

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
June 21, 2018**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. on Thursday, June 21, 2018 at Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro Tem Loretta Clawson, Sam Furgieuele, Connie Ulmer and Marshall Ashcraft. Staff present were Town Manager John Ward, Town Clerk Nicole Worley, Deputy Public Works Director Eric Gustaveson, Planning Director Jane Shook, Police Chief Dana Crawford, Lt. Danny Houck, Deputy Public Works Director Josh Eller, Fire Chief Jimmy Isaacs, Finance Director Amy Davis and Town Intern Syrena Travis. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked anyone who wished to speak to sign up on the public comment sheet.

He then presented outgoing Transportation Committee member Harry Davis with a resolution of appreciation for his seventeen years of service on the committee.

TENTATIVE AGENDA ADOPTION

Upon a motion by Council Member Furgieuele, seconded by Council Member Ulmer, Council voted to approve the tentative agenda.

VOTE: Aye: All
 Nay: None
 Absent: Mason

PUBLIC COMMENT

Jeannine Underdown-Collins thanked Council on behalf of the Cruzin' Committee for their support for skateboarding and added that she had applied to serve on the Transportation Committee, and would be honored to be appointed.

Melvin Cline on behalf of Grace Academy spoke to ask Council to consider expediting a request for a text amendment to which would allow them to increase their enrollment in time for the 2018-19 school year. Council Member Furgieuele made a motion to add an item to the beginning of the agenda to discuss this specific request. The motion was seconded by Council Member Clawson.

VOTE: Aye: All
 Nay: None
 Absent: Mason

QUASI-JUDICIAL HEARING

REQUEST FOR SERVICES - C. PERRY

Town Attorney Allison Meade opened the public hearing at 6:10 p.m. Applicant Chuck Perry was sworn in and summarized his application for Council. Mr. Perry stated that his property located on Sun Haven Lane was unsuitable for a well and septic system due to the topography and the small size of the property and requested permission to reattach the new building being constructed to Town water and sewer lines that are currently on the property. Mr. Perry indicated that he would be willing to annex into Town limits, but that he was on a strict deadline due to a sixty-day restriction on his construction loan and asked that Council consider allowing him to begin the annexation process while constructing the building. Ms. Meade stated that the previous structure on the property utilized private piping for water and sewer, which would suggest that the property was not adjacent to Town pipes. Mr. Perry responded that the development had a 6" water main that runs through the middle of the development. Council Member Furgieuele asked the applicant whether there was any impediment for annexing the property into the Town limits, to which Mr. Perry stated there was not aware of any. Mr. Perry stated that he did not know how the previous homeowners obtained water and sewer service and added that he

had contacted Public Works who determined after looking through past invoices that they paid the Town for water and sewer. Council Member Furguele asked whether Mr. Perry would be willing to cooperate with Planning and Inspections to make sure that the construction of the new building conforms with the Town's zoning ordinance, to which Mr. Perry replied that he would be willing to comply with the Town's zoning ordinance during the construction of this building. Planning Director Jane Shook was sworn and stated that the property in question was located outside the urban growth area and stated that she was unsure how the original water and sewer connection was made at the property. Ms. Shook stated that if approved and in accordance with Town policy, this connection would prevent a potential environmental issue at the property. Deputy Public Works Director Josh Eller was sworn and stated that while the property was located in the secondary pressure zone, there were no known engineering issues that would prohibit the property from connecting to Town water and sewer lines and that he was unaware of any pressure issues in the previous structure. The public hearing was closed at 6:38 p.m. Upon a motion by Council Member Furguele, seconded by Council Member Clawson, Council voted to approve the request for service from Chuck Perry with the following conditions: The property owner would address any potential pressure issues by providing a pump in order to avoid a fire hazard; the property owner would move forward with voluntary annexation and cooperate with Planning and Inspections to build the new building per the requirements of the Town UDO with the understanding that there may be conflict with the County's building requirements; No other connections will be allowed through this property for other homes; the property owner will build in accordance with what has been presented with this service request except for minor changes.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Clawson, Furguele, Ulmer, Ashcraft
ABSENT:	Mason

APPROVAL OF ITEMS ON CONSENT AGENDA

CONSIDERATION OF APPROVAL OF MINUTES - JUNE 4, 2018

RESULT:	TABLED [UNANIMOUS]	Next: 7/17/2018 6:00 PM
MOVER:	Marshall Ashcraft, Council Member	
SECONDER:	Connie Ulmer, Council Member	
AYES:	Clawson, Furguele, Ulmer, Ashcraft	
ABSENT:	Mason	

CONSIDERATION OF APPROVAL OF MINUTES - JUNE 6, 2018

RESULT:	TABLED [UNANIMOUS]	Next: 7/17/2018 6:00 PM
MOVER:	Marshall Ashcraft, Council Member	
SECONDER:	Connie Ulmer, Council Member	
AYES:	Clawson, Furguele, Ulmer, Ashcraft	
ABSENT:	Mason	

RESOLUTION OF APPRECIATION - H. DAVIS

Council Member Ashcraft made a motion, which was seconded by Council Member Ulmer to approve the resolution of appreciation for Harry Davis.

VOTE:	Aye:	All
	Nay:	None
	Absent:	Mason

RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION

WHEREAS, Harry Davis has served this community well in numerous capacities during his time volunteering on the Town of Boone's Transportation Committee; and,

WHEREAS, Mr. Davis's service to the Town of Boone shows exemplary dedication to the best interest and betterment of the community; and,

WHEREAS, through the performance of his duties and responsibilities as a member of the Transportation Committee, he has made excellent and constructive contributions to our Town; and,

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina does hereby express our sincere appreciation and thanks, as well as that of our citizens, to Harry Davis with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 21st day of June, 2018.

Rennie Brantz, Mayor

ATTEST:

Town Clerk Nicole Worley

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Marshall Ashcraft, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Furguele, Ulmer, Ashcraft
ABSENT:	Mason

COUNCIL MATTERS**Grace Academy - Special Use Permit**

Melvin Cline, representative of Grace Academy in Boone summarized for Council the special use permit issue that is being faced by the school. Mr. Cline stated that when the special use permit was approved for the school, a conditions was made that enrollment be capped at 99 students. When inquiring about amending the special use permit to enable the school to increase its enrollment, Mr. Cline was told that the particular use had been removed from B3 districts, creating a legal, non-conforming use, which meant that they were unable to move forward with the amendment. Planning Director Jane Shook stated that the only way to move forward in this case would be a text amendment to create a private school category, accessory use category or to rezone the whole campus to B3 or OI. Time constraints were discussed, with Ms. Shook expressing concern about the length of time a complete rezoning would take. Council Member Furguele stated that he believed the enrollment limit was due to fire safety or parking issues and asked that staff try to determine the basis for the limitation. Town Attorney Allison Meade recommended that staff review the recording of the meeting during which the special use permit was approved to see if reversing the restrictions would be possible, but stated that she was concerned about similar situations that may arise. Mr. Cline stated that the academy intended to increase enrollment to 199 to allow for several more years of growth. Council Member Furguele made a motion to direct the Town Attorney to determine whether a change in the verbiage of the condition to address the underlying concern would solve the problem. Council Member Furguele continued his motion by asking that if a change in verbiage would address the issue that a possible modification be presented to the Board of Adjustment so that Council would not have to entertain a change to the ordinance itself. If staff determines that a modification is not possible, the Council should then consider rezoning the property to O & I so that no

change in the UDO would be required, or alternatively, consider the creation of an accessory use category which would accommodate the proposed expansion. Mayor Pro Tem Clawson seconded the motion.

VOTE: Aye: All
 Nay: None
 Absent: Mason

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on the following topics:

- Water intake update
- General obligation bonds and water and sewer bonds closing on July 24th
- Downtown Streetscape update
- Town/County meeting regarding ad valorem taxes - Mr. Ward stated that he had reached out to the County three times asking for a meeting and had been denied each time and asked Council for direction. Council Member Furgiuele made a motion to amend the agenda to add an item to request that Watauga County Commissioners meet with the Town Council before the end of 2018. Council Member Clawson seconded the motion.

VOTE: Aye: All
 Nay: None
 Absent: Mason

- MOAA veterans memorial update
- Presented Council with photos of the completed sidewalk on Wellness Center property as part of the Greenway connector
- DFI representatives will present an update of their progress to Council in August
- Potential grant funding from the Walmart community grant for quality of life to improve access to recreation, the arts, etc. for low income families. Mr. Ward stated that if received, these funds could leverage additional funds for Junaluska Park upgrades and other recreation amenities on the Greenway
- Paving for Pizza grant will be explored to help with the cost of fixing potholes
- State legislative update - HB 507 land use regulation changes. It was the consensus of Council that the Town reach out to representative Jordan to see whether his support of this bill was the result of actions of the Town
- Glendale sanitary sewer update
- 4th of July celebrations and
- Sidewalk enhancement project to begin after 4th of July, including a brick pavement boarder and drainage

Mayor Brantz declared a break at 7:55 p.m. Council reconvened at 8:07 p.m.

APPROVAL OF FY 2018/19 OUTSIDE AGENCY ALLOCATIONS

Town Manager presented the FY 2018/19 Outside Agency Funding Review Committee recommendations which are listed below. Upon a motion by Council Member Clawson, seconded by Council Member Furgiuele, Council voted to approve the recommendations as presented, with the addition of \$20,000 in funding allocated to the Hospitality House, for a total of \$30,000 being allocated for this agency.

Agency	Amount Requested	Amount Recommended
Blue Ridge Women in Agriculture	\$30,000	\$20,000
Community Care Clinic	\$25,000	\$25,000
Financial Literacy Initiative	\$5,000	0

Friends of the Watauga County Public Library	\$10,000	\$2,500
Hospitality House	\$35,000	\$10,000
Hunger & Health Coalition	\$20,000	\$18,000
Mountain Alliance	\$20,000	\$10,000
O.A.S.I.S.	\$20,000	\$15,000
The Children's Playhouse	\$5,000	\$4,500
Watauga County Emergency & Rescue Squad	\$10,000	0
Watauga County Parks & Recreation	\$44,800	0
Watauga County Project on Aging	\$6,000	0
Western Youth Network	\$15,000	\$10,000
TOTAL	\$245,800	\$115,000

RESULT: APPROVED [UNANIMOUS]
MOVER: Loretta Clawson, Mayor Pro-Tem
SECONDER: Sam Furguele, Council Member
AYES: Clawson, Furguele, Ulmer, Ashcraft
ABSENT: Mason

ADOPTION OF PROPOSED FY 2018/19 BUDGET

Town Manager John Ward presented the FY 2018/19 budget ordinance with amendments requested by Council at the previous meeting. Upon a motion by Council Member Furguele, seconded by Council Member Ulmer, Council voted to approve the FY 2018/19 budget ordinance, with the understanding that "Pending Adoption" would be removed from the Water and Sewer portion of the ordinance and that the fees would be reincorporated as a part of the FY 2018/19 budget.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Sam Furguele, Council Member
SECONDER: Connie Ulmer, Council Member
AYES: Clawson, Furguele, Ulmer, Ashcraft
ABSENT: Mason

CONSIDERATION OF CORPORATE AUTHORIZATION RESOLUTION/VEHICLE LEASE PURCHASE DOCUMENTS

Upon a motion by Council Member Furguele, seconded by Council Member Ulmer, Council voted to approve the Corporate Authorization Resolution/Vehicle Lease Purchase documents as presented.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Furgiuele, Ulmer, Ashcraft
ABSENT:	Mason

CONSIDERATION OF ENCROACHMENT AGREEMENTS - HORTON HOTEL

Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council voted to approve the Horton Hotel Encroachment Agreements as presented.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the ~~8th~~^{15th} day of June, 2018, by and between the TOWN OF BOONE ("Town"), and Lovin Marketing Co. ("Encroacher"), who is/are the owner(s) of the property identified below.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, Encroacher desires to encroach on public land designated as a public sidewalk (hereinafter referred to as the "public land") located at 611 West King Street, Boone, NC 28607 as further described at Book 1927, Page 112 of the Watauga County Registry of Deeds, in the Town of Boone, North Carolina with the following encroaching facilities: a lighted 13.2 square foot projecting sign for the Horton Hotel which projects from the face of the existing building 32", as further shown for illustration purposes on the attached Exhibit A (hereinafter referred to as "the encroaching facility"); and

WHEREAS, it is to the material advantage of Encroacher to effect this encroachment, and the Town, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment facility on public land as specifically described in the foregoing paragraph (hereinafter, "encroachment"), subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the Town hereby grants to Encroacher the right and privilege to make this encroachment upon the following conditions, to wit:

- A. That Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees that it will:
1. comply with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances as apply;
 2. install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof;
 3. reimburse the Town for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility;

4. promptly remove or alter the encroaching facility in order to conform to the requirements of the Town, without any cost to the Town, if at any time the Town shall require the removal of or changes in the location of the encroaching facility;
 5. provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the Town's Director of Public Works or his or her designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto;
 6. be responsible for all liability and potential liability associated with the encroachment and encroaching facility and hold harmless and indemnify the Town for the same to the maximum extent allowed by law. In furtherance of such responsibility, Encroacher agrees to indemnify, defend, and hold harmless the Town and the Town's employees, councilors, officers, officials, and agents from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;
 7. require its contractor(s) who are installing or constructing the encroaching facility to add the Town as additional insured on the contractor's general liability policy, requiring the insurance carrier to give the Town at least 10 days notice of cancellation or reduction of coverage, and provide to the Town evidence of such coverage at least 10 days prior to the beginning of installation or construction.
- B. Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees to the following additional terms:
1. The Town will assume no responsibility for any damage that may be caused to the encroaching facility as the Town carries out its construction and maintenance operations, and Encroacher expressly waives all claims of liability or responsibility against the Town for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. Encroacher acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the Town during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet

above the surface of a public sidewalk, the party of the second party is knowingly and intentionally assuming that heightened risk of damage.

2. Encroacher agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.
3. Encroacher agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Town. Encroacher shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, Encroacher agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Town. Encroacher shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the Town.
4. Encroacher agrees to assume the actual cost of any inspection of the work considered to be necessary by the Town.
5. Encroacher agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the Town. The Town reserves the right to stop all work unless evidence of approval can be shown.
6. If the work referred to in this agreement is being performed on a public street open to traffic, Encroacher agrees to give written notice of when work will begin to the Town.
7. In the case of noncompliance with the terms of this agreement by Encroacher, the Town reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the Town.
8. The parties agree that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by Encroacher from the Town.
9. The Town expressly reserves the unrestricted right to require Encroacher to change the location of or to remove the encroaching facility described herein at no expense to Town.
10. This Agreement shall be revocable at will by the Town of Boone Town Council.
11. Encroacher shall obtain permits as necessary from the Town's Planning & Inspection Department.
12. By making this agreement, the Town does not guarantee in any way the extent or sufficiency of its right-of-ways. Encroacher is responsible for verifying all right-of-way on Town roads.

13. Town may, in its discretion, record this agreement with the Watauga County Register of Deeds.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed effective as of the day and year first above written.

[signatures follow on next pages]

TOWN:

The foregoing instrument is approved, this ____ day of _____, 201__.

Town of Boone

By: _____
Mayor

Attested By: _____ (SEAL)
Clerk, Town of Boone

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that she is the Clerk for the Town of Boone, a North Carolina municipality, and that by authority duly given and as an act of the Town of Boone, the foregoing instrument was signed in its name by its Mayor, _____, and attested by her as the Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 201__.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____



THIS INSTRUMENT APPROVED AS TO FORM:

Town Attorney

ENCROACHER:**Lovin Marketing Co.**By: 

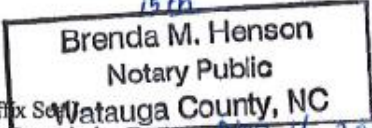
Name: Fulton Lovin

Title: President

NOTARY ACKNOWLEDGEMENTS*Corporation/LLC/Partnership*

State of North Carolina - County of Watauga

I, certify that Fulton Lovin personally came before me this day and acknowledged that he is the President of Lovin Marketing Co., a North Carolina corporation, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 8th day of June 2018.

15th

(Affix Seal) Watauga County, NC
My Commission Expires: Nov. 4, 2022


Notary Public

Brenda Henson, Notary Public
Notary's Printed or Typed Name

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the ^{15th}~~24th~~ day of June, 2018, by and between the TOWN OF BOONE ("Town"), and Lovin Marketing Co. ("Encroacher"), who is/are the owner(s) of the property identified below.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, Encroacher desires to encroach on public land designated as a public sidewalk (hereinafter referred to as the "public land") located at 611 West King Street, Boone, NC 28607 as further described at Book 1927, Page 112 of the Watauga County Registry of Deeds, in the Town of Boone, North Carolina with the following encroaching facilities: a 61 square foot (17'6"Lx78"Dx24"H) aluminum welded canopy for Horton Hotel which projects from the face of the existing building 78", as further shown for illustration purposes on the attached Exhibit A (hereinafter referred to as "the encroaching facility"); and

WHEREAS, it is to the material advantage of Encroacher to effect this encroachment, and the Town, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment facility on public land as specifically described in the foregoing paragraph (hereinafter, "encroachment"), subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the Town hereby grants to Encroacher the right and privilege to make this encroachment upon the following conditions, to wit:

- A. That Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees that it will:
1. comply with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances as apply;
 2. install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof;
 3. reimburse the Town for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility;

4. promptly remove or alter the encroaching facility in order to conform to the requirements of the Town, without any cost to the Town, if at any time the Town shall require the removal of or changes in the location of the encroaching facility;
 5. provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the Town's Director of Public Works or his or her designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto;
 6. be responsible for all liability and potential liability associated with the encroachment and encroaching facility and hold harmless and indemnify the Town for the same to the maximum extent allowed by law. In furtherance of such responsibility, Encroacher agrees to indemnify, defend, and hold harmless the Town and the Town's employees, councilors, officers, officials, and agents from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;
 7. require its contractor(s) who are installing or constructing the encroaching facility to add the Town as additional insured on the contractor's general liability policy, requiring the insurance carrier to give the Town at least 10 days notice of cancellation or reduction of coverage, and provide to the Town evidence of such coverage at least 10 days prior to the beginning of installation or construction.
- B. Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees to the following additional terms:
1. The Town will assume no responsibility for any damage that may be caused to the encroaching facility as the Town carries out its construction and maintenance operations, and Encroacher expressly waives all claims of liability or responsibility against the Town for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. Encroacher acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the Town during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet

above the surface of a public sidewalk, the party of the second party is knowingly and intentionally assuming that heightened risk of damage.

2. Encroacher agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.
3. Encroacher agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Town. Encroacher shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, Encroacher agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Town. Encroacher shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the Town.
4. Encroacher agrees to assume the actual cost of any inspection of the work considered to be necessary by the Town.
5. Encroacher agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the Town. The Town reserves the right to stop all work unless evidence of approval can be shown.
6. If the work referred to in this agreement is being performed on a public street open to traffic, Encroacher agrees to give written notice of when work will begin to the Town.
7. In the case of noncompliance with the terms of this agreement by Encroacher, the Town reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the Town.
8. The parties agree that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by Encroacher from the Town.
9. The Town expressly reserves the unrestricted right to require Encroacher to change the location of or to remove the encroaching facility described herein at no expense to Town.
10. This Agreement shall be revocable at will by the Town of Boone Town Council.
11. Encroacher shall obtain permits as necessary from the Town's Planning & Inspection Department.
12. By making this agreement, the Town does not guarantee in any way the extent or sufficiency of its right-of-ways. Encroacher is responsible for verifying all right-of-way on Town roads.

13. Town may, in its discretion, record this agreement with the Watauga County Register of Deeds.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed effective as of the day and year first above written.

[signatures follow on next pages]

TOWN:

The foregoing instrument is approved, this ____ day of _____, 201__.

Town of Boone

By: _____
Mayor

Attested By: _____(SEAL)
Clerk, Town of Boone

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that she is the Clerk for the Town of Boone, a North Carolina municipality, and that by authority duly given and as an act of the Town of Boone, the foregoing instrument was signed in its name by its Mayor, _____, and attested by her as the Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 201__.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____

Notary Public

Notary Public

Notary Public

THIS INSTRUMENT APPROVED AS TO FORM:

Town Attorney

ENCROACHER:**Lovin Marketing Co.**By: 

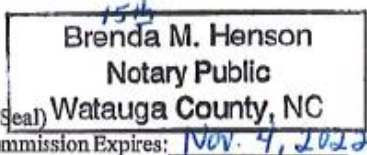
Name: Fulton Lovin

Title: President

NOTARY ACKNOWLEDGEMENTS*Corporation/LLC/Partnership*

State of North Carolina - County of Watauga

I, certify that Fulton Lovin personally came before me this day and acknowledged that he is the President of Lovin Marketing Co., a North Carolina corporation, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 8th day of June 2018.


(Affix Seal) Brenda M. Henson
Notary Public
Watauga County, NC
My Commission Expires: Nov. 4, 2022


Notary Public

Brenda Henson, Notary Public
Notary's Printed or Typed Name

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Clawson, Furguele, Ulmer, Ashcraft
ABSENT:	Mason

CONSIDERATION OF AGREEMENT WITH WATAUGA COUNTY SCHOOLS FOR SCHOOL RESOURCE OFFICER

Town Manager John Ward presented Council with an agreement with Watauga County Schools for a School Resource Officer at Watauga High School. Council Member Furguele expressed concern with language throughout the agreement including the statement that the officer would serve as a resource in legal matters, which may lead to the unauthorized practice of law and suggested the language be tweaked to protect officers. Council Member Furguele also suggested that the general duties in paragraph five of the agreement be amended to be less broad and stated that he was concerned about questioning students who have done nothing wrong as well as the fact that the officer would have to notify authorities. Police Chief Dana Crawford suggested that the term "investigatory purposes" be added to the clause regarding the questioning of students. Council Member Furguele added that a provision should be added that when a school resource officer engages

a student, that the interaction would be documented by body cameras to avoid misunderstandings. Council Member Ulmer stated that she believed officers should keep a log of who they interact with. Chief Crawford responded that officers did compile daily reports with this information. Council Member Furguele expressed concern with broad contemplations in section 2b regarding records and noted that he had privacy concerns. It was the consensus of Council that the Town Attorney make the changes listed above, as well as a 90-day termination clause and to bring back to Council for final approval.

RESULT:	CONSENSUS
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DISCUSSION REGARDING THE TOWN'S APPROACH TO THE OPEN MEETINGS LAW

Council Member Furguele stated that he put this item on the agenda due to occurrences at a recent Downtown Boone Development Association meeting during which three Council Members were in attendance and that he had intentionally not attended the Chamber of Commerce event to discuss parking in the town because he was concerned that without a special meeting being called, that would also violate the law since it would be impossible to determine the scope of the meeting or the level of participation of the Council members in attendance in advance. He continued to say that he believed that members may have been inadvertently violating open meetings law and questioned the need for the Council liaison positions. Council Member Furguele stated that he believed if a significant number of Council Members were going to be present at an event, the public should be made aware of it in order to be more open and transparent. He said that the Town's Code of Ethics directs the Town Council not only meet the letter of the law, but that the members avoid any appearance of violating the open meetings law, and that he believed that the Town strive for maximum transparency. Town Manager John Ward stated that it may be hard for staff to gauge what Council Members will do, with Town Attorney Allison Meade adding that if the entire Council was invited to an event, that she believed a notice should be issued, as long as staff knows members are attending. Discussion ensued regarding participation in such events, with Council Member Furguele indicating that he believed Council Members were influencers and participated indirectly. Council Member Ulmer stated that she believed communication between Council and staff to be key in these situations. Mr. Ward raised the question of taking minutes at these specially called meetings, with Council Member Furguele suggesting that Council Members could use a recording device to use during the meeting, or the Town Council could endorse the minutes of the event host.

TOWN ATTORNEY'S ANALYSIS REGARDING OPEN MEETINGS ISSUE

PROPOSED AMENDMENT TO "ROADWAY & SIDEWALK PROGRAM HANDBOOK"

RESULT:	TABLED [UNANIMOUS]	Next: 7/17/2018 6:00 PM
MOVER:	Sam Furguele, Council Member	
AYES:	Clawson, Furguele, Ulmer, Ashcraft	
ABSENT:	Mason	

CONSIDERATION OF UDO AMENDMENT - DISCLOSURE OF INTENT TO SEEK ABATEMENT IN PROPERTY TAXES

Council Member Furguele asked that staff put this request into the queue for UDO amendments. Town Attorney Allison Meade asked whether Council would be agreeable to placing a disclosure clause on the permit application to which Council Member Furguele stated that while having the disclaimer on the application would be an improvement, he preferred the rule be adopted into the UDO so that permits could be revoked if the applicant misrepresented its intentions. Upon a motion by Council Member Ashcraft, seconded by Council Member Clawson, Council voted to move forward with a UDO text amendment to require builders to disclose their intent to seek abatement in property taxes.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Marshall Ashcraft, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Clawson, Furgieue, Ulmer, Ashcraft
ABSENT:	Mason

CONSIDERATION OF UDO AMENDMENT - THREE-STORY LIMIT FOR MIXED USE AND MULTI-FAMILY DEVELOPMENTS IN TRANSITIONAL ZONES

Upon a motion by Council Member Furgieue, seconded by Council Member Ulmer, Council voted to have conversation at the joint Town Council/Planning Commission meeting in July regarding the three-story limit for mixed use and multi-family developments in transitional zones.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgieue, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Furgieue, Ulmer, Ashcraft
ABSENT:	Mason

CONSIDERATION OF AMENDMENT TO TOWN PERSONNEL POLICY - HIRING FROM WITHIN

Council Member Furgieue presented his request to amend the Town personnel policy to suggest that staff hire from within to the extent possible without advertising, excluding entry level and supervisory positions. He asked that the Town Attorney research whether this policy change would come into conflict with the Equal Employment Opportunity policy and bring her analysis back in July or August. He also requested information on the cost of advertising a position outside.

CONSIDERATION AND ADOPTION OF POLICY RELATING TO NEW TOWN CONSTRUCTION

RESULT:	TABLED [UNANIMOUS]	Next: 7/17/2018 6:00 PM
MOVER:	Sam Furgieue, Council Member	
AYES:	Clawson, Furgieue, Ulmer, Ashcraft	
ABSENT:	Mason	

DISCUSSION OF CONTRACT - MCLAURIN PARKING

Council Member Furgieue stated that he had recently received a complaint about the appearance of parking tickets issued by McLaurin Parking at the Marketplace property and expressed concern that visitors may perceive the tickets as coming directly from the Town of Boone. Council Member Furgieue stated that he believed McLaurin to be in violation of N.C.G.S. Chapter 75 Article 2 and that McLaurin had a commitment to the Town to comply with local, state and federal laws. The Town Attorney stated that she would have to study the issue to determine if McLaurin's actions violated State law, but these were not the kind of violations of State law which would give the Town a basis to terminate the contract. Council Member Furgieue made a motion, which was seconded by Council Member Clawson that staff communicate Council's dissatisfaction with McLaurin about their violation of N.C.G.S. §75-2 as well as what could be perceived as their simulation of municipal parking tickets and that the contract between McLaurin and the Town be discontinued if these actions failed to cease.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Sam Furguele
AYES:	Clawson, Furguele, Ulmer, Ashcraft
ABSENT:	Mason

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Rennie Brantz announced the following board vacancies:

BOARD OF ADJUSTMENT

Three alternate positions

COMMUNITY APPEARANCE COMMISSION

Three positions

CULTURAL RESOURCES ADVISORY BOARD

Two positions

DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

One Council appointed position

HISTORIC PRESERVATION COMMISSION

Three positions

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE

One position

PLANNING COMMISSION

One position

WATER ADVISORY COMMITTEE

Two positions

APPOINTMENT OF ABC BOARD CHAIRPERSON AND APPOINTMENT TO CURRENT TERM

Upon a motion by Council Member Furguele, seconded by Council Member Ashcraft, Council voted to appoint Ronnie Holste to the ABC board term expiring in 2021 and Scott Casey to the ABC board term expiring in 2019. Council Member Clawson nominated Charlie Wallin to serve as Chairman to the board.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Marshall Ashcraft, Council Member
AYES:	Clawson, Furguele, Ulmer, Ashcraft
ABSENT:	Mason

APPOINTMENT TO CULTURAL RESOURCES ADVISORY BOARD

Council Member Furguele nominated Wayne Williams to serve on the Cultural Resources Advisory Board and noted that he believed members of the board should be residents of the Town of Boone.

VOTE: Aye: All
 Nay: None
 Absent: Mason

Mr. Williams term will expire on June 30, 2021.

APPOINTMENT TO DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

Council Member Furguele reiterated his previous statement that it should be Council's goal to appoint board members who reside inside the Town of Boone. Council Member Ashcraft nominated Kendra Sink to serve on the Downtown Boone Development Association.

VOTE: Aye: All
 Nay: None
 Absent: Mason

Ms. Sink's term will expire on July 31, 2021.

APPOINTMENT TO HISTORIC PRESERVATION COMMISSION

Council Member Furguele nominated Eric Plaag to serve on the Historic Preservation Commission.

VOTE: Aye: All
 Nay: None
 Absent: Mason

Mr. Plaag's term will expire on June 30, 2021.

APPOINTMENT TO TRANSPORTATION COMMITTEE

Council Member Furguele nominated Jeannine Underdown-Collins to serve on the Transportation Committee.

VOTE: Aye: All
 Nay: None
 Absent: Mason

Ms. Underdown-Collins' term will expire on June 30, 2021.

APPOINTMENT TO PLANNING COMMISSION

Council Member Furguele nominated Frank Veno to serve a full term on the Planning Commission, James Hedrick to complete the remainder of the term expiring in 2020 and to move Michael Sanchez to the ASU representative position. He noted that he would like to hold off on filling the final vacancy on the Planning Commission until July to allow for more applications.

VOTE: Aye: All
 Nay: None
 Absent: Mason

Mr. Veno's term will expire on June 30, 2022, Mr. Hedrick's term will expire on June 30, 2020 and Mr. Sanchez's term will expire on June 30, 2019.

CLOSED SESSION

Upon a motion by Council Member Clawson, seconded by Council Member Council voted to enter into closed session at 10:00 p.m. pursuant to:

1. N.C.G.S. § 143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee.
2. N.C.G.S. § 143-318.11 (a)(11) and § 143-318.10 (e), to review, approve and seal closed session minutes from Council's prior closed session(s).
3. N.C.G.S. § 143-318.11 (a)(3), to consult with the attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.
4. N.C.G.S. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the matter involving Zhiyuan Chen.

ADJOURNMENT

Nicole Worley, Town Clerk

Rennie Brantz, Mayor