

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
August 16, 2018**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order on Thursday, August 16, 2018 at 6:00 p.m. at the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro-Tem Loretta Clawson, Connie Ulmer, Marshall Ashcraft, Lynne Mason and Sam Furguele. Staff present included Town Manager John Ward, Town Clerk Nicole Worley, Public Works Deputy Directors Josh Eller and Todd Moody, Planning Director Jane Shook, Downtown Boone Development Coordinator Lane Weiss and Police Chief Dana Crawford. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz presented the family of Stacy C. Eggers, Jr. with a resolution honoring his life.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor 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

Two Council appointed positions

HISTORIC PRESERVATION COMMISSION

Three positions

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE

One position

TOURISM DEVELOPMENT AUTHORITY

One position

WATER ADVISORY COMMITTEE

Two positions

TENTATIVE AGENDA ADOPTION

Town Manager John Ward announced that there were no additions or deletions to the agenda. Upon a motion by Council Member Furguele, seconded by Council Member Mason, Council voted to approve the agenda.

VOTE:	Aye:	All
	Nay:	None

PUBLIC COMMENT

REQUESTED APPEARANCES

WATAUGA COUNTY - REQUEST FOR AUTHORIZATION TO PAVE INDUSTRIAL LOT

Watauga County Manager Deron Geouque presented Council with a request for authorization to pave the Industrial and Anne Marie Drive parking lots which are owned in part by the Town. Council Member Furguele stated the Town had discussed the use of permeable materials when paving sidewalks to help with flooding and stormwater issues and added that he would be more enthusiastic about the improvements to the parking lots if the County would agree to look into the use of permeable materials for the project. Mr. Geouque stated that the parking lots had been covered in gravel for longer than twenty years, and that cost would be an issue to dig up the gravel in order to apply permeable concrete, though he noted the County would be in agreement to this if the Town would be willing to split the cost equally with the County. Mr. Geouque also noted concern that if an agreement was not reached on the issue, the County would have to redo the entire bid process on this project. Council Member Furguele stated that he would like for the Town to have discussion with the County regarding sales tax, and stated that it was his opinion that the County should have come to Council for approval of the project before going out to bid. Council Member Mason made a motion to approve the County's request for pavement of the lot and trail extension with the understanding that the Town wants to work toward flooding solutions. Council Member Ashcraft seconded the motion and proposed an amendment to ask that the County ask for a bid alternate for permeable surface on future projects. Council Member Mason accepted this amendment.

RESULT:	APPROVED [4 TO 1]
MOVER:	Lynne Mason, Council Member
SECONDER:	Marshall Ashcraft, Council Member
AYES:	Mason, Clawson, Ulmer, Ashcraft
NAYS:	Furguele

QUASI-JUDICIAL HEARING

REQUEST FOR SERVICE - DEBRA EHRLING

Town Attorney Allison Meade opened the hearing on a request for services from Debra Ehling at 6:24 p.m. After being duly sworn, Ms. Ehling summarized her application to Council stating that houses in the surrounding area had Town sewer and that she would like to build a second structure on her property and would like to extend Town sewer to the structure. Ms. Ehling confirmed that the property was approximately 2.4 acres and that she did not intend to subdivide the parcel. She stated that the new structure would be used as a guest home to allow family and friends a place to stay while they visited and that she would be willing to annex into the Town if needed, but noted that she did not believe the other houses in the area were annexed. She stated that there was a well on the property currently and that the well had been tested to confirm it could handle the additional flow if connected to Town sewer. Public Works Deputy Director Josh Eller was sworn and stated that sewer service could be extended to this property. Laura Shrake, daughter of the original developer of the property was sworn and stated that installing a septic tank on the property would be impossible due to the rocky terrain and confirmed that other houses in the area had Town sewer services. Ms. Meade noted that the property may not be eligible for annexation, due to the property being included as a part of a subdivision. Planning Director Jane Shook was sworn and stated that the property would fall within a view shed and stated that she did not have information on whether the property was a part of a subdivision, as it was the applicant's responsibility to provide that information. Ms. Meade closed the hearing at 6:37 p.m. Council Member Furguele made a motion to approve Ms. Ehling's request subject to annexation in due time. Mayor Pro-Tem Clawson seconded the motion. Council Member Mason suggested an amendment to stipulate that the new structure would be used as a guest house. Council Member Furguele accepted the amendment.

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

APPROVAL OF ITEMS ON CONSENT AGENDA

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the following items on the Consent Agenda:

- Resolution honoring Stacy C. Eggers, Jr.
- August 2, 2018 Town Council Special Meeting Minutes
- Boone BOO! Ordinance

Council Member Furgiuele noted that Mr. Eggers had been active in the community until recently, and served as an example and inspiration to other attorneys in the area and to those who attempt to work past an active retirement age. Council Member Mason suggested that staff look into placing a plaque on the desk at the post office where Mr. Eggers frequently sorted the mail sent to his law firm.

VOTE:	Aye:	All
	Nay:	None

RESOLUTION HONORING THE LIFE OF STACY C. EGGERS, JR.

WHEREAS, on March 20, 1924 Stacy Clyde Eggers, Jr. was born in Boone, North Carolina; and
WHEREAS, Mr. Eggers served in the United States Army Air Corps during World War II and achieved the rank of Sergeant; and

WHEREAS, Mr. Eggers opened his law office in downtown Boone in 1950. The office is still operating today as Eggers, Eggers, Eggers and Eggers Attorneys at Law; and

WHEREAS, Mr. Eggers served his Country and our community in countless ways, and will be missed by all who knew him; and

NOW THEREFORE, BE IT HEREBY RESOLVED that the Town of Boone hereby honors Stacy Clyde Eggers, Jr. for a long life well lived and for his undeniable impact on Boone and the surrounding community.

This the 16th day of August, 2018.

Rennie Brantz, Mayor

ATTEST:

Nicole Worley, Town Clerk

RESOLUTION TO BE TYPED IN BOOK ____ PAGE ____

TOWN OF BOONE

Ordinance _____

AN ORDINANCE DECLARING A ROAD CLOSURE FOR AN ANNUAL CELEBRATION

WHEREAS, The Boone Town Council acknowledges a long tradition of providing an annual Fall Celebration for its citizens which is open to everyone and is provided as a benefit to the community; and

WHEREAS, the Boone Town Council acknowledges that its citizens realize a financial benefit from holding annual events; and

WHEREAS, the Boone Town Council wishes to ensure the health and safety of all participants and spectators; and

WHEREAS, the Boone Town Council acknowledges that the annual downtown Boone Boo! celebration requires approximately thirty (30) minutes to install signage, and traffic control, and also requires approximately thirty (30) minutes for removing signs, traffic control, and litter;

NOW THEREFORE BE IT ORDAINED by the Town of Boone pursuant to the authority granted by G.S. 20-169 that they do hereby declare a temporary road closure during the day(s) and times set forth below on the following described portion of a State Highway System route:

Date(s): **Wednesday, October 31, 2017**

Times: **4:15 p.m. – 6:30 p.m.**

Route Description: **King Street (U.S. Route 421) between Hardin Street and Poplar Grove Connector, and SR 1102 (Water St./North Water St.)**

This ordinance to become effective when signs are erected giving notice of the limits and times of the parade, and implementation of adequate traffic control to guide through vehicles around the parade route.

Adopted this _____ day of _____, 2018

The Honorable Rennie Brantz, Mayor

Attest:

_____, Town Clerk

ORDINANCE TO BE TYPED IN BOOK ____ PAGE ____

COUNCIL MATTERS**TOWN MANAGER UPDATE**

Town Manager John Ward presented Council with updates on the following topics:

- Recent website improvements
- New recycling program begins September 1 and closing of recycling center near Horn in the West
- McLaurin Parking has ceased issuing citations on the private Winkler Lot

- Howard Street update: staff has been working with the USDA and the Council of Government on additional grants for the approximately nine million dollar project
- \$4,000 grant was received for stream bank restoration on the Bolick property
- Applications have been received for demolition permits at the new County recreation center
- Permits have been issued for the new ASU parking deck, which is estimated to be a two-year construction project
- Update on NCDOT projects in the area
- Sidewalk enhancement project from Appalachian Street to Boone Saloon has been completed
- Gave notice prior to construction for storm drainage improvements at Edgewood Drive and Tracy Circle, the paving of Bear Trail and Buena Vista Drive
- Bike Rodeo scheduled for September 8th at Hardin Park school
- Glendale sanitary sewer update
- Downtown Streetscape update including Foggy Pine Books, Boone Saloon and Mountaineer Mania. In September, staff will work with the contractor at the PNC Bank location to install that section of improvements
- DBDA Annual Meeting will take place on August 21st at the HOW Space

CHANGE ORDER NUMBER 3 - GARNEY CO.

Public Works Deputy Director Josh Eller presented Council with Change Order Number 3 from the Garney Company which he noted was due primarily to heavy rains causing a springhead to appear in the DOT right-of-way, which the Town was required to repair. He noted that if approved, this change order would increase the contract price in the amount of \$33,500, a time extension of 30 days and a retainage reduction. Mr. Eller confirmed that there would not be any additional engineering costs due to this change order and noted that the contract time extension and proposed retainage reduction were being requested due to delays outside of Garney Company's control which were associated with the Harper Corporation's scope of work. Town Manager John Ward updated Council on the progress of the water intake project. Council Member Mason made a motion, which was seconded by Council Member Ulmer to approve Change Order Number 3 as presented.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

PROPOSAL FOR SCADA AND TELEMETRY SYSTEM UPGRADES

Public Works Deputy Director Josh Eller presented Council with a proposal for upgrades of the SCADA and telemetry systems at the Water Treatment Plant, stating that the current system had been used for approximately thirty years and is in need of replacement. He added that the upgrades would utilize \$300,000 of grant/contingency funds and that the equipment is heavily related to public safety and performance of the water system. Mr. Eller informed Council that it would be impossible to bid this project, since there is currently no one else that provides this service and added that staff has had excellent relations with this provider. Upon a motion by Council Member Furguele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the proposal submitted by Nix, Purser & Associates in the amount of \$591,992.80 for SCADA and telemetry system upgrades.

Mayor Brantz declared a break at 7:50 p.m. Council reconvened at 8:00 p.m.

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

CONSIDERATION OF PAYMENT OPTIONS FOR SYSTEM DEVELOPMENT FEES

Council Member Mason presented a request for Council to consider implementing payment options for system development fees. Council Member Furgiuele expressed concern with the homeowner getting stuck with paying the fees in the event the contractor disappeared. Town Manager John Ward offered his opinion that payment plans for system development fees would create a great increase in workload for staff and would have to factor in a fair amount of non-payment. Council Member Mason agreed with these concerns and stated that the new system development fees caused sticker shock to businesses and added that she was concerned the Town would be run primarily by large corporations who can afford to pay the large system development fees. Council Member Furgiuele stated he was in support of this concept for the downtown area in conjunction with a "small business rescue plan". Town Attorney Allison Meade expressed that these issues were worth looking into, but that she was concerned about discrimination. After brief discussion, Council Member Furgiuele made a motion to table this item until after discussion of the small business rescue plan later in the agenda. Council Member Mason seconded the motion.

VOTE: Aye: All
 Nay: None

CONSIDERATION OF ENCROACHMENT AGREEMENT - BLACK CAT BURRITO

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the encroachment agreement for Black Cat Burrito as presented. Planning Director Jane Shook ask Council if staff could proceed under the same agreement if the addition of minimal changes to a sign encroachment. Town Attorney Allison Meade stated that new agreements have been done in the past each time a change of sign or entity took place. Town Manager John Ward suggested that Council consider allowing staff to permit minor changes to cut down on time delays. Council Member Furgiuele stated that an agreement was still needed to cover liability issues and that encroachment agreements for benches, etc. should still come before Council for approval. After brief discussion, it was the consensus of Council to have the Town Attorney and staff work together and to bring an action item back at the September meeting.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 3rd day of August, 2018, by and between the TOWN OF BOONE ("Town"), and Miller 34 Holdings, Inc. ("Encroacher"), who is/are the owner(s) of the business 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 127 South Depot Street as further described at Book 1506, Page 64 of the Watauga County Registry of Deeds, in the Town of Boone, North Carolina with the following encroaching facilities: a 15.5-square foot (31"Hx72"W) projecting sign for Black Cat Burrito, which projects from the face of the existing building 72", 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:**Miller 34 Holdings, Inc.**By: Wayne Miller

Name: Wayne Miller

Title: President

Corporation/LLC/Partnership

State of North Carolina - County of Watauga

I, certify that Wayne Miller personally came before me this day and acknowledged that s/he is the President of Miller 34 Holdings, Inc., a North Carolina corporation, and that by authority duly given and as the act of such entity, s/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 3rd day of August, 2018.

Brenda M. Henson
Notary Public
Watauga County, NC

(Affix Seal)

My Commission Expires: Nov. 4, 2022Brenda M. Henson

Notary Public

Brenda M. Henson, Notary Public

Notary's Printed or Typed Name





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

CONSIDERATION OF UDO AMENDMENT - CLARIFICATION OF BURDEN OF PROOF REQUIREMENT IN APPLICATIONS

Council Member Furgiuele presented Council with a request for clarification of burden of proof requirements in permit applications. Reference was made to the recent asphalt plant matter, with Mr. Furgiuele noting that when the General Assembly changed laws to make it more difficult to put evidence in front of the Board of Adjustment, it made it impossible for citizens to weigh in on such projects. He continued to say that he wanted people to be able to testify and that he believed there should never be a case where the applicant did not have to produce experts at a hearing to establish their case, adding that the same has not been the practice of the Town, though the ordinance provided otherwise. Council Member Furgiuele made a motion to direct staff to develop language that leaves no ambiguity on the matter and that an applicant must produce experts who must testify and establish case. Mayor Pro-Tem Clawson seconded the motion.

RESULT:	APPROVED [4 TO 0]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele, Ulmer
ABSTAIN:	Ashcraft

CONSIDERATION OF SAME UNIT REQUIREMENTS IN MIXED USE PROJECTS AS OTHER MULTI-FAMILY PROJECTS

Council Member Mason presented Council with a request for Council to consider adding certain requirements in Sections 15.10.03a and 15.10.05a and b of the UDO to the requirements for multi-family housing in mixed use buildings. Ms. Mason stated that she believed each mixed use building in town was being used as student housing serving one demographic, with Council Member Furgiuele adding a comment from James Milner that building owners never intended to fulfill the required vacant commercial space. He added that Board of Adjustment members needed to be trained on when it is appropriate to grant variances and the need to stick with that kind of requirement. Ms. Mason expressed her concern with not having affordable housing in Town and that currently the Town had a surplus of unoccupied commercial spaces. She continued by saying that she wanted the Town to having good student housing options, but that there were very few apartment projects that were geared toward the non-student population. Discussion turned to parking requirements for multi-family projects, with Council Member Furgiuele noting that parking inside a building should not be considered commercial space and that the current requirement to that effect should be changed. After brief discussion, Council Member Mason made a motion to direct staff to work on updating unit requirements in mixed-use projects to be consistent with the requirements under section 15.10 in the UDO and to address that there is adequate external parking for commercial space and limit B-2 and B-3 zoned areas, along with projects of more than four units. Council Member Furgiuele suggested that the changes should apply more in B-1 zoned areas than in B-2 and B-3 zoned areas, with Town Manager John Ward noting that in the B-1 zoned areas, if the developer was unable to meet parking requirements for the project, a fee in lieu program could be utilized. Council Member Furgiuele seconded the motion. Council Member Furgiuele made a second motion that staff develop a proposal for a fee in lieu program for parking in B-1 areas for the residential component for mixed use projects. Mayor Pro-Tem Clawson seconded this motion.

VOTE:	Aye:	All
	None:	None

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

EXEMPT SIDEWALK REQUIREMENT IN NEW SINGLE FAMILY SUBDIVISIONS

Council Member Mason presented Council with a request to consider exemptions for the sidewalk requirement in new single family subdivisions. Ms. Mason stated that she wanted to see more affordable single family homes and to incentivize building single family subdivisions. Town Manager John Ward pointed out that the majority of the requests from Council for sidewalks were those that were allowed to be built without them. Council Member Furguele voiced that he disagreed with this proposal and stated his desire to make Boone a more walkable community. Mayor Pro-Tem Clawson agreed with Council Member Furguele. Council Member Furguele suggested that staff look at all undeveloped R-3 areas and consider rezoning them to R-1. Council Member Mason made a motion to table this item until after the next Affordable Housing Task Force meeting. Council Member Ulmer seconded the motion.

RESULT:	TABLED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

REVIEW OF TOWN CODE CHAPTERS BY TOWN ATTORNEY

Town Attorney Allison Meade presented Council with proposed changes to Town Code Chapters 70-75 which include the following revisions:

1. Addition of section 70.06(C) Violations Prohibited
2. Deletion of section 70.07 Parking Validation Stickers

Upon a motion by Council Member Furguele, seconded by Council Member Ashcraft, Council voted to approve the changes as presented.

Boone, NC Code of Ordinances

CHAPTER 70: GENERAL PROVISIONS

Section

- 70.01 Definitions
- 70.02 Administration and enforcement
- 70.03 Accident investigation
- 70.04 Traffic regulation and pedestrian safety
- 70.05 Removal or alteration of traffic tickets, chalk marks
- 70.06 Violations prohibited
- 70.07 ~~Parking validation stickers~~ Deleted
- 70.08 Towing
- 70.09 Appeals

- 70.99 Penalty

§ 70.01 DEFINITIONS.

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

ADMINISTRATOR. The person designated by the Manager to perform the functions assigned by this title to the **ADMINISTRATOR**. Whenever this title authorizes or requires the **ADMINISTRATOR** to install a traffic-control device controlling parking or regulating the movement of traffic on, to or from a state-highway-system street and the installation of a device is in practice a function of the State Department of Transportation, the **ADMINISTRATOR** may discharge his or her responsibility by requesting the State Department of Transportation to install the device.

DRIVER. The operator of a vehicle.

HIGHWAY or STREET. The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms **HIGHWAY** or **STREET** or a combination of the two terms shall be used synonymously.

INTERSECTION. The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle, whether or not one highway crosses the other. Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that the intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of the highways shall be regarded as a separate **INTERSECTION**.

LOCAL STREET. A street within the town that is not part of the state highway system.

MOTOR VEHICLE. Every vehicle that is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds, as defined in G.S. § 20-4.01(27)d1.

OPERATOR. A person in actual physical control of a vehicle which is in motion or which has an engine running. The terms **OPERATOR** and **DRIVER** and their cognates are synonymous.

PARKING or STANDING. A vehicle is parked or is permitted to stand when it is stopped and allowed to remain in a fixed location for any duration of time, whether attended or unattended. Except where the context clearly indicates otherwise, the limitations on parking and standing in this title apply only to locations within a street right-of-way. In no case do these limitations on parking and standing in this title apply only to locations within a street right-of-way. In no case do these limitations apply when a vehicle is stopped to avoid conflict with other traffic or in compliance with law or the directions result of an emergency or because the vehicle is disabled.

ROADWAY. The portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways, the term **ROADWAY**, as used herein, shall refer to any roadway separately, but not to all roadways collectively.

SAFETY ZONE. A traffic island or other space that is officially set aside within a highway for the exclusive use of pedestrians and that is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

STATE HIGHWAY SYSTEM STREET. A street within the town that is part of the state highway system. Whenever this title regulates parking or the movement of traffic on, to or from a state highway system street, then to the extent that concurrence by the State Department of Transportation is necessary (by passage of a concurring ordinance or otherwise) the regulation shall not become effective until the concurrence is obtained. The following streets are part of the state highway system:

Deck Hill	Poplar Grove Road
Rivers Street	Deerfield Road
East King Street	U.S. Highway 321
Water Street	Junaluska Drive
N.C. Highway 105	Summerplace Drive
U.S. Highway 321	Fairway Drive
Highway 194	Winkler's Creek Road
High School Drive	Deck Hill Road
Academy Street	University Drive
Locust Street	Kellwood Drive
Brown Street	Pinnacle Drive
Upper half of Eastview Drive	Daulph Blan Street

STREET. See **HIGHWAY.**

TRAFFIC-CONTROL DEVICE. Any sign, signal, marking or other device placed or erected pursuant to a lawfully adopted ordinance and designed to regulate, warn, guide or control traffic.

TRAFFIC-CONTROL SIGNAL. Any device designated to regulate, guide or control traffic through the use of alternating or flashing lights or by some other mechanical means.

VEHICLE.

(1) Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon fixed rails or tracks; provided that, for the purposes of this title, bicycles shall be deemed **VEHICLES** and every rider of a bicycle upon a highway shall be subject to the provisions of this title applicable to the driver of a **VEHICLE**, except those which, by their nature, can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks and is limited by design to 15 mph when the device is being operated by a person with a mobility impairment or who uses the device for mobility enhancement.

(2) This term shall not include an electric personal assistive mobility device, as defined in G.S. § 20-4.01(7)(a).

(G.S. § 20-4.01) (Ord. passed 10-20-16)

§ 70.02 ADMINISTRATION AND ENFORCEMENT.

It is the duty of the town to enforce all of the provisions of this title and all of the state motor vehicle laws.

§ 70.03 ACCIDENT INVESTIGATION.

It is the duty of the law enforcement officers of the town to investigate traffic accidents and to obtain identification and insurance information of those persons apparently guilty of violations of this title or state motor vehicle laws causing or contributing to those accidents. The owner or operator of any ambulance must arrange for the County Emergency Communications Center to be notified before leaving to answer a call to the scene of a traffic accident.

§ 70.04 TRAFFIC REGULATION AND PEDESTRIAN SAFETY.

In the event that it becomes immediately necessary to protect the safety of motorists and pedestrians, the law enforcement officers of the town may direct traffic as required and may place temporary official traffic-control devices without regard to the other provisions of this chapter. No person may refuse to comply with a lawful order of a law enforcement officer when the order is given under the authority of this action.

§ 70.05 REMOVAL OR ALTERATION OF TRAFFIC TICKETS, CHALK MARKS.

(A) It shall be unlawful to remove a traffic ticket from a vehicle or to permit it to be removed, except for the purpose of answering the charge for which it was issued.

(B) It shall be unlawful to alter a traffic ticket and no person may have in his or her possession an unlawfully altered ticket.

(C) It shall be unlawful for any person to remove or alter chalk marks made by a parking attendant to the tires of any vehicle.

Penalty, see § 70.99

§ 70.06 VIOLATIONS PROHIBITED.

(A) ~~Except as provided in subsection (C) below,~~ it shall be unlawful for any person to cause, allow or permit a vehicle registered in the name of or operated by that person to be parked, stopped, left standing or operated in any manner in violation of the provisions of this title.

(B) Notwithstanding the preceding subsection, the registered owner of a vehicle that has been leased or rented to another person or company shall not be liable for a violation of a provision of Chapter 72 of this title if, after receiving notification of the civil violation within 90 days of the date of occurrence, the owner, within 30 days thereafter, files with the officials or agents of the municipality an affidavit including the name and address of the person or company that leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to provide the name and address of the lessee or renter, and the owner shall not be held responsible for the violation.

(C) Town employees and authorized emergency responders shall not be considered in violation of a provision of this Title to the extent that their action is reasonably necessitated by their duties as an employee of the Town and/or in the course of reasonable response to an emergency. This provision shall not relieve a Town employee or the driver of an authorized emergency vehicle from the duty to operate a motor vehicle with due regard for the safety of all persons and in compliance with all other applicable law, regulations, and policies; nor shall this provision protect the driver from the consequences of such driver's reckless disregard for the safety of others.

(Ord. passed 10-20-16) Penalty, see § 70.99

§ 70.07 PARKING VALIDATION STICKERS.

~~—Parking validation stickers shall only be used for a purpose for which they are intended. Any business that fails to stop its abuse of parking validation stickers, after receipt of a written notice of the abuse, shall be removed from the parking validation sticker program for a period of one year.~~

§ 70.08 TOWING.

Once a vehicle accumulates five parking citations and the vehicle owner/operator fails to pay these citations within five days of the first citation, the vehicle will be booted.

(A) A brightly colored adhesive sticker will be placed in a conspicuous location on the windshield of the booted vehicle stating that the vehicle is in violation of the parking policy. The sticker will contain information concerning where and when payment can be made.

(B) The owner/operator of the vehicle will be charged a fee of \$50 to remove the boot in addition to his or her outstanding parking citations.

(C) If no contact is made by the owner/operator of the vehicle by 4:00 p.m., the car will be towed. The tow company will not release the vehicle until all outstanding fines are paid.

(D) Once a vehicle is towed, the owner/operator of the vehicle will be responsible for all outstanding citations, the boot removal fee of \$50 and any towing and/or storage fees assessed by the towing company.

(E) The owner of the vehicle or any person entitled to claim possession of the vehicle may appeal the towing of the vehicle pursuant to the post-towing procedures set forth in G.S. §§ 20-219.9 through 20-219.14. If the violator prevails in his or her judicial appeal of the towing, the town shall reimburse the violator for the fees and charges which he or she was required to prepay, as well as for any court costs incurred.

Cross-reference:

Towing provisions, see Ch. 73

§ 70.09 APPEALS.

(A) Any person who wishes to appeal the issuance of a citation for the violation of §§ 70.05 through 70.07, 71.08 through 71.10, Ch. 72 or Ch. 73 may do so within ten calendar days of the issuance of the citation. This appeal shall be made to the Administrator or his or her designee.

(B) Any person who wishes to appeal the decision of the Administrator or his or her designee may do so by delivering a written notice of appeal to the Boone Town Hall located at 567 West King Street, which written notice must be delivered or post-marked within ten days after the issuance of a decision by the Administrator. All appeals pertaining to citations issued by McLaurin Parking shall be heard by the Parking Committee of the Downtown Boone Development Association. The Parking Committee shall be composed of six persons. A quorum of three committee members is required to reach a decision on any appeal. The Parking Committee will meet every two weeks or as needed. The Parking Committee of the Downtown Boone Development Association is hereby designated as "an appellate agency" by the town for the purpose of hearing appeals, as described herein.

(Ord. passed 10-20-16)

§ 70.99 PENALTY.

(A) *General.* Except as specifically provided at division (B) of this section, any violation of this title is subject to a civil penalty only and shall not constitute a criminal infraction. Unless specifically provided at division (C) below or elsewhere in this title, whoever violates any provisions of this title shall be subject to the penalty provisions in § 10.99.

(B) *Criminal penalties.* Any violation of the following sections shall constitute an infraction, punishable by a fine of not more than \$50: §§ 71.01 through 71.07, 72.08, Ch. 74, Schedules V, VII, VIII and IX. A violation of § 72.09 shall constitute a Class 3 misdemeanor and shall be subject to a fine of not more than \$500.

(G.S. § 14-4(b))

(C) *Civil penalties.*

(1) Any violation of the sections of this title set forth below shall subject the offender to those civil penalties hereinafter enumerated. Civil penalties that are not voluntarily paid by the violator may be recovered by the town a civil action in the nature of a debt.

(2) Whenever a member of the Police Department or other person authorized with the enforcement of the provisions of this title regulating the parking of vehicles shall find that any of those provisions are being or have been violated by the owner or operator of the vehicle, the officer or person shall notify the owner or operator of the vehicle of the violation by conspicuously attaching to the vehicle a parking violation notice or citation in a form as the Administrator may direct.

(3) The following civil penalties shall be imposed for violations of sections of this title set forth below. Payment of the penalty shall be due within 30 days after issuance of the notice or citation for the violation.

(a) Any violation of the following sections shall subject the offender to a penalty of \$12: §§ 72.01(A)(1), (A)(3) through (A)(5), (A)(7) through (A)(12), and (A)(15) through (A)(19); 72.01(C); 72.02; 72.05 through 72.07; Chapter 75, Schedules III and IV.

(b) Any violation of the following sections shall subject the offender to a penalty of \$20: §§ 72.01(A)(6); 72.01(A)(14).

(c) Any violation of the following sections shall subject the offender to a penalty of \$30: §§ 72.01(B); 72.04.

(d) Any violation of the following sections shall subject the offender to a penalty of \$50: §§ 70.05(C); 71.08; 71.09(A) and (B); 71.10(A), (B), (C) and (D); 72.01(A)(2).

(e) Any violation of the following sections shall subject the offender to a penalty of \$100: § 72.01(A)(13).

(4) A civil penalty of \$20, in addition to the one imposed pursuant to division (C)(3) above, shall be imposed in those cases in which the penalty prescribed in division (C)(3) above has not been paid within the designated 30-day period. In the event it is necessary for the town to institute a civil action to collect any civil penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the town.

(5) The first violation of § 71.11(B)(2), (3) or (4) shall be dismissed if the person charged submits proof within ten days that equipment meeting the standards in § 71.11(B)(2), (3) or (4) has been acquired for use by the operator or passenger. Otherwise, any violation of § 71.11(B)(2), (3) or (4) is punishable by a civil penalty in the amount of \$50, plus court costs.

(6) All civil penalties paid to the town, as herein provided, shall be paid into the General Fund of the town.

(Ord. passed 10-20-16)

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

REVISIT STRATEGIES TO MAKE COUNCIL MEETINGS MORE EFFICIENT AND PRODUCTIVE

In the interest of time, it was the consensus of Council to table this item until a future meeting.

RESULT:	CONSENSUS
----------------	------------------

REQUEST FOR COUNCIL TO SELECT A REPRESENTATIVE FOR UNCSOG NEEDS ASSESSMENT

It was the consensus of Council that Mayor Pro-Tem Clawson would be the Town's representative for the UNC School of Government Space Needs Assessment.

RESULT:	CONSENSUS
----------------	------------------

REQUEST TO SCHEDULE MEETING WITH UNC SCHOOL OF GOVERNMENT REGARDING DOWNTOWN DEVELOPMENT

Upon a motion by Council Member Furgiuele, seconded by Council Member Ashcraft, Council voted to schedule a meeting with the UNC School of Government regarding downtown development on October 10th at 6:00 p.m. at Council Chambers.

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

REQUEST TO RESCHEDULE SEPTEMBER 20, 2018 COUNCIL MEETING

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to cancel the September 20 regular Town Council meeting and to temporarily suspend the meeting time limit of 11:00 p.m. Council Member Ashcraft stated that he was not in favor of suspending the meeting time limit. Council Member Ulmer announced that she would not be in attendance at the September 18 regular Town Council meeting.

RESULT:	APPROVED [4 TO 0]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele, Ulmer
ABSTAIN:	Ashcraft

SCHEDULE MEETING TO CONTINUE DISCUSSION OF ADOPTED PLANS

Upon a motion by Council Member Furguele, seconded by Council Member Ulmer, Council voted to schedule a meeting to continue the discussion of adopted Town plans for December 4, 2018 at 6:00 p.m. at Council Chambers.

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

REQUEST FOR DBDA TO BEGIN DISCUSSION OF "SMALL BUSINESS RESCUE PLAN"

Council Member Furguele presented Council with a request that the Downtown Boone Development Association begin discussion of a "small business rescue plan" and added that Council Mason's earlier proposal of a payment plan for system development fees should also be supported. Mr. Furguele made a motion that Council schedule a joint meeting with the DBDA and that discussion about the system development fee payment plan be included in this discussion. Mayor Pro-Tem Clawson seconded the motion.

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

APPOINTMENT TO DOWNTOWN BOONE DEVELOPMENT ASSOCIATION BOARD

Council Member Furguele expressed that the DBDA needed representation from start-up businesses and noted that neither applicant was a resident of Boone. Mr. Furguele made a motion, which was seconded by Council Member Ulmer to table this item to allow for Council and staff to reach out to new business owners.

RESULT:	TABLED [4 TO 1]
MOVER:	Sam Furguele, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer
NAYS:	Ashcraft

APPOINTMENT TO TOURISM DEVELOPMENT AUTHORITY

Mayor Pro-Tem Clawson nominated Daniel Cook to serve on the Tourism Development Authority.

Mr. Cook's term will end on October 1, 2021.

CLOSED SESSION

Mayor Pro-Tem Clawson made a motion, which was seconded by Council Member Furguele to enter into closed session at 10:14 p.m. pursuant to:

-N.C. Gen. Stat. § 143-318.11 (a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).

-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 and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.

VOTE: Aye: All
 Nay: None

ADJOURNMENT

Nicole Worley, Town Clerk

Rennie Brantz, Mayor