

**MINUTES – TOWN COUNCIL
SPECIAL MEETING
DECEMBER 10, 2025
4:00 PM**

CALL TO ORDER

A special meeting of the Boone Town Council was called to order at 4:08 p.m. on Wednesday, December 10, 2025, in the Boone Town Council Chambers located at 1500 Blowing Rock Road in Boone. Mayor Tim Futrelle presided. Council members present included Mayor Pro-Tem Dalton George, Todd Carter, Virginia Roseman (entered the meeting at 5:55 p.m.), and Eric Plaag. Town staff present included Interim Town Manager Dale Presnell, Town Clerk Nicole Harmon, Deputy Public Works Director Justin Stines, Grants Coordinator/Communications Laney Wise, Deputy Planning Director Brandon Wise, Sustainability/Special Projects Manager George Santucci, Finance Director Guy Miller, Major Shane Robbins, Police Chief Daniel Duckworth, Fire Chief Jimmy Isaacs, Public Works Director Todd Moody (remote), Cultural Resources Director Mark Freed (remote), Planning Director Jane Shook (remote), and Town Attorney Allison Meade.

MOMENT OF SILENCE

A brief moment of silence was held.

ANNOUNCEMENTS

Mayor Futrelle announced the following board vacancies:

BOARD OF ADJUSTMENT

Three alternate positions

HUMAN RELATIONS COMMISSION

Two regular positions

TENTATIVE AGENDA ADOPTION

Upon a motion by Councilmember Plaag, seconded by Mayor Pro-Tem George, Council voted to approve the agenda as presented.

VOTE: Aye: Plaag, George, Carter
 Nay: None
 Absent: Roseman

APPROVAL OF PROCLAMATIONS AND RESOLUTIONS

Councilmember Plaag made a motion to approve the following resolutions of appreciation:

1. S. Main
2. C. Burlingame
3. M. Everett
4. M. Tester

Mayor Pro-Tem George seconded the motion.

VOTE: Aye: Plaag, George, Carter
 Nay: None
 Absent: Roseman

Mayor Futrelle then read the following resolution into the record:

RESOLUTION HONORING THE RETIREMENT OF MIKE TESTER

WHEREAS, Mike Tester began his distinguished career with the Town of Boone on September 26, 1997, as a Facilities Equipment Operator, where he quickly proved himself to be a dependable, hardworking, and dedicated employee; and

WHEREAS, through his consistent commitment to excellence, professionalism, and teamwork, Mike was promoted to Public Works Supervisor on September 1, 2014, a position in which he continued to serve the Town and its residents with pride and integrity; and

WHEREAS, Mike's dependability and commitment to excellence have defined his service to the Town, where he is recognized for his strong work ethic, leadership, and reliability; and

WHEREAS, over the course of his twenty-eight years with the Town of Boone, Mike earned the respect and admiration of his colleagues and community members alike, not only for his technical expertise and dependability, but also for his sharp wit, humor, and positive spirit that brightened the workplace; and

WHEREAS, Mike's presence, guidance, and good-natured personality will be deeply missed by his coworkers, who value him not only as a colleague but as a friend; and

WHEREAS, as Mike embarks upon a well-deserved retirement, he looks forward to enjoying more time at the beach and embracing a slower pace of life surrounded by family, friends, and the many memories made throughout his remarkable career;

NOW, THEREFORE, BE IT RESOLVED that the Boone Town Council hereby expresses its deepest gratitude and appreciation to Mike Tester for his outstanding service, dedication, and contributions to the Town of Boone and its citizens.

AND BE IT FURTHER RESOLVED that Mike’s co-workers and friends wish to send him off with a “Ta-Ta, for now”!

This is the 8th day of December, 2025.

Tim Futrelle, Mayor

_____(SEAL)
Nicole Harmon, Clerk

Mr. Tester thanked Council and Town staff for many good years and friendships made.

Mayor Futrelle read the following resolutions into the record:

RESOLUTION HONORING THE RETIREMENT OF SGT. CANDACE BURLINGAME

WHEREAS, Sergeant Candace Burlingame began her service to the Town of Boone on January 4, 2015, as a Police Officer, demonstrating from the outset her commitment to professionalism, compassion, and community safety; and

WHEREAS, she was reassigned to the Investigations Division as an Investigator on August 14, 2017, where she dedicated herself to the most sensitive and challenging cases, providing comfort and advocacy to victims while seeking justice; and

WHEREAS, her dedication and leadership earned her promotion to Corporal on October 21, 2019, and subsequently to Sergeant on September 7, 2020, positions through which she guided and mentored her colleagues with integrity and strength; and

WHEREAS, Sergeant Burlingame has been particularly passionate in her efforts to support victims of family and domestic violence and sexual assault, serving as a tireless advocate and voice for the vulnerable in our community; and

WHEREAS, she has worked persistently and with great determination on the case of Martin Roberts, ensuring that his story remains at the forefront of investigative efforts and that his family continues to have an advocate within the Boone Police Department; and

WHEREAS, Sergeant Burlingame now concludes a distinguished career of service to the Town of Boone, looking forward to traveling and spending time with her family;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone does hereby honor and commend Sergeant Candace Burlingame for her years of dedicated service, her unwavering compassion, and her lasting contributions to the safety and well-being of our citizens; and

BE IT FURTHER RESOLVED that the Town Council extends its heartfelt gratitude and best wishes to Sergeant Burlingame in her retirement, with deep appreciation for her legacy of service to Boone.

This is the ____ day of _____, 2025.

Tim Futrelle, Mayor

ATTEST:

Nicole Harmon, Town Clerk

RESOLUTION

The members of the Boone Town Council, meeting in regular session on December 8, 2025, do hereby adopt and pass the following resolution:

WHEREAS, Candace Burlingame will retire on December 31, 2025, after serving the Boone Police Department in an exemplary fashion; and

WHEREAS, her contribution to the service of the Town of Boone and its citizens will always be appreciated;

NOW, THEREFORE, BE IT RESOLVED, that Sergeant Candace Burlingame shall be awarded her Police badge and a service weapon as follows:

Glock Model 19 9 MM Serial # AEUE453

Furthermore, a copy of this Resolution shall be given to Sergeant Candace Burlingame.

Adopted this on the 8th day of December, 2025.

Mayor Tim Futrelle

ATTEST:

_____(SEAL)

Nicole Harmon, Town Clerk

Sgt. Burlingame expressed her gratitude for her time with the Town of Boone.

Councilmember Plaag made a motion to approve the Resolution granting Sgt. Burlingame her service weapon and badge. Mayor Pro-Tem George seconded the motion.

VOTE: Aye: Plaag, George, Carter
 Nay: None
 Absent:Roseman

Councilmember Plaag stated that he had been approached by several local citizens about adopting a 4th Amendment Workplace Resolution in light of recent actions by the current US Administration through ICE activities in Watauga County and neighboring counties. Upon a motion by Councilmember Plaag, seconded by Councilmember Carter, Council voted to approve the following resolution:

4TH AMENDMENT WORKPLACE RESOLUTION

WHEREAS, The Town of Boone has historically pursued equity and safety for all residents; and

WHEREAS, The trust and cooperation of all residents is necessary to the effective operation of Boone's local government functions, including law enforcement; and

WHEREAS, The 4th Amendment to the Constitution of the United States reads in full:
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but

upon probable cause, supported by Oath or affirmation, and particularly describing the place to.

be searched, and the persons or things to be seized;" and

WHEREAS, Executive Branch law enforcement agencies including Immigration & Customs Enforcement have recently engaged in a pattern of unconstitutional, warrantless workplace

searches, which have disrupted small businesses, courts, and local communities in many states; and

WHEREAS, The threat of unconstitutional seizure by Federal authorities such as Immigration

and Customs Enforcement is preventing immigrant households from safely engaging in public

life, including pursuing education and employment; and

WHEREAS, Second-generation and non-immigrant Black, Indigenous, and People of Color families are also being unconstitutionally targeted, harassed, and arrested by Federal authorities and law enforcement officers under the guise of immigration enforcement; and

WHEREAS, LGBTQ+ families remain at risk for illegal and unconstitutional persecution by Federal and State authorities; and

WHEREAS, Workers with Temporary Protected Status, as well as American citizens, have now been demonstrated to be at risk for arbitrary and unconstitutional persecution by Federal and State authorities at their places of work; and

WHEREAS, Various workplaces have joined an effort by Siembra NC's "Make NC Work" project to become 4th Amendment Workplaces that train their staff to defend the 4th Amendment rights of employers, staff, and patrons; and

WHEREAS, The Town of Boone can serve as an example of how local governments can advocate for the rights of all residents and discourage the overreach of Article II agencies in our communities;

NOW, THEREFORE, BE IT RESOLVED, that we the Boone Town Council resolve that the Town of Boone is proclaimed a 4th Amendment Workplace; that the Town Manager is to

direct Town staff to uphold the 4th Amendment at their workplace and Town agencies and report back to Council any needs or barriers to effective training on the 4th Amendment for any departments; and that we encourage all Town of Boone workplaces and agencies to join this effort to ensure respect for the US Constitution and discourage Federal overreach into local communities.

This the 8th Day of December 2025.

Tim Futrelle, Mayor of Boone

VOTE: Aye: Plaag, Carter, George
 Nay: None
 Absent: Roseman

PUBLIC COMMENT

No speakers were signed up for public comment.

APPROVAL OF ITEMS ON CONSENT AGENDA

Upon a motion by Mayor Pro-Tem George, seconded by Councilmember Carter, Council voted to approve the following items on the consent agenda:

1. Statement of Work Between the Town of Boone and Eunagrants
2. Bid Waiver (Fire Engine)
3. Budget Amendments:

Public Works

TO:	Rivers House	010-411-000-549145	\$28,000.00
FROM:	Misc. Revenue	010-000-000-489900	(\$28,000.00)

Explanation: Move funds from Arbor Day Grant for Rivers House cleanup.

Public Works:

TO:	Capital Outlay Water Tanks	030-700-802-57510	\$1,519,000.00
	Transfers to Water/Sewer Fund	031-700-000-598030	\$1,519,000.00
FROM:	Appropriated Fund Balance	031-700-000-499900	\$1,519,000.00

	Water Capital Reserve Contribution	030-000-000-498031	\$1,519,000.00
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Explanation: This request is being made to provide cash for payments associated with the Deck Hill Water Tank Project. These monies will be reimbursed through our CDBG-I grant.

Finance:

TO:	Funds to Cover New Server WAN	010-411-000-549102	\$18,000.00
	Invoice Oversight on At-Net Professional Services	010-414-000-509100	\$16,000.00
	Roll Forward Remaining Funds Boonerang	010-418-000-549139	\$5,600.00
	Ford F250 Utility Body Upfit Capital Outlay-Large Trucks	051-451-000-573300	\$20,537.00
	Zodiac FC-420 Inflatable Boat Capital Outlay-Other Equipment	051-451-000-574000	\$23,083.00
FROM:	Appropriated Fund Balance	010-000-000-499900	\$39,600.00
	Appropriated Fund Balance	051-451-000-499900	\$43,620.00

Explanation: Additional Re-encumbrances for FY 202425

4. Minutes

a. November 12, 2025 Regular Town Council Meeting

VOTE: Aye: George, Carter, Plaag
 Nay: None
 Absent: Roseman

WORK SESSION

CONSIDERATION OF AFFORDABLE HOUSING OPTIONS

Council next discussed the redevelopment proposal for the former IRC property with Russell Ranson of RK Investors, focusing on defining affordable housing goals and identifying mechanisms to achieve them through conditional zoning. Council members expressed a general desire to articulate the Town's affordable housing objectives more clearly and to ensure that any project-related conditions were consistent with Boone Next and the Unified Development Ordinance (UDO).

Attorney Meade explained that while the Town's direct subsidization of affordable housing is typically limited to households at or below 60–80% of Area Median Income (AMI), greater flexibility exists when affordable housing conditions are voluntarily agreed to by an applicant as part of a conditional zoning process. Attorney Meade clarified that such conditions must still be tied to land use impacts and public policy objectives, but that Boone Next supports a broad range of housing types, including workforce and attainable housing. She emphasized the importance of clearly documenting any agreed-upon conditions to reduce legal risk.

Councilmember Plaag raised questions regarding enforceability and potential legal challenges to voluntary conditions. Attorney Meade acknowledged some risk but stated that well-documented, mutually agreed-upon conditions tied to public benefit and land use policy were defensible. She noted that distinctions between owner-occupied and tenant-occupied units were not permitted under current case law, but that other creative approaches could be legally feasible if properly structured.

Limitations on imposing residency or second-home restrictions were briefly discussed, with Attorney Meade noting that conditions could not be based on the type of occupant or residency status but should be tied to land-use impacts. She further clarified that discrimination based on student status is generally permissible, provided that fair housing protections related to familial status are not violated.

It was noted that due to Monday's cancelled meeting, the Annexation Public Hearing for the project would have to be re-noticed and scheduled for a later date. Councilmember Plaag then made a motion to amend the agenda to allow for discussion with the developer, who was in attendance, about potential affordable housing options. Councilmember Carter seconded the motion.

VOTE: Aye: Plaag, Carter, George
 Nay: None

Absent: Roseman

The developer, Russell Ranson of RK Investments, addressed Council and stated that his intent was to work collaboratively with the Town and honor any commitments made as part of the approval process. He emphasized that enforceable infrastructure commitments, such as greenway construction, were preferable to cash contributions because they were measurable, enforceable prior to issuance of a certificate of occupancy, and aligned with lender requirements.

Mr. Ranson proposed constructing a segment of the Cross Boone Connector greenway, including a bridge over Winkler Creek, as a clear and enforceable community benefit. He explained that such improvements could be conditioned on project completion and were less legally ambiguous than affordable housing restrictions. Mr. Ranson also discussed potential affordable and attainable housing commitments, including offering discounted rents for a limited number of units priced around 80% AMI and exploring a preferred employer housing model targeting workforce populations such as teachers, first responders, and local government employees.

Mr. Ranson explained that financial feasibility was a concern and that increased affordability requirements could impact his project's viability. He stated that the project aimed to increase overall housing supply, which would help relieve market pressure even if the development did not reach deeply subsidized affordability levels. He emphasized that Boone had not seen a large-scale housing project since 2021 and noted that the proposed development would not be operational until approximately 2029.

Next, Council discussed the importance of avoiding the segregation of affordable or workforce housing units within a single building. Councilmember Carter expressed a preference for dispersing such units throughout the development to avoid isolation. Mayor Pro-Tem George noted that the site layout and building design could naturally separate student-oriented, rent-by-the-bedroom units from family- or workforce-oriented units without stigmatization. Mr. Ranson and Attorney Meade confirmed that marketing different buildings for different living arrangements was legally permissible.

Dave Frireich with Harmony Lanes offered strong neighborhood support for the redevelopment of the IRC site and emphasized the project's potential to advance long-standing greenway visioning, improve environmental conditions, and enhance community connectivity. He highlighted the importance of viewing the project as part of a broader, incremental approach to achieving Boone's housing and connectivity goals.

DRAFT “BRANDING BOONE” LOGO AND BRAND PACKAGE PRESENTATION

Laney Wise and Ryan Short with CivicBrand presented the proposed branding materials and new proposed Town logo, noting that the designs incorporated extensive input from Town staff, members of the public, and Town Council. A complete copy of the presentation is available online at townofboone.granicus.com. *Mayor Pro-Tem George stepped out of the meeting at 5:26 p.m. and returned at 5:29 p.m.*

Councilmember Carter stated that he loved the color palette and that the story badges were exceptional, doing a great job of telling Boone’s story. He expressed that he was not excited about the Daniel Boone seal, noting that while he liked the font used for “Boone,” he felt underwhelmed by the seal overall and did not think it told Boone’s story the way he hoped. He referenced other municipalities, such as Carrboro and Hickory, and stated he wanted something with more personality and less of a basic design. Mr. Short responded that for every individual who expressed dislike of the Daniel Boone imagery, there was another who supported it. He explained that this feedback was the reason the Daniel Boone imagery had been relegated to a heritage seal rather than serving as the primary logo.

Mayor Pro-Tem George stated that he supported including Daniel Boone on the seal but was open to potential tweaks. He acknowledged the importance of the seal and noted that many people identify Boone with Daniel Boone, though there may or may not be a proper historical tie to the area. He expressed strong support for the story badges, particularly the Hellbender badge, and stated he would like to see a more prominent ridgeline featured in the design. He also expressed that he liked the font.

Councilmember Plaag stated that he liked the font and color palette and felt that, since Boone had a very distinctive mountain feature in Howard’s Knob, he wished it had been featured more prominently. He indicated that he liked most of the story badges but did not like the Appalachian State University version, stating that it did not fit the established color palette. He expressed sensitivity to criticism that the Town is “owned” by Appalachian State University and requested that the badge be removed. Councilmember Plaag further noted that the Town of Boone was not originally named after Daniel Boone, stating that early newspaper publications across the state referred to the town as “Boon.” He explained that it was not until 1872, when a former mayor claimed a relationship to Daniel Boone, that the town was formally connected to his name. He expressed discomfort with the Town’s identity being centered on an individual who enslaved people and carried out violent acts against Native American populations. He suggested featuring the sugar maple tree instead, noting Boone’s designation as a Tree City USA community and stating that it would be an appropriate and meaningful symbol. Councilmember Plaag also suggested that the use of a log cabin resembling the Squire Boone Cabin at Daniel Boone Native

Gardens in the heritage seal would be an appropriate way to acknowledge the Daniel Boone tradition without focusing on the individual. He added that this would more broadly encompass the “settlement” history of the Town.

Councilmember Carter stated that he would be more open to Daniel Boone’s inclusion if he were not the sole element on the seal.

Mayor Pro-Tem George acknowledged the complexity of the Town’s history and stated that many members of the public still recognized Daniel Boone as the Town’s namesake. He emphasized the importance of considering public sentiment.

Mr. Short stated that he did not disagree with Councilmember Plaag’s statements and added that the project team heard from community members who hoped Daniel Boone would not be removed entirely. He noted that some residents might perceive removing him as an attempt to “whitewash” history.

Mayor Futrelle suggested that staff work with Ms. Wise on refining the heritage design and bring it back for further consideration. Mayor Pro-Tem George suggested making a small tweak to the Town of Boone logo and developing an alternative seal with a reduced presence of Daniel Boone for Council review. *Councilmember Roseman entered the meeting at 5:55 p.m.* Mayor Pro-Tem George also suggested keeping the Appalachian State University badge as a gesture of goodwill.

CONSIDERATION OF CODE AMENDMENT REGARDING SPECIAL EVENTS HELD ON TOWN STREETS & CONSIDERATION OF CODE AMENDMENT – CHAPTER 96 REGARDING OBSTRUCTIONS OF SIDEWALKS

Attorney Meade indicated that when the Chapter 96 ordinance was originally presented, one of the primary concerns was not only public safety, which she thought staff had addressed effectively, but also the impact of construction projects on public parking spaces. Councilmember Plaag referenced a previous project during which approximately six or seven parking spaces were removed from use for the better part of a year. He then asked whether the ordinance included a mechanism to recover lost parking meter revenue, similar to the penalties imposed for sidewalk encroachments, such as an escalating daily fee, or whether this was an element that would need to be added. Attorney Meade responded that such a mechanism was not currently included in the ordinance. She explained that parking impacts had historically been handled through a separate administrative process and that the Town had adopted an administrative policy charging a daily permit fee for parking spaces taken out of service, with the intent to both recover lost revenue and serve as a deterrent. She further clarified that this policy applied when parking spaces were removed for construction-related storage or staging, rather than for vehicle

parking. It was noted that if a contractor did not have an easement or a temporary construction easement approved by the Town, the use of the public right-of-way would constitute a violation of public property rights. Attorney Meade stated that such situations constituted encroachments on the public way, which were defined broadly enough in the ordinance to encompass the concerns raised by Council. She cautioned that if the ordinance were adopted in its current form, staff anticipated the possibility of unintended consequences. She added that the ordinance might ultimately prove to be either too broad or too narrow in certain respects and that staff expected to return to Council with recommended revisions once those issues became apparent.

Upon a motion by Mayor Pro-Tem George, seconded by Councilmember Plaag, Council voted unanimously to approve both amendments as follows:

Ordinance # _____

AN ORDINANCE TO AMEND CHAPTER 94 OF THE TOWN OF BOONE CODE OF ORDINANCES REGARDING SPECIAL EVENTS INVOLVING OBSTRUCTION OR CLOSURE OF A STREET OR OTHER PUBLIC WAY

WHEREAS, the Boone Town Council has general authority and control over public streets, alleys, and sidewalks within the town's corporate limits pursuant to N.C. Gen. Statutes Chapter 160A, Article 15

WHEREAS, the Boone Town Council finds it desirable to make certain modifications to the town's ordinance regarding special events that obstruct or require closure of streets or other public way ;

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

SECTION 1. Chapter 94 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 _____, 2025

Tim Futrelle, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

CHAPTER 94: ~~SPECIAL EVENTS~~

Deleted: PARADES

Section

- 94.01 Application of regulations
- 94.02 Permit required
- 94.03 Permit application
- 94.04 Staff review
- 94.05 Insurance requirement
- 94.06 Fees; cost incurred by town
- 94.07 Standards for issuance of permit
- 94.08 Street closing
- 94.09 Sponsor responsible for cleanup

§ 94.01 APPLICATION OF REGULATIONS.

This chapter applies to all street fairs, festivals, carnivals, parades, marches, rallies, demonstrations and other activities or public events that require the temporary closing or obstruction of all or a portion of any street or other public right-of-way or that substantially hinders or prevents the normal flow of vehicular or pedestrian traffic along any street or other public right-of-way. Any activity covered by this chapter shall hereafter be referred to as "a special event".

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§ 94.02 PERMIT REQUIRED.

No person may run, operate or sponsor a special event in any public street or right-of-way without a permit obtained from the Town Clerk in accordance with this chapter.

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Penalty, see § 10.99

§ 94.03 PERMIT APPLICATION.

Applications for a permit required by this chapter shall be submitted on a form provided by the Town Clerk and contain the following information:

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(A) Name, address and telephone number of the person, organization or entity seeking to conduct or sponsor the event;

(B) Name, address and telephone number of the individual in charge of the event;

(C) The proposed date and time period when the event will be conducted;

(D) A sketch-map showing:

- (1) The area where the event is to take place;
 - (2) Any streets to be closed or obstructed;
 - (3) Any barriers or traffic-control devices that will be erected;
 - (4) The location of any concession stand, booth or other temporary structures or facilities; and
 - (5) The location of proposed fences, stands, platforms, benches or bleachers.
- (E) The approximate number of people expected to attend the event;
- (F) When applicable, a request that the town provide specified services and/or that the town close identified streets or portions of streets for a particular period;
- (G) Sufficient proof of liability insurance in accordance with § 94.05; and
- (H) Any other information determined by the Town Clerk to be necessary to ensure compliance with this chapter.

Deleted: Administrator

§ 94.04 STAFF REVIEW.

Upon receipt of the permit application, the Town Clerk shall circulate it to the Police Chief, the Fire Chief, the Public Works Director and other appropriate persons for their comment. The Clerk may arrange to have a conference on the application with the applicant and one or more department heads.

§ 94.05 INSURANCE REQUIREMENT.

(A) Unless otherwise provided per subsection (B) below, the Town Clerk shall require as a condition precedent or subsequent to issuance of the permit that the applicant obtain and provide adequate proof of the following insurance:

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1. Comprehensive general liability insurance, or comparable special events liability insurance in this state with coverage that includes the entire area of the event, with policy limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; the town shall be named as an additional insured on the policy.
2. Liability insurance of at least \$1,000,000 per vehicle covering any and all vehicles used for the special event operations.
3. In the event alcohol is being served at a special event, liquor liability insurance of at least \$1,000,000 per occurrence.

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(B) The

Deleted: of the insurance shall be

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(B) The Town Manager (or designee), in the Town Manager's discretion, may allow lesser coverage and/or coverage amounts or require greater coverage and/or coverage amounts upon consideration of the specific nature and risks posed by a particular special event.

Deleted: (1) Property damage: \$50,000 for each occurrence; and¶

(2) Bodily injury or death:¶

(a) \$100,000 for each person; and¶

(b) \$300,000 for each occurrence.¶

§ 94.06 FEES; COST INCURRED BY TOWN.

(A) The applicant for a permit under §§ 94.02 and 94.03 shall, prior to the issuance of a permit, pay a fee in the following amount, as applicable, unless the fee is partially or fully waived by the Town Council in accordance with this section:

Deleted: , if the permit is for a parade, activity or public event (hereafter referred to as "event") which requires the temporary closing or obstruction of all or a portion of any street, ...

- (1) An event sponsored by the town, including July 4 parade, Christmas parade, homecoming parade for Appalachian State University and homecoming parade for Watauga High School or other event designated by the Town Council as one that is sponsored by the town: no fee;

(2) An event not sponsored by the town which requires the temporary closing or obstruction of all or a portion of any street for less than one hour: \$250;

(3) An event not sponsored by the town which requires the temporary closing or obstruction of all or a portion of any street for one hour or more: \$1,500.

(B) The fees imposed by division (A) above may be partly or wholly waived by action of the Town Council. In waiving the fees in part or in full, the Town Council may consider, among others, the following factors:

(1) The capacity of the event sponsor to defray the costs of the fee through admission fees, participation fees, advertising fees and/or sponsorship contributions;

(2) The number of people the event is likely to bring into the town and the expected economic impact of the event on the town and town merchants;

(3) The possible and expected impact of the event upon the town's image and reputation;

(4) Any features of the event which will either reduce or increase the normal expenditures of services and equipment which the town must utilize in connection with the event; and

(5) Other factor as the Town Council may determine justifies the town's bearing of a portion or the full costs of the extraordinary services or equipment necessitated by the event.

(Ord. passed 3-18-2004)

§ 94.07 STANDARDS FOR ISSUANCE OF PERMIT.

(A) The Town Clerk shall issue the permit authorizing the event unless it finds that:

(1) Conduct of the event will require the assignment of so many police officers that the remainder of the town cannot adequately be protected;

(2) The event will interfere with the movement of emergency vehicles to an extent that adequate police, fire or other emergency services cannot be provided throughout the town;

(3) The applicant has failed to obtain any necessary permits or licenses, including any required building permit or privilege license or the applicant is otherwise in violation of any town ordinance;

(4) The event will work a severe hardship on persons occupying property adjacent to the site, location or route of the event as a result of the denial of access to property or for other substantial reasons;

(5) The event, if held at the time or at the location or along the route proposed, will cause an unreasonable and unwarranted disruption to vehicular or pedestrian traffic; or

(6) The applicant has failed to comply with any of the provisions of this chapter, including the payment of any fees required.

(B) If a permit is issued in accordance with division (A) above, the Town Clerk may attach to it any reasonable conditions.

(C) If the Town Clerk finds that he or she cannot issue the permit for reasons specified in division (A) above, he or she may request the applicant to modify its application to remove any objections to the issuance of the permit and the applicant may do so without further notice or hearing.

(D) Any event conducted pursuant to a permit issued under this section shall be conducted strictly in accordance with the terms of the permit, including any conditions attached hereto.

(E) If the Town Clerk denies or revokes a special event permit, this action shall be final unless the applicant or permittee shall, within two days after the receipt of notice of the denial or revocation, file with the Town Manager written appeal. The Town Manager shall, within 24 hours after the appeal is filed, consider all evidence in support of or against the action appealed and render a decision either sustaining or reversing the denial or revocation.

Deleted: parade

§ 94.08 STREET CLOSING.

(A) If the Town Clerk finds that the permit should be issued and that, to conduct the event, it is necessary to close a street or to reroute traffic, the Town Council may pass a resolution authorizing this to be done. No resolution shall be passed affecting streets that are part of the state street system without the approval of the State Department of Transportation.

(B) The resolution shall identify the street or portion thereof to be affected and shall indicate the date and time when the street or portion thereof is to be closed or traffic thereon is to be limited in some way. The resolution shall also direct the manager to have appropriate traffic-control devices installed to give notice of the temporary traffic controls.

(C) No person may operate any vehicle contrary to the traffic-control devices installed in accordance with division (B) above.

(D) The Town Clerk shall, by any adequate means, notify persons occupying property abutting the street where the event is to take place of the contents of any resolution passed in accordance with this section.

§ 94.09 SPONSOR RESPONSIBLE FOR CLEANUP.

The sponsor of a special event shall be responsible for cleaning up any litter caused by the event, removing all temporary obstructions and in general returning the area where the event takes place to the condition that existed prior to the event. The Town Clerk may require the sponsor to post a bond or other sufficient security to guarantee compliance with this section.

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Ordinance # _____

**AN ORDINANCE TO AMEND CHAPTER 96 OF THE TOWN OF BOONE CODE OF
ORDINANCES REGARDING STREETS, SIDEWALKS AND
OTHER PUBLIC WAYS; ENCROACHMENTS**

WHEREAS, the Boone Town Council has general authority and control over public streets, alleys, and sidewalks within the town's corporate limits pursuant to N.C. Gen. Statutes Chapter 160A, Article 15

WHEREAS, the Boone Town Council finds it desirable to make certain modifications to the town's ordinance regarding encroachments upon and construction and excavation of streets, sidewalks, or other public ways;

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

SECTION 1. Chapter 96 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. *Except as otherwise specifically shown at Exhibit A, all other provisions of Chapter 96 remain unchanged.*

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 _____, 2025

Tim Futrelle, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

CHAPTER 96: STREETS, SIDEWALKS AND OTHER PUBLIC WAYS; ENCROACHMENTS

GENERAL PROVISIONS

§ 96.001 DEFINITIONS.

(A) For purposes of this chapter, the following words and terms shall have the meaning given below unless the context clearly indicates or requires otherwise.

(B) The terms abandoned, application, city (town) utility pole, collocation, make-ready work, micro wireless, small wireless facility, utility pole, wireless facility, wireless infrastructure provider, wireless provider, wireless services, and wireless services provider have the meanings provided at G.S. §§ 160A-400.51 et seq. or in the Federal Communications Commission Order FCC 18-133, whichever is more inclusive or exacting.

ADMINISTRATOR. The person or persons selected by the Town Manager or Town Council to carry out the provisions of this chapter and the designee(s) of that person or persons. If context requires, the Town Council may be deemed the Administrator when it is considering whether to authorize a particular encroachment.

AUTHORIZATION. Permission from the Administrator to do work in the public way or to maintain facilities in the public way and includes but is not limited to a franchise, an easement, an encroachment agreement, a permit, or other written approval. Multiple authorizations may be required for certain activities.

CAUSE TO BE OBSTRUCTED. An action(s) or omission(s) which, whether or not intended to obstruct the ordinary use of a public way, nevertheless interferes with a person's ordinary use of a public way to a degree that passage is prevented or delayed for an unreasonable period of time.

CONTRACTOR. Means and includes any of the following, licensed or unlicensed, performing work on an owner's behalf: contractor; subcontractor; or any employee or agent of a contractor, subcontractor, or owner.

EMERGENCY. A condition that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair to restore service to a group of users of such service.

ENCROACH or ENCROACHMENT. Any excavation in the public way, or the placing therein, thereover or below any pipes, poles, wires, fixtures or other appliances or equipment of any kind, either on, above, or below the ground surface. It also includes such digging and placing of pipes, poles, wires, fixtures or other appliances or equipment of any kind on, above or below the ground surface in areas in which the town has a utility or access easement, unless such activity is permitted by the applicable easement.

EXCAVATE or EXCAVATION. Without limitation any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the public way.

FACILITIES. Poles, pipes, culverts, conduits, ducts, cables, wires, fiber, amplifiers, pedestals, antennae, transmission or receiving equipment, other electronic equipment, electrical conductors, manholes, appliances, signs, poles, pavement structures, irrigation systems, landscaping, signs, mailboxes and any other similar equipment, for public or private use.

INTENTIONALLY OBSTRUCT. To act or fail to act with the purpose and effect that passage is prevented or delayed.

MINOR ENCROACHMENT. An encroachment as to which all of the following requirements are met:

- (a) The property owner owns the underlying fee;
- (b) There is no disruption, even temporarily, of ~~pedestrian, vehicular, or other public use;~~
- (c) There is no damage to a paved or concrete surface of a public way; and
- (d) There is no impact to the town's ability to construct, maintain or operate a public way or public facilities located in the public way.

Deleted: traffic flow

OWNER. Any property owner, company owner, and/or any entity by which work within the right-of-way has been ordered, or any entity on behalf of which any work within the right-of-way is caused to be performed, or any agent thereof.

PERSON. An individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other entity able to engage in the activities described in this ordinance, whether for profit or not for profit. The term does not include the town or the town's officials, employees, representatives or agents acting pursuant to their official duties on behalf of the town.

PUBLIC SIDEWALK. Any area open to public use as a pedestrian public way, whether paved or otherwise designated or recognized for use of pedestrian traffic and which is owned or maintained by the town.

PUBLIC WAY. Any area that is owned or maintained by the town and used or reserved for use as a public street, highway, right-of-way, alley, trail, greenway or other multi-modal path, sidewalk, curb, gutter, bike lane, bridge, round-about, tunnel, causeway, or shoulder. Such areas include, without limitation, drainage areas and dedicated areas without surface improvements that are adjacent to improved areas, and areas where no roads or other improvements have been constructed but which are dedicated for one or more of the above uses. The public way encompasses the surface of the ground, and the area above and below the ground.

REPEAT VIOLATOR. A person who:

- (a) Violates this chapter two or more times in any 12 month period; or
- (b) Violates this chapter two or more times in a period greater than 12 months but in such circumstances that an intentional violation can be inferred.

RESPONSIBLE PERSON. A person who has intentionally or negligently caused or authorized the action which violates the prohibitions of this chapter and the owner of the property from or upon which a violation extends, derives or originates.

UNREASONABLE PERIOD OF TIME. The time that a reasonable person prevented or delayed in his or her attempt to use a sidewalk for pedestrian use would consider as unreasonable.

USER. A person that proposes to place facilities in the public way, places such facilities, or owns or maintains such facilities. The term includes but is not limited to encroachment permittees and franchisees.

(Ord. passed 9-17-2019)

§ 96.002 OBSTRUCTIONS PROHIBITED.

(A) Except as otherwise authorized by statute, ordinance (including this chapter), ~~or in writing by the Administrator, or as required by the performance of some function authorized or mandated by a statute or ordinance, no person may congregate, stand, sit or lie on a public way in a manner that would intentionally obstruct or cause to be obstructed pedestrian traffic or prevent the free ingress and egress by members of the public to and from private or public buildings, memorials, parks or parking lots adjacent to or accessed by public way within the town. Except as authorized by this chapter, no person may intentionally obstruct or otherwise encroach upon a public way within the town by placing or leaving any object(s) within the traveled portion of the public way, or as a~~

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result of any excavation or other construction or by placement of barriers. A situation maintained in violation of this section is hereby declared to be a public nuisance and is subject to the provisions of § 96.010 herein.

(B) Limited exception for temporary sidewalk sales. Partial obstruction of a public sidewalk for a sidewalk sale is permissible only under the following conditions:

(1) The obstruction takes place only during daylight hours.

(2) The sidewalk is only partially obstructed in a manner that does not seriously inconvenience the public or threaten the public safety; in any event, a minimum four-foot width of sidewalk must be left clear and unimpeded for pedestrians. For purposes of this section, an obstruction shall be understood to include any employee(s) who occupy the sidewalk in connection with the sale.

(3) The person or entity conducting the sidewalk sale is authorized to do so by the fee owner(s) of the property on which the sale is being held.

Temporary sidewalk sales may be prohibited on specific days by proclamation issued by the Mayor according to law or by resolution adopted by the Town Council.

(Ord. passed 9-17-2019; Ord. passed 6-15-2021)

**** [text omitted and to remain unchanged]

§ 96.010 NOTICE AND ABATEMENT OF NUISANCES.

Any circumstance or situation declared to be a public nuisance under the provisions of this chapter shall be subject to summary abatement by the town and/or notice and order to abate to the responsible person(s) pursuant to the provisions of §§ 80.07 through 80.14 and § 80.99 of this code, just as if the nuisance constituted a violation of Chapter 80; and the provisions of §§ 80.07 through 80.14 and § 80.99 are incorporated herein as if fully set forth herein.

(Ord. passed 9-17-2019; Ord. passed 4-13-2021)

Deleted: Exceptions.¶

(1) Construction. The foregoing prohibitions shall not apply to temporary obstructions caused by persons engaged in construction work on abutting property when proper warning devices are maintained in accordance with § 96.005.¶
(2)

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Deleted: , PROCEDURES AND PENALTIES FOR

Deleted: (A) A violation of § 96.002 (obstructing sidewalk or street), § 96.005 (failure to warn of obstruction or dangerous condition, or removing or tampering with warning devices), or § 96.006 (depositing or maintaining injurious materials on street or sidewalk) of this chapter shall constitute an infraction and shall subject the offender or responsible person to a civil penalty of \$100, and may also be subject to abatement as provided at division (B) below.¶
(B) ...

AUTHORIZATION OF ENCROACHMENTS IN THE PUBLIC WAY

§ 96.025 PURPOSE AND INTENT.

The purposes for and intentions behind this division are as follows:

(A) The public ways are valuable public resources that have required, and will continue to require, substantial investment by the town; and

(B) The town desires to structure and implement a fair and orderly process for the application for, and granting of, authorization for private parties to occupy and use public ways, consistent with applicable law, and which appropriately accounts for the varied reasons that private parties seek such authorization.

(C) The town desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the public ways now and in the future, and preserve adequate capacity for existing and future uses of the public ways.

(D) The town intends to exercise, to the fullest extent permitted by applicable law, its authority in regulating the occupation and use of public ways.

(Ord. passed 9-17-2019)

§ 96.026 WRITTEN AUTHORIZATION TO ENCROACH REQUIRED EXCEPT FOR MINOR ENCROACHMENTS.

(A) Except for minor encroachments which do not require written authorization, or in the case of emergency, it shall be a violation of this chapter for any person to encroach upon any public way or town property without first receiving written authorization (i.e., an encroachment permit or work permit) to do so from the Administrator pursuant to this chapter. Without limitation, this requirement applies to town streets and other town property and to any sidewalk and greenway maintained by the town.

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Deleted: to do so from the Administrator pursuant to this chapter...

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(B) Exceptions: It shall not be a violation for a person to encroach upon a public way or town property without first receiving written authorization to do so from the Administrator in the following cases:

1. In the case of minor encroachments as defined at section 96.001.
2. In cases of encroachment upon a public way where the encroachment is necessary as the result of excavation or other construction and the encroachment is a singular encroachment that will last no longer than 24 hours or will happen for no more than 4 hours a day for three days.
3. In the case of emergency. In the event of an emergency, a person may do such work as is necessary to address the emergency. Application shall immediately be made for necessary authorizations from the town, notwithstanding that work may have started or have been completed and all necessary fees shall be paid.
4. In the case of franchise operators. Persons that operate utilities that the town may franchise under the authority of G.S. 160A-319 shall apply for a franchise to be approved by the Town Council in accordance with the Town Charter. Authorization to encroach upon a public way may be granted through the terms of an appropriate franchise agreement.
5. In any case where state law prohibits application of these regulations.

Deleted: All p

(C) In situations not governed by a franchise agreement, authorization to encroach shall be granted in appropriate cases through the terms of a non-exclusive, revocable encroachment permit or encroachment agreement, signed by the applicant and the Administrator, using whatever form the town devises and is approved by the Town Attorney for that purpose. (D) The Administrator shall develop standards and requirements for authorizations, including but not limited to franchises, licenses, permits, and other approvals, and may attach conditions to such authorizations. The Administrator may also develop standards and requirements for doing work in the public way when an authorization is not required.

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(E) The Administrator shall charge such fees as are authorized by the Town Council for applications for authorizations; review of information and plans; issuance of authorizations; inspections and re-inspections; maintenance of facilities in the public way; and for any other town review, oversight, or administration of proposed, ongoing, or completed activities within the purview of this chapter. The Administrator may allow persons to establish and fund escrow accounts or other accounts with the town to which fees may be charged.

(Ord. passed 9-17-2019)

§ 96.027 APPLICATION FOR AUTHORIZATION TO ENCROACH..

(A) Application for authorization to encroach upon a public way shall be submitted to the Administrator on whatever form is devised for that purpose. An application must be submitted in conjunction with an application of a building permit or zoning permit, if such is required under the town's Unified Development Ordinance or, if no such permit is required, at least 10 calendar days prior to the commencement of any proposed encroaching work.

Deleted: (A)

(B) The applicant shall provide the following information concerning the proposed encroachment:

Deleted: (B)

(1) Identification of the public way at issue;

Deleted: (1)

(2) A description of the nature of and purposes for the proposed encroachment;

(3) ~~A proposed construction schedule, duration, and sequence;~~

Moved (Insertion) [1]

(4) ~~A description of any insurance the person has, or would obtain if granted authorization to encroach on the relevant public street or street rights-of-way, that will cover the proposed activities in the public street or street rights-of-way;~~

Moved (Insertion) [2]

(5) ~~The name, address, email and telephone number of the person the town may contact concerning the application;~~

Moved (Insertion) [3]

(6) ~~Such other information as the Administrator may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.~~

Moved (Insertion) [4]

(C) ~~Installation of items in a public way. With respect to encroachment in a public way for purposes of installing one or more items in the public way, the applicant shall also provide the following:~~

Deleted: (2)

a) ~~A description of the items the person desires to install in the public way and the purposes those items would serve. No authorization shall be granted for new equipment or facilities that are not expressly and individually identified at the time of the application, including the specific location and design characteristics of each facility.~~

b) ~~A description of how items shall be installed, including whether any excavation in the public way will be required;~~

Deleted: (3)

c) ~~Whether installation of the relevant items will disrupt traffic flow or otherwise interfere with the use of any public way, and if so, what precautions the applicant intends to take to minimize that disruption and to protect human safety;~~

Deleted: (4)

d) ~~A site plan with sufficient detail to show the proposed locations of the items the applicant seeks to install in the public way, including any manholes or overhead poles, the size, type and proposed depth of any conduit or other enclosures, and the proximity of the applicant's items, if installed, to all existing poles, utilities, sidewalks, pavement, telecommunications or cable systems, and other improvements existing in the relevant public ways;~~

Deleted: (5)

(D) ~~Excavation / Construction. With respect to encroachment in a public way for purposes of excavation or other construction, the applicant shall also provide the following:~~

Deleted: (6)

a) ~~A plan clearly and precisely describing any periods of time during which the public way would be closed to use by the public. This plan must demonstrate to the satisfaction of the Administrator that the applicant has taken all reasonable measures to minimize closure of the public way. Other than temporary, unavoidable periods of closure to ensure public safety, public ways must be left open and accessible to the public at all times.~~

b) ~~In the event of construction in close proximity to a sidewalk that will result in more than temporary periods of sidewalk closure, the applicant must provide an essentially functionally equivalent alternative for pedestrians. This alternative may consist, for example, of an overhead covered passageway so as to leave the sidewalk unobstructed and provide safe and accessible passage, or an alternative, temporary sidewalk onsite where the site allows of such. Directing pedestrians to walk in a roadway or to a sidewalk across a street shall not be deemed a functionally equivalent alternative.~~

c) ~~Any person who receives a permit in accordance with this section shall be responsible as soon as weather permits for restoring the street or sidewalk where any excavation is made back into as good a condition as it was prior to the excavation~~

d) ~~Any permit issued in accordance with this section shall clearly state the terms and conditions for any approved temporary closures of a public way and/or any approved alternatives to be provided to pedestrians or other users of a public way.~~

e) ~~With respect to any periods of time that the applicant is practically unable to provide a functionally equivalent passageway, the applicant shall pay a daily fee to the Town as follows:~~

a. ~~For the first seven (7) days of closure, \$100.00 per day,~~

b. ~~For days eight (8) to 30 of closure, \$200.00 per day~~

c. ~~For more than 30 days of closure, \$500.00 per day.~~

(E) ~~Business and other commercial applicants shall submit the following additional information:~~

(1) ~~A general description of the applicant's business; and~~

(2) ~~A description of the services, if any, the applicant proposes to provide to others through infrastructure proposed to be installed in the public way, identifying also the geographic scope in which such services would be provided, and to whom they would be provided.~~

(F) ~~Any person who must also receive a franchise from the town for their intended business or activity may provide the information set forth above in their franchise application.~~

(G) ~~The Administrator may reject any application to encroach upon a public way that is incomplete, fails to adequately protect the public health or safety, or otherwise fails to comply with the terms of this chapter or other applicable law.~~

(Ord. passed 9-17-2019)

§ 96.028 PROCEDURE FOR CONSIDERATION OF AND ACTION ON APPLICATIONS.

(A) The authority to grant a private party authorization to encroach upon a public way shall be exercised by the Administrator. In the Administrator's discretion, however, any application for authorization to encroach may be submitted to the Town Council for review and decision, with or without a recommendation from the Administrator. In such cases, the grant of authority, if given, will be made by adoption of a resolution by the Town Council. In any case, the grant of such authority shall be conditioned upon such terms as shall be specified in the relevant encroachment or franchise agreement.

(B) The Administrator may make such investigations and take or authorize the taking of such other steps as the Administrator deems necessary or appropriate to consider and act upon applications to encroach upon a public way.

(C) The Town Council may set a public hearing to give the public an opportunity to comment on an application to encroach upon a public way.

(Ord. passed 9-17-2019)

§ 96.029 FACTORS FOR REVIEW OF APPLICATION TO ENCROACH.

(A) In deciding whether to grant any application for authorization to encroach upon any public way, the Administrator may consider such factors as it deems appropriate and in the public interest, provided such factors are consistent with applicable law, including without limitation:

(1) The willingness and ability of the applicant to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the encroachment;

(2) The ability of the applicant to maintain the property of the town in good condition throughout the term of the relevant franchise or encroachment agreement;

(3) Any services or uses of the public ways that may be precluded by the grant of the requested authorization to encroach, and the adverse impact of the proposed encroachment on the efficient use of the public streets and street rights-of-way at present and in the future;

Moved up [1]: <#>A proposed construction schedule, duration, and sequence;¶

Moved up [2]: <#>A description of any insurance the person has, or would obtain if granted authorization to encroach on the relevant public street or street rights-of-way, that will cover the proposed activities in the public street or street rights-of-way.¶

Moved up [3]: <#>The name, address and telephone number of the person the town may contact concerning the application; and

Moved up [4]: <#>Such other information as the Administrator may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.¶

Deleted: <#> (7)

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Deleted: <#> and¶

(9) ...

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(4) The adequacy of the terms and conditions of the proposed encroachment or franchise agreement to protect the public interest, consistent with applicable law; and

(5) Any other factors or considerations that are deemed pertinent.

(B) Consistent with applicable law, the Administrator may develop and implement policies and requirements to ensure that the public ways have sufficient capacity reasonably to accommodate existing and future uses in a rational and efficient manner. In evaluating an applicant for the right to encroach upon a public way, the Administrator may consider an applicant's proposals for addressing capacity needs and compliance with town policies and requirements in that regard.

(Ord. passed 9-17-2019)

§ 96.030 INSURANCE AND BONDING REQUIREMENTS, OTHER CONDITIONS.

Depending upon the extent of an applicant's proposed excavation, construction or other activities in any public way, the Administrator may require the applicant to secure and provide documentation of an appropriate performance bond or letter of credit, and/or insurance covering such activities pursuant to terms acceptable to the Administrator.

(Ord. passed 9-17-2019)

§ 96.031 RESPONSIBILITIES OF PERSONS GRANTED AUTHORIZATION TO ENCROACH.

It shall be the responsibility of each person granted authorization to encroach upon a public way to:

(A) Ensure that any excavation, construction or other work done by them or on their behalf in the relevant public way is performed consistent with the town's specifications and other requirements for construction activities, including those relating to restoration.

(B) Restore land, utility lines, other improvements, ground cover, and landscaping disturbed by excavation and construction in the public way to the standards specified by the town.

(1) Where permanent restoration is temporarily impractical because of weather or other circumstances, temporary restoration may be required.

(2) Restoration shall be accomplished within the time approved by the Administrator.

(3) If restoration work proves to be inadequate over time, as determined in the sole, reasonable discretion of the Administrator, the encroacher shall perform such additional restoration work as the Administrator may direct.

(4) Inspection and approval by the Administrator immediately after installation does not constitute a waiver of the town's rights to determine that the restoration work is not adequate over time and must be remedied.

(C) If requested due to a need for the town or its contractors to complete any work in a public way, temporarily or permanently remove or relocate their items located below or above the public way.

(D) Otherwise comply with the terms of their encroachment permit or agreement or the encroachment provisions in their franchise agreement, and all applicable laws, ordinances, resolutions, rules, regulations and other directives of the town and any federal, state or local governmental authority having jurisdiction over the person's activities in or near such public way.

(Ord. passed 9-17-2019)

§ 96.032 AUTHORITY TO ENCROACH IS NONEXCLUSIVE.

Any grant of authorization to encroach upon a public way given by the Administrator pursuant to this chapter shall be nonexclusive. The town specifically reserves the right to grant, at any time, such additional rights of access to the public way that it deems appropriate.

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(Ord. passed 9-17-2019)

§ 96.033 REMEDIES.

(A) In the event that any person encroaches upon a public way without prior authorization by the Administrator, or violates the conditions of any permit or other authorization issued pursuant to this chapter, or otherwise violates any provision of this chapter, the Administrator may, in addition to any other remedies provided by any other applicable law:

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(1) Issue an order to the person commanding them to immediately cease and desist their unpermitted or otherwise wrongful activities in the public way, and to restore the affected area;

(2) Revoke any authorization previously granted for the encroachment;

(3) Issue a one-time civil penalty of \$500 to each responsible person or \$1,000 to each repeat violator;

Deleted: or

(4) With respect to violations that are continuing in nature, issue a civil penalty of \$100 per day that the violation continues;

(4) Any combination of the above-referenced remedies and any other remedy authorized under G.S. 160A-175.

(B) Civil penalties authorized by this section shall be assessed against each responsible person, including the owner on whose behalf work is being performed and the contractor who is performing such work. In situations where evidence is submitted to the Administrator's satisfaction that the work performed constitutes emergency work, however, the Administrator may waive the civil penalties. In such emergency situations, the entity performing the emergency work must apply for the required permit as soon as reasonably possible and pay the applicable permit fee.

(Ord. passed 9-17-2019)

§ 96.034 RIGHTS OF APPEAL.

(A) In cases where the Administrator denies a person's application to encroach upon a public way, or is willing to grant that request but subject to conditions or terms the applicant deems to be unsatisfactory, resulting in an inability to finalize the requisite written authorization, the applicant may seek review of the Administrator's decision before the Town Council. The applicant must request a hearing before the Town Council in writing to the Administrator within ten days of the applicant's notice of the decision at issue. In such submission, the applicant must identify the issues or disagreements the applicant has with the relevant decision. In such cases, the Town Council shall make the final decision, through adoption of an appropriate resolution.

(B) Any person subject to an enforcement action pursuant to § 96.033 above may appeal the enforcement action per § 10.98 of the Town Code.

(Ord. passed 9-17-2019)

§ 96.035 GENERAL CONDITIONS FOR USE OF THE PUBLIC WAY.

(A) The right to perform work or maintain facilities in the public way is allowed subject to the conditions below, as supplemented by those set forth in other sections of this chapter, standards adopted by the Administrator, and requirements contained in an encroachment agreement or other written authorization.

(B) The town does not warrant its legal interest in the public way. Persons doing work in the public way and users may need to obtain approvals from persons with property interests in the public way.

Deleted: (A)

(C) An authorization does not convey any legal right, title, or interest in the public way, and may be revoked or amended at will by the town.

Deleted: (B)

- | (D) The town and its officials, officers, and employees are not liable for any direct, indirect, or consequential damages that may result to private facilities located in a public way as a result of the town's construction, installation, inspection, maintenance, or repair of the public way or of public improvements in the public way. Deleted: (C)
- | (E) Persons responsible for work in the public way or for items located in the public way shall pay for all damage that results, directly or indirectly, from such work or items. Deleted: (D)
- | (F) Non-enforcement of one or more provisions of an authorization does not waive the town's right to enforce the provisions of the authorization. Deleted: (E)
- | (G) An authorization creates no third-party rights against the town. Deleted: (F)
- | (H) An authorization does not limit the town's exercise of its regulatory, police, governmental, legislative, or contracting authority, including its authority to enact and enforce against an authorized encroacher more strict requirements than were previously applicable to the authorized encroachment. If the terms of an authorization conflict with the terms of another authorization or with an ordinance or other regulation adopted by the town, the stricter of the applicable provisions shall control. The stricter provision shall not control, however, if a later-issued permit, authorization, or ordinance explicitly and specifically states that particular terms are to override prior, less strict terms in an authorization. Deleted: (G)

(Ord. passed 9-17-2019)

§ 96.036 EXEMPTIONS.

The Administrator may exempt the town's contractors or the North Carolina Department of Transportation (NCDOT) from particular requirements of this chapter when substantial compliance has been assured or, in the case of NC DOT, where the need for state infrastructure on town roads, or a joint undertaking by the town and NC DOT, or the use of state-controlled areas of the public way makes the application of such requirements unreasonable.

(Ord. passed 9-17-2019)

*****[remaining text of chapter omitted and to remain unchanged]

APPOINTMENT TO SUSTAINABILITY COMMITTEE

Mayor Pro-Tem George nominated Will Copeck to serve in the vacant student position, and Councilmember Roseman nominated Owen Larsen to serve in the vacant student position. Hearing no further nominations, Mayor Futrelle called for a poll.

Larsen: Roseman
Copeck: Carter, George, Plaag

Mr. Copeck's term will expire on June 30, 2026.

Mayor Pro-Tem George made a motion to adjourn the meeting at 6:05 p.m. Councilmember Plaag seconded the motion, which carried unanimously.

Nicole Harmon, Clerk

Tim Futrelle, Mayor