City of Henderson, Kentucky
Board of Commissioners Video Teleconference Meeting
Tuesday, October 13, 2020, 3:00 P.M.

This meeting will be conducted as a video teleconference meeting as allowed under KRS61.826. Any interruption in the video or audio broadcast at any location shall result in the suspension of the meeting until the broadcast is restored. As a result of the state of emergency declared by the President of the United States and the Governor of Kentucky due to the global COVID-19 pandemic, and in accordance with recommended and mandated precautions related to COVID-19, Kentucky Opinion of the Attorney General 20-05, and SB 150 the following Meeting Notice is issued:

Please take notice that as Mayor of the City of Henderson, Kentucky, I hereby call a special called meeting of the Board of Commissioners to be held on Tuesday, October 13, 2020, at 3:00 p.m., in the third floor assembly room, 222 First Street, Henderson, Kentucky. One or more members of the Board of Commissioners may participate via Zoom Webinar or similar video teleconferencing system and the meeting will be broadcast to the public. Due to the highly contagious nature of COVID-19 LIMITED public attendance will be permitted at this meeting in accordance with recommended and mandated precautions. The meeting will be broadcast on Zoom (call in number/webinar ID – 1 312 626 6799 / 82719222109 Password: 8311200) or https://us02web.zoom.us/j/82719222109 Password: 8311200; will be broadcast on cable Spectrum Channel 200; and live streamed on the city’s website: https://www.cityofhendersonky.org/CivicMedia. The purpose of this called meeting is for the following:

AGENDA

1. Roll Call:

2. Appearance of Citizens:

3. Presentations: Kentucky League of Cities Training Certification Presentations – Howard Rosewell

Service Award Pin – Larry Daniels, 20 Years

Vision Plan Projects Update – Lindsay Locasto and Missy Vanderpool

4. Consent Agenda:

   Minutes: July 28, 2020, Called Work Session

   Resolutions: Resolution Authorizing Acceptance of Delta Regional Authority (DRA) Grant in the Amount of $509,000.00 for Henderson Water Utility Clearwell Project

   Municipal Order: Municipal Order Awarding Bid for Purchase of SCBA Equipment for the Fire Department
5. Ord. 2nd Reading: Ordinance Amending Chapter 23, Water & Sewer Service – Theft of Service

Ordinance Closing Portion of Public Right-of-Way – Unimproved Lincoln Avenue

6. Ord. 1st Reading: Ordinance Amending Appendix A–Zoning – Manufactured Homes & Electronic Signs

Ordinance Amending Chapter 23, Natural Gas- Theft of Service

7. Reports: Annexation – Bent Creek Subdivision & Bent Creek Estates Subdivision

8. Miscellaneous:

9. Executive Session: Executive Session Pursuant to KRS 61.810(1)(c) Relating to Pending Litigation

10. Adjournment:

Respectfully,

___________________________
Steve Austin, Mayor

A copy of the foregoing notice received and service thereof waived this 13th day of October, 2020.

___________________________
Commissioner Patti Bugg

___________________________
Commissioner X R. Royster, III

___________________________
Commissioner Bradley S. Staton

___________________________
Commissioner Austin P. Vowels

This meeting will be conducted as a video teleconference meeting as allowed under KRS61.826. Any interruption in the video or audio broadcast at any location shall result in the suspension of the meeting until the broadcast is restored.
October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners
FROM: William L. “Buzzy” Newman, Jr., City Manager
SUBJECT: Presentations

Items scheduled under the Presentations section of the agenda are as follows:

I. Presentation of Kentucky League of Cities Training Certification Awards
   Mr. Howard Rosewell, Senior Marketing Agent with KLC will present training certifications to Mayor Steve Austin, Commission Brad Staton, City Manager Buzzy Newman, and Community Relations Manager/Public Information Officer Donna Stinnett.

II. Presentation of Employee Service Award
    Larry Daniels, Gas Distribution Technician........................................20 years

III. Vision Plan Update
    Ms. Lindsay Locasto and Ms. Missy Vanderpool will present an update on the Vision Plan projects.
City Commission Memorandum
20-155

October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners

FROM: William L. "Buzzy" Newman, Jr., City Manager

SUBJECT: Consent Agenda

The Consent Agenda for the meeting of October 13, 2020, contains the following:

Minutes: July 28, 2020, Called Work Session

Resolutions: Resolution Accepting Grant and Authorizing Mayor to Execute Documents and Act as Authorized Correspondent for the Project to be Used for the Replacement of Clearwell, an 800,000 Gallon Steel Tank at the South Water Treatment Plant

Municipal Order: Municipal Order Awarding Bid for Purchase of SCBA Equipment to Fire Department Service & Supply Company, Louisville, Kentucky
A Called Work Session of the Board of Commissioners of the City of Henderson, Kentucky, was held on Tuesday, July 28, 2020, at approximately 3:15 p.m., prevailing time, (or immediately following the special called meeting of the Board of Commissioners) with no primary location designated for this video teleconference meeting as the result of the state of emergency declared by the President of the United States and the Governor of Kentucky due to the global COVID-19 pandemic, and in accordance with recommended and mandated precautions related to COVID-19 per the Kentucky Attorney General Opinion 20-05, public attendance was not permitted at this meeting due to the highly contagious nature of COVID-19. It is not feasible for the City to maintain order and abide by recommended and mandated precautions while providing a central physical location for public viewing. The meeting was conducted in accordance with KRS 61.826.

There were present Mayor Steve Austin presiding.

PRESENT:
Commissioner Patti Bugg
Commissioner X R. Royster, III
Commissioner Bradley S. Staton (via Zoom video panelist)
Commissioner Austin P. Vowels

CITY STAFF MEMBERS included William L. “Buzzy” Newman, Jr., City Manager; Dawn Kelsey, City Attorney; Maree Collins, City Clerk; Donna Stinnett, Community Relations Manager/Public Information Officer; Robert Gunter, Finance Director (via Zoom); Greg Nunn, IT Director (via Zoom); Cory Fischbeck, IT Applications Programming Manager (via Zoom); Connie Galloway, Human Resources Director; Karla Beckgerd, Human Resources Specialist; David Wright, IT Network Administrator II; Victor Carson, IT Network Administrator; Charles Abbott, Fire Lieutenant (via Zoom); Regenia Bender, HR (via Zoom); Tammy Newton, HR (via Zoom); and Doug Boom, Engineer (via Zoom)

ALSO PRESENT: Mr. Tom Williams, Henderson Water Utility General Manager; Nathaniel Phelps, (via Zoom); and Kevin Patton, The Gleaner (via Zoom)

THE FOLLOWING AGENDA ITEM WAS DISCUSSED:

1. Review and Discussion of City Civil Service System

✓ Mr. Tom Williams, Henderson Water Utility General Manager, gave a brief overview of how difficult it can be to coordinate the state certification processes with the Civil Service hiring, testing and promotional processes.
✓ Mrs. Karla Beckgerd, Human Resources Specialist, gave a brief overview of the difficulties in recruiting eligible candidates through the current Civil Service hiring processes.
✓ Mrs. Dawn Kelsey, City Attorney, presented a PowerPoint presentation detailing the City’s Civil Service System:
   ➢ History – the present civil service ordinance was passed in 1946
     o The civil service statutes only applied to first, second, and third-class cities (until 2014 the discontinuation of the City classes)
     o KLC reports that less than 30 cities out of 411 still have civil service and some of those are cities that discontinued civil service but still have employees under civil service protection or have their own civil service system.
     o HMPL discontinued Civil Service for their employees in 1991 – the last civil service employee retired in 2012
   ➢ KRS 90.310 created a three-person Civil Service Commission tasked with administering examinations and maintaining an eligibility list for applicants and conducting disciplinary hearings.
     o KRS 90.309 – no employee in the classified service shall be dismissed, suspended, or reduced in grade or pay for any reason
except for inefficiency, misconduct, insubordination, violation of law involving moral turpitude or violation of any rule adopted by the city legislative body or civil service commission.

- Appointing authority under the statute are the City Manager for city civil service workers and HWU General Manager for HWU civil service employees. Has the power to hire and/or promote from the eligible list; make temporary appointments when no one from the eligible list or lower rank is available; terminate employees on probation.

- Employees not under civil service include: probationary employees, hazardous duty employees, department heads hired after 2010, contract employees; and seasonal employees.
  - Current employees under civil service would retain their civil service status as long as they remain in their current positions.
  - Probationary employees will not obtain civil service if an ordinance is passed prior to the expiration of their probation.
  - All new hires would no longer be civil service.
  - If an employee changes positions by promotion or transfer, etc. they will lose their civil service status.

- A change from civil service to at-will is completely separate from retirement, benefits, or leave policies.
  - Eligible employees will still be covered under the County Employee Retirement System.
  - All employees will be offered the same benefit package.
  - The vacation and sick leave policies in the Employee Manual will be unchanged.

- Current Civil Service Testing/Hiring Process was reviewed
- New Hiring Process was reviewed (some positions will still include some pre-employment written and/or skills testing processes)
- Discipline Process for both Civil Service positions and new Non-Civil Service positions was reviewed.
- Benefits from Ending Civil Service include:
  - Shortens length of time for hiring; increases applicant pool due to some potential candidates refuse to apply because they do not want to test and some candidates suffer from test anxiety and possibly may allow for more diverse candidate pool; licensed professionals have to take exams; test performance is not always indicative of successful job performance; allows for succession planning; and allows for promotion of employees in “acting roles.”
- Potential Issues with Ending Civil Service include:
  - Employees’ concerns with not having the protection of civil service; prevent promotion opportunities of current civil service employees to non-civil service positions; potential political interferences when do not have civil service processes; civil service can be seen as providing impartial or objective process to hire and/or discipline employees.

- Reviewed changes to the Employee Manual that would be necessary in the various articles to end civil service and amend the hiring, testing, promotion, probationary, disciplinary, nepotism, and management responsibilities.
- Other ordinance changes would be necessary to end civil service and delete certain regulations designating department heads under civil service for both the city and HWU.

DISCUSSION WAS HELD relating to the current and proposed hiring processes; current and proposed disciplinary actions; if it is possible to create a disciplinary panel or committee it was explained that if a panel or committee were to have the final authority on disciplinary action then it would not be at-will employment; and necessary steps to avoid political pressures in hiring decisions.
NO FORMAL ACTION WAS TAKEN BY THE BOARD OF COMMISSIONERS.

MEETING ADJOURN:

MOTION by Commissioner Staton, seconded by Commissioner Royster to adjourn.

The vote was called. On roll call, the vote stood:

Commemorator Bugg ----- Aye:
Commissioner Royster -- Aye:
Commissioner Staton ---- Aye:
Commissioner Vowels --- Aye:
Mayor Austin ********** Aye:

WHEREUPON Mayor Austin declared the work session adjourned at approximately 4:35 p.m.

ATTEST: Steve Austin, Mayor
Maree Collins, CKMC
City Clerk
October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners
FROM: William L. "Buzzy" Newman, Jr., City Manager
SUBJECT: Delta Regional Authority Grant Program-Clearwell Project

The accompanying resolution authorizes the acceptance of a Delta Regional Authority grant through Green River Area Development District for funds in the amount of $509,000.00 to be used to off-set the cost of the Clearwell Project.

Established in 2000 by Congress, the Delta Regional Authority makes strategic investments of federal appropriations into the physical and human infrastructure of Delta communities. Through the States’ Economic Development Assistance Program, these investments help to improve transportation and basic public infrastructure and to strengthen our workforce development system and local business environments. It consists of 252 counties and parishes in Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee.

The grant funds would be used to help off-set the costs for replacement of the Clearwell, an 800,000-gallon steel tank with a prestressed concrete tank at the South Water Treatment Plant near the Tyson complex. Tyson signed a job retention commitment letter as part of the grant application process. Ms. Skyler Stewart, Infrastructure Planner of the Green River Area Development District (GRADD) will be assisting with the grant process.

It is planned to bid the project in February 2021, with construction completion anticipated in July 2021. The total project investment is estimated at $1,384,000.00. Your approval of the attached resolution is requested.

c: Tom Williams
Date: 7 October 2020

Memo To: Mayor Steve Austin  
City Board of Commissioners

From: Tom Williams, P.E.  
General Manager

Subject: Delta Regional Authority Grant  
South Water Treatment Plant Clearwell

HWU initiated a study in 2013 and received a final report in 2014 on capital needs at our South Water Treatment Plant, near the Tyson complex in southern Henderson County. The plant was constructed in the mid-1990’s and has several deficiencies. One of the projects from that study was replacement of the Clearwell, an 800,000-gallon steel tank. We took bids on a project to paint that tank in 2015, but the bids came in at nearly 70% of the cost of a new tank. A present worth analysis was performed, and we opted for a project to replace the steel tank with a prestressed concrete tank, since that type of structure would not have to be painted or require much major maintenance, over a 50-year life, and thus had a lower present value cost.

Shortly thereafter, other projects in our systems took higher priority, and we pushed the Clearwell project to the back burner. Recent further deterioration of that tank made this project more of a priority, and in concert with the City and the Green River Area Development District, applied for a $500,000 grant from the Delta Regional Authority to defray some of the costs. Now that the grant has come through, we are planning to bid this work in February 2021, with construction completion around 1 July 2021.

Many thanks are due to Buzzy Newman, to Joanna Shake, the new Executive Director of GRADD, along with Missy Vanderpool & Whitney Risley of Henderson Economic Development, and Dorsey Ridley in Frankfort. Also, local and corporate personnel at Tyson, who signed a commitment letter on job retention, which was very important to the granting agency.

We ask for your assent to have the Mayor sign the attached award documents, so this project can proceed.

In the meantime, if you have any questions or need further information on this subject, please feel free to call me at 270.869.6621 (Office) or 270.823.2573 (Cell).

Cc: Wm. L. (Buzzy) Newman, Jr., City Manager  
Dawn S. Kelsey, City Attorney
Award Agreement between the Delta Regional Authority and The Awardee

The Following Conditions Apply to all DRA Projects

Order of Precedence: This Agreement is subject to the provisions of the Delta Regional Authority Act, the Delta Regional Authority Code, the applicable Administrative Program Manual for awards awarded by the Delta Regional Authority and this Agreement as well as incorporated supplements, if any. Any conflict among these provisions shall be resolved giving precedence to these authorities in the order which they are listed in. The awardee acknowledges that no such provisions or any interpretations thereof shall be deemed to diminish the rights of DRA. DRA may at its option exhaust its remedies hereunder and under other documents, either concurrently or independently, and in such order as it may determine.

Deadline: The Authority may revoke or revise its approval, at its discretion, of any project if work intended to be assisted is not underway within 12 months after the date of this Agreement.

Awardee’s Compliance to all laws and regulations: The awardee shall comply fully with all laws and regulations. Specifically, the awardee shall protect his or her employees under all such laws, and regulations including, but not limited to, Executive Order 11246, Sections 503 and 504 of the Rehabilitation Act of 1973, Title VI and VII of the Civil Rights Act of 1963, The Family and Medical Leave of 1993, and applicable workers’ compensation laws of the awardee’s state.

DRA Under Run Policy: If the project contains only DRA funds, (and a non-federal share, where applicable), the DRA funds shall be returned to the DRA in the event of an under run. If the project contains both DRA funds and other agency(ies) funds, the funds shall be returned proportionately.

Additional Funds: It is understood that if the awardee receives additional funding from any new source towards the eligible cost of this project after DRA approval, these funding sources shall not be used to reduce the amount of local funds pledged. If new funds are available to this project, the DRA and the basic federal agency, if any, should be notified immediately as the DRA reserves the right to reconsider the level of its funding approval should this occur. In affirming this award, the awardee certifies that the additional funds are committed and available as needed for the project and that the additional funds will not affect ownership of, or title to, the project facilities. If the additional funds are de-committed for whatever reason, DRA reserves the right to demand return of all award proceeds and to terminate and/or revoke the project.

Delta Regional Authority
Change in Scope: It is understood that a change in scope should not be implemented without prior written approval from DRA and the basic federal agency, if any. A change of scope includes, but is not limited to, the project design, the type of project to be completed, capacity of the system, size of project, the number and/or type of customers served, or equipment items or other property purchased.

Close Working Relationship with Administering Agency: Pursuant to the Delta Regional Authority Act, it is expressly understood that the intent of this Agreement is that the awardee must work in conjunction and closely with the administering agency, if any, and follow bidding and contract award procedures to ensure that all pertinent state and federal laws are complied with. Coordination with the administering agency begins with the filing of an application and continues throughout the project until completed.

Restrictions on Assistance: Pursuant to the Delta Regional Authority Act, DRA funds should not be used for any form of assistance to relocate industries within the Delta Region; recruitment activities which place a Delta state in competition with another Delta state; and projects to promote unfair competition between businesses within the Delta Region and as set forth in the applicable Administrative Program Manual.

Project Account: Awardees shall be required to produce to DRA copies of all bank statements of the project account upon request of DRA.

Bonding or Insurance: The Awardee must provide evidence of adequate insurance and fidelity or employee dishonesty bond coverage.

Audit: Audit requirements only apply to the year(s) in which the Agency awarded funds are expended. Awardees expending $750,000 or more of federal assistance per year must submit an audit in accordance with the requirements of OMB circular A-133 as codified in 2 CFR 200. Awardees that expend less than $750,000 a year in federal awards are exempt from federal audit requirements for that year except as noted in 2 CFR 200, but the records must be available for review or audit by appropriate officials of the DRA, administering agency and/or the General Accounting Office.

Interest: The Awardee will remit interest earned on award funds deposited in an interest-bearing account in accordance with 2 CFR 200 to DRA.

Cost Incurred Prior to Approval: Prior to the initial disbursement of award funds, the awardee shall provide acceptable documentation to the Authority for costs incurred prior to the award to determine their eligibility in accordance with the requirements of the cost principles contained in 2 CFR 200. DRA reserves the right to deny all costs incurred prior to the approval of this award.
Quarterly Report: Quarterly reports are due to the DRA on the 15th of the month following each calendar quarter, executed by the proper signatory. It is the responsibility of the awardee, not the administering agency, to write a complete report and timely send the same to the DRA central office. A delinquent quarterly report will result in the withholding of funding requests.

Final Report: Within one month after the period of performance, the awardee shall prepare and submit to DRA for approval a final report of all work accomplished under this award including recommendations and conclusions based on the experience and results obtained. After DRA’s review of the final report, DRA will either accept the report and associated outcomes, return to the awardee the approved report with such comments, including any requirements, suggestions, or modifications as deemed necessary, or require resubmission of the final report if deemed necessary, in which case the awardee shall within 15 days submit another final report for review and comment.

Budget: Costs will be determined in general accord with the budget produced in the awardee’s application subject to the terms of this Agreement and to pertinent DRA Code provisions.

Hold Harmless: Awardee will carry out the program under this Agreement as an independent contractor and not as an agent of the Authority. Awardee assumes sole and complete responsibility for the conduct of the program in such a manner as to assure the safety and welfare of all persons participating in or any way involved in, affected by, any activities conducted under this Agreement. The Authority, by its provision of funds for this project, undertakes no responsibility in this regard. Notwithstanding any state or federal law to the contrary, the awardee shall indemnify and save harmless the Authority, its agents, officers and employees, from and against any and all claims, demands, suits, judgments, settlements, etc., for sums of money for or on account of personal injuries, property damage, or loss of life or property of any persons arising from or in any way connected with the performance of the project covered by this Agreement. Further, the awardee expressly releases the DRA from any liability for any losses or damages suffered by awardee, directly or indirectly, from or in any way connected with the performance of this Agreement unless state or federal law does not allow such release.

Subcontracting: The awardee may enter into subcontracts for the work contemplated under this Agreement, subject to the conditions and provisions as the Authority may deem necessary, to protect the interests of the Authority including, but not limited to, the right to disallow the use of sub-contractors and to review all sub-contracts. Provided, further, however, that no provision of this article and no such approval by the Authority of any subcontract shall be
Project Personnel: The Authority reserves the right to approve or disapprove the selection or continued participation of any personnel supported with the funds made available under this Agreement.

Suspension/Termination/Collection: The DRA shall have the right, upon written notice to the awardee, to suspend or terminate this Agreement for cause, whenever the Federal Co-Chairman determines there is reasonable basis to believe there has been malfeasance, embezzlement, misappropriation, unauthorized application of federal funds or material false statement in the conduct of this Agreement or any other DRA award agreement and begin collection proceedings by unilateral election. This Award Agreement may also be terminated and/or suspended for a violation of any law, rule, applicable DRA Administrative Program Manual(s) and/or regulation of DRA or other applicable laws.

Termination for Convenience: The DRA may, by written notice to the awardee, terminate this Agreement in whole or in part for convenience of the Authority, whenever the DRA determines that such action is in its best interest.

Award Related Communications: It will be the responsibility of the awardee to include the Delta Regional Authority in any award-related communications from your office. Specifically, all DRA funded, or partially funded projects shall include proper acknowledgement of DRA award funding to include but not be limited to: project announcements, press releases, news articles, ribbon-cutting ceremonies, check presentations, radio and/or television advertisements and the like. Whether written or verbally communicated, the awardee agrees to recognize DRA for its participation. Additionally, those written communications will include the DRA seal. A jpeg file of the DRA seal can be downloaded from the Authority’s website at www.dra.gov/state-award-funding/ and clicking on the “resource” link. DRA shall be available to assist with any of these communications.

Cornerstone, Plaque or Sign: Any facility constructed in whole or in part by the funds provided under the DRA shall include a permanent cornerstone, plaque or sign appropriately acknowledging the assistance provided through the DRA program, unless waived by the DRA; provided that such an item not be required if it would be prohibited as an eligible project cost under the basic federal program through which the DRA assistance is provided.

Operation and deemed in any event or in any manner to provide for the incurrence of any obligation by the Authority in addition to the total amount and the Authority shall not be responsible for the fulfillment of the awardee’s obligations to the subcontractors. Provided, further, that no subcontracting shall be deemed to relieve the awardee of any obligations under this Agreement.

Delta Regional Authority
Maintenance Agreement: initial disbursement, the awardee shall provide to the Authority an executed copy of an agreement with the party responsible for the operation and maintenance of the project. Such agreement must be consistent with the Authority policies including, but not limited to, non-discrimination, environmental requirements, an adequate consideration. The agreement must also set forth that prior to occupancy, the occupant of any part of the land acquired or improved by this project must furnish to the awardee, for transmittal to DRA, properly executed DRA forms evidencing assurance of compliance with all applicable requirements.

Project Start and Ending Dates: The project start date shall be the date of the official Notice to Proceed from DRA. The project end date shall be calculated, accounting for original time requested to complete the project, from the date of the Notice to Proceed.

Financial Procedure: The award proceeds will be administered in accordance with generally accepted financial accounting procedures and standards. Should the awardee fail to follow such procedures and standards, DRA reserves the right to collect, suspend, terminate, and/or collect said funds as referenced herein.

Certification Regarding Lobbying: The awardee certifies that no federal appropriated funds have been paid, or will be paid, by or on behalf of the awardee to any person or any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of this award and the entering into any and all agreements to effectuate this transaction. The awardee further agrees to comply with applicable statutory provisions prohibiting use of Federal assistance funds for activities designed to influence any legislation or appropriations except through proper, official channels.

Return of Award Proceeds: The awardee acknowledges that all award proceeds, until they are spent for the purposes of the award and in accordance with the award application and this Agreement, shall remain the property of DRA and, if not expended for the purposes of the award and in accordance with the award application and this Agreement, will be returned to DRA within 30 days after the final date on which the award proceeds were scheduled to be spent under the terms of the award application and this Agreement.

Licenses and Permits: The awardee and its employees, agents, and advisors, and not DRA, are responsible for obtaining necessary licenses and permits, if any, for insuring that all aspects of the project comply with all applicable statutes, regulations, ordinances, and codes, and for all costs of the project in excess of the amount of the approved award.

Notices: Any notice shall be conclusively deemed to have been received by a party hereto and be effective on the earlier of the day on which delivered to such party or the day specified in the notice.
party or on the third business day after the day on which mailed, addressed to such party. Such notice to DRA shall be sent to its central office address of 236 Sharkey Avenue, Suite 400, Clarksdale, Mississippi 38614. Any notice to the awardee shall be sent to the address set forth in the award application.

Waiver/Cumulative Remedies: Neither any failure nor any delay on the part of DRA or any administering agencies in exercising any right, power or privilege hereunder or under the laws of the applicable jurisdiction shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. No modification, amendment or waiver of any provision of this Agreement or other documents, nor consent to any departure by the awardee or any other person therefrom shall in any event be effective unless the same shall be in writing and signed by DRA and then such waiver or consent shall be effective only in the specific instance and for the specific purpose which given. No notice to or demand on the awardee or any other person in any case shall entitle such person to any other or further notice or demand in the same, similar, or other circumstances. Any remedies herein provided are cumulative and not exclusive of any remedies provided by law or of any remedies provided by any other document.

General Procedures: All DRA awards shall be administered in accordance with 2 CFR 200; and any other applicable Federal regulations. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Awardee shall maintain custody of time records, payrolls, and any other records as appropriate to substantiate all services reported to DRA and/or the administering agency, if any.

Successors and/or Assigns: All general provisions herein shall be applicable to the awardee’s representatives, agents, successors and/or assigns.

Contracting Procedures: In contracting for services and/or purchasing equipment under this Agreement, awardee shall assure that (1) all contracting shall be at prices and on terms most advantageous to the awardee and to the project; and (2) all interested parties shall have a full and fair chance at doing business with the awardee. Awardee shall arrange for all contracting through competitive bidding, or, if permitted by state law, other negotiating and contracting procedures that will assure compliance with (1) and (2) above.

Coordination and Non-Duplication: In carrying out the project under this Agreement, awardee shall assure that the planning, design work and implementation of activities are coordinated with the activities conducted by the awardee under other related DRA awards, if any, and shall assure that there shall be no duplication of effort or funding under this Agreement of any work or payments under those awards.
Compliance with Applicable laws: Awardee shall assure that all provisions of applicable federal, state, and local laws shall be complied with in the conduct of activities under this Award Agreement. The DRA reserves the right to suspend or terminate this Agreement in the event that applicable federal, state, and local laws and regulations are not complied with. Such right shall not be exclusive and does not affect rights and remedies provided elsewhere by law, regulation, or agreement.

Progress Payments: Awardee may receive progress payments on the basis of worked performed. DRA and the administering agency, if any, must concur as to the reasonableness of costs upon review of the submitted Form SF 270 (Request for Advance or Reimbursement). DRA and/or the administering agency, if any, reserve the right to determine that the requirements of this Agreement are being met before making such payments.

Advance Payments: Awardee may receive advances of funds subject to the approval of the Director of Project Development and Management, at his or her sole discretion, in amounts sufficient to meet scheduled payroll costs and other related costs, including payments to subcontractors on the following basis: (a) awardee’s certification that a firm commitment has been obtained from each employee appointed under this Agreement, or that firm, formal subcontracts have been executed which will require payments for goods and services to be delivered during the period for which advance is sought; (b) upon submission of Form SF 270 (Request for Advance or Reimbursement) and on the basis of the costs estimates approved by the DRA and/or administering agency, if any; and (c) awardee’s certification that any previous advance has been exhausted (if previous advance has not been exhausted, this remainder must be used to meet scheduled expenses payable during the next period).

Disbursements: All disbursements shall be for obligations incurred, after the effective date, in the performance of this Agreement, and shall be supported by contracts, invoices, vouchers and other data, as appropriate and as determined by DRA, evidencing the disbursements. DRA intends to make disbursements in proportion to DRA’s percentage of the project budget.

EIN and DRA Project Numbers: All payment requests must show the nine-digit taxpayer identification numbers assigned by the Internal Revenue Service and the project number assigned to this project by DRA.

Rebates and Discharges from Liability: Awardee agrees that any refunds, rebates or credits, or other amounts (including interest earned thereon) received by the awardee shall be paid to DRA to the extent that they are properly allocable to costs for which the awardee has been reimbursed. Awardee will, when requested, assign such amounts to DRA and execute such releases as may be appropriate to discharge the Authority, its officers and agents from liabilities arising out of
<table>
<thead>
<tr>
<th><strong>Official not to Benefit:</strong></th>
<th>No member or delegate to Congress or any local official, shall directly benefit from any DRA award.</th>
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<tbody>
<tr>
<td><strong>Covenant Against Contingent Fees:</strong></td>
<td>The awardee warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the awardee for the purpose of securing business. For breach or violation of this warranty the Authority shall have the right to annul this Agreement without liability or in its discretion to deduct from the award amount or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.</td>
</tr>
<tr>
<td><strong>Certification Regarding Debarment:</strong></td>
<td>Awardee certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.</td>
</tr>
<tr>
<td><strong>Fraud:</strong></td>
<td>The awardee certifies that it has not within a three-year period preceding the submission of the award application been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public, whether it be federal, state, or local, transaction or contract under a public transaction or violated federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.</td>
</tr>
<tr>
<td><strong>Indicted:</strong></td>
<td>The awardee certifies that it is not presently indicted for or otherwise criminally or civilly charged by a government entity, whether federal, state, or local, with commission of any offenses.</td>
</tr>
<tr>
<td><strong>Termination of Public Transaction:</strong></td>
<td>The awardee certifies that it is not within a three-year period preceding this award application had one or more public transactions, federal, state, or local, terminated for cause or default.</td>
</tr>
<tr>
<td><strong>Conflicts of Interests:</strong></td>
<td>The awardee certifies that it has not violated the provisions of 7 U.S.C. 2009aa(1)(i) dealing with the conflicts of interest statute of the Delta Regional Authority Act.</td>
</tr>
<tr>
<td><strong>Certification Regarding Drug-Free Work Place:</strong></td>
<td>The awardee certifies that it will provide a drug free workplace.</td>
</tr>
<tr>
<td><strong>Errors and Omissions/</strong></td>
<td>The awardee agrees to fully cooperate and adjust for clerical errors or omissions in executing any of the documents in connection with this award</td>
</tr>
</tbody>
</table>

Delta Regional Authority 8
Compliance Agreement: within 30 days from the date of mailing said request.

Basic Agency: If the servicing of this award is transferred to a Basic Agency, all fees, expenses, or other charges for such servicing will be paid from the award funds by DRA.

Percentage Payments: If the project budget is funded by any other source towards the eligible cost of this project, DRA shall only pay a percentage of the bill, contract, invoice, or voucher presented. This amount shall be equal to the percentage of DRA’s funds to the overall project.

Free and Clear of Liens: The awardee will keep the project free and clear of any liens, adverse claims, deeds of trust, mortgages, security interest, other charges and/or encumbrances.

Illegal Aliens: The awardee certifies that it is not in violation of the Federal Immigration and Nationality Act set-forth in 8 U.S.C. 1324 whereby it is unlawful to hire an alien, to recruit an alien, or to refer an illegal alien for a fee, knowing the illegal alien is unauthorized to work in the United States. The awardee further certifies that it has complied with all employment eligibility verification requirements, which include examination of identity documents and completion of Form I-9 for every employee hired.

Conveyance: The awardee represents and warrants that it shall not convey, transfer or assign any or all of its interest in and to the project.

Non-Discrimination: It is the general policy of the Authority that an awardee assisted under the DRAA shall carry out all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, and other federal laws prohibiting discrimination, and in such a manner that no person shall, on the grounds of race, ethnicity, citizenship status, national origin, ancestry, gender, sexual orientation, age, weight, religion, creed, physical or mental disability, marital status, veteran status, and/or political affiliation be excluded from participation in, be denied the benefits of, or be subjected to discrimination with respect to any such programs or activities. The awardee shall afford equality of opportunity in all their employment practices. The Authority is committed to the principles of equal opportunity and the elimination of all vestiges of discriminatory practices that might exist.

Certification of In-Kind Contributions: Should the award include in-kind contributions by the Awardee, the Awardee shall forward all receipts, invoices or other documentation satisfactory to DRA verifying and confirming the in-kind contribution(s). The in-kind contributions must be verifiable from the Awardee’s records. The in-kind contributions may not be included as contributions for any other federally assisted project or program and must be allowable under the
applicable cost principles. The in-kind contributions may not be paid by the Federal or State Government under another award. The in-kind contributions must be set forth in the approved budget.

**Additional Funding Sources:**
If the application submitted by the Awardee and approved by DRA was conditioned upon the Awardee providing funds from other funding sources and the Awardee represented and warranted in its application that certain additional funds would be provided from additional funding sources in order to complete this project, but at the time of closing of the award, the additional funds to complete the project had not been received, then the Awardee understands, acknowledges and agrees that six months after the date of the Award Letter, all of the award proceeds for the Awardee may be rescinded by DRA, unless the additional sources of funding have been received by the Awardee at that time, all at the discretion of DRA. Only when all funds are committed will a Notice to Proceed be issued.

**Eligible Expenses:**
The Awardee understands, acknowledges, and agrees that the funding of this project shall be used for the eligible expenses outlined in the approved application documentation. However, should the Awardee wish to use these funds for other expenses associated with this Project, the Awardee may request from DRA in writing which portion of the project the Awardee wishes to fund and the reasons for doing so as such.

**Award Amount:**
If the award amount is for a lower amount than was requested by the Awardee in the application, then the Awardee states, acknowledges, and agrees that the project described in the application will begin on the date set forth therein and can move the project forward to completion, despite this lower amount approved.

**Attorney’s Fees:**
The Awardee does hereby guarantee the prompt performance of the obligations according to the terms and provisions of this Agreement. The Awardee further agrees it shall pay all costs and expenses, including attorneys’ fees, incurred in the enforcement of this Agreement or to protect the interests of DRA, should this Agreement be placed in the hands of an attorney, by suit or otherwise.

**Bankruptcy:**
If the Awardee becomes insolvent or applies for, consents to or acquiesces in the filing of a bankruptcy proceeding, or the appointment of a trustee or receiver or other proceedings under any bankruptcy or insolvency law or any dissolution or liquidation proceedings are instituted by or against it, the Awardee shall be in default and shall return all DRA funds.

**Previous Construction:**
Should the award include spending funds on a project that has involved construction, the Awardee states and affirms that all of the persons, firms and corporations, including the general contractor and all subcontractors who have furnished services, labor or materials according to plans and
specifications, or extra items, used in the construction, repair, or renovation of the subject property described in the accompanying award application, have been paid in full and that such work has been full completed and accepted by the owner. The Awardee states and affirms that no claims have been made to the Awardee by, nor is any suit now pending on behalf of any contractor, subcontractor, laborer or materialman, and further that no chattel mortgages, conditional bills of sale, retention of title agreements, security agreements, financing statements, or personal property leases have been given or are outstanding as to any fixtures, appliances, or equipment which are now installed in or upon the subject real property, or the improvements thereon. The Awardee states and affirms that there are no outstanding deeds of trust, mortgages, judgment liens, mechanics or materialmen liens filed of record or unfiled claims or any other liens or encumbrances of any kind. Awardee further agrees and guarantees to hold DRA harmless against any liens, claims or suit of or by any general contractor, subcontractor, mechanic or materialman, and against chattel mortgages, conditional bills of sales, retention of title agreements, security agreements, financing statements, or personal property leases in connection with the construction, repair, or renovation of the subject property.

Should the award include spending funds on construction, the Awardee states and affirms that all of the persons, firms and corporations, including the general contractor and all subcontractors who will furnish services, labor or materials according to plans and specifications, or extra items, used in the construction, repair, or renovation of the subject property described in the accompanying award application, will be paid in full.

Delta Regional Authority
ARBITRATION AGREEMENT

This Agreement is entered into on the date stated by [on the signature page of this package] and between Delta Regional Authority ("DRA"), its successors, agents and/or assigns, and awardee.

1. Part of Transaction. This document ("Agreement") is a part of the agreement and transaction between DRA and AWARDEE described herein. That agreement and transaction, as well as all past and future agreements and transactions between the parties, their employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, and any other affiliated entities or persons, are hereinafter collectively defined as the "Transaction". This Agreement is incorporated into each document executed in connection with the Transaction. In the event of a conflict between the provisions of this Agreement and other documents executed in connection with the Transaction, the provisions of this Agreement shall control.

2. Consideration. The consideration for this agreement is the consideration given and received in the Transaction, and the mutual benefits to be derived by DRA and AWARDEE from the convenient, expeditious, economical, and private procedures for resolving disputes between them and other entities or persons covered by this Agreement.

3. Dispute Resolution. Any claim, dispute or controversy between AWARDEE and DRA, including DRA's employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, successors, assigns, other affiliated entities or persons (collectively, "Covered Persons"), (whether in contract, tort, or otherwise, whether preexisting, present or future, and including statutory, common law, intentional tort or equitable claims), arising from or relating to any matter, including, but not limited to, the Transaction, any past or future interactions, business or dealings between the parties or between AWARDEE and the Covered Persons or any application, advertisements, promotions, or oral or written statements related to the Transaction, any goods or services furnished in connection with the Transaction or the terms of financing, the relationships with respect to the Transaction (including to the full extent permitted by applicable law, relationships and dealings with third parties who are not signatories to the Transaction or this Agreement) or the validity, enforceability or scope of this Agreement (collectively, "Claim"), shall be resolved, upon the unilateral or joint election of AWARDEE or DRA or said Covered Persons, respectively, by binding arbitration, as hereinafter provided, pursuant to the Rules of the National Arbitration Forum ("NAF") in affect at the time the Claim is asserted. A party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in the lawsuit by any other party or parties. The Rules of NAF may be obtained by calling 1-800-474-2371 or by going to the NAF Website at www.arb-forum.com, and all Claims shall be filed at any NAF office (provided, however, that if for any reason NAF is unwilling or unable or ceases to serve as arbitration administrator, an equivalent national arbitration organization utilizing a similar code of procedure will be substituted by the parties hereto).

4. Arbitration.

(a) Any Claim shall, at the request of the AWARDEE, DRA or any Covered Persons, whether made before or after institution of legal proceedings, be determined by binding arbitration. The Transaction involves interstate commerce, and the arbitration is subject to and
shall be conducted in accordance with the United States Arbitration Act, 9 U.S.C. §1, et. seq., as amended, notwithstanding any choice of law provision in this Agreement or any other documents executed in connection with the Transaction, and under the Rules of NAF. The Arbitrator shall have authority to award damages and award such other relief he deems appropriate. The Arbitrator shall give effect to applicable law, including statutes of limitations in determining any Claim. Any controversy concerning whether an issue is arbitrable shall be determined by the Arbitrator. However, AWARDEE, DRA or any Covered Persons may institute a lawsuit for the purpose of compelling the other parties to any Claim to arbitrate in accordance with this Agreement. Judgment upon the arbitration award may be entered in any court having jurisdiction. The Arbitrator(s) shall be chosen no later than 30 days after filing of the Claim with NAF. The arbitration procedures shall be concluded, and the Arbitrator's award issued, no later than six (6) months after selection of the Arbitrator.

(b) The institution and maintenance of an action for judicial relief or pursuit of a provisional and ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff to submit the Controversy or claim to arbitration if any other party contests such action. No provision of this Agreement shall limit the right of any party to this Agreement to exercise self-help remedies such as setoff, to foreclose against or sell any real or personal property, collateral or security, or obtaining provisional or ancillary remedies for a court of competent jurisdiction before, after, or during pendency of any arbitration or other proceedings. The exercise of a remedy does not waive the right of either party to resort to arbitration.

(c) In the event of a conflict between the provisions of this Agreement and the Rules of NAF, the provisions of this Agreement shall control. No class action arbitration maybe originated or had under this Agreement and, except as provided in paragraph 3 above, there shall be no joinder of multiple party plaintiff, except for joinder of all parties covered by this Agreement.

5. Administrative Fees and Expenses. Upon request, DRA will advance the first Five Hundred Dollars ($500.00) of the filing and hearing fees charged by NAF for any Claim filed by any AWARDEE or any Covered Person against DRA. The Arbitrator will determine who will ultimately be responsible for paying any filing, hearing or other administrative fees in connection with the arbitration. Unless inconsistent with applicable law, each party to an arbitration shall bear the expense of their respective attorneys', experts' and witness fees and expenses, regardless of which party prevails in the arbitration.

6. Selection of Arbitrators. On claims of $100,000 or less, including counterclaims, an Arbitrator shall be selected from a panel of nine (9) arbitrators submitted by NAF, by DRA and AWARDEE either agreeing on the Arbitrator or striking persons from the panel until one person is left, that person being the Arbitrator. On claims in excess of $100,000, including counterclaims, three Arbitrators shall be selected from a panel of fifteen (15) arbitrators submitted by NAP by DRA and AWARDEE either agreeing on the Arbitrators or striking persons from the panel until three (3) persons are left, those persons being the Arbitrators. The determination of whom shall make the final strike and the resolution of any disputes concerning selection, including, if necessary, the appointment of the Arbitrator(s), shall be done by NAF.
7. Discovery. The Arbitrator shall have the power to authorize reasonable discovery and to issue any necessary orders and subpoenas. All discovery shall be expedited to the maximum extent practicable. In no event shall the Arbitrator allow discovery which would result in this matter not being concluded and an award issued in the time specified herein.

8. Location. The arbitration sessions shall be held at a location mutually acceptable to the parties to the arbitration. If the parties to the arbitration cannot agree on the location, the location shall be selected by NAF.

9. Confidentiality. To the extent permitted by applicable law, all proceedings pursuant to or in connection with this Agreement shall be kept strictly confidential, except for disclosures of information required in the ordinary course of the business of DRA and AWARDEE or by applicable law or regulation. This provision shall not exempt from discovery or use in any other or future proceeding any evidence otherwise discoverable, merely because it is presented in, referred to, or discussed in the course of, or in connection with, proceedings pursuant to this Agreement.

10. Severability. If any provision of this Agreement is found to be unenforceable, the remaining provisions shall be enforced to the extent permitted by applicable law and in lieu of any such unenforceable provision, there shall be substituted in its place a provision as similar in substance and effect as is capable of being enforced.

11. Successors and Assigns. This Agreement shall be binding upon, and shall enure to the benefit of, the parties, the Covered Persons, any co-signors, endorsers, guarantors or other obligors to the Transaction and their respective successors and assigns, including to the full extent permitted by applicable law, third parties who may not be signatories to the Transaction or this Agreement, such as DRA's employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, other affiliated entities or persons.

12. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior discussions, arrangements, negotiations, and other communications, if any, on dispute resolution. The signatory agrees that this Agreement may not be amended or modified in any respect except in writing.

THE SIGNATORY HAS READ AND UNDERSTANDS THE FOREGOING ARBITRATION AGREEMENT AND BY SIGNING THE SIGNATURE PAGE OF THIS AWARD DOCUMENT PACKAGE DO KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO A JURY TRIAL AND ANY BENEFITS THAT MIGHT BE DERIVED FROM A JURY TRIAL.
MEDIATION AND ARBITRATION DISCLOSURES

The following disclosures have been made to the applicant signatory, by in connection with a transaction between the Awardee and Delta Regional Authority, its successors, agents and/or assigns, (the "DRA") which transaction is described in an Arbitration Agreement between DRA and Awardee dated this date [see signature page].

1. The DRA and Awardee each have the right to request Mediation. Mediation is a procedure in which the DRA and Awardee select an impartial third party to serve as mediator to assist us in attempting to voluntarily reach a resolution of our dispute relating to the transaction which is described in the arbitration agreement between us. There are administrative and mediator fees which must be paid by the parties in accordance with the provisions of the arbitration agreement.

2. The DRA and Awardee each have the right to request Arbitration. Arbitration is a procedure in which the DRA and Awardee select an Arbitrator(s) who will hear our presentation and render a final and binding decision. There are administrative and arbitration fees which must be paid by the parties in accordance with the provisions of the Arbitration Agreement.

3. Arbitration is final and binding on the parties and subject to only very limited review by a court.

4. Except as to provisional remedies, self-help and foreclosure, the parties are waiving their right to litigate in court, including their right to a jury trial, because they have given each party the right to demand arbitration.

5. Pre-arbitration discovery is generally more limited and different from court proceedings.

6. Arbitrators' awards are not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by arbitrators is strictly limited.

THE APPLICANT SIGNATORY HAS READ AND UNDERSTANDS THAT THIS DOCUMENT DISCLOSES THE PARTIES ARE ENTERING INTO AN ARBITRATION AGREEMENT AND BY SIGNING THE SIGNATURE PAGE OF THIS AWARD DOCUMENT PACKAGE DO KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO A JURY TRIAL AND ANY BENEFITS THAT MIGHT BE DERIVED FROM A JURY TRIAL.
ENVIROMENTAL DECLARATION AND INDEMNITY

FOR AND IN CONSIDERATION of the Award provided to (the "Awardee") by Delta Regional Authority, its successors and assigns ("DRA"), and other good and valuable consideration, the receipt and sufficiency all of which is hereby acknowledged, the undersigned Awardee, being the owner, operator and/or occupier of the real property described in the accompanying award application ("Property"), hereby declares, covenants, represents, and warrants unto DRA as follows:

1. Awardee represents and covenants that, except as disclosed by Awardee to DRA in writing on or prior to the date of this agreement, (i) the Property has at all time during Awardee’s ownership, occupancy and control thereof and is presently free of contamination from any substance or material presently identified to be toxic or hazardous according to any applicable federal, state or local statute, rule or regulation (collectively, the "Law"), including without limitation, any asbestos, PCB, radioactive substance, methane, volatile hydrocarbons, industrial solvents or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property; (ii) Awardee has not caused or suffered to occur, and Awardee will not hereafter cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "spill"), or hazardous substance at, upon, under or within the Property or any contiguous real estate; (iii) neither Awardee nor any other party has been, is or will be involved in operations at or near the Property which could lead to the imposition on Awardee or any other owner of the Property of liability or the creation of a lien on the Property, under the Law or under any similar applicable laws or regulations; and (iv) Awardee has not permitted and will not permit any tenant or occupant of the Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Awardee or any other owner of any of the Property, or the creation of a lien on the Property, under the Law or under any similar applicable laws or regulations; and (v) no friable asbestos, or any substance containing asbestos deemed hazardous by federal or state regulations on the date of this Agreement, has been installed in or on the Property. The terms "hazardous substance" and "release" as used in the Agreement shall have the meaning specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event that the applicable laws of the applicable jurisdiction establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meanings shall apply.

2. Awardee shall comply strictly and in all respects with the requirements of the Law and related regulations and with all similar applicable laws and regulations and shall notify DRA promptly in the event of any spill or hazardous substance upon the Property, and shall promptly forward to DRA copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or hazardous substance or any other matters relating to the Law or related regulations or any similar applicable laws or regulations, as they may affect the Property.

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3. Awardee, promptly upon the written request of DRA from time to time, shall provide DRA with an environmental site assessment or environmental audit report, or an update or such an assessment or report, all in scope, form and content satisfactory to DRA.

4. In consideration of the award, Awardee shall indemnify DRA and hold DRA and its directors, officers, agents and employees harmless from and against all claims, demands, causes of action, loss, liability, damage, costs and expense, including, without limitation, attorneys' fees, costs of suit and fees of expert witnesses, suffered or incurred by DRA, whether as holder of a mortgage, as mortgagee in possession or as successor in interest to Awardee as owner of the Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of the Law or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Property whether or not the same originates or emanates from the Property or any such contiguous real estate, including any loss or value of the Property as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Property within the jurisdiction of the U.S. Environmental Protection Agency or any similar state or local agency. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of the Property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such hazardous substances or solid wastes, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Without prejudice to the survival of any other agreements of Awardee hereunder, this indemnity shall survive the closing of the Award and shall continue thereafter in full force and effect.

5. In the event of any spill or hazardous substance affecting the Property, whether or not the same originates or emanates from the Property or any such contiguous real estate, and/or if Awardee shall fail to comply with any of the requirements of the Law or related regulations or any other environmental law or regulation, DRA may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as DRA shall deem necessary or advisable in order to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the legal rate from the date of payment by DRA shall be due and payable by Awardee to DRA within fifteen (15) business days of demand therefore, and until paid shall be added to and become a part of the indebtedness and shall have the benefit of any lien hereby created as a part thereof.

6. Awardee shall permit any officer, employee or agent of DRA to visit and inspect the Property, examine the books of record and accounts of Awardee, take copies and extracts therefrom, and discuss the application of any Applicable Environmental Laws to the Property with Awardee's officers, consultants and employees, all at such reasonable times and on reasonable notice and as often as DRA may reasonably desire. In addition to this right of inspection, Awardee hereby awards to DRA an easement upon personal servitude of right of use of the Property for environmental inspection. As used in this section, the term "environmental inspection" shall mean any visitation to or inspection of the Property (including obtaining underground soil samples), or interview with Awardee or its consultants or employees, to determine the continuing accuracy of the environmental representations state in this Agreement.
DRA may exercise this right of use at any time during normal business hours of Awardee. The easement shall continue until termination of the transaction provided in the award, and shall automatically be transferred with any transfer of rights under the award.
AWARDER/AWARDEE NOTICE OF TRANSFER OF SERVICING OF AWARD

The servicing of the above-referenced Award will be transferred effective date of signature. Prior to this date, all draw requests should be made to the Delta Regional Authority ("DRA"). After this date, any draw request should be made to the Local Development or Planning District (the "Basic Agency") under the terms of the Award and Memorandum of Agreement. After this date, the Awardee's communications should be made directly to the Basic Agency identified on the signature page.

The Basic Agency shall be responsible for any and all draw request, monitoring and enforcement of the terms and conditions of the Award and other related documents. In addition, the Awardee shall be responsible for complying with any and all terms and conditions required by the Basic Agency. The DRA reserves the right to revoke the duties and responsibilities of the Basic Agency and require that the servicing of the Award be returned to DRA. In the event of such revocation, the Awardee shall be immediately notified.

To answer any questions or inquiries relating to the transfer of servicing, you may contact the DRA by calling Mr. Kemp Morgan, Director of Project Management & Development of DRA, at (662) 624-8600. To answer any questions or inquiries relating to the transfer of servicing or servicing in general, please contact the Basic Agency. The name, address and telephone number of the Basic Agency is as follows:

The transfer of the servicing of the Award does not affect any representation, warranties, terms or conditions of the Awardee set forth in the Award Agreement and/or other documents signed in connection with the Award.
RESOLUTION NO. ______

RESOLUTION ACCEPTING GRANT AND AUTHORIZING MAYOR TO EXECUTE DOCUMENTS AND ACT AS AUTHORIZED CORRESPONDENT FOR THE PROJECT TO BE USED FOR THE REPLACEMENT OF CLEARWELL, AN 800,000 GALLON STEEL TANK AT THE SOUTH WATER TREATMENT PLANT

WHEREAS, the Delta Regional Authority (hereinafter "DRA") was created by Congress by the Delta Regional Authority Act of 2000, as amended, as a federal/state partnership now comprised of 252 counties and parishes within the eight states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee in order to remedy severe and chronic economic distress by stimulating economic development and fostering partnerships that will have a positive impact on the Delta Region's economy; and

WHEREAS, the City of Henderson, acting by and through its Board of Commissioners, applied for an award with DRA for the Fiscal Year 2021 federal award program cycle; and

WHEREAS, DRA requires that a person be designated, appointed, and given the authority to perform certain duties and administration of said award for and on behalf of the Awardee; and

WHEREAS, the Henderson City Board of Commissioners met in a regular session on October 13, 2020, whereby the Mayor was designated, approved and given the authority to execute documents and to act as authorized correspondent for the project; and

WHEREAS, the City of Henderson Board of Commissioners by submission of the grant application agreed to provide additional funds and/or to make an in-kind contribution to said award; and

WHEREAS, in the event of an administration change, the new Mayor shall continue to have such authority under this Resolution.

NOW THEREFORE, BE IT RESOLVED THAT, by the City of Henderson Board of Commissioners as follows:

That the Mayor be and is hereby designated and appointed to perform on behalf of the City of Henderson and has the authority to make those acts and assume any and all duties in dealing with the award with DRA for the Fiscal Year 2021 federal award program cycle; and is hereby authorized to execute and submit any and all documents including, but not limited to, applications, award closing documents, request for funds, status reports to DRA for the Fiscal Year 2021 federal award program cycle; and that the City of Henderson agrees to provide
additional funds in an in-kind contribution to said award; and in the event of an administration change, the new Mayor shall continue to have such authority under this Resolution.

On motion of Commissioner ________________, seconded by Commissioner ________________, that the foregoing Resolution be adopted, the vote was called. On roll call the vote stood:

Commissioner Royster: _______ Commissioner Bugg: _______
Commissioner Staton: _______ Mayor Austin: _______
Commissioner Vowels: _______

WHEREUPON, Mayor Austin declared the Resolution adopted, affixed his signature and the date thereto and ordered that the same be recorded.

Steve Austin, Mayor

ATTEST:

Mare Collins, CKMC, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS ___ DAY OF OCTOBER, 2020.

By: Dawn S. Kelsey
City Attorney
September 17, 2020,

Dear Buzzy Newman,

Project: KY-54279

Attached separately to this email you will find Delta Regional Authority’s (DRA) standard award documents (listed below), which must be agreed to for receipt of the Notice to Proceed. If the terms and conditions in the award documents are acceptable, this page must be signed by the authorized official, notarized and returned to the Basic Agency listed below within 45-days. Additionally, if this project’s budget included any other uncommitted source(s) of funding, you will have 6-months from the date of this letter to provide DRA with documentation proving those funds are now authorized for use on this project. Only when all other funds are committed will you receive the Notice to Proceed. If for any reason either of these two milestones are not met, the DRA award could be rescinded.

No project activities shall begin prior to the awardee’s receipt of the Notice to Proceed, without prior written approval from DRA. The awardee will be given a maximum of 12-months from the date of the Notice to Proceed to request the first reimbursement of DRA funds. Failure to meet this milestone will also result in the award being rescinded.

1. Memorandum of Agreement
2. Mediation and Arbitration Disclosures
3. Arbitration Agreement
4. Notice of Basic Agency Transfer
5. Environmental Declaration and Indemnity
6. Board Resolutions Example
7. Automated Clearing House Form (ACH)

The approved project application details are as follows:

**Investment Details:**

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRA Investment (LDD Admin Fee Included $9,090)</td>
<td>$509,000</td>
</tr>
<tr>
<td>Other Public/Project Investment</td>
<td>$875,000</td>
</tr>
<tr>
<td>Other Private/Capital Investment</td>
<td>$0</td>
</tr>
<tr>
<td>Total Investment</td>
<td>$1,384,000</td>
</tr>
</tbody>
</table>

**The Basic Agency for this project is identified as:**

Green River Area Development District  
300 GRADD Way  
Owensboro, KY 42301-0200  
F. (270) 926-4433

If you have any questions or comments regarding these documents or the administration of your project, please address them to Amanda Allen, SEDAP Manager, at aallen@dra.gov.

The awardee affirms this award and the statements and documents produced in the accompanying award application are true and correct. By executing this Award Agreement with DRA, the awardee adopts and ratifies all statements, representations, warranties, covenants, and materials it has submitted to DRA, consents to the award, and agrees to all terms and conditions of this Award Agreement.

**Authorized Awardee Signatory**

| Signature: _______________________________
| Print Name/Title: ____________________________
| Date: ____________________

**Notary Public Seal**

| Signature: _______________________________
| Date: ____________________

Kemp Morgan  
Director of Project Management and Development  
Signature: _______________________________

Date: ____________________
October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners
FROM: William L. “Buzzy” Newman, Jr., City Manager
SUBJECT: Purchase of SCBA Equipment

The accompanying municipal order authorizes the purchase of Self Contained Breathing Apparatus (SCBA) equipment from Fire Department Service and Supply Company, Louisville, in the amount of $301,399.93.

Included in the purchase are forty-two air packs with pack bottle, spare bottle, mask, mask bag and APR; one additional spare air 30 minute bottle; twenty-three spare air mask and mask bags; eight additional air pack batteries; four station chargers; twelve existing bottle conversions to retro fit current MDA spare bottles; one RIT pack bag with skid, 60 minute bottle, search rope, cutters, UAC, regulator and EBSS; eighteen additional APR P100 cartridges; five quick fill connectors to adapt to station and truck compressors; and four regulator adapters or replacement for MDA Cadet Escape Respirator Confined Space.

Bid information was sent to three vendors, two bids were received. One bid did not meet specifications of single source power supply, regulator location and electronic data not on regulator. Fire Department Service and Supply Company was the lowest responsive bidder and award is recommended accordingly. They have a proven track record of servicing and maintain equipment with little turn-around time.

The project is primarily being funded with grant funds in the amount of $271,259.94 from the Federal Emergency Management Agency under the USFA Assistance for Firefighters Program, along with a local match of $30,139.99.

Your approval of the attached municipal order is requested.

c: Dawn Winn
Scott Foreman
Fire Department Memorandum  
20-12

October 8, 2020

TO: William Newman, City Manager
FROM: Scott Foreman, Fire Chief
SUBJECT: Recommendation for Award of Bid 20-18 SCBA’s

Specifications were sent to three vendors for SCBA air packs and associated equipment. Bids were due on October 6, 2020, with two (2) quotes received. The quote from Howell Rescue Systems was deemed nonresponsive due to non compliance with specifications outlined by Henderson Fire Department, namely Drager SCBA’s do not have a single source power supply, the regulator location itself, and electronic data is not on the regulator.

Service and maintenance of product is also very important to our department; Fire Department Service & Supply has a proven track record of servicing and maintaining equipment with very little turn-around time. Drager had no documentation of service record.

Fire Department Service & Supply Company of Louisville, Kentucky submitted a bid of $301,399.93 with an option for an Integrated Accountability program for 9 air packs of $3600.00.

Based on specifications met and interoperability of existing products, and the ability to be interoperable with other area agencies, we recommend the bid be awarded to Fire Department Service & Supply Company, 1902 Campus Place, Ste. #3, Louisville, KY 40299 for the MSA G1 Air pack.

This purchase is being funded with AFG Grant proceeds of $271,259.94; the city is to provide a 10% contribution of approximately $30,139.99.

cc: Robert Gunter, Finance Director
<table>
<thead>
<tr>
<th>Item Description</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Extension</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air packs to include Pack bottle, spare bottle, mask, mask bag and APR</td>
<td>42</td>
<td>$7,000.00</td>
<td>$294,000.00</td>
<td>$301,399.93</td>
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<tr>
<td>Additional spare air 30 min bottle</td>
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<td>$2,200.00</td>
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<tr>
<td>Spare air mask and mask bags</td>
<td>23</td>
<td>$273.91</td>
<td>$6,299.93</td>
<td>$6,573.84</td>
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<tr>
<td>Additional air pack batteries</td>
<td>8</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>Station chargers to charge battery power source</td>
<td>12</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Existing bottle conversions to retro current MSA spare bottles with 9 years of life left</td>
<td>12</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>RIT Pack bag w/skid, 60 mins bottle, search rope, cutters, UAC, regulator and EBSS</td>
<td>1</td>
<td>$0.00</td>
<td>$2,750.00</td>
<td>$2,750.00</td>
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<tr>
<td>Additional APR P100 cartridges</td>
<td>18</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Quick fill connectors to adapt to station and truck compressors</td>
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<td>$0.00</td>
<td>$475.00</td>
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<tr>
<td>Regulator adapters of replacement for MSA Cadet Escape Respirator Confined Space</td>
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<td>$1,700.00</td>
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<tr>
<td>Total Bid Price</td>
<td></td>
<td>$301,399.93</td>
<td>$247,685.00</td>
<td></td>
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<tr>
<td>Add on integrated TIC</td>
<td>5</td>
<td>$0.00</td>
<td>0 - N/A</td>
<td>0 - N/A</td>
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<tr>
<td>Integrated Accountability program for 9 packs</td>
<td>1</td>
<td>$400.00</td>
<td>$3,600.00</td>
<td>$3,600.00</td>
</tr>
</tbody>
</table>

Total Bid Price: $301,399.93

Other Bidders Contacted:

911 Fire and Fleet Equipment

Bids Opened & Recorded By: Dawn Winn
Bids Reviewed By: Stephanie Weiner

06-01-14H
The City of Henderson is seeking sealed bids for the following SCBA gear to be used by its Fire Department.

The bid will be awarded based on Responsive and Evaluated Criteria.

### 2019 AFG Grant

#### Items and Descriptions

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>42</td>
<td>Air packs to include Pack bottle, spare bottle, mask, mask bag, and APR.</td>
</tr>
<tr>
<td>1</td>
<td>Additional Spare air 30min bottle</td>
</tr>
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<td>Spare air mask and mask bags</td>
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</tr>
<tr>
<td>18</td>
<td>Additional APR P100 cartridges</td>
</tr>
<tr>
<td>5</td>
<td>Quick fill connectors to adapt to station and truck compressors</td>
</tr>
<tr>
<td>4</td>
<td>Regulator adapters or replacement for MSA Cadet Escape Respirator Confined Space packs</td>
</tr>
</tbody>
</table>

**Price as option:**

- 5 Add on integrated TIC
- 1 Integrated Accountability program for 9 packs

### 2018 NFPA SCBA Specifications

#### Approvals

1. Apparatus shall be approved by the National Institute for Occupational Safety and Health (NIOSH), under 42 CFR, Part 84
2. for chemical, biological, radiological, and nuclear protection (CBRN) with minimum 30 minute-rated service life
3. and compliant with all requirements of the National Fire Protection Association’s 2018 Edition of NFPA-1981
4. Standard on Open-Circuit Self-Contained Breathing Apparatus
5. Units equipped with integrated PASS device must meet requirements of NFPA 1982, 2018 edition
6. Units equipped with accountability system must meet minimum requirements for FCC part 15 and part 90
7. Meets the NFPA 1801 standard for Thermal Imagers for the fire service

II. Specific Requirements

Facepiece
1. Facepiece shall have removable inhalation check valve to prevent exhaled air from entering and contaminating regulator (demand valve).
2. Facepiece shall have open port to provide minimal breathing resistance when regulator is not attached
3. Facepiece shall not contain electronic components
4. Facepiece shall provide means to display to user with visual indicators for HUD
5. Facepiece shall have icon for HUD system status indicators
6. Facepiece shall have regulator attachment that does not bear any weight on lens
7. Facepiece shall have effective field of view of at least 86% and overlapping field of view of 122% without attached component
8. Facepiece shall be available in three sizes in Hycar Rubber (small, medium, large)
9. Facepiece shall have nose cup comprised of silicone rubber and available in three sizes (small, medium, large)
10. Facepiece shall have three head harness options constructed of flame/heat resistant assembly: Kevlar Head Harness
11. 4-pt. adjustable, Kevlar 5-pt. adjustable and rubber 5-pt. adjustable
12. Facepiece shall have universal lens that can be used with all three facepiece sizes, shall be comprised of non-shatter type material and shall be field-replaceable
13. Lens shall be hard coated on outside and anti-fog coated on inside
14. Facepiece shall have optional flame/heat-resistant fabric or rubber neck strap to carry facepiece in ready position
15. For quick donning
16. Facepiece shall have removable speaking diaphragm with aluminum-coated membrane, suitably protected and located
17. Centrally on facepiece for optimal voice projection
18. Facepiece shall have exhalation valve that is to be serviceable without special tools
20. Facepiece shall be capable of water submersion for cleaning and disinfection
21. Facepiece provide an ability to export data for maintenance and identification purposes
22. Facepiece must allow for an APR adapter
23. Facepiece must be interchangeable with departments confined space packs either by retro or system replacement

APR Adapter
1. APR Adapter works with NFPA Facepieces. Cartridges with approved full line of Chemical, Combination and Particulate Cartridges using P100 filters that can be used with the APR adapter.

Mask-Mounted Regulator (Demand Valve): Push-to-Connect
1. When doffing regulator, regulator disengagement shall simultaneously stop air flow and release regulator
2. Regulator shall house electronic module that functions as microphone and HUD system
3. Regulator shall be equipped with variable flow bypass
4. Regulator shall not have exposed wiring in order to prevent snags and increase product durability
5. Regulator shall have two cover options: hard cover or purge cover
6. Regulator shall have fewer than 35 parts that are easily replaceable without special tools
7. Regulator shall have two options for air-supply hose:
   1) Continuous hose from pressure reducer to regulator
   2) Quick-connect hose that terminates on shoulder in front of user
8. Regulator must be equipped with positive protection Tetraplex Shield membrane that covers diaphragm, preventing permeation of CBRN agents
9. Regulator shall provide an ability to export data for maintenance and identification purposes

Heads-Up Display (HUD)
1. Heads-Up Display (HUD) System shall be integrated within regulator, eliminating snag hazards and increasing product durability.
2. HUD shall be powered from central power system
3. HUD System shall eliminate crosstalk among firefighters
4. HUD System shall be immune to radio frequency interference (RFI) and must function properly in close proximity to fire service hand-held radios
5. HUD System shall separate pressure indicators from status indicators:
   1) Left: status indicators
   2) Right: pressure indicators
6. HUD system shall provide user with remaining cylinder air volume, available in four increments through series of four colored LEDs:
   1) Four green lights 76-100% cylinder volume
   2) Three green lights 51-75% cylinder volume
   3) Two flashing amber lights 36-50% cylinder volume
   4) One flashing red light 0-35% cylinder volume
7. HUD status indicators shall be icon-based and display battery life warning, and PASS alarms
8. Buddy lights shall be visible from outside of firefighter’s facepiece
9. HUD shall be field-removable and replaceable without use of special tools
10. HUD shall provide a visual indication of activation for minimum of 20 seconds

Universal Air Connection (UAC)
1. System shall be capable of:
   1. Refill within immediately dangerous to life or health (IDLH) atmospheres
   2. Transfilling between two SCBA wearers (connection allows for donation and receipt of air), providing emergency breathing system (EBS) while maintaining NIOSH approvals
   3. Quickly refilling (approximately one-minute duration) SCBA cylinder from mobile compressor, cascade system or RIT pack
2. Primary UAC shall be illuminated when supply pressure reaches Low Pressure Warning Alarm or can be configured to optional medium pressure warning alarm
3. Transfilling is possible with 4500 psig

Pressure Reducer (First-Stage Regulator) with Primary Low-Pressure Warning Device
1. Pressure reducer shall incorporate downstream valve to ensure fail-safe design when in open position
2. Pressure reducer shall incorporate bell alarm mechanism
3. Bell alarm mechanism shall be an air-actuated, continuously ringing audible warning alarm, automatically operating when supply cylinder air pressure reaches approximately 35% of rated service life.
4. Bell alarm mechanism shall cover multiple levels of frequencies to cover all hearing levels.
5. Bell alarm mechanism shall be user-accessible while wearing SCBA.
6. Pressure reducer reduces cylinder pressure to outlet pressure not to exceed 115 psi; outlet pressure must be adjustable.
7. Pressure reducer shall have flow capacity of 700 liters per minute at full pressure.
8. Pressure reducer shall have two options for cylinder connection type: threaded or quick-connect.
9. Quick-connect connection shall not be removable from cylinder while under pressure.
10. Pressure reducer shall be capable of converting from threaded to quick-connect or vice versa.
11. Pressure reducer body shall be constructed of high-strength aluminum alloy and anodized with Teflon hard coat to minimize corrosion and wear of internal and external components.
12. Pressure reducer shall be sealed system that does not allow moisture to enter valve components.
13. Pressure reducer shall not require special tools for disassembly.

**Cylinders**

1. Cylinders using 4500 psig operating pressure must be utilized with a minimum 30-minute cylinder.
2. Cylinder shall be constructed of deep-drawn, seamless aluminum liner that is fully wound over entire surface (except for thick neck area) with high-strength carbon fiber filaments impregnated with epoxy resin.
3. Cylinder shall contain cylinder valve that shall incorporate pressure gauge to indicate cylinder pressure at all times. Pressure gauge face shall be luminescent. Hand wheel shall be placed at 90° angle from cylinder axis.
4. Cylinder valve shall incorporate CGA thread that can be converted to quick-connect cylinder without special tools.
5. Cylinder shall have bracket and boot that can be user-installed and provide positioning and added security of cylinder to backplate.
6. Cylinder shall be available with locking handwheel option.
7. Current HFD cylinders must be able to be retrofitted to new style.
8. Quick fill adapter / retro kit to attach to the stations and apparatus cascade systems for quick refilling of cylinders this shall be provided for all of the departments current fill locations.

PASS Device

1. PASS device shall contain power, control and battery modules
2. Power module shall provide power to all electronic SCBA components from battery module and act as central power system
3. Power module shall act as central command center, distributing all information and data among electronic components
4. Power module shall be capable of illuminating UAC fitting when supply cylinder reaches 35% of rated service time
5. Control module shall have analog and digital display for added redundancy. Analog gauge must be positioned above digital display as viewed by user
6. Control module shall be equipped with full color graphical display. Display shall be reprogrammable and capable of future integrations. Display’s background color coordinates with HUD pressure status.
7. Control module shall automatically provide information to user when placed in upright position. Device can be manually activated by pressing reset button
8. Control module shall have two reset buttons that perform same function no matter which button is pressed
9. Control module shall have alarm button to activate full alarm and is to be illuminated
10. PASS device shall be equipped with buddy lights on firefighter’s front and back and viewable from 360° view.
11. Power module shall be equipped with dual sound emitters; sound emitters shall perform at minimum 92 dBA in room temperature
12. PASS device shall be immune to radio frequency interference (RFI) and must function properly in close proximity of fire service handheld radios
13. PASS device shall have optional time-remaining display. Time remaining function must update calculations every 30 seconds based upon user’s previous three minutes of air consumption. Initial calculation will appear after
   a. three minutes. Calculations can be made to zero pressure, low pressure alarm or medium pressure alarm
14. PASS device shall employ a seal to provide highest protection level against water ingress, while providing ability to upgrade or repair electronics
15. Control module shall have service mode that provides ability to see number of hours used.
16. Control module shall incorporate rubber boot for added protection and is to be replaceable.
17. Shall provide an ability to export data for maintenance and identification purposes.

**Speaker Module**
1. Speaker module shall provide amplified speech that removes inhalation breath noise.
2. Speaker module shall provide at minimum, 70 dBA output.
3. Speaker module shall turn on and off with PASS device.
4. Speaker module shall be powered by central power system.
5. Speaker module shall be positioned on chest and attached to shoulder straps.
6. Speaker module shall be capable of being mounted on either left or right shoulder strap.
7. Speaker module shall easily be attached and removed without special tools.
8. Speaker module shall have light to indicate that device is powered on.
9. Speaker module shall have on/off button to allow user to manually power off as needed.

**Carrier and Harness**
1. Shoulder harness shall have separate left and right pads for easier and less costly replacement.
2. Shoulder harness shall have retro-reflective markings for better visibility within low light conditions.
3. Shoulder harness shall have localized friction pads on shoulders to prevent slippage.
4. Shoulder harness shall be available in standard and serviceable tunnel.
5. Shoulder harness shall have color stability with not less than 600°F.
6. Shoulder harness shall have optional chest strap.
7. Harness design shall have Kevlar webbing.
8. Shoulder harness shall have accessory attachment point available for facepiece or pouch and can be easily moved from one shoulder strap to the other.
9. Adjustable lumbar pad shall be adjustable and can be performed while on user’s back.
10. Backplate shall have two side handles and one top handle that are accessible with gloved hand.
11. Backplate side handles shall be capable of minimum 500 lbs. of static force.
12. Backplate top handle shall be capable of minimum 1000 lbs. of static force.
13. Backplate cylinder band shall be metal.
14. Waist straps shall be double-pull forward design.
15. Harness design shall have regulator keeper for storage that can be attached to waist strap or chest strap.
16. Regulator keeper shall allow regulator to be connected at any angle.
17. Cylinder removal shall be accessible from top or bottom.

Weight
1. Weight of SCBA shall not exceed 26.5 lbs.
2. Weight of facepiece (without regulator, with communications) shall not exceed 1.4 lbs.
3. Weight of cylinder and valve assemblies (empty) shall not exceed:

<table>
<thead>
<tr>
<th>Cylinder Type</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon-wrapped H30-SL</td>
<td>7 lbs. 4 oz.</td>
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</table>

Power Source
1. All components of the SCBA must be powered from single power source.
2. Power source must have a rechargeable battery without making adaptations to the SCBA itself.
3. Rechargeable battery must recharge from full discharge in less than 8 hours.
4. Rechargeable battery will have full charge capabilities for no less than 300 cycles.
5. Rechargeable battery Charger must be a smart charger which will; rapid charge, analyze condition, and switch to trickle charge mode when charge is complete.
6. Rechargeable battery Charger must have charging indication lights.
SPECIAL CONDITIONS AND TECHNICAL SPECIFICATIONS

Upgradeability
1. Systems must be able to receive updates to firmware to keep packs as current as possible

Rapid Intervention Kit
1. Must include all pneumatics including regulator and buddy breather assembly and 6-foot quick fill hose.
2. 60min 4500psi cylinder
3. RIT Pack Slide Bag made of rugged construction
4. 100-foot high temperature search line
5. Cable cutters
6. Strobe light
7. Carabiner
8. Apparatus door decal

Optional Integrated Thermal Imaging Camera
1. Must have option for thermal imaging camera to be integrated into control module.
2. Integrated Thermal Imaging Camera must have option for 5 user selected color palettes available on control module color display
3. Must be powered by central power source
4. Thermal Imaging Camera must add no more than 4.7 oz. in additional weight to the SCBA
5. Integrated Thermal Imaging Camera must have minimum of 5 Year Warranty.

Optional Accountability System
1. Must be operational on a Windows Surface Pro 6
2. Must show current air supply
3. Must show assignment and apparatus assigned
4. Must be able to send emergency information to packs
5. Must be upgradable

Technical questions may be directed to Scott Foreman, Fire Chief at 270-831-1217. Bid procedure questions may be directed to Dawn Winn, Assistant Finance Director at 270-831-1290, ext. 220.

- End of Section -
MUNICIPAL ORDER

MUNICIPAL ORDER AWARDING BID FOR PURCHASE OF SCBA EQUIPMENT TO FIRE DEPARTMENT SERVICE & SUPPLY LOUISVILLE, KY

WHEREAS, the City of Henderson has issued invitations to bid for the purchase of SCBA Equipment which includes the MSA GI Air pack to be used by the Henderson Fire Department; and

WHEREAS, bids were submitted pursuant to said invitation, and were publicly opened on October 6, 2020, with Fire Department & Supply Company of Louisville, KY, submitting the best bid of $301,399.93; and

WHEREAS, this purchase is being funded with AFG Grant proceeds of $271,259.94 with a 10% contribution by the City of approximately $30,139.99 for the total amount of $301,399.93; and the City Manager recommends approval of this purchase.

NOW, THEREFORE, BE IT RESOLVED by the City of Henderson, Kentucky, award is hereby made to Fire Department Service & Supply, 1902 Campus Place, Ste. #3, Louisville, KY 40299, for the purchase of SCBA Equipment in the amount of $301,588.00 of which $271,259.94 will be funded with AFG Grant funds and a 10% contribution by the City of approximately $30,139.99, in strict accordance with their bid as submitted pursuant to Bid Reference 20-18.

On motion of Commissioner __________, seconded by Commissioner __________, that the foregoing Resolution be adopted, the vote was called. On roll call the vote stood:

Commissioner Royster: __________  Commissioner Bugg: __________
Commissioner Staton: __________  Mayor Austin: __________
Commissioner Vowels: __________

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this ______ day of October, 2020.

________________________________________________________
Steve Austin, Mayor
Date: ___________________________________________________________________

ATTEST:

________________________________________________________
Maree Collins, CKMC,
City Clerk
APPROVED AS TO FORM AND LEGALITY THIS ___ DAY OF OCTOBER, 2020.

By: [Signature]
Dawn S. Kelsey
City Attorney
City Commission Memorandum  
20-158

October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners

FROM: William L. “Buzzy” Newman, Jr., City Manager

SUBJECT: Ordinance Amending Chapter 23, Utilities, Article II, Water and Sewer Service, Division 1, Generally

An item for the agenda of Tuesday, October 13, 2020 is final reading of an ordinance amending Chapter 23, Utilities, Article II, Water and Sewer Service, Division 1, Generally, Section 23-23 Establishment of other rates, fees and charges, of the Code of Ordinances.

As detailed in the attached documentation from Henderson Water Utility General Manager Tom Williams, the proposed revisions relate to the addition of language related to repairs, damage, theft of potable water service, and tampering with meters or other water devices.

The Water and Sewer Commission took formal action at their Monday, September 21, 2020 recommending the proposed amendments.

Your approval of the attached ordinance is requested.

cc: Tom Williams, HWU General Manager
Resolution No. 2020 – 22
Recommendation Changes to Chapter 23 of
The City of Henderson Code of Ordinances

The following Resolution was duly adopted by the Water & Sewer Commission of the City of Henderson at a regular meeting held on Monday, 21 September 2020, at which meeting a quorum was present.

WHEREAS, the Henderson Water Utility (HWU) operates and maintains two water treatment and distribution, and wastewater collection and treatment systems, serving the City of Henderson, Henderson County, and other localities in the region; and

WHEREAS, the Safe Drinking Water Act, and other Federal and State laws and regulations have established regulatory standards that apply to all water users, which standards are enforced locally by HWU; and,

WHEREAS, the Henderson Water Utility is responsible for enforcement of plumbing code and drinking water regulations and standards in our water distribution system, as they relate to damages and repairs to the distribution system, theft of potable water service, and tampering with meters and other devices; therefor,

BE IT RESOLVED, that the Water and Sewer Commission of the City of Henderson, under the authority granted to the Board of Commissioners under Chapter 23 Article II Division 3 Sections 23-36 through 23-45.1 of the City Code of Ordinances hereby recommends to the Board of Commissioners of the City of Henderson, Kentucky, that the City of Henderson enact and adopt revisions to portions of Article II of Chapter 23 of the City Code of Ordinances, incorporating language related to repairs, damage, theft of potable water service, and tampering
with meters or other water devices, as recommended by the staff of the Water and Sewer Commission, and herewith transmitted to the City by attachment to this resolution.

The General Manager is hereby authorized to deliver this Resolution to the City of Henderson, and to pursue the changes enumerated above as shown on the attached Code sections.

These changes will become effective upon the date of adoption by the Board of Commissioners of the City of Henderson, Kentucky.

IN WITNESS WHEREOF, having come before the Board of Commissioners on Monday, 21 September 2020, and upon Motion made by Commissioner ______________, and seconded by Commissioner ________________, the Board of Commissioners voted as follows:

<table>
<thead>
<tr>
<th>AYE</th>
<th>NAY</th>
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<tbody>
<tr>
<td>Commissioner, Paul Bird</td>
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<tr>
<td>Commissioner, George Jones</td>
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<td>Commissioner, John Henderson</td>
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<tr>
<td>Commissioner, Gary Jennings</td>
<td></td>
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<tr>
<td>Commissioner, Julie Wischer</td>
<td></td>
</tr>
</tbody>
</table>

Tom Williams, P.E.
General Manager
Henderson Water Utility
Sec. 23-23. Establishment of other rates, fees and charges; theft of service and tampering; payment and restoration of service.

(1) Authority. The water and sewer commission shall have authority to establish specific service fees and charges, and to negotiate agreements and cost-sharing arrangements related to the provision of water and wastewater services for situations not specifically covered by this article.

(2) Special fees and charges. Fees for specific services such as drying bed fees, septic tank haulers fees, plan review fees, construction inspection fees, tap fees, wastewater pretreatment penalties and surcharges, and other similar service fees shall be periodically reviewed and approved by the Henderson Water and Sewer Commission. These fees shall adequately reflect the current cost of providing the services plus an appropriate rate of return. Copies of the approved fees and charges shall be kept at the Henderson Water and Sewer Commission Office located at 111 Fifth Street and shall also be kept on file in the city clerk’s office.

(3) Repairs and damages. No person shall maliciously, willfully, or negligently break, damage, uncover, deface, or tamper with any structure, appurtenance or equipment, which is a part of the potable water treatment plants, the potable water distribution system or any attached portion of the system, including but not limited to water storage tanks, pumping stations, valves, meters and hydrants. Repairs to any water utility property or equipment including but not limited to water meters, fire hydrants, water and sewer lines, tanks, structures, and manholes damaged by the activities of other parties shall be charged to the responsible party at the actual cost to the Henderson Water Utility for making repairs or replacing the damaged facilities, plus fifteen percent (15%) for administrative costs.

(4) Theft of Service and Tampering. Tampering with water meters or stealing potable water service shall be grounds for discontinuance of service. Theft of service and tampering shall include but not be limited to the following:

   a) opening valves at the main or meter that have been turned off by utility personnel;

   b) by-passing meters in any manner;

   c) taking of unmetered water from hydrants by anyone other than a utility employee, a fire department employee, or other authorized person, for purposes other than fire-fighting, street sweeping, testing, or flushing of hydrants;

   d) use of fire suppression service water for any purpose other than fire suppression;

   e) removing, disabling, or adjusting meter registers, cutting wires, or disabling or tampering with any metering or data collection device;

   f) removing or reversing a water meter; or

   g) making any unauthorized connection to the distribution system.
Any person damaging, defacing, or tampering with the potable water treatment, pumping or distribution systems, water meters, water storage tanks, or any person stealing potable water service shall be deemed guilty of a Class B misdemeanor.

(5) Notice of violation and service cut-off. A Notice of Violation (NOV) may be mailed or otherwise delivered if evidence suggests the possibility of theft of service or tampering. If in the opinion of the General Manager the theft or tampering endangers public health, or if theft is evident on a customer's premises, the notice of violation may include a provision for the immediate cut-off of service. The City and HWU shall not be liable for any loss or damage resulting from the discontinuance or interruption of service imposed due to theft or tampering.

(6) Payment of fees and restoration of service. If the City/HWU determines that theft of service or tampering has occurred, it reserves the right to adjust the customer's current bill and bills for the prior twelve (12) months usage. Service will not be restored until payments are received for all the following: adjusted payment for utility service; a violation payment of $100.00 per occurrence; service call charges; labor, including on-call and overtime premiums; replacement parts; and reconnect charges. Discontinuance of service shall not release the customer from liability for payment for service already received. The City and HWU shall have the right to refuse service to an applicant or any member of an applicant's household living at the same address whenever such persons are delinquent on any payment to the City, or has had service discontinued because of a violation for theft or tampering.

(7) Contract rates. The water and sewer commission shall have authority to establish written agreements and/or cost-sharing arrangements with utility customers that have their own water distribution and/or wastewater collection systems or large commercial or industrial customers that have specific requirements or concerns that are not addressed by the standard city rate structure. Contract rates shall adequately reflect the actual cost of providing the services plus an appropriate rate of return on the utility's investment.

(Ord. No. 06-11, 3-22-11; Ord. No. 56-17, 9-26-17)
ORDINANCE NO. ________

ORDINANCE AMENDING CHAPTER 23 UTILITIES

SUMMARY: ORDINANCE AMENDING ARTICLE II, WATER AND SEWER SERVICE, OF CHAPTER 23, UTILITIES, Sec. 23-23, ESTABLISHMENT OF OTHER RATES, FEES AND CHARGES OF THE CODE OF ORDINANCES OF THE CITY OF HENDERSON

WHEREAS, at its meeting on September 21, 2020, the Henderson Water and Sewer Commission recommended by Resolution No. 2020-22, (attached hereto) that the Board of Commissioners of the City of Henderson enact and adopt an amended Article II, Water and Sewer Service, of Chapter 23, Utilities, Sec. 23-23 Establishment of other rates, fees and charges, of the City's Code of Ordinances; and

WHEREAS, the Henderson Water Utility (HWU) operates and maintains two water treatment and distribution, and wastewater collection and treatment systems, serving the City of Henderson, Henderson County, and other localities in the region; and

WHEREAS, the Safe Drinking Water Act, and other Federal and State laws and regulations have established regulatory standards that apply to all water users, which standards are enforced locally by HWU; and,

WHEREAS, the Henderson Water Utility is responsible for enforcement of plumbing code and drinking water regulations and standards in our water distribution system as they relate to damages and repairs to the distribution system, theft of potable water service, and tampering with meters and other devices; and

WHEREAS, the Water and Sewer Commission recommends to the Board of Commissioners of the City of Henderson to enact and adopt revisions to portions of Article II of Chapter 23 of the City Code of Ordinances, incorporating language related to repairs, damage, theft of potable water services, and tampering with meters or other water devices; and

NOW, THEREFORE, BE IT ORDAINED by the City of Henderson, Kentucky that the existing Article II, Water and Sewer Service, Sec. 23-23 Establishment of other rates, fees and charges of Chapter 23, Utilities of the City's Code of Ordinances be and is hereby amended, and the revised Article II, Water and Sewer Service of Chapter 23, Utilities, is hereby approved and adopted a copy of which is attached hereto and marked Exhibit “A”.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner _______________, seconded by Commissioner ___________________________, that the ordinance be adopted on its first reading.

FIRST READ: 09/22/2020
SECOND READ: __________
On roll call the vote stood:

Commissioner Bugg: _______          Commissioner Vowels: _______
Commissioner Royster: _______        Mayor Austin: _______
Commissioner Staton: _______

WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner ____________________________, seconded by Commissioner ____________________________, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner Bugg: _______          Commissioner Vowels: _______
Commissioner Royster: _______        Mayor Austin: _______
Commissioner Staton: _______

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

Steve Austin, Mayor
Date: ________________________

ATTEST:

Maree Collins, CKMC, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS 19 DAY OF SEPTEMBER, 2020.

By: ________________________
    Dawn S. Kelsey
    City Attorney
HENDERSON WATER AND SEWER COMMISSION
RESOLUTION OF THE BOARD OF COMMISSIONERS

Resolution No. 2020 – 22
Recommending Changes to Chapter 23 of
The City of Henderson Code of Ordinances

The following Resolution was duly adopted by the Water & Sewer Commission of the City of Henderson at a regular meeting held on Monday, 21 September 2020, at which meeting a quorum was present.

WHEREAS, the Henderson Water Utility (HWU) operates and maintains two water treatment and distribution, and wastewater collection and treatment systems, serving the City of Henderson, Henderson County, and other localities in the region; and

WHEREAS, the Safe Drinking Water Act, and other Federal and State laws and regulations have established regulatory standards that apply to all water users, which standards are enforced locally by HWU; and,

WHEREAS, the Henderson Water Utility is responsible for enforcement of plumbing code and drinking water regulations and standards in our water distribution system, as they relate to damages and repairs to the distribution system, theft of potable water service, and tampering with meters and other devices; therefor,

BE IT RESOLVED, that the Water and Sewer Commission of the City of Henderson, under the authority granted to the Board of Commissioners under Chapter 23 Article II Division 3 Sections 23-36 through 23-45.1 of the City Code of Ordinances hereby recommends to the Board of Commissioners of the City of Henderson, Kentucky, that the City of Henderson enact and adopt revisions to portions of Article II of Chapter 23 of the City Code of Ordinances, incorporating language related to repairs, damage, theft of potable water service, and tampering.
with meters or other water devices, as recommended by the staff of the Water and Sewer
Commission, and herewith transmitted to the City by attachment to this resolution.

The General Manager is hereby authorized to deliver this Resolution to the City of
Henderson, and to pursue the changes enumerated above as shown on the attached Code
sections.

These changes will become effective upon the date of adoption by the Board of
Commissioners of the City of Henderson, Kentucky.

IN WITNESS WHEREOF, having come before the Board of Commissioners on Monday, 21
September 2020, and upon Motion made by Commissioner _____________, and seconded by
Commissioner ______________, the Board of Commissioners voted as follows:

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<thead>
<tr>
<th>Commissioner, Paul Bird</th>
<th>AYE</th>
<th>NAY</th>
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<tr>
<td>Commissioner, George Jones</td>
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<td>Commissioner, John Henderson</td>
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<td>Commissioner, Gary Jennings</td>
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<td>Commissioner, Julie Wischer</td>
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__________________________
Tom Williams, P.E.
General Manager
Henderson Water Utility
Sec. 23-23. Establishment of other rates, fees and charges; theft of service and tampering; payment and restoration of service.

(1) Authority. The water and sewer commission shall have authority to establish specific service fees and charges, and to negotiate agreements and cost-sharing arrangements related to the provision of water and wastewater services for situations not specifically covered by this article.

(2) Special fees and charges. Fees for specific services such as drying bed fees, septic tank haulers fees, plan review fees, construction inspection fees, tap fees, wastewater pretreatment penalties and surcharges, and other similar service fees shall be periodically reviewed and approved by the Henderson Water and Sewer Commission. These fees shall adequately reflect the current cost of providing the services plus an appropriate rate of return. Copies of the approved fees and charges shall be kept at the Henderson Water Utility Administration Office located at 111 Fifth Street and shall also be kept on file in the city clerk's office.

(3) Repairs and damages. No person shall maliciously, willfully, or negligently break, damage, uncover, deface, or tamper with any structure, appurtenance or equipment, which is a part of the potable water treatment plants, the potable water distribution system, the wastewater treatment plants, the wastewater collection system, or any attached portion of the systems, including but not limited to water storage tanks, pumping stations, valves, meters, hydrants, pump stations, and manholes. Repairs to any water utility property or equipment including but not limited to water meters, fire hydrants, water and sewer lines, tanks, structures, and manholes damaged by the activities of other parties shall be charged to the responsible party at the actual cost to the Henderson Water Utility for making repairs or replacing the damaged facilities, plus fifteen percent (15%) for administrative costs.

(4) Theft of Service and Tampering. Tampering with water meters or stealing potable water service shall be grounds for discontinuance of service. Theft of service and tampering shall include but not be limited to the following:
   a) opening valves at the main or meter that have been turned off by utility personnel;
   b) by-passing meters in any manner;
   c) taking of unmetered water from hydrants by anyone other than a utility employee, a fire department employee, or other authorized person, for purposes other than fire-fighting, street sweeping, testing, or flushing of hydrants;
   d) use of fire suppression service water for any purpose other than fire suppression;
   e) removing, disabling, or adjusting meter registers, cutting wires, or disabling or tampering with any metering or data collection device;
   f) removing or reversing a water meter; or
   g) making any unauthorized connection to the distribution system.
Any person damaging, defacing, or tampering with the water treatment plants, distribution system, pumping system, collection system, water meters, water storage tanks, or any person stealing potable water service shall be deemed guilty of a Class B misdemeanor.

(5) Notice of violation and service cut-off. A Notice of Violation (NOV) may be mailed or otherwise delivered if evidence suggests the possibility of theft of service or tampering. If in the opinion of the General Manager the theft or tampering endangers public health, or if theft is evident on a customer’s premises, the notice of violation may include a provision for the immediate cut-off of service. The City and HWU shall not be liable for any loss or damage resulting from the discontinuance or interruption of service imposed due to theft or tampering.

(6) Payment of fees and restoration of service. If the City/HWU determines that theft of service or tampering has occurred, it reserves the right to adjust the customer’s current bill and bills for the prior twelve (12) months usage. Service will not be restored until payments are received for all the following: adjusted payment for utility service; a violation payment of $100.00 per occurrence; service call charges; labor, including on-call and overtime premiums; replacement parts; and reconnect charges. Discontinuance of service shall not release the customer from liability for payment for service already received. The City and HWU shall have the right to refuse service to an applicant or any member of an applicant’s household living at the same address whenever such persons are delinquent on any payment to the City, or has had service discontinued because of a violation for theft or tampering.

(7) Contract rates. The water and sewer commission shall have authority to establish written agreements and/or cost-sharing arrangements with utility customers that have their own water distribution and/or wastewater collection systems or large commercial or industrial customers that have specific requirements or concerns that are not addressed by the standard city rate structure. Contract rates shall adequately reflect the actual cost of providing the services plus an appropriate rate of return on the utility’s investment.

(Ord. No. 06-11, 3-22-11; Ord. No. 56-17, 9-26-17)
October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners

FROM: William L. “Buzzy” Newman, Jr., City Manager

SUBJECT: Right-of-Way Closure – Lincoln Avenue (Unimproved)

An item for the agenda of Tuesday, October 13, 2020 meeting is final reading of an ordinance closing a portion of Lincoln Avenue public right-of-way located between Highway 2084 N. and Highway 351.

The applicant, Palmer Operations, LLC, has requested closure of Lincoln Avenue right-of-way between Highway 2084 N. and Highway 351, that was platted and never built. The closure is being sought to allow the consolidation of property.

All adjoining property owners have agreed to the vacation of this unimproved street right-of-way. Any required utility easements for this closure will be addressed on the consolidation plat.

Your approval of the attached ordinance is requested.

c: Doug Boom  
Brian Bishop
September 2, 2020

Mayor Steve Austin
City Commissioners
Henderson Municipal Center
Henderson, KY 42420

ATTN: Buzzy Newman, City Manager

RE: RIGHT-OF-WAY CLOSURE REQUEST

Please be advised on Tuesday, September 1, 2020 the Henderson City-County Planning Commission held a Public Hearing to consider the following:

ALLEY CLOSING REQUEST – Submitted by Palmer Operations, LLC and Attorney Chris Hopgood, to close an unimproved portion of Lincoln Avenue, approximately 6,513 square feet between Highway 2084 N. and Highway 351.

PLANNING COMMISSION RECOMMENDATION- MOTION WAS MADE BY DAVID WILLIAMS AND SECONDED BY MAC ARNOLD TO RECOMMEND TO THE CITY OF HENDERSON THAT THE RIGHT OF WAY CLOSURE REQUEST BE GRANTED SUBMITTED BY PALMERS OPERATIONS, LLC., AND ATTORNEY CHRIS HOPGOOD, TO CLOSE AN UNIMPROVED PORTION OF LINCOLN AVENUE APPROXIMATELY 6,513 SQUARE FEET BETWEEN HIGHWAY 2084 N AND HWY 351.
AYE: ALL (GRAY HODGE DID NOT RESPOND TO THE ROLL)
NAY: NONE

Attached is a copy of the transcript of the public hearing, and documents related to the Right-Of-Way closing.

Respectfully submitted,

Brian Bishop
Executive Director, AICP
Henderson City-County Planning Commission

BB/tgc
Cc: Dawn Kelsey
The Henderson City-County Planning Commission held a meeting September 1, 2020 at 6:00 p.m., at the Peabody Building, 1990 Barret Ct, Suite F, via teleconference. Members present via teleconference: Chairman David Dixon, Vice-Chairman David Williams, Bobbie Jarrett, Gary Gibson, Rodney Thomas, Dickie Johnson, Gray Hodge, Kevin Richard, Mac Arnold, Stacy Denton and Tommy Joe Fridy. Kevin Herron and Doug Bell were absent. Staff present: Director Brian Bishop, Jennifer Marks, Theresa Curtis, Heather Lauderdale and Chris Raymer.

Chairman Dixon: Ok, the motion passes for approval.

The next item on the agenda is the Right of Way Closure Request submitted by Palmer Operations, Brian?

Brian Bishop: One second, we are not showing up.

Can everybody see us and hear us?

EVERYONE STATED THEY COULD SEE AND HEAR THE MEETING

I'm sorry, I thought we had lost our feed for a second.

Brent, we are not seeing the feed. Here we go, we do have the feed now.

Chairman Dixon: I'm sorry, do we have anybody wanting to comment on the first item, the Hancock Subdivision on Facebook?

Is anyone there that wants to speak?

Brian Bishop: From the public.

Chairman Dixon: Ok, sorry, I forgot about that folks.
Back to the Right of Way Closure.

Brian Bishop: Everyone should be able to see the screen on Facebook and through ZOOM.

The Right of Way Closure request submitted by Palmer Operations, LLC. And Attorney Chris Hopgood, to close an unimproved portion of Lincoln Avenue, approximately 6,513 square feet between Highway 2084 and Hwy 351.

The applicant is requesting that the right of way be closed so that they can consolidate property that they own on both sides they own of the right of way. If you can see, this is the area that would be closed. This is a piece of property that could be used and joined with this piece of property.

They are doing this for future development and right now they cannot do that because that is a public right of way. This request has been send to the City Manager’s office. It has been sent to the technical advisors. We would deal with any utilities on this site via easements which would be created with the consolidation plat.

With that, I’ll do my best to answer any questions and allow Mr. Hopgood to comment.

Chris, can you hear us?

Chris Hopgood: Yes.

Chairman Dixon: Any questions for staff?

Mac Arnold: Brian, this is Mac Arnold.

Brian Bishop: Yes sir.

Mac Arnold: Looking at the drawing that we’ve got, the colored one from Associated Engineering?

Brian Bishop: Yes sir.
Mac Arnold: They’re showing a ten foot (10’) alley right in the middle of that piece of property just across from Palmers. Does anything have to be done with that or does it just disappear when you close the street?

Brian Bishop: My understanding, Mr. Arnold is that will be closed via the plat when that is done but right now their request is only for the alley that is shown in the drawing that is shown on the screen.

Mac Arnold: Ok, alright.

Chairman Dixon: Any other questions for staff? Any questions for the applicant? Any questions for the applicant’s attorney, who is available?

David Williams: Excuse me, this is David Williams.

Does the client own both properties; the service station and the property behind on the other side of the right of way?

Chris Hopgood: The service station...

Chairman Dixon: I need to swear you in. I need your name and address sir.

Chris Hopgood: Chris Hopgood, 318 Second Street, Henderson, Kentucky, 42420.

Chairman Dixon: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Chris Hopgood: I do.

Chairman Dixon: Thank you very much, proceed.

Chris Hopgood: The property that’s not developed, which would be east of the Lincoln Avenue closure is owned in fee simple by Palmer Operations. The service station is owned by Edward Leasor, who’s represented by Cass Wilson and joined in this, and they have a long term lease with Palmer Operations for the service station.
David Williams: Ok, so we have two (2) distinct properties on either side of the right of way?

Chris Hopgood: Correct.

David Williams: My question would be is would half of the right of way go to the property and the other half go to the other?

Chris Hopgood: Yes.

David Williams: Ok, thank you.

Chris Hopgood: You're welcome.

Chairman Dixon: Good, any other questions from Mr. Hopgood? Thank you counselor, very helpful.

Any other questions? I'll entertain a motion in regards to this right of way closure.

David Williams: I do have a point of order. Is this going to be a recommendation to the City Commission, or what do we do?

Chairman Dixon: Tommy Joe?

Tommy Joe Fridy: It is a recommendation. Only the city can close the alley. The city referred the matter to us to hold a public hearing.

Chairman Dixon: Very good. Good question Commissioner Williams.

David Williams: Tommy Joe, is there anything that we need to include in our question and answering at this point?

Tommy Joe Fridy: No. The record will show that there was no public comment for or against.

Chairman Dixon: We do need to ask if we have anything on Facebook. Nothing on Facebook? Ok.

I think we are now ready to consider a motion unless there are more questions.
David Williams: Mr. Chairman, this is David Williams.  I proposed that we

**MOTION WAS MADE BY DAVID WILLIAMS AND SECONDED BY MAC ARNOLD TO RECOMMEND TO THE CITY OF HENDERSON THAT THE RIGHT OF WAY CLOSURE REQUEST BE GRANTED SUBMITTED BY PALMERS OPERATIONS, LLC., AND ATTORNEY CHRIS HOPGOOD, TO CLOSE AN UNIMPROVED PORTION OF LINCOLN AVENUE APPROXIMATELY 6,513 SQUARE FEET BETWEEN HIGHWAY 2084 N AND HWY 351.**

Chairman Dixon: Do we have a second?

Very good.  Madame Secretary, please call the roll.

**AYE: ALL (GRAY HODGE DID NOT RESPOND TO THE ROLL)**

**NAY: NONE**

Chairman Dixon: Motion passes, thank you all.
RIGHT-OF-WAY CLOSURE REQUEST
Administrative Memorandum
20-14

July 30, 2020

TO: Brian Bishop, Executive Director
Planning Commission

FROM: William L. "Buzzy" Newman, Jr., City Manager

SUBJECT: ROW Closure Request

Enclosed for your review is a request of Palmer Operations, LLC to close an unimproved portion of Lincoln Avenue. The attached letter and plat from J. Christopher Hopgood, Attorney for the applicant, depicts the area sought to be closed on his client's behalf.

The letter of request is for the vacating of approximately 6,513 square feet of the unimproved portion of Lincoln Avenue between Highway 2084N and Highway 351 (A.K.A. 2nd Street).

Staff's review for the impact on public services and utilities has been completed and is enclosed. Also enclosed is the written description, an original certified survey plat and a list of abutting property owners.

Please start the process to obtain all necessary Consent To Right-of-Way Closing documents and conduct a public hearing before the Planning Commission to consider this request and return with a recommendation to the Board of Commissioners.

c: Doug Boom
Dawn Kelsey
July 29, 2020

Ms. Maree Collins
City Clerk
City of Henderson
Pot Office Box 716
Henderson, KY 42419

Re: Closing of portion of Lincoln Avenue

Dear Maree:

My client, Palmer Operations, LLC, requests that the portion of Lincoln Avenue that is adjacent to Palmer’s Market be closed. Enclosed is Branson Survey’s plat, the legal description of the portion to be closed, and the name of the adjacent owner, Mrs. Mary Strother Leasor, 198 Fisher Lane, Bowling Green, KY 42103. Our firm’s check for $100.00 is enclosed as well.

Please advise if anything further is needed.

Respectfully

DORSEY, GRAY, NORMENT & HOPGOOD

By

J. Christopher Hopgood

JCH/eds
Encls.
NO-RE: THIS DRAWING DOES NOT DEPICT A PHYSICAL PROPERTY SURVEY.

LEGEND
--- PROPERTY LINES FROM PLANS AND INFORMATION GATHERED FROM THE KY DEPARTMENT OF TRANSPORTATION HIGHWAY ENGINEER'S OFFICE.
--- ASBUILT SETBACKS (AS WORKED)
--- WATERLINE
--- ELECTRIC & TELEPHONE CALS ON POLE
--- TELEPHONE CALE ON POLE
--- STORM WATER MAIN HOUSE
--- SANITARY SEWER MAIN HOUSE
--- UTILITY POLE
--- WATER VALVE
--- WATERTURB
--- FIRE HyDRANT
--- CASSETTE

PHOTO DATE: OCTOBER 30, 2019

GRAPHIC SCALE: 1" = 100'
DESCRIPTION

A PORTION OF THE
N. LINCOLN AVE RIGHT-OF-WAY

HENDERSON, KENTUCKY

A certain tract or parcel located north of Hwy. 2084 N., south of Hwy. 351 and west of I-69 in Henderson County, Kentucky, and being more specifically described as follows:

Unless otherwise noted, all monuments referred to as a "pin and cap" is a set 5/8" diameter, smooth sided iron pin, eighteen inches in length, with cap stamped C.L. Krahwinkel P.L.S. #3685. All bearings stated hereon are referred to Kentucky State Plane South Zone (NAD 83).

Beginning at a 3" x 3" chiseled "X" with a 3/4" drill in the center, being located in the north right-of-way line of Hwy. 2084 N. at station 12+90.88-57.04 feet right of design centerline, being located in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6 in the Henderson County Court Clerk's Office in Henderson, Kentucky, being located at the southeast corner of the Mary Leasor property recorded in Deed Book 487 Page 459-Parcel No. 1, being located at the southwest corner of the Everett & Mary Leasor property recorded in Deed Book 642 Page 824 and being located in the west right-of-way line of N. Lincoln Ave.;

Thence with the east line of said Leasor property and the west right-of-way line of N. Lincoln Ave., NORTH 36 DEGREES 27 MINUTES 30 SECONDS EAST, a distance of 122.05 feet to a pin and cap set in the south right-of-way line of Hwy. 351 at station 92+36.94-95.21 feet right and being in the south line of the Commonwealth of Kentucky property recorded in Deed Book 230 Page 497;

Thence leaving said Leasor property and with the south right-of-way line of Hwy. 351, with the south line of said Commonwealth property and with the Commonwealth of Kentucky property recorded in Deed Book 229 Page 65, SOUTH 51 DEGREES 55 MINUTES 36 SECONDS EAST, a distance of 50.02 feet to a pin and cap set in said right-of-way at station 92+84.03-112.08 feet right, being in the south line of said Commonwealth property, being in the east right-of-way line of N. Lincoln Ave. and being located at the northwest corner of the Palmer Operations, Inc. property recorded in Deed Book 610 Page 605;

Thence leaving the south right-of-way line of Hwy. 351, with the east right-of-way line of N. Lincoln Ave., with the west line of said Palmer Operations, Inc. property and with the west line of the Palmer Oil Company, Inc. property recorded in Deed Book 464 Page 293, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 125.01 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+47.79-60.00 feet right (cited as 12+47.75-60.00 feet right by S.P. 51-5079) and being located at corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693;
Thence continuing with the east right-of-way line of N. Lincoln Ave. and with said Commonwealth property, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 13.79 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+45.29-46.52 feet right (cited as 12+45.20-46.51 feet right by S.P. 51-5079), being a corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693, being located in the existing north right-of-way line of Hwy. 2084 N. and being in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 13;

Thence with the north right-of-way line of Hwy. 2084 N., with the north line of said Commonwealth property and with the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6, along a curve to the left, 53.20 feet along said curve, having a radius of 1472.40 feet, through a central angle of 02 DEGREES 04 MINUTES 12 SECONDS, having a chord bearing of NORTH 33 DEGREES 35 MINUTES 22 SECONDS WEST, and a chord length of 53.19 feet to the point of beginning and containing 6513 sq.ft. or 0.150 acres and being subject to all legal written and unwritten easements and rights-of-way. This description was prepared from a physical survey conducted under the direction of Clifton L. Krahwinkel, Ky. P.L.S. #3685 of Branson Surveys, inc. on July 6, 2020.

[Signature]

[Stamp]
ORDINANCE NO. 21-20

ORDINANCE CLOSING PORTION OF PUBLIC RIGHT-OF-WAY

SUMMARY: AN ORDINANCE CLOSING PORTION OF PUBLIC RIGHT-OF-WAY WHICH IS AN UNIMPROVED PORTION OF LINCOLN AVENUE, APPROXIMATELY 6,513 SQUARE FEET LOCATED BETWEEN HIGHWAY 2084 AND HIGHWAY 351 THE CITY OF HENDERSON

WHEREAS, Attorney Chris Hopgood on behalf of client Palmer Operations, LLC, has petitioned the City of Henderson for the closing of a certain public right-of-way which is an unimproved portion of Lincoln Avenue approximately 6,513 square feet between Highway 2084 and Highway 351, and more specifically shown by plat marked Exhibit "A-1", which is attached hereto and made a part hereof by reference.

WHEREAS, it appears that the best interest of the residents of Henderson, Kentucky would be served by the closing of said public right-of-way; and

WHEREAS, it appears that the closing of said right-of-way would enhance the value of the property affected thereby and would not create a hardship on any of the adjoining property owners or other persons with any interest therein; and

WHEREAS, under KRS 82.405(2), the Board of Commissioners of the City of Henderson, Kentucky, makes the following findings of fact:

(a) that the identity of all property owners in or abutting the above referred to public right-of-way or portions thereof to be closed has been made;

(b) that the requirement contained in KRS 82.405 (2) (b) that written notice of the proposed closing has been given to all property owners in or abutting the public right-of-way or any portion thereof being closed;

(c) that Palmer Operations, LLC, Commonwealth of Kentucky-KYTC District #2, and Everett and Mary Strother Leasor are the owners of properties adjoining the public way or portion thereof being closed and have given their written notarized consents to the closing, and a notarized copy of such consents which contain a description of the public way to be closed are attached hereto and made a part hereof, collectively marked Exhibit “A”.

FIRST READ: 09/22/2020
SECOND READ: ____________

ORDINANCE NO. 21-20
NOW, THEREFORE, BE IT ORDAINED by the City of Henderson, Kentucky, that under the provisions of KRS 82.405, as amended, relating to the closing of public ways, the right-of-way being an unimproved portion of Lincoln Avenue approximately 6,513 square feet between Highway 2084 and Highway 351, and more specifically shown by plat marked Exhibit "A-1", which is attached hereto and made a part hereof by reference.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner __________, seconded by Commissioner __________, that the ordinance be adopted on its first reading:

On roll call the vote stood:

Commissioner Bugg: _______ Commissioner Vowels: _______
Commissioner Royster: _______ Mayor Austin: _______
Commissioner Staton: _______

WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for a second reading by the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner __________, seconded by Commissioner __________, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner Bugg: _______ Commissioner Vowels: _______
Commissioner Royster: _______ Mayor Austin: _______
Commissioner Staton: _______

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

Steve Austin, Mayor
Date: ____________________________
ATTEST:

Maree Collins, CKMC,
City Clerk

APPROVED AS TO FORM AND LEGALITY THIS 17th DAY OF SEPTEMBER, 2020.

By: ____________________________
    Dawn S. Kelsey
    City Attorney
CONSENT TO RIGHT-OF-WAY CLOSING

STATE OF Kentucky
COUNTY OF Henderson.

COMES the undersigned, Palmer Operations LLC, 1638 Clay Street Henderson, KY 42420, after being duly sworn, state that they are the owners of a portion of property abutting a public right-of-way as shown on the plat attached hereto, and as said owners do hereby consent in writing to the right-of-way closing of said properties as described as follows, to-wit:

A certain tract or parcel located north of Hwy. 2084 N., south of Hwy. 351 and west of I-69 in Henderson County, Kentucky, and being more specifically described as follows:

Unless otherwise noted, all monuments referred to as a "pin and cap" is a set 5/8" diameter, smooth sided iron pin, eighteen inches in length, with cap stamped C.L. Krahwinkel P.L.S. #3685. All bearings stated hereon are referred to Kentucky State Plane South Zone (NAD 83).

Beginning at a 3" x 3" chiseled "X" with a 3/4" drill in the center, being located in the north right-of-way line of Hwy. 2084 N. at station 12+90.88-57.04 feet right of design centerline, being located in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6 in the Henderson County Court Clerk's Office in Henderson, Kentucky, being located at the southeast corner of the Leasor property recorded in Deed Book 487 459-Parcel No. 1, being located at the southwest corner of the Everett & Mary Leasor property recorded in Deed Book 642 Page 824 and being located in the west right-of-way line of N. Lincoln Ave.;

Thence with the east line of said Leasor property and the west right-of-way line of N. Lincoln Ave., NORTH 36 DEGREES 27 MINUTES 30 SECONDS EAST, a distance of 122.05 feet to a pin and cap set in the south right-of-way line of Hwy. 351 at station 92+36.94-95.21 feet right and being in the south Line of the Commonwealth of Kentucky property recorded in Deed Book 230 Page 497;

Thence leaving said Leasor property and with the south right-of-way line of Hwy. 351, with the south Line of said Commonwealth property and with the Commonwealth of Kentucky property recorded in Deed Book 229 Page 65, SOUTH 51 DEGREES 54
MINUTES 36 SECONDS EAST, a distance of 50.02 feet to a pin and cap set in said right-of-way at station 92+84.03-112.08 feet right, being in the south line of said Commonwealth property, being in the east right-of-way line of N. Lincoln Ave. and being located at the northwest corner of the Palmer Operations, Inc. property recorded in Deed Book 610 Page 605;

Thence leaving the south right-of-way line of Hwy. 351, with the east right-of-way line of N. Lincoln Ave., with the west line of said Palmer Operations, Inc. property and with the west line of the Palmer Oil Company, Inc. property recorded in Deed Book 464 Page 293, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 125.01 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+47.79-60.00 feet right (cited as 12+47.76-60.00 feet right by S.P. 51-5079) and being located at corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693;

Thence continuing with the east right-of-way line of N. Lincoln Ave. and with said Commonwealth property, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 13.79 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+45.29-46.52 feet right (cited as 12+45.20-46.51 feet right by S.P. 51-5079), being a corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693, being located in the existing north right-of-way line of Hwy. 2084 N. and being in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 13;

Thence with the north right-of-way line of Hwy. 2084 N., with the north line of said Commonwealth property and with the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6, along a curve to the left, 53.20 feet along said curve, having a radius of 1472.40 feet, through a central angle of 02 DEGREES 04 MINUTES 12 SECONDS, having a chord bearing of NORTH 33 DEGREES 35 MINUTES 22 SECONDS WEST, and a chord length of 53.19 feet to the point of beginning and containing 6513 sq. ft. or 0.150 acres and being subject to all legal written and unwritten easements and rights-of-way. This description was prepared from a physical survey conducted under the direction of Clifton L. Krahwinkel, Ky. P.L.S. #3685 of Branson Surveys, Inc. on July 6, 2020.
CONSENT TO RIGHT-OF-WAY CLOSING

STATE OF Kentucky
COUNTY OF Hopkins

COMES the undersigned, Commonwealth of Kentucky- KYTC District #2, 1840 N. Main Street, Madisonville, KY 42431, after being duly sworn, state that they are the owners of a portion of property abutting a public right-of-way as shown on the plat attached hereto, and as said owners do hereby consent in writing to the right-of-way closing of said properties as described as follows, to-wit:

A certain tract or parcel located north of Hwy. 2084 N., south of Hwy. 351 and west of I-69 in Henderson County, Kentucky, and being more specifically described as follows:

Unless otherwise noted, all monuments referred to as a "pin and cap" is a set 5/8" diameter, smooth sided iron pin, eighteen inches in length, with cap stamped C.L. Krahwinkel P.L.S. #3685. All bearings stated hereon are referred to Kentucky State Plane South Zone (NAD 83).

Beginning at a 3" x 3" chiseled "X" with a 3/4" drill in the center, being located in the north right-of-way line of Hwy. 2084 N. at station 12+90.88-57.04 feet right of design centerline, being located in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6 in the Henderson County Court Clerk's Office in Henderson, Kentucky, being located at the southeast corner of the Leasor property recorded in Deed Book 487 459-Parcel No. 1, being located at the southwest corner of the Everett & Mary Leasor property recorded in Deed Book 642 Page 824 and being located in the west right-of-way line of N. Lincoln Ave.;

Thence with the east line of said Leasor property and the west right-of-way line of N. Lincoln Ave., NORTH 36 DEGREES 27 MINUTES 30 SECONDS EAST, a distance of 122.05 feet to a pin and cap set in the south right-of-way line of Hwy. 351 at station 92+36.94-95.21 feet right and being in the south Line of the Commonwealth of Kentucky property recorded in Deed Book 230 Page 497;

Thence leaving said Leasor property and with the south right-of-way line of Hwy. 351, with the south Line of said Commonwealth property and with the Commonwealth of Kentucky property recorded in Deed Book 229 Page 65, SOUTH 51 DEGREES 55
As abutting property owners, Palmer Operations, LLC have been given written notice of the proposed closing, and hereby give written notarized consent to the closing of the above described public right-of-way in accordance with KRS 82.405, as amended.

PALMER OPERATIONS, LLC, GRANTEE

By: Mary Ann Storero

SIGNED, ACKNOWLEDGED AND SWORN to before me by Mary Ann Storero, duly authorized member of Palmer Operations, LLC, for and on behalf of said company this 5th day of Sept., 2020

My commission expires 7-22-23

Kimberly A. Hardin
Notary Public

1027241
Serial Number, if any

(Seal)

SIGNED, ACKNOWLEDGED AND SWORN to before me by Mary Strother Leasor this ___ day of __________ 2020

My commission expires

Notary Public

Serial Number, if any

(Seal)
MINUTES 36 SECONDS EAST, a distance of 50.02 feet to a pin and cap set in said right-of-way at station 92+84.03-112.08 feet right, being in the south line of said Commonwealth property, being in the east right-of-way line of N. Lincoln Ave. and being located at the northwest corner of the Palmer Operations, Inc. property recorded in Deed Book 610 Page 605;

Thence leaving the south right-of-way line of Hwy. 351, with the east right-of-way line of N. Lincoln Ave., with the west line of said Palmer Operations, Inc. property and with the west line of the Palmer Oil Company, Inc. property recorded in Deed Book 464 Page 293, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 125.01 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+47.79-60.00 feet right (cited as 12+47.76-60.00 feet right by S.P. 51-5079) and being located at corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693;

Thence leaving the south right-of-way line of Hwy. 351, with the east right-of-way line of N. Lincoln Ave., with the west line of said Palmer Operations, Inc. property and with the west line of the Palmer Oil Company, Inc. property recorded in Deed Book 464 Page 293, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 125.01 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+47.79-60.00 feet right (cited as 12+47.76-60.00 feet right by S.P. 51-5079) and being located at corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693;

Thence continuing with the east right-of-way line of N. Lincoln Ave. and with said Commonwealth property, SOUTH 36 DEGREES 27 MINUTES 30 SECONDS WEST, a distance of 13.79 feet to a pin and cap set at a corner of the existing right-of-way of Hwy. 2084 N. at station 12+45.29-46.52 feet right (cited as 12+45.20-46.51 feet right by S.P. 51-5079), being a corner of the Commonwealth of Kentucky property recorded in Deed Book 309 Page 693, being located in the existing north right-of-way line of Hwy. 2084 N. and being in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 13;

Thence with the north right-of-way line of Hwy. 2084 N., with the north line of said Commonwealth property and with the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6, along a curve to the left, 53.20 feet along said curve, having a radius of 1472.40 feet, through a central angle of 02 DEGREES 04 MINUTES 12 SECONDS, having a chord bearing of NORTH 33 DEGREES 35 MINUTES 22 SECONDS WEST, and a chord length of 53.19 feet to the point of beginning and containing 6513 sq. ft. or 0.150 acres and being subject to all legal written and unwritten easements and rights-of-way. This description was prepared from a physical survey conducted under the direction of Clifton L. Krahwinkel, Ky. P.L.S. #3685 of Branson Surveys, Inc. on July 6, 2020.
CONSENT TO RIGHT-OF WAY CLOSING

STATE OF Kentucky
COUNTY OF Warren

COMES the undersigned, Everett & Mary Strother Leasor, 198 Fisher Lane, Bowling Green, KY 42103, after being duly sworn, state that they are the owners of a portion of property abutting a public right-of-way as shown on the plat attached hereto, and as said owners do hereby consent in writing to the right-of-way closing of said properties as described as follows, to-wit:

A certain tract or parcel located north of Hwy. 2084 N., south of Hwy. 351 and west of I-69 in Henderson County, Kentucky, and being more specifically described as follows:

Unless otherwise noted, all monuments referred to as a "pin and cap" is a set 5/8" diameter, smooth sided iron pin, eighteen inches in length, with cap stamped C.L. Krahwinkel P.L.S. #3685. All bearings stated hereon are referred to Kentucky State Plane South Zone (NAD 83).

Beginning at a 3" x 3" chiseled "X" with a 3/4" drill in the center, being located in the north right-of-way line of Hwy. 2084 N. at station 12+90.88-57.04 feet right of design centerline, being located in the north line of the Commonwealth of Kentucky property recorded in Deed Book 132 Page 6 in the Henderson County Court Clerk's Office in Henderson, Kentucky, being located at the southeast corner of the Leasor property recorded in Deed Book 487 459-Parcel No. 1, being located at the southwest corner of the Everett & Mary Leasor property recorded in Deed Book 642 Page 824 and being located in the west right-of-way line of N. Lincoln Ave.;

Thence with the east line of said Leasor property and the west right-of-way line of N. Lincoln Ave., NORTH 36 DEGREES 27 MINUTES 30 SECONDS EAST, a distance of 122.05 feet to a pin and cap set in the south right-of-way line of Hwy. 351 at station 92+36.94-95.21 feet right and being in the south Line of the Commonwealth of Kentucky property recorded in Deed Book 230 Page 497;

Thence leaving said Leasor property and with the south right-of-way line of Hwy. 351, with the south Line of said Commonwealth property and with the Commonwealth of Kentucky property recorded in Deed Book 229 Page 65, SOUTH 51 DEGREES 55
As abutting property owners, Commonwealth of Kentucky-KYTC District #2 have been given written notice of the proposed closing, and hereby give written notarized consent to the closing of the above described public right-of-way in accordance with KRS 82.405, as amended.

COMMONWEALTH OF KY-KYTC DISTRICT #2

By: [Signature]

SIGNED, ACKNOWLEDGED AND SWORN to before me by [Signature], duly authorized member of Commonwealth of KY-KYTC District #2, for and on behalf of said company this ___ day of September, 2020

My commission expires ___

[Seal]

Notary Public

Serial Number, if any

(Seal)
MINUTES 36 SECONDS EAST, a distance of 50.02 feet to a pin and cap set in said right-of-way at station 92+84.03-112.08 feet right, being in the south line of said Commonwealth property, being in the east right-of-way line of N. Lincoln Ave. and being located at the northwest corner of the Palmer Operations, Inc. property recorded in Deed Book 610 Page 605;

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As abutting property owners, Everett & Mary Strother Leasor have been given written notice of the proposed closing, and hereby give written notarized consent to the closing of the above described public right-of-way in accordance with KRS 82.405, as amended.

Everett Leasor  
Mary Leasor  

SIGNED, ACKNOWLEDGED AND SWORN to before me by Everett Leasor this 14th day of September, 2020

Raven McKenzy Robinson  
Notary Public  
Kentucky, State at Large  
Notary ID KYNP10448  
My Commission Expires July 8, 2024  

(Signature)

My commission expires July 8, 2024

Raven McKenzy Robinson  
Notary Public  
Kentucky, State at Large  
Notary ID KYNP10448  
My Commission Expires July 8, 2024  

(Signature)

Serial Number, if any
City Commission Memorandum
20-161

October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners

FROM: William L. "Buzzy" Newman, Jr., City Manager

SUBJECT: Amending Appendix “A” Zoning – Manufactured Housing and Signage

Enclosed for the agenda of Tuesday, October 13, 2020, is first reading of an ordinance amending Appendix “A” Zoning relating to Manufactured Housing and Electronic Signage.

The proposed amendments to Appendix A-Zoning relate to manufactured housing and electronic signage in the City of Henderson. At the September 22, 2020, meeting of the Board of Commissioners, a review of the draft ordinance was presented by City Attorney Dawn Kelsey and a motion was passed to request the Planning Commission to initiate a review of the zoning ordinance to determine the appropriateness of amending the ordinance and hold any necessary formal hearing for recommended changes to these sections.

The Planning Commission held a public hearing on October 6, 2020 where unanimous approval was given to approve the amendments to Sections 2.01, Definitions-(1) Class A Manufactured Housing (A)(4); 5.01, Powers and Duties (q); 13.02, Permitted Uses; 13.03, Conditional Uses; 31.03 (1), Permitted Uses; 31.03 (2), Conditional Uses; and 33.14, Signage.

Your approval of the attached ordinance is requested.

c: Brian Bishop
Ray Nix
October 7, 2020

Mayor Steve Austin
City Commissioners
Henderson Municipal Center
Henderson, KY 42420

ATTN: Buzzy Newman, City Manager

RE: Amendments to Henderson City Zoning Ordinance, Appendix A Zoning - The Planning Commission will consider adding changes to the following Articles below.

Please be advised on Tuesday, October 6, 2020 the Henderson City-County Planning Commission held a Public Hearing to consider the following:

- **Article II, Section 2.01, Definitions- (1) Class A Manufactured Housing (a)(4);**
- **Article V, Section 5.01, – Powers and duties; (q)**
- **Article XIII- R-3, Medium to High Density Residential District, Section 13.02, Permitted uses;**
- **Article XIII- R-3, Medium to High Density Residential District, Section 13.03, Conditional uses;**
- **Article XXXI, Audubon Residential District, Section 31.03-Permitted uses;**
- **Article XXXI, Audubon Residential District, Section 31.03-Conditional uses;**
- **Article XXXIII, Gateway Zone District #1, Section 33.14-Signage**

PLANNING COMMISSION RECOMMENDATION-
MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY MAC ARNOLD TO PROPOSE A RECOMMENDATION TO THE CITY COMMISSION THE APPROVAL OF THE AMENDMENTS TO THE HENDERSON CITY ZONING ORDINANCE,
APPENDIX A ZONING. THE PLANNING COMMISSION HAVE CONSIDERED ADDING CHANGES TO THE FOLLOWING ARTICLES;
ARTICLE II, SECTION 2.01, DEFINITIONS- (1) CLASS A MANUFACTURED HOUSING (A) (4);
ARTICLE V, SECTION 5.01- POWERS AND DUTIES; (Q)
ARTICLE XIII- R-3, MEDIUM TO HIGH DENSITY RESIDENTIAL DISTRICT, SECTION 13.02, PERMITTED USES;
ARTICLE XIII- R-3, MEDIUM TO HIGH DENSITY RESIDENTIAL DISTRICT, SECTION 13.02, CONDITIONAL USES;
ARTICLE XXXI, AUDUBON RESIDENTIAL DISTRICT, SECTION 31.03-PERMITTED USES;
ARTICLE XXXI, AUDUBON RESIDENTIAL DISTRICT, SECTION 31.03-CONDITIONAL USES;
ARTICLE XXXIII, GATEWAY ZONE DISTRICT #1, SECTION 33.14-SIGNAGE.

Attached is a copy of the transcript of the public hearing, and documents related to the text amendments.

Respectfully submitted,

Brian Bishop
Executive Director, AICP
Henderson City-County Planning Commission
BB/kg
Cc: Dawn Kelsey
The Henderson City-County Planning Commission held a meeting October 7, 2020 at 6:00 p.m., at the Peabody Building, 1990 Barret Ct, Suite F, via teleconference. Members present via teleconference: Chairman David Dixon, Vice-Chairman David Williams, Bobbie Jarrett, Gary Gibson, Rodney Thomas, Dickie Johnson, Gray Hodge, Kevin Richard, Mac Arnold, Kevin Herron, and Tommy Joe Fridy. Stacy Denton and Doug Bell were absent. Staff present: Director Brian Bishop, Jennifer Marks, Heather Lauderdale and Chris Raymer. Theresa Curtis was absent.

Chairman Dixon: The next items are some amendments to the Henderson City Zoning Ordinance.

I think Mr. Ray Nix is going to lead that discussion.

Ray Nix: Yes. The first amendments relate to manufactured housing. Currently, manufactured housing is permitted in R-3 and ARD, the Audubon Residential District. Just for your information, R-3 has a segment roughly from Fifth Street north to Twelfth, and east of Green Street to just east of North Adams Street; for a geographical area.

Another geographical area of R-3 is from Sand Lane north to Pringle, and from the cemetery east to Atkinson Street.

The ARD zone covers an area from Pringle north to Clay, and Ingram east to Atkinson Street. So, that gives you a geographical area of what we're discussing here.

The nature of the sizes of some of the lots in some of those districts end up actually preventing the placement of a manufactured home because the ordinance states that the home shall meet all requirements for lot, yard, building and other requirements for the district.
In essence, no variances.

Regular stick built constructed homes are allowed variances but not to manufactured homes as described. With current manufactured home designs and our current ordinance definition and requirement standards, manufactured homes should have the variance opportunities to help meet a long-term goal of the City of providing affordable housing.

So, the amendments for manufactured housing are as follows;

Section 2.01, in definitions of manufactured housing the following is added; variances may be granted for yard setbacks when the manufactured home is approved as a conditional use in R-3 or ARD districts.

Going into the actual zoning segment itself; Section 13.02, R-3 Zoning District; the permitted use of Class A manufactured homes has been deleted but in 13.03, R-3 Zoning district conditional uses, Class A manufactured homes has been added to include it’s definition in addition to the just stated section I just mentioned about Section 2.01.

As well as the additional limitations that are described in the definitions of Class A manufactured homes.

Some of those additional limitations relate to acceptable installation and appearances as well as set-back limitations. There’s a contextual set back requirements that are similar to what is described in our HIP and also our Gateway Zoning District. So, we utilize those for reference.

In Section 31.03 is the ARD Zoning District permitted use of Class A manufactured homes, that has been deleted from that segment. However, again, in Section 31.03 ARD Zoning District, conditional uses of Class A manufactured homes has been added similar to what we did in the R-3 zoning segment.

We have also added in both the R-3 and ARD zoning district language, the statement that in the granting of the variance, in no instance shall any
permanent structure be permitted to be placed in a public utility or drainage easement.

This is the same statement language that has been added as an amendment to Section 5.01, 7(q) to the powers and duties of the Board of Zoning Adjustment regarding to the hearing and decisions of the board on applications for variances. That pretty much covers the amendments that are regarding the manufactured housing.

The final amendment is regarding signage in the Gateway Zoning District. When the Gateway zone was instituted back in 2014, there was flashing, traveling, animated signs were prohibited.

We have observed the following over the past several years; 1.) The signage industry has evolved and animated signs are becoming the method of choice to provide a method of messages on one sign board. 2.) The improvement of technology has been significant which has allowed for the dialing in of electronics to meet motion and light sensitivity and requirements. Animated signs are currently permitted in Highway Commercial, and by Conditional Use in General Business, Central Business District, as well as Light and Heavy Industrial.

Some recent examples of Conditional Use permits for these animated signs in the General Business zone which is typically up and down Green Street are the; convenient care, Independence Bank, German American Bank, Cancun Restaurant, and more recently the Beverage Barn and just last month the Race Creek Baptist Church, which is across from Jefferson Elementary School.

The City is requesting the addition of animated signs as a Conditional Use permit for the Gateway Zone, which includes all the definitions and specifications requirements currently listed for the signs.

It also includes limitations that the sign be a part of a monument-type sign with the monument part to be no taller than eight (8) feet in height and width with the actual site itself limited to four (4) feet in height and
six (6) feet in width. The materials used shall be consistent with the current permitted materials list for said signs in the Gateway Zone district and that landscaping is to be established and maintained as part of the sign location.

That was a lot to cover, but that pretty much concludes the presentation and explanations as best as I can give them. If you have any questions, I’ll be glad to answer them.

Chairman Dixon: Let’s make sure we understand. In this case, we would be asked to make a recommendation again?

Brian Bishop: Correct. This text was originated by the City Commission, the board of Commissioners so they sent that to us with the proposed language. We hold the public hearing and recommend back to the Board of Commissioners.

Kevin Richard: Mr. Nix?

Ray Nix: Yes?

Kevin Richard: Being that the verbiage still prohibits a back lit sign, what would be an example of a back lit sign?

Ray Nix: It would basically be a sign case with the light source behind the sign face.

Brian Bishop: Mr. Richards, would you like an example, perhaps?

Kevin Richard: Just for clarity... an LED flashing sign versus a back lit sign; what makes a back lit sign different from the LED sign?

Ray Nix: Quite often, LED is on the front face of the sign, and they can have simple messages as well like open, or closed. I think that’s probably an example of that but a back lit sign is basically the old type signs that are still hanging on some of the business up and down Second Street where they’re basically a plastic sign front and back, and inside is a light source that illuminates it.
Brian Bishop: Those are normally fluorescent bulbs, correct?
Ray Nix: Yes.
Brian Bishop: Does that help Commissioner Richard?
Kevin Richard: Yes, I thought that's what it meant, I just wanted to clarify it so everyone would make sure what that was, including myself.
Chairman Dixon: Thank you, thank you. Any other questions?
As far as the public hearing, do we have anybody who would like to speak for or against these amendments?
Brian Bishop: We have eight (8) folks watching on Facebook, and no questions at this time.
Chairman Dixon: Anybody watching on Facebook want to ask a question or make a point?
Brian Bishop: We scared one person off, we’re down to seven; still no questions.
Chairman Dixon: Any other questions from the Commission?
I’ll entertain a motion in regards to these amendments to the Henderson City Zoning Ordinance.

MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY MAC ARNOLD TO PROPOSE A RECOMMENDATION TO THE CITY COMMISSION THE APPROVAL OF THE AMENDMENTS TO THE HENDERSON CITY ZONING ORDINANCE, APPENDIX A ZONING. THE PLANNING COMMISSION HAVE CONSIDERED ADDING CHANGES TO THE FOLLOWING ARTICLES;

ARTICLE II, SECTION 2.01, DEFINITIONS- (1) CLASS A MANUFACTURED HOUSING (A) (4);
ARTICLE V, SECTION 5.01- POWERS AND DUTIES; (Q)

ARTICLE XIII-R-3, MEDIUM TO HIGH DENSITY RESIDENTIAL DISTRICT, SECTION 13.02, PERMITTED USES;

ARTICLE XIII-R-3, MEDIUM TO HIGH DENSITY RESIDENTIAL DISTRICT, SECTION 13.02, CONDITIONAL USES;

ARTICLE XXXI, AUDUBON RESIDENTIAL DISTRICT, SECTION 31.03-PERMITTED USES;

ARTICLE XXXI, AUDUBON RESIDENTIAL DISTRICT, SECTION 31.03-CONDITIONAL USES;

ARTICLE XXXIII, GATEWAY ZONE DISTRICT #1, SECTION 33.14-SIGNAGE.

Chairman Dixon: We have a motion and a second. Madame Secretary, please call the roll.

AYE: ALL

NAY: NONE

Chairman Dixon: The motion passes, thank you folks.
Sec. 2.01. - Definitions.

For the purpose of these regulations, certain terms and words shall be used and interpreted as defined hereinafter. Words used in the present tense include the future. The singular number includes the plural, and the plural the singular. The word "shall" is mandatory, not merely directive; the word "may" is permissive.

Accessory structure or use. Any structure or use, other than the principal structure or use, and detached therefrom by a reasonable distance, directly incidental to or required for the enjoyment of the permitted use of any premises; also as specifically designated under the zoning district regulations of this chapter.

Administrative official. Any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation.

Agricultural use. The use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetable, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public.

Alley. Any public or private way which affords only a secondary means of access to abutting property and which does not constitute a public maintained street upon which property may front.

Alteration. Any change, addition or modification in construction or type of occupancy; any change in the structural members of a building, such as walls, partition, columns, beams, "altered or reconstructed."

Apartment. A dwelling unit as defined by this article, not to be construed as an apartment house.

Applicant. The owner of land and/or property proposed to be zoned or his representative.

Basement. That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for the purpose of general household habitation.

Bed and breakfast inn. A single-family, owner occupied dwelling which has been designated by the State of Kentucky as a Kentucky Landmark and is arranged in order for the owner-occupant to let no more than four (4) separate bedrooms and serve breakfast to overnight guests. The following applies to signs advertising the bed and breakfast inn:

(1) There shall be no evidence of the conduct of the bed and breakfast business from the exterior of the dwelling, other than one (1) sign not exceeding four (4) square feet in area, unlighted, and mounted flat against the wall of the dwelling. In the case of a corner lot, one (1) sign may be placed on each street side of the dwelling.

Block. The property abutting one (1) side of a street and lying between the two (2) nearest intersecting streets, or between the nearest such street and railroad right-of-way, unsubdivided acreage, river or live stream, or between any of the foregoing and any other barriers, to the continuity of development.

Board. The word "board" shall mean the board of zoning adjustment as established in Article V of this ordinance.

Boardinghouse. A building arranged or used for lodging with or without meals for compensation, by more than five (5) and not more than twenty (20) individuals.

Buffer. An area meeting specified widths and depths on the side(s) abutting, facing, or fronting between differing land uses. A buffer area serves as a physical and/or visual means of separating...
differing land uses. Where required under the provisions of these regulations, a buffer area shall be provided as specified herein.

**Buildable area.** The portion of a building site remaining after required yards have been provided.

**Building.** Any structure for the shelter or enclosure of persons, animals or property.

**Building height.** The vertical distance measured from the average finished grade at the front building line to the highest point of the structure.

**Building, principal.** A building, including covered porches, carports, and attached garages in which is conducted the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

**Building, separate.** Any portion of any structure completely separated from every other portion by masonry or a fire wall without any window, which wall extends from the ground to the roof.

**Building inspector.** The Building Inspector of the City of Henderson, or his authorized representative.

**Building site.** The land occupied or to be occupied by a principal building and its accessory buildings and including such open spaces, yards, minimum area, off-street parking facilities, and off-street truck loading facilities as are required by this ordinance; every building site shall abut upon a dedicated street. Any building site established after the effective date of this ordinance which occupies only a portion of a lot of record may be established only in accordance with the requirements of the subdivision regulations [Appendix A of this Code] and this ordinance, whichever is more restrictive.

**Building line.** A line established in general, parallel to the front street line between which line and the front street line, no part of a building shall project, except as otherwise provided by these regulations.

**Carport.** A shelter for one (1) or more vehicles which is not fully enclosed by walls and one (1) or more doors.

**Certificate of use and occupancy.** The certificate issued by the building official which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for the use and occupancy of the building in its several parts together with any special stipulation or conditions of the building permit.

**City.** The word "city" shall mean the Board of Commissioners of the City of Henderson, Kentucky.

**Clerk.** The clerk of the governing body.

**Club.** An organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics or the like, but not for profit.

**Commission.** The word "commission" shall mean the Henderson City-County Planning Commission.

**Comprehensive plan.** A comprehensive plan for the development of the local government, prepared and adopted by the planning commission and board of commissioners pursuant to state law, and including any part of such plan separately adopted and any amendment to such plans, or parts thereof.

**Conditional use.** A use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation.

**Conditional use permit.** Legal authorization to undertake a conditional use issued by the administrative official pursuant to authorization by the board of zoning adjustment, consisting of two (2) parts:

1. A statement of the factual determination by the board of zoning adjustment which justifies the issuance of the permit; and
2. A statement of the specific conditions which must be met in order for the use to be permitted.
**Condominium.** Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

**Consumer fireworks.** Those fireworks that are described in KRS 227.702.

**Convalescent home.** A convalescent home is a home for the care of the aged or infirm, or a place of rest for those suffering bodily disorders wherein two (2) or more persons are cared for. Said home shall conform and qualify for license under state law.

**County.** The word "county" shall mean the Fiscal Court of Henderson County, Kentucky.

**Court.** An open, unoccupied space, other than a yard on the same lot as a building.

**Craft distillery.** A facility as defined by KRS 243.120(2)b, which produces in quantities not to exceed fifty thousand (50,000) gallons of distilled spirits per calendar year.

**Day care facility.** A day care facility is designed to offer care and/or training to children or adults unrelated to the owner or director for any part of a day on some kind of regular basis. Such facility may or may not be operated for profit. For the purposes of the zoning regulations, a sitting service that is used at the convenience of parents or other relatives at irregular intervals is not to be considered a day care facility.

Type of day care facilities: The services offered and ages of persons enrolled in a day care facility determine the classification of the facility. The name of the facility should be descriptive of its purpose.

- **(a)** Group care center (day nursery, day care center) is defined as a facility for six (6) or more children, regardless of age, whose primary purpose is the care of the child for part of a day.

- **(b)** Nursery school is defined as a school for two-, three-and four-year-old children which operates for periods generally not to exceed four (4) hours per day and whose primary purpose is education and guidance.

- **(c)** Kindergarten is defined as a school for four- and five-year-olds which operates for periods not to exceed four (4) hours per day and whose primary purpose is education and guidance for health, emotional and social development of the children.

- **(d)** Foster family day care is defined as a service in a private home offering care in a family setting to a maximum of five (5) children, including the foster families own children during part of the day. Because of the special needs of the very young child, there should be no more than two (2) children under the age of two (2) years in a foster family day care home.

- **(e)** Adult day care is defined as personal care and supervision in a protective setting for adults outside their own home for less than twenty-four (24) hours per day. The program may include the provisions of daily medical supervision, nursing and other health care support, psycho-social assistance, or appropriate socialization stimuli or a combination of these. Adult day care is available for those persons who do not require twenty-four-hour per day institutional care, but who, because of physical and/or mental disability, are not capable of full-time independent living.

**Density.** The number of families residing on, or dwelling units developed on an acre of land. As used in these regulations, all densities are stated in families per acre.

**Development plan.** Written and graphic material for the provision of a development, including any or all of the following: Location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions and all other conditions agreed to by the applicant.

**District.** A portion of the jurisdiction of the governing body within which on a uniform basis, certain uses of land and buildings are permitted and within which certain yards, open spaces, lot acres and other requirements are established, i.e., residential district, commercial district, etc.
Drive-in establishment. A business establishment, other than a drive-in restaurant, so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle, and may include drive-in banks, drive-in cleaners and drive-in laundries.

Drive-in restaurant. Any place or premises used for the sale, dispensing or serving of food, refreshments, or beverages in automobiles, including establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages in automobiles on the premises.

Dwelling, group. A group of two (2) or more single-family semi-detached or multiple dwellings occupying a parcel of land in common ownership and having yard or courts in common.

Dwelling, multifamily. A residential dwelling designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, row or townhouses. A row of three (3) or more attached single-family dwellings, not more than two and one-half (2½) stories in height, in which each dwelling has its own front and rear entrances.

Dwelling, two-family. A building designed exclusively for occupancy by two (2) families independent of each other, such as a duplex dwelling unit.

Dwelling unit. A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Dwelling unit, single-family.

(a) A building or structure designed and intended for occupancy by a single family constructed on site on a permanent foundation in compliance with all standards contained in the Kentucky Building Code; or

(b) A building or structure designed and intended for occupancy by a single family and fabricated in whole or part in an off-site manufacturing facility and transported by truck for installation or assembly at the building site as a permanent structure with installation required to be moored to a permanent foundation in compliance with all the standards contained in the Kentucky Building Code and once installed can only be moved as a conventional home.

Efficiency unit. An efficiency unit is a dwelling unit consisting of one (1) room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the room, providing not less than three hundred fifty (350) square feet of floor area.

Erected. The word "erected" includes built, constructed, reconstructed, moved upon, or any physical operation on the premises required for the building. Excavations, fill, drainage, and the like, shall be considered a part of "erected."

Facade. Facade is the visual portion of a property with frontage along a public right-of-way, not including a public alleyway, including all architectural and construction features including and without limitation to: structural materials, facing materials, windows, doors, trim, sill, steps, railing, cornices, molding, and fences.

Family. One (1) person living alone, or two (2) or more persons living together as a single nonprofit, housekeeping unit, provided that unless all members are related by blood, marriage, or legal adoption, no such family shall contain over three (3) unrelated persons. The term "family" shall be deemed to include domestic servants, gratuitous guests, and foster or boarded children whose room and board is paid by a recognized child care agency. Further provided that the term "family" shall not include a group occupying a hotel, club, boarding house or fraternity or sorority house.

Family child-care home. A private residence that provides for the temporary care of children who are unrelated to the care provider.

Fast food restaurant. A fast food restaurant is defined to be a restaurant that has the following characteristics:

(a) Its principal business is the sale of food items and beverages of the kind which can readily be taken out of the restaurant for consumption off the premises.
(b) Service is not customarily provided to customers at their tables by employees of the restaurant.

**Filling.** Shall mean the depositing or dumping of any matter on or into the ground, except deposits resulting from common household gardening and general farm care.

**Floor area ratio.** The ratio between the maximum allowable amount of floor space on all floors in a building and the total area of the lot on which the building is located. Example. A FAR of 2.0 would allow floor space of twice the area, or a four-story building covering one-half (½) of the lot. A FAR of 0.5 would allow floor space of one-half (½) of the lot area, or a two-story building covering one-quarter (¼) of the lot area, or a two-story building covering one-quarter (¼) of the lot.

**Floor area, total.** The area of all floors of building including finished basements and covered porches.

**Floor area, usable.** Any floor area within outside walls of a building, exclusive of areas in cellars, unfinished basements, utility area, unfinished attics, garages, open porches and accessory buildings.

**Foster child.** A person who has not reached his eighteenth birthday, unrelated to a family by blood or adoption with whom he or she lives for the purpose of care and/or education.

**Garage, private.** An accessory building designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is accessory, for personal use only.

**Garage, public.** Any premises used for the storage or care of motor-driven vehicles, or place where any such vehicles are equipped for operation, repaired, or kept for re-numeration, hire or sale.

**Home occupation.** Professional offices and personal services maintained or conducted within a dwelling or conducted as a conditional use in a detached existing garage. (See reference [section] 4.38).

**Hospital.** Any institution providing health services, primarily for inpatients and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, outpatient department, training facilities, central service facilities and staff offices, as licensed by the Commonwealth of Kentucky.

**Hotel.** A building or group of buildings containing individual sleeping or living units designed for the temporary occupancy of transient guests and including hotels, tourist courts, motor lodges, motor hotels, or auto courts, but not including boarding houses or lodging houses.

**Junk.** The term "junk" means any motor vehicle, machine, appliance, scrap material that is in a condition which prevents its use for the purpose for which it was originally manufactured.

**Junkyards, used auto parts yards, salvage yards.** The use of an area of any lot for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition, abandonment of automobiles, or other vehicles or machines or parts thereof.

**Kennel.** Any lot or premises on which three (3) or more dogs, four (4) months old or older, are kept either permanently or temporarily for commercial or breeding purposes.

**Laboratory.** A place devoted to experimental study, such as testing and analyzing. Manufacturing of product or products is not permitted within this definition.

**Loading space.** An off-street space on the same parcel of property with a building or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

**Lot.** A parcel of land occupied or intended for occupancy by a use permitted in these regulations, including one (1) principal building together with the accessory buildings, yard area, and parking spaces required by these regulations, and having its principal frontage upon a publicly maintained street.

**Lot area.** The total horizontal area within the lot lines of a lot.

**Lot, corner.** A corner lot of which at least two (2) adjacent sides abut for their full length upon a street, provided that such two (2) sides intersect at an interior angle of not more than one hundred thirty-five (135) degrees. Where a lot is on a curve, if tangents through the extreme point of the street line of such lot make an interior angle of not more than one hundred thirty-five (135) degrees, it is a corner lot.
the case of a corner lot with curved street line, the corner is that point on the street lot line nearest to the point of intersection of the tangents described above.

*Lot, coverage.* That part or percent of the lot occupied by the buildings, including accessory buildings.

*Lot depth.* The mean horizontal distance from the front lot line to the rear lot line.

*Lot, double frontage.* An interior lot having frontages on two (2) more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, one (1) street will be designated as the front street in the plat and the request for a building permit will indicate which street is the designated front street.

*Lot, interior.* A lot other than a corner lot.

*Lot line.* The property line abounding the lot.

*Lot line, front.* In the case of an interior lot, that line separating said lot from the street. In the case of a corner lot, or double frontage lot, "front lot line" shall mean that line separating said lot from that street which is designated as the front street in the plat and in the application for a building permit.

*Lot line, rear.* That lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line not less than ten (10) feet long farthest from the front lot line and wholly within the lot.

*Lot line, side.* Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

*Lot line, street or alley.* A lot line separating the lot from the right-of-way of a street or alley.

*Lot of record.* A lot which is part of a subdivision recorded in the office of the county court clerk, or a lot or parcel surveyed or described by metes and bounds, by description of which has been so recorded.

*Lot width.* The mean horizontal distance between the side lines at the building line measured along the building line.

*Maintenance.* General property maintenance and/or repair of any water, sewer, HVAC, or electrical expenditures incurred in updating an existing structure where no new expansion will occur.

*Major thoroughfare.* The major streets which carry a relatively large amount of vehicular traffic and may connect to secondary or regional thoroughfares. The major thoroughfares are as delineated on the comprehensive land use plan as adopted by the governing body.

*Manufactured housing.* A manufactured building designed for long-term residential use. Manufactured housing includes that housing built on a chassis and is commonly referred to as "mobile homes"; however, manufactured housing does not include recreational vehicle, as defined herein at "Article II, Definitions, Section 2.01, Definitions." For the purpose of these regulations, manufactured housing is divided into four (4) classifications.

1. **Class A manufactured housing.** Manufactured housing certified by the Department of Housing and Urban Development as meeting all federal manufactured home construction and safety standards and approved by the zoning administrator as meeting all the "acceptable installation standards" and all "acceptable appearance standards" herein below.
   
   a. **Acceptable installation standards.**
      
      1. The home shall be permanently attached and installed on a permanent foundation with the manufacturer's installation specifications as approved by the U.S. Department of Housing and Urban Development.
      
      2. The home shall be anchored to the ground in accordance with manufacturer's specifications.
      
      3. All wheel, trailer tongue and hitch assemblies shall be removed upon installation.
4. The home shall meet all requirements for lot, yard, building and other requirements for the district in which it is located. Variances may be granted for yard setbacks when manufactured home is approved as a conditional use in R-3 or Audubon Residential District zones.

5. All stairs, porches, entrances, platforms and other means of entrance and exit to the home shall be installed and constructed in conformance to the Kentucky Building Code.

6. All utilities shall be permanently connected to a public utility system in accordance with all City Codes and all public health requirements governing plumbing installations.

b. Acceptable appearance standards.

1. A poured concrete or masonry skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home, including the perimeter of the front steps and front porch, even if the wall is not structurally required by manufactured installation specifications. Venting and access requirements shall be in accordance with the Kentucky Building Code.

2. The home shall be a minimum width of twenty (20) feet as measured across the narrowest portion.

3. The home shall be placed so that the main egress is parallel to the street. Main egress shall be considered the principal access for the home as constructed off site.

4. The manufactured home shall either be oriented so that: 1) its long axis is parallel with the street; or 2) if the narrow dimension of the unit is located parallel to the street it shall be no less than fifty (50) percent of the unit's long dimension.

5. The home shall have a minimum roof pitch of four (4) feet of rise for every twelve (12) feet of horizontal run. The roof shall be covered with material that is residential in appearance including, but not limited to, approved wood, asphalt composition shingles, standing seam metal, or fiberglass, but excluding corrugated aluminum, corrugated fiberglass or other metal roofs.

6. Exterior siding cannot have a high-gloss finish and must be residential in appearance including, but not limited to, clapboards, simulated clapboards such as conventional vinyl or metal siding, wood shingles, "glossy" shakes, or similar material but excluding smooth, ribbed, or corrugated metal or plastic panels.

7. An adequate guttering and roof drainage system shall be installed.

8. The home shall have eaves with a minimum of six (6) inch overhang.

(2) Class B manufactured home. Manufactured housing certified by the Department of Housing and Urban Development as meeting all federal manufactured home construction and safety standards and acceptable installation standards but not meeting all of the acceptable appearance standards described above.

(3) Class C manufactured home. A manufactured/mobile home built before the HUD Code (1976) which is not certified by the Department of Housing and Urban Development as meeting all federal manufactured housing and safety standards and not meeting all of the acceptable installation standards and acceptable appearance standards described above. No class C manufactured homes will be permitted.

(4) Class D manufactured home. A manufactured home having been issued a "class B2 seal", which means the home has been inspected and found not to be in compliance with applicable codes and is a salvage unit unfit for human habitation. No class D manufactured homes will be permitted.
Manufactured housing park. A unified development of two (2) or more manufactured housing sites, plots, or stands arranged on a large tract usually under single ownership, meeting the area and yard requirements of this ordinance, and designed to accommodate manufactured housing, for more or less permanent duration, whether or not a charge is made for such accommodations, and includes any service building, structure, enclosure or other facility used as part of the manufactured housing park.

Marina. A dock or basin with moorings and supplies for yachts and small pleasure craft. A marina differs from a port in that a marina does not handle large passenger ships or commercial vessels.

Microbrewery. A facility as defined by KRS 243.157, which engages in the business of a brewery under the terms and conditions of KRS 243.150, which produces in quantities not to exceed twenty-five thousand (25,000) gallons of malt beverages per calendar year, including the sale of malt beverages produced on premises to licensed distributors and the general public.

Motor vehicle repair. General repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service such as body, frame or fender straightening and repair; overall painting, completely enclosed spray booth.

Motor vehicle wash establishments. A building, or portion thereof, the primary purpose of which is that of washing motor vehicles.

Nonconforming structures or uses. A structure or use of any premises which does not conform with applicable provisions of this ordinance, but which existed at the time of its designation as nonconforming by the adoption or amendment of this ordinance.

Nursery, trees and shrubs. An area or establishment devoted to the raising and care of trees, shrubs, or similar plant materials.

Off-street parking lot. A facility providing vehicular parking spaces, along with adequate drives and aisles for maneuvering, so as to provide access for entrance and exit for the parking of more than two (2) automobiles.

Open air business uses. Open air business uses shall include the following:
(a) Retail sale of trees, shrubs, plants, flowers, seed, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment and other home garden supplies and equipment.
(b) Retail sale of fruit and vegetables.
(c) Tennis courts, archery courts, shuffleboard, horseshoe courts, miniature golf, golf driving ranges, children's amusement parks or similar recreational uses.
(d) Bicycle, trailer, motor vehicle, boats or home equipment sales, service, rental services, farm and construction equipment.
(e) Outdoor display and sale of garages, swimming pools, monuments, and similar uses.
(f) Flea markets and similar open air displays.

Parking spaces. An area of not less than ten (10) feet wide by eighteen (18) feet long, for each automobile or motor vehicle, such space being exclusive of necessary drives, aisles, entrances or exits and being fully accessible for the storage or parking of permitted vehicles.

Person with a disability. A person with a physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, deafness or hard of hearing, sight impairments, and orthopedic impairments, but not including convicted felons or misdemeanants on probation or parole or receiving rehabilitation services as a result of their prior conviction, or mentally ill persons who have pled guilty but mentally ill to a crime or not guilty by reason of insanity to a crime. "Person with a disability" does not include persons with current, illegal use of or addiction to alcohol or any controlled substance as regulated under KRS [Ch.] 218A.

Planned unit development (PUD). A land development project comprehensively planned as an entity via a unitary site plan which permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces and the preservation of significant natural features.
Public street. A publicly maintained thoroughfare providing the principal means of access to abutting property and listed on the city, county, state, or federal road system.

Recreational vehicle:
(1) Travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation or vacation.
(2) Pick-up coach means a structure designed to be mounted on a truck for use as a temporary dwelling for travel, recreation or vacation.
(3) Motor home means a portable temporary dwelling to be used for travel, recreation or vacation, constructed as an integral part of a self-propelled vehicle.
(4) Camping trailer means a canvas or other collapsible folding structure, mounted on wheels and designed for travel, recreation or vacation use.
(5) Dependent recreational vehicle means a recreational vehicle which does not have toilet, lavatory or bathing facilities.
(6) Self-contained recreational vehicle means a recreational vehicle which can operate independent of connections to sewer, water and electric systems. It contains a water-flushed toilet, lavatory, shower or bath, [and] kitchen sink, all of which are connected to water-storage and sewage-holding tanks located within the recreational vehicle.

Residential care facility. A residence operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for persons with disability.

Residential care services. Services include but are not limited to supervision, shelter, protection, rehabilitation, personal development and attendant care.

Rubbish. Means the miscellaneous waste materials resulting from housekeeping, mercantile enterprises, trades, manufacturing and offices, including other waste matter such as slag, stone, broken concrete, fly ash, ashes, tin cans, glass, scrap metal, rubber, paper, rags, chemicals or any similar or related combinations thereof.

Salvage. Refers to any motor vehicle, machine or appliance having sufficient value to justify its sale or repair or recovery of parts.

Self storage (a shorthand for "self-service storage", and also known as "mini storage") is an industry in which storage space (such as rooms, lockers, containers, and/or outdoor space), also known as "storage units" is rented to tenants, usually on a short-term basis.

Setback. The required distance between every structure and any lot line on the lot on which it is located.

Setback, front. The minimum distance between the street right-of-way and the building line.

Service station. A building or structure designed or used for the retail sale or supply of fuels, lubricants, air, water and other operating commodities for motor vehicles, aircraft or boats, and including the customary space and facilities for the installation of such commodities on or in vehicles and including space for facilities for the temporary storage of vehicles, minor repair or servicing.

Shooting range, indoors. A facility designed or used for shooting at targets with bows and arrows, rifles, pistols, or shotguns and which is completely enclosed within a building or structure for the purposes of target practice or temporary competitions.

Shopping center. A group of three (3) adjoining or adjacent retail stores, and more than twenty thousand (20,000) square feet, or service establishments to be planned, constructed and developed as a single unit, and including any additional such stores or establishments subsequently adjoining or adjacent thereto.

Sign. Any fabricated sign or outdoor display structure including its structure, consisting of any letter, figure, character, mark, point, plane, marquee sign, design, poster, pictorial picture stroke, stripe, line,
trademark, reading matter, or illuminating device, constructed, attached, erected, fastened, or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise whatsoever, and displayed in any manner out of doors for recognized advertising purposes.

Site plan. A graphic plan drawn to scale for all proposed non-single family development or change of uses, or creation of new commercial or multi-family lots, which shows elements of site design in sufficient detail to depict the approved locations of buildings, accessory structures, parking areas, access points, open spaces, drainage facilities, utilities, yard dimensions, easements, screening, erosion control, flood zone boundaries, and all other information required by the enforcement officer or approving body.

Soil removal. Shall mean the removal of any kind of soil or earth matter which includes topsoil, sand, gravel, clay or other materials or any combination thereof, except common household gardening and general farm care.

Story. That part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.

(1) First story. The lowermost story entirely above the grade plane.

(2) Mezzanine. An intermediate level between the floor and the ceiling of any story, and covering not more than thirty-three (33) percent of the floor area of the room in which it is located.

Street. Any public or private vehicular way which affords the principal means of access to abutting property. The term shall include "road," "highway," or "thoroughfare." A public street is a street accepted according to the subdivision regulations and maintained by the governing body. A private street is not so accepted and maintained.

Structure. Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something having a fixed location on the ground, including buildings, radio towers, swimming pools, and walls or fences exceeding three and one-half (3½) feet in height, billboards, and poster panels; reference to buildings includes structures and vice versa.

Structural alteration. Any change in the supporting members of a building or structure, each as bearing walls or partitions, columns, beams or girders or any change in the width or number of exits, or any structural change in the roof.

Subdivision regulations. Regulations as adopted by the city for the subdivision of land.

Swimming pool. The term "swimming pool" shall mean any structure or container intended for swimming or bathing located either above or below grade designed to hold water to a depth greater than twenty-four (24) inches.

Townhouse. An attached, privately owned, single-family dwelling, which is designed and erected as an independent unit on a separate lot and separated from all other such units by a properly rated common party wall having no doors, windows, or other provisions for human passage or visibility. (See Article IV, Section 4.05)

Travel trailer. A vehicular portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, with a body width not exceeding eight (8) feet and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons. For the purposes of these regulations, the term includes recreational vehicle, pickup campers, camping trailers, and motorized homes (living facilities constructed as integral parts of self-propelled vehicles).

Truck gardening. Truck gardening is the use of land for growing edible vegetables, fruits, and other crops for resale and commercial purposes. Household gardening by a property owner for a hobby or purely local consumption by himself and his family residing on the same premises shall not be construed to be truck gardening.

Use. The purpose for which land or premises or a building thereon is designed, arranged, or intended, or for which it is occupied or maintained, let or leased.
Utility room. A room or space, located other than in the basement, specifically designed and constructed to house any home appliances (furnace, water heater, pump).

Variance. A departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 and 100.247.

Vehicular use area (VUA). Any area used by vehicles of any type, whether moving or at rest, including but not limited to parking lots or areas, loading and unloading areas, mobile home yards, sales and service areas, and driveways.

Yard. An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein. The measurement of a yard is the minimum horizontal distance between the lot line and the building or structure.

(1) Side yard. A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard, or in the absence of either such yard, to the front and rear lot lines, as the case may be; except that on a corner lot, the side yard adjacent to a street shall extend the full depth of the lot.

(2) Front yard. A yard extending the full width of the lot; the depth of which is the horizontal distance between the front lot line and the nearest line of the principal building on the lot.

(3) Rear yard. A yard extending the full width of the lot, the depth of which is the horizontal distance between the rear lot line and the rear line or lines of the principal building of the lot.

(Ord. No. 23-14, Exh. A, 7-8-14; Ord. No. 06-15, Exh. A, 4-14-15; Ord. No. 24-16, Exh. A, 7-12-16; Ord. No. 28-17, 6-13-17; Ord. No. 26-18, 8-28-18)
Sec. 5.01. - Powers and duties.

The board of zoning adjustment established by Ordinance No. 35-66 passed in 1966, and continued by Ordinance No. 3-70 passed in 1970, and Ordinance No. 35-70 passed in 1970, and Ordinance No. 15-82 passed in 1982, is continued by this ordinance. The board is known as the Henderson City Board of Zoning Adjustment. The board has the powers, duties, and responsibilities as set forth in KSA Chapter 100.

(a) Jurisdiction of the board of adjustment for the city shall be within the incorporated limits of the city, as exists or is amended in the future.

(b) The membership, appointment, and term of office of the board of adjustment is as follows: The board shall consist of five (5) citizen members, one (1) of which shall be citizen member of the planning commission and resident of the City of Henderson. The Mayor of Henderson shall appoint the members of the board with the approval of the City of Henderson legislative body. The term of office of members first appointed shall be staggered so that a proportionate number serve one (1), two (2), three (3), and four (4) years respectively, with later appointments or reappointments continuing the staggered pattern.

(c) Reimbursement for expenses lawfully incurred by a member of the board of adjustment in the performance of his duties may be authorized by formal action of the city commission.

(d) The board of adjustment shall have the power to receive, hold, administer and disburse funds which it may lawfully receive from any source. Prior to the beginning of each fiscal year the board may adopt a budget which will be presented to the board of commissioners for the purpose of receiving funds for the cost of its operation.

(e) Expenditures of such appropriations and funds shall be in accordance with the formal action of the board pursuant to the regulations lawfully established. Administration of the board shall be as described in KRS Ch. 100 and may be amended in the future.

(f) Vacancies on the board of adjustment shall be filled within sixty (60) days by the appointing authority. If the appointing authority fails to act within that time, the planning commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of the term. All appointments shall continue until the successors shall have qualified.

(g) All members of the board of adjustment shall, before entering upon their duties, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any judge, notary public, clerk of a court or justice of the peace within the district or county in which he/she resides.

(h) Any member of the board of adjustment may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance or conflict of interest. Any appointing authority who exercises the power to remove a member of the board of adjustments shall submit a written statement to the commission setting forth the reasons for removal, and the statement shall be read at the next meeting of the board of adjustment which shall be open to the general public. The member so removed shall have the right to appeal from the removal to the circuit court of the county in which he/she resides.

(i) The board of adjustment shall annually elect a chairman, vice-chairman and secretary and any other such officers it deems necessary and any officer shall be eligible for reelection at the expiration of his term.

(j) The board of adjustment shall conduct meetings at the call of the chairman who shall give written notice or oral notice to all members of the board at least seven (7) days prior to the meeting, which notice shall contain the date, time and place for the meeting and the subjects which will be discussed.

(k) A simple majority of the total membership of a board of adjustment as established by regulation or agreement shall constitute a quorum. Any member of the board of adjustment who has any

Section 5.01
direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself/herself from voting on the questions.

(i) The board of adjustment shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings including regulations, transactions, findings, and determinations and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall immediately after adoption, be filed in the office of the board. A transcript of the minutes of the board of adjustment meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

(m) The board of adjustment may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties.

(n) The board of adjustment shall have the power to issue subpoena to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The sheriff shall serve such subpoenas. The circuit court may, upon application by the board, compel obedience to such court or such subpoena by proceedings of contempt.

(o) The chairman of the board of adjustments shall have the power to administer an oath to witnesses prior to their testifying before the board on any issue.

(p) The board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met.

(1) The board may approve, modify, or deny any application for a conditional use permit. If it approves such permits it may attach necessary conditions such as time limitations, requirements that one (1) or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board’s minutes and on the conditional use permit along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The board shall have the power to revoke conditional use permits or variances for noncompliance with the condition thereof. Furthermore, the board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

(2) Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing and other regulations.

(3) In any case where a conditional use permit has not been exercised within the time limit set by the board, or within one (1) year, if no specific time limit has been set, such conditional use permit shall not revert back to its original designation unless there has been another public hearing. "Exercised" as set forth in this section shall mean that binding contracts for the construction of the main building or other improvements have been met or, in the absence of contracts, that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment, under contract, in development are completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

(4) The administrative official shall review all conditional use permits except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the administrative official shall report the fact in writing to the chairman of the board of adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit,
and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the board of adjustments. The board shall hold a hearing on the report within a reasonable time and notice of the time and place of the hearing shall be furnished to the landowner at least one (1) week prior to the hearing. If the board of adjustments finds that the facts alleged in the report of the administrative official are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the board of adjustments may authorize the administrative official to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

(5) Once the board of adjustment has completed a conditional use permit and all the conditions required are such type that they can be completely and permanently satisfied, the administrative official upon request of the applicant may, if facts warrant, make a determination that the conditions have been satisfied, and note the conclusion in the margin of the conditional use permit which is on file in the office of the code administrator. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(6) When an application is made for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, the mayor and city clerk, an owner of every parcel of property adjoining the property to which the application applies. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and address of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation records as having the same address.

(7) When any property within the required notification area for a public hearing upon a conditional use permit application is located within an adjoining city, county, or planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing by first class mail to that unit's planning commission. If the adjoining property is not part of a planning unit, notice shall be given to the mayor of the city in which the property is located or, if the property is in an unincorporated area, notice shall be given to the judge/executive of the county in which the property is located.

(q) The board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant. In the granting of a variance, in no instance shall any permanent structure be permitted to be placed in a public utility or drainage easement.

(r) Before any variance is granted, the board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings the board shall consider whether:

(1) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(2) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
(3) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

(s) The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

(t) The board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the zoning regulation in the zone in question, or to alter density requirements in the zone in question.

(u) A dimensional variance applies to the property for which it is granted, and not to the individual who applied for it. A variance also runs with the land and is transferrable to any future owner of the land, but it cannot be transferred by the application to a different site.

(v) The lawful use of a building or premises existing at the time of adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations except as otherwise provided herein. The board of adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification provided, however, the board of adjustments may grant approval, effective to maintain nonconforming use status, for enlargements or extensions, made or to be made to the facilities of a nonconforming use where the use consists of the presenting of a major public attraction or attractions such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained local prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demand of participants and patrons.

(w) The board of adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant or refusal made by an administrative official in the enforcement of the zoning regulations. Such appeal shall be taken within thirty (30) days.

(x) Appeals to the board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action or decision of the zoning enforcement officer. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from, by filing with said officer and with the board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the board any interested person may appeal and enter his appearance and all shall be given an opportunity to be heard.

(y) The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Ch. 424, as well as written notice to the appellant and the administrative official at least one (1) week prior to the hearing and shall decide it within thirty (30) days. The affected party may appear at the hearing in person or by attorney.

(z) If no building permit has been issued and a builder begins or continues to build, a restraining order may be obtained upon application to the property court of record and evidence of the lack of a building permit shall establish a prima facie case for the issuance of the restraining order.

(Ord. No. 23-14, Exh. A, 7-8-14)
Sec. 13.02. - Permitted uses.

In all R-3 districts no building or land, except as otherwise provided in this ordinance, shall be erected or used except for the following specified uses:

(a) Any use permitted in the R-2, medium density residential district.
(b) Accessory uses.
(c) Class A manufactured homes, as defined in "Article II, Definitions, Section 2.01, Definitions".

Sec. 13.03. - Conditional uses.

(a) Any use classified as a conditional use in the R-2, medium density residential district.
(b) Reserved.
(c) Reserved.
(d) Bed and breakfast inns.
(e) Class A manufactured homes, as defined in "Article II, Definitions, Section 2.01, Definitions", with the following limitations:

(1) Manufactured home shall meet all acceptable installations standards of Class A manufactured housing as provided in Section 2.01 of this code; and

(2) Manufactured home shall meet all acceptable appearance standards of Class A manufactured housing as provided in Section 2.01 of this code; and

(3) In the granting of a variance, in no instance shall the front yard setback be less than the average front setback that exists on the nearest developed lots on the same block that front on the same side of the street as the subject lot, in accordance with the following rules:

   a. Lots that front on a different street than the subject lot or that are separated from the subject lot by a street may not be used in computing the average;

   b. When the subject lot is a corner lot, the average setback will be computed on the basis of the two (2) nearest developed lots that front on the same side of the street as the subject lot;

   c. When the subject lot abuts a corner lot fronting the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two (2) lots that front on the same street as the subject lot; and

(4) In the granting of a variance, in no instance shall either side yard setback be less than five (5) feet; and

(5) In the granting of a variance, in no instance shall the rear yard setback be less than ten (10) feet; and

(6) In the granting of a variance, in no instance shall any permanent structure be permitted to be placed in a public utility or drainage easement.
Sec. 31.03. - Permitted uses.

1. **Permitted Uses.** The following uses are permitted:

   (a) Single-family dwellings.
   
   (b) Two-family dwellings (duplexes).
   
   (c) Class A manufactured homes, as defined in Article II, Section 2.01.
   
   (d) Townhouses in accordance with Section 4.05.
   
   (e) Accessory buildings or uses customarily incidental to any of the permitted uses, when located on the same lot and not involving any business, profession, trade or occupation.
   
   (f) Community gardens.
   
   (g) Home occupation as defined in Section 4.38.
   
   (h) Mixed-uses.

   i. **Mixed use buildings:**

      Existing structures containing both residential dwelling units and non-residential commercial uses as found herein: residential dwelling units may be located on the ground floor of mixed-use buildings provided that a minimum of one thousand five hundred (1,500) square feet of non-residential floor areas is located on the ground floor, or when all the following criteria are met:

      1. The building is a minimum of two (2) stories in height;
      2. Commercial or office uses are restricted to the ground floor unless a conditional use permit is obtained;
      3. Each ground floor dwelling unit is at the rear of the building, behind a commercial or office use, unless a conditional use permit is obtained.

   ii. **Neighborhood retail sales and services:**

      The use must be located in an existing structure, originally constructed for neighborhood business, or located within any mixed-use building, with the following criteria:

      1. The gross floor area of the original structure may be expanded with a conditional use permit.
      2. Retail sales and services that have been traditionally found in older urban neighborhoods. Typical uses include grocery shops, butcher shops, delicatessens, fruit and vegetable markets, ice cream shops, bakeries, cafes, pharmacies, music shops and schools, dance studios, antique shops, shoe repair, restaurants without drive-thrus, clothing and apparel stores, barber and beauty shops, and similar uses as determined by the codes administrator.
      3. Bars, banks with drive-thrus, and restaurants with drive-thrus are permitted with a conditional use permit.

   iii. **Professional offices:**

      The following professional office uses, may be allowed as permitted uses in existing or new buildings originally constructed for neighborhood business, or mixed-use purposes:

      1. Medical, dental, optometry, chiropractic offices, architecture and engineering offices, attorney, title or other legal offices, professional services including real-estate, insurance, property management, tourism and travel, marketing, design, and other related professional services.
2. Such professional office uses shall only be permitted on the first floor of a mixed use building unless a conditional use permit is obtained.

2. Conditional uses.

(a) Funeral homes.

(b) Nonprofit public and private facilities.

(c) Schools, libraries, churches and other facilities normally incidental thereto, provided that there is adequate access to all required off-street parking areas, on-site parking spaces as required in Section 9.01 are provided, and there is no parking in the required front yard (see Section 31.05 parking (2)(a).

(d) Bed and breakfast inns.

(e) Family child-care home, with the following limitations:

   i. There shall be a maximum of ten (10) children allowed in the home of which no more than six (6) shall be unrelated to the care provider. No more than four (4) children under twelve (12) months of age nor more than six (6) children under six (6) years of age, including the provider's own or related children, shall be kept in the home.

   ii. No person may be employed that is not a resident of the premises.

   iii. Otherwise fully complies with the provisions of a home occupation as provided in Section 2.01 of this zoning ordinance.

(f) Class A manufactured homes, as defined in "Article II, Definitions, Section 2.01, Definitions", with the following limitations:

   1. Manufactured home shall meet all acceptable installations standards of Class A manufactured housing as provided in Section 2.01 of this code; and

   2. Manufactured home shall meet all acceptable appearance standards of Class A manufactured housing as provided in Section 2.01 of this code; and

   3. In the granting of a variance, in no instance shall the front yard setback be less than the average front setback that exists on the nearest developed lots on the same block that front on the same side of the street as the subject lot, in accordance with the following rules:

      a. Lots that front on a different street than the subject lot or that are separated from the subject lot by a street may not be used in computing the average;

      b. When the subject lot is a corner lot, the average setback will be computed on the basis of the two (2) nearest developed lots that front on the same side of the street as the subject lot;

      c. When the subject lot abuts a corner lot fronting the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two (2) lots that front on the same street as the subject lot; and

   4. In the granting of a variance, in no instance shall either side yard setback be less than five (5) feet; and

   5. In the granting of a variance, in no instance shall the rear yard setback be less than ten (10) feet; and

   6. In the granting of a variance, in no instance shall any permanent structure be permitted to be placed in a public utility or drainage easement.
Sec. 33.14. - Signage.

Article X of the zoning ordinance applies, and the following additional district signage regulations shall also apply:

1. **Wall signage.**
   - Each business will be allowed one (1) wall-mounted sign per street frontage, up to ten (10) percent of the surface area of the wall area;

2. **Pedestrian signage.**
   - Pedestrian oriented signs are designed and intended for pedestrians to easily read the signage of the business, as they stand on the sidewalk adjacent to the business;
   - One (1) pedestrian oriented sign is permitted per business fronting Second Street, in addition to existing on-site signage allowances of Article X;
   - Such pedestrian sign shall be either a projecting sign, an awning sign, or attached to the facade;
   - If the pedestrian sign is a wall or awning sign in type, it must not exceed eight (8) square feet in size;
   - Projecting signage is allowed with the following conditions:
     - All signs shall comply with applicable provisions of the Kentucky Building Code and the National Electrical Code adopted by the City of Henderson
     - The sign must not exceed sixteen (16) square feet in size;
     - The sign shall not be placed lower than ten (10) feet above grade;
     - The maximum height of the sign shall be sixteen (16) feet in height or the bottom of the second floor window or wall, whichever is less;
     - The sign shall not project more than six (6) feet from the facade of the building;
     - If the sign encroaches over a city sidewalk, an encroachment permit issued by the city is required;
   - No projecting sign may encroach over any roadway, public or private.
   - Signs in the public right-of-way, including sandwich board signs, are permitted as per the requirements of subsection 10.08(d).

3. **Permitted sign materials.**
   - Masonry or monument signs;
   - Wood: painted, stained, or natural;
   - Metal;
   - Plastic, when used for individual letters and symbols only.

4. **Prohibited signs.**
   - Pole, pylon, and cabinet-type facade signs are prohibited;
   - Flasing, traveling, animated, LED, or back-lit signs, of all types are prohibited;
   - Illuminated signs that cast any glare into any residential or mixed use residential unit are prohibited.

5. **Permitted monument sign size.**
   - Monument signs may be up to eight (8) feet in height and eight (8) feet wide (and may be placed on a planting area no more than two (2) feet in height);
(b) Plastic, metal or wood inserts may be used for business names;

(c) Signs may not be backlit but may be lit with ground accent lighting.

6. **Animated signs**

   (a) Animated signs as defined in "Article X, Sec. 0.03 - Definitions and interpretation" may be allowed as a conditional use permit, with the following limitations:

   i. Animated signs shall be monument type sign and may be up to eight (8) feet in height and eight (8) feet wide; and

   ii. Animated portion of sign shall be no larger than four (4) feet in height and six (6) feet wide; and

   iii. Animated portion of sign shall be encased using materials consistent with the permitted materials allowed in the Gateway Zone District; and

   iv. Landscaping shall be established and maintained as part of sign location.

(Ord. No. 6-14, Exh. A, 1-28-14; Ord. No. 68-17, 12-15-17)
A. Amendments to Henderson City Zoning Ordinance, Appendix A Zoning, - The Planning Commission will consider adding changes to the following Articles:

Article II, Section 2.01, Definitions- (1) Class A Manufactured Housing (a)(4);
Article V, Section 5.01. – Powers and duties; (q)
Article XIII- R-3, Medium to High Density Residential District, Section 13.02, Permitted uses;
Article XIII- R-3, Medium to High Density Residential District, Section 13.03, Conditional uses;
Article XXXI, Audubon Residential District, Section 31.03-Permitted uses;
Article XXXI, Audubon Residential District, Section 31.03-Conditional uses;
Article XXXIII, Gateway Zone District #1, Section 33.14-Signage
ORDINANCE AMENDING APPENDIX A-ZONING

SUMMARY: AN ORDINANCE AMENDING APPENDIX A – ZONING, ARTICLE II, SECTION 2.01, DEFINITIONS; ARTICLE V, BOARD OF ADJUSTMENT, SECTION 5.01 POWERS AND DUTIES; ARTICLE XIII, R-3 MEDIUM TO HIGH DENSITY RESIDENTIAL DISTRICT, SECTION 13.02 PERMITTED USES AND SECTION 13.03 CONDITIONAL USES; ARTICLE XXXI, AUDUBON RESIDENTIAL DISTRICT PURPOSES, SECTION 31.03 PERMITTED USES AND CONDITIONAL USES; AND ARTICLE XXXIII, GATEWAY ZONE DISTRICT, SECTION 33.14 SIGNAGE OF THE CODE OF ORDINANCES OF THE CITY OF HENDERSON

WHEREAS, at a meeting of the Henderson City-County Planning Commission held on October 6, 2020, it was recommended that the Planning Commission make changes to Appendix A-Zoning, of the City’s Code of Ordinances of the City of Henderson.

NOW, THEREFORE BE IT ORDAINED by the City of Henderson, Kentucky that Appendix A, Zoning, Article II, Definition, Section 2.01, Definitions; Article V, Board of Adjustment, Section 5.01 Powers and duties; Article XIII, R-3 Medium to High Density Residential District, Section 13.02 Permitted Uses and Section 13.03 Conditional Uses; Article XXXI, Audubon Residential District Purposes, Section 31.03 Permitted Uses and Conditional Uses; and Article XXXIII, Gateway Zone District, Section 33.14 Signage of Appendix A of the Code of Ordinances of the City of Henderson, known as The Zoning Regulations of the City of Henderson, Kentucky is hereby amended as set forth in Exhibit “A” attached hereto and made a part hereof by reference.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

The ordinance shall become effective upon legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner ________________, seconded by Commissioner ________________, that the Ordinance be adopted on its first reading. On roll call the vote stood:

Commissioner Royster: ________ Commissioner Bugg: ________
Commissioner Staton: ________ Mayor Austin: ________
Commissioner Vowels: ________
On second reading of the ordinance, it was moved by Commissioner ________, seconded by Commissioner ____________, that the Ordinance be adopted. On roll call the vote stood:

Commissioner Royster: _______  Commissioner Bugg: _______
Commissioner Staton: _______  Mayor Austin: _______
Commissioner Vowels: _______

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

______________________________
Steve Austin, Mayor

Date: __________________________

ATTEST:

______________________________
Maree Collins, CKMC,
City Clerk

APPROVED AS TO FORM AND LEGALITY THIS ___ DAY OF OCTOBER, 2020.

By: ____________________________
Dawn S. Kelsey
City Attorney
Sec. 2.01. - Definitions.

For the purpose of these regulations, certain terms and words shall be used and interpreted as defined hereinafter. Words used in the present tense include the future. The singular number includes the plural, and the plural the singular. The word "shall" is mandatory, not merely directive; the word "may" is permissive.

Accessory structure or use. Any structure or use, other than the principal structure or use, and detached therefrom by a reasonable distance, directly incidental to or required for the enjoyment of the permitted use of any premises, also as specifically designated under the zoning district regulations of this chapter.

Administrative official. Any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation.

Agricultural use. The use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetable, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public.

Alley. Any public or private way which affords only a secondary means of access to abutting property and which does not constitute a public maintained street upon which property may front.

Alteration. Any change, addition or modification in construction or type of occupancy; any change in the structural members of a building, such as walls, partition, columns, beams, "altered or reconstructed."

Apartment. A dwelling unit as defined by this article, not to be construed as an apartment house.

Applicant. The owner of land and/or property proposed to be zoned or his representative.

Basement. That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for the purpose of general household habitation.

Bed and breakfast inn. A single-family, owner occupied dwelling which has been designated by the State of Kentucky as a Kentucky Landmark and is arranged in order for the owner-occupant to let no more than four (4) separate bedrooms and serve breakfast to overnight guests. The following applies to signs advertising the bed and breakfast inn:

(1) There shall be no evidence of the conduct of the bed and breakfast business from the exterior of the dwelling, other than one (1) sign not exceeding four (4) square feet in area, unlighted, and mounted flat against the wall of the dwelling. In the case of a corner lot, one (1) sign may be placed on each street side of the dwelling.

Block. The property abutting one (1) side of a street and lying between the two (2) nearest intersecting streets, or between the nearest such street and railroad right-of-way, unsubdivided acreage, river or live stream, or between any of the foregoing and any other barriers, to the continuity of development.

Board. The word "board" shall mean the board of zoning adjustment as established in Article V of this ordinance.

Boardinghouse. A building arranged or used for lodging with or without meals for compensation, by more than five (5) and not more than twenty (20) individuals.

Buffer. An area meeting specified widths and depths on the side(s) abutting, facing, or fronting between differing land uses. A buffer area serves as a physical and/or visual means of separating
differing land uses. Where required under the provisions of these regulations, a buffer area shall be provided as specified herein.

**Buildable area.** The portion of a building site remaining after required yards have been provided.

**Building.** Any structure for the shelter or enclosure of persons, animals or property.

**Building height.** The vertical distance measured from the average finished grade at the front building line to the highest point of the structure.

**Building, principal.** A building, including covered porches, carports, and attached garages in which is conducted the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

**Building, separate.** Any portion of any structure completely separated from every other portion by masonry or a fire wall without any window, which wall extends from the ground to the roof.

**Building inspector.** The Building Inspector of the City of Henderson, or his authorized representative.

**Building site.** The land occupied or to be occupied by a principal building and its accessory buildings and including such open spaces, yards, minimum area, off-street parking facilities, and off-street truck loading facilities as are required by this ordinance; every building site shall abut upon a dedicated street. Any building site established after the effective date of this ordinance which occupies only a portion of a lot of record may be established only in accordance with the requirements of the subdivision regulations [Appendix A of this Code] and this ordinance, whichever is more restrictive.

**Building line.** A line established in general, parallel to the front street line between which line and the front street line, no part of a building shall project, except as otherwise provided by these regulations.

**Carport.** A shelter for one (1) or more vehicles which is not fully enclosed by walls and one (1) or more doors.

**Certificate of use and occupancy.** The certificate issued by the building official which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for the use and occupancy of the building in its several parts together with any special stipulation or conditions of the building permit.

**City.** The word "city" shall mean the Board of Commissioners of the City of Henderson, Kentucky.

**Clerk.** The clerk of the governing body.

**Club.** An organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics or the like, but not for profit.

**Commission.** The word "commission" shall mean the Henderson City-County Planning Commission.

**Comprehensive plan.** A comprehensive plan for the development of the local government, prepared and adopted by the planning commission and board of commissioners pursuant to state law, and including any part of such plan separately adopted and any amendment to such plans, or parts thereof.

**Conditional use.** A use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation.

**Conditional use permit.** Legal authorization to undertake a conditional use issued by the administrative official pursuant to authorization by the board of zoning adjustment, consisting of two (2) parts:

1. A statement of the factual determination by the board of zoning adjustment which justifies the issuance of the permit; and

2. A statement of the specific conditions which must be met in order for the use to be permitted.
**Condominium.** Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

**Consumer fireworks.** Those fireworks that are described in KRS 227.702.

**Convalescent home.** A convalescent home is a home for the care of the aged or infirm, or a place of rest for those suffering bodily disorders wherein two (2) or more persons are cared for. Said home shall conform and qualify for license under state law.

**County.** The word "county" shall mean the Fiscal Court of Henderson County, Kentucky.

**Court.** An open, unoccupied space, other than a yard on the same lot as a building.

**Craft distillery.** A facility as defined by KRS 243.120(2)b, which produces in quantities not to exceed fifty thousand (50,000) gallons of distilled spirits per calendar year.

**Day care facility.** A day care facility is designed to offer care and/or training to children or adults unrelated to the owner or director for any part of a day on some kind of regular basis. Such facility may or may not be operated for profit. For the purposes of the zoning regulations, a sitting service that is used at the convenience of parents or other relatives at irregular intervals is not to be considered a day care facility.

**Density.** The number of families residing on, or dwelling units developed on an acre of land. As used in these regulations, all densities are stated in families per acre.

**Development plan.** Written and graphic material for the provision of a development, including any or all of the following: Location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions and all other conditions agreed to by the applicant.

**District.** A portion of the jurisdiction of the governing body within which on a uniform basis, certain uses of land and buildings are permitted and within which certain yards, open spaces, lot acres and other requirements are established, i.e., residential district, commercial district, etc.
**Drive-in establishment.** A business establishment, other than a drive-in restaurant, so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle, and may include drive-in banks, drive-in cleaners and drive-in laundries.

**Drive-in restaurant.** Any place or premises used for the sale, dispensing or serving of food, refreshments, or beverages in automobiles, including establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages in automobiles on the premises.

** Dwelling, group.** A group of two (2) or more single-family semi-detached or multiple dwellings occupying a parcel of land in common ownership and having yard or courts in common.

** Dwelling, multifamily.** A residential dwelling designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

** Dwelling, row or townhouses.** A row of three (3) or more attached single-family dwellings, not more than two and one-half (2½) stories in height, in which each dwelling has its own front and rear entrances.

** Dwelling, two-family.** A building designed exclusively for occupancy by two (2) families independent of each other, such as a duplex dwelling unit.

** Dwelling unit.** A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

** Dwelling unit, single-family.**

(a) A building or structure designed and intended for occupancy by a single family constructed on site on a permanent foundation in compliance with all standards contained in the Kentucky Building Code; or

(b) A building or structure designed and intended for occupancy by a single family and fabricated in whole or part in an off-site manufacturing facility and transported by truck for installation or assembly at the building site as a permanent structure with installation required to be moored to a permanent foundation in compliance with all the standards contained in the Kentucky Building Code and once installed can only be moved as a conventional home.

** Efficiency unit.** An efficiency unit is a dwelling unit consisting of one (1) room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the room, providing not less than three hundred fifty (350) square feet of floor area.

** Erected.** The word "erected" includes built, constructed, reconstructed, moved upon, or any physical operation on the premises required for the building. Excavations, fill, drainage, and the like, shall be considered a part of "erected."

** Facade.** Facade is the visual portion of a property with frontage along a public right-of-way, not including a public alleyway, including all architectural and construction features including and without limitation to: structural materials, facing materials, windows, doors, trim, sill, steps, railing, cornices, molding, and fences.

** Family.** One (1) person living alone, or two (2) or more persons living together as a single nonprofit, housekeeping unit, provided that unless all members are related by blood, marriage, or legal adoption, no such family shall contain over three (3) unrelated persons. The term "family" shall be deemed to include domestic servants, gratuitous guests, and foster or boarded children whose room and board is paid by a recognized child care agency. Further provided that the term "family" shall not include a group occupying a hotel, club, boarding house or fraternity or sorority house.

** Family child-care home.** A private residence that provides for the temporary care of children who are unrelated to the care provider.

** Fast food restaurant.** A fast food restaurant is defined to be a restaurant that has the following characteristics:

(a) Its principal business is the sale of food items and beverages of the kind which can readily be taken out of the restaurant for consumption off the premises.
(b) Service is not customarily provided to customers at their tables by employees of the restaurant.

Filling. Shall mean the depositing or dumping of any matter on or into the ground, except deposits resulting from common household gardening and general farm care.

Floor area ratio. The ratio between the maximum allowable amount of floor space on all floors in a building and the total area of the lot on which the building is located. Example. A FAR of 2.0 would allow floor space of twice the area, or a four-story building covering one-half (½) of the lot. A FAR of 0.5 would allow floor space of one-half (½) of the lot area, or a two-story building covering one-quarter (¼) of the lot area, or a two-story building covering one-quarter (¼) of the lot.

Floor area, total. The area of all floors of building including finished basements and covered porches.

Floor area, usable. Any floor area within outside walls of a building, exclusive of areas in cellars, unfinished basements, utility area, unfinished attics, garages, open porches and accessory buildings.

Foster child. A person who has not reached his eighteenth birthday, unrelated to a family by blood or adoption with whom he or she lives for the purpose of care and/or education.

Garage, private. An accessory building designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is accessory, for personal use only.

Garage, public. Any premises used for the storage or care of motor-driven vehicles, or place where any such vehicles are equipped for operation, repaired, or kept for re-numeration, hire or sale.

Home occupation. Professional offices and personal services maintained or conducted within a dwelling or conducted as a conditional use in a detached existing garage. (See reference [section] 4.38).

Hospital. Any institution providing health services, primarily for inpatients and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, outpatient department, training facilities, central service facilities and staff offices, as licensed by the Commonwealth of Kentucky.

Hotel. A building or group of buildings containing individual sleeping or living units designed for the temporary occupancy of transient guests and including hotels, tourist courts, motor lodges, motor hotels, or auto courts, but not including boarding houses or lodging houses.

Junk. The term “junk” means any motor vehicle, machine, appliance, scrap material that is in a condition which prevents its use for the purpose for which it was originally manufactured.

Junkyards, used auto parts yards, salvage yards. The use of an area of any lot for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition, abandonment of automobiles, or other vehicles or machines or parts thereof.

Kennel. Any lot or premises on which three (3) or more dogs, four (4) months old or older, are kept either permanently or temporarily for commercial or breeding purposes.

Laboratory. A place devoted to experimental study, such as testing and analyzing. Manufacturing of product or products is not permitted within this definition.

Loading space. An off-street space on the same parcel of property with a building or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

Lot. A parcel of land occupied or intended for occupancy by a use permitted in these regulations, including one (1) principal building together with the accessory buildings, yard area, and parking spaces required by these regulations, and having its principal frontage upon a publicly maintained street.

Lot area. The total horizontal area within the lot lines of a lot.

Lot, corner. A corner lot of which at least two (2) adjacent sides abut for their full length upon a street, provided that such two (2) sides intersect at an interior angle of not more than one hundred thirty-five (135) degrees. Where a lot is on a curve, if tangents through the extreme point of the street line of such lot make an interior angle of not more than one hundred thirty-five (135) degrees, it is a corner lot. In
the case of a corner lot with curved street line, the corner is that point on the street lot line nearest to the point of intersection of the tangents described above.

**Lot, coverage.** That part or percent of the lot occupied by the buildings, including accessory buildings.

**Lot depth.** The mean horizontal distance from the front lot line to the rear lot line.

**Lot, double frontage.** An interior lot having frontages on two (2) more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, one (1) street will be designated as the front street in the plat and the request for a building permit will indicate which street is the designated front street.

**Lot, interior.** A lot other than a corner lot.

**Lot line.** The property line abounding the lot.

**Lot line, front.** In the case of an interior lot, that line separating said lot from the street. In the case of a corner lot, or double frontage lot, "front lot line" shall mean that line separating said lot from that street which is designated as the front street in the plat and in the application for a building permit.

**Lot line, rear.** That lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line not less than ten (10) feet long farthest from the front lot line and wholly within the lot.

**Lot line, side.** Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

**Lot line, street or alley.** A lot line separating the lot from the right-of-way of a street or alley.

**Lot of record.** A lot which is part of a subdivision recorded in the office of the county court clerk, or a lot or parcel surveyed or described by metes and bounds, by description of which has been so recorded.

**Lot width.** The mean horizontal distance between the side lines at the building line measured along the building line.

**Maintenance.** General property maintenance and/or repair of any water, sewer, HVAC, or electrical expenditures incurred in updating an existing structure where no new expansion will occur.

**Major thoroughfare.** The major streets which carry a relatively large amount of vehicular traffic and may connect to secondary or regional thoroughfares. The major thoroughfares are as delineated on the comprehensive land use plan as adopted by the governing body.

**Manufactured housing.** A manufactured building designed for long-term residential use. Manufactured housing includes that housing built on a chassis and is commonly referred to as "mobile homes"; however, manufactured housing does not include recreational vehicle, as defined herein at "Article II, Definitions, Section 2.01, Definitions." For the purpose of these regulations, manufactured housing is divided into four (4) classifications.

1. **Class A manufactured housing.** Manufactured housing certified by the Department of Housing and Urban Development as meeting all federal manufactured home construction and safety standards and approved by the zoning administrator as meeting all the "acceptable installation standards" and all "acceptable appearance standards" herein below.

a. **Acceptable installation standards.**

   1. The home shall be permanently attached and installed on a permanent foundation with the manufacturer's installation specifications as approved by the U.S. Department of Housing and Urban Development.
   2. The home shall be anchored to the ground in accordance with manufacturer's specifications.
   3. All wheel, trailer tongue and hitch assemblies shall be removed upon installation.
4. The home shall meet all requirements for lot, yard, building and other requirements for the district in which it is located. Variances may be granted for yard setbacks when manufactured home is approved as a conditional use in R-3 or Audubon Residential District zones.

5. All stairs, porches, entrances, platforms and other means of entrance and exit to the home shall be installed and constructed in conformance to the Kentucky Building Code.

6. All utilities shall be permanently connected to a public utility system in accordance with all City Codes and all public health requirements governing plumbing installations.

b. Acceptable appearance standards.

1. A poured concrete or masonry skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home, including the perimeter of the front steps and front porch, even if the wall is not structurally required by manufactured installation specifications. Venting and access requirements shall be in accordance with the Kentucky Building Code.

2. The home shall be a minimum width of twenty (20) feet as measured across the narrowest portion.

3. The home shall be placed so that the main egress is parallel to the street. Main egress shall be considered the principal access for the home as constructed off site.

4. The manufactured home shall either be oriented so that: 1) its long axis is parallel with the street; or 2) if the narrow dimension of the unit is located parallel to the street it shall be no less than fifty (50) percent of the unit's long dimension.

5. The home shall have a minimum roof pitch of four (4) feet of rise for every twelve (12) feet of horizontal run. The roof shall be covered with material that is residential in appearance including, but not limited to, approved wood, asphalt composition shingles, standing seam metal, or fiberglass, but excluding corrugated aluminum, corrugated fibergliss or other metal roofs.

6. Exterior siding cannot have a high-gloss finish and must be residential in appearance including, but not limited to, clapboards, simulated clapboards such as conventional vinyl or metal siding, wood shingles, "glossy" shakes, or similar material but excluding smooth, ribbed, or corrugated metal or plastic panels.

7. An adequate guttering and roof drainage system shall be installed.

8. The home shall have eaves with a minimum of six (6) inch overhang.

(2) Class B manufactured home. Manufactured housing certified by the Department of Housing and Urban Development as meeting all federal manufactured home construction and safety standards and acceptable installation standards but not meeting all of the acceptable appearance standards described above.

(3) Class C manufactured home. A manufactured/mobile home built before the HUD Code (1976) which is not certified by the Department of Housing and Urban Development as meeting all federal manufactured housing and safety standards and not meeting all of the acceptable installation standards and acceptable appearance standards described above. No class C manufactured homes will be permitted.

(4) Class D manufactured home. A manufactured home having been issued a "class B2 seal", which means the home has been inspected and found not to be in compliance with applicable codes and is a salvage unit unfit for human habitation. No class D manufactured homes will be permitted.
Manufactured housing park. A unified development of two (2) or more manufactured housing sites, plots, or stands arranged on a large tract usually under single ownership, meeting the area and yard requirements of this ordinance, and designed to accommodate manufactured housing, for more or less permanent duration, whether or not a charge is made for such accommodations, and includes any service building, structure, enclosure or other facility used as part of the manufactured housing park.

Marina. A dock or basin with moorings and supplies for yachts and small pleasure craft. A marina differs from a port in that a marina does not handle large passenger ships or commercial vessels.

Microbrewery. A facility as defined by KRS 243.157, which engages in the business of a brewery under the terms and conditions of KRS 243.150, which produces in quantities not to exceed twenty-five thousand (25,000) gallons of malt beverages per calendar year, including the sale of malt beverages produced on premises to licensed distributors and the general public.

Motor vehicle repair. General repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service such as body, frame or fender straightening and repair; overall painting, completely enclosed spray booth.

Motor vehicle wash establishments. A building, or portion thereof, the primary purpose of which is that of washing motor vehicles.

Nonconforming structures or uses. A structure or use of any premises which does not conform with applicable provisions of this ordinance, but which existed at the time of its designation as nonconforming by the adoption or amendment of this ordinance.

Nursery, trees and shrubs. An area or establishment devoted to the raising and care of trees, shrubs, or similar plant materials.

Off-street parking lot. A facility providing vehicular parking spaces, along with adequate drives and aisles for maneuvering, so as to provide access for entrance and exit for the parking of more than two (2) automobiles.

Open air business uses. Open air business uses shall include the following:

(a) Retail sale of trees, shrubs, plants, flowers, seed, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment and other home garden supplies and equipment.

(b) Retail sale of fruit and vegetables.

(c) Tennis courts, archery courts, shuffleboard, horseshoe courts, miniature golf, golf driving ranges, children's amusement parks or similar recreational uses.

(d) Bicycle, trailer, motor vehicle, boats or home equipment sales, service, rental services, farm and construction equipment.

(e) Outdoor display and sale of garages, swimming pools, monuments, and similar uses.

(f) Flea markets and similar open air displays.

Parking spaces. An area of not less than ten (10) feet wide by eighteen (18) feet long, for each automobile or motor vehicle, such space being exclusive of necessary drives, aisles, entrances or exits and being fully accessible for the storage or parking of permitted vehicles.

Person with a disability. A person with a physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, deafness or hard of hearing, sight impairments, and orthopedic impairments, but not including convicted felons or misdemeanants on probation or parole or receiving rehabilitation services as a result of their prior conviction, or mentally ill persons who have pled guilty but mentally ill to a crime or not guilty by reason of insanity to a crime. "Person with a disability" does not include persons with current, illegal use of or addiction to alcohol or any controlled substance as regulated under KRS [Ch.] 218A.

Planned unit development (PUD). A land development project comprehensively planned as an entity via a unitary site plan which permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces and the preservation of significant natural features.
**Public street.** A publicly maintained thoroughfare providing the principal means of access to abutting property and listed on the city, county, state, or federal road system.

**Recreational vehicle:**

1. **Travel trailer** means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation or vacation.

2. **Pick-up coach** means a structure designed to be mounted on a truck for use as a temporary dwelling for travel, recreation or vacation.

3. **Motor home** means a portable temporary dwelling to be used for travel, recreation or vacation, constructed as an integral part of a self-propelled vehicle.

4. **Camping trailer** means a canvas or other collapsible folding structure, mounted on wheels and designed for travel, recreation or vacation use.

5. **Dependent recreational vehicle** means a recreational vehicle which does not have toilet, lavatory or bathing facilities.

6. **Self-contained recreational vehicle** means a recreational vehicle which can operate independent of connections to sewer, water and electric systems. It contains a water-flushed toilet, lavatory, shower or bath, [and] kitchen sink, all of which are connected to water-storage and sewage-holding tanks located within the recreational vehicle.

**Residential care facility.** A residence operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for persons with disability.

**Residential care services.** Services include but are not limited to supervision, shelter, protection, rehabilitation, personal development and attendant care.

**Rubbish.** Means the miscellaneous waste materials resulting from housekeeping, mercantile enterprises, trades, manufacturing and offices, including other waste matter such as slag, stone, broken concrete, fly ash, ashes, tin cans, glass, scrap metal, rubber, paper, rags, chemicals or any similar or related combinations thereof.

**Salvage.** Refers to any motor vehicle, machine or appliance having sufficient value to justify its sale for repair or recovery of parts.

**Self storage** (a shorthand for "self-service storage", and also known as "mini storage") is an industry in which storage space (such as rooms, lockers, containers, and/or outdoor space), also known as "storage units" is rented to tenants, usually on a short-term basis.

**Setback.** The required distance between every structure and any lot line on the lot on which it is located.

**Setback, front.** The minimum distance between the street right-of-way and the building line.

**Service station.** A building or structure designed or used for the retail sale or supply of fuels, lubricants, air, water and other operating commodities for motor vehicles, aircraft or boats, and including the customary space and facilities for the installation of such commodities on or in vehicles and including space for facilities for the temporary storage of vehicles, minor repair or servicing.

**Shooting range, indoors.** A facility designed or used for shooting at targets with bows and arrows, rifles, pistols, or shotguns and which is completely enclosed within a building or structure for the purposes of target practice or temporary competitions.

**Shopping center.** A group of three (3) adjoining or adjacent retail stores, and more than twenty thousand (20,000) square feet, or service establishments to be planned, constructed and developed as a single unit, and including any additional such stores or establishments subsequently adjoining or adjacent thereto.

**Sign.** Any fabricated sign or outdoor display structure including its structure, consisting of any letter, figure, character, mark, point, plane, marquee sign, design, poster, pictorial picture stroke, stripe, line,
trademark, reading matter, or illuminating device, constructed, attached, erected, fastened, or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise whatsoever, and displayed in any manner out of doors for recognized advertising purposes.

Site plan. A graphic plan drawn to scale for all proposed non-single family development or change of uses, or creation of new commercial or multi-family lots, which shows elements of site design in sufficient detail to depict the approved locations of buildings, accessory structures, parking areas, access points, open spaces, drainage facilities, utilities, yard dimensions, easements, screening, erosion control, flood zone boundaries, and all other information required by the enforcement officer or approving body.

Soil removal. Shall mean the removal of any kind of soil or earth matter which includes topsoil, sand, gravel, clay or other materials or any combination thereof, except common household gardening and general farm care.

Story. That part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.

(1) First story. The lowermost story entirely above the grade plane.

(2) Mezzanine. An intermediate level between the floor and the ceiling of any story, and covering not more than thirty-three (33) percent of the floor area of the room in which it is located.

Street. Any public or private vehicular way which affords the principal means of access to abutting property. The term shall include "road," "highway," or "thoroughfare." A public street is a street accepted according to the subdivision regulations and maintained by the governing body. A private street is not so accepted and maintained.

Structure. Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something having a fixed location on the ground, including buildings, radio towers, swimming pools, and walls or fences exceeding three and one-half (3½) feet in height, billboards, and poster panels; reference to buildings includes structures and vice versa.

Structural alteration. Any change in the supporting members of a building or structure, each as bearing walls or partitions, columns, beams or girders or any change in the width or number of exits, or any structural change in the roof.

Subdivision regulations. Regulations as adopted by the city for the subdivision of land.

Swimming pool. The term "swimming pool" shall mean any structure or container intended for swimming or bathing located either above or below grade designed to hold water to a depth greater than twenty-four (24) inches.

Townhouse. An attached, privately owned, single-family dwelling, which is designed and erected as an independent unit on a separate lot and separated from all other such units by a properly rated common party wall having no doors, windows, or other provisions for human passage or visibility. (See Article IV, Section 4.05)

Travel trailer. A vehicular portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, with a body width not exceeding eight (8) feet and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons. For the purposes of these regulations, the term includes recreational vehicle, pickup campers, camping trailers, and motorized homes (living facilities constructed as integral parts of self-propelled vehicles).

Truck gardening. Truck gardening is the use of land for growing edible vegetables, fruits, and other crops for resale and commercial purposes. Household gardening by a property owner for a hobby or purely local consumption by himself and his family residing on the same premises shall not be construed to be truck gardening.

Use. The purpose for which land or premises or a building thereon is designed, arranged, or intended, or for which it is occupied or maintained, let or leased.
**Utility room.** A room or space, located other than in the basement, specifically designed and constructed to house any home appliances (furnace, water heater, pump).

**Variance.** A departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 and 100.247.

**Vehicular use area (VUA).** Any area used by vehicles of any type, whether moving or at rest, including but not limited to parking lots or areas, loading and unloading areas, mobile home yards, sales and service areas, and driveways.

**Yard.** An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein. The measurement of a yard is the minimum horizontal distance between the lot line and the building or structure.

1. **Side yard.** A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard, or in the absence of either such yard, to the front and rear lot lines, as the case may be; except that on a corner lot, the side yard adjacent to a street shall extend the full depth of the lot.

2. **Front yard.** A yard extending the full width of the lot; the depth of which is the horizontal distance between the front lot line and the nearest line of the principal building on the lot.

3. **Rear yard.** A yard extending the full width of the lot, the depth of which is the horizontal distance between the rear lot line and the rear line or lines of the principal building of the lot.
Sec. 5.01. - Powers and duties.

The board of zoning adjustment established by Ordinance No. 35-66 passed in 1966, and continued by Ordinance No. 3-70 passed in 1970, and Ordinance No. 35-70 passed in 1970, and Ordinance No. 15-82 passed in 1982, is continued by this ordinance. The board is known as the Henderson City Board of Zoning Adjustment. The board has the powers, duties, and responsibilities as set forth in KSA Chapter 100.

(a) Jurisdiction of the board of adjustment for the city shall be within the incorporated limits of the city, as exists or is amended in the future.

(b) The membership, appointment, and term of office of the board of adjustment is as follows: The board shall consist of five (5) citizen members, one (1) of which shall be citizen member of the planning commission and resident of the City of Henderson. The Mayor of Henderson shall appoint the members of the board with the approval of the City of Henderson legislative body. The term of office of members first appointed shall be staggered so that a proportionate number serve one (1), two (2), three (3), and four (4) years respectively, with later appointments or reappointments continuing the staggered pattern.

(c) Reimbursement for expenses lawfully incurred by a member of the board of adjustment in the performance of his duties may be authorized by formal action of the city commission.

(d) The board of adjustment shall have the power to receive, hold, administer and disburse funds which it may lawfully receive from any source. Prior to the beginning of each fiscal year the board may adopt a budget which will be presented to the board of commissioners for the purpose of receiving funds for the cost of its operation.

(e) Expenditures of such appropriations and funds shall be in accordance with the formal action of the board pursuant to the regulations lawfully established. Administration of the board shall be as described in KRS Ch. 100 and may be amended in the future.

(f) Vacancies on the board of adjustment shall be filled within sixty (60) days by the appointing authority. If the appointing authority fails to act within that time, the planning commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of the term. All appointments shall continue until the successors shall have qualified.

(g) All members of the board of adjustment shall, before entering upon their duties, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any judge, notary public, clerk of a court or justice of the peace within the district or county in which he/she resides.

(h) Any member of the board of adjustment may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance or conflict of interest. Any appointing authority who exercises the power to remove a member of the board of adjustments shall submit a written statement to the commission setting forth the reasons for removal, and the statement shall be read at the next meeting of the board of adjustment which shall be open to the general public. The member so removed shall have the right to appeal from the removal to the circuit court of the county in which he/she resides.

(i) The board of adjustment shall annually elect a chairman, vice-chairman and secretary and any other such officers it deems necessary and any officer shall be eligible for reelection at the expiration of his term.

(j) The board of adjustment shall conduct meetings at the call of the chairman who shall give written notice or oral notice to all members of the board at least seven (7) days prior to the meeting, which notice shall contain the date, time and place for the meeting and the subjects which will be discussed.

(k) A simple majority of the total membership of a board of adjustment as established by regulation or agreement shall constitute a quorum. Any member of the board of adjustment who has any
direct or indirect financial interest in the outcome of any question before the body shall disclose
the nature of the interest and shall disqualify himself/herself from voting on the questions.

(l) The board of adjustment shall adopt bylaws for the transaction of business and shall keep
minutes and records of all proceedings including regulations, transactions, findings, and
determinations and the number of votes for and against each question, and if any member is
absent or abstains from voting, indicating the fact, all of which shall immediately after adoption,
be filed in the office of the board. A transcript of the minutes of the board of adjustment meeting
shall be provided if requested by a party, at the expense of the requesting party, and the
transcript shall constitute the record.

(m) The board of adjustment may employ or contract with planners or other persons as it deems
necessary to accomplish its assigned duties.

(n) The board of adjustment shall have the power to issue subpoena to compel witnesses to attend
its meetings and give evidence bearing upon the questions before it. The sheriff shall serve
such subpoenas. The circuit court may, upon application by the board, compel obedience to
such court or such subpoena by proceedings of contempt.

(o) The chairman of the board of adjustments shall have the power to administer an oath to
witnesses prior to their testifying before the board on any issue.

(p) The board shall have the power to hear and decide applications for conditional use permits to
allow the proper integration into the community of uses which are specifically named in the
zoning regulations which may be suitable only in specific locations in the zone only if certain
conditions are met.

(1) The board may approve, modify, or deny any application for a conditional use permit. If it
approves such permits it may attach necessary conditions such as time limitations,
requirements that one (1) or more things be done before the request can be initiated, or
conditions of a continuing nature. Any such conditions shall be recorded in the board’s
minutes and on the conditional use permit along with a reference to the specific section in
the zoning regulation listing the conditional use under consideration. The board shall have
the power to revoke conditional use permits or variances for noncompliance with the
condition thereof. Furthermore, the board shall have a right of action to compel offending
structures or uses removed at the cost of the violator and may have judgment in personam
for such cost.

(2) Granting of a conditional use permit does not exempt the applicant from complying with all
of the requirements of building, housing and other regulations.

(3) In any case where a conditional use permit has not been exercised within the time limit set
by the board, or within one (1) year, if no specific time limit has been set, such conditional
use permit shall not revert back to its original designation unless there has been another
public hearing. “Exercised” as set forth in this section shall mean that binding contracts for
the construction of the main building or other improvements have been met or, in the
absence of contracts, that the main building or other improvement is under construction to
a substantial degree, or that prerequisite conditions involving substantial investment, under
contract, in development are completed. When construction is not a part of the use,
“exercised” shall mean that the use is in operation in compliance with the conditions as set
forth in the permit.

(4) The administrative official shall review all conditional use permits except those for which
all conditions have been permanently satisfied, at least once annually and shall have the
power to inspect the land or structure where the conditional use is located in order to
ascertaining that the landowner is complying with all the conditions listed on the conditional
use permit. If the landowner is not complying with all the conditions listed on the
conditional use permit, the administrative official shall report the fact in writing to the
chairman of the board of adjustments. The report shall state specifically the manner in
which the landowner is not complying with the conditions on the conditional use permit,
and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the board of adjustments. The board shall hold a hearing on the report within a reasonable time and notice of the time and place of the hearing shall be furnished to the landowner at least one (1) week prior to the hearing. If the board of adjustments finds that the facts alleged in the report of the administrative official are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the board of adjustments may authorize the administrative official to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

(5) Once the board of adjustment has completed a conditional use permit and all the conditions required are such type that they can be completely and permanently satisfied, the administrative official upon request of the applicant may, if facts warrant, make a determination that the conditions have been satisfied, and note the conclusion in the margin of the conditional use permit which is on file in the office of the code administrator. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(6) When an application is made for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, the mayor and city clerk, an owner of every parcel of property adjoining the property to which the application applies. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and address of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation records as having the same address.

(7) When any property within the required notification area for a public hearing upon a conditional use permit application is located within an adjoining city, county, or planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing by first class mail to that unit's planning commission. If the adjoining property is not part of a planning unit, notice shall be given to the mayor of the city in which the property is located or, if the property is in an unincorporated area, notice shall be given to the judge/executive of the county in which the property is located.

(q) The board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant. In the granting of a variance, in no instance shall any permanent structure be permitted to be placed in a public utility or drainage easement.

(r) Before any variance is granted, the board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings the board shall consider whether:

(1) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(2) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
(3) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

(s) The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

(t) The board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the zoning regulation in the zone in question, or to alter density requirements in the zone in question.

(u) A dimensional variance applies to the property for which it is granted, and not to the individual who applied for it. A variance also runs with the land and is transferrable to any future owner of the land, but it cannot be transferred by the application to a different site.

(v) The lawful use of a building or premises existing at the time of adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations except as otherwise provided herein. The board of adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification provided, however, the board of adjustments may grant approval, effective to maintain nonconforming use status, for enlargements or extensions, made or to be made to the facilities of a nonconforming use where the use consists of the presenting of a major public attraction or attractions such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained local prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demand of participants and patrons.

(w) The board of adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant or refusal made by an administrative official in the enforcement of the zoning regulations. Such appeal shall be taken within thirty (30) days.

(x) Appeals to the board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action or decision of the zoning enforcement officer. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from, by filing with said officer and with the board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the board any interested person may appeal and enter his appearance and all shall be given an opportunity to be heard.

(y) The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Ch. 424, as well as written notice to the appellant and the administrative official at least one (1) week prior to the hearing and shall decide it within thirty (30) days. The affected party may appear at the hearing in person or by attorney.

(z) If no building permit has been issued and a builder begins or continues to build, a restraining order may be obtained upon application to the property court of record and evidence of the lack of a building permit shall establish a prima facie case for the issuance of the restraining order.
Sec. 13.02. - Permitted uses.

In all R-3 districts no building or land, except as otherwise provided in this ordinance, shall be erected or used except for the following specified uses:

(a) Any use permitted in the R-2, medium density residential district.
(b) Accessory uses.
(c) [Class A manufactured homes, as defined in "Article II, Definitions, Section 2.01, Definitions"].

Sec. 13.03. - Conditional uses.

(a) Any use classified as a conditional use in the R-2, medium density residential district.
(b) Reserved.
(c) Reserved.
(d) Bed and breakfast inns.
(e) Class A manufactured homes, as defined in "Article II, Definitions, Section 2.01, Definitions", with the following limitations:

1. Manufactured home shall meet all acceptable installations standards of Class A manufactured housing as provided in Section 2.01 of this code; and
2. Manufactured home shall meet all acceptable appearance standards of Class A manufactured housing as provided in Section 2.01 of this code; and
3. In the granting of a variance, in no instance shall the front yard setback be less than the average front setback that exists on the nearest developed lots on the same block that front on the same side of the street as the subject lot, in accordance with the following rules:
   a. Lots that front on a different street than the subject lot or that are separated from the subject lot by a street may not be used in computing the average;
   b. When the subject lot is a corner lot, the average setback will be computed on the basis of the two (2) nearest developed lots that front on the same side of the street as the subject lot;
   c. When the subject lot abuts a corner lot fronting the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two (2) lots that front on the same street as the subject lot; and
4. In the granting of a variance, in no instance shall either side yard setback be less than five (5) feet; and
5. In the granting of a variance, in no instance shall the rear yard setback be less than ten (10) feet; and
6. In the granting of a variance, in no instance shall any permanent structure be permitted to be placed in a public utility or drainage easement.
Sec. 31.03. - Permitted uses.

1. **Permitted Uses.** The following uses are permitted:
   
   (a) Single-family dwellings.
   
   (b) Two-family dwellings (duplexes).
   
   (c) Class A manufactured homes, as defined in Article II, Section 2.01.
   
   (d) Townhouses in accordance with Section 4.05.
   
   (e) Accessory buildings or uses customarily incidental to any of the permitted uses, when located on the same lot and not involving any business, profession, trade or occupation.
   
   (f) Community gardens.
   
   (g) Home occupation as defined in Section 4.38.
   
   (h) Mixed-uses.

   i. **Mixed use buildings:**

      Existing structures containing both residential dwelling units and non-residential commercial uses as found herein: residential dwelling units may be located on the ground floor of mixed-use buildings provided that a minimum of one thousand five hundred (1,500) square feet of non-residential floor areas is located on the ground floor, or when all the following criteria are met:

      1. The building is a minimum of two (2) stories in height;
      2. Commercial or office uses are restricted to the ground floor unless a conditional use permit is obtained;
      3. Each ground floor dwelling unit is at the rear of the building, behind a commercial or office use, unless a conditional use permit is obtained.

   ii. **Neighborhood retail sales and services:**

      The use must be located in an existing structure, originally constructed for neighborhood business, or located within any mixed-use building, with the following criteria:

      1. The gross floor area of the original structure may be expanded with a conditional use permit.
      2. Retail sales and services that have been traditionally found in older urban neighborhoods. Typical uses include grocery shops, butcher shops, delicatessens, fruit and vegetable markets, ice cream shops, bakeries, cafes, pharmacies, music shops and schools, dance studios, antique shops, shoe repair, restaurants without drive-thrus, clothing and apparel stores, barber and beauty shops, and similar uses as determined by the codes administrator.
      3. Bars, banks with drive thrus, and restaurants with drive-thrus are permitted with a conditional use permit.

   iii. **Professional offices:**

      The following professional office uses, may be allowed as permitted uses in existing or new buildings originally constructed for neighborhood business, or mixed-use purposes.

      1. Medical, dental, optometry, chiropractic offices, architecture and engineering offices, attorney, title or other legal offices, professional services including real estate, insurance, property management, tourism and travel, marketing, design, and other related professional services.
      2. Such professional office uses shall only be permitted on the first floor of a mixed use building unless a conditional use permit is obtained.
2. **Conditional uses.**

(a) Funeral homes.

(b) Nonprofit public and private facilities.

(c) Schools, libraries, churches and other facilities normally incidental thereto, provided that there is adequate access to all required off-street parking areas, on-site parking spaces as required in Section 9.01 are provided, and there is no parking in the required front yard (see Section 31.05 parking (2)(a)).

(d) Bed and breakfast inns.

(e) Family child-care home, with the following limitations:
   
   i. There shall be a maximum of ten (10) children allowed in the home of which no more than six (6) shall be unrelated to the care provider. No more than four (4) children under twelve (12) months of age nor more than six (6) children under six (6) years of age, including the provider’s own or related children, shall be kept in the home.

   ii. No person may be employed that is not a resident of the premises.

   iii. Otherwise fully complies with the provisions of a home occupation as provided in Section 2.01 of this zoning ordinance.

(f) **Class A manufactured homes**, as defined in "Article II, Definitions, Section 2.01, Definitions", with the following limitations:

   1. Manufactured home shall meet all acceptable installations standards of Class A manufactured housing as provided in Section 2.01 of this code; and

   2. Manufactured home shall meet all acceptable appearance standards of Class A manufactured housing as provided in Section 2.01 of this code; and

   3. In the granting of a variance, in no instance shall the front yard setback be less than the average front setback that exists on the nearest developed lots on the same block that front on the same side of the street as the subject lot, in accordance with the following rules:

      a. Lots that front on a different street than the subject lot or that are separated from the subject lot by a street may not be used in computing the average;

      b. When the subject lot is a corner lot, the average setback will be computed on the basis of the two (2) nearest developed lots that front on the same side of the street as the subject lot;

      c. When the subject lot abuts a corner lot fronting the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two (2) lots that front on the same street as the subject lot; and

   4. In the granting of a variance, in no instance shall either side yard setback be less than five (5) feet; and

   5. In the granting of a variance, in no instance shall the rear yard setback be less than ten (10) feet; and

   6. In the granting of a variance, in no instance shall any permanent structure be permitted to be placed in a public utility or drainage easement.
Sec. 33.14. - Signage.

Article X of the zoning ordinance applies, and the following additional district signage regulations shall also apply:

1. **Wall signage.**
   (a) Each business will be allowed one (1) wall-mounted sign per street frontage, up to ten (10) percent of the surface area of the wall area;

2. **Pedestrian signage.**
   (a) Pedestrian oriented signs are designed and intended for pedestrians to easily read the signage of the business, as they stand on the sidewalk adjacent to the business;
   (b) One (1) pedestrian oriented sign is permitted per business fronting Second Street, in addition to existing on-site signage allowances of Article X;
   (c) Such pedestrian sign shall be either a projecting sign, an awning sign, or attached to the facade;
   (d) If the pedestrian sign is a wall or awning sign in type, it must not exceed eight (8) square feet in size;
   (e) Projecting signage is allowed with the following conditions:
      i. All signs shall comply with applicable provisions of the Kentucky Building Code and the National Electrical Code adopted by the City of Henderson
      ii. The sign must not exceed sixteen (16) square feet in size;
      iii. The sign shall not be placed lower than ten (10) feet above grade;
      iv. The maximum height of the sign shall be sixteen (16) feet in height or the bottom of the second floor window or wall, whichever is less;
      v. The sign shall not project more than six (6) feet from the facade of the building;
      vi. If the sign encroaches over a city sidewalk, an encroachment permit issued by the city is required;
      vii. No projecting sign may encroach over any roadway, public or private.
   (f) Signs in the public right-of-way, including sandwich board signs, are permitted as per the requirements of subsection 10.08(d).

3. **Permitted sign materials.**
   (a) Masonry or monument signs;
   (b) Wood: painted, stained, or natural;
   (c) Metal;
   (d) Plastic, when used for individual letters and symbols only.

4. **Prohibited signs.**
   (a) Pole, pylon, and cabinet-type facade signs are prohibited;
   (b) Flashing, traveling, animated, LED, or back-lit signs, of all types are prohibited;
   (c) Illuminated signs that cast any glare into any residential or mixed use residential unit are prohibited.

5. **Permitted monument sign size.**
   (a) Monument signs may be up to eight (8) feet in height and eight (8) feet wide (and may be placed on a planting area no more than two (2) feet in height);
(b) Plastic, metal or wood inserts may be used for business names;
(c) Signs may not be backlit but may be lit with ground accent lighting.

6. **Animated signs**

   (a) Animated signs as defined in “Article X, Sec. 0.03. - Definitions and interpretation” may be allowed as a conditional use permit, with the following limitations:

   i. Animated signs shall be monument type sign and may be up to eight (8) feet in height and eight (8) feet wide; and

   ii. Animated portion of sign shall be no larger than four (4) feet in height and six (6) feet wide; and

   iii. Animated portion of sign shall be encased using materials consistent with the permitted materials allowed in the Gateway Zone District; and

   iv. Landscaping shall be established and maintained as part of sign location.
October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners
FROM: William L. “Buzzy” Newman, Jr., City Manager
SUBJECT: Ordinance Amending Chapter 23, Utilities, Article III, Gas Service

An item for the agenda of Tuesday, October 13, 2020 is first reading of an ordinance amending Chapter 23, Utilities, Article III, Gas Service, by adding Section 23-57, Theft of Service and Tampering: Payment and Restoration of Service, of the Code of Ordinances.

The proposed revisions relate to the addition of language related to repairs, damage, theft of natural gas service, and tampering with meters or other gas devices and mirror the changes that are being adopted for Henderson Water Utility.

Your approval of the attached ordinance is requested.

c: Owen Reeves, Gas System Director
ORDINANCE NO. _________

ORDINANCE AMENDING CHAPTER 23 UTILITIES

SUMMARY: ORDINANCE AMENDING ARTICLE III, GAS SERVICES, OF CHAPTER 23, UTILITIES, BY ADDING SEC. 23-57, THEFT OF SERVICE AND TAMPERING; PAYMENT AND RESTORATION OF SERVICE OF THE CODE OF ORDINANCES OF THE CITY OF HENDERSON

WHEREAS, the Henderson Municipal Gas System is responsible for enforcement of natural gas system and standards as they relate to damages and repairs to the distribution system, theft of natural gas service, and tampering with meters and other devices; and

WHEREAS, the Henderson Municipal Gas System Director and City Manager recommend to the Board of Commissioners of the City of Henderson to enact and adopt revisions to portions of Article III of Chapter 23 of the City Code of Ordinances, incorporating language related to repairs, damage, theft of gas services, and tampering with meters or other natural gas devices; and

NOW, THEREFORE, BE IT ORDAINED by the City of Henderson, Kentucky that the existing Article III, Gas Service, Sec. 23-57 Theft of Service and Tampering; Payment and Restoration of Service of Chapter 23, Utilities of the City's Code of Ordinances be and is hereby approved.

Sec. 23-57. - THEFT OF SERVICE AND TAMPERING; PAYMENT AND RESTORATION OF SERVICE.

No person shall maliciously, willfully, or negligently break, damage, uncover, deface, or tamper with any structure, appurtenance or equipment, which is a part of the Henderson Municipal Gas System. Repairs to any gas utility property or equipment including but not limited to meter sets, regulators, service lines and mains or other related infrastructure by the activities of other parties shall be charged to the responsible party at the actual cost to the Henderson Municipal Gas Utility for lost natural gas, making repairs or replacing the damaged facilities, plus fifteen percent (15%) for administrative costs.

1) Theft of Service and Tampering. Tampering with gas meters or stealing natural gas service shall be grounds for discontinuance of service. Theft of service and tampering shall include but not be limited to the following:
   a) opening valves at the main or meter that have been turned off by utility personnel;
   b) by-passing meters in any manner;
   c) taking of unmetered gas;
   d) removing, disabling, or adjusting meter registers, cutting wires, or disabling or tampering with any metering or data collection device;
   e) removing or reversing a gas meter; or
   h) making any unauthorized connection to the distribution system.

2) Any person damaging, defacing, or tampering with the Henderson Municipal Gas System or
any person stealing gas service shall be deemed guilty of a Class B misdemeanor.

3) Notice of violation and service cut-off. A Notice of Violation (NOV) may be mailed or otherwise delivered if evidence suggests the possibility of theft of service or tampering. If in the opinion of the General Manager the theft or tampering endangers public health, or if theft is evident on a customer's premises, the notice of violation may include a provision for the immediate cut-off of service. The City and HMG shall not be liable for any loss or damage resulting from the discontinuance or interruption of service imposed due to theft or tampering.

4) Payment of fees and restoration of service. If the City/HMG determines that theft of service or tampering has occurred, it reserves the right to adjust the customer's current bill and bills for the prior twelve (12) months usage. Service will not be restored until payments are received for all the following: adjusted payment for utility service; a violation payment of $100.00 per occurrence; service call charges; labor, including on-call and overtime premiums; replacement parts; and reconnect charges. Discontinuance of service shall not release the customer from liability for payment for service already received. The City and HMG shall have the right to refuse service to an applicant or any member of an applicant's household living at the same address whenever such persons are delinquent on any payment to the City, or has had service discontinued because of a violation for theft or tampering.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner ______________, seconded by Commissioner ______________, that the ordinance be adopted on its first reading.

On roll call the vote stood:

Commissioner Royster: _______ Commissioner Bugg: _______
Commissioner Staton: _______ Mayor Austin: _______
Commissioner Vowels: _______

WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner ______________, seconded by Commissioner ______________, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner Royster: _______ Commissioner Bugg: _______
Commissioner Staton: _______ Mayor Austin: _______
Commissioner Vowels: _______
WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

ATTEST:

Maree Collins, CKMC, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS ___ DAY OF OCTOBER, 2020.

By:  
Dawn S. Kelsey  
City Attorney

Steve Austin, Mayor  
Date: ___________________________
City Commission Memorandum
20-163

October 7, 2020

TO: Mayor Steve Austin and the Board of Commissioners
FROM: William L. “Buzzy” Newman, Jr., City Manager
SUBJECT: City Manager’s Report

I. Annexation – Bent Creek Subdivision & Bent Creek Estates Subdivision
Commission Direction Requested.

The City would like to proceed with annexation of a parcels of land containing approximately 86.98 acres located in the County of Henderson, Kentucky, into the corporate limits of the City. A copy of the proposed survey plat is attached.

Formal action is necessary to forward this annexation request to the Planning Commission for review and return of recommendation for zoning classification.

I am requesting authorization from the Board to submit this request to the Planning Commission for the appropriate zoning classification to be assigned for these properties.

c: Brian Bishop
# UPCOMING BOARD APPOINTMENTS

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<tr>
<th>BOARD</th>
<th>EXPIRATION DATE</th>
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<tr>
<td><strong>MUNICIPAL HOUSING COMMISSION</strong></td>
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<td>Willie Ballard*</td>
<td>09/30/2020</td>
<td>2-Year</td>
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<td>*Non-voting Resident Member</td>
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| **CITY-COUNTY AIRPORT BOARD**              | Current Term Expires | Term         |
| (Jointly appointed)                        |                  |             |
| Dorin Luck                                 | 01/05/2021        | 4-Year      |
| Glenn Stone                                | 01/05/2021        | 4-Year      |

| **WATER & SEWER COMMISSION**               | Current Term Expires | Term       |
|                                          |                    |            |
| Paul Bird                                 | 01/12/2021         | 3-Year     |
| Gary Jennings, D.M.D.                     | 01/12/2021         | 3-Year     |

| **BOARD OF OCCUPATIONAL LICENSE APPEALS**  | Current Term Expires | Term       |
|                                          |                    |            |
| Alternate Member (Vacant-former member moved out of town) | | 3-Year |