

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 18 March 2015

SUBJECT: Modification of Articles and Bylaws of Henderson County
Historic Courthouse Corporation

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Proposed "Amended and Restated Articles of Incorporation"
Proposed Amendment to Bylaws

SUMMARY OF REQUEST:

Attached is a proposed "Amended and Restated Articles of Incorporation of Henderson County Historic Courthouse Corporation", along with a proposed Amendment to the Bylaws of the corporation.

The original Articles of Incorporation were created in December 2003. Amendments occurred in 2006, 2007, and 2008. The proposed "Amended and Restated Articles" restate the original articles with all the amendments to date. In addition, they make one further amendment, removing the (one) non-voting member of the Board of Directors of the corporation that was appointed by the Tourism Development Authority. This leaves nine (9) voting members and one (1) non-voting member (who must be a member of the Board of Commissioners).

The proposed amendment to the Bylaws is in accordance with the "further amendment" proposed herewith (removing one of two non-voting members). The previous amendments to the articles had already been incorporated into the Bylaws.

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

BOARD ACTION REQUESTED:

Approval of the proposed documents.

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

I move that the Board approve the proposed Amended and Restated Articles of Incorporation of Henderson County Historic Courthouse Corporation, and approve the proposed amendment to the Bylaws of that corporation.

Amended and Restated Articles of Incorporation

of

HENDERSON COUNTY HISTORIC COURTHOUSE CORPORATION

A Non-Profit Corporation

We, the undersigned natural persons, all of the age of twenty-one years or more, acting as incorporators for the purpose of creating a non-profit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina (the "Non-Profit Corporation Act") and the several amendments thereto, do hereby set forth:

I – Name

The name of the corporation is Henderson County Historic Courthouse Corporation.

II – Duration

The period of duration of the corporation shall be perpetual.

III – Purpose

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.

IV – Membership

The corporation shall not have members, and shall not issue any capital stock.

V – Address of Initial Registered Agent

The name and address of the corporation's initial registered agent (and the address of the registered office and principal office) is:

Amended and Restated Articles of Incorporation of
Henderson County Historic Courthouse Corporation

Name: Charles Russell Burrell
Address: 1 Historic Courthouse Square, Suite 5
Hendersonville, NC 28792
County: Henderson

VI – Directors

The Board of Directors shall consist of nine (9) voting Directors, and one (1) non-voting Director, shall be elected in the manner stated herein. The names, addresses and counties of residence of the current Board of Directors are as follows:

Director 1 (term expires 30 June 20)

Name: Bessie Mac Levi Bright
Address: 3305 Spartanburg Highway
Flat Rock, NC 28731
County: Henderson

Director 2 (term expires 30 June 20)

Name: Andrew Carl Brannon
Address: 874 Brannon Road
Horse Shoe, NC 28742
County: Henderson

Director 3 (term expires 30 June 20)

Name: VACANT
Address:

County:

Director 4 (term expires 30 June 20)

Name: Carolyn Justus
Address: 1055 Stepp Mill Road
Hendersonville, NC 28792
County: Henderson

Director 5 (term expires 30 June 20)

Name: Virginia Gambell
Address: 2 Cedarbrook Drive
Hendersonville, NC 28739
County: Henderson

Director 6 (term expires 30 June 20)

Name: Patsy Farmer Jones
Address: 203 North Overlook Terrace
Hendersonville, NC 28739
County: Henderson

Amended and Restated Articles of Incorporation of
Henderson County Historic Courthouse Corporation

Director 7 (term expires 30 June 20)

Name: Jo Ann Stepp Fain
Address: 535 Waddell Drive
Hendersonville, NC 28792
County: Henderson

Director 8 (term expires 30 June 20)

Name: Margaret Miller L. Medlin
Address: 1300 Pinecrest Drive
Hendersonville, NC 28739
County: Henderson

Director 9 (term expires 30 June 20)

Name: James H. Toms
Address: 610 Erkwood Drive
Hendersonville, NC 28739
County: Henderson

All Directors, voting and non-voting, including the seat above designated "Vacant", and all successors, shall be elected by the Board of Commissioners of Henderson County. Voting Directors shall be elected in three groups, and their successors' terms shall end on a triennial basis.

The first group, including Director 1, Director 2 and Director 3, serving a term ending 30 June 2017, or until the election of their successors.

The second group, including Director 4, Director 5, and Director 6, serving a term ending 30 June 2015, or until the election of their successors.

The third group, including Director 7, Director 8 and Director 9, serving a term ending 30 June 2016, or until the election of their successors.

The 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.

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.

VII – Powers

The corporation shall have all the powers granted non-profit corporations under the laws of the State of North Carolina so long as the same are not inconsistent with the corporation qualifying as tax-exempt under the provisions of Section 501(c)(3) of the Code.

VIII – Earnings

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to any director, officer or other private person, except that the corporation may pay reasonable compensation for services rendered and may make payments and distributions in furtherance of its purposes as stated herein.

IX – Internal Affairs

Except as provided in these Articles, the internal affairs of the corporation shall be regulated and determined by its by-laws.

X – Prohibited Activities

At all times and notwithstanding merger, consolidation, reorganization, termination, dissolution or winding up of the corporation (whether voluntary or involuntary by operation of law), or any other provisions hereof:

- A. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. The corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code, (ii) by a corporation contributions to which are deductible under Section 1790(c)(2) of the Code, or (iii) by a non-profit corporation created under Chapter 55A of the General Statutes of North Carolina.
- B. At no time shall the corporation engage in any activities which are unlawful under the laws of the United States, North Carolina or any other jurisdiction where any of its activities are carried on.
- C. Notwithstanding any other provision of these Articles, if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code, then during such time or times:
 - 1. The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Code;
 - 2. The corporation shall not engage in any act of self-dealing as defined in Section

Amended and Restated Articles of Incorporation of
Henderson County Historic Courthouse Corporation

4941(d) of the Code.

3. The corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Code;
 4. The corporation shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; and
 5. The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.
- d. The corporation shall not discriminate on the basis of race, color, religion, sex, age, or national or ethnic origin in the administration of its activities.

XI – Indemnification

The Board of Directors may provide in the by-laws of the corporation that the corporation shall indemnify its current and former directors, officers, employees, and agents against expenses and liabilities incurred as a result of actual or threatened litigation arising from the performance of their official duties. The indemnification provided by the Article shall not be deemed exclusive of any other rights to which such directors, officers, employees or agents may be entitled under any By-Law, agreement, resolution of the Board of Directors, or otherwise. In no case, however, shall the corporation indemnify or reimburse any person for any federal excise taxes imposed on such individual under Chapter 42 of the Code. Further, if at any time or times the corporation is a private foundation within the meaning of Section 4095 of the Code, then during such time or times no payment shall be made under this Article if such payment would constitute an act of self-dealing (as defined in Section 4941(d) of the Code).

XII – Dissolution

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provisions for the payment of all liabilities of the corporation, convey all of the assets of the corporation to Henderson County, to be used exclusively for public purposes. Any such assets not so disposed shall be disposed of by the Clerk of Superior Court of Henderson County, North Carolina, to Henderson County, to be used exclusively for public purposes. The private property of the officers and directors of the corporation shall not be subject to payment of corporate debts to any extent whatever.

XIII – Amendments to the Articles of Incorporation and Bylaws

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.

Amended and Restated Articles of Incorporation of
Henderson County Historic Courthouse Corporation

XIV -- Incorporators

The names and addresses of the incorporators were:

Name: Grady H. Hawkins
Address: 100 North King Street
Hendersonville, NC 28792
County: Henderson

Name: Larry R. Young
Address: 100 North King Street
Hendersonville, NC 28792
County: Henderson

Name: C. Shannon Baldwin
Address: 100 North King Street
Hendersonville, NC 28792
County: Henderson

Name: Charles Messer
Address: 100 North King Street
Hendersonville, NC 28792
County: Henderson

Name: William L. Moyer
Address: 100 North King Street
Hendersonville, NC 28792
County: Henderson

END OF AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
HENDERSON COUNTY HISTORIC COURTHOUSE CORPORATION

Amended and Restated Articles of Incorporation of
Henderson County Historic Courthouse Corporation

The foregoing Amended and Restated Articles of Incorporation of Henderson County Historic Courthouse Corporation were adopted by the Henderson County Board of Commissioners after motion and vote, this the 18th day of March, 2015.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
THOMAS H. THOMPSON, Chairman

Attest:

TERESA L. WILSON
Clerk to the Board of Commissioners

[SEAL]

PROPOSED MODIFICATION OF BYLAWS
HENDERSON COUNTY HISTORIC COURTHOUSE CORPORATION

ARTICLE V

Section 3. 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 one non-voting Director. The non-voting Director shall be a member of the Board of Commissioners of Henderson County.