



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
February 7, 2019



THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, February 7, 2019 at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to review the agenda for the regular monthly meeting scheduled for Monday, February 11, 2019 at 6:00 p.m.

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 5:00 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Carlos Showers
Alderman Ryan Stone - absent
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager – absent
Dean Luebbe, Assistant Town Manager
Angela L. Reece, Town Clerk
Ron Sneed, Town Attorney

Shawn Freeman, Police Chief
John Wilson, Deputy Fire Chief
Jessica Trotman, Planning Director
Joshua Henderson, Recreation Director

The Board reviewed the items that were proposed for the February 11, 2019 regular session meeting having made no changes.

Mayor Don Collins opened the meeting. Mayor Collins reminded the public that the Board of Aldermen would pay tribute to Dr. Martin Luther King Jr. by attending the 29th Annual MLK Prayer Breakfast at Camp Dorothy Walls on Saturday February 9, 2019 at 8:00 a.m. Mayor Collins encouraged citizens to come.

Assistant Town Manager, Dean Luebbe presented the proposed agenda to the Board of Aldermen. Reverend Brent Bolick of Mountain View Church will give the invocation.

Assistant Town Manager, Dean Luebbe discussed **Items 5C**, Resolution Accepting the Contribution by Buncombe County of River Walk Greenway Phase II funding – Interlocal Agreement stating this agreement is to accept funding in the amount of \$400,000 from the County for the River Walk Greenway project over the next three years. Attorney Sneed stated

Black Mountain Board of Aldermen
Agenda Workshop Minutes -February 7, 2019

this resolution authorizes the signing of the Interlocal agreement with Buncombe County to accept the funding on a schedule.

Mayor Collins asked fellow Board members if any of them had issue with collecting this funding from the County. Alderman Larry B. Harris stated he believes it is equitable and fair for our citizens to receive funding for a greenway. Remaining Board members concurred.

Assistant Town Manager, Dean Luebbe discussed **Items 5E**, Budget Amendment to Purchase Police Vehicle reminding the Board that the police department received grant funding from the Governor's Highway Safety Program in the amount of \$17,500 as well as approximately \$11,000 in donated equipment to be used for a new police vehicle. Assistant Manager Luebbe stated \$23,000 will come from restricted ABC funds and the total value of the vehicle will be approximately \$51,000 with no cost to the Black Mountain tax payers.

Alderman Larry B. Harris clarified with Chief Shawn Freeman that he has obtained a total of four new 4wd police vehicles this year.

Assistant Town Manager, Dean Luebbe discussed **Items 5F**, Salary & Compensation Rate Adjustment Request stating this request is regarding the Interim Golf Superintendent, Jerry Brigman. Assistant Manager Luebbe stated Mr. Brigman has been assigned additional duties for a period of four years acting as the Golf Superintendent and this request will increase his base pay by \$3,000 to compensate for the additional duties.

Town Attorney, Ron Sneed discussed **Items 5G**, Call for Public Hearing for Text Amendments to Add Graffiti Ordinance presenting a revised draft ordinance to the Board for their consideration. The draft ordinance is attached to and made part of these minutes.

Town Attorney, Ron Sneed discussed **Items 7A**, Agreement for Wholesale Purchase of Water from City of Asheville stating he has prepared a draft agreement for consideration of the Board of Aldermen. Alderman Larry B. Harris stated he is prepared to move forward on this item at the regular meeting and feels an overall increase in capacity of 400,000 gallons per day in June 2021 will be sufficient to support the new customers and the Avadim expansion project. The proposed draft agreement is attached to and made part of these minutes.

Town Attorney, Ron Sneed discussed **Items 7B**, continuation of Public Hearing for Text Amendments to Right-of-Way Closure recalling discussions with the Planning Board who recommended expanding the noticing area and said his objection to that is that the case law does not support it. Attorney Sneed also recalled concerns of the Board of Aldermen regarding noticing and said he has prepared a draft ordinance which keeps the noticing requirement but allows the option to notice additional adjoining property.

Assistant Town Manager, Dean Luebbe discussed **Items 8A**, Acceptance of Public Art Proposal stating this item is a more formal process than what has been done in the past to allow public art to be placed on public property. Planning Director Jessica Trotman stated her department and the Greenways Commission will be working on a formal policy to present to the Board soon. Alderman Carolos Showers stated he has concerns over the design of the piece stating he feels someone could be hurt if they attempted to climb on it. Alderman Showers stated he would like to see some sort of a barrier placed around the piece.

Black Mountain Board of Aldermen
Agenda Workshop Minutes -February 7, 2019

Assistant Town Manager, Dean Luebke discussed **Items 8B**, Black Mountain Pool Rate & Policy Revisions stating this item is necessary to be considered prior to the beginning of pool season in May. Recreation Director Josh Henderson stated all of the fee schedules for recreation include a resident/non-resident fee and said he feels the proposal is appropriate and reflects other facilities comparable to the town's facility. Director Henderson stated the increased rates will help offset operation costs. Board members discussed the proposed rates and pricing for employee passes. Board members requested pool rental rates to be included in this proposal as well. Recreation Director Henderson advised there is a policy amendment included in the rate schedule regarding safety and liability and recommended having no person under the age of thirteen years of age be allowed in the pool area unless accompanied by a responsible person, eighteen years of age or older. Director Henderson stated this is due to the age of consent to treat and said pool staff may not assist a child age 12 or younger with a medical situation unless it is a life threatening situation. Pool Manager, Beth Dubrock gave an example of a child choking and said that they were not legally allowed to offer assistance until the situation became life threatening and would be forced to contact 911. Ms. Dubrock stated she supported having the age limit increased in order to render medical assistance without incurring additional liability.

Town Attorney, Ron Sneed discussed a matter regarding a voluntary annexation petition to annex The Native Kitchen that has been filed with the Town Clerk. Attorney Sneed stated Property that is annexed by petition must either be contiguous to the primary corporate limits of the city under G.S. 160A-31, or must meet the criteria under G.S. 160A-58.1 for non-contiguous or "satellite" annexation. Attorney Sneed stated those criteria include limits on the distance between the area to be annexed and the primary corporate limits of the city, the proximity of the property to the primary corporate limits of another city, and the size of the property as a percentage of the total size of the city. Attorney Sneed stated NC G.S. 160A-58.1(b)(3) requires the town to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits such as police and fire service. Mayor Don Collins inquired if the Board must take up this matter. Attorney Sneed stated citizens have a right to petition and redress before their elected body and said the petitioners are not citizens of the Town of Black Mountain. Alderman Carlos Showers stated he feels the matter should come before the Board in a public hearing. The Town Clerk advised the petition that has been filed is incomplete. Attorney Sneed confirmed there is an incomplete survey and added the applicant did not indicate if they had any vested rights on the application. Vice Mayor Maggie Tuttle inquired of the reason for the petition and Alderman Larry B. Harris advised the petitioner is seeking liquor by the drink at his restaurant. Alderman Harris stated he finds this request unreasonable due to the distance to provide police protection in a practical manner. Alderman Harris also stated he feels it would be unfair to the Black Mountain restaurant owners to grant an annexation for alcohol sales for one business outside the corporate limits. Attorney Sneed stated a completed application and petition is necessary before the petitioner can seek a public hearing before the Board of Aldermen. Board members were in favor of a public hearing for transparency but acknowledged there was a significant cost to the petitioner to complete the application and petition with the consensus of the Board not being in favor of the request. Attorney Sneed will reach out to the petitioner to discuss his preference with moving forward. The petition to annex and application are attached to and made part of these minutes.

Black Mountain Board of Aldermen
Agenda Workshop Minutes -February 7, 2019

There was no further discussion on the agenda.

Alderman Larry B. Harris moved to enter into closed session to consult with the town attorney, as permitted in NCGS § 143.318.11(a)(3) at 6:00 p.m.

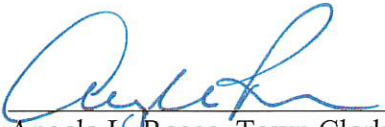
The motion was unanimously approved by a vote of 4-0.

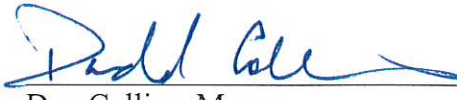
Alderman Larry B. Harris moved to return to open session at 6:25 p.m.

The motion was unanimously approved by a vote of 4-0.

There being no further discussion, on a motion by Carlos Showers with a vote of 4-0 Mayor Don Collins adjourned the meeting at 6:25 p.m.

ATTEST:


Angela L. Reece, Town Clerk


Don Collins, Mayor

ORDINANCE NO. #O-19-05

REVISED DRAFT

AN ORDINANCE TO ADD TEXT SECTIONS TO CHAPTER 20, TO ADD ARTICLE VII, GRAFFITI, TO THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Board of Aldermen on the 13th day of December, 1993; and

WHEREAS, the North Carolina General Statutes make the placing of graffiti on public and private buildings and property; and

WHEREAS, it is the interest of the citizens of and visitors to Black Mountain that the Town actively pursue both the prevention and removal of graffiti.

NOW, THEREFORE, BE IT RESOLVED that Chapter 20 of the Town of Black Mountain Code of Ordinances is amended to add the following Article VIII:

ARTICLE VIII - GRAFFITI

Sec. 20-371 – General.

(a) Purpose. Graffiti is destructive of the rights and values of public and private property owners as well as the entire community. Unless the board of aldermen acts to enforce removal of graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, entire neighborhoods are affected and become less desirable places in which to live, work and visit, all to the detriment of the town; and is hereby declared a public nuisance. The board of aldermen intends through adoption of this article to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement.

(b) Definitions.

Graffiti: Writings, drawings, inscriptions, figures or marks of paint, ink, chalk, dye or other similar substances on public or private buildings, sidewalks, streets, structures, or places which are not authorized or permitted by the property owner or possessor, defacing the property upon which such markings are placed. For the purposes of this chapter, graffiti shall include drawings, writings, markings or inscriptions regardless of the content or nature of materials used in the commission of the act. Provided however, this definition shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews. Perpetrator: The person who engages in creating or putting graffiti on public or private real and personal property.

Person: Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Perpetrator: Any person who places graffiti or causes graffiti to be placed on any public or private real or personal property.

Property owner: The owner of the property, such property owner's agent or any person in lawful control or possession of the property.

(c) Use of public funds. Whenever the town becomes aware of or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the town shall be authorized to use public funds to assist in the removal, painting, obscuring or repairing of the graffiti.

Sec. 20-372 – Graffiti prohibited.

(a) It shall be unlawful for any person to place graffiti upon the surface of any public or private property, real or personal.

(b) Any person who applies graffiti upon the surface of any public or private property is guilty of a misdemeanor and shall be subject to prosecution in accordance with G.S. 14-127, 14-127.1 and G.S. 14-160. In addition to criminal prosecution, such person shall be subject to the additional enforcement provisions set forth herein.

(c) It shall be the responsibility of the person who places the graffiti on any public or private property, or the parents of the person who places such graffiti on any public or private property if the perpetrator is a minor, to remove the graffiti.

(d) It shall be unlawful for any property owner to permit property that is defaced with graffiti to remain defaced; such property owner shall be subject to the civil enforcement provisions herein.

(e) It is the specific intent of this article to regulate the placement of graffiti both as a criminal violation and civil violation, and to regulate the failure to remove graffiti as a civil violation only and not as a criminal violation. Nothing herein is intended to prevent, restrain or prohibit the criminal prosecution of graffiti perpetrators under the laws of the State of North Carolina.

Sec. 20-373 – Removal required.

(a) Immediate removal. It is the responsibility of the perpetrator to immediately remove any graffiti created or caused by the perpetrator, but if the perpetrator fails to remove such graffiti, it is the responsibility of the property owner to promptly remove graffiti from the property owner's property. The property owner should not wait for the town to send a notice to remove or notice of defacement, but shall take immediate and prompt action to remove the

graffiti when applied.

(b) Removal by property owner. It shall be unlawful for any property owner to fail to take the necessary steps to remove or effectively obscure any graffiti upon property they own within ten (10) days after receiving written notice from the town to remove such graffiti ("notice to remove" or "notice of defacement"). The property owner shall be deemed to have taken such necessary steps if the property owner has contracted with others to remove or obscure the graffiti and the party contracted with has provided a reasonable estimate of time when the work will be done. Notice to the property owner shall be served by personal delivery or by certified or registered mail, return receipt requested in conjunction with regular mail. If the regular mail is not returned as undeliverable within ten days, service shall be deemed sufficient. Additionally, service hereunder may be made in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice to remove shall provide:

- (1) The street address or other description of the property sufficient for property identification;
- (2) A description and general location of the graffiti;
- (3) A statement that the property is a public nuisance due to the existence of the graffiti;
- (4) Statement that the graffiti must be removed or effectively obscured within ten days after receiving notice to remove and that if the nuisance is not so abated within that time, the town may abate the public nuisance at the cost of the property owner as set forth herein;
- (5) Information identifying any graffiti removal assistance available through the town.

(c) Removal by town. If the town has provided notice to remove under subsection (b) above, and property owner fails and/or refuses to remove or effectively obscure graffiti upon the property owner's property, the town, may, after compliance with the requirements contained herein below, go upon the private property and remove the graffiti at the expense of the property owner. The town shall not clean, paint or obscure or repair any property containing graffiti more extensively than where the graffiti itself is located. The town shall not be required to restore the area that contained graffiti, or any obscured area, to its original condition including conditions of color, texture, and finish. The cost of obtaining compliance with the requirements of this article shall be a lien in accordance with G.S. 160A-193. Provided however nothing herein shall require the town to remove graffiti from private property or from property designated as historic property under federal or state laws.

Sec. 20-374 – Right of entry to private property.

Prior to entering upon private property or property owned by a public entity other than the town for the purpose of graffiti removal, the town shall attempt to secure the consent of the property owner and release of the town from any and all claims arising out of the removal. If the property owner fails to remove the graffiti within the time specified in the notice to remove, or the town has requested consent to remove or paint over the graffiti and the property owner has refused consent and/or refused to grant the town a release of liability, the town may seek

remedies as set forth in G.S. 160A-175, including injunctive relief, an order of abatement or other relief in the appropriate court of law. Provided however, nothing herein shall prevent the town from summarily removing graffiti when there is an imminent threat to life or property.

Sec. 20-375 – Enforcement/remedies.

(a) Civil penalties – against perpetrator.

(1) In addition to the graffiti perpetrator being subject to criminal prosecution under the laws of the State of North Carolina, the perpetrator shall also be subject to the assessment of a civil penalty under this Article in the amount of \$200.00. In the event there is more than one violation, then the civil penalty shall be increased for each additional violation as set forth below:

- a. Second violation: \$250.00;
- b. Third violation: \$500.00;
- c. Fourth violation: \$750.00;
- d. Fifth and any subsequent violation within a 12-month period: \$1,000.00.

(2) The civil penalty shall be forgiven for a first or second violation if the perpetrator removes the graffiti within fifteen (15) days after receipt of notice of the violation and imposition of the civil penalty.

(b) Civil penalties – against property owner.

(1) In addition to the remedies stated above, the Town may also impose a civil penalty of \$10.00 per day, with such penalty to begin accruing at least ten days after notice of the violation and the requirement to remove the graffiti has been given to the property owner as provided in Section 20-373 and ten days after notice of the imposition of this penalty is given to the property owner. Each day that the graffiti remains will be a separate and distinct offense. Such penalties may be collected by the Town in a civil action in the nature of a debt as provided in N.C.G.S Sec. 160A-175(c)..

(d) Notice of violation.

(1) Against the perpetrator. Whenever any town official charged with the duty of enforcing the regulations in this article has reasonable cause to believe that a person has violated any of the provisions herein, that official shall notify the violator of the violation and assess the civil penalty set forth herein above. The violation shall have seven days to pay the civil penalty. Failure to pay any assessed civil penalty shall subject the violator to the remedies set forth in G.S. 160A-175.

(2) Against the property owner. Whenever any town official charged with the duty of enforcing the regulations in this article has reasonable cause to believe that a property owner has failed and refused to remove graffiti from the property owner's property, that official shall notify the property owner of the violation, providing up to ten days to correct the violation. Upon failure to comply with the violation notice or file an appeal with the committee referenced in this article, the violator will be subject to injunctive relief and/or an order of abatement as set forth in G.S. 160A-175, and the civil penalty set out above.

This ordinance shall become effective on June 10, 2019, to allow time for notice of the adoption and effect of the ordinance to be publicized and to provide a grace period for property owners to come into compliance.

READ, APPROVED AND ADOPTED by a vote of ____ to ____ this the 11th day of March, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

CITY OF ASHEVILLE

AMENDED WHOLESALE WATER PURCHASE
AGREEMENT WITH THE TOWN OF BLACK
MOUNTAIN

THIS AGREEMENT, made and entered into by and between the City of Asheville (hereinafter called "City), and the Town of Black Mountain (hereinafter called "Black Mountain"):

WITNESSETH:

WHEREAS, Black Mountain desires to purchase a portion of its water supply from the City and the City desires to provide such water supply over an extended period of time; and

WHEREAS, the City and Black Mountain entered into wholesale water purchase agreement dated February 14, 2006, which was amended by Amendment 1 dated August 25, 2009; and

WHEREAS, the City has entered into an agreement pursuant to which approximately 600 water customers will be transferred from the City to the Black Mountain water system, which will increase the amount of water Black Mountain will need to acquire from the City, with the first increase anticipated to be needed in May, 2020, and the second increase anticipated to be needed in May, 2021; and

WHEREAS, Avadim Technologies, Inc., will construct a manufacturing facility which will be served by the Black Mountain water system, increasing the amount of water Black Mountain will need to acquire from the City, with the date such demand will occur anticipated as occurring early in 2020.

NOW, THEREFORE, In consideration of mutual covenants, terms and conditions contained herein accruing to the benefit of each of the respective parties hereto, the City and Black Mountain agree as follows:

A. TERM

1. This Agreement has been in effect since February 14, 2006, and has and will continue to be automatically renewed on a year-to-year basis (since April 30, 2007) unless either party gives at least thirty (30) days written notice prior to the expiration of the current renewal term.
2. The City has the right to immediately suspend this Agreement for cause and terminate water service when public health or safety is endangered due to Black Mountain's system not operating in accordance with the North Carolina Rules Governing Public Water Systems. If this Agreement is immediately suspended, the City will provide thirty (30) days written notice for cause after which this Agreement is terminated unless the violation is corrected, or that Black Mountain

Amended Wholesale Water Purchase
Agreement with Black Mountain

is actively correcting the problem in the sole determination of the City of Asheville Director of Water Resources (the "Director").

B. WATER QUANTITY COMMITMENT

1. The City has committed to deliver treated water to Black Mountain from the City's water system not to exceed 200,000 gallons per day, which commitment is presently being honored.
2. The City is committed to deliver 300,000 gallons per day beginning June 1, 2020, or immediately after the Town has used 300,000 gallons per day for three consecutive months, whichever should first occur. The Town, by giving notice to the City no later than May 1, 2020, postpone the effective date of this increase up to six months if the opening of the Avadim facility and the transfer of the first 300 water customers to Black Mountain is delayed. Payment for such committed amount of water shall begin on the effective date.
3. The City is committed to deliver 350,000 gallons per day beginning June 1, 2021, or immediately after the Town has used 350,000 gallons per day for three consecutive months, whichever should first occur. The Town, by giving notice to the City no later than May 1, 2021, postpone the effective date of this increase up to six months if the transfer of the second 300 water customers to Black Mountain is delayed. Payment for such committed amount of water shall begin on the effective date.
4. Except as limited by other conditions of this Agreement, Black Mountain may purchase from the City treated water in daily quantities up to the commitment provided by this Agreement. Black Mountain may purchase quantities above the commitment for peak demands or emergency use only if the City can provide the additional quantity-without affecting the City's commitment to its other customers regarding quantity, pressure, or quality, as determined in the sole discretion of the City.
5. The capacity commitment of this Agreement is an essential condition of this Agreement. Notwithstanding any single allowance by the City for additional supply under Section B.2 of this Agreement, the City is never obligated to supply future water to Black Mountain for any reason in excess of the capacity committed in Sections B.1., B.2., or B.3., whichever is applicable at that time.
6. Black Mountain may renegotiate the fixed volume amount upward with City anytime during any renewal term of this Agreement upon a thirty (30) day written notice to the Director who shall negotiate in good faith within thirty (30) days of receiving the request for a new fixed volume monthly amount.

Amended Wholesale Water Purchase
Agreement with Black Mountain

7. If Black Mountain requires a higher commitment of water supply for any purpose, including prolonged emergency conditions such as waterline breaks or well pump failures, or as a result of drought conditions, the only manner in which the City may commit such additional supply is through a written amendment of this Agreement to increase the capacity committed under Section B.1, B.2 or B.3 and a corresponding increase in the monthly fixed fee as stated in Section C.1 or as outlined in B.8.
8. In the event that Black Mountain's total metered water flow from the City exceeds the commitment specified in Section B.1, B.2 or B.3 of this Agreement as an average for three (3) monthly billing cycles from any twelve month period, and the City has continued to supply this volume, the water commitment in Section B.1 shall automatically be raised to the three (3) month average exceeding the fixed volume amount based on the average water use for that three-month cycle. The Director shall notify Black Mountain in writing of the increase of capacity as stated in Section B.1 of this Agreement. The aforementioned notification shall automatically amend Section B.1 of this Agreement and related monthly fees due to the increased commitment amount as stated in Section C.
9. If Black Mountain falls to request an amendment to this Agreement but establishes a recurring pattern of water use beyond the commitment stated in Section B.1, the City may request this Agreement be amended to increase the commitment accordingly. A recurring pattern of water use beyond the commitment is defined as when Black Mountain exceeds the capacity commitment in B.1, B.2 or B.3, five (5) times (Monthly averages) in a calendar year and not pursuant to Section B.2. The Director shall send Black Mountain written notice of the intent to renegotiate this Agreement. Upon Black Mountain's receipt of said notice both parties shall have ninety (90) days to enter into good faith negotiation (herein "Negotiation Period"). If the parties fail to reach a new Agreement within the Negotiation Period, this Agreement shall terminate thirty (30) days after the Negotiation Period expires.
10. If the capacity commitment of this Agreement is increased by the provisions of paragraph(s) B.6., 7., 8., or 9., Black Mountain may make a formal request for a reduction of the capacity commitment one (1) year after the capacity increase. Black Mountain cannot request a reduction that would lower the capacity commitment to less than the original capacity commitment as set forth in paragraph B.1. of this Agreement. Black Mountain shall make a written request to the Water Resources Director of the City. The Water Director shall determine the monthly average consumption of water provided by the City to Black Mountain in the preceding 12 months. If the monthly average water consumption has not exceeded the requested capacity commitment for the preceding 12 months, the request will be granted.

Amended Wholesale Water Purchase
Agreement with Black Mountain

C. COST OF SERVICE

1. Black Mountain shall pay to the City a fixed fee each month based on the committed capacity stated or as amended pursuant to Section B of this Agreement, and shall also pay to the City a water volume charge based on the actual metered water flow from the City to Black Mountain. Both the monthly fixed fee and the water volume charge shall be established by the City by resolution for wholesale customers and are subject to change. Black Mountain will not be responsible for payment of any water inadvertently sent through the meters at the designated delivery points by the City due to excessive pressure or release of excessive water into the system. The City would notify Black Mountain before any such releases and obtain before and after meter readings to ensure accurate billing.
2. The City shall bill Black Mountain monthly. Should Black Mountain fail to pay its water bill on time as outlined in the City's Water Policies, and further fail to pay after fifteen (15) days written notice of delinquency, Black Mountain shall be responsible for all fees and charges regarding delinquent accounts as set forth in the City's Water Policies. If Black Mountain fails to pay its water bill in ninety (90) days after receipt of the notice of delinquency, the City may terminate service and this Agreement.
3. The City shall read Black Mountain's meters at least monthly and shall compute the average use using the combined meter readings for all meters serving Black Mountain, divided by the number of days since the last reading.

D. DELIVERY POINTS

1. The City recognizes Black Mountain as a customer of the City and agrees to provide Black Mountain with water at the following existing metered points, unless a change is otherwise agreed in writing by the Director: US Highway 70 and 1136 Oconeechee Street and _____.
2. These points of connection shall be under the ownership and control of the City. The City shall have the right to test the meters at these points for accuracy, calibrate, repair or replace meters or modify the metering assembly as established by AWWA Standards.
3. The water supplied at these points of connection shall be at a reasonably consistent pressure not less than 40 psi under average flow conditions.
4. The City may at any time propose improvements to the water system (such as a new booster pump or a pressure reducing valve), which increases or decreases the

Amended Wholesale Water Purchase
Agreement with Black Mountain

consistent pressure provided subject to the minimum pressure specified above, and must give Black Mountain the same notice as retail customers, in accordance with Water Department Policies, before implementing such system improvements.

5. The City may have to alter the quantities delivered at the respective delivery points based on the needs of the City's system due to an emergency situation or to make repairs to the system.

E. DUTIES OF THE CITY

1. The City shall at all times operate and maintain its system in a good state of repair so that Black Mountain may rely upon the delivery of a dependable source of water for redistribution to its customers, normal service interruptions excepted.

2.

F. DUTIES OF THE CUSTOMER

1. Black Mountain shall install and maintain, at its sole expense, all necessary backflow devices as required by the City in the adopted Water Policies, as amended. The City reserves the right to inspect and to require Black Mountain to test, repair and replace these backflow devices as required with such replacements and/or repairs being charged to and paid by Black Mountain.
2. Black Mountain shall be held liable for any detrimental backflow occurrence into the City's water system and Black Mountain shall indemnify the City for all costs associated with a backflow occurrence.

G. LIMITATIONS ON SERVICE

1. Limitations in the delivery of water to Black Mountain shall include all limitations provided by the City's current Water Policies.
2. At its sole discretion, the City may temporarily reduce or terminate flow to Black Mountain if the City needs to perform repair work or it is necessary in the interest of public health and safety. Normal line breaks and failures may occur and natural disaster and other matters beyond the control of the City may occur. In the event of the interruption of service caused by such events, the obligation of the City shall be to make such repairs as reasonably as possible so that the delivery of water to Black Mountain will not be unnecessarily interrupted nor the failure to deliver water prolonged for an unreasonable period of time taking into consideration the nature and extent of the damage to the City's lines and facilities and available resources.

Amended Wholesale Water Purchase
Agreement with Black Mountain

3. In the event of an emergency, the City's commitment stated in B.1 of this Agreement is not applicable. In the event a reduction in the supply of water is necessary, the City agrees that Black Mountain shall not be treated differently from other similar municipal wholesale customers nor shall its supply of water be denied or reduced except for good reason. In no event, however, shall the City be held liable for said reduction or termination of service to Black Mountain.

H. GENERAL PROVISIONS

1. Any changes in applicable Federal or State laws or regulations requiring more restrictive changes in the operation of the Black Mountain water system shall automatically become a part of this Agreement, and the City shall notify Black Mountain within a reasonable length of time of any such changes. Black Mountain agrees to conform thereto.
2. The City hereby acknowledges that Black Mountain is purchasing this water for resale to its customers. The City implies no warranty or responsibility for water quality or quantity beyond Black Mountain's metered connections listed previously.
3. Black Mountain shall provide the City a minimum advance written notice of thirty (30) days prior to activating any new water supply source or new purchased water source.
4. Black Mountain shall adopt and/or maintain a water use restrictions policy at least as stringent as that policy adopted by the City for such purpose. In the event the City declares a Phase I, or III drought alert and mandatory restrictions, Black Mountain shall declare at least the same level of restrictions to its customers and enforce same.
5. Black Mountain shall indemnify and hold harmless the City, its officers, employees, and agents, from and against any damages, liabilities, judgments, fees (including reasonable attorney's fees and expert witness fees) or costs caused solely by the negligence or willful misconduct of Black Mountain, its employees, or agents in connection with this Agreement. The City shall indemnify and hold harmless Black Mountain, its officers, employees and agents, from and against any damages, liabilities, judgments, fees (including reasonable attorney's fees and expert witness fees) or costs caused solely by the negligence or willful misconduct of the City, its employees or agents in connection with this Agreement.
6. This Agreement is not to be construed as creating any third party beneficiaries and may only be enforced by the parties herein.
7. This Agreement shall not be construed as a purchase of capacity in the water

Amended Wholesale Water Purchase
Agreement with Black Mountain

treatment works owned and operated by the City nor shall this Agreement be deemed to be a dedication of capacity within such water works solely to or for the benefit of Black Mountain nor shall Black Mountain be expected to pay any portion of the operation and maintenance costs of the City's treatment works and/or distribution system other than the payment of the purchase price of the water supplied under this Agreement.

8. This Agreement is between the City and Black Mountain and shall not be construed as creating a contractual relationship between the City and any particular customer of Black Mountain nor shall any customer of Black Mountain have any right or cause of action directly against the City because of this Agreement.
9. This Agreement contains the entire agreement between the parties; and there are no representations, warranties, covenants, or undertakings other than those expressed and set forth herein.
10. This Agreement shall be construed in accordance with the laws of North Carolina.
11. For purposes of providing notice in this agreement, the following contact persons and addresses shall control unless changed in writing:

City contact will be :
Director of Water Resources, City of Asheville
PO Box 7148
Asheville, NC 28802.

Black Mountain's contact will be:
Town Manager
160 Midland Avenue
Black Mountain, NC 28711

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, as of the days and years set out.

[SIGNATURE PAGES FOLLOW]

Amended Wholesale Water Purchase
Agreement with Black Mountain

Date: _____ CITY OF ASHEVILLE

By: _____
Esther Manheimer, Mayor

WITNESS: _____
Magdalen Burleson, City Clerk

(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a notary public of said County and State, do hereby certify that Magdalen Burleson personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing Amended Wholesale Water Purchase Agreement was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Town Clerk.

WITNESS my hand and official seal, this the _____ day of _____
_____, 2019.

Notary Public

Typed or Printed Name of Notary

My Commission Expires:

Amended Wholesale Water Purchase
Agreement with Black Mountain

Date: _____

TOWN OF BLACK MOUNTAIN

By: _____
Don Collins, Mayor

WITNESS:

Angela Reece, Town Clerk

(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a notary public of said County and State, do hereby certify that Angela Reece personally came before me this day and acknowledged that she is the Town Clerk of the Town of Black Mountain, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing Amended Wholesale Water Purchase Agreement was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Town Clerk.

WITNESS my hand and official seal, this the _____ day of _____
_____, 2019.

Notary Public

Typed or Printed Name of Notary

My Commission Expires:

2019 Pool Revisions

2019

1. Season Passes- Family

(members of family in same household up to five persons)

\$150.00 resident
\$170.00 non-resident
(\$25 for each extra individual)

2. Individual

\$75.00 resident
\$ 95.00 non-resident

3. Multiple Entry Pass

(10 Visits)

\$25 resident
\$35 non-resident

4. Daily Admission

\$3.00 resident
\$4.00 non-resident

5. Employee Family Pass

(members of family in same household up to five persons)

(Applies to Full-Time Employees only)

\$30 (\$10 for each additional person
outside of the 5 family members in
the household)

6. Employee Individual Pass

(Applies to Full-Time Employees only)

\$20

7. Pool Rental

\$185 resident
\$245 non resident
\$25 (extra lifeguard 21-40
attendees)

8. Safety & Liability-

No person under the age of thirteen (13) years
old will be allowed in the pool area unless
accompanied by a responsible person,
Eighteen (18) years of age or older.



VOLUNTARY ANNEXATION PETITION FORM

To: The Town of Black Mountain Board of Aldermen

Date: 1/25/19

We, the undersigned, being all of the owners of the real property described herein, respectfully request that the area described herein be annexed to the Town of Black Mountain pursuant to the provisions of G.S. 160A-31.

The area to be annexed is ☐ contiguous ☐ non-contiguous to the existing Town Limits and the boundaries of such territory are as indicated on the attached map and description.

Parcel Identification Number(s): 9699-00-2846

Current County Zoning District: Buncombe

Town Zoning District designation requested: Black Mountain

Buncombe County property tax valuation: \$544,100

Do you declare vested rights*? ☐ yes ☐ no

*We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate "yes" and attach proof.)

Are you requesting water service from the Town of Black Mountain? ☐ yes ☒ no

Number of existing residential dwelling units: 0 Number of commercial units: 1

A legal description of the area, complete copy of the last deed of record for each parcel of property to be annexed, and copies of the draft annexation plat prepared by a registered land surveyor are attached. We have also provided the following for your additional information: Please feel free to attach any additional information you feel may help the Board of Aldermen in determining the appropriateness of annexing this parcel into the Town of Black Mountain.

Property Owner(s): Address: Signature: Date:

All property owners must sign this petition including husband and wife if jointly owned. Add other sheets as needed.

204 Whitson Ave
Swannanoa NC, 28778
Brandi Ellison

Completed Applications to the Town of Black Mountain, 160 Midland Avenue, Black Mountain, NC 28711, (828) 419-9300.



TOWN OF BLACK MOUNTAIN

VOLUNTARY ANNEXATION SUBMITTAL REQUIREMENTS

Only complete submittals will be processed. The following items are required to be submitted to the Planning and Development Department in order for your application to be deemed complete:

- ☐ Original Petition Form Signed by ALL Owners of the property
- ☐ Legal Description of the area to be annexed in both hard and digital (Word) format
- ☐ A complete copy of the last deed of record for each parcel of property to be annexed
- ☐ 3 paper copies of the draft annexation plat prepared by a registered land surveyor including the following information:

- Title block:

Annexation File #: _____

- Vicinity map showing location of property in relation to the primary corporate town limits (indicate where corporate limits are adjacent to the property or the location of the closest point of the primary Town Limits)
- Surveyor's certificate

- The following review officer's certificate:

Review Officer's Certificate

State of North Carolina

Buncombe County

I, _____, Review Officer of Buncombe County, certify that the plat or map to which this certification is affixed meets all statutory requirements for recording.

Review Officer

Date

After the draft annexation plat is approved by Town staff, one (1) mylar and two (2) paper copies of the Annexation Plat as well as ten 11x17 paper copies will be required to be submitted prior to the Public Hearing and official action by the Board of Aldermen.

[illegible]



Doc ID: 026599680004 Type: CRP
 Recorded: 07/30/2014 at 01:41:42 PM
 Fee Amt: \$1,326.00 Page 1 of 4
 Revenue Tax: \$1,300.00
 Workflow# 0000229733-0002
 Buncombe County, NC
 Drew Reisinger Register of Deeds

BK 5229 PG 1806-1809

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$1300.00

Tax Parcel Identification Number (PIN): 9699-00-2846; portion of 9699-00-1729

Mail after recording to: Goosmann Rose Colvard & Cramer, PA (Box 81)

This instrument is prepared by Zeno B. Lancaster, a licensed North Carolina Attorney.

Delinquent taxes, if any, are to be paid by the closing attorney to the County Tax Collector upon disbursement of the closing proceeds.

14-0828 emc/cm

THIS DEED made this the 29 day of July, 2014, by and between

GRANTOR	GRANTEE
BEACON STREET MUSIC HALL, LLC, a North Carolina limited liability company; and BEACON STREET COMMONS, LLC, a North Carolina limited liability company. Address: 1 Page Avenue, Suite 109 Asheville, NC 28801	SYMMETRY PROPERTIES, LLC, a North Carolina limited liability company. Address: 204 Whitson Ave, Suite 2 B Swannanoa, NC 28778 Attn: Mr. Brendan Hoyer

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of _____, Buncombe County, North Carolina, and more particularly described as follows:

SEE ATTACHED EXHIBIT A

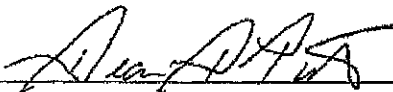
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee *in fee simple*.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that the Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions: Subject to easements, restrictions and rights of way of record

The property conveyed herein ____ Is X Is not the grantor's primary residence.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its corporate name by its duly authorized officer(s) by authority of its Board of Directors, the day and year first above written.

BEACON STREET MUSIC HALL, LLC

By:  (SEAL)
Dean D. Pistor, Member-manager

NORTH CAROLINA, BUNCOMBE County.

I, a Notary Public of the County and State aforesaid, certify that Dean D. Pistor personally appeared before me this day and acknowledged that he is the member-manager of **BEACON STREET MUSIC HALL, LLC** and that he executed the foregoing instrument as said member-manager of said LLC and in behalf of said LLC. Witness my hand and official stamp or seal, this the 29 day of July, 2014.


NOTARY PUBLIC
My commission expires: 5/30/18



BEACON STREET COMMONS, LLC

By: Dean D. Pistor (SEAL)
Dean D. Pistor, Member-manager

NORTH CAROLINA, BUNCOMBE County.

I, a Notary Public of the County and State aforesaid, certify that Dean D. Pistor personally appeared before me this day and acknowledged that he is the member-manager of BEACON STREET COMMONS, LLC and that he executed the foregoing instrument as said member-manager of said LLC and in behalf of said LLC. Witness my hand and official stamp or seal, this the 27 day of July, 2014.

[Signature]
NOTARY PUBLIC

My commission expires: 5/30/18

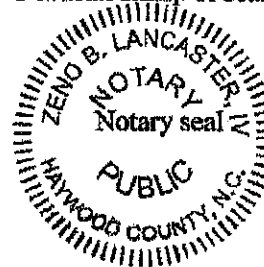


EXHIBIT A

Being all of that 0.82-acre parcel, more or less, as shown as "Portion of Lot 4 All of Lot 2" on that plat recorded in Plat Book 173 at Page 196 of the Buncombe County, NC Register's Office; reference to which Plat is hereby made for a more particular description of said Property.

The above-described property is a portion of that property conveyed in those deeds recorded in Record Book 4339 at Page 1841 and Record Book 4339 at Page 1856 of the Buncombe County, NC Register's Office.

14-0828