

PUBLIC INPUT SIGN UP SHEET

PUBLIC INPUT SHALL BE LIMITED TO
THREE (3) MINUTES PER PERSON.

EACH PERSON SHOULD:

- (1) STATE YOUR NAME
- (2) IN WHAT AREA OF THE COUNTY YOU LIVE
- (3) SPEAK IN A CLEAR AND COURTEOUS MANNER.

	<u>NAME</u>	<u>ADDRESS</u>	<u>ISSUE</u>
1.	Patricia Cascard		
✓ 2.	Jessie Maylin		
✓ 3.	DICK BIRD	511 Hidden LAKE	FINANCE
✓ 4.	PATTI KECK		
✓ 5.	ANNA CYMOREK		
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			

HENDERSON COUNTY TAX COLLECTOR

200 NORTH GROVE STREET, SUITE 66

HENDERSONVILLE, NC 28792

PH: (828) 697-5595

FAX: (828) 698-6153

April 17, 2006

Henderson County Board of Commissioners
100 N. King Street
Hendersonville, NC 28792

Re: Tax Collector's Report to Commissioners – 04/19/06 Meeting

Please find outlined below collections information through March 30th for the new 2005 bills mailed out on August 31st, as well as vehicle bills.

Annual Bills G01 Only:

2005 Total Charge: \$43,573,244.32
Payments & Releases: 41,742,332.43
Unpaid Taxes: 1,828,681.72
Percentage collected: 95.80%
(1/01/05– 4/13/06)


Motor Vehicle Bills G01 Only:

2005 Total Charge: \$4,025,587.12
Payments & Releases: 2,893,438.32
Unpaid Taxes: 1,131,019.98
Percentage collected: 71.90%
(1/01/05 – 4/13/06)

Fire Districts All Bills

2005 Total Charge: \$4,993,946.60
Payments & Releases: 4,635,073.83
Unpaid Taxes: 358,506.39
Percentage collected: 92.99%
(1/01/05 – 4/13/06)

Respectfully submitted,


Terry F. Lyda,
Henderson County Tax Collector

Total local option sales tax dollars for Henderson County: \$27,933,655.00

(This figure is the FY2007 estimate from the Henderson County Finance Office of the total amount for both Henderson County and all Henderson County municipalities.)

“Two-Thirds” Option (2/3 of revenue between hypothetical *ad valorem* distribution method baseline for municipalities and hypothetical *per capita* distribution method for municipalities to Henderson County):

	TOTAL SALES TAX RECEIPTS	AMOUNT PAID TO COUNTY	AMOUNT RETAINED BY MUNICIPALITY
Flat Rock	\$370,097.85	\$258,619.48	\$129,309.74
Fletcher	\$975,333.44	\$175,367.59	\$87,683.79
Hendersonville	\$2,570,074.68	\$150,172.66	\$75,086.33
Laurel Park	\$428,373.07	\$49,568.95	\$24,784.48
Mills River	\$593,346.82	\$763,406.31	\$381,703.15

“Sixty Percent” Option (60% of revenue between hypothetical *ad valorem* distribution method baseline for municipalities and hypothetical *per capita* distribution method for municipalities to Henderson County):

	TOTAL SALES TAX RECEIPTS	AMOUNT PAID TO COUNTY	AMOUNT RETAINED BY MUNICIPALITY
Flat Rock	\$395,959.80	\$232,757.53	\$155,171.69
Fletcher	\$992,870.20	\$157,830.83	\$105,220.55
Hendersonville	\$2,585,091.94	\$135,155.40	\$90,103.60
Laurel Park	\$433,329.96	\$44,612.06	\$29,741.37
Mills River	\$669,687.45	\$687,065.68	\$458,043.78

“Fifty Percent” Option (50% of revenue between hypothetical *ad valorem* distribution method baseline for municipalities and hypothetical *per capita* distribution method for municipalities to Henderson County):

	TOTAL SALES TAX RECEIPTS	AMOUNT PAID TO COUNTY	AMOUNT RETAINED BY MUNICIPALITY
Flat Rock	\$434,752.72	\$193,964.61	\$193,964.61
Fletcher	\$1,019,175.34	\$131,525.69	\$131,525.69
Hendersonville	\$2,607,617.84	\$112,629.50	\$112,629.50
Laurel Park	\$440,765.31	\$37,176.71	\$37,176.71
Mills River	\$784,198.40	\$572,554.73	\$572,554.73

.....

NOTES: (1) The column “Amount Retained by Municipality” represents the savings to each municipality under the proposed agreements, rather than what the municipality would receive if the County purely elected the “*ad valorem*” method of sales tax distribution. (2) On the following page are the data from which the above was taken, in a single table.

TS:	\$27,933,655.00							TOTAL
1 County	Flat Rock	Fletcher	Hendersonville	Laurel Park	Mills River		TOTAL	
96,124	2,798	5,121	12,106	2,127	6,038		124,314	
7.32355%	2.25075%	4.11941%	9.73824%	1.71099%	4.85706%		100.00000%	
39,294.15	\$628,717.33	\$1,150,701.03	\$2,720,247.34	\$477,942.02	\$1,356,753.13		\$27,933,655.00	
47,866.02	\$523,118.00	\$1,928,440.36	\$5,420,422.60	\$876,805.99	\$459,801.00		\$55,856,453.97	
3.86690%	0.86200%	3.17771%	8.93184%	1.44481%	0.75767%		100.00000%	
71,735.80	\$240,788.11	\$887,649.65	\$2,494,988.34	\$403,588.59	\$211,643.67		\$27,933,655.00	
7,558.35)	(\$387,929.22)	(\$263,051.38)	(\$225,258.99)	(\$74,353.43)	(\$1,145,109.46)			
	\$258,619.48	\$175,367.58	\$150,172.66	\$49,568.95	\$763,406.31			
	\$232,757.53	\$157,830.83	\$135,155.40	\$44,612.06	\$687,065.68			
	\$193,964.61	\$131,525.69	\$112,629.50	\$37,176.71	\$572,554.73			
36,429.14	\$370,097.85	\$975,333.44	\$2,570,074.68	\$428,373.07	\$593,346.82			
56,715.64	\$395,959.80	\$992,870.20	\$2,585,091.94	\$433,329.96	\$669,687.46			
47,145.39	\$434,752.72	\$1,019,175.34	\$2,607,617.84	\$440,765.31	\$784,198.40			
24,693.34	\$129,309.74	\$87,683.79	\$75,086.33	\$24,784.48	\$381,703.15			
34,979.84	\$155,171.69	\$105,220.55	\$90,103.60	\$29,741.37	\$458,043.78			
75,409.59	\$193,964.61	\$131,525.69	\$112,629.50	\$37,176.71	\$572,554.73			
47,866.02	\$523,118.00	\$1,928,440.36	\$5,420,422.60	\$876,805.99	\$459,801.00		\$55,856,453.97	
3.88105%	0.88459%	3.26097%	9.16588%	1.48267%	0.77752%		100.00000%	
34,361.03	\$247,097.50	\$910,908.79	\$2,560,364.68	\$414,163.85	\$217,189.38		\$59,136,972.20	
35,066.88	(\$381,619.84)	(\$239,792.24)	(\$159,882.66)	(\$63,778.17)	(\$1,139,563.75)		\$0.00	
2,068.11)	(\$123,000.36)	(\$64,424.65)	(\$9,710.00)	(\$14,209.22)	(\$376,157.44)			
2,354.61)	(\$148,862.30)	(\$81,961.41)	(\$24,727.26)	(\$19,166.11)	(\$452,498.07)			
2,784.36)	(\$187,655.23)	(\$108,266.55)	(\$47,253.16)	(\$26,601.46)	(\$567,009.02)			
Fire Districts						Fire Districts	TOTAL LEVY	
						\$4,830,088.00	\$60,686,541.97	
						\$2,223,260.83	\$27,933,655.00	
						\$3,280,518.23	\$59,136,972.20	
						\$0.00	\$26,384,085.23	

Hand-out ent
4-19-06
Staff "A"

DRAFT

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered this ____ day of April, 2006, by and between Henderson County, a body politic and corporate, the Village of Flat Rock, a North Carolina municipal corporation, the Town of Fletcher, a North Carolina municipal corporation, the City of Hendersonville, a North Carolina municipal corporation, the Town of Laurel Park, a North Carolina municipal corporation, and the Town of Mills River, a North Carolina municipal corporation (together the Village of Flat Rock, the Town of Fletcher, the City of Hendersonville, the Town of Laurel Park and the Town of Mills River are sometimes collectively referred to as "the municipalities"), each having the ability and capacity to contract pursuant to the laws of the State of North Carolina;

WITNESSETH:

WHEREAS, by resolutions of the Henderson County Board of Commissioners, hereinafter "Board of Commissioners", local option sales taxes have been levied in Henderson County pursuant to Articles 39, 40, 42, and 44 of Chapter 105 of the North Carolina General Statutes, collectively hereinafter referred to as "local option sales taxes" or "sales taxes"; and

WHEREAS, N.C. Gen. Stat. §§ 105-472, 105-486, 105-501, and 105-520 grant to the Board of Commissioners the right to choose the method by which the local option sales taxes are distributed between Henderson County and the municipalities and other *ad valorem* tax-levying entities located within Henderson County; and

WHEREAS, on April 23, 1971, the Board of Commissioners by Resolution elected for the Article 39 sales tax to be distributed according to the "*per capita* method" of distribution as defined in N.C. Gen. Stat. §105-472(b)(1) (hereinafter "*per capita* method"), and consequently since that time by operation of law all of the local option sales taxes have been distributed according to the *per capita* method; and

WHEREAS, changing to the "*ad valorem* method" of sales tax distribution as defined in N.C. Gen. Stat. §105-472(b)(2) (hereinafter "*ad valorem* method"), would result in an estimated increase in sales tax revenue to Henderson County for fiscal year 2006-2007, but would also result in a corresponding loss in sales tax revenues for the municipalities for fiscal year 2006-2007 (and subsequent years), more particularly an estimated loss of approximately \$387,929.22 for the Village of Flat Rock, \$263,051.38 for the Town of Fletcher, \$225,258.99 for the City of Hendersonville, \$74,353.43 for the Town of Laurel Park, and \$1,145,109.46 for the Town of Mills River; and

WHEREAS, changing to the *ad valorem* method would affect the existing contracts between several volunteer fire departments and several of the municipalities and would therefore impact the provision of fire protection services to the residents of affected municipalities; and

WHEREAS, changing to the *ad valorem* method would necessitate the lowering of fire district *ad valorem* tax rates in fire districts located outside the municipalities within Henderson County (in order to maintain the same level of funding for each volunteer fire department), making each such department reliant on local option sales tax revenue for a substantial portion of its total funding; and

Sales Tax Distri .

WHEREAS, the various volunteer fire departments have notified Henderson County that they prefer for their funding for areas outside the incorporated areas of the municipalities to be wholly through *ad valorem* property taxes, as opposed to partial funding through distribution of a portion of sales tax proceeds, in order to avoid the fluctuations incumbent in annual sales tax revenues; and,

WHEREAS, Chapter 160A, Article 20, Part 1, of the North Carolina General Statutes grant to Henderson County and its municipalities the authority to, by contract, enter into an undertaking involving the joint exercise or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government;

NOW, THEREFORE THIS AGREEMENT, that for and inconsideration of the mutual promises and other good and valuable consideration as provided for hereinbelow, the parties mutually agree as follows:

1. AUTHORITY. This agreement is entered into pursuant to the authority of N.C. Gen. Stat. Chapter 160A, Article 20, Part 1, N.C. Gen. Stat. § 153A-11, N.C. Gen. Stat. § 160A-11, and other laws of the State of North Carolina.
2. TERM, DISSOLUTION AND AUTOMATIC RENEWAL. This agreement shall be in effect from and after the date first stated hereinabove through and including June 30, 2011.
 - a. Notwithstanding, however, any party to this agreement may dissolve this agreement by giving notice to the other parties, at the addresses contained below, by not later than the March 15 which is at least twelve (12) months prior to the beginning of the Henderson County fiscal year in which such party intends the dissolution of this agreement to occur¹. Should such notice be given by any party, Henderson County shall be free to elect any lawful method for distribution of sales tax proceeds during the month of April immediately prior to the beginning of the fiscal year in which the party giving notice of its desire to dissolve this agreement intends the dissolution of this agreement to occur.²
 - b. Further, the term of this agreement shall be deemed to be automatically extended by one year for each fiscal year which is completed without any party giving the notice contemplated in paragraph 2.a, above.
3. UNDERTAKING. The parties to this agreement intend to jointly exercise the right of Henderson County to select the method of sales tax distribution granted by N.C. Gen. Stat. §§ 105-472, 105-486, 105-501, and 105-520. To this end, the parties agree that the sales tax distribution method shall remain the *per capita* method for each fiscal year this agreement remains in effect.
4. OBLIGATION OF HENDERSON COUNTY. Henderson County shall not independently exercise the right to select the method of sales tax distribution granted by N.C. Gen. Stat. §§ 105-472, 105-486, 105-501, and 105-520 for so long as this agreement is in effect. Henderson County shall be deemed to

¹ By way of example, if Town A wished to dissolve this agreement effective with the 2010 Henderson County fiscal year, which begins July 1, 2009, Town A would have to give notice of its intent to Henderson County and the other parties to this agreement by not later than March 15, 2008 (the March 15 which is at least one year prior to the beginning of the Henderson County fiscal year for which the dissolution is effective).

² By way of further example, in the scenario set forth in footnote 1, above, Henderson County could, during April of 2009, elect either the *per capita* method or the *ad valorem* method, effective for the 2010 Henderson County fiscal year.

have fully complied with its obligations for a given fiscal year under this agreement if the April 30 immediately prior to such fiscal year passes without Henderson County adopting a resolution to change to the *ad valorem* method for such fiscal year³.

5. OBLIGATION OF THE VILLAGE OF FLAT ROCK:

- a. In fiscal year 2007, the Village of Flat Rock shall pay to Henderson County the amount of \$193,964.61, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2006, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2007. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
- b. For fiscal year 2008 and each subsequent fiscal year, the annual total of payments pursuant to this agreement from the Village of Flat Rock to Henderson County shall be determined in accordance with paragraph 10, below. Each annual payment shall be paid in twelve (12) equal monthly installments, the first installment to be due July 30 of such fiscal year, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30 of such fiscal year.

6. OBLIGATION OF THE TOWN OF FLETCHER:

- a. In fiscal year 2007, the Town of Fletcher shall pay to Henderson County the amount of \$131,525.69, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2006, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2007. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
- b. For fiscal year 2008 and each subsequent fiscal year, the annual total of payments pursuant to this agreement from the Town of Fletcher to Henderson County shall be determined in accordance with paragraph 10, below. Each annual payment shall be paid in twelve (12) equal monthly installments, the first installment to be due July 30 of such fiscal year, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30 of such fiscal year.

7. OBLIGATION OF THE CITY OF HENDERSONVILLE:

- a. In fiscal year 2007, the City of Hendersonville shall pay to Henderson County the amount of \$112,629.50, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2006, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2007. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
- b. For fiscal year 2008 and each subsequent fiscal year, the annual total of payments pursuant to this agreement from the City of Hendersonville to Henderson County shall be determined in accordance with paragraph 10, below. Each annual payment shall be

³ Again by way of example, Henderson County will fulfill its obligations for the 2008 fiscal year (July 1, 2007, through June 30, 2008) if it does not elect the *ad valorem* sales tax distribution method by April 30, 2007.

paid in twelve (12) equal monthly installments, the first installment to be due July 30 of such fiscal year, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30 of such fiscal year.

8. OBLIGATION OF THE TOWN OF LAUREL PARK:

- a. In fiscal year 2007, the Town of Laurel Park shall pay to Henderson County the amount of \$37,176.71 for FY 2004-2005, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2006, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2007. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
- b. For fiscal year 2008 and each subsequent fiscal year, the annual total of payments pursuant to this agreement from the Town of Laurel Park to Henderson County shall be determined in accordance with paragraph 10, below. Each annual payment shall be paid in twelve (12) equal monthly installments, the first installment to be due July 30 of such fiscal year, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30 of such fiscal year.

9. OBLIGATION OF THE TOWN OF MILLS RIVER:

- a. In fiscal year 2007, the Town of Mills River shall pay to Henderson County the amount of \$572,554.73, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2006, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2007. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
- b. For fiscal year 2008 and each subsequent fiscal year, the annual total of payments pursuant to this agreement from the Town of Mills River to Henderson County shall be determined in accordance with paragraph 10, below. Each annual payment shall be paid in twelve (12) equal monthly installments, the first installment to be due July 30 of such fiscal year, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30 of such fiscal year.

10. DETERMINATION OF MUNICIPAL OBLIGATIONS IN FUTURE YEARS. Each municipality's obligations for future fiscal years shall be determined during the April next prior to the beginning of the Henderson County fiscal year. To determine such amount, the Finance Director of Henderson County and each of the municipalities shall attempt to obtain from the North Carolina Department of Revenue an estimated gross local option sales tax revenue figure for Henderson County for the next subsequent fiscal year. (Should the North Carolina Department of Revenue not provide such a figure, and should in such event the parties not agree upon a figure for estimated local option sales tax revenue for Henderson County, then estimated gross local option sales tax revenue for Henderson County shall be 103% of the estimated annual local option sales tax revenue for the then-current fiscal year.) The "estimated revenue difference" between the distribution of the estimated local option sales tax revenue for Henderson County for the next subsequent fiscal year under the *per capita* method and the *ad valorem* method for each municipality shall be computed using then-current population and *ad valorem* tax levy figures for each party. Each municipality's obligation for the next subsequent fiscal

year shall be fifty percent (50%) of the estimated revenue difference for such next subsequent fiscal year as so calculated.

11. SALES TAX REVENUES. The parties agree that for so long as this agreement is in effect each party shall be entitled to retain all sales tax revenues distributed to them by the State of North Carolina Department of Revenue in accordance with the *per capita* method of distribution. Notwithstanding any other provision contained herein to the contrary, any payments due to Henderson County shall be forgiven and shall not be due and payable for any month when sales tax revenues collected during such month are not distributed by the State of North Carolina to the Village of Flat Rock, the Town of Fletcher, the City of Hendersonville, the Town of Laurel Park and the Town of Mills River.

12. AMENDMENT OR TERMINATION. This agreement constitutes the entire agreement of the parties hereto and may not be amended or terminated except as is stated herein or by a written instrument, duly approved by resolution of all of the parties.

13. TERMINATION FOR *FORCE MAJEUR*: This agreement may be immediately terminated at the option of any party for fiscal years subsequent to the occurrence of the following:

- a. The formation of an incorporated municipality within (in whole or in part) Henderson County which is not a party to this agreement.
- b. The occurrence of any event or series of events which results in the decrease in optional sales tax revenue for Henderson County to a level below 75% of the estimated gross local option sales tax revenue figure for Henderson County for the next subsequent fiscal year used, pursuant to paragraph 10, above, in determining the municipalities' obligations to Henderson County for a subsequent fiscal year.

14. THIRD PARTY BENEFICIARIES. There are no intended or incidental third party beneficiaries to this agreement.

15. NOTICE. Any written notice related to this agreement given by one party to the other parties shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the person named below:

TO HENDERSON COUNTY:	Chairman, Henderson County Board of Commissioners 100 North King Street Hendersonville, NC, 28792
TO THE VILLAGE OF FLAT ROCK:	Mayor, Village of Flat Rock Post Office Box 1288 Flat Rock, NC 28731
TO THE TOWN OF FLETCHER	Mayor, Town of Fletcher 4005 Hendersonville Road Fletcher, NC 28732
TO THE CITY OF HENDERSONVILLE	Mayor, City of Hendersonville City Hall Post Office Box 1670 Hendersonville, NC 28793

TO THE TOWN OF LAUREL PARK Mayor, Town of Laurel Park
441 White Pine Drive
Laurel Park, NC 28739

TO THE TOWN OF MILLS RIVER: Mayor, Town of Mills River
Post Office Box 189
5406 Boyleston Highway, Suite 3
Horse Shoe, NC 28742

16. SEVERABILITY. A determination by any court of competent jurisdiction that any term, phrase, paragraph, covenant or condition of this agreement, is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms, phrases, paragraphs, covenants or conditions of this agreement.

17. NONASSIGNMENT. Neither this agreement, nor the right to payment hereunder, may be assigned by any party.

18. REMEDIES:

- a. Breach by County. In the event Henderson County breaches this agreement by unilaterally exercising the right to choose the sales tax distribution method in violation of this agreement, then any obligation of the municipalities to make payments to Henderson County under this agreement shall immediately terminate.
- b. Breach by the Village of Flat Rock: In the event the Village of Flat Rock breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is due any payment owed under paragraph 5 of this agreement, the Village of Flat Rock shall pay to the County the benefit of the County's bargain with the Village of Flat Rock under this agreement.
- c. Breach by the Town of Fletcher: In the event the Town of Fletcher breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is due any payment owed under paragraph 6 of this agreement, the Town of Fletcher shall pay to the County the benefit of the County's bargain with the Town of Fletcher under this agreement.
- d. Breach by the City of Hendersonville: In the event the City of Hendersonville breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is due any payment owed under paragraph 7 of this agreement, the City of Hendersonville shall pay to the County the benefit of the County's bargain with the City of Hendersonville under this agreement.
- e. Breach by the Town of Laurel Park: In the event the Town of Laurel Park breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is due any payment owed under paragraph 8 of this agreement, the Town of Laurel Park shall pay to the County the benefit of the County's bargain with the Town of Laurel Park under this agreement.
- f. Breach by the Town of Mills River: In the event the Town of Mills River breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is

due any payment owed under paragraph 9 of this agreement, the Town of Mills River shall pay to the County the benefit of the County's bargain with the Town of Mills River under this agreement.

19. CONSTRUCTION. This agreement shall be deemed to have been prepared equally by the parties, all of which has access to legal counsel, and shall not be construed more strictly against any of them.

20. APPLICABLE LAW. The interpretation, enforcement and performance of this agreement shall be governed by the laws of the State of North Carolina.

21. COUNTERPARTS. This agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been duly ratified by resolution of the governing board of each party and duly executed all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.

The remainder of this page is left intentionally blank.

IN WITNESS HEREOF, the parties have caused this Agreement to be duly ratified by resolution of their governing boards and have caused this Agreement to be duly executed in their respective names and sealed in six counterparts, each to have the force and effect of an original to be effective as of the date first written hereinabove.

ATTEST: (County Seal)

Clerk to the Board of Commissioners

ATTEST: (Village Seal)

Town Clerk

ATTEST: (Town Seal)

Town Clerk

ATTEST: (City Seal)

City Clerk

ATTEST: (Town Seal)

Town Clerk

ATTEST: (Town Seal)

Town Clerk

HENDERSON COUNTY



BY: _____
Chairman, Board of Commissioners

VILLAGE OF FLAT ROCK

BY: _____
Mayor

TOWN OF FLETCHER

BY: _____
Mayor

CITY OF HENDERSONVILLE

BY: _____
Mayor

TOWN OF LAUREL PARK

BY: _____
Mayor

TOWN OF MILLS RIVER

BY: _____
Mayor

Latest ewc
4-19-06

AN ORDINANCE TO PREVENT CERTAIN PUBLIC NUISANCES

The Board of Commissioners of Henderson County makes the following findings:

1. There exists a problem within Henderson County with abandoned motor vehicles, manufactured homes and other solid waste accumulating on property in a manner to cause a likelihood of injury and illness, in a manner prejudicial to the public health and safety, and in a manner which is contrary to the policy of Henderson County regarding the disposal of solid waste.
2. Section 153A-132 of the North Carolina General Statutes gives Henderson County the power to provide for the removal and disposal of "abandoned motor vehicles" and "junked motor vehicles".
3. Section 153A-136 of the North Carolina General Statutes gives Henderson County the power to "regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes."
4. Section 153A-140 of the North Carolina General Statutes gives Henderson County the power "to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety."

THEREFORE, in order to correct the problems observed and found existing in Henderson County, and pursuant to the authority granted by the General Statutes of North Carolina, the Board of Commissioners of Henderson County enacts the following

<u>SECTION 1</u>	Purpose
<u>SECTION 2</u>	General Provisions
<u>SECTION 3</u>	Definitions
<u>SECTION 4</u>	Administration
<u>SECTION 5</u>	Investigation and Response to a Public Nuisance
<u>SECTION 6</u>	Costs and Reimbursements
<u>SECTION 7</u>	Appeals
<u>SECTION 8</u>	Disclaimer Of Liability
<u>SECTION 9</u>	Fees
<u>SECTION 10</u>	Penalties
<u>SECTION 11</u>	Separability
<u>SECTION 12</u>	Captions
<u>SECTION 13</u>	Effective Date

SECTION -1: PURPOSE.

126-1.01 Purpose. This Ordinance is enacted to protect the health, safety, and general welfare of the people of Henderson County pursuant to powers granted under NC General Statutes Sections 153A-132, 153A-136, and 153A-140, the Henderson County Code, and subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted in the future.

126-1.02 Objectives. The principal objectives of this Ordinance are:

- A.** To prevent injury and illness to occupants of property and the public and to remove public nuisances.
- B.** To provide countywide standards for the abatement of public nuisances including, but not limited to solid waste, junked motor vehicles and abandoned manufactured homes.
- C.** To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public nuisances.
- D.** To ensure proper actions are taken to abate public nuisances.

SECTION -2: GENERAL PROVISIONS

126-2.01 Jurisdiction. This Ordinance shall apply to all property located in the Henderson County Zoning Jurisdiction.

126-2.02 Exception. This ordinance shall not regulate property being actively used as a Bona Fide farm which is any tract of land containing at least three (3) acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry and including facilities for the sale of such products from the premises where produced provided that, a farm shall not be construed to include commercial poultry and swine production, cattle feeder lots and furbearing animal farms.

126-2.03 Prohibitions. The creation or maintenance of a public nuisance is prohibited. The following are hereby expressly declared to be public nuisances:

- A. Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.
- B. An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.
- C. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent-proof container designed or reasonably adapted for such purpose.
- D. Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death.
- E. Significant outdoor storage of solid waste including but not limited to: decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, furnaces, home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all terrain vehicles, toys, bicycles, junk or any other substances in which flies, mosquitoes, other disease carrying insects, rodents or other vermin can harbor.
- F. Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.
- G. Any junked motor vehicles without a current Vehicle Restoration Permit and/or any abandoned manufactured home as defined below.
- H. Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.
- I. Breeding grounds which support mosquito larvae and mosquitoes capable of carrying West Nile Virus, La Crosse Encephalitis Virus, or any other disease causing microorganism.
- J. Use of a Recreational Vehicle as a primary residence without permitted electric, water, and sewerage connections.
- K. Recreational vehicles used to store solid waste.

126-2.04 Outdoor Storage. Outdoor storage shall not be allowed between any building and the right-of-way on the side of the property which is the "front" of the property for zoning purposes. Such storage shall not exceed one-third of the rear yard area, shall not be closer than ten feet to the side lot lines or an alley and shall be at least 15 feet from any street. Use of land for outdoor storage of items not related to the property's use in relation to any zoning permit granted for the property shall not be permitted. Outdoor storage by a business is allowed so long as a part of the business and in compliance with a valid zoning permit.

SECTION 3: DEFINITIONS. Definitions of words, phrases, and terms used in this Ordinance shall be those set forth in North Carolina Statutes Chapters 153A-132, Henderson County Code and this section.

1. **Abatement** means the proper removal and/or containment of substances or materials hazardous to humans and/or the environment. Abatement is part of remediation.
2. **Abandoned Manufactured Home** means a manufactured home that has not had legal power or was not properly connected to a permitted septic system and water supply in the last 6 months, not to be interpreted to include a manufactured home stored or parked in accordance with a valid zoning permit.
3. **Board of Commissioners** means the currently elected Henderson County Board of Commissioners and may be referred to as “the Board” or “the County Board”.
4. **Building** means any structure having a roof supported by columns or by enclosed walls and intended for shelter, housing or enclosure of persons, animals or chattels.
5. **County** means Henderson County.
6. **Department** means the County Department responsible for enforcing this ordinance and may be referred to as “the Department”.
7. **Junked Motor Vehicle** means a motor vehicle that does not display a current license plate or vehicle registration.
8. **Junk** means litter, debris, waste materials or any kind, dead animals, used or unserviceable automobile and machinery parts, used and non-functional furniture and appliances, and used and non-functional tools, equipment, and implements, but shall not include compost piles for normal, personal or non-commercial use, in their proper location.
9. **Manufactured Home** means a single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act 1974 (which became effective June 15, 1976), as amended. For purposes of this chapter, however, the term includes mobile homes.
10. **Occupant** means any person who occupies real property, whether with or without any right, title or interest in the property, and any person in possession or charge of such property, in the event the owner resides or is located elsewhere.
11. **Owner** means any person, persons, organization, or corporation that owns, in whole or in part, the land, structure, or other property or is the purchaser of the property under contract for deed.
12. **Park Model (Recreational Vehicle)** means a vehicle which is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is self-propelled or permanently towable by a light duty truck and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel, and seasonal use. Recreational vehicles are not subject to the Manufactured Home Construction and Safety Standards.
13. **Personal property** means all property other than that defined in 13, 16, and 17 of this section that is subject to ownership.
14. **Property** means publicly or privately owned real property including parcels of land, buildings or structures.
15. **Property agent** means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.
16. **Public nuisance** means any activity or failure to act that adversely affects the public and shall include, but is not limited to, any condition which poses an immediate and direct hazard to human health if left unheeded due to the existence of the condition

itself or due to the immediate threat of transmission of disease through insects, animals, or other means of transmission or infections.

17. **Real property**, real estate, and land means not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging or in any way appertaining to the property. These terms also mean a manufactured home as defined in G.S. 143-143.9(6) if it is a residential structure; has the moving hitch, wheels, and axles removed; and is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed and where the lease expressly provides for disposition of the manufactured home upon termination of the lease. A manufactured home as defined in G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property.
18. **Vehicle Restoration Permit** means a permit that allows persons to actively restore an unlicensed and unregistered vehicle.
 1. Persons storing any motor vehicle for more than 30 days outside a fully enclosed permanent structure for the purpose of restoration shall obtain a Vehicle Restoration Permit from the department.
 2. This permit shall allow for one restoration vehicle and up to one parts vehicle that must be compatible with the vehicle being restored.
 3. The permit allows for outdoor storage of the vehicle(s) for a period of up to six (6) months.
 4. A maximum of two (2) six (6) month extensions may be granted upon request, provided substantial progress can be proven in the restoration of the vehicle at each extension interval.
 5. Progress will be measured by receipts for the purchase of parts or services or visible reconstruction or deconstruction.
 6. At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil or becoming a harborage for vermin.
 7. Upon the permit expiration date, the vehicle shall be removed or placed inside a fully enclosed building as required by this Ordinance.
 8. The permit shall be placed in the vehicle in a location viewable from outside the vehicle.

SECTION 4: ADMINISTRATION.

126-4.01 Henderson County Ordinances. Except where otherwise specified, this Ordinance is subject to all provisions of the Henderson County Code.

126-4.03 Declaration as a public nuisance.

- A. It shall be the duty of the department to determine whether or not a public nuisance exists.
- B. For purposes of emergency response and notification to applicable authorities and

posting for the public, a zoning enforcement officer may determine that a structure, property, or portion of a property constitutes a public nuisance pursuant to a memorandum of understanding with the Henderson County Department of Public Health.

126-4.04 Modifications to or dismissal of the public nuisance declaration.

- A. The department may modify conditions of the declaration or dismiss the declaration of a public nuisance.
- B. Such modifications or dismissal shall occur only after the department has confirmed that the violation no longer exists.
- C. The department will base its criteria for determining levels of contamination on the best health and safety information available at the time of the remediation and cannot be held liable for future discoveries.
- D. For good cause shown, the owner or occupant may request authorization from the department for an extension of time to complete abatement activities. The department may grant such extension if the extension does not increase the risk to public or safety and is deemed appropriate by the department. An extension will be no longer than 30 days and must show substantial improvement or the completion of that deadline will result in penalty.

126-4.05 Access to premises and records. The owner or occupant shall, upon the request of the department and after proper identification, permit access to all parts of the site or structure as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this Ordinance. If the occupant will not permit entry upon the property, the department shall complete the requirements of an Administrative Search Warrant in order to inspect the complaint.

126-4.06 Interference with the department. No person shall in any way interfere with or hinder the department in the performance of duties, or refuse the department access to gather information necessary to ascertain compliance with this Ordinance.

SECTION 5: INVESTIGATION AND RESPONSE TO A PUBLIC NUISANCE.

126-5.01 DEPARTMENT owner notification. Upon declaration of a public nuisance, the DEPARTMENT shall give written notice of its determination and orders to abate the nuisance to the owner, occupant and property agent, if applicable. This notice shall be served in person, by regular mail, or by an officer authorized to serve a warrant and contain the following:

- A. Property location by street address, parcel identification number, or other property description.
- B. Information identifying the nature of the public nuisance at the property.
- C. A summary of the owner's and occupant's responsibilities under this Ordinance.
- D. Specific orders for abatement or remediation of the public nuisance.
- E. A date for completion of the abatement not to exceed thirty days following the receipt

of the notice unless a shorter time is required due to the department's further determination that the immediate abatement is necessary to protect public and safety. In such cases, the reason for a shortened abatement period shall be specified.

F. Information regarding a right of appeal as provided in Section 7 of this Ordinance and that, unless the threat to public is abated or removed in accordance with the terms of the notice, the department will have the public nuisance abated or removed at the expense of the owner under the provisions of North Carolina Statutes 153A-132, this Ordinance, or other applicable state or local law.

126-5.02 Unknown or absent property owner. In the event the owner of the property is unknown or absent and has no known representative upon whom the notice can be served, the department shall post a written or printed notice on the property stating that, unless the threat to the public is abated or removed within thirty days, the department will have the public nuisance abated or removed at the expense of the owner under the provisions of North Carolina Statutes 153A-132, this Ordinance, or other applicable state or local law.

126-5.03 Public notification. The department shall provide information in writing about the public nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

- A. Child Protection Division in situations of potential child maltreatment or endangerment,
- B. Adult Protection Division in situations of potential vulnerable adult maltreatment or endangerment,
- C. Neighbors in close proximity likely to be affected by the conditions found at the site,
- D. The local municipal clerk,
- E. Local Law Enforcement Officer, or
- F. Other state and local authorities that may have public or environmental protection responsibilities.

126-5.04 Warning sign. The department shall post a warning sign when deemed necessary to further protect the public and safety. The warning sign shall be posted on the entrance(s) of the structure or property and contain information sufficient to alert visitors or returning occupants to the site that it may be dangerous to enter and that entry is prohibited unless authorized by the department or the law enforcement department posting the sign. Any person other than the department or its designated agent that removes a warning sign shall be in violation of this Ordinance. A draft sign is attached to this ordinance as Appendix A.

126-5.05 DEPARTMENT abates public nuisance. If the owner, property agent or occupant, fails or neglects to comply with the requirements in the notice provided under Section 5.01 of this Ordinance, then the department shall abate or remediate the public nuisance described in the notice. The department will recoup such costs as necessary to abate the public nuisance as provided in Section 6 of this Ordinance.

126-5.06 Vacating the public nuisance order. Upon department verification of proper abatement, remediation or removal at the site, the department shall issue written notice to those persons served notice under section 5.01 of this Ordinance that the public nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under section 5.03 of this Ordinance.

SECTION 6: COSTS AND REIMBURSEMENTS.

126-6.01 Recovery of costs.

A. If the department is required to remove, abate or remediate a public nuisance; the County shall make every reasonable effort to recover costs incurred in removal, abatement or remediation in a civil action. The cost of enforcement action under this Ordinance may be assessed and charged against the real property on which the public nuisance was located. The County shall extend the cost as assessed and charged against said real property.

B. When the estimated cost of abatement and remediation exceeds seventy-five percent of the County Assessor's market value of the structure, the County Manager or designee, is authorized to notify the property owner of the County's intent to remove and dispose of the affected property instead of proceeding with abatement and remediation. For motor vehicles, the County will use the Kelley Blue Book value or equivalent in determining market value.

C. Nothing herein precludes or limits the County from seeking recovery of costs through other methods allowed by federal or state law.

126-6.02 Subrogation Rights. Nothing in this Ordinance is intended to limit the subrogation rights of any party and the owner occupants. The County shall maintain the right to recover costs, referenced in this section, from persons contributing to the damage.

SECTION 7: APPEALS.

126-7.01 Right of Appeal. When a public nuisance is declared, an owner and/or an occupant of the affected property may appeal the declaration, including an order for abatement or remediation from the department, by filing a written request with the Henderson County Zoning Board of Adjustment for an administrative hearing within ten calendar days of the date of service under sections 5.01. In the event of an unknown or absent property owner, the appeal must be requested within ten calendar days of the day of posting of the notice under section 5.02.

126-7.02 Hearing. If any owner or occupant makes a written request to the Zoning Board of Adjustment for hearing, such hearing shall be held before the Zoning Board of Adjustment.

126-7.03 Schedule. The hearing shall be held at the next available meeting after the request for a hearing was received.

126-7.04 Notice. The department shall mail a notice to the appealing party of the time and place of the hearing at least ten calendar days prior to the hearing.

126-7.05 Witnesses and Evidence. All parties shall have full opportunity to respond to and present evidence and witnesses.

126-7.06 Standard of Proof. The appellant shall have the burden of proving its position by clear and convincing evidence.

126-7.07 Rules of Evidence. Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.

126-7.08 Record of Hearing. The hearing shall be recorded and the minutes of the meeting shall be approved by the Zoning Board of Adjustment at their next scheduled meeting.

126-7.09 Notice of Decision. The decision of the **Zoning Board of Adjustment** shall be issued within ten calendar days following the hearing. Unless otherwise provided by law, the decision of the Zoning Board of Adjustment shall constitute the final decision.

126-7.10 Further Appellate Rights. Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than thirty calendar days after the party receives the final decision from the County Zoning Board of Adjustment.

SECTION 8: DISCLAIMER OF LIABILITY. Liability on the part of, or a cause of action against, Henderson County or any officer, employee or agent thereof for any damages that may result from administration and enforcement of this Ordinance shall be limited as provided by North Carolina Statutes 153A-132.

SECTION 9: FEES. Fees for the department complaint investigation, verification, administration, and enforcement of violations of this Ordinance shall be those established by resolution, as amended from time to time, of the Henderson County Board of Commissioners.

SECTION 10: PENALTIES.

126-10.01 Misdemeanor. Any person who violates this Ordinance, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the department, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. Each day of violation constitutes a separate offense. Violation of this ordinance shall be prosecuted under Henderson County Code § 1-14 Violations and Penalties A. Criminal Penalties.

126-10.02 Civil Remedies. In the event of a violation or threat of violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations. The County Attorney enforcing provisions of this Ordinance may seek costs and expenditures, including staff time and attorneys' fees. Violation of this ordinance shall be prosecuted under Henderson County Code § 1-14 Violations and Penalties B. Civil Penalties.

126-10.03 Citations. Whenever the department discovers a violation of this Ordinance, a citation may be issued to the person charged with the violation, or in case of a corporation or municipality, to any officer or agent expressly or impliedly authorized to accept such issuance.

SECTION 11: SEPARABILITY. If any provision of this Ordinance is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance.

SECTION 12: CAPTIONS. The captions printed in boldfaced type before the sections of this Ordinance are mere catch words to indicate the content of the section.

SECTION 13: EFFECTIVE DATE. After passage by the Henderson County Board of Commissioners, this Ordinance shall take effect on July 1, 2006 and enforcement efforts will begin September 1, 2006.

APPENDIX A

WARNING!

**THIS PROPERTY IS IN VIOLATION
OF THE HENDERSON COUNTY
PUBLIC NUISANCE ORDINANCE.**

**DUE TO THE AMOUNT OF OUTDOOR
STORAGE, THIS PROPERTY HAS
BEEN DETERMINED TO BE
UNSAFE.**

THIS PROPERTY IS IN VIOLATION AS:

- A HARBORAGE FOR VERMIN
- A SOLID WASTE VIOLATION
- A JUNKYARD BECAUSE OF JUNKED
CARS, ABANDONED MANUFACTURED
HOMES, OR OUTDOOR STORAGE
- AN ENVIRONMENTAL NUISANCE

§ 1-1. Henderson County Public Nuisance

VEHICLE RESTORATION PERMIT

Name _____

Address _____

Make / Model Vehicle V.I.N.# _____

1. Persons storing any motor vehicle for more than 30 days outside a fully enclosed permanent structure for the purpose of restoration shall obtain a Vehicle Restoration Permit from the department.
2. This permit shall allow for one restoration vehicle and up to one parts vehicle that must be compatible to the vehicle being restored.
3. The permit allows for outdoor storage of the vehicle(s) for a period of up to six (6) months.
4. A maximum of two (2) six (6) month extensions may be granted upon request, provided substantial progress can be proven in the restoration of the vehicle at each extension interval.
5. Progress will be measured by receipts for the purchase of parts or services or visible reconstruction or deconstruction.
6. At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil or becoming a harborage for vermin.
7. Upon the permit expiration date, the vehicle shall be removed or placed inside a fully enclosed building as required by this Ordinance.
8. The permit shall be placed in the vehicle in a location viewable from outside the vehicle.

I, the undersigned have read and understand the requirements of this permit

Signature: _____

Date: _____

(office use only)

Date _____

Permit Fee: \$ _____

Permit # _____

Expiration Date: _____