

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
November 16, 2021**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:00 p.m. on Tuesday, November 16, 2021. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Connie Ulmer, Sam Furguele, Virginia Roseman, Nancy LaPlaca and Dalton George. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Deputy Public Works Directors Todd Moody and Josh Eller, Downtown Boone Development Coordinator Lane Moody, Finance Director Amy Davis, Administrative Support Specialist Laney Pilkington, Cultural Resources Director Mark Freed, Sustainability and Special Projects Manager George Santucci, Human Resources Director Dale Presnell, Fire Chief Jimmy Isaacs, Police Chief Andy Le Beau and Planning Director Jane Shook. Town Attorney Allison Meade was also in attendance.

TENTATIVE AGENDA ADOPTION

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the agenda as presented.

PUBLIC COMMENT

Kinney Baughman of Boone spoke in favor of keeping the Town of Boone mask mandate and state of emergency ordinance in place. He stated that he spoke to the Senior Deputy Director for the North Carolina Department of Health and Human Services Division of Public Health, and asked whether or not she thought Boone should keep it's mask mandate. Mr. Baughman stated that the Deputy Director answered by referring to what the CDC said about masks with respect with how prevalent the disease was in the community. In light of that information, Mr. Baughman suggested Council continue setting the standard for the region and the state, and keep the local mask mandate in place.

Jodi Feimster of Boone spoke in favor of keeping the Town of Boone mask mandate and state of emergency ordinance in place, and agreed with Mr. Baughman's comments. She indicated that she did a search of local AirBnB's for guests coming to the area for the Thanksgiving holiday, and discovered that her search was one of more than 1,900 in the last week. Ms. Feimster noted that a recent poll suggested that the industries with employees who were least likely to be vaccinated were those in agriculture, construction, food, retail, manufacturing, and transportation. She expressed concern that the vaccination rate in the County was low at 54%, and believed that the mask mandate needed to continue.

REQUESTED APPEARANCES

JESS WILKINSON & EVE LETTAU - NC GROWTH

Eve Lettau, Carolyn Freiburger and Jess Wilkinson presented the final draft resiliency report prepared for Boone as part of the NC Growth project. A complete copy of the presentation may be viewed online at <http://boonenc.iqm2.com/Citizens/Default.aspx> . Mr. Furguele noted that the presentation did not name the people who were interviewed for the presentation, which he believed was crucial since Boone was a small town. It was his view that certain people could be wedded to particular narratives which could present the Town in a narrow perspective. Mr. Furguele stated that he appreciated the work that went into the project, and asked that an addendum be prepared which disclosed who the stakeholders were who were interviewed.

Ms. Freiburger indicated that interviews were conducted in a confidential manner, and that a conversation would need to be held with Mr. Ward, as well as the interviewee to see if they were agreeable to having their identities disclosed. Mayor Pro-Tem Ulmer suggested that at least the statistics of those who were interviewed be released. Ms. LaPlaca thanked Ms. Lettau and Ms. Wilkinson for their work, but reminded members to remember that sustainability and clean energy should also be a part of resiliency planning for the Town of Boone.

CHELSEA BLOUNT- NEW RIVER CONSERVANCY

Chelsea Blount with New River Conservancy gave members an update on the Winklers and Boone Creek restoration projects, as well as the Bolick property project. A complete copy of the presentation can be viewed online at <http://boonenc.igm2.com/Citizens/Default.aspx>.

ADOPTION OF ITEMS ON THE CONSENT AGENDA

Upon a motion by Mr. George, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the following items on the Consent Agenda:

1. Resolution Honoring Dr. Ronald J. Stanley for the Creation of Arborcrest Gardens
2. Honorary Designation of Rivers Street as Chancellor Dr. John E. Thomas Thruway
3. Notice of Settlement of Legal Claim
4. Amendment to Records Retention Schedule - Program Records Schedule
5. Amendment to Records Retention Schedule - General Records Schedule
6. Amendment to Noise Ordinance Regarding Warnings

RESOLUTION HONORING DR. RONALD J. STANLEY FOR HIS ACHIEVEMENT WITH ARBORCREST GARDENS

WHEREAS, Dr. Ronald J. Stanley has transformed some 26 acres of steep land and deep ravines (originally part of the Councill family land-grant in the heart of Boone) into a world-class arboretum and test garden, experimenting with both native and exotic species and helping to preserve rare species like the American native *Franklinia* (*F. alatomaha*), now considered extinct in the wild, and the non-native Dove tree from China (*Davidia involucrata*); and

WHEREAS, Dr. Stanley's "Arborcrest" is now open by appointment to the public free of charge on Fridays; and

WHEREAS, Arborcrest's fame for stunning vistas, expert landscape design, garden structures (a covered bridge) and other hardscaping (a hillside smiley face), along with paths, restroom facilities, and instructive signage placed for all 14,000 native and exotic specimen plants (a list still growing); and

WHEREAS, the Town of Boone now shares in the statewide, regionwide, and soon nationwide fame of Arborcrest, a travel magnet for master gardeners and gardening experts and eco-tourists who seek out beautifully landscaped nature; and

WHEREAS, Dr. Stanley's vision (achieved through sweat, expertise with plants and landscape design, and care for sustainability and the preservation of natural features of the landscape) has added so substantially to the fame of Boone and to its general quality of life and should therefore be officially recognized and honored for the achievement, and for generously opening Arborcrest to the public;

NOW, THEREFORE, the Town of Boone applauds Dr. Ronald J. Stanley's landscaping achievement and recognizes its inestimable contributions (both visible and invisible) to the town's profile with the rest of the state, and to the green enhancement of the environment within the town, and to the pleasure and delight of garden-lovers everywhere.

Adopted this the ____ day of _____, 2021.

Rennie Brantz, Mayor

ATTEST:

_____(SEAL)

Nicole Harmon, Town Clerk

RESOLUTION FOR CHANCELLOR DR. JOHN E. THOMAS THRUWAY

WHEREAS, John Thomas was born on April 23, 1931 in Ft. Worth, Texas; and

WHEREAS, John Thomas earned a B.S. degree in Electrical Engineering, a J.D. in Law, an M.S. in Research and Development Management, and a Doctorate in Business Administration; and

WHEREAS, John Thomas served his country by serving in both the U.S. Marine Corps and the U.S. Navy; and

WHEREAS, John Thomas in 1974 joined Appalachian State University as the Vice Chancellor of Academic Affairs; and

WHEREAS, John Thomas in 1979 was appointed Chancellor of ASU by the UNC Board of Governors and held that position until 1993; and

WHEREAS, John Thomas established the University's first Doctoral program in Educational Leadership; and

WHEREAS, John Thomas formalized international exchange programs in a dozen countries and created many other innovative programs; and

WHEREAS, John Thomas grew enrollment from 10,179 in 1970-1980 to 12,092 in 1992-1993; and

WHEREAS, The Boone Town Council recommends that the North Carolina Department of Transportation designates Rivers Street from Blowing Rock Road to Burrell Street the Chancellor John E. Thomas Thruway.

Adopted this the ____ day of _____, 2021.

Rennie Brantz, Mayor

ATTEST:

_____ (SEAL)

Nicole Harmon, Town Clerk

Ordinance # _____

**AN ORDINANCE TO AMEND THE TOWN OF BOONE
CODE OF ORDINANCES CHAPTER 82, SECTION 82.99 REGARDING WARNINGS
FOR NOISE ORDINANCE VIOLATIONS BY MUSIC VENUES**

WHEREAS, the Boone Town Council desires to modify the town's noise ordinance to make enforcement more effective; and

WHEREAS, the Boone Town Council is authorized to adopt this ordinance pursuant to its general powers under Chapter 160A of the North Carolina General Statutes;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Section 82.99 of the Boone Code of Ordinances is hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference.

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this ____ day of _____, 2021

Rennie Brantz, Mayor

ATTEST: _____

Town Clerk

EXHIBIT A

§ 82.99 ENFORCEMENT; PENALTIES.

(A) The town manager, chief of police or their designee(s) shall have responsibility for the enforcement of the noise regulations contained herein. Nothing in this section shall prevent the town manager or chief of police or their designee(s) from obtaining voluntary compliance by way of warning, notice or education

(B) *Initiation of enforcement.* The provisions of § 82.03(A) (noises intended to disturb) and § 82.06 (live, recorded or amplified music) shall be enforced only as the result of the receipt of a complaint. All other provisions of this chapter may be enforced either as the result of the receipt of a complaint or as the result of the observations of any law enforcement officer or other employee or official of the town.

(C) Initial warning(s) required. Before a citation may be issued and penalties assessed against a person pursuant to divisions (D) and (F) below, that person shall be given written warning(s) within any rolling 12-month period as follows:

- (1) ~~Four~~ Two warnings shall be given before a citation is issued for a violation of § 82.06 regarding live, recorded or amplified music.
- (2) One warning shall be given before a citation is issued for a violation of § 82.03 regarding noises prohibited at all times, except no warning shall be given for failure to discontinue an alarm in violation of § 82.03(H)
- (3) One warning shall be given before a citation is issued to a person who is a responsible person hereunder but was not present at the property when the noise was made (such as a property owner, property manager, lessee or occupant of a property from which offending noise issued).
- (4) No warnings shall be required with respect to any other violation of this chapter.

(D) *Civil penalties.* A violation of this chapter shall subject the violator to a civil penalty in the amount of \$100; provided, that subsequent violations within any 12-month rolling period shall subject the violator to the following civil penalties: a second violation in any rolling 12-month period shall subject the violator to a civil penalty in the amount of \$200, and a third and any subsequent violation in any rolling 12-month period shall result in the assessment of a \$500 civil penalty.

(E) *Appeal of civil penalty.* Appeal of a civil penalty amount may be made to the Town Manager or designee as provided at § 10.99 of this Code by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the Town Manager or designee may consider the following:

- (1) The gravity of the violation;
- (2) Any action taken or not taken by the violator to avoid and/or correct the violation;
- (3) The cost of the action to correct the violation; and
- (4) Any previous violations committed by the violator, on the same or different site.

(F) *Criminal penalties.* A person committing more than two violations of this chapter during any rolling 12-month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500, in addition to the civil penalties imposed.

COUNCIL MATTERS

DISCUSSION REGARDING CURRENT STATE OF EMERGENCY ORDER

Mr. Ward asked for discussion and direction regarding the current state of emergency order, and noted that the Town of Blowing Rock recently voted to keep theirs in place. He noted that Public Health Director Jennifer Greene was attending the County Commission meeting, but had sent him a presentation to share with members. A complete copy of the presentation can be viewed online at http://boonenc.iqu2.com/Citizens/Detail_Meeting.aspx?ID=2383. Ms. Roseman noted that she worked in a job that was very accessible to the public and that people in the community often pleaded for Council to continue the mask mandate. In-person meetings were briefly discussed, as well as mask enforcement. Mr. Furgiuele agreed that the mask mandate should continue, and noted that at some point, the Town may want to revisit the idea of having enforcement triggered by notification on business doors. He added that he hoped the next Council would be careful about how quickly they relaxed these conditions and that they watched the numbers closely. Mr. Furgiuele believed that the decision about in-person meetings should be made by the incoming Council. It was the consensus of Council to continue the current state of emergency order.

REQUEST FOR AUTHORIZATION TO CONVEY LOOM TO WATAUGA COUNTY SCHOOLS

Ms. Meade and Mr. Freed presented a request that the Town Council consider conveying a loom owned by the Town (which was currently in pieces and being stored in the Jones House attic) to Watauga County Schools. It was noted that Mr. Freed had not yet discovered any particular historic value in the loom. Mr. Furgiuele felt that it should not be assumed that the loom did not have historical significance, and that the matter should be discussed with the Historic Preservation Commission. He added that it was his experience that when things were given to the school system, they were kept for a while and when personnel changed, the item was thrown out or given away. Mr. Furgiuele suggested that once it was determined that the loom had no historical significance, the loom be loaned to the school system instead, with the expectation that if they ever stopped using it, the Town would be notified. Ms. Roseman, who was a former manager at the Southern Appalachian Historical Association, stated that they had a similar loom at one time, and wondered if this could be the same one. Mr. Freed indicated that he had inquired as to whether or not SAHA was the appropriate place for the loom, and was told by SAHA staff that they did not have room for it. Ms. Meade suggested that the loom could be loaned to the school system while absolving them of all liability if the loom were damaged while in their possession. In the alternative, she indicated that the loom could be given to them outright with a contract that allowed the Town the right of first refusal if the school were to move on from the loom. Ms. Meade stated that she was unfamiliar with looms, and asked whether the loom might present the possibility of personal injury, and was informed that it was not. Consensus was reached that there be a consultation with HPC, then an agreement should be reached with the school system that would address the concerns of both parties. Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously that the recommendation be accepted with the alteration that there be a mechanism in the contract that the loom be returned to the Town if it is no longer being used by the school system; and that there be a conference with the members of the Historic Preservation Commission to determine whether there may be some specific significance that might trigger a reexamination of this action, at which point the Town Manager should inform members of Council so that further discussion could be held.

Mayor Brantz called for a break at 7:59 p.m. Council reconvened at 8:10 p.m.

CONSIDERATION FOR RENEWAL OF TOWN-WIDE JURISDICTION AGREEMENT FOR APP STATE POLICE

Chief Le Beau indicated that last year when the Town-wide jurisdiction agreement with ASU Police Department was approved, he was asked by Council to bring it back for review. He noted that there had been no issues whatsoever with the ASU Police Department and that on the issues the Boone Police Department had worked with them on, officers and staff had all worked well together. Chief Le Beau recommended that Council continue the agreement for another year, at which time he would bring the agreement back for Council's review. Mr. Furgiuele indicated that he had concerns about the agreement, and particularly with the fact that people over whom the Town did not have control, were in positions of authority. He stated that he did not have distrust in any of the officers currently employed at ASU, but was concerned that the agreement was in perpetuity

unless it was terminated, and that personnel changed often. Mr. George was also concerned with the Town's liability in issues involving ASU officers. He asked about ASU officer training compared to Boone officer training, to which Chief Le Beau answered that all officers went through the standard state mandated basic law enforcement training class. Brief discussion was held regarding liability and personnel matters before Ms. Meade clarified that Town Council could, at anytime, terminate this contract. She noted that Council also controlled the Police Chief through the Town Manager, which meant that they controlled the conduct of the Police Department. Ms. Meade indicated that if Council became aware of misconduct by an ASU officer towards a resident, they could control it by terminating the contract. She noted that the agreement did not allow ASU officers to be co-policemen in the Town limits, but that there were only three circumstances under this agreement in which the ASU officers could act outside the campus: 1) in pursuit of an investigation of a crime that happened on campus 2) if a crime happened in the presence of an ASU police officer that was an immediate threat to public welfare 3) when specifically requested by the Boone police department. Chief Le Beau reassured members that he would not tolerate his officers mistreating a citizen or any kind of misconduct by his officers, and would report it to the Town Manager immediately. Mr. Furguele expressed his concern, in follow up to Mr. George's statement regarding liability, that the issue was not just the potential liability of the Town created by non-employees, but also whether the Town relinquished control over making a citizen who was mistreated whole by denying potential liability. Mayor Pro-Tem Ulmer made a motion, which was seconded by Ms. LaPlaca to continue with the agreement as presented, and requested that staff bring the agreement back to Council next year for review.

VOTE: Aye: Ulmer, LaPlaca, Roseman
 Nay: Furguele, George

CONSIDERATION OF ORDINANCE ESTABLISHING HUMAN RELATIONS COMMISSION

Upon a motion by Mr. George, seconded by Mr. Furguele, Council voted unanimously to approve the ordinance establishing a human relations commission as presented.

Ordinance # _____

**AN ORDINANCE TO AMEND THE TOWN OF BOONE CODE OF ORDINANCES
TO ESTABLISH A HUMAN RELATIONS COMMISSION**

WHEREAS, the Boone Town Council desires to establish a Human Relations Commission in order to further effect the Town's interests in encouraging nondiscrimination and facilitating understanding and inclusiveness among its citizens and residents; and

WHEREAS, the Boone Town Council is authorized to adopt this ordinance and establish a Human Relations Commission pursuant to N.C. Gen. Stat. § 160A-492;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. The Boone Code of Ordinances is hereby revised to add a new Chapter 39 as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference.

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this _____ day of _____, 2021

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

CHAPTER 39: HUMAN RELATIONS COMMISSION

§ 39.01 Declaration of Policy.

The town council finds that prejudice and the practice of discrimination against any individual or group based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin, may menace the peace and public welfare. To work towards elimination of such prejudice and discrimination, a commission should be established through which the citizens of Boone may be kept informed of developments in human relations, the officers and departments of the town may obtain advice and assistance concerning practices to keep peace and good order, and private persons and groups may be officially encouraged to promote tolerance and goodwill to all people.

The purpose of the Boone Human Relations Commission is to promote and improve human relations and equity among all citizens in the town. The commission will work with town government and partner with communities and outside agencies in an effort to encourage and ensure diversity, fairness, equity and inclusion throughout the town. In furtherance thereof, the commission should endeavor to identify and assist in addressing all forms of individual, institutional and community discrimination through education, advocacy and policy recommendations.

§ 39.02 Establishment.

- A. The Boone Human Relations Commission (hereinafter, "commission") is hereby created pursuant to the authority set forth at N.C. Gen. Stat. §160A-492.
- B. The duration of the committee shall initially be for five years, after which the committee shall expire unless action has been taken by the town council to extend its duration.

§ 39.03 Powers and Duties

The commission shall have the following powers and duties:

- A. To serve as an advisory body to the town council;
- B. To study and recommend strategies for the prevention of potential human relations problems and for the promotion of good relations.
- C. To endeavor to make the commission itself a model of good human relations at work.
- D. To promote equality of opportunity in the economic, educational, governmental, and cultural life of the community for all citizens without regard to actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin, and work to eliminate discrimination on any of these bases.
- E. To invite and enlist the cooperation of persons and groups representing various economic, educational, and social groups in all areas of the town, and to act as a coordinating agency among these and other groups in the community in the establishment and maintenance of educational programs in the community designed to bring about better human relations.

- F. To cooperate with any interested citizen, and all state, federal and local agencies whenever such cooperation is appropriate in furthering the purpose of this chapter;
- G. To institute and conduct educational and other programs to promote the equal rights and opportunities of all persons, regardless of their race, color, religion, creed, national origin or marital status, sexual orientation or gender identity, and to promote understanding among all such persons and groups;
- H. To seek grants and donations to the town from foundations and others for the purpose of carrying out the above-listed functions;
- I. To prepare and render to the town council annual reports on its progress in accomplishing the objectives of this chapter.

§ 39.04 Membership qualifications and terms of office

- A. Town council shall appoint up to 10 members of the commission. The members shall be persons committed to the values set forth in the Declaration of Policy above and shall represent a cross section of the community.
- B. For sake of stability of the commission, the initial members shall be appointed for staggered terms of one-, two- and three-year terms. Thereafter, except for student members, terms of office of the members shall be three (3) years.
- C. High school and college student members may be appointed for one (1) year terms in the discretion of Town Council.
- D. Except as may be expressly set forth herein, members shall hold office subject to existing ordinances and policies applicable to all town board and commission members.
- E. Town Council may appoint one or more of their members to serve as non-voting liaison members of the commission.

§ 39.05 Officers and procedures

- A. The commission shall select from its membership a chairperson, a vice chairperson, and a secretary, each to serve for a period of one (1) year or until a successors is appointed.
- B. The time and place of the regularly scheduled meetings of the commission shall be established and filed with the town clerk. Such meetings shall take place no less than quarterly.
- C. A majority of the commission's total membership (not including vacant or liaison positions) shall constitute a quorum for transaction of official business.
- D. The commission shall keep a full record of its proceedings and minutes of its meetings showing the business transacted at each meeting and upon approval of such records and minutes, copies shall be provided to the town manager.
- E. The commission may adopt bylaws and prescribe rules and regulations for the conduct of its meeting and the transaction of its business; however, such rules and regulations shall be consistent with existing town ordinances and policies.
- F. Except as otherwise expressly set forth herein, the commission shall function as any other advisory committee of the town pursuant to the provisions of Chapters 30 and 35 of this Code of Ordinances.

REPORT AS TO BOONE'S ORDINANCES AND THE NEW STATE DECRIMINALIZATION STATUTE

Ms. Meade presented a report as to the Town of Boone's ordinances and the new state decriminalization statute. She noted that a number of years ago, section 10.99 of the Town Code was adopted which enacted a general penalty provision. She noted that the provisions stated that a violation of a Town ordinance was not a criminal infraction unless specifically called out as being a criminal infraction. Ms. Meade indicated that there were some areas of the Code which were of issue for the Town now that the state law had changed. The main one, she noted, was that the violation of planning and development ordinances related to unsafe buildings could no longer include a criminal penalty, with the single exception of ordinances related to unsafe buildings. Ms. Meade believed that violations of the towing/booting ordinance would likely be construed as a regulation of a trade or business, and would also no longer be allowed to carry a criminal penalty under the new law. Mr. Furguele stated that he would like to see the future Council consider enhanced civil penalties in place of the loss of criminal penalties in regards to the towing/booting ordinance. He added that he believed the confinement of an animal in a hot car should be a civil penalty, since most of the time people did this out of ignorance and not malice. It was the consensus of Council that the confinement of an animal in a hot car would be subject to a civil penalty of \$100, and if the violator committed the offense twice in a three year period, then they would be subject to a misdemeanor. Chief Le Beau noted that officers often gave written warnings to first time offenders.

PROPOSED AMENDMENT OF TOWING/BOOTING ORDINANCE TO REMOVE CRIMINAL PENALTY

Upon a motion by Mr. George, seconded by Ms. LaPlaca, Council voted unanimously to approve the amendment of the towing/booting ordinance as presented. After Mr. George expressed his view that there was a need to make it easier for people affected by this ordinance to learn their rights, Mr. Furguele suggested that Ms. Pilkington create an information campaign regarding this and other Town ordinances to be placed on Town social media.

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Ordinance # _____

**AN ORDINANCE TO AMEND THE TOWN OF BOONE
CODE OF ORDINANCES SECTION 73.99 REGARDING PENALTIES FOR
VIOLATIONS OF TOWING AND BOOTING REGULATIONS**

WHEREAS, the state legislature has adopted Session Law 2021-138 which, at Part XIII, section 13(b), provides, *inter alia*, that a municipality may not criminalize violations of certain local ordinances, including ordinances enacted pursuant to authority under G.S. § 160A-194 to regulate trades and businesses; and

WHEREAS, the Boone Town Council wishes to conform its ordinance to the requirements of state law;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Section 73.99 of the Boone Code of Ordinances is hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference.

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this _____ day of _____, 2021

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

§ 73.99 PENALTY.

The provisions of § 10.99 apply to violations of this chapter except as specifically provided otherwise in this section.

~~—(A) Per G.S. § 14-4(a), any person who violates this chapter shall be guilty of a Class 3 misdemeanor and subject to a fine of up to \$500 for each violation.~~

(AB) (1) Any person who violates this chapter shall be subject to a civil penalty in the amount of \$100. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

- (a) Second offense within one year: \$250.
- (b) Third offense within one year: \$500.
- (c) Fourth offense within one year: \$750.
- (d) Fifth and any subsequent offense within one year: \$1,000.

(2) Once the one year period has run from the first violation, the next violation shall be considered to be a first violation for the purposes of establishing a new one-year period.

(BE) This chapter may also be enforced by an appropriate equitable action.

(CD) Per G.S. § 160A-175(f), any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter.
(Ord. passed 12-15-2016)

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. George, Council voted unanimously to enter into closed session at 9:01 p.m. pursuant to:

1. N.C. Gen. Stat. § 143-318.11(a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).
2. 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.

Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted unanimously at 9:28 p.m. to exit closed session.

ADJOURNMENT

Upon a motion by Mr. George, seconded by Ms. LaPlaca, Council voted unanimously at 9:30 p.m. to adjourn the meeting.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor