

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
September 17, 2015**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 5:30 p.m., Thursday, Sept. 17, 2015, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro Tem Rennie Brantz presided. Council members present were Lynne Mason, Quint David, Loretta Clawson and Fred Hay. Town Attorney Allison Meade was also present. Staff members present were Town Manager John Ward, Town Clerk Christine Pope, Administrative Support Specialist Nicole Worley, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Planning Director Bill Bailey, Public Works Director Rick Miller and Cultural Resources Director Pilar Fotta.

ANNOUNCEMENTS

Mayor Pro Tem Brantz 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 Pro Tem Brantz presented a resolution that would be adopted under Consent Agenda pertaining to Bryson Cox who tragically drowned in a culvert in Boone on Aug. 13, 2010. He stated through the resolution that the Town Council will honor the memory and legacy of Bryson Cox and work hard to ensure the safety of all citizens.

Mayor Pro Tem Brantz announced an information session regarding the downtown historic survey scheduled for Sept. 23 from 5 to 7 p.m.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward noted there were no changes to be made to the agenda.

PUBLIC COMMENT

Adrian Thompson of 321 Jefferson Road stated he was the director of governmental and external affairs for the Student Government Association at Appalachian State University, and would be attending as many of the Town Council meetings as possible. He stated he would be bringing his feedback to the town manager and Council, and noted that if anyone--general public or Town Council--had anything for him to take back to the student government to let him know.

Joseph Cox of 641 Edgewood Drive made the following statement:

"My name is Joseph Cox. I would like to thank the Mayor Pro Tem Dr. Rennie Brantz and the Boone Town Council for recognizing the death of my child, Bryson Cox, and moving forward with a resolution to make the town of Boone safer for all its citizens and visitors.

Two days after my child's drowning in the town of Boone, I stood before the Town Council of Boone with a request. I asked the Town, business owners, and property owners to safen their properties and to provide warning signs or fences in order to protect unsuspecting citizens and visitors of the unmarked culverts and flash flood areas within the Town of Boone.

It is unfortunate that in our society it takes injuries, deaths, and lawsuits to get the wheels of progress moving. Some days, I feel like David versus Goliath. My family spent hundreds of thousands of dollars on private investigators, experts, and legal fees to take the Town of Boone, various individuals within Boone, and certain Boone business owners to task. This was in order to address and attempt to get them to acknowledge that there is a public safety issue regarding hidden culverts and unmarked flash flood zones on properties within the Town of Boone.

It is nice to see that the Town has finally recognized, in a public forum, that these issues needed to be addressed in order to keep its citizens and visitors safe. With this recognition, I feel my son's death was not in vain and I thank you all for that.

I understand that the political arena is a delicate balance of keeping businesses and the town

profitable as well as keeping the public safe, but it should always be the role of government officials to maintain public safety, first and foremost, over the profit of any one person or business.

As part of the Town's resolution I would request, as I did 5 years ago, that the town place conspicuous warning signs or barriers around hidden culverts as well as signs marking flash flood areas so no unsuspecting individual is harmed. In fact, there are more signs warning that your car will be towed or booted, in the Town of Boone, than there are signs warning that you may be injured or drown from dangerous culverts and flash floods. This is a simple and cheap fix that many towns around the country have done to protect its citizens. I am not quite sure why the Town of Boone has not done this by now.

I will pause here as I feel the need to recognize the Boone Police Department, Watauga EMS, the Fire Department, and the hospital staff at Watauga Medical Center for their kindness, respect, professionalism, and determination in attempting to save my child's life. I also need to thank the citizens of Boone and Watauga County for reaching out to my family in our time of need. I am deeply grateful to all.

In closing, I again sincerely want to thank Mayor Pro Tem Rennie Brantz for being a man of his word and working on a resolution for keeping the citizens and visitors of Boone safe. I also want to thank the current Council members of the Town of Boone for doing the right thing. I am confident that the elected officials of Boone will remain diligent in keeping its citizens and visitors safe above the financial gains of any one person or business."

Julie Mullis of 246 High Knolls Lane in Deep Gap, the mother of Bryson Cox, thanked Council for their kindness and for going out of their way. She stated that her son reflected the diversity and beauty of the area. Ms. Mullis spoke of her son's walks finding crystals and coins others dropped as well as his love for animals and plants. She asked that Council make a park connection and daylight the stream for others who were touched by Bryson in the community to enjoy as a way to memorialize him.

REQUESTED APPEARANCES (FIVE MINUTES EACH)

WATAUGA COMMUNITY HOUSING TRUST REQUEST

Scott Eggers presented a request on behalf of the Watauga Community Housing Trust to receive staff assistance in evaluating certain Town properties for the purpose of workforce housing initiatives and land transfer if the project proves to have merit (**Map of potential site in September 2015 Meeting Packet**). Council Member Mason stated the biggest hold-ups for workforce housing is acquiring land that could be developed. Ms. Mason also gave credit to Assistant to the Town Manager Jim Byrne for the potential site suggestion, and noted that anything done would be in harmony with the existing neighborhoods and would compliment it. It was the consensus of the Council to move forward with investigating this project and provide staff assistance to further evaluate the Town properties suggested.

RESULT:	CONSENSUS
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HARDIN PARK PTO REQUEST FOR DONATION OF SERVICES AND FEE WAIVER

Jane Shook presented a request on behalf of the Hardin Park PTO requesting Town assistance with path construction and fee waiver for the construction of the new accessible playground to be installed at Hardin Park School. Ms. Shook noted several other organizations and government entities who are donating materials and services toward this project. Brian Johnson of Hardin Park PTO stated this will be the only 100% accessible playground in the county, providing not just the school but the county with an accessible park. Mr. Johnson provided a brief overview of the timeframe involved, noting that if they are not able to begin work in October, they could do so in the spring, but it would take approximately two-to-three days of staff time to complete the path construction. Town Manager John Ward stated they would be able to accommodate this request and that

the Council has the authority to take action on the fee waiver request similar to those given for special events. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to provide Town labor for the installation of the pathways and the requested fee waiver. Several members of Council voiced their support for this project. Council Member David suggested advertising this park as ADA accessible once completed, to which Hardin Park's principal, Mary Smalling, agreed.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Hay, Mason, David, Clawson, Brantz

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Clawson, seconded by Council Member Mason, Council moved to adopt the Consent Agenda as presented.

- A. Meeting Minutes: Aug. 3, 2015 – Quarterly Public Hearing.
- B. Meeting Minutes: Aug. 20, 2015 – Regular Meeting.
- C. Approval of Encroachment Agreement – Insomnia Cookies (**Copy of agreement permanently on file in Town Hall**).
- D. Approval of Solar Lease Agreements (**Copy of agreements permanently on file in Town Hall**).
- E. Consideration of Proposed Revisions to Town Code Chapter 75: Parking Schedules:

CHAPTER 75: PARKING SCHEDULES

Schedule

- I. Parking prohibited at all times
- II. Parking time limited
- III. Angle parking permitted
- IV. Snow emergency zones

SCHEDULE I. PARKING PROHIBITED AT ALL TIMES.

The Administrator shall install no-parking signs, yellow curb markings or traffic-control devices to indicate that parking and standing is prohibited under the following circumstances at the following locations:

<i>Street</i>	<i>Side</i>	<i>Location</i>
Hamby Alley	Both	Between College Street and Coffey Street
Howard Street	Both	From College Street to Hardin Street
King Street	South	From Appalachian Street to College Street, except during church hours on Sunday or during funeral services
Linney Street	West	

(Prior Code, Ch. 74, Sch. I) Penalty, see § 70.99

SCHEDULE II. PARKING TIME LIMITED.

(A) ~~The Administrator shall install no parking signs, yellow curb markings or traffic control devices to indicate that parking and standing is prohibited under the following circumstances at the following locations: Parking time limits shall be enforced Monday through Saturday, 8 a.m. to 5 p.m., as indicated by installed parking meters (two hour limit) or parking lot pre-pay stations (unlimited time).~~

<i>Street</i>	<i>Side</i>	<i>Location</i>	<i>Time Limit</i>
Cherry Drive		From King Street to Council Street	One hour
College Street		From King Street to the alley between the First Baptist Church and Whitener Hall	One hour
Depot Street	South and north	From Rivers Street to Queen Street	One hour
King Street	North	Between Linney Street and Post Office Drive	30 minutes
	North	From Straight Street to College Street	One hour
	South	From Straight Street to Appalachian Street	One hour
	South	From Coffey Street to Hardin Street	One hour
Linney Street	East	From King Street to Queen Street	30 minutes
Vance Lot		Corner of Depot and Queen Streets	One hour
West Howard Street	North	From South Depot Street to alleyway	One hour

(B) ~~The east side of Linney Street shall be available for 30 minute parking for post office use only. Parking enforcement is Monday through Saturday. Where one hour parking is permitted Monday through Friday, two hour parking is allowed on Saturday.~~

(Prior Code, Ch. 74, Sch. II) (Ord. passed 8-17-2010) Penalty, see § 70.99

SCHEDULE III. ANGLE PARKING PERMITTED.

Parking at an angle of approximately 45 degrees to the curb shall be allowed at the following locations and the Administrator shall mark the pavement at those areas to indicate that only angle parking is permitted:

<i>Street</i>	<i>Location</i>
King Street	Between Appalachian and Water Streets
Queen Street	Between Depot and Water Streets

(Prior Code, Ch. 74, Sch. III) Penalty, see § 70.99

SCHEDULE IV. SNOW EMERGENCY ZONES.

There shall be no parking on either side of the following streets during periods of snow accumulations from 11:00 p.m. to 7:00 a.m.:

<i>Street</i>	<i>Location</i>
Depot Street	From Queen Street to Rivers Street
King Street	From Straight Street to College Street
Queen Street	From Water Street to Depot Street

(Prior Code, Ch. 74, Sch. IV) Penalty, see § 70.99

F. Consideration of Proposed Revisions to Town Code Chapter 73: Towing:

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 authorized

73.09 Signs or notification required before parking control devices or methods may be utilized in parking lots

73.10 Operational requirements for persons involved in the use of parking control devices or methods in parking lots and spaces

73.11 Parking lots in which both towing and parking control devices or methods are utilized

73.12 Compliance dates

73.99 Penalty

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 § 73.04 TOWING OF VEHICLES FROM PARKING LOTS.

(A) *Signs and other requirements for towing from a parking lot of a mall, shopping center, or parking lot which serves multiple locations or establishments.* For a parking lot in serving a “mall” or “shopping center,” as those terms are defined in Chapter 153, Article 34 of the Unified Development Ordinance (hereafter “UDO”), as well as for a parking lot which serves multiple 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 parking lot meets all of the following requirements:

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

(2) ~~Unless legal impossibility is demonstrated pursuant to division (A)(4), a sign~~ Two signs per is posted on both sides of every each vehicle entrance to the parking lot ~~shall be posted,~~ in locations and at heights designed to be easily seen ~~by from the vantage point of and conspicuous to~~ the driver of a vehicle, each sign complying with all of the following:

(a) ~~The signs are posted (i) on both sides of each vehicle entrance and Each sign is~~ placed no more than ~~ten-five~~ feet from the street right-of-way line of the street from which access to the parking lot is obtained, OR (ii) on the premises in locations which are conspicuous to and can easily be seen by every unauthorized person entering the parking lot or exiting a parked vehicle in the parking lot unless a different location is approved in writing by the Chief of Police, based upon his or her determination that it will be more effective in advising persons utilizing the parking lot of its restricted availability;

(b) Each sign is no smaller than four square feet and no larger than six square feet, with a white background and red letters, printed in fonts which can easily be read by a person of ordinary vision, seated in a vehicle entering the parking lot; and

(c) Each sign contains all of the following information, as applicable:

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

2. The name of the mall or shopping center which the parking lot serves;

3. If fewer than six locations or establishments in a mall or shopping center are served by the parking lot, the name of each location or establishment served;

4. If the parking lot serves multiple locations or establishments not part of a single shopping center or mall, the name of every location and establishment served by the parking lot, which names must match the names displayed on each of the locations or establishments themselves; and

5. The name and telephone number of the towing company and location where any towed vehicle is taken.

~~—(d3) Has vehicle entrances clearly defined by curb cuts, or has established locations of motor vehicle entrances by means of markings on the pavement, such as painted hash marks, reflectors or the like~~ In the event the parking lot does not have curb cuts or other clearly-defined vehicle entrances, signs shall be posted not less than one per 50 feet of road frontage;

~~—(e4) Legal impossibility.~~ Alternative sign placements may be approved or required, as applicable, by the Chief of Police in the event (i) when a property owner or other person exercising legal control of a parking lot demonstrates to the Chief's satisfaction that compliance is legally impossible. In order to establish legal impossibility, the person must present a signed opinion from an attorney licensed in North Carolina, which certifies that the attorney has examined the relevant legal records related to the parking lot, and which identifies with specificity the legal impediments to compliance. The person must propose an alternative placement of signs which achieves the highest level of notice feasible under the circumstances; or (ii) one or more complaints are received by the Police Department from any person to the effect that the signs posted on a parking lot per subsection (a)(ii) above are not conspicuous to and easily seen by every person entering the parking lot or exiting a parked vehicle in the parking lot.

(B) *Signs and other requirements for towing from a parking lot serving a single location or establishment other than a mall or shopping center.* For a parking lot serving a single location or establishment, other than a mall or shopping center, 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 parking lot complies with at least one of the following divisions, (1) through (4), compliance with division (1) presumptively considered adequate notice:

(1) There is a sign posted on both sides of every vehicle entrance to the premises, in locations and heights designed to be easily seen from the vantage point of the driver of a vehicle entering the parking lot, each sign no smaller than two square feet and no larger than four square feet, each with a white background and red letters,

containing the following information in fonts 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"; and

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

(2) There is a sign or combination of signs posted on the premises, each no smaller than two square feet and no larger than four square feet, in a location(s) designed to be, and which can easily be seen by every unauthorized person entering the parking lot or exiting a parked vehicle in the parking lot, each sign with a white background and red letters, containing the following information, in a fonts which can easily be read by a person of ordinary vision:

(a) 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.

(3) There is a sign compliant with § 73.05(A)(1) at every parking space within the lot for which enforcement may take place.

(4) A written notice, in a form designed to be weather-resistant, has been placed on the windshield, under a windshield wiper of the vehicle to be towed, or at some 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 24 hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which notice contains all of the following information:

(a) 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.

(C) Once an owner or operator of a vehicle has been notified of unauthorized use pursuant to § 73.04 (B)(4) 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 at the same parking lot, and upon its discovery, the vehicle in question or another vehicle driven by the same owner or operator may be immediately towed.

(Prior Code, § 75.03) (Ord. 03-02, passed 4-24-2003; Ord. passed 7-24-2014; Ord. passed 10-23-2014)

§ 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 either one of the following three conditions is met with respect to that parking space:

—(1) The parking lot in which the parking space is located is subject to and in compliance with the requirements of § 73.049(A) or § 73.04(B) above;

(2) A sign has been posted in a conspicuous location facing the parking space, no smaller than 120 square inches, with a white background and red letters, identifying the space as private property, and warning that unauthorized vehicles will be towed, e.g., "Private Parking - Towing Enforced," and AND either (a) the sign facing the parking space 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 (b) there is at least one other sign placed in a conspicuous location in the parking lot, no smaller than four square feet and no larger than six square feet, listing the name and telephone number of the towing company; or

(3) A written notice, in a form designed to be weather-resistant, has been placed on the windshield, under a windshield wiper of the vehicle to be towed, or at some 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 24 hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which notice contains all of the following information:

(a) 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, amount, terms and conditions for the imposition of any storage charges by the towing company.

(B) Unless the parking space in question is also located in a parking lot, before having a car towed pursuant to the procedure authorized under § 73.05(A)(2), 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.

(C) Once an owner or operator of a vehicle has been notified pursuant § 73.05(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, and upon its discovery that the vehicle in question, or another vehicle driven by the same owner or operator, may be immediately towed.

(Prior Code, § 75.04) (Ord. 03-02, passed 4-24-2003; Ord. passed 7-24-2014; Ord. passed 10-23-2014)

§ 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~~200% 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~~70.00. If a normal consensual towing fee is \$45, the maximum non-consensual fee is ~~\$78.75~~90.00.

(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) *Compliance.* A towing company which has failed to comply with the provisions of § 73.07 is prohibited from charging any storage fee whatsoever and is subject to 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; Ord. passed 7-24-2014; Ord. passed 10-23-2014)

§ 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 divisions (B) and (C) below.

(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 division (A). If the towing company is located more than ~~three-ten~~ miles from the location from which the vehicle was towed, and the owner or driver has requested the opportunity and indicated a willingness to pay the fees, but states an inability to obtain transportation to the location of the vehicle, 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.

(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-ten~~ 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.

(Ord. passed 7-24-2014; Ord. passed 10-23-2014)

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

(A) Use of parking control devices or methods is hereby authorized within the town.

(B) Except as explicitly authorized by § 73.10(B), no company or individual which maintains a fixed business situs within the corporate limits may 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, unless it first obtains and has in effect a current privilege license issued by the town in accordance with § 112.35. For purposes of this section, a **FIXED BUSINESS SITUS** includes an office, storage facility and any other fixed location relating to the conduct of the operation. 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.

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

(D) No person may attach a parking control device or method to an occupied vehicle. Except as specified herein, this chapter does not authorize any person to attempt to impede or block an occupied vehicle from being removed from a parking space or lot.

(Ord. passed 7-24-2014; Ord. passed 10-23-2014; Ord. passed 11-20-2014)

§ 73.09 SIGNS OR NOTIFICATION REQUIRED BEFORE PARKING CONTROL DEVICES OR METHODS MAY BE UTILIZED IN PARKING LOTS.

(A) *Signs and other requirements for the use of a parking control device or method in a parking lot of a mall, shopping center, or parking lot which serves multiple locations or establishments.* For a parking lot serving a "mall" or "shopping center," as those terms are defined in Chapter 153, Article 34 of the Unified Development Ordinance, as well as for a parking lot which serves multiple locations or 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 unless the parking lot meets all of the following requirements:

(1) It complies with UDO § 26.12.01, as applicable by the terms of that section.

(2) Two signs per each vehicle entrance to the parking lot shall be posted, in locations and at heights designed to be easily seen by from the vantage point of and conspicuous to the driver of a vehicle, each sign complying with all of the following: ~~A sign is posted on both sides of every vehicle entrance to the parking lot,~~

~~unless legal impossibility is demonstrated pursuant to division (A)(3), in locations and at heights designed to be easily seen from the vantage point of the driver of a vehicle, each sign complying with all of the following:~~

~~(a) The signs are posted (i) on both sides of each vehicle entrance and placed no more than five feet from the street right-of-way line of the street from which access to the parking lot is obtained, OR (ii) on the premises in locations which are conspicuous to and can easily be seen by every unauthorized person entering the parking lot or exiting a parked vehicle in the parking lot. Each sign is placed no more than ten feet from the street from which access to the parking lot is obtained, unless a different location is approved in writing by the Chief of Police, based upon his or her determination that it will be more effective in advising persons utilizing the parking lot of its restricted availability;~~

(b) Each sign is no smaller than four square feet and no larger than six square feet, with a white background and red letters printed in fonts which can easily be read by a person of ordinary vision, seated in a vehicle entering the parking lot, and which contains all of the following information, as applicable:

1. 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;

2. The name and number of the parking control company, and the amount of any charge imposed to remove the parking control device or method from the vehicle;

3. The name of the mall or shopping center which the parking lot serves;

4. If fewer than six locations and establishments in a mall or shopping center are served by the parking lot, the name of each location and establishment served;

5. If the parking lot serves multiple locations or establishments or locations not part of a single shopping center or mall, the name of every location and establishment served by the parking lot, which names must match the names displayed on each of the locations and establishments themselves;

6. That 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 locations and/or establishments and unauthorized locations and/or establishments.

~~(c) In the event the parking lot does not have curb cuts or other clearly-defined vehicle entrances, signs shall be posted not less than one per 50 feet of road frontage. Has vehicle entrances clearly defined by curb cuts, or has established locations of motor vehicle entrances by means of markings on the pavement such as painted hash marks, reflectors or the like.~~

~~(3) Legal impossibility. Alternative sign placements may be approved or required, as applicable, by the Chief of Police in the event (i) a property owner or other person exercising legal control of a parking lot demonstrates to the Chief's satisfaction that compliance is legally impossible, or (ii) one or more complaints are received by the Police Department from any person to the effect that the signs posted on a parking lot per subsection (a)(ii) above are not conspicuous to and easily seen by every person entering the parking lot or exiting a parked vehicle in the parking lot. Alternative sign placements may be approved by the Chief of Police, when a property owner or other person exercising legal control of a parking lot demonstrates that compliance is legally impossible. In order to establish legal impossibility, the person must present a signed opinion from an attorney licensed in North Carolina, certifying that the attorney has examined the relevant legal records related to the parking lot, and identifying with specificity the legal impediments to compliance. The person must propose an alternative placement of signs which achieves the highest level of notice feasible under the circumstances.~~

(B) *Signs and other requirements for use of a parking control device or method in a parking lot serving a single location or establishment other than a mall or shopping center.* For a parking lot other than the parking lot for a "mall" or "shopping center," as those terms are defined in Chapter 153, Article 34 of the UDO, and other than a parking lot serving multiple locations or 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 parking lot complies with at least one of the following four divisions, (1) through (4), compliance with division (1) presumptively considered adequate notice:

(1) Two signs per each vehicle entrance to the parking lot shall be posted in locations and at heights designed to be easily seen by and conspicuous to the driver of a vehicle, each sign complying with all of the following. There is a sign posted on both sides of every vehicle entrance to the parking lot, unless legal impossibility is demonstrated pursuant to division (6), in locations and at heights designed to be easily seen from the vantage point of the driver of a vehicle entering the parking lot, each sign complying with all of the following:

(a) The signs are posted (i) on both sides of each vehicle entrance and placed no more than five feet from the street right-of-way line of the street from which access to the parking lot is obtained, OR (ii) on

~~the premises in locations which are conspicuous to and can easily be seen by every unauthorized person entering the parking lot or exiting a parked vehicle in the parking lot. Each sign is placed no more than ten feet from the street from which access to the parking lot is obtained, unless a different location is approved in writing by the Chief of Police, based upon his or her determination that it will be more effective in advising persons utilizing the parking lot of its restricted availability;~~

~~_____ (b) Each sign is no smaller than four square feet and no larger than six square feet, with a white background and red letters, printed in fonts which can easily be read by a person of ordinary vision, seated in a vehicle entering the parking lot, and containing all of the following information, as applicable:~~

~~_____ 1. 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;~~

~~_____ 2. The name and telephone number of the parking control company, and the amount of any charge imposed to remove the parking control device or method from the vehicle; and~~

~~_____ 3. That 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 locations and/or establishments and unauthorized locations and/or establishments.~~

~~(c) In the event the parking lot does not have curb cuts or other clearly-defined vehicle entrances, signs shall be posted not less than one per 50 feet of road frontage~~

~~_____ (2) There is a sign or combination of signs posted on the premises, each no smaller than two square feet and no larger than four square feet, in a location(s) designed to be, and which can easily be seen by every unauthorized person entering the parking lot or exiting a parked vehicle in the parking lot, each sign with a white background and red letters, containing the following information in fonts which can easily be read by a person of ordinary vision, containing all of the following information, as applicable:~~

~~_____ (a) 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;~~

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

~~_____ (c) That 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 the authorized locations or establishments and unauthorized locations and/or establishments.~~

~~(23) There is a sign otherwise compliant with § 73.05(A)(24) at every parking space within the lot for which enforcement may take place, except that instead of towing, the specific parking control device is identified on each sign; and notice is given of the name and number of the parking control company as set forth at § 73.05(A)(2).-~~

~~(34) A written notice, in a form designed to be weather-resistant, has been placed on the windshield, under a windshield wiper of the vehicle to be immobilized, or at some 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 24 hours prior to the application of the parking control device or method if the parking lot is located outside the Municipal Service District, which notice contains all of the following information:~~

~~(a) 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~~

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

~~(45) Once an owner or operator of a vehicle has been notified pursuant to division (B)(2) above, it shall be unnecessary for the person authorizing, directing, contracting for, implementing or applying a parking control device or method 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.~~

~~(56) Legal impossibility. Alternative Alternative sign placements may be approved or required, as applicable, by the Chief of Police in the event (i) a property owner or other person exercising legal control of a parking lot demonstrates to the Chief's satisfaction that compliance is legally impossible; or (ii) one or more complaints are received by the Police Department from any person to the effect that the signs posted on a parking lot per subsection (a)(ii) above are not conspicuous to and easily seen by every person entering the parking lot or exiting a parked vehicle in the parking lot. sign placements may be approved by the Chief of Police when a property owner or other person exercising legal control of a parking lot demonstrates that compliance is legally impossible. In order to establish legal impossibility, the person must present a signed opinion from an~~

~~attorney licensed in North Carolina, certifying that the attorney has examined the relevant legal records related to the parking lot, and which identifying with specificity the legal impediments to compliance. The person must propose an alternative placement of signs which achieves the highest level of notice feasible under the circumstances.~~

(Ord. passed 7-24-2014; Ord. passed 10-23-2014)

...

 § 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) *Convictions.* No person ~~convicted of (a) convicted within any five (5) – year period of any two criminal infractions (a felony and/or misdemeanor) as the result of arising from a violating violation of this chapter and/or no person convicted of any felony, Class 1 misdemeanor or Class 2 misdemeanor~~ related to activities connected to parking lot or parking space enforcement within the town, or (b) convicted of any manner of assault related to activities connected to parking lot or parking space enforcement within the town may thereafter engage in towing activities involving direct interaction with the public or in the application or removal of parking control devices or methods in the town for a period of two 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; Ord. passed 7-24-2014; Ord. passed 10-23-2014)

G. Authorization for Staff and Town Attorney to Research Dedication of Private Portion of Park Street to Town of Boone.

H. Approval of Budget Amendment for Emergency Replacement Purchase for Sanitary Sewer CCTV Camera:

Description:	Account Number:	To:	From:
Capital Outlay - Other Equipment	030-700-803-574000	\$49,967	
Appropriated Fund Balance	030-000-000-499900		(\$49,967)

I. Approval of Bryson Cox Resolution:

RESOLUTION

WHEREAS, seven-year-old Bryson Cox tragically drowned in a culvert in Boone on August 13, 2010; and,

WHEREAS, Bryson was an inquisitive young man who loved to explore the world and its many wonders; and,

WHEREAS, Bryson's memory will live on in the Town of Boone and in the surrounding communities; and,

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone, North Carolina will honor the memory and legacy of Bryson Cox and will work hard to ensure the safety of all citizens.

Adopted by unanimous vote of the Town Council on the 17th day of September, 2015.

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 246)

J. Approval of Budget Amendments:

Description:	Account Number:	To:	From:
Downtown Streetscape Projects	010-411-000-549105	\$300,000	
Transfer to General Fund (MSD)	050-450-000-598010	\$300,000	
Transfer from MSD (General Fund)	010-000-000-498050		(\$300,000)
Appropriated Fund Balance (MSD)	050-450-000-499900		(\$250,000)
Municipal Service District (MSD)	050-450-000-553104		(\$50,000)
Town Council Priority Projects	010-411-000-549130	\$22,000	
Appropriated Fund Balance (General Fund)	010-000-000-499900		(\$22,000)
Capital Outlay – Large Trucks	051-451-000-573300	\$358,898	
Appropriated Fund Balance – Rural Fire	051-451-000-499900		(\$358,898)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Loretta Clawson, Council Member
SECONDER: Lynne Mason, Council Member
AYES: Hay, Mason, David, Clawson, Brantz

COUNCIL MATTERS

SCHEDULING OF BICYCLE/PEDESTRIAN STAKEHOLDERS ANNUAL MEETING

Public Works Director Rick Miller provided Council will available dates to hold the annual stakeholders meeting as required by the Bicycle/Pedestrian Plan. It was the consensus of the Council to schedule this meeting for Thursday, Oct. 29, 2015, from 4 to 6 p.m. in the Council Chambers located at 1500 Blowing Rock Road.

RESULT: CONSENSUS

REQUEST FOR NOMINEE FOR COUNTY'S RECREATION COMMISSION

It was the consensus of Council to first confirm with Greg Dobbins if he'd like to continue to serve on the Watauga County Parks and Recreation Commission before sending his nomination to the County

Commissioners for consideration. Town Clerk Christine Pope advised she would try to reach out to Mr. Dobbins for confirmation before the next meeting.

RESULT: CONSENSUS

REORGANIZATION AND CONSOLIDATION OF EXISTING TOWN BOARDS, COMMITTEES AND TASK FORCES AND TO HOST A MAJOR RECRUITMENT DRIVE BY COUNCIL TO FULFILL THE OPEN POSITIONS

Town Manager John Ward presented Council with a potential consolidation and reorganization of the Town boards, task forces and committees for Council's consideration in order to increase efficiency, clarify focus, and maximize staff and volunteer efforts. Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to direct staff to proceed with developing a plan to reorganize and consolidate existing Town boards, committees and task forces.

RESULT: APPROVED [UNANIMOUS]
MOVER: Lynne Mason, Council Member
SECONDER: Quint David, Council Member
AYES: Hay, Mason, David, Clawson, Brantz

APPROVAL OF BUDGET AMENDMENT FOR RAW WATER PROJECT PROPERTY ACQUISITION

Council Member Clawson made the following statement regarding the property acquisition budget amendment for consideration:

"I have just gotten back on Town Council and am trying to catch up with where we are on issues. In 2008, the town residents passed a referendum for \$25 million for a new water project.

Fast forward to now:

We are asking for a budget amendment to be passed to condemn 16 properties by eminent domain. These have been filed by the Town of Boone and there is no way to know how much this will cost our town taxpayers.

I am in theory opposed to condemnation by eminent domain. I think the idea by some is 'look how much we have already spent and we can't stop now!' But, how much is it going to cost us to look at it this way. Eminent domain by jury trial is a very long and costly process and who pays for this - the taxpayers of Boone. I haven't heard of anyone going to help us.

We are going to give the county 750,000 gallons a day of this new water even though they took almost \$2 million a year of our tax revenues. Now we are moving forward into the unknown by condemnation.

I think we need to table this and take it back to the voters who only approved \$25 million and let them decide what they want to do. I don't want to take our taxpayers into the unknown.

Thank you."

Mayor Pro Tem Brantz, and Council members Mason and David voiced their continued support for the water intake project. Discussion ensued regarding the cost to hold an election for citizens to vote regarding

condemnation. Town Manager John Ward noted the several necessary permits that have been obtained from various federal and state entities, and advised Council that construction must begin in 2016. He stated that by delaying the project any further, they would potentially sacrifice the \$1.8 million grant and \$20 million loan from the USDA. Mr. Ward added that they expect to go out to bid for this project in the fall.

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the property acquisition budget amendment:

Description:	Account Number:	To:	From:
Capital Outlay – Land	030-700-801-575201	\$200,000	
Transfer to Water/Sewer Fund (Water Infra Capital Reserve Fund)	033-700-000-598030	\$200,000	
Transfer from Water Infrastructure Capital Reserve Fund	030-000-000-498033		(\$200,000)
Appropriated Fund Balance Water Infrastructure Capital Reserve	033-700-000-499900		(\$200,000)

RESULT: APPROVED [4 TO 1]
MOVER: Lynne Mason, Council Member
SECONDER: Rennie Brantz, Mayor Pro-Tem
AYES: Hay, Mason, David, Brantz
NAYS: Clawson

TOWN MANAGER UPDATE

Town Manager John Ward provided Council with several updates regarding upcoming meetings and conferences, downtown events, streetscape completion, paving projects, an upcoming contract for the Howard Street project, and various businesses opening soon throughout Town and the surrounding area.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Pro Tem Rennie Brantz announced the current vacancies on various Town boards.

APPOINTMENT TO SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE

Council Member David nominated Ben Scarboro to serve on this committee. With no further nomination, Mayor Pro Tem Brantz called for a vote.

Mr. Scarboro's term will expire Sept. 17, 2017.

RESULT: APPROVED [UNANIMOUS]
MOVER: Quint David, Council Member
SECONDER: Rennie Brantz, Mayor Pro-Tem
AYES: Hay, Mason, David, Clawson, Brantz

APPOINTMENT TO BOONE TOURISM DEVELOPMENT AUTHORITY

Council Member Mason nominated Jessica Smith for reappointment to this board. With no further nominations, Mayor Pro Tem Brantz called for a vote.

Ms. Smith's term will expire Sept. 30, 2018.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Rennie Brantz, Mayor Pro-Tem
AYES:	Hay, Mason, David, Clawson, Brantz

CLOSED SESSION

MOTION TO ENTER CLOSED SESSION

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member Clawson, Council moved to enter Closed Session at 6:52 p.m. to hear the following items:

Pursuant to N.C.G.S. 143-318.11(a)(3) and (a)(5), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the terms of possible acquisition of easements from Watauga County related to the water intake project.

Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning potential claims involving the Town of Boone.

Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council in order to confer with the attorney regarding certain legal matters.

Pursuant to N.C.G.S. 143-318.11(a)(5)(ii), to establish the amount of compensation and/or other material terms of an employment contract or proposed employment contract.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rennie Brantz, Mayor Pro-Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Hay, Mason, David, Clawson, Brantz

MOTION TO EXIT CLOSED SESSION

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member Clawson, Council moved to exit closed session at 8:05 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rennie Brantz, Mayor Pro-Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Hay, Mason, David, Clawson, Brantz

POSSIBLE ACTION FOLLOWING CLOSED SESSION

MOTION

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member Mason, Council moved to approve the third easement with Watauga County and to authorize the Mayor Pro Tem to execute the easement agreement.

RESULT:	APPROVED [4 TO 1]
MOVER:	Rennie Brantz, Mayor Pro-Tem
SECONDER:	Lynne Mason, Council Member
AYES:	Hay, Mason, David, Brantz
NAYS:	Clawson

ADJOURNMENT

MOTION

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member Mason, Council moved to adjourn the meeting at 8:08 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rennie Brantz, Mayor Pro-Tem
SECONDER:	Lynne Mason, Council Member
AYES:	Hay, Mason, David, Clawson, Brantz

Christine Pope, Town Clerk

Rennie Brantz, Mayor Pro Tem