

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 7 July 2008

SUBJECT: Revision to charter and bylaws of Henderson County
Historic Courthouse Corporation

ATTACHMENT(S): Draft amendment to Articles of Incorporation
Draft amended By-Laws

SUMMARY OF REQUEST:

The Board is requested to amend the charter and bylaws of the Henderson County Historic Courthouse Corporation. The Amendment would increase the Board of Directors of the Corporation to nine voting members, and add two non-voting *ex officio* members (one a member of this Board, and the other a member of the Travel and Tourism Committee).

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of amendments.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the Third Articles of Amendment to the Articles of Incorporation of Henderson County Historic Courthouse Corporation, and further approve the amended By-Laws.

Third Articles of Amendment to the

Articles of Incorporation of

Henderson County Historic Courthouse Corporation

A Non-Profit Corporation

We, the duly elected and qualified Board of Directors of the Henderson County Historic Courthouse Corporation, a North Carolina Non-Profit Corporation, with the assent of the Henderson County Board of Commissioners, hereby act to amend the Articles of Incorporation of the Henderson County Historic Courthouse Corporation, a Non-Profit Corporation, as follows:

1. Article "VI – Directors" is hereby modified as follows:

(1) The first sentence of the first paragraph thereof is stricken and replaced with the following:

The Board of Directors shall consist of nine (9) voting Directors, and two (2) non-voting Directors, shall be elected in the manner stated herein.

(2) The portion thereof beginning with the sentence "This Board of Directors shall serve until their successors are elected" and through the end of Article "VI – Directors" is stricken, and replaced with the following:

The initial Director 8 and Director 9 shall be appointed by the Board of Commissioners of Henderson County. All Directors, voting and non-voting, including successors, shall be elected by the Board of Commissioners of Henderson County. Voting Directors shall be elected in three groups.

The first group, including Director 1, Director 2 and Director 3, shall serve for a term ending 30 June 2008, or until the election of their successors.

The second group, including Director 4, Director 5, and Director 6, shall serve for a term ending 30 June 2009, or until the election of their successors.

The third group, including Director 7, Director 8 and Director 9, shall serve for a term ending 30 June 2010, or until the election of their successors.

One non-voting Director shall be a member of the Board of Commissioners of Henderson County, and shall serve for a term of one year, ending each 31 December, or as soon thereafter as a successor is elected by the Board of Commissioners from among its membership.

One non-voting Director shall be a member of the Henderson County Travel and Tourism Committee, and shall serve for a term of one year, ending each 31 December, or as soon thereafter as a successor is elected by the Board of Commissioners from among the membership of the Henderson County Travel and Tourism Committee.

Successor voting Directors shall serve terms of three years thereafter. Voting Directors may serve no more than two consecutive full three-year terms.

The Chair of the Board of Directors shall be elected by the Board of Commissioners of Henderson County each year, and shall serve an annual term ending 31 December each year, or until a successor is elected by the Board of Commissioners.

Voting Directors may only be removed for cause as allowed by North Carolina law.

2. Article "XIII – Amendments to the Articles of Incorporation and Bylaws" is hereby modified by striking the same, and replacing it with the following:

Neither these Articles of Incorporation nor the Bylaws may be amended in a way to prevent the corporation from qualifying as an exempt organization pursuant to Section 501(c)(3) of the Code. Amendments to the Articles of Incorporation or the Bylaws may be made by the Board of Commissioners of Henderson County. Amendments to the Bylaws may be made by the Board of Commissioners of Henderson County, or by the Board of Directors, subject to the approval of the Board of Commissioners of Henderson County.

3. Except as expressly modified hereby, the existing Articles of Incorporation are unmodified, and remain in full force and effect.

IN WITNESS WHERE, we, the Board of Commissioners of Henderson County, have executed and acknowledged these Third Articles of Amendment of Articles of Incorporation of Henderson County Historic Courthouse Corporation, this the _____ day of _____, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

_____[SEAL]
WILLIAM MOYER, Chairman

_____[SEAL]
CHARLIE MESSER, Vice Chairman

_____[SEAL]
LARRY YOUNG

_____[SEAL]
CHUCK McGRADY

_____[SEAL]
MARK WILLIAMS

Attest:

Clerk to the Board of Commissioners

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, a Notary Public of said County and State, do hereby certify that William Moyer, Charlie Messer, Larry Young, Chuck McGrady and Mark Williams, personally appeared before me this day, and acknowledged the due execution of the foregoing Instrument.

Witness my hand and seal, this the _____ day of _____, 2008.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, a Notary Public of said County and State, do hereby certify that _____, Secretary to the Board of Commissioners of Henderson County personally appeared before me this day, and acknowledged the due execution of the foregoing Instrument on behalf of the Board of Commissioners by the Chairman thereof after action duly taken by such Board.

Witness my hand and seal, this the _____ day of _____, 2008.

Notary Public

My commission expires:

BYLAWS
OF
HENDERSON COUNTY HISTORIC COURTHOUSE CORPORATION

ARTICLE I
Name and Seal

The name of the corporation is Henderson County Historic Courthouse Corporation (hereinafter sometimes “the corporation”).

The seal of the corporation will be circular in form which shall bear the legend “Corporate Seal of Henderson County Historic Courthouse Corporation”, and words indicating that the corporation was incorporated in North Carolina.

ARTICLE II
Purposes of the Corporation

The corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code for the United States of America (as the same now exists or may be hereafter be amended, hereinafter “the Code”), including the operation of an educational and historical museum and exhibit space within the Henderson County Historic Courthouse structure.^a

ARTICLE III
Members

The corporation shall have no members.

ARTICLE IV
Offices and Registered Agent

1. Offices. The corporation continuously shall maintain in North Carolina a registered office at such place as may be designated by the Board of Directors. The principal office of the corporation and such other offices as it may establish shall be located at such place(s) within North Carolina as may be designated by the Board of Directors.

^a The operation of an educational and historical museum and exhibit space within the Henderson County Historic Courthouse structure is defined to mean “the offering for public display galleries, displays, artifacts, collections, archives, libraries, demonstrations, performances and other similar exhibitions relating to the history, culture, heritage, and the story of the founding settlement and development of Henderson County, the state of North Carolina, and the United States, up to the present. Such museum will collect, preserve, research, exhibit, and interpret a collection of historical and cultural artifacts. It will serve the inhabitants of Henderson County and the surrounding area by carrying out these functions and by its emphasis on special activities at the museum.”

2. Agent. The corporation continuously shall maintain within North Carolina a registered agent.

3. Changes. Any change in the registered office or registered agent of the corporation shall be accomplished in compliance with the North Carolina Non-Profit Corporation Act.

ARTICLE V

Board of Directors for the Corporation

1. General Powers and Duties. The property, business, and affairs of the corporation shall be managed, controlled, and directed by a Board of Directors (sometimes referred to herein as “the Board”). The Board of Directors shall have, and may exercise, any and all powers provided in the Articles of Incorporation or the North Carolina Non-Profit Corporation Act that are necessary or convenient to carry out the purposes of the corporation and which support and foster the purposes of the corporation as established in these Bylaws.

2. Composition. The Board of Directors (except for the Initial Board of Directors named in the Articles of Incorporation, as amended) shall consist of nine regular Directors and two non-voting Directors, all appointed by the Board of Commissioners of Henderson County.

A. Regular Directors: The initial regular Directors of the corporation are those persons named in the Articles of Incorporation, as amended.

B. The two non-voting Directors shall be as stated in the Articles of Incorporation, as amended.

C. Successor Directors and Terms shall be as stated in the Articles of Incorporation, as amended.

3. Officers of the Board.

A. The Chair shall preside at all meetings of the Board of Directors and perform such other duties as may be directed by the Board. The Chair shall be elected as provided in the Articles of Incorporation, as amended.

B. The Vice Chair shall preside at all meetings of the Board in the absence of the Chair, and shall perform such other duties as may be directed by the Board. The Vice Chair shall be elected at each annual meeting of the Board by the Board of Directors from among its members.

C. Secretary. The Board shall elect at each annual meeting of the Board from among its members a Secretary who, with the assistance of the corporation staff, shall be responsible for keeping an accurate record of the proceedings and actions of the Board. The Secretary of the Board shall also be the Secretary of the corporation. The Secretary shall have the custody of the corporate seal and shall maintain a current record of all the persons who are Directors of the corporation, showing their respective places of residence, and such book shall be open for inspection as prescribed by law. Subject to the control of the Board of Directors, the Secretary shall in general perform all the duties incident to the office of Secretary, and shall perform such other duties as the Board may assign.

D. Treasurer. The Board shall elect at each annual meeting of the Board from among its

members a Treasurer of the Corporation, who shall have the custody of all funds, property, and securities of the corporation, subject to such regulations as the Board of Directors may impose. The Treasurer shall be required to give bond, at the cost of the corporation, for the faithful performances of his duties in such sum and with such sureties as the Board may require. When necessary or proper, the Treasurer, on behalf of the corporation, may endorse for collection checks, notes, and other obligations, and shall deposit the proceeds to the credit of the corporation at such bank or banks as the Board may designate by resolution as depository. The Treasurer shall sign all receipts and vouchers and, together with such other officer or officers, if any, as shall be designated by the Board the Treasurer shall sign all checks of the corporation and all bills of exchange issued by the corporation, except in cases where the signing and execution thereof shall be expressly assigned by the Board or by these Bylaws to some other officer or agent of the corporation. The Treasurer shall make such payments as may be necessary or proper to be made on behalf of the corporation. The Treasurer shall maintain full and accurate books of account reflecting the transactions, assets, and obligations of the corporation and shall exhibit such books at all reasonable times to any Director on application at the offices of the corporation. In general, the Treasurer shall perform all the duties incident to the office of Treasurer, subject to the control of the Board.

4. Compensation. Members of the Board may receive reasonable travel and subsistence expenses. No further compensation shall be allowed to members of the Board.

5. Resignation. A Director may resign at any time by giving notice thereof in writing to the Chair. In the event of a resignation, a new director shall be appointed in the manner provided herein for successor directors. The new director shall complete the term of the resigned director.

ARTICLE VI Officers of the Corporation

1. Officers. The officers of the corporation shall be the Chief Executive Officer, a Secretary (who shall also be the Secretary of the Board of Directors, as stated above), a Treasurer (who shall be a director, as stated above), and any other officers that the Board of Directors may designate. Individuals to serve in these capacities shall be designated by the Board of Directors and given powers and duties consistent with these Bylaws. No two offices may be held by the same persons.

2. Chief Executive Officer. The Chief Executive Officer shall be elected by a majority of the Board of Directors, and may not be a Director of the corporation. The Board of Directors and the Chief Executive Officer elected by them may enter into an employment contract (subject to the provisions of Article VI., Section 3. and Article VI. Section 4. of these By-Laws, below) for the Chief Executive Officer. The Chief Executive Officer shall have and exercise general charge and supervision of the day-to-day affairs of the corporation (including authority to hire and dismiss employees), and shall perform such other duties as the Board of Directors may assign.

3. Compensation. The Board of Directors shall fix the compensation of the Chief Executive Officer of the corporation.

4. Removal. Any officer of the corporation may be removed from office upon five-sevenths vote of the membership of the Board of Directors then in office at any regular or special meeting called for that purpose. Any officer of the corporation proposed to be removed shall be entitled to at least five days notice in writing by mail of the meeting of the Board of Directors at which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board at such meeting.

ARTICLE VII
Director Meetings

1. Meetings to be open. All meetings, hearings, deliberations, and actions of this board be conducted openly. Except as allowed by N.C. Gen. Stat. §143-318.11 each meeting of the Board of Directors shall be open to the public and any person is entitled to attend such a meeting. The public's right to attend such meeting does not necessarily entitle the public to participate in the meeting.

2. Regular Meetings. The Board of Directors shall establish a schedule of regular meetings to conduct and transact the business of the Corporation, with a schedule of same to be filed with the Clerk of the Henderson County Board of Commissioners and kept on file with the secretary of the Board. These meetings shall occur at least annually, or more frequently as the Board of Directors shall determine. The Board of Directors shall have the authority to change the schedule of regular meetings, and/or to change the date of a particular regularly scheduled meeting without the necessity of approval of the Henderson County Board of Commissioners. If the Board of Directors changes the schedule of regular meetings, the secretary of the Board shall forward a copy of the new schedule to the Clerk to the Board of Commissioners at least seven (7) days prior to the first meeting held pursuant to the new schedule. If a particular regularly scheduled meeting date is changed, the secretary shall comply with the notice provisions of paragraph VII.4. below, Special meetings.

Written notice of the time, date, and place of Board of Director meetings shall be given by the President of the Board of Directors or the President of the corporation to each member of the Board of Directors at least ten (10) days in advance of the meeting, except as otherwise stated herein.

3. Place of Meetings. The meetings of the Board of Directors shall be held at the principal office of the corporation, or at such other place as the President may designate.

4. Special meetings. The Chair of the Board of Directors or the majority of the members of the board may at any time call a special meeting of the board by signing a notice stating the time and place of the meeting and the subjects to be considered. At least forty-eight hours before the date and time of the meeting, such notice must be:

- A. posted on the bulletin board in the front lobby of the Henderson County Courthouse,
- B. posted on the bulletin board for the County Administration Building,
- C. mailed or delivered to each newspaper, wire service, radio station and television station which has filed a written request for notice with the secretary,
- D. mailed or delivered to any entity or person that has requested to be on the board's sunshine list as prescribed by law; and
- E. delivered to all members of the board.

Only the business that is specified in the notice of the meeting may be transacted during a special meeting.

5. Attendance. Attendance by a member at a meeting shall constitute a waiver of notice of such meeting by such member, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

6. Notice of Intention to Attend; Attendance Required. Members of the Board shall be required to notify the President or the Chief Executive Officer of the corporation of their inability to attend a lawfully

scheduled meeting within three (3) days of the receipt of a meeting notice for regular meetings of the Board, and twelve hours of receipt of a meeting notice for a special meeting.

7. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business. The quorum shall be determined at the beginning of the business meeting.

8. Parliamentary Rules. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, all meetings shall be conducted in an open, orderly, and fair manner, and Robert's Rules of Order, in its then-current edition, shall apply to all deliberations.

9. Manner of Acting. Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, all matters before the Board of Directors shall be decided by a majority vote of the Directors present at a meeting at which a quorum exists at its beginning.

10. Compliance with State requirements. The corporation shall conduct its operations, including its meetings, in a manner pursuant to Article 33C of Chapter 143 of the North Carolina General Statutes (the Open Meetings Law), and Chapter 132 of the North Carolina General Statutes (the Public Records Law).

ARTICLE VIII

Contracts, Checks, Deposits, and Funds

1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instances.

2. Loans. No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

3. Checks and Drafts. All checks, drafts, or other orders for the payment of money, issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

4. Funds. All funds of the corporation not otherwise employed shall be deposited to the credit of the corporation in such investments allowed for North Carolina counties (including deposit with banks, trust companies, or other depositories) as the Board may select.

5. Acceptance of Gifts. The Board, or any officer or officers or agent or agents of the corporation to whom such authority may be delegated by the Board, may accept on behalf of the corporation any contribution, gift, bequest, or devise for the purposes of the corporation.

6. Audits. Annually, or more frequently on request of a majority of the Board, the accounts of the corporation shall be audited by a reputable certified public accountant, whose report shall be submitted to each member of the Board and to the Henderson County Board of Commissioners.

7. Bond. At the direction of the Board, any officer or employee of the corporation shall be bonded. The corporation shall pay the expense of procuring any such bond.

ARTICLE IX

Indemnification

Any person who at any time serves or has served as a member of the Board of Directors or officer of this corporation, or in such capacity (as officer or director) at the request of the corporation for any other corporation, whether for profit or nonprofit, shall have the right to be indemnified by the corporation to the fullest extent permitted by law against (a) reasonable expenses, including attorney's fees actually and necessarily incurred by him or her in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether or not brought by or on behalf of the corporation, seeking to hold him or her liable by reason of the fact that he or she is or was acting in such capacity and (b) reasonable payments made by him or her in satisfaction of any judgment, money decree, lien, penalty, or settlement for which he or she may have become liable in any such action, suit, or proceeding.

The Board of Directors shall take all such action as may be necessary and appropriate to authorize the corporation to pay the indemnification provided by this Bylaw, including without limitation, purchase of liability insurance and, to the extent necessary, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him or her.

ARTICLE X Relations with Public Bodies

1. Grants and Appropriations. The corporation contemplates that in the conduct of its affairs it will from time to time receive grants or appropriations from public and private bodies. Expenditures by the corporation of such grants or appropriations shall be made only for public purposes and only for the charitable purposes of the corporation and according to law.

2. Report to Public Bodies. Annually within thirty (30) days after the annual audit required by Article VIII, Section 6, shall have been delivered to each member of the Board, the Chair shall transmit a copy of that annual audit and an administrative report to the Board of Commissioners of Henderson County, and any public body of the State of North Carolina from which any grant or appropriation has been received during the fiscal year to which such audit applies, together with a report briefly stating the nature of the activities carried on by the corporation during that fiscal year and stating the corporation's compliance, to the best of the knowledge of the Chair, with the provisions of this Article X.

ARTICLE XI Fiscal Year

Except as altered by a resolution of the Board of Directors, the fiscal year of the corporation shall begin on the first day of each July and end on the last day of June next ensuing.

ARTICLE XII Prohibition Against Sharing in Corporate Earnings

No director, officer, employee or member of a committee of the corporation, or any other private individual (within the meaning of Section 501 of the Internal Revenue Code or its successor provisions), shall at any time receive any of the net earnings from the activities of the corporation, but this shall not prevent the payment to any person of such reasonable compensation that the Board of Directors shall fix for services rendered to or for the corporation in effecting any of its purposes; and no such person shall be entitled to share in the distribution of any corporate assets on the dissolution of the corporation. All directors of the

corporation shall be deemed expressly to have consented and agreed that upon such dissolution or similar winding-up of the affairs of the corporation, whether voluntary or involuntary, the assets of the corporation then remaining in the hands of the Board, after satisfaction of the corporation's liabilities, shall be transferred, conveyed, delivered, and paid over as provided in the Articles of Incorporation.

ARTICLE XIII General Provisions

1. Limit of Use of Property and Funds to Purposes of the corporation. No funds or property of the corporation shall be devoted to or expended for any purpose or objective not stated in the corporation's Articles of Incorporation, but all the corporation's funds and properties shall at all times be used exclusively for said corporate purposes. In no event shall any of the funds or property of the corporation be used for personal benefit, by way of compensation, directly or indirectly, of these directors, with the exception of the President, who may be paid a salary set by the directors for services actually rendered.

2. Waiver or Notice. Whenever any notice is required to be given to any director or other person under the provisions of these Bylaws, the Articles of Incorporation, or any applicable law, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

3. Amendments. These Bylaws may be altered, amended, or repealed, or new bylaws may be adopted, either by majority vote of the Board of Commissioners of Henderson County, or upon both of the following occurring:

- A. Approval by a vote of two-thirds of the Directors then in office at any meeting of the Board of Directors of the corporation upon at least ten (10) days notice; and
- B. Approval by the Board of Commissioners of Henderson County.