

Town of Boone Planning Commission Regular Meeting
6:00 PM, Oct. 26, 2020 WebEx, WebEx

This meeting will be held remotely using video conferencing software (WebEx). For information on how to watch, listen, and/or participate in the meeting, please see the WebEx Video Conferencing Information on the bottom of this page.

I. Call to Order

II. Generally-Applicable Board Guidance & Issues

General Training Memo

- A. *Meeting Procedures***
- B. *Open Meeting Requirements***
- C. *Public Records Requirements***
- D. *Code of Ethics/Conflicts of Interest***
- E. *Contact with Applicants and Citizens***

III. Planning Commission-Specific Guidance & Issues

- A. *Unified Development Ordinance Text Amendments***
- B. *General Use Zoning Map Amendments***
- C. *Conditional District Zoning Map Amendments***

IV. Adjournment

WebEX Video Conferencing Information

To watch the meeting: Anyone can view the meeting live at: <https://townofboone.viebit.com/index.php>

Note: To preserve bandwidth and ensure an orderly meeting, individuals who wish only to view the meeting but not speak at it should view the livestream at this link. Only individuals who wish to participate should use the WebEx link described below.

To participate in the meeting: Individuals who wish to participate may do so through WebEx, the video conferencing software, either online (by computer or smartphone) or by telephone. To do so, please email Jane Shook, Director of Planning & Inspections at jane.shook@townofboone.net or call in at 828-268-6960 and you will be provided with an email invitation to the meeting. All requests for participation must be completed by 5:00 p.m. on the day of the meeting.

TOWN OF BOONE
Board/Committee General Training Memo

Allison Meade, Town Attorney

August 5, 2020

Note: The following is intended as a primer for legal and ethical considerations related to your service as a member of a Town of Boone board or committee. It is hoped that this rather brief outline will lead to more in-depth discussion of issues that actually arise for committee members in the course of their service. This outline does *not* attempt comprehensive coverage and analysis of any particular subject. If you have additional questions or concerns, or if a specific issue arises in the course of your service to the Town, please raise the question with Town staff or contact the Town Attorney at ameade@meade-law.com or (828) 773-2062.

Topics covered:

1. Open Meetings requirements
2. Public Records requirements
3. Meeting procedures/voting
4. Limitations on the powers & authority of committees and their members
5. Ethical considerations
6. Sources of substantive law relevant to municipalities

Attachments:

Town Code Chapter 35 – Town Boards and Committees

Town Code Chapter 30, section 52 – Code of Ethics

Gift policy changes – Code of Ethics

1. Open Meetings requirements

- a. “Official meetings” must be open, public, and properly noticed
 - i. “Official meeting” as defined in the Town Code (Chapter 35) as follows: “An Official Meeting occurs whenever a scheduled meeting of the town body or sub-committee occurs, whether or not a quorum is present, **or** when a majority of the town body or sub-committee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action or otherwise transact public business. (See also N.C.G.S. § 143-318.10.)
 - ii. “Deliberate” is defined very broadly in the Town’s code as follows: “DELIBERATE includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.”
 - iii. Single exception to the requirement for open meetings: properly called closed sessions for discussion of confidential matters such as attorney-client communications. Closed sessions are permitted only for certain specified reasons

Communication: General Training Memo (Generally Applicable Board Guidance & Issues)

per N.C.G.S. § 143-318.11, and generally are not appropriate for any committee other than Town Council itself.

- b. Open meetings must be properly noticed in advance and meeting minutes must be kept.
- c. Reasons for open meeting requirements: transparency and accountability. See N.C.G.S. § 143-318.9: “Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people’s business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.”
- d. Violations are subject to legal action by “any person,” and a court may order injunctive relief, including the nullification of official action, and attorney’s fees. Attorney’s fees may be assessed against individual board members found to have “knowingly or intentionally” committed a violation, except no such assessment may be made where the individual relied on an attorney’s advice that the conduct was lawful.
- e. Particular issues:
 - i. Receipt (passively) by board members of information
 - ii. Attendance at events
 - iii. Email

2. Meeting procedures

- a. Town Code Chapter 35 provides direction as to voting and meeting procedures, including but not limited to:
 - i. Quorum = 50% of members unless otherwise provided by Council
 - ii. Action by majority vote
 - iii. Agendas: for regular meetings, agendas may be amended (and items added) by majority vote.
 - iv. “The business of the body or sub-committee shall be conducted in a manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the chair, and members of the committee, task force or advisory body shall be respectful to each other and shall avoid interrupting each other.”
- b. Where the Town Code does not provide expressly for meeting procedures, Robert’s Rules should generally be followed.

3. Public records and record-keeping obligations

- a. “Public records” mean “all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, *made or received pursuant to law or ordinance in connection with the transaction of public business* by any agency of North Carolina government or its subdivisions.”

- b. There are limited exceptions for, among other things, certain communications by legal counsel, utility billing information, criminal investigation files, police body cam video, and personnel records.
- c. Public records must be retained pursuant to retention schedules established by the State and produced upon the request of any person.
- d. A public official who destroys public records contrary to law is guilty of a Class 3 misdemeanor and subject to a fine, and is also subject to civil litigation and the imposition of attorney's fees (with the same limitations as for open meetings violations).
- e. Public (town) business versus private business: courts have construed "public records" (and specifically the qualifier that public records are those "*made or received pursuant to law or ordinance in connection with the transaction of public business*") in a very broad manner. Committee members should assume that all written communications (including electronic communications) relating to their service as Committee members are public records:
 - i. Assume all communication associated with Committee member role = public business
 - 1. Communicating with town officers, staff, and Council members about matters relevant to the committee = public business
 - 2. Communicating with other Committee members about matters relevant to the committee = public business
 - ii. Campaigning and individual (personal) affairs = private

4. Limitations on the powers and authority of committees and committee members

Town Code § 35.03 provides as follows:

- (A) All boards, commissions, task forces, advisory bodies, committees or other entities shall have only those powers and duties which have been assigned to the body by the Council.
- (B) No individual member of any body shall purport to speak or act on behalf of the body without action by the body explicitly authorizing the member to speak or act on its behalf.
- (C) No individual member of any body, nor the body itself, shall purport to speak or act on behalf of the town without action by the Town Council explicitly authorizing the member or empowering or authorizing the body to speak or act on its behalf.
- (D) Without an express grant of authority or explicit authorization by the Town Council, no individual member of any body, nor the body itself, may direct staff members of the town to take action or engage in actions requiring the expenditure of town funds.
- (E) No body may create its own committee, sub-committee or working group, by whatever name denominated, without the explicit advance approval of the Town Council.
- (F) Unless otherwise directed by Council, a body may select its own Chair and Vice-Chair.

5. Ethical issues & the Town's Code of Ethics

Highlights from the Town's Code of Ethics: Chapter 30, section 52 of the Town Code:

- a. Committee members must attest that they have read the Code of Ethics before beginning service to the Town
- b. Conflicts of interest and apparent conflicts of interest:
 - i. committee members must ask to be recused from voting on matters involving their own direct or indirect financial interests or official conduct and must not participate in the deliberations or votes regarding the matters. They must avoid attempting to influence others who are involved in approving, making or administering a contract with the town if they will derive a direct benefit from the contract.
 - ii. committee members must avoid soliciting or receiving any gift or reward in exchange for recommending, influencing or attempting to influence the award of any contract by the town.
 - iii. committee members shall avoid using knowledge of a contemplated action by the town, or information learned in their official capacities and not made public, to acquire a financial interest in any property, transaction or enterprise, or to otherwise gain a financial benefit that may be affected by the information or contemplated action, and they shall not help another person in doing so.
- c. Committee members may not act on behalf of or speak for, or give the appearance of acting or speaking for, the Committee, the Council or the town except as specifically authorized by the committee or the Council.
- d. Duty to decline gifts
- e. Civil and respectful discourse
- f. Diligent preparation

6. A primer on sources of substantive law

- a. Federal law trumps state law; state law trumps local law
- b. In NC, municipalities are subdivisions of the state **and can only exercise those powers specifically granted to them by the state**. Furthermore, in the current judicial environment, local powers are often strictly construed, while state power vis à vis local political subdivisions is broadly construed.
- c. Local law: town ordinances
 - i. Most official actions taken by the Town Council are by means of Resolutions and Ordinances (or ordinance amendments, such as zoning changes). Ordinances = local laws
 - ii. Town Code – Mainly concerns the town's governance and the exercise of its **police powers**. See <https://www.amlegal.com/code-library/>
 - iii. Unified Development Ordinance ("UDO") – the means by which the town exercises its **zoning powers**. See <http://www.townofboone.net/departments/planning-inspections/7711-2/>

CHAPTER 35: BOARDS, COMMISSIONS, COMMITTEES AND OTHER SUCH ENTITIES

Section

- 35.01 Grant of authority
- 35.02 Procedure for creation
- 35.03 Powers
- 35.04 Meetings
- 35.05 Resignation
- 35.06 Duration

§ 35.01 GRANT OF AUTHORITY.

The Town Council is authorized to create the boards, commissions, task forces, advisory bodies, committees and other entities as it may find useful or necessary to the discharge of its duties or the effective operation of the town.

(Ord. passed 6-18-2009)

§ 35.02 PROCEDURE FOR CREATION.

(A) All boards, commissions, task forces, advisory bodies, committees or other entities shall be created by motion, second and majority vote of the Council.

(B) The Council shall appoint the members of each board, commission, task force, advisory body, committee and other entity (hereafter, "body") in accordance with the town's Unified Development Ordinance and § 30.51, supra, as appropriate.

(Ord. passed 6-18-2009; Ord. passed 6-21-2011; Ord. passed 6-16-2016)

§ 35.03 POWERS.

(A) All boards, commissions, task forces, advisory bodies, committees or other entities shall have only those powers and duties which have been assigned to the body by the Council.

(B) No individual member of any body shall purport to speak or act on behalf of the body without action by the body explicitly authorizing the member to speak or act on its behalf.

(C) No individual member of any body, nor the body itself, shall purport to speak or act on behalf of the town without action by the Town Council explicitly authorizing the member or empowering or authorizing the body to speak or act on its behalf.

(D) Without an express grant of authority or explicit authorization by the Town Council, no individual member of any body, nor the body itself, may direct staff members of the town to take action or engage in actions requiring the expenditure of town funds.

(E) No body may create its own committee, sub-committee or working group, by whatever name denominated, without the explicit advance approval of the Town Council.

(F) Unless otherwise directed by Council, a body may select its own Chair and Vice-Chair.

(Ord. passed 6-18-2009; Ord. passed 6-16-2016; Ord. passed 1-15-2019) Penalty, see § 10.99

§ 35.04 MEETINGS.

(A) Every board, commission, task force, advisory body, committee and other entity created by the Council, including any sub-committee or working group, by whatever name or designation, and whether created by the Council or other town body with Council approval, must operate in compliance with the State Open Meetings Law, codified as G.S. §§ 143-318.9 et seq. Meetings of all town bodies or sub-committees shall be conducted as follows:

(1) Notice of any official meeting, other than an emergency meeting, shall be given by posting of the date, time and name of the town body or sub-committee at least 48 hours in advance, on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the town body or sub-committee prior to the meeting, it shall also be posted. When an agenda has not been distributed prior to the meeting, it shall be distributed at the beginning of the meeting before the meeting is called to order and additional copies shall be available for members of the media and public.

(a) An **OFFICIAL MEETING** occurs whenever a scheduled meeting of the town body or sub-committee occurs, whether or not a quorum is present, or when a majority of the town body or sub-committee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action or otherwise transact public business.

(b) **DELIBERATE** includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

(c) An **EMERGENCY MEETING** is one that concerns generally unexpected circumstances which require the immediate consideration of the town body or sub-committee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting;

(2) All official meetings shall be open to the public, except as to a closed session conducted in accordance with law; and

(3) Full and accurate minutes of the meeting shall be kept, a copy of which shall be provided to the Town Clerk once approved by the body or sub-committee.

(B) Unless the Council adopts procedures specific to the body or sub-committee, it will conduct its meetings in compliance with the following procedures.

(1) A quorum shall be 50% of the persons initially appointed to the body or sub-committee.

(2) In the absence of the Chair, the Vice-Chair shall conduct any meeting of the body or sub-committee, and in the absence of both officers, the Mayor may designate a person to act as chair for the meeting in question.

(3) *Agendas.*

(a) The agenda of the body or sub-committee shall include only those matters within the responsibilities and powers of the body or sub-committee which have been conferred upon it by the Council.

(b) The Chair or his or her designee (e.g. the Board's Secretary) shall prepare the agenda for each meeting.

(c) At any regularly-scheduled meeting, the body or sub-committee may, by majority vote, add an item to or delete an item from its agenda.

(d) At any special or emergency meeting, the body or sub-committee may consider only those matters included in the notice of the meeting.

(4) The business of the body or sub-committee shall be conducted in a manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the chair, and members of the committee, task force or advisory body shall be respectful to each other and shall avoid interrupting each other.

(5) Town Council may appoint Council members and/or the Mayor to serve as liaisons on various town boards, commissions, committees and other town bodies so long as the number of such liaison members does not exceed two per body. Unless otherwise provided by Council, these liaisons shall be voting members of such bodies any may serve as the Chair or Vice-Chair of the body. Their role shall be:

(a) To provide direction to the body or sub-committee regarding the relationship between the Town Council and the body or sub-committee;

(b) To assist with procedural matters;

(c) To serve as a resource; and

(d) To communicate concerns and initiatives of the body back to the full Town Council.

(6) Minutes of the body or sub-committee shall be subject to revision and adoption by the group as a whole.

(7) All actions or recommendations of the body or sub-committee shall require the presence of a quorum and are only effective or adopted upon majority vote, following a motion and second. When the action is to be reported to the Town Council, the committee, task force or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

(8) Meetings of the body or sub-committee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion and public comment, when public comment is to be accepted. By majority vote of the members of the body or sub-committee in attendance, the order of business may be altered.

(9) At any meeting, if public comment is permitted at the discretion of the body or sub-committee, any person wishing to address the body or sub-committee shall state his or her name and whether or not he or she is a resident of the town.

(a) If there is a sign up sheet provided for speakers, speakers shall be recognized in the order in which they have signed up.

(b) Unless by motion, second, and majority vote a different time limit is adopted by the committee, task force or advisory body, no person shall be allowed to speak for more than five minutes.

(c) Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the Presiding Officer may require that all persons designate a spokesperson for their group to address the committee, task force or advisory body, and the Presiding Officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

(d) All persons addressing the body shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning the person(s) and, except in a situation where there is a risk of harm to any person present, providing the person(s) the opportunity to alter their behavior to bring it into conformity with norms of accepted behavior, the Presiding Officer may direct that the person(s) be removed from the meeting.

(Ord. passed 6-18-2009; Ord. passed 9-21-2010; Ord. passed 6-21-2011; Ord. passed 4-21-2016; Ord. passed 6-16-2016; Ord. passed 1-15-2019)

§ 35.05 RESIGNATION.

A member of a board, commission, task force, advisory body, committee or other entity may resign by notifying the Mayor, Town Manager or relevant department head.

(Ord. passed 6-18-2009)

§ 35.06 DURATION.

Unless a different duration is specified by the Council at the time of creation of a board, commission, task force, advisory body, committee or other entity, including a sub-committee, the duration of the body shall be one year, but it may be extended by action of the Council.

(Ord. passed 6-18-2009)

§ 30.52 CODE OF ETHICS.**(A) General principles underlying the Code of Ethics.**

(1) *Purpose.* The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for members of the Town Council, including the Mayor and members of the town's various volunteer boards, committees and task forces (hereinafter, "committees") and to provide guidance in determining what conduct is appropriate in particular cases. This Code should not be considered a substitute for the law or for a Council member's best judgment, and the provisions herein should be considered minimum standards and examples. Town Council and committee members shall strive to bring the perception and actual honesty to all endeavors related to town matters or which may reflect on the public perception of the town.

(2) *Commitment to the Code of Ethics.* No person elected or appointed to the Town Council or appointed to a committee of the town shall begin official duties until that person has certified that he or she has read this Code of Ethics. Each person so elected or appointed shall be provided by the Town Clerk with a copy of this Code of Ethics.

(3) *Foundation of Code of Ethics.* The Code of Ethics is founded on the following ideas and they shall inform the interpretation of the Code of Ethics.

(a) The stability and proper operation of democratic representative government depends upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials and the other persons they appoint to transact the government's business.

(b) Governmental decisions and policy must be made and implemented through proper channels, and fair and open processes of the governmental structure to the extent possible.

(c) Elected local government officials must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent, without fear of reprisal or condemnation.

(d) Elected local government officials must always remain aware that at various times they play different roles:

1. As advocates, who strive to advance the legitimate needs of the citizens;
2. As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders and resolutions; and
3. As fair and impartial decision-makers, when making quasi-judicial and administrative determinations.

(e) Elected local government officials must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.

(f) Elected local government officials must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must ultimately find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

(g) People serving on the various boards, committees and task forces (hereinafter referred to as "committee members") that often inform the legislative, administrative and decision-making processes must exercise their roles in a manner as to justify the trust placed upon them by their elected officials, and they must not use their positions for improper purposes.

(B) Code of Ethics.

(1) (a) Principle 1-1. Town Council and committee members should obey all laws, including state and federal laws and regulations, and local ordinances which apply to their official actions.

(b) Principle 1-2. Town Council and committee members should be guided by the spirit as well as the letter of the law in whatever they do.

(c) Principle 1-3. Town Council and committee members shall endeavor to keep themselves up to date about new or ongoing legal or ethical issues they may face in their official positions. They should avail themselves of resources and training in these areas which may be reasonably available to them. Town Council and committee members should review the pertinent sections in the town's code, Unified Development Ordinance and other sources concerning the procedures by

which they perform their duties so that they will be knowledgeable and informed as they do so.

(2) Mandates:

(a) Town Council and committee members must ask to be recused from voting on matters involving their own direct or indirect financial interests or official conduct and must not participate in the deliberations or votes regarding the matters. They must avoid attempting to influence others who are involved in approving, making or administering a contract with the town if they will derive a direct benefit from the contract.

(b) Town Council and committee members must avoid soliciting or receiving any gift or reward in exchange for recommending, influencing or attempting to influence the award of any contract by the town.

(c) Town Council and committee members shall avoid using knowledge of a contemplated action by the town, or information learned in their official capacities and not made public, to acquire a financial interest in any property, transaction or enterprise, or to otherwise gain a financial benefit that may be affected by the information or contemplated action, and they shall not help another person in doing so.

(d) Town Council members shall reject any gift or favor from a current, past or potential contractor of the town.

(e) Town Council and committee members shall not participate in or vote upon any quasi-judicial matter coming before them if prior to hearing the evidence of the case they have a fixed opinion that is not susceptible to change; they have had undisclosed ex parte communications regarding the substance of the matter involved; they have a close familial, business or other associational relationship with an affected person; or they have a financial interest in the outcome of the matter.

(f) Every Town Council member shall attend statutorily mandated ethics training.

(3) (a) Principle 2-1. Town Council and committee members should act with integrity and with independence from improper influence as they exercise the functions of their offices.

(b) Principle 2-2. Town Council and committee members should use their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright and consistent manner.

(c) Principle 2-3. Town Council and committee members should not be subject to improper influence by family, friends, business associates or others who are motivated by self-interest rather than the common good, but they must be able to consider the opinions and ideas of others throughout the community as they formulate approaches to the issues with which they are presented.

(d) Principle 2-4. Town Council and committee members should strive to show respect toward other persons with whom they interact, including each other, recognizing that they may often be perceived as representing the town itself even when they are acting in a personal capacity.

(e) Principle 2-5. Town Council and committee members shall strive to not form a final opinion regarding an issue until all sides have been given a reasonable opportunity to present their viewpoints.

(f) Principle 2-6. In situations in which recusal from voting or participation is not allowed, but an objective observer may believe that a conflict of interest exists, Town Council members shall seek to explain their inability to seek recusal while striving to discharge their responsibilities to advance the common good.

(4) Mandates:

(a) Town Council and committee members must be free to assert policy positions and opinions without fear of reprisal from fellow Town Council or committee members or citizens. So, to assert that a Town Council or committee member is behaving unethically based simply upon a disagreement with that Town Council or committee member related to a question of policy, as opposed to the Town Council or committee member's actual unethical behavior, is unfair, dishonest, irresponsible and itself unethical.

(b) Town Council and committee members who are involved in quasi-judicial procedures shall actively avoid inappropriate contacts with interested persons regarding the issues involved.

those procedures, and when despite their best efforts they engage in the contacts, they shall disclose them and withdraw from participation in the procedures.

(5) (a) Principle 3-1. Town Council and committee members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach.

(b) Principle 3-2. Town Council and committee members should recognize that they are part of a larger group and should act accordingly. They should respect their office and not behave in ways that reflect badly on it. They should treat other Town Council and committee members and the public with respect, and should honor the opinions of others even when they disagree.

(c) Principle 3-3. If a Town Council or committee member concludes that his or her actions which the Town Council or committee member believes are legal and ethical may be misunderstood, he or she should seek the advice of the Town Attorney as to whether the actions are legal and ethical. Alternatively, he or she may state on the record the facts of the situation and the steps taken to resolve it.

(6) Mandates:

(a) A Town Council or committee member should never make a request to a town employee, including the Town Manager, for an action, forbearance or other thing of value which would benefit himself or herself or any other person or entity, whether or not the Town Council and committee member has a familial, business or other relationship with that person or entity, unless as an ordinary citizen of the town it would be appropriate to make a request. Even in instances where a request would ordinarily be appropriate, a Town Council or committee member making a request must disclose to the employee that he or she is not entitled to preferential treatment, that the request should be rejected if it would not customarily be granted to an ordinary citizen of the town, and that the employee may refuse the request without fear of reprisal.

(b) Town Council and committee members shall not attempt to influence a decision by the Town Council or the committee on which they serve relative to any action from which they will derive a direct financial benefit, although they shall not be precluded from appearing in an individual capacity to testify in quasi-judicial zoning procedures which have a substantial impact upon their own property interests so long as those interests are disclosed.

(c) Town Council and committee members shall not solicit or accept any gift or other thing of value which might be perceived as affecting any vote or decision involving the donor, but the receipt of an honorarium for participating in a meeting, the receipt of an advertising item or souvenir of nominal value or a meal furnished at a banquet will not be considered a violation of this principle so long as it does not actually influence the Town Council or committee member in the discharge of his or her official duties. In the event a Town Council or committee member has inadvertently accepted a gift or other thing of value from a person seeking action by the town, the Town Council member or committee member may not attempt to influence the decision or participate in any vote relating to the decision.

(d) Town Council and committee members must recognize that unless specifically charged with representing the town, Council or committee, they are not authorized to act on behalf of the town, Council or committee, and they should not offer their opinions, positions or analysis as representing the views of the town, Council or committee unless the Council or committee has itself taken official action as a body in conformity with those opinions, positions or analysis.

(e) Town Council members and committee members shall not demand information from other Town Council members or committee members to which they are not legally entitled by threatening to take formal legal action or by making a public records request against the other if the recipient of the request refuses to provide the requested information.

(7) (a) Principle 4-1. Town Council and committee members should be faithful in the performance of the duties of their offices.

(b) Principle 4-2. Town Council and committee members should be diligent in their attendance at meetings and in their preparation for those meetings. They should carefully analyze all credible information that is provided to them and recognize the importance to the well being of the town and its citizens of many of their decisions.

(c) Principle 4-3. Town Council members shall seek full accountability from those over whom the Town Council has authority, particularly with regard to the expenditure of public funds. Page 10

(d) Principle 4-4. Town Council members should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

(e) Principle 4-5. Town Council and committee members should be willing to bear their fair share of the workload, commensurate with their skills and other commitments.

(f) Principle 4-6. Town Council members in particular should strive to recognize that by accepting the public trust, they may have to subordinate their personal endeavors to discharge their official responsibilities. To the extent appropriate, they should be willing to put the town's interests ahead of their own.

(8) Mandates:

(a) Town Council and committee members should keep confidential information entrusted to them in legally called and held closed sessions, the disclosure of which has or may have a negative impact on the interests of the town itself, and they shall keep private confidentially obtained information about other members which would embarrass those members or expose them to public ridicule, but which has no bearing on the performance of any official duty.

(b) Unless such service has been authorized by action of a super majority of the Town Council, four-fifths of the members in attendance, upon a finding that individual service is in the interests of the town as a whole and that an exception should therefore be made, members of the Town Council shall not serve on the boards of directors of organizations that have contracts with the town, or that seek funding or similar support from the town.

(9) (a) Principle 5-1. Town Council and committee members shall conduct the affairs of their boards in an open and public manner.

(b) Principle 5-2. Town Council and committee members should remember when meeting that they are conducting the public's business.

(c) Principle 5-3. Town Council and committee members should remember that except for those records otherwise protected by law against public disclosure, the records of the town belong to the public and not to them or the town's employees. They should make clear that a climate of openness is to be maintained at all times in the town.

(d) Principle 5-4. In order to ensure strict compliance with the laws governing openness, Town Council members should prohibit unjustified delays in fulfilling public records requests should they become aware of the delays. They should assure themselves before they go into closed session that the closed session is called for a lawful purpose.

(10) Mandates: Town Council and committee members must comply with all applicable laws governing open meetings and public records.

(C) *Censure procedures.*

(1) If the Town Council has reason to believe that one of its members or a member of a town committee has violated a mandate of this Code of Ethics, by majority vote of the Town Council members present and voting, it may open an investigation into the matter, using the resources of the town to compile the necessary information to make a determination. If the proceeding involves a Town Council member's actions, that member shall not participate in the vote to authorize the investigation.

(2) Following investigation, all information compiled, including any grounds for the finding of probable cause that a mandate has been violated shall be summarized in writing by the Town Manager, Town Attorney or other person as may be designated by the Town Council, and the written summary shall be shared with the accused Town Council or committee member promptly when it is available. All information pertaining to the case shall be open to public inspection and copying as pursuant to G.S. §§ 132-1 et seq.

(3) Following the investigation and report, should the Town Council determine, by vote of a two-thirds majority of those present and voting, that it wishes to proceed further with a censure proceeding, it shall call for and schedule a quasi-judicial hearing at a regular meeting or special meeting convened for that purpose. If the proceeding involves a Town Council member's actions, that member shall not participate in the vote to proceed or schedule the hearing.

(4) The notice of the hearing stating its time, place, and purpose shall be published at least two times, once each in two separate calendar weeks in a newspaper of general circulation, or it shall be advertised daily for at least ten days on the town's official website. If placed in the

newspaper, the initial notice shall be published at least ten days and not more than 25 days before the date set for the hearing and shall state that the summary regarding the allegations against the Town Council or committee member is available for public inspection and copying in the office of the Town Clerk.

(5) The hearing shall be convened at the time and place specified. Any and all votes during the hearing and any deliberations that follow shall be taken by a vote of the full Town Council in attendance and participating, and each vote shall be recorded in the minutes. The hearing and any deliberations shall be conducted in open session in accordance with the requirements of the state's open meetings statutes, G.S. §§ 143-318.9 and 143-318.10.

(6) The accused Town Council or committee member shall have the right to challenge the participation in the case of any other Town Council member or the Presiding Officer, based on bias or self-interest. If a challenge is made, the Town Council shall immediately hear evidence and vote on the challenge in a separate hearing conducted for that purpose. It shall not be a basis for removal of a Town Council member that he or she was the person who offered the motion to investigate the behavior in question or to conduct the hearing. Neither the accused Town Council member, if any, nor the Town Council member whose participation is challenged, may vote on the challenge although both may offer evidence. The challenge shall be decided by a majority vote of those present and voting, a quorum being present not including the person accused and the person challenged. If more than one person's participation is challenged, however, a separate hearing shall be conducted as to each challenged member's participation and all members, except the accused member and challenged member shall participate in the vote as to the right of the challenged member to participate.

(7) The rules governing any hearing as to bias and the hearing on the underlying ethical charges shall be those that apply to a standard quasi-judicial hearing, and an audio or video recording of the proceedings shall be made. All hearings on this policy shall be conducted by the Town Attorney. During the hearing, the accused Town Council or committee member shall have the right:

- (a) To have counsel present;
- (b) To present and cross-examine expert and other witnesses; and
- (c) To offer evidence.

(8) Any person in attendance at the hearing with knowledge of the alleged incident(s) giving rise to or materially related to the allegation shall be given an opportunity to testify, and all testimony shall be taken under oath.

(9) Once the hearing is concluded, it shall be closed by majority vote. The Presiding Officer shall then entertain a motion to adopt a non-binding resolution censuring the Town Council or committee member based on specified violations of the mandates of the Code of Ethics. Any motion made must be an affirmative one in favor of adopting a non-binding resolution of censure. If the motion or resolution does not state particular grounds for censure under the Code of Ethics, the Presiding Officer shall rule it out of order. If a motion to adopt a non-binding resolution of censure stating particular grounds under the Code of Ethics has been made, the Board shall debate the motion. The accused Town Council member, if any, and any other Town Council member who has been removed from participation because of bias or self-interest may remain present, but shall not be allowed to participate in the debate. At the conclusion of the debate, the Town Council shall vote, except for the accused Town Council member, if any, and any other Town Council member who has been removed from participation. If the motion is approved by a minimum two-thirds vote of those present and voting, a quorum being present, the motion will be approved and the non-binding resolution of censure adopted. The quorum requirement shall be met if the requisite number is present, even though removal of some from participation may prevent a quorum from actually voting on the issue.

(10) If a resolution of censure is adopted, it shall become a part of the official record of the Town Council. If it pertains to a member of a committee, it shall be the basis for further action, which may be taken immediately following the vote of censure, to remove the committee member from the committee upon which he or she serves.

(Ord. passed 11-16-2010; Res. passed 11-20-2014; Ord. passed - -)

Town Code Section 30.52(B) Code of Ethics. – GIFT POLICY

* * * *

(2) Mandates:

* * * *

(b) Town Council and committee members must avoid soliciting or receiving any gift or reward in exchange for recommending, influencing or attempting to influence the award of any contract by the town.

(c) Town Council members and committee members shall not knowingly accept any gift or favor from a person who is a current or potential contractor of the town, or who has been a contractor to the town within the previous two years . A prohibited gift shall be promptly declined, returned, paid for at fair market value, or donated to charity or the city.

(d) Except as provided below, Town Council members and committee members shall not knowingly accept any gift or favor that is given as a result of or in connection with the Council or committee member's position with or service on behalf of the town. A prohibited gift shall be promptly declined, returned, paid for at fair market value, or donated to charity or the city.

1. Illustrations. The following are examples of gifts and favors that are not given as a result of or in connection with the Council or committee member's position with or service on behalf of the town, and therefore are not prohibited:
 - i. Gifts or favors given by family or friends in the normal course of those private relationships and unconnected to the Council or committee member's official activities as a Town board member.
 - ii. Gifts or honorariums given by professional societies or fraternal groups in connection with the private vocation, avocations, or other private activities of the Council or committee member.
 - iii. Items and services made available to the general public or made available to the Council or committee member as a result of his or her private affiliations or activities rather than his or her status as a Town board member.
2. Exceptions. These prohibitions shall not apply to any of the following:
 - i. A memento such as a commemorative shovel, plaque, figurine, trinket, or novelty item related to a civic occasion or event.
 - ii. Informational materials relevant to the duties of the official.
 - iii. Food and beverages for immediate consumption in connection with gatherings attended by the Council or committee member in his or her official capacity as a Town board member, so long as the official pays the same amount, if any, that other attendees are charged for attending the gathering or for the food and drink.

- iv. Tickets or admittance to, and food and beverages for immediate consumption at, an event or meeting where the official is clearly representing the town and where the town has a legitimate purpose in being represented at the event. By way of illustration but not limitation, this would include community events sponsored by the town and events or meetings hosted by the Boone TDA, the Downtown Boone Development Association, local government agencies and authorities, Appalachian University and other educational institutions, and similar organizations.
3. For purposes of this division, “gift” and “favor” mean any thing or service, respectively, of monetary value given or received without fair market value given in return or, for loans or other contractual arrangements, on terms that are not available to the general public in the normal course of business. Gifts do not include the following:
- i. Academic or athletic scholarships given based on the same criteria as applied to the general public.
 - ii. Anything of value properly reported as required under G.S. Ch. 163, Art. 22A (North Carolina Campaign Contributions Law).
 - iii. Expressions of condolence related to a death of an individual, including the giving of a sympathy card, letter, or note, flowers, food or beverages for immediate consumption, or donations to a religious organization, charity, the state or a political subdivision of the state, not to exceed a total of \$200 per death per donor.

Town Code Section 30.52(B) Code of Ethics. – GIFT POLICY

* * * *

(2) Mandates:

* * * *

(b) Town Council and committee members must avoid soliciting or receiving any gift or reward in exchange for recommending, influencing or attempting to influence the award of any contract by the town.

(c) Town Council members and committee members ~~shall reject~~ shall not knowingly accept any gift or favor from a person who is a current, ~~past~~ or potential contractor of the town, or who has been a contractor to the town within the previous two years. A prohibited gift shall be promptly declined, returned, paid for at fair market value, or donated to charity or the city.

(d) Except as provided below, Town Council members and committee members ~~should~~ shall not knowingly accept any gift or favor that is given as a result of or in connection with the Council or committee member's position with or service on behalf of the town ~~unless it falls within one of the exceptions set forth below~~. A prohibited gift shall be promptly declined, returned, paid for at fair market value, or donated to charity or the city.

——— 1. Illustrations. The following are examples of gifts and favors that are not given as a result of or in connection with the Council or committee member's position with or service on behalf of the town, and therefore are not prohibited:

- i. Gifts or favors given by family or friends in the normal course of those private relationships and unconnected to the Council or committee member's official activities as a Town board member.
- ii. Gifts or honorariums given by professional societies or fraternal groups in connection with the private vocation, avocations, or other private activities of the Council or committee member.
- iii. Items and services made available to the general public or made available to the Council or committee member as a result of his or her private affiliations or activities rather than his or her status as a Town board member.

——— 2. Exceptions. These prohibitions shall not apply to any of the following:

- a. ~~Gifts from the official's extended family, or a member of the same household.~~
- b. ~~Anything generally made available or distributed to the general public without charge.~~

- i. A memento such as a commemorative shovel, plaque, figurine, trinket, or novelty item related to a civic occasion or event.
- ii. Informational materials relevant to the duties of the official.

iii. Food and beverages for immediate consumption in connection with gatherings attended by the Council or committee member in his or her official capacity as a Town board member, ~~any of the following gatherings~~, so long as the official pays the same amount, if any, that other attendees are charged for attending the gathering or for the food and drink:

~~i. A meeting of the Town Council (or committee).~~

~~ii. Business meetings.~~

~~iii. A gathering open to the general public.~~

iv. Tickets or admittance to, and food and beverages for immediate consumption at, an event or meeting where the official is clearly representing the town and where the town has a legitimate purpose in being represented at the event. By way of illustration but not limitation, this would include community events sponsored by the town and events or meetings hosted by the Boone TDA, the Downtown Boone Development Association, local government agencies and authorities, Appalachian University and other educational institutions, and similar organizations.

~~32.~~ For purposes of this division, “gift” and “favor” means any thing or service, respectively, of monetary value given or received without fair market value given in return or, for loans or other contractual arrangements, on terms that are not available to the general public in the normal course of business. Gifts do not include the following:

- i. Academic or athletic scholarships given based on the same criteria as applied to the general public.
- ii. Anything of value properly reported as required under G.S. Ch. 163, Art. 22A (North Carolina Campaign Contributions Law).
- iii. Expressions of condolence related to a death of an individual, including the giving of a sympathy card, letter, or note, flowers, food or beverages for immediate consumption, or donations to a religious organization, charity, the state or a political subdivision of the state, not to exceed a total of \$200 per death per donor.