maintain, at no charge, one service drop to each public building within the franchise area for which the demarcation point (common entry point for utilities) is located 300 feet or closer to the closest useable point on the grantee's cable system.~~
  - ~~(a) On request from the appropriate official, and if the town or the respective entity is willing to pay the incremental costs, grantee will run feeder rather than drop cable to a public building which does or plans to amplify the signal for internal distribution.~~
  - ~~(b) Grantee shall provide full basic service and the CPST tier or its equivalent and one non-addressable converter to such building free of charge. Any additional converters will be provided on request at grantee's standard lease rate.~~
  - ~~(c) Upon request from an appropriate official, at free drop locations, grantee will provide inside wiring for a reasonable number of outlets, and the requesting entity shall reimburse grantee's full cost of labor and materials for such internal wiring unless otherwise provided for in grantee's (or parent company's) social contract with the FCC.~~
  - ~~(d) Grantee shall also extend cable to public buildings located further than 300 feet from grantee's distribution plant where the town or the respective entity is willing to reimburse grantee's full cost for materials and labor beyond the first 300 feet.~~

~~(B) Emergency override.~~

- ~~(1) To the extent required by and consistent with applicable federal statutes and FCC regulations, the grantee shall satisfy its emergency access override obligation throughout the town and shall designate a government access channel for emergency broadcast of both audio and video signals.~~
- ~~(2) The town shall train its personnel in proper use of the channel; shall limit access to its override functions to such trained individuals; and shall indemnify, hold harmless and defend the grantee against any and all claims, causes of action, proceedings and judgments for damages arising out of the town's use of the emergency channel.~~

~~(Ord. passed 3-20-00)~~

**Sec. 112.081 Installations, connections, other grantee services.**

~~(A) Standard installations.~~ Standard installation shall consist of a subscriber connection not exceeding 150 feet from a single point or pedestal attachment to the customer's residence.

- ~~(1) Service in excess of 150 feet and concealed wiring shall be charged before installation begins at a rate not to exceed additional installation costs.~~
- ~~(2) The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible, subject to the grantee's good faith judgment in regard to, but limited to, safety, efficiency and system performance.~~
- ~~(3) The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation.~~
- ~~(4) Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed 15 days, weather permitting.~~

~~(B) Antennas and antenna switches.~~ The grantee shall not, as condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

~~(C) Lockout devices.~~

- ~~(1) The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber.~~
- ~~(2) The lockout device described herein shall be made available to all subscribers requesting it, beginning on the first day that any cable service is provided or, in the case of a renewed or extended franchise, on the effective date of such renewal or extension.~~

~~(D) Reconnection.~~

- ~~(1) The grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed.~~

- 
- (2) ~~Further, any such reconnection may be on terms and conditions established by the grantee.~~
- (E) ~~Free disconnection.~~ Subscribers shall have the right to have cable service disconnected or de-authorized without charge therefor.
- (1) ~~Such disconnection or de-authorization shall be made as soon as practicable and not to exceed 15 days.~~
- (2) ~~A refund of unused service charges shall be paid to the customer within 60 days from the date of termination of service.~~
- (F) ~~Delinquent accounts.~~
- (1) ~~The grantee shall use its best efforts to collect delinquent subscriber accounts.~~
- (2) ~~Whenever possible, the grantee shall provide the customer with at least seven working days written notice prior to disconnection.~~
- (Ord. passed 3-20-00)

**Sec. 112.082 Service calls and complaint procedures.**

- (A) ~~System office.~~ The grantee shall establish, operate and maintain, a local office and local telephone number within the system, including a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges.
- (B) ~~System telephone.~~ The grantee shall have a listed, locally staffed telephone number for service calls, and such telephone service shall be available 24 hours a day, seven days a week.
- (C) ~~Complaint response.~~ The grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities.
- (1) ~~The grantee shall respond as quickly as possible to such complaints and requests.~~
- (2) ~~Complaints or requests which may pose a potential health and safety hazard will be responded to immediately.~~
- (3) ~~In connection with billing complaints, the grantee shall respond within seven business days.~~
- (D) ~~Rules/regulations.~~
- (1) ~~The grantee shall prepare and file with the town copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints.~~
- (2) ~~The grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the office or agent to whom such~~

inquiries or complaints are to be addressed, and furnish information concerning the town office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.

(E) ~~Records.~~ The grantee shall keep full records in connection with all complaints and requests in the nature of complaints in connection with the system.

(1) ~~Such records shall identify the person contacting the grantee and the person responding on behalf of the grantee, the subject matter of the contract, the date and time it was received, the resolution of the matter in question or the action taken by the grantee in connection with the contact, and the date and time thereof and such other information as may be deemed pertinent by the grantee.~~

(2) ~~These records shall be made available for periodic inspection by the town after 48 hours notice to grantee.~~

(F) ~~Equipment service/replacement.~~ The grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the grantee may charge a subscriber for service to or replacement of any equipment damaged directly or indirectly by a subscriber.

(G) ~~Unresolved complaints.~~ The town may review and monitor unresolved customer complaints.

(H) ~~Service interruption rebate.~~ In the event that any subscriber is interrupted for 24 or more consecutive hours due to causes within the grantee's control, the grantee shall provide a prorated rebate of monthly fees to the affected subscriber upon the subscriber's request.

(Ord. passed 3-20-00)

#### **Sec. 112.083 Consumer service goals.**

~~Grantee agrees to the following consumer service goals or any other goals established by federal or state governmental authorities, whichever are higher.~~

(A) ~~Complaint resolution.~~ The grantee shall resolve all complaints within 15 days and shall notify the town of those not resolved within 15 days.

(B) ~~Subscriber information.~~

(1) ~~The grantee shall provide all prospective subscribers with complete, clear and concise information concerning all services and rates provided by the grantee upon solicitation of service and prior to the confirmation of any agreement for the installation of cable service.~~

(2) ~~Such information shall include but not be limited to the following: all services and rates; deposits, if applicable; installation costs; additional set charges; service upgrade and downgrade charges; and stolen or lost converter charges.~~

(C) ~~Subscriber handbook.~~ A subscriber handbook shall be provided to each subscriber upon installation. This handbook should include information:

(1) ~~On the utilization of videocassette recorders;~~

- ~~(2) Regarding complaint, billing and collection procedures, methods of ordering changes, termination of services, refund policies and the telephone number and address of the appropriate town department to whom problems with complaint procedures can be addressed;~~
  - ~~(3) Installation and service maintenance policies;~~
  - ~~(4) Instructions on how to use the cable service;~~
  - ~~(5) Channel positions of programming carried on the system;~~
  - ~~(6) Concerning parental lock-out devices;~~
  - ~~(7) About use of the grantee's converters;~~
  - ~~(8) About adjusting the television set;~~
  - ~~(9) Explaining the bill;~~
  - ~~(10) Describing community programming;~~
  - ~~(11) Regarding office hours and customer-related telephone numbers; and~~
  - ~~(12) Regarding addresses for the grantee's offices.~~
- ~~(D) *Services.* The grantee's office shall be open weekdays from 8 a.m. to 6 p.m. and on Saturdays from 9 a.m. to 6 p.m., unless otherwise stated in grantee's franchise agreement.~~
- ~~(1) Additional payment centers located elsewhere in the town should be provided throughout the term of the franchise, as consumer needs demand.~~
  - ~~(2) Where feasible, grantee shall provide contract services for the purpose of exchange or retrieval of converter equipment outside the normal business hours.~~
  - ~~(3) The grantee shall respond to repair calls, either by telephone contact with the subscriber for an appointment, by a visit to the premises or by a doorknob hanger if no one is at home, within 24 hours.~~
- ~~(E) *Maintenance notices.*~~
- ~~(1) The grantee shall notify subscribers of routine maintenance activities through methods such as notes in the monthly guide, bill inserts and video commercials.~~
  - ~~(2) Whenever possible, routine maintenance should be done by the grantee in the early morning so that the subscribers are inconvenienced the least amount possible.~~
- ~~(F) *Corrective actions.*~~
- ~~(1) Excluding conditions beyond the control of the grantee, the grantee will begin working on the loss of picture or sound on one or more channels promptly and in no event later than 24 hours after the interruption becomes known.~~
  - ~~(2) The grantee must begin actions to correct other service problems the next business day after notification of the service problem.~~

- (G) ~~Installations.~~ The grantee shall install cable television service to new subscribers and perform service changes to existing subscribers within seven business days of initial requests under standard conditions.
- (H) ~~Appointments.~~ Appointment window alternatives for installations, service calls and other installation activities will be either for a specific time or no more than a four hour block of time during the business day.
- (1) ~~Appointments cannot be canceled after the close of business the day before an appointment is scheduled.~~
  - (2) ~~Customers must be contacted and offered another time at their convenience if the company representative is running late and cannot keep the scheduled appointment.~~
  - (3) ~~The above standards must be met no less than 95 percent of the time, as measured on a quarterly basis.~~
- (I) ~~Telephone response.~~ For consumer telephone calls, the grantee should answer 90 percent of all calls handled (all calls which held more than 60 seconds) within 60 seconds.
- (1) ~~No more than 15 percent of the total calls received and held for over 60 seconds should be lost. Busy signals cannot be received more than three percent of the time, under normal operating conditions.~~
  - (2) ~~The grantee shall provide information to the town annually or upon special request regarding the number of active telephone lines, the time period in which telephone calls are answered and the percent of calls lost.~~
  - (3) ~~Such back-up information as deemed necessary by the town which can be provided by the grantee's telephone management information system should be provided by the grantee.~~
- (J) ~~Trained representative.~~
- (1) ~~A trained company representative will answer consumer calls during normal business hours.~~
  - (2) ~~Calls made after normal business hours are to be answered by trained company representatives on the next business day.~~
- (K) ~~Consumer education.~~ The grantee shall provide ongoing consumer education programs regarding billing which shall include at a minimum annual subscriber notification of the billing process and cycles and 30 days prior notification of changes to this process or the cycles.
- (L) ~~Consumer research.~~ The grantee, on an ongoing basis, shall research customer needs, especially in the areas of automated response units, universal remote controls and cable converter boxes.
- (M) ~~Performance review information.~~ The grantee shall provide information deemed necessary to the town for triennial performance review of the grantee's performance and to evaluate consumer service performance.



- (N) ~~*Billing.* The grantee, at a maximum, shall bill subscribers monthly, but this shall not preclude other payment arrangements expressly agreed upon by the grantee and the subscriber.~~
- (O) ~~*Bill clarity.* All bills must be clear, concise and understandable.~~
- (1) ~~Bills must be itemized, including itemization for basic and premium service charges and equipment charges.~~
- (2) ~~All activities during the billing period must be shown, including optional charges, rebates and credits.~~
- (P) ~~*Complaint response.* The grantee must respond to written complaints from subscribers regarding billing disputes within 30 days.~~
- (1) ~~Refund checks must be issued promptly, but not later than:~~
- (a) ~~The customer's next billing cycle following resolution of the customer's request, or 30 days, whichever is earlier; or~~
- (b) ~~Upon return of equipment supplied by grantee if service is terminated.~~
- (2) ~~Credit is to be issued no later than the customer's next billing cycle following determination that credit is warranted.~~
- (Q) ~~*Notices.*~~
- (1) ~~Customers must be notified of any changes in rates, programming services or channel positions in writing and by announcements on the cable system.~~
- (2) ~~If the change is within the grantee's control, notice must be provided at least 30 days in advance.~~
- (R) ~~*Repair response.* The grantee shall resolve 80 percent of all repair calls within 48 hours, unless otherwise stipulated in grantee's franchise agreement.~~
- (S) ~~*Prior approval.* The grantee shall secure formal approval from the Administrator prior to any and all changes to all the aforementioned items of this section, which approval shall not unreasonably be withheld.~~
- (T) ~~*Additional compliance.* In addition to the above, the grantee shall comply with all service-related procedures contained in the franchise agreement.~~

(Ord. passed 3-20-00)

#### **Sec. 112.084 Continuity of service.**

- (A) ~~*Uninterrupted service.* The grantee shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted service, insofar as their financial and other obligations to the grantee are honored.~~
- (B) ~~*Rebuild, modify or sale of system.*~~
- (1) ~~In the event that the grantee elects to rebuild, modify or sell the system, or the town gives notice of intent to terminate or fails to renew the grantee's franchise, the grantee~~

~~shall cooperate with the town or new grantee or operator in maintaining continuity of service to all subscribers.~~

- ~~(2) During such period, the grantee shall be entitled to the revenues for any period during which it operated the system and shall be entitled to reasonable costs when it no longer operates the system.~~

~~(C) *Failure to operate.*~~

- ~~(1) In the event the grantee fails to operate the system for seven consecutive days without prior approval of the town or without just cause, the town may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the town or a permanent successor is selected.~~
- ~~(2) If the town is required to fulfill this obligation for the grantee, the grantee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the grantee's failure to perform.~~

~~(Ord. passed 3-20-00)~~

**~~Sec. 112.085 Protection of subscriber privacy.~~**

- ~~(A) *Notice.* At the time of entering into an agreement to provide any cable service or other service to a subscriber, and at least once a year thereafter, the grantee shall provide notice, in the form of a separate written statement to each subscriber, which clearly and conspicuously informs the subscriber of:~~

- ~~(1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;~~
- ~~(2) The nature, frequency and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;~~
- ~~(3) The period during which such information might be maintained by the grantee;~~
- ~~(4) The times and places at which the subscriber may have access to such information in accordance with this subchapter and other applicable federal, state, county and local law.~~

- ~~(B) *Personally identifiable information.* The grantee shall not use the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the grantee to the subscriber or to detect unauthorized reception of cable communications, without the prior written or electronic consent of the subscriber concerned or as otherwise required by the FCC.~~

- ~~(C) *Consent.* The grantee shall not, without the specific written or electronic consent of the subscribers concerned, sell, disclose or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers or any personal data, social security number, income and other data the grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the grantee to the subscriber, if required to be in compliance with federal law or~~

---

regulation or if the grantee has provided the subscriber the opportunity to prohibit or limit such disclosure and the disclosure does not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the grantee or the nature of any transaction made by the subscriber over the cable system.

(D) ~~Information access.~~ Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the grantee collects or maintains.

(1) ~~Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by the grantee.~~

(2) ~~The subscriber shall be provided the reasonable opportunity to correct any error in such information.~~

(E) ~~Not prohibited.~~ This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

(Ord. passed 3-20-00)

### **Sec. 112.086 Rights of individuals.**

(A) ~~Non-discrimination required.~~

(1) ~~The grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired; and, provided further that nothing contained herein shall prohibit the grantee from granting senior citizens discounts to subscribers.~~

(2) ~~The grantee shall comply at all times with all other applicable federal, state, county and local laws and regulations relating to non-discrimination which may hereinafter be incorporated and made a part of this subchapter by reference.~~

(B) ~~Fairness of accessibility.~~ The entire system of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; provided, however, that allocation of use of said facilities shall be made according to the rules or decisions of the grantee and any regulatory agencies affecting the same.

(C) ~~Information accessibility.~~

(1) ~~Each individual shall have the right to information concerning the provisions of this subchapter and the rules and regulations formulated pursuant to it by the Commission, agent or entity created hereunder or pursuant to this subchapter.~~

(2) ~~The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the town and in such other media as the Commission may determine.~~

- ~~(3) Each individual subscribing to the services of the cable communications system or leasing channels thereof or using the access channels shall be provided with a memorandum setting forth all rules and regulations specifically outlining such individual rights, duties and obligations pertinent to such use.~~
- ~~(4) Such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be specified by the Commission.~~
- ~~(5) Each document required to be maintained, prepared, filed or submitted under the provisions of this subchapter or pursuant to it, except those required and designated confidential by the grantee or the Federal Communications Commission shall be a public document, available for public inspection and copying at the requestor's expense, at the office of the grantee or the town during normal business hours.~~
- ~~(6) The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.~~
- ~~(7) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Commission pursuant to the provisions of this subchapter.~~
- ~~(8) Such representation by citizens of the town shall be in the manner and form as the Commission may determine, ensuring equal participation of all protected groups.~~

~~(Ord. passed 3-20-00)~~

**Secs. 112.087—112.099 Reserved.**

#### *ARTICLE VI. BOOKS, RECORDS AND REPORTS*

**Sec. 112.100 Books and records available to town.**

- ~~(A) The grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the town.~~
- ~~(B) The town shall have the right to inspect upon 24 hours written notice, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the system unless otherwise provided for in the franchise.~~

~~(Ord. passed 3-20-00)~~

**Sec. 112.101 Reports required.**

~~The grantee shall file the following reports with the town as indicated herein, unless modified by terms of Grantee's franchise agreement.~~

- ~~(A) *Regulatory communications.* All reports required by the Federal Communications Commission (FCC), including, but not limited to, annual proof of performance tests and results and Equal Employment Opportunity (EEO) reports.~~

- 
- (B) ~~*Facilities report.*~~ An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.
- (C) ~~*Grantee rules.*~~ The grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its system subscribers shall be filed with the town.
- (D) ~~*Proof of bonds and insurance.*~~ The grantee shall submit to the town the required performance bond, or a certified copy thereof, written evidence of payment of required premium, certificates of policies of insurance required by this subchapter and written notice of payment of required premium.
- (E) ~~*Financial and ownership reports.*~~ The grantee shall submit to the town an independently audited annual financial statement for its town system, including a balance sheet and income statement which details gross revenues, in addition to a copy of its parent company's annual audit report.
- (F) ~~*Operational reports.*~~ The following system and operational reports shall be submitted annually to the town:
- (1) ~~A report on the system's technical tests and measurements as set forth herein and in the franchise agreement;~~
  - (2) ~~A summary of the previous year's activities, including, but not limited to, new services offered;~~
  - (3) ~~A summary of complaints received and handled;~~
  - (4) ~~A summary of the number of outages (three or more service calls in one area).~~
- (G) ~~*Additional reports.*~~ The grantee shall prepare and furnish to the town, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the functions or duties of the town in connection with the system.
- (H) ~~*Exclusions for small systems.*~~ Small system operators, as classified under current FCC guidelines, shall be permitted to petition the town to secure waivers of certain reporting requirements in the franchise.

(Ord. passed 3-20-00)

#### **Sec. 112.102 Reports required to be maintained.**

The Grantee shall at all times maintain the following reports.

- (A) ~~*Complaints/service interruptions.*~~ A record of all complaints received and interruptions or degradation of service experienced for the preceding period prior to a performance review.

~~(B) *Plans/maps.* A full and complete set of plans, record and "as-built" maps showing the exact location of all cable communication system equipment installed or in use in the town, exclusive of subscriber service drops.~~

~~(1) Grantee shall provide the "as built" maps to the town using a geographical information systems format approved by the town, which accurately displays their "as built" system.~~

~~(2) These maps will be kept current continuously and updated at least annually by the grantee.~~

~~(C) *Contractor records.* A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.~~

~~(D) *Other records.* The town may impose reasonable requests for additional information, records and documents from time to time.~~

~~(Ord. passed 3-20-00)~~

#### **~~Sec. 112.103 Records required.~~**

~~The grantee shall at all times maintain the following records.~~

~~(A) *Public notice.* Minimum public notice of any public meeting relating to this subchapter or the franchise shall be by publication in a newspaper of general circulation in the area at least seven days prior to the meeting and by posting at the Charlotte-Mecklenburg Government Center.~~

~~(B) *Captions.* The captions to sections throughout this subchapter are intended solely to facilitate reading and reference to the sections and provisions of this proposal. Such captions shall not affect the meaning or interpretation of this subchapter.~~

~~(C) *Franchise applications.* Applicants for a franchise shall submit to the town written applications utilizing the appropriate standard format provided by the town, at the time and place designated by the town for accepting applications and including the designated applications and including the designated application fee, if any.~~

~~(Ord. passed 3-20-00)~~

#### **~~Sec. 112.104 Exclusions for small systems.~~**

~~(A) *Section exclusions.* Any small system (as defined by the FCC), operating within the town, shall be excluded from the following provisions:~~

~~(1) Equal opportunity affirmative action plan, Section 112.028;~~

~~(2) Construction and technical standards, state of the art, Section 112.061;~~

~~(3) Records required, Section 112.103.~~

~~(B) *Section substitutions.* Any small system (as defined by the FCC), operating within the town, shall have the following sections replace the so numbered section herein, Section 112.049 Schedule of Liquidated Damages.~~

- (1) ~~*Willful violation.*~~ For the willful violation of any of the following provisions of this section, the town shall notify the grantee in writing of the violation and the grantee shall be allowed 30 days, or such greater amount of time as the town may specify, to correct such violation.
- (2) ~~*Chargeable to bond.*~~ Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by the grantee within the aforesaid period of time.
- (3) ~~*Hearing.*~~ The grantee may request a hearing before the Commission in writing within seven business days of receiving notice of violation from the town. The time frame specified in the notice for correction of the violation shall be tolled from the date of receipt of a request from the grantee for a hearing until the day after the hearing.
- (4) ~~*Damages, penalties.*~~ These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this section, including penalties or revocation, or other statutorily or judicially imposed penalties.
  - (a) ~~No decision by the town to invoke any remedy under this section, the franchise agreement or any statute, law or ordinance shall preclude the availability of any other such remedy.~~

| <b>Issue</b>                                                                                                        | <b>Liquidated Damages</b>                                              |
|---------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Failure to render payment of the reimbursement of the town's franchise expenses, franchise fee or penalty payments: | \$200.00 per day from time due until paid.                             |
| Failure to file reports:                                                                                            | \$50.00 per day from time due until report(s) are filed.               |
| Failure to complete system construction:                                                                            | \$400.00 per day from time due until construction is complete.         |
| Failure to comply with material provisions of this chapter or the franchise agreement:                              | \$100.00 per day until grantee is in compliance with the provision(s). |
| Failure to provide access funds, equipment, facilities or services:                                                 | \$200.00 per day from time due until paid or provided.                 |

- (b) ~~The town retains the right at its sole option to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the grantee are deemed to exist. The Town Manager or his or her designee shall determine the town's willingness to reduce or waive any of the above-listed penalties.~~

**Sec. 112.100 Books and records available to the town.**

- ~~(1) The grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the town.~~
- ~~(2) The town shall have the right to inspect upon reasonable written notice, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the system.~~

~~(Ord. passed 3-20-00)~~

**Sec. 92.99 - Penalty.**

Any violation of this chapter or the failure to abide by any lawful order issued pursuant to this chapter shall be an infraction requiring the payment of a fifty dollar (\$50.00) penalty. This Chapter and may also be enforced punishable as provided in [Section 10.99](#).

**Sec. 130.01 - Model glue; possession, use regulated.**

- (A) *Definition.* As used in this section, the term "model glue" shall mean any glue or cement of the type commonly used in the building of model airplanes, boats and automobiles, containing tuluol, hexane, trichloroethylene, isopropanol, methyl isobutyle ketone, methyl cellosolve acetate, cyclohexanone or other solvent or chemical having the property of releasing toxic vapors.
- (B) *Inhalation of fumes prohibited.* No person shall, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction or dulling of the senses or nervous system, intentionally smell or inhale the fumes from any model glue; provided, however, that this section shall not apply to the inhalation of any anesthesia for medical or dental purposes.
- (C) *Possession or transfer for unlawful purposes prohibited.* No person shall, for the purposes of violation or aiding another to violate any provision of this section, intentionally possess, buy, sell, transfer possession or receive possession of any model glue.
- (D) *Use by minors regulated.*

(1) Except as provided in subsection (3) hereof, no person under 16 years of age shall possess or buy any model glue.

(2) Except as provided in subsection (3) hereof, no person shall sell or transfer possession of any model glue to another person under 16 years of age.

(3) A person may sell or transfer possession of model glue to a person under 16 years of age for model building or other lawful use where the minor has in his or her possession and exhibits the written consent of one of his or her parents or his or her guardian. A



person may sell and transfer possession of model glue to a person under 16 years of age where the glue is sold, delivered or given away simultaneously with and as part of a kit used for the construction of model airplanes, model boats, model automobiles, model trains or other similar models.

(E) Penalty. This section may be enforced by any or both of the following ways as provided by law.

(1) Anyone violating this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$100.00 or imprisoned for not more than 20 days.

(2) A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$50.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

#### **Sec. 32.02 - Levy of tax.**

A tax is imposed and levied in an amount equal to one and one-half percent of the gross receipts derived from the short-term lease or rental of vehicles at retail to the general public.

~~This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211.~~

## **AN ORDINANCE TO AMEND THE TOWN OF HUNTERSVILLE CODE OF ORDINANCES**

**Section 1. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 10.99 of Title I of the Town of Huntersville Code of Ordinances, General Penalty, is hereby amended as follows:

### **Sec. 10.99 - General penalty.**

- (A) In accordance with G.S. § 160A-175, and unless this code of ordinances provides otherwise or as otherwise prohibited by law, violation of any provision hereof shall be a Class 3 misdemeanor as provided in G.S. § 14-4, punishable upon conviction by a fine not exceeding \$50.00 or by imprisonment not exceeding 30 days. An ordinance may provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. 14-4.
- (B) ~~By express statement, a~~ An ordinance contained herein may be enforced ~~provide for its enforcement~~ by other remedies as authorized in G.S. § 160A-175, including the imposition of civil fines, the ordering of appropriate equitable relief, including injunctions, or a combination of remedies.
- (C) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

**Section 2. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 98.99 of the Town of Huntersville Code of Ordinances, Penalty, is hereby added as follows:

### **Sec. 98.99 - Penalty.**

This chapter may be enforced by any or both of the following ways as provided by law:

- Anyone violating this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$100.00 or imprisoned for not more than 20 days.
- A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$100.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

**Section 3.** BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 910.99 of the Town of Huntersville Code of Ordinances, Penalty, is hereby added as follows:

**Sec. 910.99 - Penalty.**

This chapter may be enforced by any or both of the following ways as provided by law:

- Anyone violating this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$100.00 or imprisoned for not more than 20 days.
- A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$100.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

**Section 4.** BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 111.99 of the Town of Huntersville Code of Ordinances, Penalty, is hereby added as follows:

**Sec. 111.99 - Penalty.**

This chapter may be enforced by any of the following ways as provided by law:

(A) A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$100.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

**Section 5.** BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Chapter 112 of the Town of Huntersville Code of Ordinances, Cable Communications, is hereby removed as follows:

**~~CHAPTER 112 CABLE COMMUNICATIONS~~**

**~~ARTICLE I. GENERAL PROVISIONS~~**

---

**Sec. 112.001 Purpose.**

- (A) ~~The Town of Huntersville finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of Huntersville. Because of the complex and rapidly changing technology associated with cable television, the town further finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers, which may be vested in the town or such persons as the town shall designate.~~
- (B) ~~Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the town's residents but can also provide a variety of broadband, interactive communications services to institutions and individuals.~~
- (C) ~~For these purposes, the following goals underlie the regulations contained herein:~~
- ~~(1) Where economically feasible, communications services should be available to the maximum number of town residents, as provided for herein;~~
  - ~~(2) The cable television systems should be capable of accommodating both the present and reasonably foreseeable future communications needs of the town;~~
  - ~~(3) The cable television systems should be maintained as necessary during the franchise term so that the new facilities, if any, may be integrated to the maximum extent possible with existing facilities;~~
  - ~~(4) The communications systems authorized by this chapter shall be responsive to the needs and interests of the local community.~~
- (D) ~~The public, educational and governmental needs for reasonable access to the cable system shall be met.~~
- (Ord. passed 3-20-00)

**Sec. 112.002 Title.**

- (A) ~~This chapter shall be known and may be cited as the "Huntersville Cable Communications Regulatory Ordinance," and it shall become a part of the ordinances of the Town of Huntersville.~~
- (B) ~~This chapter shall take effect and be in force from and after the date as established herein.~~
- (C) ~~All ordinances or parts of ordinances in conflict with the provisions of this chapter are repealed.~~
- (Ord. passed 3-20-00)

**Sec. 112.003 Definitions.**

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

*Additional services* means programming or services for which an additional charge is made beyond the charge for basic subscriber services, including, but not limited to movies, concerts, variety acts, sporting events, pay per view programs, interactive services and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this chapter.

*Basic cable service* means any service tier which includes the retransmission of local television broadcast signals and public, educational and government access channels.

*Cable Act or Communications Policy Act* means the Cable Communications Policy Act of 1984, 47 USC 521 *et seq.*, and the Telecommunications Act of 1996, which amends various sections of Titles 15, 18, and 47, as they may be amended or succeeded.

*Cable service* means the one-way transmission to subscribers of video programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

*Cable television system (system)* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves only subscribers in one or more multiple dwelling unit dwellings under common ownership, control or management, unless such facility or facilities uses any public rights-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provision of Title 11 of the Cable Act, except that such facility shall be considered a cable system other than for purposes of Section 621(c) of the Cable Act to the extent such facility is used in the transmission of video programming directly to subscribers; or
- (4) Any facilities of any electric utility used solely for operating its electric utility systems.

*Channel* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

*Closed-circuit or institutional service* means such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

*Commence operation* means that time and date when operation of the cable communications system is considered to have commenced, which shall be when the system is fully constructed.

*Commercial subscriber* means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

*Commission* means the Town of Huntersville Board of Commissioners.

*Converter* means an electronic device which converts signals to a frequency receivable by a subscriber television receiver and any channel selector which permits a subscriber to view all signals at designated converter dial locations at the set or by remote control.

*Dedicated institutional access channels* means broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit-making organizations that may be qualified by the Commission.

*Discrete channel* means a channel which can only be received by the person and/or institution intended to receive signals on such channel.

*Drop* means a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

*Educational channel or educational access channel* means any analog channel designated for noncommercial educational access programming.

*External incremental cost* means only the incremental material costs for additional fibers within common cable sheaths and includes no labor costs for construction of such common cable sheaths.

*Fair market value* means the price that a willing buyer would pay to a willing seller for a going concern.

*FCC* means the Federal Communications Commission or any legally appointed or elected successor.

*Franchise* means the nonexclusive rights, granted pursuant to this chapter, to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the town. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the town, as required by other ordinances and laws of the town.

*Franchise agreement* means a contract entered into voluntarily by the town and the grantee, containing the specific provisions of the franchise granted including applicable referenced specifications, franchise proposals, applications and other related material.

*Franchise area* means the entire town, or portions thereof, for which a franchise is granted under the authority of this chapter. If not otherwise stated in the franchise agreement, the franchise area shall be the limits of the town.

*Franchise fee* means an amount, as specified by the town, of the grantee's gross receipts from the operation of the system pursuant to the franchise agreement.

*Franchisee or grantee* means the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s) or organization(s) of any kind which has been legally granted a franchise by the town and its lawful successor, transferee or assignee.

*Government channel or government access channel* means any channel specifically designated or dedicated for government use.

*Grantor* means the Town of Huntersville as represented by the Board of Commissioners acting within the scope of its jurisdiction.

~~*Gross annual revenues* means all revenue received directly or indirectly by the grantee, its affiliates, subsidiaries and any person in which the grantee has a financial interest derived from the operation of the system hereunder; or as further defined in a franchise agreement.~~

~~*Incremental material cost* means only that portion of the costs incurred in the installation of facilities which exceed the construction capital cost of the cable television system and, but for the additional capacity provided upon request of the town, which would be incurred in the normal course of providing facilities of the grantee's own use and purpose.~~

~~*Installation* means the connection of the system from feeder cable to an outlet in a subscribers home.~~

~~*Leased access channel or commercial leased channel* means any channel designated or dedicated for use by persons unaffiliated with the grantee in accordance with the Cable Act.~~

~~*Monitoring* means observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.~~

~~*Person* means an individual, partnership, association, organization, corporation or any lawful successor or transferee of said individual, partnership, association, organization or corporation.~~

~~*Plant mile* means a linear mile of strand bearing cable as measured on the street or easement from pole or pedestal to pedestal.~~

~~*Programmer* means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.~~

~~*Public access channel or community access channel* means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a nondiscriminatory basis.~~

~~*Public buildings* means buildings so designated by the town that shall not be used for commercial purposes.~~

~~*Public property* means any real property owned by the town, other than street.~~

~~*Public way or public rights-of-way* means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, waterways, utility easements or other public right-of-way hereafter located within the town which shall entitle the town and the grantee to the use thereof for the purpose of installing and maintaining a cable television system.~~

~~*Reasonable notice* means written notice addressed to either town or grantee at its respective principal office within the town or such other office as the party has designated to the other as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven days, holidays recognized by the town shall be excluded.~~

~~*Resident* means any person residing in the town, as otherwise defined by applicable law.~~

~~*Residential subscriber* means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.~~

~~*Sale* means any sale, exchange, barter or offer for sale.~~

~~*School* means any public, private or nonprofit educational institution, including primary and secondary schools, colleges and universities.~~

~~*Service or Cable service* means~~

~~(1) The one-way transmission to subscribers of:~~

~~(a) Video programming; or~~

~~(b) Other programming service.~~

~~(2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.~~

~~*Service area* means the entire geographic area within the franchise territory.~~

~~*Signal* means any transmission of radio frequency energy or optical information.~~

~~*State* means the State of North Carolina.~~

~~*Street* means such of the following, which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the town limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the town shall permit to be included within the definition of street from time to time.~~

~~*Subscriber* means any person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with a cable communications system.~~

~~*System facilities* means the cable communications system constructed for use within the town, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property, security systems, equipment or facilities located within the corporate limits of the town, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the town and any other equipment or facilities located within the corporate limits of the town intended for the use of the system; provided, however, such system facilities exclude buildings, contacts, facilities and equipment where primary use is for providing service to other system facilities located outside the town limits.~~

~~*Transfer* means the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except publicly traded issue, not in control of the grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five percent or more at one time of the ownership or controlling interest in the system or 20 percent cumulatively over the term of the franchise of such interests~~



to a corporation, partnership, limited partnership, trust or association or person or group of persons acting in concert.

*Trunk line* means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

*Upstream signal* means a signal originating from a terminal to another point in the cable television system, including video, audio or digital signals for either programs or other uses such as security alert services and the like.

*User* means a person or organization utilizing channel or equipment and facilities for the purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

(Ord. passed 3-20-00)

#### **Sec. 112.004 Performance bond.**

(A) *Bond.* Not later than 45 days after the effective date of the franchise, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the town a corporate surety bond or letter of credit, in an amount specified in the franchise agreement, to guarantee the faithful performance of the grantee of all its obligations provided under this section and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation of this section.

(B) *Conditions.* The performance bond shall provide the following conditions:

(1) There shall be recovered by the town, jointly and severally from the principal and surety, any and all fines and penalties due to the town and any and all damages, losses, costs and expenses suffered or incurred by the town resulting from the failure of the grantee to faithfully comply with the provisions of this section and the franchise applicable orders, permits and directives of any town agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the town which arise by reason of the construction, operation, maintenance or repair of the cable system;

(2) The total amount of the bond shall be forfeited in favor of the town in the event:

(a) The grantee abandons the cable system at any time during the term of the franchise or any extension thereto;

(b) The grantee assigns the franchise without the express written consent of the town.

(C) *Reduction of bond.* Upon written application by the grantee, the town may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the town's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within 90 days of any prior application.

(D) *Use of performance bond.* Prior to drawing upon the performance bond for the purposes described in this section, the town shall notify the grantee in writing that payment is due,

and the grantee shall have ten days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the grantee does not make the payment within ten days, the town may withdraw the amount thereof from the performance bond.

- (E) ~~Notification.~~ Within three days of a withdrawal from the performance bond, the town shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
- (F) ~~Replenishment of performance bond.~~ No later than 30 days after receipt by the grantee of certified mail notification of a withdrawal pursuant to division (E) of this section, the grantor shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this section.
- (G) ~~Non-renewal, alteration or cancellation of performance bond.~~ The performance bond required herein shall be in a form satisfactory to the town and shall require 30 days written notice of any non-renewal, alteration or cancellation to both the town and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premium for and file with the town written evidence of the issuance of a replacement bond within 30 days following receipt by the town or the grantee of any notice of cancellation.

(Ord. passed 3-20-00)

#### **~~Sec. 112.005 Liability and insurance.~~**

- (A) ~~Insurance amounts.~~ As of the effective date of this section, the grantee shall file with the town a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of the grantee, a comprehensive general liability insurance policy, naming the town as additional insured, written by a company authorized to do business in the State of North Carolina, protecting the town against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the cable communications system by the grantee in the following minimum amounts:
  - (1) ~~One million dollars combined single limited, bodily injury and for property damage in any one occurrence;~~
  - (2) ~~One million dollars aggregate.~~
- (B) ~~Automobile liability.~~ The grantee shall also file with the town a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the State of North Carolina for all owned, non-owned, hired and leased vehicles operated by the grantee, with limits no less than \$1,000,000.00 each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.
- (C) ~~Worker's compensation and employer's liability insurance.~~ The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of the statutory limit for worker's compensation and \$500,000.00 for employer's liability.

~~(D) *Term and endorsements.*~~

- ~~(1) All liability insurance required in this section shall be kept in full force and effect by the grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures installed by the grantee incidental to the maintenance and operation of this section.~~
- ~~(2) All policies shall be endorsed to give the Town of Huntersville 30 days written notice of the intent to amend, cancel or non-renew by either the grantee or the insuring company.~~

~~(E) *Liability and insurance.* The grantee agrees and binds itself to indemnify, keep and hold free and harmless the town from any and all liability or costs, including attorneys' fees and court costs pertaining thereto, arising from any activities herein authorized, in that the grantee shall pay, and by its acceptance of the franchise the grantee specifically agrees that it will pay, all damages and penalties which the town may be legally required to pay as a result of the franchise, provided that the town provides grantee timely notice of any such damages and penalties and tender promptly any cases for which it seeks indemnification. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this section.~~

~~(F) *No limitation on liability.* None of the provisions of this chapter or any insurance policy required herein, or any damages recovered by the town hereunder, shall be construed to excuse the faithful performance by or limit the liability of grantee under this chapter or the franchise agreement for damages either to the limits of such policies or otherwise.~~

~~(Ord. passed 3-20-00)~~

**Secs. 112.006—112.019 Reserved.**

*ARTICLE II. GRANT OF FRANCHISE*

**Sec. 112.020 Grant of franchise; territory.**

~~(A) *Grant of franchise.*~~

- ~~(1) In the event that the town shall grant to the grantee a nonexclusive, revocable franchise, as provided herein, to construct, operate and maintain a cable communications system within the town, the franchise shall constitute both a right and an obligation to provide the services of a cable communications system, as regulated by the provisions of this chapter and the franchise agreement.~~
- ~~(2) The franchise agreement shall include by reference those provisions of the grantee's application for franchise that are finally negotiated and agreed to by the town and grantee.~~

~~(B) *Terms/conditions.* The franchise shall be granted under the terms and conditions contained herein, consistent with the other applicable statutory requirements. In the event of conflict~~

between the terms and conditions of this chapter, the franchise agreement or the terms and conditions on which the town may grant a franchise, statutory requirements shall control.

- (C) ~~Ordinance provisions.~~ Any franchise granted by the town is made subject to the applicable general ordinance provisions of the town now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the town regarding permits, fees to be paid or manner of construction.
- (D) ~~Franchise territory.~~ The franchise territory shall be the entire town, or portions thereof, for which a franchise is granted under authority of this chapter. The service area shall be the entire territory defined in the franchise agreement.

(Ord. passed 3-20-00)

#### **Sec. 112.021 Use of public streets and ways, town and grantee facilities.**

- (A) ~~Public streets and ways.~~ For the purpose of operating and maintaining a cable communications system in the town, the grantee may erect, install, construct, repair, replace, reconstruct and/or retain in, on, over, under, upon, across and along the public streets and ways within the town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications system; provided, however, that the grantee complies with all design, construction, safety and performance provisions contained in this chapter, the franchise agreement and other applicable regulations.
- (B) ~~Town facilities.~~ At the town's option, the town may require a grantee to utilize town-owned conduit or other facilities for any portion of its cable communications system which is being newly constructed or rebuilt. The consideration, if any, for the use of town conduit or other facilities shall be as stated in the franchise agreement. A reasonable fee, if any, for the use of town facilities established in the franchise agreement may be adjusted at the periodic performance evaluations.
- (C) ~~Grantee facilities.~~ No poles shall be erected by the grantee without prior approval of the appropriate governing authorities with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right, and such poles shall be removed or modified by the grantee at its own expense whenever the appropriate governing authority determines that the public convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits, where possible. The town shall have the right, during the life of the franchise, to install and maintain upon the poles owned by the grantee, at fair market value, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the grantee.

(Ord. passed 3-20-00)

#### **Sec. 112.022 Franchise required; term, acceptance.**

- (A) ~~Required.~~ No cable communications system shall be allowed to occupy or use the streets of the town or be allowed to operate without a franchise.

~~(B) *Term.* The term of any franchise granted pursuant to this chapter shall be ten years, unless otherwise stated in the franchise agreement.~~

~~(C) *Acceptance.*~~

~~(1) Following approval by the town, any franchise granted pursuant to this chapter and the rights, privileges and authority granted thereunder shall take effect and be in force from and after the date on which the grantee accepts, signs and affixes its corporate seal to the franchise agreement.~~

~~(2) By accepting the franchise, the grantee agrees to be bound by all the terms and conditions contained in this chapter and said franchise. The grantee also agrees to provide all services specifically set forth in its application to provide cable television service within the confines of the town, and by its acceptance of the franchise, the grantee specifically acknowledges and agrees that its application is thereby attached and incorporated by reference and made a part of the franchise.~~

~~(3) By accepting the franchise, the grantee acknowledges that it does so relying upon its own investigation and understanding of the town in connection with the system and the franchise.~~

~~(4) By accepting the franchise, the grantee acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement not expressed therein, whether oral or written, concerning any term or condition of the franchise, regardless of whether such statement was made by or on behalf of the town.~~

~~(5) By accepting the franchise, the grantee acknowledges that it has carefully read the terms and conditions of the franchise agreement.~~

~~(D) *Nonexclusive.* Any franchise granted hereunder shall be nonexclusive. The town specifically reserves the right to grant at any time such additional franchises containing substantially equivalent standards, terms and conditions to those previously granted hereunder for a cable communications system as it deems appropriate.~~

~~(E) *Time of the essence.* Whenever the franchise agreement shall set forth any time for an act to be performed by or on behalf of either party, such time shall be deemed of the essence, and any failure of the party to perform within the time allotted shall always be sufficient ground for the other party to invoke an appropriate penalty.~~

~~(F) *North Carolina law governs.* In any controversy or dispute under this chapter, the law of the State of North Carolina shall apply to the extent such law has not been superseded or preempted.~~

~~(G) *Severability.* If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state, county or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.~~

~~(Ord. passed 3-20-00)~~

## **Sec. 112.023 Transfer of ownership or control.**

- (A) ~~Transfer/sale/lease/assignment.~~ Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to by force or voluntary sale, receivership or other means, without the prior consent of the town and then under such reasonable conditions as the town may establish.
- (B) ~~Notice.~~ The grantee shall promptly notify the town of any actual or proposed change in, transfer of or acquisition by any other party of control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five percent or more at one time of the ownership or controlling interest in the system or 20 percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association or person or group of persons acting in concert.
- (C) ~~Franchise subject to cancellation.~~ Every change, transfer or acquisition of control, as defined in division (B) of this section, of the grantee shall make the franchise subject to cancellation unless and until the town shall have consented thereto, which consent will not be unreasonably withheld.
- (1) ~~For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the town may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the grantee shall assist the town in any such inquiry.~~
  - (2) ~~Failure to provide all information reasonably requested by the town as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.~~
- (D) ~~Pledge of franchise.~~ The town agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the town that it, or its designees satisfactory to the town, will take control and operate the cable television system.
- (1) ~~Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system.~~
  - (2) ~~The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the town at its discretion, and during said period of time it shall have the right to petition for transfer of the franchise to another grantee.~~
  - (3) ~~If the town finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant, is satisfactory, the town will transfer and assign the rights and obligations of such franchise as are in the public interest.~~
  - (4) ~~The consent of the town to such transfer shall not be unreasonably withheld.~~

- (E) ~~*Town consent.*~~ The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town or other governmental entity in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this chapter and the franchise agreement.
- (F) ~~*Non-approval.*~~ In the absence of extraordinary circumstances, the town will not approve any transfer or assignment of the franchise prior to completion or rebuild of construction of the proposed system.
- (G) ~~*Controlling party signatory.*~~ Any approval by the town of transfer of ownership or control or rebuilds of the cable system shall be contingent upon the prospective controlling party becoming a signatory to the transfer amendment with the town.
- (H) ~~*Town rights reserved.*~~ The town reserves the right of first purchase in any sale, transfer, lease, assignment or disposal of the system at a cost at least equal to a bona fide offer otherwise acceptable to the grantee.
- (Ord. passed 3-20-00)

#### **Sec. 112.024 Franchise renewal; police powers.**

- (A) ~~*Renewal.*~~ Upon completion of the term of any franchise granted under this chapter, the town may grant or deny renewal of the franchise of the grantee in accordance with the provisions of the Cable Act.
- (B) ~~*Police powers.*~~
- (1) ~~In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the police powers of the town to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the town pursuant to such power.~~
  - (2) ~~Any conflict between the provisions of this chapter or the franchise and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable communications systems, which contains provisions inconsistent with this chapter shall prevail only if, upon such exercise, the town finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.~~

(Ord. passed 3-20-00)

#### **Sec. 112.025 Franchise fees.**

- (A) ~~*Fee amount.*~~ A grantee of any franchise hereunder shall pay to the town an annual fee in an amount as designated in the franchise agreement.
- (1) ~~The quarterly franchise payment shall commence as of the effective date of the franchise.~~

- (2) ~~The town shall be furnished a statement of said payment by a certified public accountant, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.~~
- (B) ~~Payment additional.~~ This payment shall be in addition to any other tax or payment owed to the town or other taxing jurisdiction by the grantee.
- (C) ~~Acceptance not release.~~ No acceptance of any payment by the town shall be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable as a franchise fee under this chapter.
- (D) ~~Interest.~~ In the event that any undisputed franchise payment is not made on or before the dates specified herein, the grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date.
- (E) ~~Payable quarterly.~~ The franchise fee and any other cost or damages assessed shall be payable quarterly to the town and submitted to the Town Finance Officer or other designee. Payment date is the last day of the month following the month in which payment is due.
- (F) ~~Audited financials.~~ Grantee agrees to provide to the town an independently audited annual financial statement, including a balance sheet and income statement which details all gross revenues, in addition to a copy of the annual audit report of the grantee's parent company.
- (G) ~~Right to inspect.~~ The town shall have the right upon reasonable notice to inspect the grantee's income records and to re-compute any amounts determined to be payable under this chapter. Any undisputed additional amount due to the town as a result of the audit shall be paid within 90 days following written notice to the grantee by the town, which notice shall include a copy of the audit report.
- (Ord. passed 3-20-00)

#### **Sec. 112.026 Forfeiture or revocation.**

- (A) ~~Revocation.~~ The Commission reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this chapter or the franchise agreement:
- (1) ~~If the grantee shall default in the performance of any of the material obligations under this chapter or under such documents, contracts and other terms and provisions entered into by and between the town and the grantee;~~
  - (2) ~~If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to the franchise agreement;~~
  - (3) ~~If the grantee's construction schedule is delayed later than the schedule contained in the franchise agreement, if any, or beyond any extended date set by the Board of Commissioners;~~
  - (4) ~~If the grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt;~~



- ~~(5) If the grantee fails to restore service after 96 consecutive hours of interrupted system-wide service, except when such service interruption is caused by forces beyond the grantee's control (including but not limited to actions of subscribers) or when approval of such interruption is obtained from the Town Manager or his or her designee;~~
    - ~~(6) If there has been material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.~~
  - ~~(B) *Force majeure.* The grantee shall be not liable for any failure or delay in the performance of its obligations pursuant to this chapter and the franchise and such failure or delay shall not be deemed a default of this chapter and the franchise or grounds for termination hereunder if any of the following conditions are satisfied:~~
    - ~~(1) If such failure or delay:~~
      - ~~(a) Could not have been prevented by reasonable precaution; and~~
      - ~~(b) Cannot reasonably be circumvented by the grantee through the use of alternate sources, work-around plans or other means; or~~
    - ~~(2) If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.~~
  - ~~(C) *Force majeure event.* Upon the occurrence of an event which satisfies any of the conditions set forth above (a force majeure event) the grantee shall be excused from any further performance of those of its obligations pursuant to this chapter and the franchise affected by the force majeure event for as long as:~~
    - ~~(1) Such force majeure event continues; and~~
    - ~~(2) The grantee continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.~~
  - ~~(D) *Notice.* Upon the occurrence of a force majeure event, the grantee shall immediately notify the town by telephone, to be confirmed by written notice, of the occurrence of a force majeure event and shall describe in reasonable detail the nature of the force majeure event.~~
  - ~~(E) *Procedure prior to revocation.*~~
    - ~~(1) The town shall make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation:~~
      - ~~(a) If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the town shall place its request for revocation of the franchise upon a regular Commission meeting agenda.~~
      - ~~(b) The town shall cause to be served upon the grantee, at least seven days prior to the date of such Commission meeting, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the Town Clerk at least twice, seven and 14 days respectively, before such meeting, in a newspaper of general circulation within the town.~~

- ~~(2) The Commission shall hear any persons interested therein, including the grantee, and shall determine in its discretion whether or not any failure, refusal or neglect by the grantee was with just cause.~~
  - ~~(3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the town, the Commission shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.~~
  - ~~(4) If the Commission shall determine such failure, refusal or neglect by the grantee was without just cause, then the Council shall, by resolution, declare that the franchise of the grantee shall be revoked and bond shall be forfeited, unless there is compliance by the grantee within 90 days.~~
  - ~~(F) *Termination.* In the event a franchise is revoked or otherwise terminated, the town may, in its sole discretion, do any of the following:~~
    - ~~(1) Purchase the system under the procedures set forth in this chapter;~~
    - ~~(2) Effect a transfer of ownership of the system to another party for good and sufficient considerations, which shall be an amount at least equal to the fair market value of the system under the original grantee's operation, in accordance with the Cable Act;~~
    - ~~(3) Order the removal of all system facilities from the town within a reasonable period of time.~~
  - ~~(G) *Facilities removal.* In removing its system facilities, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, normal wear and tear excepted, as was prevailing prior to the grantee's removal of system facilities.~~
    - ~~(1) The town shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal.~~
    - ~~(2) The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this paragraph, this chapter and the franchise agreement is reached.~~
  - ~~(H) *Performance failure.*~~
    - ~~(1) In the event of a failure by the grantee to complete any work required by this subchapter or Sections 112.060 *et seq.* of any other work required by town law or ordinance, and upon reasonable notice to the grantee, the town may cause such work to be done and grantee shall reimburse the town the reasonable costs thereof within 30 days after verification of an itemized list of such costs.~~
    - ~~(2) The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.~~
- ~~(Ord. passed 3-20-00)~~

---

**Sec. 112.027 Receivership and foreclosure.**

- (A) ~~Receivership.~~ The franchise shall, at the option of the town, cease and terminate 120 days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:
- (1) ~~Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees, within said 120 days, shall have remedied all defaults under the franchise agreement; and~~
  - (2) ~~Such receivers or trustees shall, within said 120 days, execute an agreement, duly approved by the court having jurisdiction of the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provisions and limitation of this chapter and the franchise agreement.~~
- (B) ~~Foreclosure.~~ In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof, including or excluding the franchise, the town may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of such notice unless:
- (1) ~~The town shall have approved the transfer of the franchise in the manner this chapter provides; and~~
  - (2) ~~Such successful bidder shall have covenanted and agreed with the town to assume and be bound by all the terms and conditions of the franchise.~~
- (Ord. passed 3-20-00)

**Sec. 112.028 Equal opportunity.**

The grantee shall be an equal opportunity/affirmative action employer, adhering to all federal, state, county or municipal laws and regulations related thereto.

- (A) ~~Maintenance.~~ The grantee shall establish and maintain equal opportunity in employment, and no person shall be discriminated against in employment by the grantee because of race, religion, color, sex, national origin, age or physical disability.
- (B) ~~Implementation.~~ Implementation, administration and review of all Equal Employment Opportunity (EEO) and affirmative action policies and programs shall be the direct responsibility of the chief executive officer of the cable communications system. All officers, executives, managers and administrative and supervisory personnel of the grantee shall be directed to participate in the grantee's affirmative action efforts.
- (C) ~~Affirmative action plan.~~ Any significant subcontractor of the Grantee or a parent, subsidiary or affiliate of the Grantee which does not already have an affirmative action

~~plan which would cover its activities in the Town of Huntersville shall submit to the town a plan for its operations on behalf of the grantee, consistent with the spirit of this section.~~

- ~~(D) *Records.* The grantee shall prepare and maintain records of promotions, demotions, terminations and transfers.~~
- ~~(E) *Federal law compliance.* The grantee shall assure that it constructs all facilities so that they are in compliance with applicable federal law pertaining to service to the disabled.~~
- ~~(F) *M/WBD enterprises.* The grantee shall make a good faith effort to utilize minority/women business enterprises in construction and purchase contracts.~~

~~(Ord. passed 3-20-00)~~

#### **~~Sec. 112.029 Local office; enforcement; waiver of provisions.~~**

- ~~(A) *Local office.* The grantee shall maintain, within 30 miles of the corporate limits of the town, an office and local telephone number for the conduct of business related to the franchise during normal business hours. The grantee shall be required to advise the town of such address and telephone numbers and any changes thereof.~~
- ~~(B) *Failure of town to enforce the franchise is no waiver of the terms thereof.* The grantee shall not be excused from complying with any of the terms and conditions of this chapter or the granted franchise by any failure of the town upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.~~

~~(Ord. passed 3-20-00)~~

#### **~~Sec. 112.030 Rights reserved to the grantor.~~**

##### ~~(A) *Right to purchase.*~~

- ~~(1) In the event the town revokes the franchise pursuant to provisions of this chapter, or at the normal expiration of the franchise term, the town shall have the right, directly or as an intermediary, to purchase the cable communications system. The purchase price shall be based upon the value of the system determined pursuant to this section. In no event shall the town, when acting as an intermediary or effecting the transfer or ownership of the system to another person, be paid any consideration by any party for such activities.~~
- ~~(2) The date of valuation shall be no earlier than the day following the date of expiration or revocation and no later than the date the town makes an appropriate offer for the system.~~
- ~~(3) The value of the cable system shall be determined by a qualified appraiser appointed by the town and in accordance with the Cable Act. The appraiser shall determine the worth of the assets as follows:
  - ~~(a) If a franchise held by the grantee is revoked for cause and the town acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition shall be at an equitable price; or~~~~

- ~~(b) If a renewal of a franchise held by the grantee is denied and the town acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value.~~
- ~~(4) Upon receipt of reasonable notice of the town's intent to purchase the system at the value established above, the grantee shall have 30 days within which to accept that valuation as the purchase price of the system. In the event that purchase price is not acceptable, the parties shall have 120 days in which to negotiate an acceptable purchase price.~~
- ~~(5) Upon exercise of this option and the payment of the agreed upon sum by the town and its service of reasonable notice of such action upon the grantee, the grantee shall immediately transfer to the town possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the town in lieu of some portion of the purchase price set forth above; and the grantee shall execute such warranty, deeds or other instruments of conveyance to the town as shall be necessary for this purpose.~~
- ~~(6) In the event the town and the grantee are unable to agree upon the value of the cable communications system within the time limits set forth above, either party may require by reasonable notice to the other that the value of the cable communications system be submitted to arbitration in the following manner:
  - ~~(a) The town and the grantee shall each, within 15 days after such notice, select an arbitrator who shall be a disinterested person with reasonable knowledge and experience relative to the subject to be arbitrated. The two arbitrators thus selected shall immediately thereafter select a third arbitrator who shall likewise be a disinterested person having reasonable knowledge and experience relative to the subject to be arbitrated;~~
  - ~~(b) Within 30 days after appointment of all arbitrators and upon ten days written notice to the parties, the panel of arbitrators shall commence a hearing on the issue of valuation and shall receive all relevant information from the parties. The value of the system as determined by the arbitration panel shall be in accordance with this section;~~
  - ~~(c) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated, except that, at the request of either of the parties, debate and deliberations may be held in closed session;~~
  - ~~(d) Within 30 days after the close of the hearing, the panel of arbitrators shall prepare findings and a decision agreed upon by a majority of the panel, which shall be filed with the town and served by mail immediately upon the grantee. Should there be no majority decision, the proceedings shall be started anew, unless the parties extend by mutual agreement the time in which the panel of arbitrators may make a decision.~~
  - ~~(e) Either party may seek judicial relief in the following circumstances:
    - 1. — A party fails to select an arbitrator;~~~~

- 2.—The arbitrators fail to select a third arbitrator;
  - 3.—One or more arbitrators is unqualified in either party's opinion;
  - 4.—Designated time limits have been exceeded;
  - 5.—The decision was procured by corruption, fraud or undue means;
  - 6.—There was evident partiality on the part of the independent arbitrator who represents neither the grantee nor the town;
  - 7.—The arbitration panel exceeded the authority granted hereunder;
  - 8.—Based upon the record, the panel abused its discretion.
- (f) ~~In the event a court of competent jurisdiction determines that judicial relief is appropriate to the circumstances set forth above, the court in its discretion may order the arbitration procedure repeated and issue findings, orders and directions.~~
- (g) ~~The expenses of the arbitrators selected by each party shall be borne by that party, and the expenses of the third arbitrator and those expenses incurred by the panel as a whole shall be borne equally by the parties.~~
- (h) ~~Upon receipt of the decision of the arbitration panel, the town shall have 30 days in which to notify the grantee of its intent to exercise its option to purchase the system. The purchase price shall be the value of the system as determined by the arbitration panel in accordance with this section.~~
- (7) ~~At any time prior to the actual transfer to the town of possession and title of the system hereunder, the grantee may operate the system, using its good faith judgment in all matters, and be compensated therefor in an amount appropriate to be paid to an independent party providing the same management services. Revenues collected by the grantee during such a period shall be considered revenues of the town or other person to whom the town intends to transfer ownership.~~
- (B) ~~*Right to inspect.* The town shall have the right, at its expense, to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this chapter, the franchise agreement and other pertinent provisions of the law.~~
- (C) ~~*Right to intervene.* The town shall have the right of intervention in any suit of proceeding to which the grantee is party.~~
- (Ord. passed 3-20-00)

**Secs. 112.031—112.044 Reserved.**

### *ARTICLE III. REGULATION OF FRANCHISE*

**Sec. 112.045 Regulatory authority.**

- (A) ~~*Regulation.* The town may exercise appropriate regulatory authority under the provisions of this subchapter and applicable law. This authority shall be vested in the Commission and~~

administration through the Town Manager or his or her designee in order to provide day-to-day administration of this subchapter and any franchise granted hereunder.

- (B) *Legal compliance.* Notwithstanding any other provisions of this subchapter to the contrary, the grantee shall at all times comply with all applicable laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the town under this subchapter or the franchise; or if in compliance with any local, state or federal law or regulation, the grantee finds conflict with the terms of this subchapter, the franchise, or any law or regulation of the town, then as soon as possible following knowledge thereof, the grantee shall notify the town of the point of conflict believed to exist between such law or regulation and the laws or regulations of the town, this subchapter and the franchise. The town shall have the right to modify any provisions of this subchapter to such reasonable extent as may be necessary to carry out the intent and purpose of this subchapter.
- (C) *Plenary authority.* The town reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the town, the town may, without the approval of the grantee, legislate any such additional regulation as may then be permissible, whether or not contemplated by this subchapter.

(Ord. passed 3-20-00)

#### **Sec. 112.046 Regulation responsibilities and functions.**

- (A) *Responsibilities.* The town shall have the following regulatory responsibilities:
- (1) Administration and enforcement of the provisions of this subchapter and any franchise granted hereunder;
  - (2) Award renewal, extension or termination of a franchise pursuant to the provisions of this subchapter, the franchise and other applicable law;
  - (3) Consent prior to sale or transfer of any franchise granted hereunder;
  - (4) Performance evaluations pursuant to this subchapter and the franchise.
- (B) *Functions.* The town also reserves the right to perform the following functions:
- (1) Develop objectives and coordinate activities related to the operation of government channels;
  - (2) Provide technical, programming and operational support to public agency users such as town departments, schools and health care institutions;
  - (3) Coordinate plans for interconnection of cable services;
  - (4) Analyze the possibility of integrating cable communications with other town, state or regional telecommunications networks;

- 
- ~~(5) Formulate and recommend long-range telecommunications policy for the town and provide for the determination of future cable-related needs and interests of the community;~~
  - ~~(6) Provide the administration effort necessary for the conduct of performance evaluations pursuant to this subchapter and the franchise and any other activities required for the administration of the franchise;~~
  - ~~(7) Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints;~~
  - ~~(8) Monitor the grantee's adherence to operational procedures and line-extension policies;~~
  - ~~(9) Assure compliance with applicable laws and ordinances;~~
  - ~~(10) Arrange tests and analyses of equipment and performance, pursuant to this subchapter and franchise, to ensure compliance with this subchapter and the franchise;~~
  - ~~(11) Provide for reasonable continuity in service;~~
  - ~~(12) Receive for examination all data and reports required by this subchapter.~~
- ~~(Ord. passed 3-20-00)~~

**Sec. 112.047 Rates and charges.**

- ~~(A) *Rate regulation.* The town may regulate basic cable service tier rates and related equipment, installation and service charges of any cable television system operating in the Town of Huntersville pursuant to existing federal law and FCC regulations, notwithstanding any different or inconsistent provisions in the franchise.~~
- ~~(B) *Views considered.* In connection with such rate regulation, the town shall ensure a reasonable opportunity for consideration of the views of interested parties.~~
- ~~(C) *FCC forms.* The Town Manager, or his or her designee, is authorized to execute on behalf of the town and file with the FCC such certification forms or other instruments as may be required by federal law or FCC regulations in order to enable the town to regulate rates and charges.~~
- ~~(D) *Rate/schedules.* The grantee shall file with the town schedules which shall describe all services offered, all rates and charges of any kind and all terms and conditions relating thereto.~~

~~(Ord. passed 3-20-00)~~

**Sec. 112.048 Performance evaluation.**

- ~~(A) *Performance evaluations.* The town and the grantee shall, at the discretion of the town, hold scheduled performance evaluation sessions every third year during the term of the franchise.~~
- ~~(B) *Special evaluations.* Special evaluation sessions may be held at any time during the term of the franchise at the request of the town.~~



- 
- (C) ~~*Public notice.*~~ All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with the public notice provisions of this chapter. The grantee shall notify subscribers of all such evaluation sessions by announcement on the designated local origination channel on the system at such various times and frequencies so as to ensure comprehension between the hours of 11 a.m. and 9 p.m. for five consecutive days preceding each session.
- (D) ~~*Topics.*~~ Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance, grantee compliance with this subchapter and the franchise, customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC filings and line extensions.
- (E) ~~*Grantee cooperation.*~~ During the review and evaluation by the town, the grantee shall cooperate with the town and shall provide such information and documents as the town may need to reasonably perform its review.
- (Ord. passed 3-20-00)

**Sec. 112.049 Schedule of liquidated damages.**

- (A) ~~*Willful violation.*~~ For the willful violation of any of the following provisions of this subchapter, the town shall notify the grantee in writing of the violation, and the grantee shall be allowed 30 days, or such greater amount of time as the town may specify to correct such violation.
- (B) ~~*Chargeable to bond.*~~ Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by the grantee within the aforesaid period of time.
- (C) ~~*Hearing.*~~ The grantee may request a hearing before the Commission in writing within seven business days of receiving notice of violation from the town. The time frame specified in the notice for correction of the violation shall be tolled from the date of receipt of a request from the grantee for a hearing until the day after the hearing.
- (D) ~~*Damages, penalties.*~~ These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this subchapter, including penalties or revocation, or other statutorily or judicially imposed penalties.
- (1) ~~No decision by the town to invoke any remedy under this subchapter, the franchise agreement or any statute, law or ordinance shall preclude the availability of any other such remedy.~~

**Issue**

**Liquidated Damages**

Failure to render payment of the reimbursement of the town's franchise expenses, franchise fee or penalty payments:

\$500.00 per day from time due until paid.

Failure to file reports:

\$100.00 per day from time due until report(s) are filed.

|                                                                                       |                                                                        |
|---------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Failure to complete system construction:                                              | \$1,000.00 per day from time due until construction is complete.       |
| Failure to comply with material provisions of this chapter or the franchise agreement | \$200.00 per day until grantee is in compliance with the provision(s). |
| Failure to provide access funds, equipment, facilities or services                    | \$500.00 per day from time due until paid or provided.                 |

- (2) ~~The town retains the right at its sole option to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the grantee are deemed to exist. The Town Manager or his or her designee shall determine the town's willingness to reduce or waive any of the above-listed penalties.~~

(Ord. passed 3-20-00)

**Secs. 112.050—112.059 Reserved.**

#### *ARTICLE IV. DESIGN AND CONSTRUCTION*

**Sec. 112.060 Authority to construct.**

(A) ~~Authorization to commence new construction and application procedures.~~ Within 30 days of the acceptance by the grantee of a franchise, the grantee shall register the system with the FCC and apply for contracts for use of poles.

- (1) ~~Within 30 days after completion of the make-ready survey identifying the routes of the system facilities, the grantee shall apply for all additional licenses from the state, town or other necessary parties, such as the railroads, for crossing under or over their property.~~

- (2) ~~In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction schedule as outlined in the franchise.~~

- (3) ~~Failure to make such timely application and timely filing shall constitute a substantial violation of this subchapter.~~

(B) ~~Power to contract.~~ Upon grant of the franchise and in order to construct, operate and maintain a cable system in the town, the grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the town, obtain right-of-way permits from appropriate city, county, state or federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a city, county, state or federal agency may require.

(Ord. passed 3-20-00)

**Sec. 112.061 Construction and technical standards.**

~~(A) Compliance with construction and technical standards.~~

- ~~(1) The grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements and FCC technical standards, which standards are incorporated by reference herein.~~
- ~~(2) The system shall be designed, constructed, operated and maintained for 24 hours-a-day continuous operation.~~

~~(B) State of the art. The grantee shall construct, install, operate and maintain its system in accordance with, but not limited to, the following:~~

- ~~(1) The system will be designed to permit a minimum of 750 MHZ operation;~~
- ~~(2) Where economically feasible, the system will utilize home terminals which will make the system adaptable for the development of future services;~~
- ~~(3) The grantee shall maintain its system facilities in a manner which will continue to enable to add new services and associated equipment as they are developed, available and proved economically feasible and marketable to subscribers.~~

~~(C) Facility installation/construction. Prior to the erection or installation by the grantee of any towers, poles or fixtures of five feet by five feet by four feet or larger for use in connection with the installation, construction, maintenance or operation of the cable communications system under this subchapter, the grantee shall first submit to the town and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. If required for town approval, pursuant to this chapter, grantee shall also provide such description and drawings for underground construction.~~

~~(D) Contractor qualifications. Any contractor proposed for work of construction, reconstruction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the state and all local ordinances.~~

~~(E) Map accuracy. The town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.~~

~~(F) Work performance. Construction, reconstruction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner in accordance with then-current technological standards.~~

- ~~(1) All cables and wires shall be installed, where possible, parallel with electric and telephone lines.~~
- ~~(2) Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.~~

~~(G) Compliance by grantee. Grantee shall at all times comply with:~~

- (1) ~~Occupational Safety and Health Administration (OSHA) regulations;~~
  - (2) ~~National Electric Code;~~
  - (3) ~~National Electrical Safety Code (NESC);~~
  - (4) ~~AT&T Manual of Construction Procedures (Blue Book);~~
  - (5) ~~Bell Telephone Systems Code of Pole Line Construction;~~
  - (6) ~~All federal, state, town and municipal construction requirements, including FCC rules and regulations, utility construction and requirements;~~
  - (7) ~~All building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.~~
- (H) ~~*Antennas.* Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure standards as required by federal and state laws or regulations.~~
- (I) ~~*Work facilities, conditions and procedures.* All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.~~
- (J) ~~*RF leakage.* RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible.~~
- (1) ~~Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern.~~
  - (2) ~~FCC rules and regulations shall govern.~~
  - (3) ~~The system shall cause no measurable interference in television signal reception to any operating receiver not connected to and serviced by the system.~~
- (K) ~~*Standby power.* The grantee shall maintain equipment capable of providing standby power for a minimum of four hours for the headend and all fiber optic nodes.~~
- (L) ~~*Health/safety.* If, at any time, it is reasonably determined by the town or any other agency or authority of competent jurisdiction that any part of the system, including without limitation, any means used to distribute signals over or within the system, is harmful to the health or safety of any person, then the grantee shall, at its own cost and expense, promptly correct all such conditions.~~
- (M) ~~*Town not liable.* Except for acts of willful misconduct or gross negligence, neither the town nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the grantee or any affiliated person for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration or relocation of any part of the system by or on behalf of the grantee or town in connection with any emergency, public work, public improvement, alteration or any municipal structure, any change in the grade or line of any street or the elimination, discontinuation and closing of any street.~~

(Ord. passed 3-20-00)

**~~Sec. 112.062 System construction schedule.~~**

~~(A) *Service availability.* The grantee must make cable television service available to every dwelling unit within the franchise service area in accordance with the terms of the franchise agreement and this subchapter.~~

~~(B) *Dedicated access.*~~

~~(1) It is the intent of the town that dedicated access channels shall be constructed concurrently with any franchised cable communications system to take advantage of the cost reduction inherent in concurrent construction.~~

~~(2) The requirements for dedicated institutional access channels shall be stated in the franchise agreement.~~

~~(Ord. passed 3-20-00)~~

**~~Sec. 112.063 Extension of service.~~**

~~(A) *Density.* The grantee shall provide service to any new residential dwelling units or commercial subscribers within the initial service area and any additional areas annexed to the town where there are at least 18 potential subscribers or residential dwelling units per proposed cable plant mile for residentially zoned areas and at least 50 subscribers per proposed cable plant mile for commercially zoned areas, except where served by another cable company.~~

~~(B) *Lack of density.* In other areas with less than 18 residential dwelling units or 50 commercial subscribers per proposed cable plant mile, the grantee shall offer a cost-sharing arrangement with residents. The cost-sharing arrangement shall consist of the following:~~

~~(1) On the request of one or more potential subscribers desiring service, the grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of plant extension required to provide service to each subscriber from the closest point where available quality signals exist;~~

~~(2) The cost of construction shall be allocated based on the following formula: if a request for extension of service into a residential area requires the construction of cable plant which does not pass at least 18 potential subscribers per strand or trench mile, the grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are nine subscribers per strand mile or trench mile, the grantee's share will equal 9/18 or one-half of construction cost. The remaining cost will be shared equally by each subscriber;~~

~~(3) The average cost of line extension shall be recalculated annually and based upon then-current costs for labor and materials.~~

~~(C) *New construction.* In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of such construction or development and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults and laterals to be provided at the grantee's expense.~~

- 
- ~~(1) The grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner.~~
  - ~~(2) Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the town of a preliminary plant request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plant request.~~

~~(Ord. passed 3-20-00)~~

**Sec. 112.064 Use of streets.**

- ~~(A) *Underground installations.* All installations shall be underground in those areas of the town where public utilities providing telephone and electric service are underground at the time of installation.~~
  - ~~(1) In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the town or are placed underground, the grantee shall likewise place its services underground without additional cost to the town or to the individual subscriber so served.~~
  - ~~(2) Where not otherwise required to be placed underground by this subchapter or the franchise agreement, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request.~~
  - ~~(3) All new cable passing under the roadway shall be installed in conduit or PVC sheathing no less than 18 inches from the top of the conduit to the surface of the ground.~~
- ~~(B) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:~~
  - ~~(1) Not endanger or interfere with the health, safety or lives of persons;~~
  - ~~(2) Not interfere with any improvements the city, county or state may deem proper to make;~~
  - ~~(3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;~~
  - ~~(4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and~~
  - ~~(5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the town.~~

~~(C) *Restoration to prior condition.*~~

- ~~(1) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the town, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the town.~~
- ~~(2) The restoration shall be undertaken within no more than ten days after the disturbance is incurred and shall be completed as soon as possible thereafter.~~

~~(D) *Restoration of the facilities.* In the event that at any time during the period of this franchise the city, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.~~

~~(E) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wire to permit the moving of buildings.~~

- ~~(1) The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance.~~
- ~~(2) The grantee shall be given not less than 15 working days advance notice to arrange for such temporary wire changes.~~

~~(F) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing town ordinances, to trim any trees upon and overhanging public rights of way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the town, such trimming may be done by it or under its supervision and direction at the expense of the grantee.~~

~~(G) *Easements.*~~

- ~~(1) All necessary easements over and under private property shall be arranged for by the grantor.~~
- ~~(2) Any easements over or under property owned by the town other than the public rights-of-way shall be separately negotiated with the town.~~

~~(H) *Work within right of way.* The closing of any part of a publicly maintained street or right-of-way must be approved by the town or state and shall not unreasonably impede traffic flow.~~

- ~~(1) During repairs or improvements traffic on streets must be maintained.~~
- ~~(2) Where full closing of the street is required, the request for approval must be submitted at least ten days in advance.~~
- ~~(3) Closings will not be permitted in the central business district during the holiday shopping season.~~

- (4) ~~Where emergency closings are necessary, the town is to be notified as soon as possible.~~
- (5) ~~All closings are to be protected and signed.~~
- (I) ~~Removal of town or state property.~~ No town or state property is to be removed from a right-of-way, including signing on utility poles, without proper permission from the town.
- (J) ~~No burden on public rights-of-way.~~
  - (1) ~~Grantee shall not erect, install, construct, repair, replace or maintain its cable system in such a fashion as to unduly burden the present or future use of the streets or public rights-of-way.~~
  - (2) ~~If the town, in its reasonable judgment, determines that any portion of the cable system is an undue burden, the grantee at its expense shall modify its cable system or take such other actions as the town may determine is in the public interest to remove or alleviate the burden and grantee shall do so within the time period established by the town.~~
- (K) ~~Barriers.~~ While any portion of the streets or public rights-of-way are open, grantee shall maintain reasonable barriers, lights at night and other warnings to the users of the streets or public rights-of-way in compliance with applicable government regulations requiring and pertaining to such barriers.
- (L) ~~Soil erosion.~~
  - (1) ~~All construction shall be in accordance with state and local laws and regulations regarding soil erosion.~~
  - (2) ~~Grantee or grantee's contractor shall correct any violation at the direction of the town and at grantee's expense.~~
- (M) ~~Utility crowding.~~
  - (1) ~~In areas of the town where the town or state finds that the public rights-of-way will not accommodate further underground facilities, the town or state may require that the grantee's conduits be oversized, duplicated or placed in multiple configurations, and the grantee shall share the use of its underground conduits and multiple configurations at such locations at reasonable rates.~~
  - (2) ~~Such rates shall be determined by the town or state if grantee and third parties cannot agree on same.~~
- (N) ~~Removal of obsolete facilities/cooperation.~~ When grantee opens a trench, accesses a conduit or boring or is working on aerial locations, it shall remove all obsolete cable system facilities from such locations.
  - (1) ~~When grantee opens a trench or access to underground bores, it shall notify all other grantees and permittees in advance of such work, so that they may remove their obsolete facilities from such locations. Grantee shall cooperate with such persons in such activities.~~
  - (2) ~~When grantee receives notification from another grantee or permittee that it is opening a trench or access to underground bores, grantee shall remove all of its obsolete facilities from such location while they are opened.~~



~~(O) *Vacating of rights-of-way.* If a public right-of-way is vacated, eliminated, discontinued or closed, all rights of grantee under its franchise to use same shall terminate and grantee at its expense shall immediately remove the cable systems from such public right-of-way unless grantee obtains any necessary easements from the affected property owners to use the former public right-of-way.~~

~~(P) *Acquisition of right-of-way.* In acquiring or widening public right-of-way, the town or state shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.~~

~~(Q) *Pavement cut coordination/additional fees.* Grantee shall coordinate its construction program and all other work in the public rights-of-way with town's or state's program for street construction, rebuilding, resurfacing and repair (hereinafter collectively referred to as street resurfacing). Grantee shall meet with the official of the town responsible for such program at least twice per year to this end.~~

~~(1) The goals of such coordination shall be to require grantee to conduct all work in the public rights-of-way in conjunction with or immediately prior to any street resurfacing planned by the town. Grantee shall provide timely notice to the town prior to such work and grantee shall have applied for permits as required.~~

~~(2) In addition to any other fees or payments required by this chapter and the franchise, grantee shall pay to the town any costs required under local ordinances. This fee is in addition to and not in lieu of the obligation to restore the public rights-of-way.~~

~~(Ord. passed 3-20-00)~~

#### **Sec. 112.065 Erection, removal and common use of poles.**

~~(A) *Approval required.* No poles shall be erected by the grantee without prior approval of the town or state with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire holding structure of the grantee shall give rise to a vested interest, and such poles or structures shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby.~~

~~(B) *Utilization of existing poles.* Where poles already in existence for use in serving the town are available for use by the grantee, the town or state may require the grantee to use such poles and structures, if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.~~

~~(C) *Permitting.* Where a public utility serving the town desires to make use of the poles or other wire holding structures of the grantee, but agreement therefor with the grantee cannot be reached, the town may require the grantee to permit such use for such consideration and upon such terms as the town shall determine to be just and reasonable, if the town determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operation.~~

~~(Ord. passed 3-20-00)~~

---

**~~Sec. 112.066 Construction reporting requirements.~~**

~~The grantee shall provide the town with a written progress report detailing construction work completed as specified in the franchise.~~

~~(Ord. passed 3-20-00)~~

**~~Sec. 112.067 Tests and performance monitoring.~~**

~~(A) *Technical performance.* Not later than 90 days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and thereafter on the third anniversary of the effective date of the franchise, the grantee shall conduct technical performance tests to demonstrate substantial compliance with all technical standards contained in this subchapter and the franchise agreement and the applicable technical standards and guidelines of the FCC.~~

~~(B) *Supervision/reporting.*~~

~~(1) Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience.~~

~~(2) A copy of said engineer's report shall be submitted to the town, describing test results, instrumentation, calibration and test procedures and the qualification of the engineer responsible for the tests.~~

~~(C) *Monitor test points.*~~

~~(1) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line at or near trunk line extremities.~~

~~(2) Such periodic tests shall be made at the test points as shall be required by the FCC and/or the franchise agreement.~~

~~(D) *FCC tests.* In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the town within 60 days of completion.~~

~~(E) *Complaint response.*~~

~~(1) Whenever there have been similar complaints made within one year from more than ten percent of the subscribers to the grantee's system, or when there exists other substantial evidence which, in the judgement of the town, casts doubt on the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze and report on the performance of its system.~~

~~(2) Reports on such tests shall be delivered to the town no later than 30 days after the town reasonably notifies the grantee and shall include the following information:~~

~~(a) The nature of the complaints which precipitated the special tests;~~

~~(b) What system component was tested;~~

- (c) ~~The equipment used and procedures employed in said testing;~~
  - (d) ~~The results of such tests; and~~
  - (e) ~~Methods by which said complaints were resolved.~~
  - (3) ~~The tests and analyses shall be supervised by a qualified technician who shall sign all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions, if any, should be taken by the grantee or town.~~
  - (F) ~~Consultants. The town shall have the right to employ, at the town's expense, qualified consultants if necessary or desirable to assist in the administration of this or any other section of this subchapter or the franchise agreement.~~
- (Ord. passed 3-20-00)

**Secs. 112.068—112.079 Reserved.**

#### *ARTICLE V. SERVICE*

**Sec. 112.080 Services to subscribers and users.**

- (A) ~~Services. Concurrently with the activation of the cable communications system in the town, the grantee shall provide those services to subscribers as described in the franchise agreement or services of similar mix, quality and level.~~
  - (1) ~~The system shall carry the programming and services as indicated in the franchise agreement.~~
    - (a) ~~Should the grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its best efforts to maintain the mix, quality and level of services provided over the system.~~
    - (b) ~~Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise agreement and shall be reported to the town at least 30 days prior to the proposed implementation when possible.~~
    - (c) ~~The grantee shall use its best efforts to ensure diversity of programming.~~
  - (2) ~~A basic service tier shall be offered to subscribers throughout the term of this franchise.~~
  - (3) ~~The grantee shall provide and maintain access channels pursuant to the terms defined under the franchise agreement.~~
  - (4) ~~The grantee shall provide and maintain an institutional network or provisions for such services pursuant to the terms defined under the franchise agreement.~~
  - (5) ~~The grantee shall make available leased access channels to assure that the widest possible diversity of information sources are made available to subscribers.~~

- ~~(a) Such channels shall be especially designated for leased access use by persons unaffiliated with the grantee on terms, rates and conditions which are in accordance with federal regulation.~~
- ~~(b) The number of such channels shall be determined by the provisions of federal regulation.~~
- ~~(c) The grantee shall advertise periodically the availability of such channels.~~
- ~~(d) The grantee shall not exercise any editorial control over any programming provided over such channels, except as permitted in accordance with the provisions of federal regulation.~~
- ~~(6) Grantee shall install and maintain, at no charge, one service drop to each public building within the franchise area for which the demarcation point (common entry point for utilities) is located 300 feet or closer to the closest useable point on the grantee's cable system.~~
  - ~~(a) On request from the appropriate official, and if the town or the respective entity is willing to pay the incremental costs, grantee will run feeder rather than drop cable to a public building which does or plans to amplify the signal for internal distribution.~~
  - ~~(b) Grantee shall provide full basic service and the CPST tier or its equivalent and one non-addressable converter to such building free of charge. Any additional converters will be provided on request at grantee's standard lease rate.~~
  - ~~(c) Upon request from an appropriate official, at free drop locations, grantee will provide inside wiring for a reasonable number of outlets, and the requesting entity shall reimburse grantee's full cost of labor and materials for such internal wiring unless otherwise provided for in grantee's (or parent company's) social contract with the FCC.~~
  - ~~(d) Grantee shall also extend cable to public buildings located further than 300 feet from grantee's distribution plant where the town or the respective entity is willing to reimburse grantee's full cost for materials and labor beyond the first 300 feet.~~

~~(B) Emergency override.~~

- ~~(1) To the extent required by and consistent with applicable federal statutes and FCC regulations, the grantee shall satisfy its emergency access override obligation throughout the town and shall designate a government access channel for emergency broadcast of both audio and video signals.~~
- ~~(2) The town shall train its personnel in proper use of the channel; shall limit access to its override functions to such trained individuals; and shall indemnify, hold harmless and defend the grantee against any and all claims, causes of action, proceedings and judgments for damages arising out of the town's use of the emergency channel.~~

~~(Ord. passed 3-20-00)~~

---

**Sec. 112.081 Installations, connections, other grantee services.**

- (A) ~~Standard installations.~~ Standard installation shall consist of a subscriber connection not exceeding 150 feet from a single point or pedestal attachment to the customer's residence.
- (1) ~~Service in excess of 150 feet and concealed wiring shall be charged before installation begins at a rate not to exceed additional installation costs.~~
  - (2) ~~The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible, subject to the grantee's good faith judgment in regard to, but limited to, safety, efficiency and system performance.~~
  - (3) ~~The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation.~~
  - (4) ~~Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed 15 days, weather permitting.~~
- (B) ~~Antennas and antenna switches.~~ The grantee shall not, as condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.
- (C) ~~Lockout devices.~~
- (1) ~~The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber.~~
  - (2) ~~The lockout device described herein shall be made available to all subscribers requesting it, beginning on the first day that any cable service is provided or, in the case of a renewed or extended franchise, on the effective date of such renewal or extension.~~
- (D) ~~Reconnection.~~
- (1) ~~The grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed.~~
  - (2) ~~Further, any such reconnection may be on terms and conditions established by the grantee.~~
- (E) ~~Free disconnection.~~ Subscribers shall have the right to have cable service disconnected or de-authorized without charge therefor.
- (1) ~~Such disconnection or de-authorization shall be made as soon as practicable and not to exceed 15 days.~~
  - (2) ~~A refund of unused service charges shall be paid to the customer within 60 days from the date of termination of service.~~
- (F) ~~Delinquent accounts.~~

- 
- ~~(1) The grantee shall use its best efforts to collect delinquent subscriber accounts.~~
  - ~~(2) Whenever possible, the grantee shall provide the customer with at least seven working days written notice prior to disconnection.~~

~~(Ord. passed 3-20-00)~~

**~~Sec. 112.082 Service calls and complaint procedures.~~**

- ~~(A) *System office.* The grantee shall establish, operate and maintain, a local office and local telephone number within the system, including a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges.~~
- ~~(B) *System telephone.* The grantee shall have a listed, locally staffed telephone number for service calls, and such telephone service shall be available 24 hours a day, seven days a week.~~
- ~~(C) *Complaint response.* The grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities.~~
  - ~~(1) The grantee shall respond as quickly as possible to such complaints and requests.~~
  - ~~(2) Complaints or requests which may pose a potential health and safety hazard will be responded to immediately.~~
  - ~~(3) In connection with billing complaints, the grantee shall respond within seven business days.~~
- ~~(D) *Rules/regulations.*~~
  - ~~(1) The grantee shall prepare and file with the town copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints.~~
  - ~~(2) The grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the office or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the town office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.~~
- ~~(E) *Records.* The grantee shall keep full records in connection with all complaints and requests in the nature of complaints in connection with the system.~~
  - ~~(1) Such records shall identify the person contacting the grantee and the person responding on behalf of the grantee, the subject matter of the contract, the date and time it was received, the resolution of the matter in question or the action taken by the grantee in connection with the contact, and the date and time thereof and such other information as may be deemed pertinent by the grantee.~~

- (2) ~~These records shall be made available for periodic inspection by the town after 48 hours notice to grantee.~~
- (F) ~~*Equipment service/replacement.* The grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the grantee may charge a subscriber for service to or replacement of any equipment damaged directly or indirectly by a subscriber.~~
- (G) ~~*Unresolved complaints.* The town may review and monitor unresolved customer complaints.~~
- (H) ~~*Service interruption rebate.* In the event that any subscriber is interrupted for 24 or more consecutive hours due to causes within the grantee's control, the grantee shall provide a prorated rebate of monthly fees to the affected subscriber upon the subscriber's request.~~
- (Ord. passed 3-20-00)

**Sec. 112.083 ~~Consumer service goals.~~**

~~Grantee agrees to the following consumer service goals or any other goals established by federal or state governmental authorities, whichever are higher.~~

- (A) ~~*Complaint resolution.* The grantee shall resolve all complaints within 15 days and shall notify the town of those not resolved within 15 days.~~
- (B) ~~*Subscriber information.*~~
- ~~(1) The grantee shall provide all prospective subscribers with complete, clear and concise information concerning all services and rates provided by the grantee upon solicitation of service and prior to the confirmation of any agreement for the installation of cable service.~~
  - ~~(2) Such information shall include but not be limited to the following: all services and rates; deposits, if applicable; installation costs; additional set charges; service upgrade and downgrade charges; and stolen or lost converter charges.~~
- (C) ~~*Subscriber handbook.* A subscriber handbook shall be provided to each subscriber upon installation. This handbook should include information:~~
- ~~(1) On the utilization of videocassette recorders;~~
  - ~~(2) Regarding complaint, billing and collection procedures, methods of ordering changes, termination of services, refund policies and the telephone number and address of the appropriate town department to whom problems with complaint procedures can be addressed;~~
  - ~~(3) Installation and service maintenance policies;~~
  - ~~(4) Instructions on how to use the cable service;~~
  - ~~(5) Channel positions of programming carried on the system;~~
  - ~~(6) Concerning parental lock-out devices;~~
  - ~~(7) About use of the grantee's converters;~~

- ~~(8) About adjusting the television set;~~
- ~~(9) Explaining the bill;~~
- ~~(10) Describing community programming;~~
- ~~(11) Regarding office hours and customer-related telephone numbers; and~~
- ~~(12) Regarding addresses for the grantee's offices.~~
- ~~(D) *Services.* The grantee's office shall be open weekdays from 8 a.m. to 6 p.m. and on Saturdays from 9 a.m. to 6 p.m., unless otherwise stated in grantee's franchise agreement.~~
  - ~~(1) Additional payment centers located elsewhere in the town should be provided throughout the term of the franchise, as consumer needs demand.~~
  - ~~(2) Where feasible, grantee shall provide contract services for the purpose of exchange or retrieval of converter equipment outside the normal business hours.~~
  - ~~(3) The grantee shall respond to repair calls, either by telephone contact with the subscriber for an appointment, by a visit to the premises or by a doorknob hanger if no one is at home, within 24 hours.~~
- ~~(E) *Maintenance notices.*~~
  - ~~(1) The grantee shall notify subscribers of routine maintenance activities through methods such as notes in the monthly guide, bill inserts and video commercials.~~
  - ~~(2) Whenever possible, routine maintenance should be done by the grantee in the early morning so that the subscribers are inconvenienced the least amount possible.~~
- ~~(F) *Corrective actions.*~~
  - ~~(1) Excluding conditions beyond the control of the grantee, the grantee will begin working on the loss of picture or sound on one or more channels promptly and in no event later than 24 hours after the interruption becomes known.~~
  - ~~(2) The grantee must begin actions to correct other service problems the next business day after notification of the service problem.~~
- ~~(G) *Installations.* The grantee shall install cable television service to new subscribers and perform service changes to existing subscribers within seven business days of initial requests under standard conditions.~~
- ~~(H) *Appointments.* Appointment window alternatives for installations, service calls and other installation activities will be either for a specific time or no more than a four hour block of time during the business day.~~
  - ~~(1) Appointments cannot be canceled after the close of business the day before an appointment is scheduled.~~
  - ~~(2) Customers must be contacted and offered another time at their convenience if the company representative is running late and cannot keep the scheduled appointment.~~



- (3) ~~The above standards must be met no less than 95 percent of the time, as measured on a quarterly basis.~~
- (I) ~~Telephone response.~~ For consumer telephone calls, the grantee should answer 90 percent of all calls handled (all calls which held more than 60 seconds) within 60 seconds.
  - (1) ~~No more than 15 percent of the total calls received and held for over 60 seconds should be lost. Busy signals cannot be received more than three percent of the time, under normal operating conditions.~~
  - (2) ~~The grantee shall provide information to the town annually or upon special request regarding the number of active telephone lines, the time period in which telephone calls are answered and the percent of calls lost.~~
  - (3) ~~Such back-up information as deemed necessary by the town which can be provided by the grantee's telephone management information system should be provided by the grantee.~~
- (J) ~~Trained representative.~~
  - (1) ~~A trained company representative will answer consumer calls during normal business hours.~~
  - (2) ~~Calls made after normal business hours are to be answered by trained company representatives on the next business day.~~
- (K) ~~Consumer education.~~ The grantee shall provide ongoing consumer education programs regarding billing which shall include at a minimum annual subscriber notification of the billing process and cycles and 30 days prior notification of changes to this process or the cycles.
- (L) ~~Consumer research.~~ The grantee, on an ongoing basis, shall research customer needs, especially in the areas of automated response units, universal remote controls and cable converter boxes.
- (M) ~~Performance review information.~~ The grantee shall provide information deemed necessary to the town for triennial performance review of the grantee's performance and to evaluate consumer service performance.
- (N) ~~Billing.~~ The grantee, at a maximum, shall bill subscribers monthly, but this shall not preclude other payment arrangements expressly agreed upon by the grantee and the subscriber.
- (O) ~~Bill clarity.~~ All bills must be clear, concise and understandable.
  - (1) ~~Bills must be itemized, including itemization for basic and premium service charges and equipment charges.~~
  - (2) ~~All activities during the billing period must be shown, including optional charges, rebates and credits.~~
- (P) ~~Complaint response.~~ The grantee must respond to written complaints from subscribers regarding billing disputes within 30 days.
  - (1) ~~Refund checks must be issued promptly, but not later than:~~

- ~~(a) The customer's next billing cycle following resolution of the customer's request, or 30 days, whichever is earlier; or~~
  - ~~(b) Upon return of equipment supplied by grantee if service is terminated.~~
- ~~(2) Credit is to be issued no later than the customer's next billing cycle following determination that credit is warranted.~~
- ~~(Q) Notices.~~
  - ~~(1) Customers must be notified of any changes in rates, programming services or channel positions in writing and by announcements on the cable system.~~
  - ~~(2) If the change is within the grantee's control, notice must be provided at least 30 days in advance.~~
- ~~(R) Repair response.~~ The grantee shall resolve 80 percent of all repair calls within 48 hours, unless otherwise stipulated in grantee's franchise agreement.
- ~~(S) Prior approval.~~ The grantee shall secure formal approval from the Administrator prior to any and all changes to all the aforementioned items of this section, which approval shall not unreasonably be withheld.
- ~~(T) Additional compliance.~~ In addition to the above, the grantee shall comply with all service-related procedures contained in the franchise agreement.

~~(Ord. passed 3-20-00)~~

#### **Sec. 112.084 Continuity of service.**

- ~~(A) Uninterrupted service.~~ The grantee shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted service, insofar as their financial and other obligations to the grantee are honored.
- ~~(B) Rebuild, modify or sale of system.~~
  - ~~(1) In the event that the grantee elects to rebuild, modify or sell the system, or the town gives notice of intent to terminate or fails to renew the grantee's franchise, the grantee shall cooperate with the town or new grantee or operator in maintaining continuity of service to all subscribers.~~
  - ~~(2) During such period, the grantee shall be entitled to the revenues for any period during which it operated the system and shall be entitled to reasonable costs when it no longer operates the system.~~
- ~~(C) Failure to operate.~~
  - ~~(1) In the event the grantee fails to operate the system for seven consecutive days without prior approval of the town or without just cause, the town may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the town or a permanent successor is selected.~~
  - ~~(2) If the town is required to fulfill this obligation for the grantee, the grantee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the grantee's failure to perform.~~

(Ord. passed 3-20-00)

**Sec. 112.085 Protection of subscriber privacy.**

- (A) *Notice.* At the time of entering into an agreement to provide any cable service or other service to a subscriber, and at least once a year thereafter, the grantee shall provide notice, in the form of a separate written statement to each subscriber, which clearly and conspicuously informs the subscriber of:
- (1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
  - (2) The nature, frequency and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
  - (3) The period during which such information might be maintained by the grantee;
  - (4) The times and places at which the subscriber may have access to such information in accordance with this subchapter and other applicable federal, state, county and local law.
- (B) *Personally identifiable information.* The grantee shall not use the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the grantee to the subscriber or to detect unauthorized reception of cable communications, without the prior written or electronic consent of the subscriber concerned or as otherwise required by the FCC.
- (C) *Consent.* The grantee shall not, without the specific written or electronic consent of the subscribers concerned, sell, disclose or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers or any personal data, social security number, income and other data the grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the grantee to the subscriber, if required to be in compliance with federal law or regulation or if the grantee has provided the subscriber the opportunity to prohibit or limit such disclosure and the disclosure does not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the grantee or the nature of any transaction made by the subscriber over the cable system.
- (D) *Information access.* Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the grantee collects or maintains.
- (1) Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by the grantee.
  - (2) The subscriber shall be provided the reasonable opportunity to correct any error in such information.
- (E) *Not prohibited.* This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

(Ord. passed 3-20-00)

## **Sec. 112.086 Rights of individuals.**

### ***(A) ~~Non-discrimination required.~~***

- ~~(1) The grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired; and, provided further that nothing contained herein shall prohibit the grantee from granting senior citizens discounts to subscribers.~~
- ~~(2) The grantee shall comply at all times with all other applicable federal, state, county and local laws and regulations relating to non-discrimination which may hereinafter be incorporated and made a part of this subchapter by reference.~~

### ***(B) ~~Fairness of accessibility.~~*** The entire system of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; provided, however, that allocation of use of said facilities shall be made according to the rules or decisions of the grantee and any regulatory agencies affecting the same.

### ***(C) ~~Information accessibility.~~***

- ~~(1) Each individual shall have the right to information concerning the provisions of this subchapter and the rules and regulations formulated pursuant to it by the Commission, agent or entity created hereunder or pursuant to this subchapter.~~
- ~~(2) The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the town and in such other media as the Commission may determine.~~
- ~~(3) Each individual subscribing to the services of the cable communications system or leasing channels thereof or using the access channels shall be provided with a memorandum setting forth all rules and regulations specifically outlining such individual rights, duties and obligations pertinent to such use.~~
- ~~(4) Such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be specified by the Commission.~~
- ~~(5) Each document required to be maintained, prepared, filed or submitted under the provisions of this subchapter or pursuant to it, except those required and designated confidential by the grantee or the Federal Communications Commission shall be a public document, available for public inspection and copying at the requestor's expense, at the office of the grantee or the town during normal business hours.~~
- ~~(6) The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.~~

- (7) ~~Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Commission pursuant to the provisions of this subchapter.~~
- (8) ~~Such representation by citizens of the town shall be in the manner and form as the Commission may determine, ensuring equal participation of all protected groups.~~

(Ord. passed 3-20-00)

**Secs. 112.087—112.099 Reserved.**

*ARTICLE VI. BOOKS, RECORDS AND REPORTS*

**Sec. 112.100 Books and records available to town.**

- (A) ~~The grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the town.~~
- (B) ~~The town shall have the right to inspect upon 24 hours written notice, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the system unless otherwise provided for in the franchise.~~

(Ord. passed 3-20-00)

**Sec. 112.101 Reports required.**

~~The grantee shall file the following reports with the town as indicated herein, unless modified by terms of Grantee's franchise agreement.~~

- (A) ~~*Regulatory communications.* All reports required by the Federal Communications Commission (FCC), including, but not limited to, annual proof of performance tests and results and Equal Employment Opportunity (EEO) reports.~~
- (B) ~~*Facilities report.* An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.~~
- (C) ~~*Grantee rules.* The grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its system subscribers shall be filed with the town.~~
- (D) ~~*Proof of bonds and insurance.* The grantee shall submit to the town the required performance bond, or a certified copy thereof, written evidence of payment of required premium, certificates of policies of insurance required by this subchapter and written notice of payment of required premium.~~
- (E) ~~*Financial and ownership reports.* The grantee shall submit to the town an independently audited annual financial statement for its town system, including a~~

---

balance sheet and income statement which details gross revenues, in addition to a copy of its parent company's annual audit report.

(F) ~~Operational reports.~~ The following system and operational reports shall be submitted annually to the town:

(1) ~~A report on the system's technical tests and measurements as set forth herein and in the franchise agreement;~~

(2) ~~A summary of the previous year's activities, including, but not limited to, new services offered;~~

(3) ~~A summary of complaints received and handled;~~

(4) ~~A summary of the number of outages (three or more service calls in one area).~~

(G) ~~Additional reports.~~ The grantee shall prepare and furnish to the town, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the functions or duties of the town in connection with the system.

(H) ~~Exclusions for small systems.~~ Small system operators, as classified under current FCC guidelines, shall be permitted to petition the town to secure waivers of certain reporting requirements in the franchise.

(Ord. passed 3-20-00)

#### **Sec. 112.102 Reports required to be maintained.**

The Grantee shall at all times maintain the following reports.

(A) ~~Complaints/service interruptions.~~ A record of all complaints received and interruptions or degradation of service experienced for the preceding period prior to a performance review.

(B) ~~Plans/maps.~~ A full and complete set of plans, record and "as-built" maps showing the exact location of all cable communication system equipment installed or in use in the town, exclusive of subscriber service drops.

(1) ~~Grantee shall provide the "as built" maps to the town using a geographical information systems format approved by the town, which accurately displays their "as built" system.~~

(2) ~~These maps will be kept current continuously and updated at least annually by the grantee.~~

(C) ~~Contractor records.~~ A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.

(D) ~~Other records.~~ The town may impose reasonable requests for additional information, records and documents from time to time.

(Ord. passed 3-20-00)

**Sec. 112.103 Records required.**

The grantee shall at all times maintain the following records.

- (A) ~~Public notice.~~ Minimum public notice of any public meeting relating to this subchapter or the franchise shall be by publication in a newspaper of general circulation in the area at least seven days prior to the meeting and by posting at the Charlotte-Mecklenburg Government Center.
- (B) ~~Captions.~~ The captions to sections throughout this subchapter are intended solely to facilitate reading and reference to the sections and provisions of this proposal. Such captions shall not affect the meaning or interpretation of this subchapter.
- (C) ~~Franchise applications.~~ Applicants for a franchise shall submit to the town written applications utilizing the appropriate standard format provided by the town, at the time and place designated by the town for accepting applications and including the designated applications and including the designated application fee, if any.

(Ord. passed 3-20-00)

**Sec. 112.104 Exclusions for small systems.**

- (A) ~~Section exclusions.~~ Any small system (as defined by the FCC), operating within the town, shall be excluded from the following provisions:
  - (1) ~~Equal opportunity affirmative action plan, Section 112.028;~~
  - (2) ~~Construction and technical standards, state of the art, Section 112.061;~~
  - (3) ~~Records required, Section 112.103.~~
- (B) ~~Section substitutions.~~ Any small system (as defined by the FCC), operating within the town, shall have the following sections replace the so numbered section herein, Section 112.049 Schedule of Liquidated Damages.
  - (1) ~~Willful violation.~~ For the willful violation of any of the following provisions of this section, the town shall notify the grantee in writing of the violation and the grantee shall be allowed 30 days, or such greater amount of time as the town may specify, to correct such violation.
  - (2) ~~Chargeable to bond.~~ Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by the grantee within the aforesaid period of time.
  - (3) ~~Hearing.~~ The grantee may request a hearing before the Commission in writing within seven business days of receiving notice of violation from the town. The time frame specified in the notice for correction of the violation shall be tolled from the date of receipt of a request from the grantee for a hearing until the day after the hearing.

~~(4) *Damages, penalties.* These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this section, including penalties or revocation, or other statutorily or judicially imposed penalties.~~

~~(a) No decision by the town to invoke any remedy under this section, the franchise agreement or any statute, law or ordinance shall preclude the availability of any other such remedy.~~

**Issue**

**Liquidated Damages**

Failure to render payment of the reimbursement of the town's franchise expenses, franchise fee or penalty payments:

~~\$200.00 per day from time due until paid.~~

Failure to file reports:

~~\$50.00 per day from time due until report(s) are filed.~~

Failure to complete system construction:

~~\$400.00 per day from time due until construction is complete.~~

Failure to comply with material provisions of this chapter or the franchise agreement:

~~\$100.00 per day until grantee is in compliance with the provision(s).~~

Failure to provide access funds, equipment, facilities or services:

~~\$200.00 per day from time due until paid or provided.~~

~~(b) The town retains the right at its sole option to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the grantee are deemed to exist. The Town Manager or his or her designee shall determine the town's willingness to reduce or waive any of the above-listed penalties.~~



**~~Sec. 112.100 Books and records available to the town.~~**

- ~~(1) The grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the town.~~
- ~~(2) The town shall have the right to inspect upon reasonable written notice, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the system.~~

~~(Ord. passed 3-20-00)~~

**Section 6. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 92.99 of the Town of Huntersville Code of Ordinances, Penalty, is hereby amended as follows:

**Sec. 92.99 - Penalty.**

Any violation of this chapter or the failure to abide by any lawful order issued pursuant to this chapter shall be an infraction requiring the payment of a fifty-dollar (\$50.00) penalty. This Chapter and may also be enforced punishable as provided in Section 10.99.

**Section 7. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 130.01(E) of the Town of Huntersville Code of Ordinances, Penalty, is hereby added as follows:

**Sec. 130.01 - Model glue; possession, use regulated.**

- (A) *Definition.* As used in this section, the term "model glue" shall mean any glue or cement of the type commonly used in the building of model airplanes, boats and automobiles, containing toluol, hexane, trichloroethylene, isopropanol, methyl isobutyle ketone, methyl cellosolve acetate, cyclohexanone or other solvent or chemical having the property of releasing toxic vapors.
- (B) *Inhalation of fumes prohibited.* No person shall, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction or dulling of the senses or nervous system, intentionally smell or inhale the fumes from any model glue; provided, however, that this section shall not apply to the inhalation of any anesthesia for medical or dental purposes.
- (C) *Possession or transfer for unlawful purposes prohibited.* No person shall, for the purposes of violation or aiding another to violate any provision of this section, intentionally possess, buy, sell, transfer possession or receive possession of any model glue.
- (D) *Use by minors regulated.*
  - (1) Except as provided in subsection (3) hereof, no person under 16 years of age shall possess or buy any model glue.

(2) Except as provided in subsection (3) hereof, no person shall sell or transfer possession of any model glue to another person under 16 years of age.

(3) A person may sell or transfer possession of model glue to a person under 16 years of age for model building or other lawful use where the minor has in his or her possession and exhibits the written consent of one of his or her parents or his or her guardian. A person may sell and transfer possession of model glue to a person under 16 years of age where the glue is sold, delivered or given away simultaneously with and as part of a kit used for the construction of model airplanes, model boats, model automobiles, model trains or other similar models.

(E) Penalty. This section may be enforced by any or both of the following ways as provided by law.

(1) Anyone violating this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$100.00 or imprisoned for not more than 20 days.

(2) A violation of this chapter shall subject the violator to issuance of a citation in the amount of \$50.00 dollars for each such citation. A citation remaining unpaid to the town after 15 days shall subject the violator to a civil penalty which may be recovered by the town in a civil action. A violation which is a continuing violation shall subject the violator to a separate citation for each day the violation continues.

**Section 8.** **BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 32.02 of the Town of Huntersville Code of Ordinances, Levy of Tax, is hereby amended as follows:

**Sec. 32.02 - Levy of tax.**

A tax is imposed and levied in an amount equal to one and one-half percent of the gross receipts derived from the short-term lease or rental of vehicles at retail to the general public. ~~This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211.~~

**Section 9. Effective Date.**

This ordinance shall become effective upon the date of adoption.

**Town of Huntersville  
Town Board  
April 4, 2022**

**To:** Town Board

**From:** Emily Sloop

**Date:** April 4, 2022

**Subject:**

---

**EXPLAIN REQUEST:**

In September 2021, the HOAB Bylaws were updated to reflect statutory conflicts of interest rules, allow for subcommittees, and incorporate provisions for remote meetings. On the date of adoption, the Town Board requested an additional edit to the Bylaws to allow for the HOAB to elect its own Chair and Vice Chair rather than said positions being appointed by the Town Board. The attached edits set the term limit for the elected offices and the date of the election.

**ACTION RECOMMENDED:**

Approval

**FINANCIAL IMPLICATIONS:**

None

**ATTACHMENTS:**

1. HOAB Bylaws - 3-11-22

## HUNTERSVILLE ORDINANCES ADVISORY BOARD

### BYLAWS (September 7, 2021)

#### Authority and Responsibility

- 1-1 The Huntersville Ordinances Advisory Board (hereinafter “HOAB”) shall have the duties and responsibilities as follows:
- A) Review and evaluate proposed text amendments to the Town’s Zoning and Subdivision Ordinances that have been applied for through the Town of Huntersville Planning Department (“Planning Department”) or which are proposed by Planning Department staff, the Town of Huntersville Planning Board (the “Planning Board”), or the Town of Huntersville Board of Commissioners (the “Town Board”);
  - B) Provide recommendations to the Planning Board and Town Board on the proposed text amendments reviewed and evaluated pursuant to subsection 1-1-A.
  - C) Review and evaluate Town planning processes and procedures as directed by the Town Board and recommend amendments to such processes and procedures to the Planning Board and Town Board; and
  - D) Other such related tasks as directed by the Town Board or Planning Board.
- 1-2 In addition to the duties and responsibilities prescribed in Section 1-1, the HOAB shall:
- A) Keep the Planning Board and the Town Board informed and advised as to matters within their duties and responsibilities; and
  - B) Review concerns from residents and developers regarding Town planning processes and procedures as may be communicated to the HOAB by Planning Department staff.

#### Membership

- 2-1 Members of the HOAB shall be appointed by the Town Board and shall be composed of nine (9) voting members and ~~four~~<sup>three</sup> (4<sup>3</sup>) non-voting members as follows: ~~(Effective March 1, 2022, there will be four (4) non-voting members):~~

Voting Members:

- ~~A) One (1) Chairperson (this position may not be a Town Board member);~~
- ~~B) One (1) Town Board member (ex officio to their position as a Town Board member) or the appointed Town Board member’s designee (ex officio to the designee’s~~

~~position as a Town Board member) (Effective March 1, 2022, this position will move to a non-voting position);~~

~~E)A)~~ One (1) Planning Board member (ex officio to their position as a Planning Board member) or the appointed Planning Board member's designee (ex officio to the designee's position as a Planning Board member); and

~~D)B)~~ ~~EightSix (86)~~ At Large Members who shall live, work, or own a business or property within the Town of Huntersville Corporate Limits or the ETJ. ~~(Effective March 1, 2022, there will be seven (7) at large members).~~

Non-voting Members:

~~E)C)~~ One (1) Planning Director or Planning Staff member;

~~F)D)~~ One (1) Planning Executive Assistant;

~~G)E)~~ The Town of Huntersville Attorney; and

~~H)F)~~ One (1) Town Board member (ex-officio to their position as a Town Board member) or the Town Board member's designee (ex officio to the designee's position as a Town Board Member). ~~(Effective March 1, 2022).~~

2-2 At Large Members (see Section 2-1) of the HOAB shall be appointed by the Town Board for three (3) year staggered terms. Members shall be limited to serving two (2) consecutive terms; however, a member may be reappointed to the board after remaining off the board for at least one (1) year. No person may serve on more than one (1) appointed Town board, commission, or committee at the same time. Ex officio appointments shall not count in considering the number of boards, commissions, or committees on which a person is serving. Terms may be adjusted as deemed necessary by the Town Board to preserve staggered terms.

2-3 If a vacancy should occur on the HOAB for any reason, an appointment to that seat shall be made for the duration of the unexpired term in the same manner as noted in Section 2-1. Appointment to a vacancy to fill an unexpired HOAB member term shall not be counted towards the Town's term limits for serving on Town boards, committees, and commissions.

### **Election of Officers**

3-1 At the regular HOAB meeting held in the month of July, or at the first regular meeting held after July, the HOAB Board shall elect a Chairman and Vice Chairman from their Voting membership. All Voting members shall be allowed to vote. Office holders shall be limited to Voting members. Terms of office shall be one (1) year. Persons may be reelected to the same office for successive terms.-  
~~Chairperson shall be elected from all the voting members of the HOAB. The Vice-Chairperson shall be elected from all the voting members of the HOAB.~~

3-2 The Chairperson shall preside at all meetings and have the duties normally conferred on

such office. The Vice Chairperson shall serve as temporary Chairperson in the absence of the Chairperson.

- 3-3 In the event of the absence or recusal (disqualification) of both the Chairperson and Vice Chairperson from a meeting of the HOAB or a matter before its voting members in attendance, the present members may elect a temporary Chairperson for that meeting and proceed with the order of business.
- 3-4 The Planning Director, or designee, shall serve as Secretary of the HOAB. The Secretary shall, with concurrence of the Planning Director and Chairperson, prepare agendas for the meeting, provide public notice of the meetings, publish minutes (see Section 5-1), attend to correspondences, and perform such other duties as necessary. The Chairperson shall have a role in setting the agenda. If any agenda changes need to be made, they will be voted on at the time of the meeting by the HOAB.

### **Meetings**

- 4-1 Regular monthly meetings of the HOAB shall be held at a standard time and place as agreed upon by the Town Board. Members shall be notified by electronic mail of each regular meeting by the Planning Department's Executive Assistant.
- 4-2 Special meetings may be called by the Chairperson provided a ten (10) calendar day notice of the time and location of each such meeting shall be given to all members by the Planning Executive Assistant.
- 4-3 The HOAB shall operate according to Robert's Rules of Order to the extent not contrary to these Bylaws. The Chairperson, subject to these rules, shall decide all points of procedure unless otherwise directed by a majority of the HOAB in session at that time.
- 4-4 When a State of Emergency has been declared in accordance with N.C.G.S. § 166A-19.20 that is applicable within the Town limits, the Town Board and any other Town board, committee, or commission may hold a regular, special, or emergency meeting as a remote, electronic meeting using technology such as Zoom, Ring Central, or another virtual or teleconferencing platform.

Any electronic meeting held under this rule must comply with the requirements of N.C.G.S. § 166A-19.24. Under such conditions, an electronic meeting shall be treated as though it were a meeting at which all of the Board members who are simultaneously communicating are physically present.

A member of the public body participating by simultaneous communication under this section shall be counted as present for quorum purposes only during the period while simultaneous communication is maintained for that member.

Votes of each member made during a remote meeting under this section shall be counted

as if the member were “physically present” only during the period while simultaneous communication is maintained for that member.

- 4-5 If no State of Emergency is in effect in accordance with N.C.G.S. § 166A-19.20 that is applicable within the Town limits, the HOAB may hold a regular, special, or emergency meeting as a remote, electronic meeting using technology such as Zoom, Ring Central, or another virtual or teleconferencing platform only upon a consensus from the Town Board allowing the remote meeting.

Any electronic meeting held under this rule must comply with the requirements of N.C.G.S § 166A-19.24(b)-(e) and N.C.G.S. § 143-318.13. Under such conditions, an electronic meeting shall be treated as though it were a meeting at which all of the Board members who are simultaneously communicating are physically present.

A member of the public body participating by simultaneous communication under this section shall be counted as present for quorum purposes only during the period while simultaneous communication is maintained for that member.

Votes of each member made during a remote meeting under this section shall be counted as if the member were “physically present” only during the period while simultaneous communication is maintained for that member.

### **Records**

- 5-1 The HOAB shall keep a record of its recommendations, transactions, findings, and determinations. Said records shall be published and released to the public through the Town of Huntersville web site, except as exempted by State law, and maintained in the files of the Planning Department.

### **Action by Committee**

- 6-1 All actions of the HOAB shall have been put before the HOAB members in the form of a motion, duly seconded and voted upon. A quorum of all voting members shall be present before a vote may be taken on any motion. (See Section 2-3 relative to vacancies of voting members).
- 6-2 Voting shall be done by a show of hands. Only voting members present at the time a vote is taken shall be eligible to vote.
- 6-3 All voting members of the HOAB must vote on all matters. Members who are present and not excused will be deemed to have voted in favor of the motion presented if they do not vote, this is to include an abstention vote.

### **Attendance**

- 7-1 In order for the HOAB to carry out its duties and responsibilities, it is necessary for all voting members to attend the meetings. If any voting member is absent for three (3)

consecutive regular meetings or fails to attend at least seventy-five percent (75%) of the regular meetings within a twelve (12) month “moving” period, the Chairperson shall request from the Town Board that the position be vacated and a replacement be made by the Town Board. Attendance records will be kept by the Planning Executive Assistant.

### **Conflict of Interest**

- 8-1 Pursuant to N.C.G.S. § 160D-109, members of appointed boards shall not vote on any advisory or legislative decision regarding the adoption of a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. For purposes of these rules a “close familial relationship” means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

In applying this rule, the following procedure shall govern:

An HOAB member who believes that a conflict of interest exists for himself or herself shall declare that the possible conflict exists and ask to be excused from deliberation on the matter in question. The conflict of interest may be specific to a particular agenda item, ordinance change, etc. A majority vote of the remaining HOAB members shall be required to excuse a member from the deliberation for a conflict of interest.

- 8-2 A contention of the existence of an overt conflict of interest or a contention of an undisclosed conflict of interest may be made by any interested party or HOAB member. Such a contention, only after the facts have been presented, may be grounds for reconsideration of a decision or recommendation of the HOAB.
- 8-3 Any such contention made to the HOAB shall be supported by factual and material evidence and shall be submitted to a properly convened meeting of the HOAB. The HOAB shall hear all such evidence and shall, by majority vote, make a final determination as to the existence of a conflict of interest and any further action required of the HOAB by such determination.
- 8-4 Excuse from participation in any matter is necessary only in those specific matters in which a conflict arises. There shall be no excuse based on entire categories of the business, profession, or outside interest with which a member is associated.

### **Subcommittees**

- 9-1 The HOAB may create standing or ad hoc subcommittees. The following rules shall be applicable to the meetings of any standing or ad hoc subcommittee, which may be



formed by the HOAB from among its own members:

- i) A quorum shall be required consisting of a majority of the members of the subcommittee.
- ii) The Chairman of the subcommittee shall have a vote on all matters coming before the subcommittee.
- iii) Minutes of subcommittee meetings shall be kept and open to the inspection of the public. The results of each vote shall be recorded in the minutes.

### **Adoption of Rules of Procedure and Amendments**

10-1 These Rules shall at all times be consistent with all ordinances of the Town of Huntersville and laws of the State of North Carolina. Should any provisions of these Rules be inconsistent with such ordinances or laws of the State of North Carolina, said ordinances and laws shall control.

The Town Board, by a majority vote, shall adopt the Rules of Procedure. These Rules may, within the limits allowed by law, be amended at any time by an affirmative vote of two-thirds (2/3rds) of the Town Board, or an affirmative vote of the majority of the Town Board, provided that such amendments were presented in writing at a regular or special meeting before the meeting at which the vote is taken.

Adopted, as amended, this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Mayor, Town of Huntersville

ATTEST:

\_\_\_\_\_  
Town Clerk



**Town of Huntersville  
Town Board  
April 4, 2022**

**To:** Town Board

**From:** Pattie McGinnis

**Date:** April 4, 2022

**Subject:** Consider adopting First Amendment to the Capital Project Ordinance for Holbrook Street and Patterson Road Extension Projects.

---

**EXPLAIN REQUEST:**

Approve the First Amendment to the Capital Project Ordinance to transfer \$200,000 from the Walters Street project to the Holbrook Street project and \$450,000 from the Walters Street project to the Patterson Road Extension project due to cost increases to deliver Holbrook Street and Patterson Road Extension projects. Funding for Walters Street will be delayed into a future year.

**ACTION RECOMMENDED:**

Approve Board Action

**FINANCIAL IMPLICATIONS:**

No net impact to fund balance.

**ATTACHMENTS:**

1. Revised Capital Prj Ord- Projects - Fund 95

**TOWN OF HUNTERSVILLE  
TRANSPORTATION PROJECTS  
CAPITAL PROJECT ORDINANCE  
FIRST AMENDMENT**

**WHEREAS**, it has been determined that G.S. 159-45 and related chapters allow local governments to finance capital projects through the use of General Obligation Bonds; and

**WHEREAS**, the citizens of Huntersville voted on November 6, 2012 and approved the Public Improvement Bonds voting 68.11% in favor and Street Bonds voting 67.86% in favor; and

**WHEREAS**, the Local Government Commission approved a three year extension on September 10, 2019 for the \$17,850,000 Street Bonds and \$7,150,000 of Public Improvement bonds authorized on November 6, 2012 of which \$11,985,000 of Street Bonds and \$3,575,000 of Public Improvement Bonds remain unissued, and

**WHEREAS**, the Board approved the Resolution to adopt the sale of \$15,560,000 General Obligation Bonds on February 3, 2020, and

**WHEREAS**, the bonds were sold on February 19, 2020, and

**WHEREAS**, in accordance with North Carolina General Statute 159-13.2, the Town is authorized to establish a balanced project ordinance for projects involving the construction or acquisition of a capital asset.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville that a Project Ordinance is hereby established for the purchase of right of way, design and engineering, utility relocation, landscaping and construction costs.

**SECTION 1. PATTERSON ROAD EXTENSION.** The Patterson Road extension project is authorized to extend Patterson Road to Vanstory Drive. This will provide better connectivity and improved emergency access to areas inside The Park as well as a secondary emergency access to parcels along Patterson Road. This will include planning, permitting, engineering design, right of way acquisition and construction.

**SECTION 1.1.** The following amounts are appropriated for the project:

|                                                                                                                                      | <b><u>6/1/2020<br/>Original<br/>Budget</u></b> | <b><u>4/4/2022<br/>1st<br/>Amendment</u></b> | <b><u>Total</u></b>       |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|----------------------------------------------|---------------------------|
| Contruction, Utility relocation,<br>purchase of right of way,<br>design and engineering<br>and landscaping and bond<br>issuance cost |                                                |                                              |                           |
| <b>TOTAL PROJECT COSTS</b>                                                                                                           | <b><u>\$1,161,019</u></b>                      | <b><u>\$ 200,000</u></b>                     | <b><u>\$1,361,019</u></b> |

**SECTION 1.2.** The following revenues are anticipated to be available to complete this project:

|                                  | <b><u>6/1/2020<br/>Original<br/>Budget</u></b> | <b><u>4/4/2022<br/>1st<br/>Amendment</u></b> | <b><u>Total</u></b>       |
|----------------------------------|------------------------------------------------|----------------------------------------------|---------------------------|
| 2020 Transportation Bonds Issued | \$ 811,019                                     |                                              | \$ 811,019                |
| General Fund transfer            | 350,000                                        |                                              | 350,000                   |
| Transfer from Walters St.        |                                                | 200,000                                      | 200,000                   |
| <b>TOTAL REVENUE</b>             | <b><u>\$1,161,019</u></b>                      | <b><u>\$ 200,000</u></b>                     | <b><u>\$1,361,019</u></b> |

**SECTION 2. HOLBROOK STREET EXTENSION.** The Holbrook Street extension project is authorized to extend Holbrook Street to the intersection with Dallas Street connector which will provide additional east-west connectivity for improved local trip distribution as an alternative to Gilead Road. This will include planning, permitting, engineering design, right of way acquisition and construction.

**SECTION 2.1.** The following amounts are appropriated for the project:

|                                                                                                                                      | <b><u>6/1/2020<br/>Original<br/>Budget</u></b> | <b><u>4/4/2022<br/>1st<br/>Amendment</u></b> | <b><u>Total</u></b>        |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|----------------------------------------------|----------------------------|
| Contruction, Utility relocation,<br>purchase of right of way,<br>design and engineering<br>and landscaping and bond<br>issuance cost |                                                |                                              |                            |
| <b>TOTAL PROJECT COSTS</b>                                                                                                           | <b><u>\$ 1,019,737</u></b>                     | <b><u>\$ 450,000</u></b>                     | <b><u>\$ 1,469,737</u></b> |

**SECTION 2.2.** The following revenues are anticipated to be available to complete this project:

|                                  | <b><u>6/1/2020<br/>Original<br/>Budget</u></b> | <b><u>4/4/2022<br/>1st<br/>Amendment</u></b> | <b><u>Total</u></b>        |
|----------------------------------|------------------------------------------------|----------------------------------------------|----------------------------|
| Transportation Reserve transfer  | \$ 715,604                                     |                                              | \$ 715,604                 |
| 2020 Transportation Bonds Issued | 304,133                                        |                                              | 304,133                    |
| Transfer from Walters St.        | -                                              | 450,000                                      | 450,000                    |
| <b>TOTAL REVENUE</b>             | <b><u>\$ 1,019,737</u></b>                     | <b><u>\$ 450,000</u></b>                     | <b><u>\$ 1,469,737</u></b> |

**SECTION 3. WALTERS (HUNTERSVILLE-CONCORD 3<sup>RD</sup> STREET.** Walters Street project is authorized to improve Walters Street from Huntersville-Concord Road to 3<sup>rd</sup> Street. This will improve safety and traffic flow for increasing volumes between Huntersville-Concord Road and Vermillion Village. This will include planning, permitting, engineering design, right of way acquisition and construction.

**SECTION 3.1** The following amounts are appropriated for the project:

|                              | <b><u>6/1/2020<br/>Original<br/>Budget</u></b> | <b><u>4/4/2022<br/>1st<br/>Amendment</u></b> | <b><u>Total</u></b>      |
|------------------------------|------------------------------------------------|----------------------------------------------|--------------------------|
| Premium on 2020 Bonds Issued | \$ 681,450                                     |                                              | \$ 681,450               |
| Interest on Bonds            | 79,469                                         |                                              | 79,469                   |
| Transfer to other projects   |                                                | (650,000)                                    | (650,000)                |
| <b>TOTAL REVENUE</b>         | <b><u>\$ 760,919</u></b>                       | <b><u>\$ (650,000)</u></b>                   | <b><u>\$ 110,919</u></b> |

**SECTION 3.2.** The following revenues are anticipated to be available to complete this project

|                                                                                                                                      | <b><u>6/1/2020<br/>Original<br/>Budget</u></b> | <b><u>4/4/2022<br/>1st<br/>Amendment</u></b> | <b><u>Total</u></b>      |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|----------------------------------------------|--------------------------|
| Contruction, Utility relocation,<br>purchase of right of way,<br>design and engineering<br>and landscaping and bond<br>issuance cost |                                                |                                              |                          |
| <b>TOTAL PROJECT COSTS</b>                                                                                                           | <b><u>\$ 760,919</u></b>                       | <b><u>\$ (650,000)</u></b>                   | <b><u>\$ 110,919</u></b> |

**SECTION 4.** The officers of the unit are hereby directed to proceed with the capital projects in Sections 1 through 3 above within the terms of the bond resolution, grant documents, and the budget contained herein. Such authorization includes but is not limited to bidding, awarding and entering into contracts as necessary to carry out the capital project as allowed by law and after review by the Town Attorney for compliance with lawful procedures.

**SECTION 5.** Copies of this capital project ordinance shall be furnished to the Clerk to the Governing Board and the Finance Officer for direction in carrying out this project

Duly Adopted this 4th day of April, 2022.

**Town of Huntersville  
Town Board  
April 4, 2022**

**To:** Town Board

**From:** Pattie McGinnis

**Date:** April 4, 2022

**Subject:** Property Tax Refunds.

---

**EXPLAIN REQUEST:**

Attached are the Refund reports from Mecklenburg County. These reports contain three refunds totaling \$3,104.91 which includes \$110.67 in interest. The refund is the result of the Property Tax Commission.

**ACTION RECOMMENDED:**

Approve Board Action

**FINANCIAL IMPLICATIONS:**

Decrease in revenue.

**ATTACHMENTS:**

1. Hunt refunds 2022 03 08
2. Huntersville PTC refunds 2022 02 02



# HUNTERSVILLE

| Tax Year | Bill Number             | Parcel # | Source Type | Adj. # | Adj. Reason  | Date of Adj. | Recipient Name        | Address Line 1       | City         | State | Zip   | Amount (\$) | Total Interest to Pay if mailed on or before 3/30/2022 (\$) |
|----------|-------------------------|----------|-------------|--------|--------------|--------------|-----------------------|----------------------|--------------|-------|-------|-------------|-------------------------------------------------------------|
| 2020     | 0001460539-2020-0000-00 | 00927415 | REI         | 602009 | PTC Decision | 3/8/2022     | SHRI ASHTAVINAYAK LLC | 16617 STATESVILLE RD | HUNTERSVILLE | NC    | 28078 | \$ 1,455.12 | \$ 89.30                                                    |
| 2021     | 0001460539-2021-0000-00 | 00927415 | REI         | 602010 | PTC Decision | 3/8/2022     | SHRI ASHTAVINAYAK LLC | 16617 STATESVILLE RD | HUNTERSVILLE | NC    | 28078 | \$ 1,455.12 | \$ 16.54                                                    |
| TOTAL    |                         |          |             |        |              |              |                       |                      |              |       |       | \$ 2,910.24 | \$ 105.84                                                   |

**HUNTERSVILLE**

| Tax Year | Bill Number                  | Parcel # | Source Type | Adj. # | Adj. Reason  | Date of Adj. | Recipient Name       | Refund Address Line 1  | Refund City  | State | Zip   | Payment Date for Interest Calculation | Refund Amount (\$) | Total Interest to Pay if mailed on or before 3/2/2022 (\$) |
|----------|------------------------------|----------|-------------|--------|--------------|--------------|----------------------|------------------------|--------------|-------|-------|---------------------------------------|--------------------|------------------------------------------------------------|
| 2020     | 0001468441-2020-2020-0001-00 | 01304112 | REI         | 601613 | PTC Decision | 1/31/2022    | JACKSON, DAVID KEITH | 13027 ALLISON FERRY RD | HUNTERSVILLE | NC    | 28078 | 1/6/2021                              | 84.00              | 4.83                                                       |
| TOTAL    |                              |          |             |        |              |              |                      |                        |              |       |       |                                       | 84.00              | 4.83                                                       |