

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

INTERLOCAL AGREEMENT

This Agreement is made and entered into this the 16th day of June, 2025, by and between the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation (the *City*), and the **COUNTY OF HENDERSON**, a body corporate and politic of the State of North Carolina (the *County*).

Circumstances

A. The City operates a water system providing potable water service. The City's treatment plant is located outside City limits in the County and serves customers within the City and also outside the City in the County.

B. The City operates a sanitary sewer system, which serves customers within the City and also outside the City in the County.

C. The County zones all of the land area not located within one of its municipalities.

D. The City and the County entered into a "Contract for Purchase and Interlocal Cooperation and Settlement Agreement" December 20, 2000 (the *Mud Creek Agreement*). Under its terms, the Mud Creek Agreement expires thirty (30) years after its execution.

E. Various disputes between the City and the County have arisen over the years, which the parties seek to resolve hereby.

F. This Agreement is entered under the provisions of Article 20 of Chapter 160A of the North Carolina General Statutes.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants made to one another, the parties agree as follows:

Water and Sewer

1. The Joint Water and Sewer Commission (the *JWSC*) created by the General Assembly shall:

A. The JWSC shall develop policies that will assist in the development of affordable housing projects in the City and outside the City in the County.

B. The JWSC shall work closely with the Henderson County Partnership for Economic Development to provide utility service to existing and prospective industries.

C. The JWSC shall work closely with the County and Henderson County Agricultural Development Corporation to assist the County in meeting its farmland preservation and agricultural development goals.

2. The City will allow the extension of their sewer system to the Flat Rock Cidery property (off Upward Road) and the Baystone Glen development (off U.S. Highway 25) without requiring annexation into the City. Such extensions shall be in accordance to the policies of the Water and Sewer Commission as approved by the City.

3. After consultation with its counsel, the County waives any possible claim of conflict of interest or any potential conflict of interest of the City Attorney in representing the City arising from the negotiation or drafting of the Mud Creek Agreement or with interpretation and application of the provisions of the Mud Creek Agreement while it is in effect.

Land Use Planning

4. The City shall have the right to request zoning map and text zoning changes from the County, and City's planning staff may work with County's planning staff when rezonings of interest to both parties are considered.

State Action Required

5. The parties shall jointly request the North Carolina General Assembly to pass a revised version of Senate Bill 69 (copy attached), in order to accomplish their mutual goals.

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Executed after majority vote of both the Hendersonville City Council and the Board of Commissioners of Henderson County, this the 16th day of June, 2025.

CITY OF HENDERSONVILLE

COUNTY OF HENDERSON

By: Barbara Volk
BARBARA VOLK, Mayor

By: William A. Lapsley
WILLIAM LAPSLEY, Chairman
Board of Commissioners

Attest:

Attest:

Jill Murray
City Clerk

Lonya Flynn, Deputy
Clerk to the Board of Commissioners

Approved as to form:

Approved as to form:

Rugla M
City Attorney

CRS
County Attorney

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SENATE BILL 69

Short Title: Hendersonville/Public Enterprises Operation. (Local)

Sponsors: Senator Moffitt (Primary Sponsor).

Referred to: Rules and Operations of the Senate

June ____, 2025

A BILL TO BE ENTITLED
AN ACT REGARDING THE OPERATION OF PUBLIC ENTERPRISES BY THE CITY OF
HENDERSONVILLE AND TO PROVIDE FOR ZONING JURISDICTION OVER
SATELLITE ANNEXATIONS

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-312 reads as rewritten:

"§ 160A-312. Authority to operate public enterprises.

...

(d) Where a separate water or sewer system is operated by a city and by a county within the same county, the city and county shall by Resolution form a water and sewer commission.

(1) The water and sewer commission shall be composed as follows:

- a. The commission shall consist of eight (8) members and a chair-person, for a total of nine (9) members.
- b. Four (4) members of the commission shall be appointed by the city, and four (4) members shall be appointed by the county.
- c. Terms of the members shall be staggered; therefore two of the appointees appointed by the city and the county shall be appointed for an initial three (3) year term, and two shall be appointed by each for a five (5) year term. Thereafter, all members appointed by the city or county shall serve a five (5) year term. Members appointed to fill a vacancy shall serve for the remainder of the unexpired term of the seat vacated. No member shall serve more than two (2) consecutive terms without a one-year period of non-service.
- d. The appointment of the chair-person of the commission shall alternate between the county board of commissioners and the city council. The initial term shall be appointed by the county commission with the second term appointed by the city council and alternated every two years thereafter. The chair-person shall serve a two (2) year term.
- e. Members shall serve at the pleasure of the appointing authority, and may be removed by the appointing authority with or without cause.
- f. No elected official and no employee of the City or County may serve as a voting member of the Commission, however, at their election, the mayor and chair-person of the county commission may serve as ex officio non-voting members of the commission; however neither shall count towards the establishment of a quorum.

- 1 g. A quorum shall consist of five (5) members plus the chair-person or vice-chair-
2 person.
- 3 h. The commission, once appointed, shall adopt bylaws.
- 4 i. The commission shall be managed as an advisory board of the city.
- 5 (2) The water and sewer commission shall have the following duties:
- 6 a. To receive public comment and hold public hearings.
- 7 b. To adopt policies to govern the day-to-day operation and maintenance of the
8 water or sewer system operated by the city and the water or sewer system
9 operated by the county, including service connections.
- 10 c. To recommend plans and policies for adoption by the city to govern capital
11 improvements and extensions of the city's water or sewer system.
- 12 d. To recommend plans and policies for adoption by the county to govern capital
13 improvements and extensions of the county's water or sewer system.
- 14 e. To approve extensions of the water or sewer system in accordance with the
15 policies adopted by the city for the city's systems, and the policies adopted by
16 the county for the county's systems.
- 17 f. To conduct studies concerning the construction, operation, maintenance and
18 expansion of the city's systems or the county's systems, in accordance with
19 funds budgeted by the city or county for their respective systems.
- 20 g. To recommend fees, charges, and rates to the city and the county for their
21 respective systems according to classes of service and areas of service, in order
22 to generate sufficient revenue to meet all costs of operating and maintaining the
23 systems, all debt service costs, all operating capital, a reasonable reserve for
24 improvements and enlargements, and all other costs or expenses necessary or
25 desirable for carrying out of the governmental authority and responsibility
26 relating to the provision of water and sewerage services by their respective
27 systems. The City and the County, and not the water and sewer commission,
28 shall be responsible for adopting the fees, charges and rates for their respective
29 systems.
- 30 h. To provide quarterly reports to both the city and the county regarding the
31 performance of all water systems and sewer systems in the county operated by
32 the city or the county.
- 33 i. To make recommendations to the city and the county concerning a new
34 interlocal sewer agreement between the city and the county for the Mud Creek
35 Drainage Basin. Until such time as a new agreement is reached, the existing
36 [Mud Creek Agreement] shall remain in full force and effect, notwithstanding
37 its provisions regarding termination.
- 38 j. To study and advise the city and the county as to the future ownership of the
39 county's water and sewer systems.
- 40 k. Such other duties as may be agreed upon by the city and county by resolution.
- 41 (3) The water and sewer commission shall not have the authority to enter into contracts,
42 nor to issue bonds, or incur any debt. The contracting, and the funding and timing of all
43 capital improvements and the incurrence of debt shall be by the city for the city's systems,
44 and by the county for the county's systems.
- 45 (4) The city and county shall each remain fully financially responsible for their
46 respective water or sewer systems, including incurring debt, and for all costs and expenses
47 for their systems' operation, maintenance and expansion. The monies in the enterprise

1 fund and any interest accrued from investments of these monies will be budgeted, expended
2 and managed by the city or county as to their respective systems, taking into account, but
3 not being bound by, the recommendations of the water and sewer Commission.

4 (5) Staffing for the water and sewer commission shall be by the city staff which shall
5 remain employees of the city, subject to the direction and control of the city manager. The
6 reasonable costs of such staffing services and routine clerical service as well as necessary
7 office space and supplies for the operation of the Commission will be furnished by the city
8 and paid for from water and sewer revenues of the city.

9 (6) Staffing for the maintenance and operation of the city's systems shall be city
10 employees. Staffing for the maintenance and operation of the county's systems shall be
11 county employees, unless otherwise contracted for by the county.

12 (7) The City and the County shall each amend their ordinances to provide consistency
13 with the terms of this section. The city shall retain ordinance making and enforcement
14 authority over the entirety of its water and sewer systems, and the county shall retain
15 ordinance making and enforcement authority over the entirety of its water and sewer
16 systems. To the extent the policies of the water and sewer commission conflict with the
17 ordinances of the city or county, the ordinances shall govern.

18
19 (e) The city shall reduce water rate differential for customers outside of the city but within the
20 county at the rate of 5% per year until rates for customers inside and outside of the City within the
21 county have been equalized. The city shall equalize sewer rates for all customers, both inside the
22 city and outside the city but within the county, within ten (10) years of the date of this agreement.
23 This does not preclude the city council from establishing assessments, fees or rate differentials to
24 cover capital expenditures necessitated by the extensions or additions to the water or sewer system
25 of the city for customers served by such extensions or additions.

26 (f) A city or county shall have the authority to waive or discount water or sewer fees, including
27 but not limited to, system development charges or fees and connection fees, to any housing
28 development providing housing to persons at or below 80% of the area median income. The city
29 or county shall, by ordinance, establish the criteria and standards to govern the application and
30 implementation of any discounted or waived fees.

31 (g) A city or county shall have the authority to waive or discount water or sewer fees, including
32 but not limited to, system development charges or fees and connection fees, for economic
33 development which would qualify for economic development incentives pursuant to G.S. 158-7.1.
34 The city or county shall, by ordinance, establish the criteria and standards to govern the application
35 and implementation of any discounted or waived fees.

36
37 **SECTION 2.** Except as otherwise provided in the other sections of S69, contracts
38 governing the provision of water and sewer services existing between the city and the county are
39 hereby terminated.

40
41 **SECTION 3.** G.S. 160A-58.1 reads as rewritten:

42 **"§ 160A-58.1. Petition for annexation; standards.**

43

44 (e) A city may not require annexation under this section for any property located wholly
45 outside of the Mud Creek Drainage Basin as a condition of receiving sewer service for such
46 property, but may require annexation as a condition of receiving water or sewer service for parcels
47 located in whole or in part within the Mud Creek Drainage Basin upon which is proposed new

commercial or industrial development, or any redevelopment of the parcel which is intended to increase the assessed tax value of the parcel by at least fifty percent (50%).

(f) When a property is annexed into a city's corporate limits, and the property was a part of the taxing district where fire coverage is contracted for by a volunteer fire department prior to the annexation, the City shall contract with such volunteer fire department to provide fire protection services to the property for a minimum of 5 years. The contract shall establish a level of service to be provided by the volunteer fire department consistent with the requirements and standards of the Office of the State Fire Marshal for like departments. Nothing herein shall prevent the City from terminating any such contract entered for failing to provide the established level of service. The city shall compensate the volunteer fire department based on the following formula:

(1) The contract shall apply to all properties annexed by the city from and after January 1, 2015, and during the term of the agreement with the volunteer fire department, including all renewals.

(2) The annual fee paid by the City to such volunteer fire department shall be the amount which is one-half of the *ad valorem* tax which would have been owed and paid on such year's assessed value of the annexed real property or real properties at that year's adopted fire district tax rate that would have applied to the real property but for the annexation.

(3) Fees shall not be paid retroactively.

SECTION 4. G.S. 160D-201 reads as rewritten:

"§ 160A-201. Planning and development regulation jurisdiction.

(a) **Cities.** All of the powers granted by this Chapter may be exercised by any city within its corporate limits and within any extraterritorial area established pursuant to G.S. 160D-202. When a property is annexed into a city's corporate limits pursuant to G.S. Chapter 160A, Article 4A, Part 4, Annexation of Noncontiguous Areas, the City shall, at the time of adopting the annexation ordinance, also adopt a resolution requesting that the county assume jurisdiction for land development regulation under this chapter for the annexed property. The county shall have thirty (30) days from the effective date of the annexation ordinance to adopt a resolution declaring the county's assumption of land development regulation jurisdiction over the annexed property. In the event the county does not adopt a resolution assuming land development regulation jurisdiction within said thirty (30) day time period, the city shall retain land development regulation jurisdiction over the annexed property and NCGS 160D-202(g) shall apply.

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SECTION 5. Session law 2025-_____, Part X, reads as re-written:

PART X. ELIMINATE ETJ IN HENDERSON COUNTY

SECTION 10.1.(a) Notwithstanding the provisions of G.S. 160D-202, no municipality in Henderson County shall exercise any of the powers granted to cities under Chapter 160D of the General Statutes or its predecessor, Article 19 of Chapter 160A of the General Statutes, beyond its ~~contiguous~~ corporate limits.

SECTION 10.1.(b) The relinquishment of jurisdiction pursuant to Section 10.1(a) of this act, over an area that a municipality in Henderson County is regulating under the authority of

Chapter 160D of the General Statutes or its predecessor, Article 19 of Chapter 160A of the General Statutes, shall become effective July 1, 2025.

SECTION 10.1.(c) Upon relinquishment of jurisdiction pursuant to Section 10.1(a) of this act, over an area that a municipality in Henderson County is regulating under the authority of Chapter 160D of the General Statutes or its predecessor, Article 19 of Chapter 160A of the General Statutes, the following shall apply:

- (1) The municipality's regulations and powers of enforcement shall remain in effect until (i) Henderson County has adopted the regulation or (ii) a period of 60 days has elapsed following July 1, 2025, the date the relinquishment becomes effective, whichever is sooner. Prior to the transfer of jurisdiction, Henderson County may hold hearings and take other measures consistent with G.S. 160D-204 that may be required in order to adopt and apply its development regulations for the area at the same time it assumes jurisdiction.
- (2) Any person who has acquired vested rights in a municipality in Henderson County may exercise those rights as if no change of jurisdiction had occurred. Henderson County, in acquiring jurisdiction over the area, may take any action regarding the development approval, certificate, or other evidence of compliance that could have been taken by the municipality pursuant to its development regulations. Except as provided in this subdivision, any building, structure, or other land use in an area over which Henderson County has acquired jurisdiction is subject to the development regulations of Henderson County.

SECTION 6. G.S. 160D-201 reads as rewritten:

"§ 160D-601. Procedure for adopting, amending, or repealing development regulations.

...

(d) Down-Zoning. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning amendment unless such amendment is initiated by the applicable county or municipal government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

(1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

(3) By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element.

SECTION 7. This act applies only to the City of Hendersonville and Henderson County.

SECTION 8. Sections 1-3 of this act shall become effective January 1, 2026. Sections 4-6 of this act shall be effective when this act becomes law.