

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL JULY
21, 2014**

A regular meeting of the Boone Town Council was called to order at 5:30 p.m., Monday, July 21, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Quint David, Fred Hay, and Jennifer Peña. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Assistant to the Manager Jim Byrne, Police Captain Andy LeBeau, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Director Bill Bailey, Cultural Resources Director Pilar Fotta, and Downtown Development Coordinator Virginia Falck.

ANNOUNCEMENTS

Mayor Ball called the meeting to order and welcomed all in attendance. He noted that anyone wanting to sign up to speak during the public comment session would need to sign the public comment sign-up sheet.

PUBLIC COMMENT

There was no signed up to speak during public comment.

DISCUSSION OF TOWING AND BOOTING ISSUES

It was agreed to keep this matter under Council Matters for further discussion.

WATER COMMITTEE RECOMMENDATIONS

It was agreed to keep this matter under Council Matters for further discussion.

SCHEDULING OF ZONING MAP AND TEXT AMENDMENTS

- **Case 20140349 – First Baptist Church & Hospitality House – General Use Map Amendment**
- **Case 20140372 – Church of Jesus Christ of Latter Day Saints – Conditional District Map Amendment**
- **Case 20140385 – Parking Control Warning Signs**
- **Case 20140384 – UDO Corrections**

Planning Director Bill Bailey explained that the Council needs to take action on sending the zoning text and map amendments to the next Quarterly Public Hearing agenda in order to meet advertising deadlines. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to amend the agenda to take action on all of the zoning map and text amendments.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to send the following cases to the August Quarterly Public Hearing agenda:

- **Case 20140349 – First Baptist Church & Hospitality House – General Use Map Amendment**

- Case 20140372 – Church of Jesus Christ of Latter Day Saints – Conditional District Map Amendment
- Case 20140385 – Parking Control Warning Signs
- Case 20140384 – UDO Corrections

VOTE: Aye – All
 Nay – None

REQUEST DIRECTION ON UDO TEXT AMENDMENT REGARDING TEMPORARY RETAIL KIOSKS

Planning Director Bill Bailey stated that the Council had been approached by Mitch Copeland requesting a change to the UDO to allow temporary retail kiosks be permitted in the B-1 zoning districts. After brief discussion, Council directed staff to investigate what other municipalities allow in regard to this type of use. It was agreed to keep this matter under Council Matters for further discussion.

REQUEST DIRECTION ON HISTORIC PRESERVATION COMMISSION

Planning Director Bill Bailey stated that the Historic Preservation Commission has learned of recent changes by the NC State Historic Preservation Office which will affect the Commission in regard to what is now needed to gain certification by the Local Government Commission. It was agreed to keep this matter under Council Matters for further discussion.

P&I MONTHLY REPORT

It was agreed by Council to keep this item under Council Matters for further discussion.

TRANSPORTATION COMMITTEE RECOMMENDATION – PEDESTRIAN PLAN FOR POPLAR GROVE ROAD AREA

Interim Public Works Director Eric Gustaveson explained that a design for a pedestrian area along Poplar Grove Road has been submitted by Destination by Design. He relayed that the intent of this design is to connect the Poplar Grove Road area with Howard and Water Street via a Greenway/Veterans Walkway instead of construction of sidewalk on Poplar Grove Road which would be cost prohibitive. Mr. Gustaveson stated that the Transportation Committee is requesting that the Council review the concept submitted for compatibility with current plans and regulations regarding alternative transportation. It was agreed by Council to keep this item under Council Matters for further discussion.

TRANSPORTATION COMMITTEE RECOMMENDATION – PAVEMENT RESURFACING PRIORITIES

Interim Public Works Director Eric Gustaveson presented a list of pavement resurfacing priorities for Boone as recommended by the Transportation Committee. It was the consensus of the Council to place this item on the Consent Agenda.

TRANSPORTATION COMMITTEE RECOMMENDATION – SIGNALIZED PEDESTRIAN CROSSWALKS PRIORITY LIST

Interim Public Works Director Eric Gustaveson presented the following priorities recommended by the Transportation Committee for signalized pedestrian crosswalks:

1. Highway 105 and Wilson Drive intersection – making a connection to the Greenway Trail.
2. Blowing Rock Road and Holmes Drive – connecting the Holmes Convocation Center to the Alumni Center.
3. Blowing Rock Road and Boone Heights Drive – connecting local hotels and businesses to the Greenway Trail.

It was the consensus of the Council to place this item on the Consent Agenda.

APPROVAL OF DBDA CONTRACT

Downtown Coordinator Virginia Falck presented a request from the DBDA to change the date of the audit on the recently adopted contract to September 30, 2014 instead of September 1st. It was the consensus of the Council to place this matter on the Consent Agenda.

QUARTERLY NOISE REPORT

It was the consensus of the Council to keep this item under Council Matters.

MONTHLY WATER USE STATUS REPORT

It was the consensus of the Council to keep this item under Council Matters.

ANNOUNCEMENT OF BOARD VACANCIES

It was the consensus of the Council to keep this item under Council Matters.

BOARD APPOINTMENTS

It was the consensus of the Council to keep this item under Council Matters.

Town Manager Greg Young informed the Council that the requested appearance by representatives of the Daniel Boone Native Gardens has been deleted from the agenda per request from Lila Petersen. Additionally, he noted that an item for Closed Session has been requested to be added. Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to delete Item 7.A. Requested Appearances – Rebecca Kaenzig and to add the following item to Closed Session:

-Pursuant to NCGS §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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of potential claims against the Town.

VOTE: Aye – All
 Nay – None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to enter Closed Session at 5:59 p.m. pursuant to NCGS 143-318-11a(1)(3)(5) to hear the following items:

- A. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim by the Town.

- B. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(5), to establish, or to instruct Town staff and negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed interest in real property.
- C. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim by the Town.
- D. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling of a potential claims against the Town.
- E. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling of a claim against the Town.
- F. Addition of Item to Closed Session – Pursuant to NCGS §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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of potential claims against the Town.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Peña, seconded by Council Member Brantz, Council moved to exit Closed Session at 8:35 p.m.

VOTE: Aye – All
 Nay – None

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to recess the meeting at 8:37 p.m. until Thursday, July 24, 2014, in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

CALL TO RECONVENE

A recessed meeting of the Boone Town Council was called to order at 5:30 p.m., Thursday, July 24, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Quint David, Fred Hay, and Jennifer Peña. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Fire Marshal Ronnie Marsh, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Director Bill Bailey, Human Resources Director Peri Moretz, and Cultural Resources Director Pilar Fotta.

ANNOUNCEMENTS

Mayor Ball called the meeting to order and welcomed all in attendance. He noted that anyone wanting to sign up to speak during the public comment session would need to sign the public comment sign-up sheet.

Mayor Ball informed the Council that the Town of Boone was included in utilities honored by the State for meeting stringent drinking water standards and will receive the 2013 NC Area Wide Optimization Award from the Division of Water Resources Public Water Supply section. Mayor Ball and members of the Council expressed appreciation for all of the hard work done by the staff at the Town of Boone Water Treatment Plant.

Public Utilities Director Rick Miller recognized Mike Trivette, a cross-connection technician for the Town of Boone, for receiving the Utility Management Certification (UMC) credential. He stated that the UMC is the highest professional credential in the utility industry. Mayor Ball and members of the Council congratulated Mr. Trivette on receiving this distinguishing credential.

Mayor Ball informed the Council that the Town of Boone has been designated as a “Tree City USA” Community of the Year.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted no changes to the agenda. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the agenda, as presented.

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

- A. Minutes: June 2, 2014 – Special Public Hearing.
June 9, 2014 – Special Meeting. June
11, 2014 – Special Meeting. June 16,
2014 – Special Meeting. June 16/19,
2014 – Regular Meeting.
- B. Approval of Encroachment Agreement – Lost Provice Brewing Co., Inc. Projecting Sign. **(Copy of agreement permanently on file at Boone Town Hall.)**
- C. Approval of Encroachment Agreement – Mile High Vapory Projecting Sign. **(Copy of agreement permanently on file at Boone Town Hall.)**
- D. Transportation Committee Recommendation – Pavement Resurfacing Priorities.
- E. Transportation Committee Recommendation – Signalized Pedestrian Crosswalks Priority List.
- F. Change to DBDA Contract – Receipt of Audit Date. **(Permanently on file at Boone Town Hall.)**

Upon a motion by Council Member Brantz, seconded by Council Member Pena, Council moved to adopt items A, C, D, E and F of the Consent Agenda.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to excuse Council Member Mason from consideration of Item B of the Consent Agenda.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member David, Council moved to approve Item B – Approval of Encroachment Agreement for Lost Province Brewery Co., Inc. Projecting Sign. **(Copy of agreement permanently on file at Boone Town Hall.)**

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to reseal Council Member Mason.

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Al Earnest, chairman of SAHA, updated the Council on recent activities at Horn in the West. He stated that attendance and revenues have increased approximately 35% compared to last year, although the organization still has a huge deficit. Mr. Earnest stated that he plans to present more updates to the Council throughout the year.

WATER COMMITTEE RECOMMENDATIONS

Public Utilities Director Rick Miller presented three recommendations from the Water Use Committee:

- 1) Members recommend to Town Council that existing water and sewer connections in the ETJ remain in service.
- 2) Members recommend to Town Council that no new extensions or connections be allowed outside Boone’s corporate town limits, with the exception for hardships, as approved by Town Council.
- 3) Members recommend to Town Council to direct Town Staff and the Town Attorney to draft language and set parameters for the definition of hardship, for which the Council will be able to consider requests for hardship.

Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved to approve the recommendations of the Water Use Committee and directed the Town Attorney to incorporate these recommendations into Ordinance #11-01.

VOTE: Aye – All
 Nay – None

REQUEST DIRECTION ON UDO TEXT AMENDMENT REGARDING TEMPORARY RETAIL KIOSKS

Planning Director Bill Bailey stated that he was unable to find any additional information on this particular use. Several of the council members voiced concerns about safety, security, and

aesthetics in regard to this use. Town Attorney Sam Furguele stated that the council needs to consider other uses besides this one request. After discussion, it was the consensus of the Council that more information on this type of general use needs to be presented before a decision can be rendered.

REQUEST DIRECTION ON HISTORIC PRESERVATION COMMISSION

Anne McDonald, of the State Historic Preservation Office, appeared before the Council to explain that some additional steps are necessary in attaining Certified Local Government certification. Eric Plaag, chair of the Historic Preservation Commission, informed the Council that the board is holding a retreat in August to discuss additional priorities and will report back to council. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to authorize local designations for the Downtown Boone Post Office and the Jones House, a historic survey, and to develop a plan to gain Certified Local Government status.

VOTE: Aye – All
 Nay – None

P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I Monthly report. **(Permanently on file in the July 2014 Town Council meeting packet.)**

DISCUSSION OF TOWING & BOOTING ISSUES

Town Attorney Sam Furguele presented changes he has drafted to Chapter 73: Towing. After lengthy discussion of the proposed changes, Council Member Mason moved to approve the draft amendment as presented, to make the changes effective as of August 15, 2014, and to instruct the Town Attorney to look at additional language for removal of signs not covered by this language. Council Member Hay seconded the motion.

CHAPTER 73: TOWING

Section

- 73.01 Definitions
- 73.02 Limitations of chapter
- 73.03 Towing Authorized
- 73.04 Towing of vehicles from parking lots
- 73.05 Towing of vehicles from parking spaces
- 73.06 Towing charges
- 73.07 Time limits for releasing non-consensually towed vehicles
- 73.08 Use of parking control devices or methods in parking lots and spaces

- 73.99 Penalty

§ 73.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARKING-CONTROL DEVICE OR METHOD. For purposes of this chapter, a ***PARKING-CONTROL DEVICE OR METHOD*** shall include, but not be limited to, the use of any

mechanical device, such as a "boot" or instrument intended to disable a vehicle or prevent a vehicle from being removed from a private parking lot or space, or the imposition of a private charge for the removal of a vehicle from a private parking lot or space, or any other non-consensual means by which a vehicle is immobilized, blocked or prevented from being removed from a parking lot or space.

PARKING LOT. Any privately-owned area created, designated or used for the parking of two or more vehicles, not including driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit.

PARKING SPACE. Any privately-owned area created, designated or used for the parking of vehicles, which does not constitute a parking lot, not including driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit. One or more parking spaces may, if designated in compliance with this chapter, exist within a parking lot.

TOWING COMPANY. Any person, business or other entity engaged in the towing of vehicles for compensation, including any officer, employee, agent, contractor or other person acting on behalf of, pursuant to the authority of, or under the supervision or control of the towing company. A person who functions as an "independent contractor" for purposes of federal tax law, but who maintains a business affiliation with one or more towing companies, shall be considered both a "towing company" and an employee of the towing company or companies with which the person maintains the business affiliation.

VEHICLE. Any motorized contrivance fitted with wheels or runners, whether or not it is required to be registered or licensed or is registered or licensed by the State, designed for the transportation of one or more persons, as well as any non-motorized contrivance fitted with wheels or runners, designed for the transporting of anything and designed to be pulled by an automobile, truck or other motorized vehicle.

(Prior Code, § 75.01) (Ord. 03-02, passed 4-24-2002; Ord. passed 10-21-2004; Ord. passed 9-20-2012; Ord passed 2-19-2013; Ord passed 2-20-2014)

§ 73.02 LIMITATIONS OF CHAPTER.

(A) This chapter shall not limit or in any way modify the authority or abrogate the procedures created by § 70.08, §§ 91.070 *et seq.*, nor of any towing powers or procedures conferred or created by state general statute or the code of ordinances upon Police, Fire Department or other emergency personnel. Except as expressly provided, this chapter does not in any way amend the provisions of § 153.01 with respect to the number, posting, placement, permitting, dimensions or other characteristics or requirements of signs within the town. This chapter shall not apply to the towing of vehicles encroaching into areas clearly designated as fire lanes and shall not limit the right to tow vehicles which are blocking clearly designated areas of ingress and/or egress or encroaching into areas clearly designated and marked for access to dumpster(s) so long as signage reasonably calculated to be seen warns that encroachment into dumpster access areas will result in towing of the vehicle.

(B) This chapter does not limit other remedies under law a property owner may have against a person trespassing on private property, but only applies and limits the use of towing and parking control devices as specified.

(Prior Code, § 75.02) (Ord. 03-02, passed 4-24-2003; Ord. passed 9-20-2012)

§ 73.03 TOWING AUTHORIZED.

(A) Towing by towing companies is hereby authorized within the town.

(B) No towing company which maintains a physical business location within the corporate limits of the town may tow a vehicle from a parking lot or parking space within the town unless it first obtains and has in effect a current privilege license issued by the town in accordance with §112.35. A “physical business location” includes an office, impoundment or storage lot, and any other fixed location relating to the conduct of the towing operation. For an independent contractor who individually has no fixed physical business location, the “ physical location” of the towing company shall be considered the towing vehicle itself, and such contractor shall be required to obtain a privilege license before engaging in any towing activity within the town limits.

(C) No towing company may attach a towing vehicle to an occupied vehicle, tow a vehicle which is occupied, nor demand payment pursuant to this chapter in connection with an occupied vehicle. This chapter does not authorize a towing company to attempt to impede or block an occupied vehicle from being removed from a parking space or lot.

(Ord. passed 9-20-2012; Ord. passed 2-20-2014) Penalty, see § 73.99

§ 73.04 TOWING OF VEHICLES FROM PARKING LOTS.

(A) Other than the parking lot for a mall, shopping center, as those terms are defined in the town’s Unified Development Ordinance (the “UDO”), or a parking lot serving multiple commercial establishments, it shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle from any parking lot in the town unless the person:

(1) Has posted a sign on both sides of every vehicle entrance to the premises, in locations and heights designed to be easily seen from the vehicle driver’s vantage point by an unauthorized person entering the parking lot, on signs each no smaller than two square feet and no larger than four square feet containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:

(a) A statement that the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and

(b) The name and telephone number of the towing company and location where any towed vehicle is taken; or

(2) Has posted a sign or combination of signs, each no smaller than two square feet and no larger than four square feet on the premises, in a location(s) designed to and which can easily be seen by every unauthorized person utilizing the parking lot, containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:

(a) A statement that the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and

(b) The name and telephone number of the towing company and location where any towed vehicle is taken; or

(3) Has posted a sign compliant with §73.05(A)(1) at every parking space within the lot for which enforcement may take place; or

(4) Has placed a written notice, in a form designed to be weather resistant, on the windshield, under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and at least twenty-four hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which contains the following information:

(a) A statement that the parking lot is a private parking lot and unauthorized vehicles will be towed;

(b) The name and telephone number of the towing company and location where any towed vehicle is taken;

(c) The towing charges imposed by the towing company; and

(d) The existence and amount of any storage charges related to the storage by the towing company of the vehicle and the terms and conditions for the imposition of storage charges.

(B) For parking lots in “malls” or “shopping centers,” as those terms are defined in the Unified Development Ordinance (hereafter “UDO”), as well as parking lots which serve multiple commercial locations or establishments, it shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle unless the mall, shopping center or parking lot:

(1) Has complied with UDO §26.12.01, as applicable by the terms of that section;

(2) Has posted a sign on both sides of every vehicle entrance to the premises, in locations and at heights designed to be easily seen from the driver of a vehicle’s vantage point, no more than ten (10) feet from the street from which access to the parking lot is obtained, each sign no smaller than four square feet and no larger than six square feet, with a white background and red letters, containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:

(a) That the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced";

(b) The name of the mall or shopping center which the parking lot serves, and if fewer than six businesses are served by the parking lot, the name of each business contained in the mall or shopping center; or if the parking lot is one that serves multiple businesses or establishments not part of a shopping center or mall, the name of every business served by the parking lot, which name must match the name displayed on the business itself; and

(c) The name and telephone number of the towing company and location where any towed vehicle is taken; and

(3) When vehicle entrances are not clearly defined by curb cuts, has established locations of motor vehicle entrances by means of markings on the pavement such as painted hash marks, reflectors or the like, combined with the signs required by subsection (2).

(C) Once an owner or operator of a vehicle has been notified pursuant to subsection (A)(4) above, it shall be unnecessary for the person authorizing, directing, engaging in, or contracting for the non-consensual ~~notice~~ towing to give any further notification should there be any future

unauthorized parking with the same vehicle or by the same owner or operator at the same parking lot.

(Prior Code, § 75.03) (Ord. 03-02, passed 4-24-2003)

§ 73.05 TOWING OF VEHICLES FROM PARKING SPACES.

(A) It shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle from any parking space in the town unless:

(1) A sign has been posted in a conspicuous location facing the parking space, no smaller than 120 square inches, identifying the space as private property and warning that unauthorized vehicles will be towed, e.g. "Private Parking - Towing Enforced" and listing the name and telephone number of the towing company or a telephone number at which the name and location of the towing company can be ascertained; or

(2) The person authorizing, directing, engaging in, or contracting for the non-consensual towing places a written notice, in a form designed to be weather resistant, on the windshield under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and twenty-four hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which informs the owner or operator of the vehicle that the parking space is private property and the vehicle will be towed at the owner's expense if it is not removed and states the name and address of the towing company to be used. Unless the parking space in question is also located in a parking lot, before having a car towed pursuant to this procedure, the person authorizing, directing or contracting for the non-consensual towing shall first inform the Police Department that he or she is having an unauthorized vehicle towed.

(B) Once an owner or operator of a vehicle has been notified pursuant to subsection (A)(2) above, it shall be unnecessary for the person authorizing, directing, engaging in, or contracting for the non-consensual towing to give any further notification should there be any future unauthorized parking with the same vehicle or by the same owner or operator in the same parking space.

(Prior Code, § 75.04) (Ord. 03-02, passed 4-24-2003)

§ 73.06 TOWING CHARGES.

(A) Limits on towing charges.

(1) No towing company shall charge for the non-consensual towing of a vehicle more than 175% of its normal towing charge for consensual towing of a vehicle. For example, if a normal consensual towing fee is \$35, the maximum non-consensual towing fee is \$61.25. If a normal consensual towing fee is \$45, the maximum non-consensual fee is \$78.75.

(2) Whenever a towing company is attempting to non-consensually tow a vehicle and has already connected the vehicle to its tow truck, but the vehicle has not yet been removed from the parking lot or parking space and the owner or driver of the vehicle appears and states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver upon the payment of 50% of the non-consensual towing charge. If the vehicle has not yet been connected to the tow truck at the time the owner or driver appears, but the towing company has begun the process of preparing the vehicle for towing, and the owner or driver states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver so long as the owner or driver immediately removes the vehicle from the premises and pays a fee of 25% of the non-consensual towing charge.

(3) A towing company may charge a daily fee for the storage of a vehicle which has been non-consensually towed to the property of the towing company. No storage fee may be charged for days when the towing company is not open during the full normal business hours of at least 9:00 a.m to 4:00 p.m. for the recovery of a non-consensually towed and stored vehicle.

(a) Waiting period before storage fees may be charged. A towing company which is not open for the recovery of a towed vehicle at the time of the non-consensual towing shall not charge a storage fee for the storage of the towed vehicle until at least one full business day (no less than 24 hours) has elapsed from the time the towing company is next open for the recovery of a towed vehicle after the towing. If the towing company is open for recovery of a towed vehicle at the time a vehicle is non-consensually towed, the towing company may begin to charge a daily storage fee 24 hours after the vehicle is detached from the tow truck onto the property where the vehicle will be stored.

(b) Imposition of storage fees if towing company is closed when waiting period elapses. If the 24-hour waiting period for the charging of storage fees elapses at a time when the towing company is not open for the recovery of a vehicle which has been non-consensually towed, a storage fee cannot be charged until at least two hours after the beginning of the next business day thereafter.

(c) Amount of storage fees. Any storage fee charged by the towing company shall be reasonably related to the cost of storing the vehicle. A daily storage charge not exceeding \$10 per day shall be presumed to be reasonably related to the cost of storing a vehicle.

(d) A towing company which has failed to comply with the provisions of § 73.08 is prohibited from charging any storage fee whatsoever and is subject to such civil and other penalties authorized herein.

(B) Posting of fees. Each towing company operating within the jurisdictional limits of the town shall post, in a conspicuous location at its place(s) of business, a schedule of fees designed to be easily seen, which states, at a minimum, its consensual towing fee(s), its non-consensual towing fee, its daily storage fee and its hours of operation. The schedule of fees shall at all times be available for inspection and shall be placed or posted in a location(s) so that a person may obtain the information at times when the towing company is not open for business. Posting of the schedule on the entrance of the towing company, if the entrance of the towing company is approachable without a person having to pass through any barrier when the towing company is closed, shall comply with the requirements of this section with regard to the required place of posting.

(Prior Code, § 75.05) (Ord. 03-02, passed 4-24-2003)

§ 73.07 TIME LIMITS FOR RELEASING NON-CONSENSUALLY TOWED VEHICLES.

(A) Any time a towing company engages in the non-consensual towing of a vehicle, during the next six hours and during the next business day following the towing, an agent or employee of the towing company must respond within one-half hour to a telephone call from the vehicle's owner or driver to the contact number provided by the towing company. During its response call, upon the request of the driver or owner of the towed vehicle, the towing company must make arrangements for the release of the vehicle upon the full payment of fees, in accordance with subparagraphs (B) and (C).

(B) The towing company must arrange for and allow the full payment of fees within one-half hour of the end of the conversation described in subparagraph (A). If the towing company is

located more than three miles from the location from which the vehicle was towed, the company must travel to the location of the driver or owner of the towed vehicle to allow the full payment of fees to be made, if the owner or driver has requested the opportunity to pay the fees.

(C) Following the full payment of fees, the towing company must arrange for the release of the towed vehicle within one hour of payment. If the vehicle is more than three miles from the location from which it was towed, the company must return the vehicle to the public street nearest the location from which the vehicle was towed within one hour of payment.

§ 73.08 USE OF PARKING CONTROL DEVICES OR METHODS IN PARKING LOTS AND SPACES.

(A) Signs or Notification Required Before Parking Control Devices or Methods May be Utilized in Parking Lots.

(1) Other than the parking lot for a “mall” or “shopping center,” as those terms are defined in the UDO, or a parking lot serving multiple commercial establishments, it shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot unless the person:

(a) Has posted a sign on both sides of every vehicle entrance to the premises in locations and heights designed to be easily seen from the vehicle driver’s vantage point by an unauthorized person entering the parking lot, placed no more than ten (10) feet from the street from which access is obtained, each no smaller than two square feet and no larger than four square feet, containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:

(i) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified; and

(ii) The amount of any charge imposed to remove the parking control device or method from the vehicle; and

(iii) That, if applicable, the practice of the particular parking lot owner is to allow the application of a parking control device or method to a vehicle when the user of the vehicle utilizes the parking lot to visit both authorized premises and/or establishments and unauthorized premises and/or establishments.

(b) Has placed a written notice, in a form designed to be weather resistant, on the windshield, under a windshield wiper of the vehicle to be immobilized or other secure place on the vehicle, designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the application of the parking control device or method if the parking lot is located within the Municipal Service District and at least twenty-four hours prior to the application of the parking control device or method if the parking lot is located outside the Municipal Service District, which contains the following information:

(i) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified; and

(ii) The amount of any charge imposed to remove the parking control device or method from the vehicle.

(2) For parking lots in malls or shopping centers, as defined in the Unified Development Ordinance, as well as parking lots which serve multiple commercial or are in a location where confusion might arise as to which premises are served by the parking lot, it shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle unless the mall, shopping center or parking lot:

(a) Has complied with UDO §26.12.01, as applicable by the terms of that section;

(b) Has posted a sign on both sides of every vehicle entrance to the premises, in locations and at heights designed to be easily seen from the driver of a vehicle's vantage point, no more than ten (10) feet from the street from which access to the parking lot is obtained, each sign no smaller than four square feet and no larger than six square feet, with a white background and red letters, containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:

(i) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified;

(ii) The amount of any charge imposed to remove the parking control device or method from the vehicle.

(iii) The name of the mall or shopping center which the parking lot serves, and if fewer than six businesses are served by the parking lot, the name of each business contained in the mall or shopping center; or if the parking lot is one that serves multiple businesses not part of a shopping center or mall, the name of every business served by the parking lot, which name must match the name displayed on the business itself; and

(iv) That, if applicable, the practice of the particular parking lot owner is to allow the application of a parking control device or method to a vehicle when the user of the vehicle utilizes the parking lot to visit both authorized premises and/or establishments and unauthorized premises and/or establishments.

(c) When vehicle entrances are not clearly defined by curb cuts, has established locations of motor vehicle entrances by means of markings on the pavement such as painted hash marks, reflectors or the like, combined with the signs required by subsection (b).

(B) Operational Requirements for Persons Involved in the Use of Parking Control Devices or Methods in Parking Lots and Spaces.

(1) Any company which maintains a physical location within the corporate limits must obtain a privilege license from the town to direct or be involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town. The physical location of a person who functions as an "independent contractor" for purposes of federal tax law shall be the parking lot or parking spaces within which the person is engaged in the activities controlled by this chapter, and any such person involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town must obtain a privilege license from the town to direct or be involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town.

(2) Whether an individual functions as an employee or an independent contractor, for purposes of vicarious liability under this chapter he shall be treated as an employee of any company or person who directs his activities.

(3) No person (hereafter referred to as "parking lot attendant") may implement or apply a parking control device or method to a vehicle nor demand or accept payment for the removal or discontinuance of any parking control device or method until he has obtained an identification badge from the town.

(a) In order to obtain an identification badge from the town, the applicant must:

(i) Provide a certified copy of the applicant's criminal record in North Carolina from the Watauga County Clerk of Superior Court;

(ii) Fully complete an application on a form provided by the town, disclosing his name, address, telephone number, date of birth, gender, company affiliation, if any, physical location of affiliated company, and status as an employee or independent contractor of the company, by stating whether and by whom income taxes and FICA taxes are withheld from his pay; and

(iii) Disclose and certify, under oath, all criminal convictions within the prior ten (10) years in any jurisdiction for assaults or threats; homicide; sexual assault; crimes against nature, incest, indecent exposure and related offenses; kidnaping, larceny, possession of stolen goods, embezzlement and related offenses; robbery, extortion, and related offenses; burglary and breaking and entering; felony fraud, false pretenses and related offenses involving financial transactions; and weapons offenses. No person convicted of any of the foregoing within the prior ten (10) years shall be issued an identification badge.

(b) A person who is engaged in the use of parking control devices or methods in parking lots and spaces must display on his or her person at all times during which the person is present on the parking lot or on duty, the picture identification badge issued by the town. Such identification must be attached to the exterior clothing to an area plainly visible to a person addressing the parking lot attendant, or it must be attached to a lanyard hanging around the neck of the attendant and plainly visible to a person addressing the parking lot attendant. Upon request, the parking lot attendant must allow the operator or owner of the vehicle which has been immobilized to examine and copy any information from the identification badge.

(4) If a parking lot attendant observes an individual parking in a lot in which parking control devices or methods are utilized and further observes the individual leaving the vehicle in a direction that suggests that the individual is not an authorized user of the parking lot, before implementing or applying a parking control device or method to the vehicle, the parking lot attendant must attempt to verbally advise the individual that the parking lot is reserved for particular establishments and that the vehicle must be removed immediately or a parking control device or method will be utilized to immobilize the vehicle. For purposes of this subsection, an "attempt" shall consist of the parking lot attendant communicating the required information from the location from which the unauthorized vehicle is observed and doing so in a loud speaking voice. This subsection shall not require the parking lot attendant to physically pursue the person who has parked the unauthorized vehicle.

(5) No parking lot attendant may, when present on the premises of the parking lot or when he is at a location from which he can observe any portion of the parking lot or its entrances or exits, hide or secret himself, but instead must remain in plain view so that his presence will act as a deterrent to unauthorized persons contemplating the use of the parking lot or space. Such person must:

(a) Either position himself in open air; or

(b) If he monitors the parking lot from a vehicle:

(i) The vehicle must be parked in the parking lot which is subject to the parking control device or method; and

(ii) The vehicle:

(A) Must not have glass more deeply tinted than the degree of tinting provided by the manufacturer as part of its standard window tinting;

(B) Must have had no tinting applied to an original window following original manufacture; and

(C) Must have no other obstruction preventing the parking lot attendant from being clearly seen.

(iii) The parking lot attendant must remain in an upright position at all times while in the vehicle; and

(iv) The vehicle must have insignia on both the driver's door and the front passenger door which:

(A) Identifies the company with which the attendant is employed by name, address and telephone number;

(B) Includes in the name of the company a description of the parking control device or method utilized, e.g. "ABC Wheel-lock Company;" and

(C) Which can be easily be seen in both day and night conditions by the operator of every vehicle entering the parking lot from every entrance, OR

(e) In lieu of these "insignia," "tinting" and "posture" requirements (subsections 73.08 (B)(5)(b)(ii), (iii) and (iv)), the vehicle in which the parking lot attendant is stationed must be parked in a parking space next to the main entrance to the lot, have a light on top or within its cab which is compliant with the requirements of North Carolina for a tow truck engaged in the towing of a vehicle, and keep the light turned on and in actual use (rotating, flashing, etc., as the case may be) at all times during which the parking lot attendant is within the vehicle.

(6) A parking control device may not be applied to a vehicle which is occupied.

(C) Procedures After Parking Control Devices or Methods Utilized.

(1) After a parking control device or method has been utilized on an unauthorized vehicle, the person applying the parking control device or method must conspicuously display contact information for telephone contact by the owner or operator of the vehicle with a person who has the ability to remove the parking control device or method (the "contact person")

(2) Any person directing or arranging for the application of a parking control device or method must arrange for the contact person to respond within a time period no greater than fifteen minutes.

(3) The contact person must make a reasonable effort to respond within a fifteen-minute period to release the immobilized vehicle.

(4) After a parking control device or method is applied to a vehicle in any parking lot or space, it shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of the vehicle from the parking lot or space for a period of at least eight hours following such application.

(5) Except as authorized by 73.08(C)(4), after one parking control device or method is applied to a vehicle in any parking lot or space, it shall be unlawful for any person to authorize, direct or contract for a second parking control device or method to be applied to the vehicle and then to charge or attempt to charge an additional fee beyond the fee for removal of a single parking control device or method, or to refuse to remove all parking control devices or methods once the fee for removal of the initial parking control device is paid.

(6) Any time a parking control device is applied to a vehicle, when the penalty has been paid, the vehicle must be immediately released, and the vehicle operator must be provided with a receipt which discloses the correct contact information and appeal process, if any, for challenging the action of the person applying the parking control device or method.

(7) Should the Town Manager receive three or more unrelated and credible complaints within any three-month period asserting the failure of the contact person for the person authorizing, directing, contracting for, implementing or applying parking control devices or other methods to vehicles to respond within fifteen minutes to telephone contact by the owners or operators of vehicles which have been immobilized, it shall be presumptively concluded that the person authorizing, directing, contracting for, implementing or applying a parking control device or method to a vehicle in any parking lot or space in the town does not have the capacity to respond within fifteen minutes. Thereafter, a duly authorized person must be on duty and present in the parking lot or space at all times when any vehicle is subjected to a parking control device or method, and the person must remain on the property until the owner or operator of the vehicle returns, with the ability to remove the parking control device or method upon payment of the posted charges.

§ 73.99 PENALTY.

(A) Civil penalties. Whoever violates any provision of this chapter shall be subject to the penalty provisions of § 10.99.

(B) Criminal penalties. Any person who violates this chapter shall be guilty of a class 3 misdemeanor, pursuant to G.S. § 14-4(a), and is subject to a fine of up to \$500.

(C) No person convicted of a misdemeanor as the result of violating this chapter and no person convicted of any crime under State law related to activities connected to parking lot or parking space enforcement within the town may thereafter engage in towing or in the application of parking control devices or methods in the town for a period of ten (10) years from the date of conviction.

(Prior Code, § 75.99) (Ord. 03-02, passed 4-24-2003; Ord. passed 10-21-2004; Ord. passed 8-17-2006)

VOTE: Aye – All
 Nay – None

TRANSPORTATION COMMITTEE RECOMMENDATION – PEDESTRIAN PLAN FOR POPLAR GROVE ROAD AREA

Interim Public Works Director Eric Gustaveson appeared before Council to present a recommendation from the Transportation Committee regarding a pedestrian plan for the Poplar

Grove Road area proposed by Destination by Design. He explained that the West Downtown Boone Plan's objective is to create an alternative, pedestrian-friendly route to connect Howard and Waters Streets to the Poplar Grove Connector without pursuing the difficult challenge of installing a sidewalk along Poplar Grove Road. Mr. Gustaveson further explained that the plan would be to develop a Greenway or Veteran's Walkway along Kraut Creek that will extend downtown Boone, as well as connect Watauga County, DBDA and ASU properties. He relayed that anticipated shareholders would include the DBDA district, Watauga County, Town of Boone, and the Temple of the High Country. Following lengthy discussion on the proposal, Council Member Hay moved to authorize the Town to continue to explore this concept and to direct Planning Director Bill Bailey to contact the consultant to find out what the next steps are for this concept. Council Member Brantz seconded the motion.

VOTE: Aye – All
 Nay – None

QUARTERLY NOISE REPORT

Police Chief Dana Crawford presented the 2nd Quarter Noise Report. **(Permanently on file in the July 2014 Town Council meeting packet.)**

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report. **(Copy of report permanently on file in the July 2014 Town Council meeting packet.)**

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Ball announced the following board vacancies:

Community Appearance Commission – Resignation of Ms. Linda Wise. Her term expires on June 30, 2016.

Outside Agency Funding Committee – Resignation of Cliff Baldwin. His term expires on July 31, 2017.

TDA Board – Three positions expire on August 31, 2014.

BOARD APPOINTMENTS

Board of Adjustment

There were no applications submitted for consideration for this committee.

Community Appearance Commission

There were no applications submitted for consideration for this committee.

Cultural Resources Board

Council Member Peña nominated Michael McKee to serve on the Cultural Resources Board. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

DBDA Board

Council Member Mason nominated Jamie Goodman and Chris Grasinger to serve on the DBDA Board. With no other nominations, Mayor Ball called for a vote:

Jamie Goodman

VOTE: Aye – All
 Nay – None

Chris Grasinger

VOTE: Aye – All
 Nay – None

Greenway, Parks & Gardens Committee

There were no applications submitted for consideration for this committee.

Historic Preservation Commission

Council Member Mason nominated Bill Dixon for reappointment to the Historic Preservation Commission. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

Outside Agency Funding Committee

There were no applications submitted for consideration for this committee.

Planning Commission

There were no applications submitted for consideration for this committee.

Sustainability Task Force

There were no applications submitted for consideration for this committee.

Water Committee

Council Member Brantz nominated Loretta Clawson to serve on the Water Use Committee. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

Council Member Mason left the meeting at 7:38 p.m.

Upon a motion by Council Member Peña, seconded by Council Member Brantz, Council moved to reconsider nominations for the Water Use Committee.

VOTE: Aye – All

Nay – None
Absent – 1 (Mason)

Council Member Brantz moved to nominate Patrick Beville for reappointment to the Water Use Committee. Mayor Ball called for a vote on the nomination:

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to enter Closed Session at 7:53 p.m. pursuant to NCGS 143-318-11a(1)(3)(5) to hear the following items:

- A. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim by the Town.
- B. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(5), to establish, or to instruct Town staff and negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed interest in real property.
- C. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim by the Town.
- D. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling of a potential claims against the Town.
- E. Pursuant to N.C. Gen. Stat. § 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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling of a claim against the Town.
- F. Addition of Item to Closed Session – Pursuant to NCGS §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, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of potential claims against the Town.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to exit Closed Session at 9:21 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to authorize the unsealing of the minutes of the closed sessions of May 15, 2012 and August 23, 2012 for the limited purpose of allowing the town manager to review them and to prepare a summary for the August 2014 regular meeting of the dispute with the Watauga Arts Council regarding payment of the salary of Mark Freed.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to adjourn at 9:23 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Absent)

Kimberly S. Brown, Town Clerk

Andy Ball, Mayor