



TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Date: June 10, 2019 Time: 6:00 p.m.

Regular Session Agenda

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 **Conserve resources; print only when necessary.**

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door.

Should you need other assistance or accommodation for this meeting, please contact

Town Clerk Angela Reece at 419-9310, or by email at angela.reece@townofblackmountain.org
(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Minister Jack Taylor, Mountain View Church, Black Mountain*
- Announcements – *Mayor Don Collins*

2. PROCLAMATIONS, AWARDS & RECOGNITION - NONE

3. CITIZEN COMMENTS

Individuals wishing to address the Board are asked to sign in at the entrance to the board room, indicating the topic(s) or agenda item(s) you wish to discuss, so that the chair may group speakers according to topic. The chair will recognize individuals requesting to address the Board. Comments by any one speaker shall be limited to three (3) minutes. If the topic you wish to discuss pertains to a public hearing scheduled for this meeting, please reserve your comment for the applicable public hearing.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

- A. System Development Fee Study-McGill Associates, P.A.- Dale Schepers, Senior Consultant
- B. Capital Projects Fund Update – Dean Luebbe, Assistant Town Manager/Finance Director

5. CONSENT AGENDA

All items on the consent agenda are considered routine, to be enacted by one motion without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the consent agenda and considered separately.

A. Adoption of Minutes

Motion: To adopt the minutes of May 9, 2019 (Agenda Session), May 13, 2019 (Regular Session), May 9, 2019 (Special Call), May 20, 2019 (Budget Workshop)

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
June 10, 2019

B. Budget Amendment for Fund Transfer to FY20

#FY2019-20

Motion: *To approve Budget Amendment #FY2019-20 as submitted, increasing the expense accounts, 3091-8100-542 (Transfer to Water Capital Reserve Fund) by \$125,000, and to decrease the expense account 3091-8100-730 (Capital Outlay) by \$125,000, and increasing the expense account 1010-5300-580 (Transfer to General Capital Reserve Fund) by \$100,000 and to decrease the expense account 1010-5300-730 (Capital Outlay) by \$100,000.*

Consent Motion: *To approve consent items A-B as presented.*

6. CITIZEN COMMENTS

*The chair will recognize individuals requesting to address the Board regarding the specific New Business or Unfinished Business items below. Comments by any one **speaker shall be limited to three (3) minutes.** If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

7. UNFINISHED BUSINESS

A. Montessori Lease Amendment

Motion: *To approve the Montessori School Lease amendment as presented [or as amended].*

B. Art in the Afternoon Lease

Motion: *To approve the Art in the Afternoon Lease as presented [or as amended].*

C. Resolution Authorizing the Town of Black Mountain to Engage in Electronic Payments as Defined by NC G.S. 159-28 or NC G.S. 115C-441

#R-19-10

Motion: *To approve Resolution #R-19-10 authorizing the Town of Black Mountain to engage in electronic payments as defined by NC G.S. 159-28 or NC G.S. 115C-441 as presented.*

D. Town of Black Mountain Procurement Policy

Motion: *To approve the Town of Black Mountain Procurement Policy as presented [or as amended].*

E. Hemphill Property Resolution

#R-19-11

Motion: *To approve Resolution #R-19-11 as presented [or as amended].*

F. Mayor & Board of Aldermen Compensation Ordinance

#O-19-14

Motion: *To approve Ordinance #O-19-14 as presented [or as amended].*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
June 10, 2019

8. NEW BUSINESS

A. Offer received to purchase Town owned property located at 2992 U.S. Hwy 70, Black Mountain NC (Former Public Works Building)

B. Appointment to fill vacancies on Town Boards and Commissions

1. **ABC Board** – (1) vacancy/3-yr term ending June 30, 2022

1 applicant:

Roger Hibbard (applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

2. **Greenways Commission** – (2) vacancies/ 3-yr terms ending June 30, 2022
AND (2) unexpired term ending June 30, 2020

3 applicants:

Julie White (Per policy is ineligible -re-applying for 3rd full term)

Ann Lutz (new applicant applying for 1st full term)

Elizabeth Williams (new applicant applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

***There will be two unexpired term vacancies left open pending new applications.**

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 10, 2019

3. **Historic Preservation Commission** – (2) vacancy/ 3-yr terms ending June 30, 2022
AND (1) unexpired term ending June 30, 2020

2 applicants: *Amanda Vollrath* (new applicant applying for 1st full term)
Susan Leive (*Citizen Academy Graduate*- new applicant applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

***There will be 1 unexpired term vacancy left open pending new applications.**

4. **Planning Board** – (3) vacancy/ 3-yr term ending June 30, 2022

2 applicants:
Lauronda Teeple (new applicant applying for 1st full term)
Chris Collins (new applicant applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
June 10, 2019

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

***There will be one full term vacancy left open pending new applications.**

5. **Recreation Commission** – (3) vacancies/ 3-yr terms ending June 30, 2022
AND (1) unexpired term ending June 30, 2021

5 applicants:

Michael Nerder (Citizen Academy Graduate - applying for 1st full term)
Marcus Duarte (new applicant applying for 1st full term)
Lee Reading (new applicant applying for 1st full term)
Steven Giles (new applicant applying for 1st full term)
Elizabeth Williams (new applicant applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
June 10, 2019

Motion: To appoint _____ to fill an unexpired term ending **June 30, 2021**
by a vote of _____ for and _____ against.

6. **Urban Forestry Commission**– (1) vacancies/ 3-yr term ending June 30, 2022
AND (1) unexpired term ending June 30, 2020
AND (1) unexpired term ending June 30, 2021

3 applicants:

Rhea Bockhorst (re-applying for 2nd full term)
Scott Abla (new applicant applying for 1st full term)
Emily Sampson (new applicant applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a
vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill an unexpired term ending **June 30, 2020**
by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill an unexpired term ending **June 30, 2021**
by a vote of _____ for and _____ against

7. **Zoning Board of Adjustment** – (3) vacancies/ 3-yr term ending June 30, 2022
AND 3rd Alternate term

3 applicants:

John DeWitt (re-applying for 2nd full term)
Robert Osmundsen (re-applying for 2nd full term)
Ted Mattson (1st Alternate eligible for appointment into first full term)

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 10, 2019

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2022 by a vote of _____ for and _____ against.

Per policy, current alternates shall move forward as follows:

1st Alternate **Janet McKimpson**

2nd Alternate **Charlotte McRaine**

***There will be a 3rd Alterate vacancy left open pending new applications.**

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Board regarding the specific topic of the public hearing. **Public hearing comments by any on speaker shall be limited to ten (10) minutes.** The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each Public Hearing.

A. Public Hearing to Close an Unopened, Platted Street known as Campbell Street **#R-19-12**

Motion:

1. To open the public hearing for **Resolution #R-19-12** to Close Unopened, Platted Street known as Campbell Street.
2. To close the public hearing.
3. To approve **Resolution #R-19-12** for the street closure.

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
June 10, 2019

- B. Public Hearing to Close the remainder of an Unopened, Platted Street known as Campbell Street** **#R-19-13**

Motion:

1. To open the public hearing for **Resolution #R-19-13** to Close Remaining Unopened, Platted Portion of Campbell Street.
2. To close the public hearing.
3. The approve **Resolution #R-19-13** for the street closure.

- C. Public Hearing for Building Permit Ordinance Text Amendments** **#O-19-11**

Motion:

1. To open the public hearing.
2. To close the public hearing.
1. To adopt Ordinance **#O-19-11** as presented [or as amended].

- D. Public Hearing for FY19-20 Budget** **#O-19-10**

Motion:

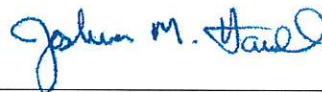
1. To open the public hearing.
2. To close the public hearing.
3. To adopt **FY19-20 Budget Ordinance #O-19-10** as presented [or as amended].

10. COMMUNICATION FROM STAFF

- A. Town Attorney – Ron Sneed
- B. Town Manager – Josh Harrold

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT



Josh Harrold
Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 10, 2019

SUBJECT: Budget Amendment #FY2019-20 for Fund Transfer to FY20

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 5B
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: In the FY18-19 budget, the Board of Aldermen approved a capital purchases in the water fund for \$125,000 for the automatic read water meters (AMR), and in the General Fund for \$100,000 for building renovations at the Fire Department. These funds will not be expended in FY19, and the Town wishes to transfer these funds into the Capital Reserve Funds. The Town expects both projects will begin in FY20. After this budget amendment, the General Capital Project Fund will show a balance of \$395,000 and the Water Capital Project Fund will show a balance of \$325,000. (An additional \$125,000 has been budgeted in FY19-20 budget for the automatic read water meters.)

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY2019-20 as submitted, increasing the expense accounts, 3091-8100-542 (Transfer to Water Capital Reserve Fund) by \$125,000, and to decrease the expense account 3091-8100-730 (Capital Outlay) by \$125,000, and increasing the expense account 1010-5300-580 (Transfer to General Capital Reserve Fund) by \$100,000 and to decrease the expense account 1010-5300-730 (Capital Outlay) by \$100,000.

FUNDING SOURCE: N/A.

ATTACHMENTS: Budget Amendment #FY2019-20.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2019-20
Fiscal Year 2018-2019

Dept.	Account #	Account Name	Debit	Credit	Comments
	3091-8100-542	Transfer to WCRF	125,000		Transferring budgeted,
	3091-8100-730	Capital Outlay		125,000	but unspent, capital items to
	1010-5300-580	Transfer to GCRF	100,000		Capital Reserve Funds.
	1010-5300-730	Capital Outlay		100,000	

Totals:	225,000	225,000
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

AMENDMENT TO LEASE AGREEMENT

This Amendment to Lease Agreement is made and entered into this _____ day of _____, 2019, by and between THE TOWN OF BLACK MOUNTAIN, a North Carolina Municipal Corporation, (the "Landlord" or "Town") and SWANNANOVA VALLEY MONTESSORI SCHOOL, a North Carolina Non-Profit Corporation (the "Tenant" or "SVMS").

WITNESSETH:

WHEREAS, the Landlord and the Tenant entered into a Lease Agreement dated July 19, 2017, under which Landlord did lease to Tenant certain parts of that building and appurtenant outside areas at 102 Carver Avenue known as the Carver Center; and

WHEREAS, since that date, the school operated by the Tenant has grown while at the same time the Town's Parks and Recreation Department offices have moved to a different location; and

WHEREAS, the Tenant is using more space in the building at 102 Carver Avenue, exercising almost exclusive control over all of the building except for the portion of the building that was added after the original construction of the building which is commonly referred to as the "Annex", and

WHEREAS, the additional space used by the Tenant is approximately 860 feet; and

WHEREAS, this space will be better as used space than and as vacant and unmaintained space; and

WHEREAS, the original Lease Agreement must be amended to allow the Tenant to use this additional space until such time as it is needed for Town purposes.

NOW, THEREFORE, in consideration of the premises and the mutual benefits and burdens derived by the parties from an enlargement of the use of the Carver Center by the Tenant, the parties do hereby agree and amend the Lease Agreement dated July 19, 2017, as follows:

1. The term of the Lease Agreement will remain unchanged.
2. In addition to the areas described on Exhibit A of the Lease Agreement, the space to be rented to the Tenant shall include approximately 860 square feet comprised of that space formerly occupied by the offices of the Black Mountain Parks and Recreation Department.
3. The total monthly rent shall remain the same, but if this portion of the property is

needed by the Town, the Tenant will vacate this area of the Carver Center at the end of the lease term in which the Town gives notice of its desire to use such area of the building, with such notice to be given in the same manner and within the time frame as set out in the lease for full termination of the lease.

5. All other terms of the Lease Agreement dated July 19, 2017, shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord has executed this Lease and Tenant has caused this Lease to be executed on its behalf and through its duly authorized officers, all as of the day and year first above written.

TOWN OF BLACK MOUNTAIN, Landlord

By: _____
Josh Harrold, Town Manager

SWANNANOVA VALLEY MONTESSORI SCHOOL, INC.

By: _____

LEASE AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

**Prepared by & return to: Ronald E. Sneed
P.O. Box 995, Black Mountain, NC 28711**

THIS LEASE AGREEMENT (the "Lease") is made and entered into this _____ day of June, 2019, by and between **THE TOWN OF BLACK MOUNTAIN**, a North Carolina Municipal Corporation, the "Landlord" or "Town"), and **STEPHANIE SULTZMAN**, (the "Tenant").

WITNESSETH:

WHEREAS, Landlord desires to let and lease to Tenant, and Tenant desires to let and lease from Landlord, upon the terms and conditions hereinafter set forth, that certain real property being that portion of the Carver Center located at 101 Carver Avenue in Black Mountain, Buncombe County, North Carolina, commonly referred to as the "Annex".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by the Tenant, Landlord has leased and rented, and by these presents does lease and rent, unto the Tenant who hereby agrees to lease from the Landlord, upon the terms and conditions which are hereinafter contained, the Property:

1. Description. Landlord does hereby lease to Tenant the Property, together with any and all rights, easements and appurtenances pertaining thereto running in favor of Landlord with respect to the Property, and all improvements, including, without limitation, that portion of the building at 101 Carver Avenue commonly referred to as the Annex, being approximately 2,577 square feet.

2. Term. The initial term of this Lease shall commence June 1, 2019 (the "Commencement Date"), and shall expire, unless extended pursuant to the terms of Item 2 (B) below, on the August 31, 2019.

3. Rent. The Rent shall be \$1,000.00 per month, paid in advance at the beginning of each month beginning June 1, 2019.

4. Tenant's Insurance. Beginning on the Lease Commencement Date, Tenant, at her own expense, shall provide and maintain a general liability insurance policy naming the Landlord, its agents and its managers as additional insureds, in the amount of \$100,000.00 per occurrence and \$500,000.00 in aggregate.

5. Damage or Destruction. In the event the buildings or improvements located on the Property shall be damaged or destroyed by fire or other disaster, Landlord may in its sole discretion determine whether such damage shall be repaired. If the Landlord decides to repair, the Tenant's duty to pay rent shall abate until such time as the repairs are completed and Tenant can resume use of the premises.

In order to insure the Landlord's ability to repair or rebuild the damaged or destroyed buildings or improvements located on the Property, Landlord shall maintain fire and extended insurance coverage or so-called "all-risk" insurance for the full replacement value of the buildings and other improvements located on the Property.

Tenant understands and agrees that the insurance which is to be obtained and maintained by the Landlord will not cover any items of personal property owned by the Tenant and kept on the property, including merchandise, inventory, furniture, equipment or trade fixtures. If Tenant desires to have such property protected by insurance, he will be responsible for obtaining hazard insurance for that purpose.

6. Maintenance and Repairs. Landlord, at its sole cost and expense, shall maintain and repair the load bearing structural walls, roof structural, foundation, and plumbing and electrical up to the metering devices serving the Premises. Landlord shall also maintain and repair all interior items including but not limited to walls, plumbing, electrical, doors, windows and HVAC. Tenant shall maintain and repair all property and improvements it brings into the classroom, including cabinets, furniture, chalkboards, etc. All supplies needed by the Tenant will be provided by the Tenant, including bathroom supplies and cleaning materials. Tenant shall be responsible for all cleaning.

7. Right of Entry. Landlord reserves the right during the term of this Lease to enter and inspect the Property at reasonable hours and in such a manner as to not interfere with the business activity conducted thereon. No inspections shall be conducted unless an authorized representative of Tenant is present.

8. Assignment and Subletting. Tenant may not assign any interest in this Lease, or sublet any portion of the leased premises, without the written consent of the Landlord.

9. Remedies upon Default. If Tenant should fail to promptly pay the Rent herein stipulated or any other sum for which Tenant is liable under the terms of this Lease within fifteen (15) days after Tenant's receipt of notice from Landlord of such delinquency, Tenant shall owe a late payment penalty of five percent (5%) of the past due rental amount. If Tenant shall fail to pay the monthly amount due within thirty days of the due date, or should the Tenant breach any of its covenants under this Lease and not cure the same within thirty (30) days after the receipt of notice from Landlord designating such

breach, the Landlord may, at his option, terminate this Lease and take possession of the Property. The foregoing rights of the Landlord shall be in addition to any rights which the Landlord may have under law or in equity.

Notwithstanding any other provision of this Lease, where the curing of an alleged default requires more than the payment of money and the work of curing said default cannot be reasonably accomplished within the time otherwise permitted herein, and where Tenant has commenced upon curing said default and is diligently pursuing same, then Tenant shall be entitled to reasonable time extensions to permit the completion of curing said default as a condition precedent to any reentry by Landlord or termination of this Lease by Landlord, and any default that is cured shall not thereafter be grounds for reentry or termination.

10. Use of the Property. The Premises shall be continuously used, throughout the term of the Lease, solely for the purposes of providing an art program for school age children and an arts based summer camp program.

11. Removal of Equipment, Fixtures and Merchandise. Landlord acknowledges that Landlord has no interest in any personal property or equipment or furniture or any trade fixtures which may be installed by Tenant upon the Property, and Landlord agrees in the future to furnish Tenant, upon request, with such waiver or similar documents as may be reasonably required by any lender or equipment lessor in connection with Tenant's acquisition or financing respecting such personal property, equipment, furniture and fixtures. All personal property, furniture, equipment, and trade fixtures, including, but not limited to, specialty equipment, shelves, cabinets, counters and signs, which are installed or placed on the Property by or at the expense of Tenant shall remain the property of the Tenant, and Tenant shall have the right at all times to remove such personal property, furniture, equipment, and trade fixtures from the Property. Landlord shall not be responsible for the condition or safety of the furniture, fixtures, equipment, trade fixtures, inventory or other personal property used or stored on the Property, and Tenant shall indemnify and hold the Landlord harmless from any claims others might make on damage to any personal property used or stored on the Property.

12. Covenant of Quiet Enjoyment. Landlord covenants and warrants to Tenant that: (i) Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this Lease for the entire lease term including any extensions thereof, and has good and marketable title to the Property in fee simple, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, encumbrances or defects in title of any nature whatsoever, (ii) this Lease is not and shall not be subject or subordinate to any mortgage of Landlord; (iii) upon Tenant's compliance with the terms of this Lease, Tenant shall quietly and peaceably hold, possess and enjoy the Property for the full term of this Lease without any hindrance or molestation by any party, and Landlord will defend the title to the Property and the use and occupancy of the same by the Tenant against the claims of all persons, whomsoever, except those claiming by or through the Tenant.

13. Waiver of Breach. It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

14. Holding Over. In the event of Tenant's continued occupancy of the Property after the expiration of the term of this Lease or any renewal or extension thereof, or any earlier termination provided or permitted in this Lease, Tenant shall be deemed to be a tenant from month-to-month. All other covenants, provisions, obligations and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

15. Notices. All notices to be given to either party by the other shall be in writing, and shall be deemed to have been given when the same is either (i) personally delivered (including delivery by any "overnight mail service"), or (ii) deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested and properly addressed to the respective party; it being specifically agreed and understood that all cure or grace periods for compliance established under the terms and provisions of this Lease shall not be deemed to have commenced until such time as notice shall have been received by the party to whom it shall have been directed, or until such time as delivery of such notice shall have been refused. All notices to be given shall be sent as follows, unless the party to receive notice has notified the other in writing of a change:

To Landlord:
 Town of Black Mountain
 160 Midland Avenue
 Black Mountain, NC 28711

To Tenant:
 Stephanie Sultzman

16. Miscellaneous.

A. The captions in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

B. Time is of the essence of the Lease and of all provisions hereof.

C. This Lease shall be construed and enforced in accordance with the laws of the State of North Carolina.

D. This Lease may be executed in several counterparts, each of which shall be an original and all collectively shall constitute one lease.

IN WITNESS WHEREOF, Landlord has executed this Lease and Tenant has caused this Lease to be executed on its behalf and through its duly authorized officers, all as of the day and year first above written.

TOWN OF BLACK MOUNTAIN, Landlord

By: _____
Josh Harrold, Town Manager

Stephanie Sultzman, Tenant



STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

GREGORY C. GASKINS
DEPUTY TREASURER

Memorandum # 2018-05

To: Finance Officers of Local Governments and LEAs

From: Sharon Edmundson, Director, Fiscal Management Section

Subject: Changes to Pre-audit Certification Requirements for Electronic Obligations and Payments; Administrative Code - 20NCAC 03 .0409 and 20 NCAC 03.0410

Date: March 12, 2018

The 2015 legislature modified GS 159-28 (d2) (local governments) and 115C-441(d2) (local school administrative units) to allow the Local Government Commission (LGC) to adopt rules to address the execution of the pre-audit and disbursement process related to electronic transactions for local government and local school administrative units. The new pre-audit and disbursement rules were effective as of November 1, 2017, and exist as part of the North Carolina Administrative Code ([20 NCAC 03.0409](#) and [20 NCAC 03.0410](#)).

Units of government can now be exempt from the pre-audit certificate and disbursement certificate requirements on electronic transactions **if they follow the requirements as detailed in the new administrative code rules**. The purpose of this memorandum is to briefly outline the requirements that will allow local governments to take advantage of these changes for electronic transactions utilizing the following:

- (1) charge cards;
- (2) credit cards;
- (3) debit cards;
- (4) gas cards;
- (5) procurement cards; or
- (6) electronic funds transfers

It is important to note that **none of these rule changes exempt a unit of government from going through the pre-audit process**; the rules only exempt a unit from affixing the certificate of pre-audit on electronic transactions IF the unit abides by the rules set forth in the administrative code.

Requirements to Take Advantage of Pre-Audit Certificate Exemption on Electronic Obligations

There are multiple steps a unit of government must take in order to take advantage of the rule change for electronic **obligations**. These steps are:

1. The unit's governing board shall adopt a resolution authorizing the unit to engage in electronic payments as defined by G.S. 159-28 or G.S. 115C-441 (see Addendum A for a sample resolution).
2. The unit's board must adopt policies and procedures for electronic obligations or delegate the authority and responsibility for writing those policies and procedures to the finance officer.
3. The written policy must outline the basic procedures for pre-auditing obligations incurred by electronic transactions. The written policy and any procedures developed by the finance officer must provide sufficient internal controls over the obligation process, which must include the following:
 - a. Ensure that there is an appropriate budget ordinance or project/grant ordinance appropriation authorizing the obligation;
 - b. ensure that sufficient monies remain within the appropriation to cover the amount that is expected to be paid out during the current fiscal year if accounted for in the budget ordinance, or to cover the entire amount if accounted for in a project or grant ordinance.
 - c. Record the amount of the transaction in the unit's encumbrance system.
4. The unit must provide training to all personnel about the written policy and the procedures that must be followed before undertaking an electronic transaction.
5. If a governmental unit is not already doing so, the unit of government must present to its governing board at least quarterly a budget to actual statement by fund that includes budgeted accounts, actual payments made, amounts encumbered (including electronic obligations) and the amount of the budget that is unobligated.
6. The unit's written policy and procedures must include a method to track obligations, commonly called an encumbrance system. The system can be manual or maintained as part of the unit's accounting system or any combination thereof.

Requirements to Take Advantage of Disbursement Certificate Exemption on Electronic Payments

Likewise there are multiple steps a unit of government must take in order to take advantage of the rule change for electronic **payments**. These steps are:

1. The unit's governing board shall adopt a resolution authorizing the unit to engage in electronic payments as defined by G.S. 159-28 or G.S. 115C-441 (see Addendum A for a sample resolution).

2. The unit's board must adopt policies and procedures for electronic payments or delegate the authority and responsibility for writing those policies and procedures to the finance officer.
3. The unit must adopt a written policy outlining basic procedures for disbursing public funds electronically. The written policy must provide sufficient internal controls to ensure the following:
 - a. ensure that the amount claimed is payable;
 - b. ensure that there is an appropriate budget ordinance or project/grant ordinance appropriation authorizing the expenditure;
 - c. ensure that sufficient monies remain within the appropriation to cover the amount that is due to be paid out during the current fiscal year if accounted for in the budget ordinance, or to cover the entire amount if accounted for in a project/grant ordinance; and
 - d. ensure that the unit has sufficient cash to cover the payment.

Some of the questions we have received about this new process, along with our responses, are noted below.

Q. *Does the board's delegation of authority to the finance officer to develop the policies and procedures need to be in writing?*

A. Yes.

Q. *My unit already publishes monthly budget-to-actual financial reports on its website – will these suffice for the requirement to provide these reports to the board?*

A. We believe so if they meet all the other requirements listed.

While these changes do not address all the business challenges that local governments face in operating in an increasingly electronic environment, they should provide a way for entities to more easily operate within the requirements of the General Statutes in this particular area.

If you have any questions or concerns about this publication, please contact us at (919) 814-4299 or via email at Sharon.edmundson@nctreasurer.com

Resolution # R-19-10

**AUTHORIZING THE TOWN OF BLACK MOUNTAIN TO ENGAGE IN
ELECTRONIC PAYMENTS AS DEFINED BY G.S. 159-28 or G.S. 115C-441**

WHEREAS, it is the desire of the Black Mountain Board of Aldermen that the Town of Black Mountain is authorized to engage in electronic payments as defined by G.S.159-28 or G.S.115C-441; and

WHEREAS, it is the responsibility of the Finance Director, who is appointed by and serves at the pleasure of the Town Manager, to adopt a written policy outlining procedures for pre-auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409; and

WHEREAS, it is the responsibility of the Finance Director, who is appointed by and serves at the pleasure of the Town Manager to adopt a written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Aldermen of the Town of Black Mountain that the Board of Aldermen hereby:

Section 1. Authorizes the Town of Black Mountain to engage in electronic payments as defined by G.S. 159-28 or G.S. 115C-441;

Section 2. Authorizes the Town Manager and Finance Director to adopt a written policy outlining procedures for pre- auditing obligations that will be incurred by electronic payments as required by NC Administrative Code 20 NCAC 03 .0409;

Section 3. Authorizes the Town Manager and Finance Director to adopt a written policy outlining procedures for disbursing public funds by electronic transaction as required by NC Administrative Code 20 NCAC 03 .0410;

Section 4. This resolution shall take effect upon its passage.

READ, APPROVED AND ADOPTED by a vote of ___ to ___ this 10th day of June, 2019.

ATTEST:

Angela Reece, Town Clerk

Don Collins, Mayor

Josh Harrold, Town Manager

Dean Luebbe, Finance Director

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
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Town of Black Mountain, North Carolina

Procurement Policy

Contents

1.0	Policy Information	1-2
2.0	Policy Purpose.....	1-2
3.0	Roles & Responsibilities	1-2
a.	Town of Black Mountain Finance Department –Procurement.....	
b.	All Town Departments	1-2
c.	Standards of Conduct	1-2
4.0	Penalties for Non-Compliance	1-3
5.0	Types of Purchases.....	1-3
a.	Goods (Apparatus, supplies, materials, or equipment)	1-3
b.	Services	1-3
c.	Architects, engineers, surveyors, design and build, or construction manager at risk.....	1-4
d.	Construction or Repair	1-5
e.	Information Technology.....	1-5
6.0	Bidding.....	1-6
a.	Formal Bids.....	1-6
b.	Informal Bids	1-8
c.	Bid Specifications	1-8
d.	Request for Proposals (RFP)	1-9
e.	Request for Qualifications (RFQ)	1-9
f.	Exemptions.....	1-9
7.0	Procurement Methods	1-11
a.	Requisitions.....	1-11
b.	Purchase Orders	1-11
c.	Change Orders.....	1-12
d.	Procurement Cards	1-13
e.	Contracts	1-13
8.0	Delivery and Performance.....	1-13
	Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes	1-15
	Exhibit B - Independent Contractor / Employee Checklist.....	1-16
	Exhibit C - Procurement Guidance When Using Federal Funds.....	1-17

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

1.0 Policy Information

Category & Subcategory:	Procurement/Policies and Procedures	Original Effective Date:	7/1/2019	This Revision Effective:	
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Persons Affected:	Eligible Town of Black Mountain Workforce
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Approvals:	Approved By:	Town Manager	Approved By:	Finance Director
	Date Approved:		Date Approved:	
	Approved By:	Town Board of Aldermen		
	Date Approved:			

Revision History

Effective Date	Version	Section	Summary of Changes	Author

2.0 Policy Purpose

This policy is intended to be a guide to all Town of Black Mountain Government employees responsible for obtaining apparatus, supplies, materials, equipment and services. The intent is to design policies and procedures that will serve the Town's needs, provide for effective, efficient and economical buying processes, and follow the legal guidelines set forth in the North Carolina General Statutes.

3.0 Roles & Responsibilities

The procurement roles and responsibilities of the Town of Black Mountain Government can largely be assigned to the following:

a. Town of Black Mountain Finance Department- Procurement

The Town's Finance Department is responsible for:

- Procurement policy development, revision, implementation, and monitoring;
- Administration of centralized procurement programs and processes;
- Development and provision of any required procurement-related training to town employees;
- Assisting all town employees with procurement needs.

b. All Town Departments

Department Directors and their designees, and all staff with procurement-related roles are responsible for the following:

- Conducting all purchasing activities in accordance with the applicable North Carolina General Statutes, Town policies and procedures, ordinances, Federal rules and regulations, and in pursuit of the best interests of the Town of Black Mountain;
- Developing and maintaining good public, supplier, and internal relationships;
- Ensuring fair and open competition by ethical means;
- Extending honest, courteous, and impartial treatment to all interested suppliers;
- Respecting public trust and not abusing the procurement process for personal advantage or gain.

c. Standards of Conduct

i. Gifts and Favors from Suppliers

North Carolina General Statute § 133-32 addresses the legal implications of governmental employees accepting gifts and favors from suppliers. Briefly summarized, this statute states it is unlawful for any supplier who has a current contract with a governmental agency, has performed under such a contract within the past year, or anticipates bidding on such a contract in the future to give gifts or favors to any employee of a governmental agency who is charged with preparing plans, specifications, or estimates for public contracts, awarding or

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

administering such contracts, or inspecting or supervising construction. It is also unlawful for a governmental employee to willfully receive or accept such gifts or favors.

ii. Supplier Relations

Should a department have trouble with a supplier, concerns should be documented in an email to the Finance Director or their designee. Correspondence should be as specific as possible, detailing the circumstances, dates, personnel involved (including titles), and phone numbers. This information will be helpful in determining if the supplier will be considered for future bid awards.

4.0 Penalties for Non-Compliance

Failure to comply with this policy may result in an audit finding and/or disciplinary action, including termination and criminal charges. Individuals and departments identified as failing to comply with Town of Black Mountain policies shall be notified and potentially identified to town management, and/or law enforcement, as appropriate.

5.0 Types of Purchases

Purchases must be made according to the dollar thresholds set forth by North Carolina law (see **Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes**). Additional Town policies may also apply, as shown below.

a. Goods (Apparatus, supplies, materials, or equipment)

The following thresholds are established to govern procurement of goods.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$499	Multiple quotes not required P-Card recommended Purchase Order or Contract optional	Authorized Department Staff
\$500 - \$29,999	Multiple quotes recommended Requisition Purchase Order or Contract	Town Manager or Designee
\$30,000 - \$89,999	Informal bid process Requisition Purchase Order or Contract	Town Manager or Designee BOA Notified
\$90,000 or greater	Formal bid process Purchase Order or Contract	Town Manager or Designee BOA Approval

i. Food Purchases

Specific guidelines exist around food purchases for meetings, please refer to the Meals and Meetings Policy. Meals should not be purchased using a procurement card while also receiving a per diem for meal expense, please refer to the Procurement Card Policy.

ii. Vehicle Purchases

The purchase of vehicles should be coordinated in conjunction with the Finance Department. Title and/or bill of sale must be received and maintained for all vehicle purchases.

iii. Buy and Sale of Real Property

The buy and sale of real property at any dollar amount must be approved by the governing board.

b. Services

Competition may be formal or informal based on the dollar amount and project (RFP, simple quotes, or other best practice method). Award should be based on the best overall, justifiable solution, which may include cost and other factors. Refer to **Exhibit B - Independent Contractor / Employee Checklist** for help in determining whether someone qualifies as an independent contractor.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$500	Best practice based on the needs of the department	Authorized Department Staff
\$501 - \$49,999	Best practice based on needs of the department Purchase Order or Contract Contract may be advisable based on risk	Town Manager or Designee
\$50,000 or greater	Solicitation or Request for Proposals required unless waived (reason for waiver must be provided) Purchase Order or Contract	Town Manager or Designee BOA Approval
Contracts with schools, universities or other agencies for student interns	Contract	Town Manager or Designee
One year leases, rentals and maintenance contracts	Contract	Town Manager or Designee
Multi year leases, rentals and maintenance contracts	Contract	Town Manager or Designee BOA Approval

For services contracts, consider the following:

- Issuance of a Request for Proposals (RFP) is the preferred method when and if a Town department chooses to use a more formal competitive solicitation process.
- The procedures for advertising and proposal opening are flexible.
- Award of service contracts may be based on factors other than cost and responsiveness with such factors as vendor experience, qualifications, and solution possible taking precedence over price.

Waiver of competitive solicitation of services contracts

A Department may waive the requirement for issuance of a competitive solicitation for a services contract over \$90,000 when it is in the Town's best interest to do so. Examples of such instances include the following:

- continuum of service delivery is paramount;
- competition will not yield significant benefits;
- when only a single vendor can provide a specific service.

c. Architects, engineers, surveyors, design and build, or construction manager at risk

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$49,999	Qualification-Based Selection (unless exempted) Contract	Town Manager or Designee
\$50,000 - or greater	Qualification-Based Selection Contract	Town Manager or Designee BOA Approval

1. Qualification-Based Selection (QBS)

- Selection criteria shall be based on qualifications and solution possible taking precedence over price to evaluate participating firms.
- When using construction manager at risk, prequalification of first-tier subcontractors must be determined as stated in General Statute §143-128.1.
- If the exemption of the qualification process is being used it must be noted in any advertisement or announcement.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

2. Task Orders

Any task order issued by an architect, engineer, or surveyor shall be approved by the Board or an employee designated by the Board.

d. Construction or Repair

General Statute § 143-129 requires towns to obtain formal bids for construction or repair for projects of \$500,000 and above and sets forth advertisement timeframes. An advertisement must run one time at least seven calendar days before the bid opening. The advertisement must list the date and time of the bid opening, mention where the specifications may be obtained, and state that the Board reserves the right to reject any and all bids. General Statute § 143-132; and § 143-129(b). Three bids are required and if three are not received, the project must be re-advertised at least seven full days before the next bid opening. If three are still not received, a contract can be awarded by the Board of Aldermen after evaluation, to the lowest responsive, responsible bidder, taking into consideration quality, performance, and the time specified for performance of the contract. Construction and repair projects should be handled by the appropriate staff, along with the pre-bid conferences, bidding and award in consultation with the architect, engineer, or construction manager at risk for the project.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	Best practice based on the needs of the department	Authorized Department Staff
\$5,000 - \$29,999	Best practice based on the needs of the department Purchase Order or Contract	Town Manager or Designee
\$30,000 - \$89,999	Informal bid process Purchase Order or Contract	Town Manager or Designee BOA Notified BOA Approval required over \$50,000
\$90,000 - \$499,999	Informal bid process Purchase Order or Contract	Town Manager or Designee BOA Approval
\$500,000 or greater	Formal bid process Contract	BOA Approval

e. Information Technology

All requisitions for Information Technology related items, including but not limited to computer hardware and software, telephone systems, mobile communication devices, and security goods or services will have prior approval and involvement of the Town Manager or Designee.

NC Statute allows for the selection and award based on considerations other than price.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	Request for technology purchase through IT Vendor	Authorized Department Staff
\$5,000 - \$29,999	Request for technology purchase through IT Vendor Purchase Order or Contract	Town Manager or Designee
\$30,000 - \$89,999	Request for technology purchase through IT Vendor Informal Request for Proposals (RFP) Purchase Order or Contract	Town Manager or Designee BOA Notified BOA Approval required over \$50,000
\$90,000 or greater	Request for technology purchase through IT Vendor Formal Request for Proposals (RFP) Contract	Town Manager or Designee BOA Approval

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

6.0 Bidding

All bidding shall be compliant with North Carolina statutes.

When procurement requires both the purchase of goods and services, it is imperative to determine which element, whether goods or services, constitutes the larger component of cost. **The element constituting the larger portion of the procurement is the predominant aspect.** The predominant aspect must be identified in order to determine the procurement method required to fulfill the purchase.

The record of bids submitted shall be maintained. Departments should supply this record to the Finance Department as directed.

a. Formal Bids

A **competitive bid process** in compliance with NCGS § 143-129 must be used in the following cases:

- Purchase of supplies, materials, and equipment estimated at \$90,000 and above;
- Construction or repair contracts estimated at \$500,000 and above.

1. **Notify Finance Department** that a formal bidding process is required.

2. Prepare Specifications

Detailed written specifications will be prepared by the requesting Department with the assistance of the Finance Department or designee when needed. Refer to the section labeled “Bid Specifications” for additional information.

3. Create Bid Package or Request for Bid

A Request for Bid will be issued and will contain at a minimum the following information:

- A. The name of the requesting department.
- B. A brief description of the goods or services to be purchased.
- C. The date and time of the bid opening.
- D. The date and time of the pre-bid conference, if applicable.
- E. The name of the Finance Department Head or designee.
- F. General Conditions, applicable for a Formal Bid Proposal.
- G. Specific requirements for the goods or services to be purchased.

4. Post Advertisements

Advertisement of Bids: North Carolina General Statute § 143-129(b) requires that at least seven (7) calendar days must lapse between the date the advertisement appears and the date of the opening of formal bids. Bidding opportunities are publicized electronically using the Town website.

5. Conduct Pre-bid Conference (Optional)

A pre-bid conference is a meeting between the Finance Director (Procurement Manager) and Town Manager or designee, the requesting departmental staff and prospective suppliers during which the specifications will be reviewed, and/or the site toured. The Procurement Manager or designee will explain the scope and objectives and techniques of the procurement, emphasize critical elements of the bid documentation and encourage input from the suppliers. A site visit allows the suppliers to observe physical characteristics of the land or structures that are relevant to the procurement. A pre-bid conference and site visit are collectively referred to as a “Pre-Bid Conference.”

- A. When a pre-bid conference should be held: Pre-bid conferences may be particularly advisable when the Town seeks to procure goods or services that are highly technical or complex.
- B. Notice of the pre-bid conference: If a pre-bid conference is conducted, the bid documents must provide the time, date and location of the conference. The conference should be held as soon as possible after the Bid Package is issued.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

- C. Attendance at the pre-bid conference: Attendance of suppliers at pre-bid conferences is encouraged but is not mandatory, unless otherwise specified in the Bid Package.
- D. Oral representations at the pre-bid conference: The Procurement Manager, designee or requesting department will make a written note of all inquiries and points of contention raised by the prospective bidders. Clarification may be provided at the pre-bid conference as long as the specifications or conditions are not altered. Oral representations made at the pre-bid conference by the Procurement Manager, designee or the requesting department will not be binding upon the Town. All material clarifications of any provision of the invitation for bids, or the amendment of a specification or condition of the Bid Package, will be made only in writing as an addendum.
- E. Minimum requirements: The Procurement Manager may add any additional requirements to a pre-bid conference as is deemed appropriate.

6. Submission of Bids

Proposals for Formal Bids must comply with the following:

- A. Oral, telephone, or faxed bids are not accepted: The Finance Director (Procurement Manager), Town Manager or designated staff will not accept oral bids nor bids received by telephone, or fax, for formal bids.
- B. Bids must be sealed: Bids shall remain sealed until the date and time set for the opening.
- C. Deviations: Bids containing conditions, omissions, erasures, alterations, or items not called for in the bid may be rejected by the Town as being incomplete.
- D. Bid forms must be signed: The bid forms must be signed in order to be considered a responsive, responsible bid. If a bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation's trade name. The bidder must indicate the corporate title of the individual signing the bid.
- E. Confirmation of receipt: The bidder is responsible for confirming the receipt of a bid submission.

7. Receipt of Bids

The Procurement Manager or designee will receive bids as follows:

- A. Bids must be received timely: If bid specifications indicate bids are to be delivered in person, through the postal mail, or by parcel service, bids must be delivered no later than the date and time set for the receipt of bids in the bid specifications.
- B. Bids must be kept in a secure location until opened: All bids received must be sealed and will be kept in a secure location until the time and date set for the opening of bids.
- C. Identity of Bidders confidential: Prior to the time and date of opening, the identity of the suppliers submitting bids and the number of bids received is confidential and may be disclosed only to Town officials and only when disclosure is considered necessary for the proper conduct of the bidding process.
- D. Inadvertent opening of bid: If a bid is inadvertently opened in advance of the prescribed bid opening, the Procurement Manager or designee will write an explanation of the inadvertent opening on the envelope, with the bid number, time and date of opening. The envelope will be resealed and deposited with the other bids.
- E. Late Bids: Late bids will not be considered under any circumstances and will be returned unopened with a letter or email of explanation to the sender.

8. The Opening of Bids

The Town Manager or designee will open formal bids according to the following procedure:

- A. Bids opened and read aloud: All bids received timely will be opened and publicly read aloud at the time and date established for such opening in the Bid Package.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

- B. Bids submitted electronically: Bids received via electronic means such as email or fax are closed at the determined close time. A bid tally will be run indicating the suppliers responding to the bid and their bid amounts as submitted.
- C. Bids submitted for Information Technology goods and services:
Proposals submitted for information technology goods or services, including software, telecommunications, data processing, etc., are not subject to public inspection until a contract is awarded. Therefore, there will be no public bid opening to comply with NCGS 143-129.8 for information technology related items.

9. Evaluation of Bids

The bids received timely will be examined by the Finance Director (Procurement Manager) or designee for compliance with the requirements set forth in the Bid Package. The Procurement Manager or designee will review each bid to determine whether it has facial deficiencies that preclude it from being examined further.

10. Award

Bids shall be awarded in accordance with North Carolina General Statutes § 143-129(b) to the lowest responsive, responsible bidder taking into consideration quality, performance, and the time specified in the proposal for the performance of the contract.

b. Informal Bids

An informal bidding process will be used for the following:

- Construction or repair contracts estimated from \$30,000 to \$499,999
- Purchases of supplies, materials, and equipment estimated from \$30,000 to \$89,999

While informal bids are acceptable at these thresholds, departments may also choose to use a formal process if desired. If the estimated total dollar amount of an informal purchase is over \$80,000 for purchases of goods or over \$450,000 for construction or repair contracts, then it is recommended to use a formal bid process to prevent rebidding if all quotes received are over the formal threshold.

NCGS § 143-131 does not specify any methods for securing informal bids, however it does require awards be made to the lowest responsible bidder taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. Methods of receiving quotes are at the discretion of the Procurement Manager or the requesting department designee.

State and Town policy require the following for all informal bids:

- Written documentation of contacting more than one vendor to support the competitive process.
- All verbal pricing or quotes must be documented in writing.
- The record of bids shall not be subject to public inspection until the contract is awarded.

c. Bid Specifications

When using a formal or informal bidding process, specifications must be prepared. All specifications should do at least the following:

1. Identify minimum requirements;
2. Encourage competitive bids;
3. Be capable of objective review;
4. Provide for an equitable award at the lowest possible cost;
5. Identify factors to be used in evaluating bids.
6. Specifications will be as simple as possible while maintaining the degree of exactness required to prevent bidders from supplying substandard goods or services and otherwise taking advantage of their competitors.
7. All specifications utilizing a name brand must include the term “or substantially equivalent” to avoid being restrictive and eliminating fair competition from the bidding process.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

Different methods of structuring specifications include:

- Qualified products generally accepted for the same use
- Specification by architectural or engineer drawings
- Specification by chemical analysis or physical properties
- Specification by performance, purpose or use
- Specification by identification with industry standards
- Specification by samples

d. Request for Proposals (RFP)

NCGS § 143-129.8 authorizes the use of a Request for Proposals (RFP) process rather than an Invitation to Bid (ITB) in certain instances. RFP's may be used for the following:

- Purchases of services;
- Any combination of goods or services, particularly when the services component of the purchase is greater than the goods component;
- Technology and services contracts;
- Other combinations of goods and services not best handled by NCGS 143-129 and where departments have a need for a more flexible approach.

e. Request for Qualifications (RFQ)

In instances where a Qualifications-Based Selection (QBS) is required, a Request for Qualifications (RFQ) will be used to solicit responses from interested firms and individuals. The Procurement Manager or designee should be notified to begin this process, to guide the QBS through selection, and to assist with creation of a proper RFQ.

f. Exemptions

G.S. 143-129 defines several exemptions to the competitive bidding requirements. The following categories of purchases are exempt from both the formal and informal bidding requirements established in G.S. 143-129. However, the following list is just a shorthand statement of these categories; before attempting to make purchases using these exceptions read the relevant sections of the statute contained in G.S. 143-129 very carefully as this statute provides additional guidance. Items 1) through 11) are found in G.S. 143-129 (e). Statutory guidance as to the other items is found in the statutes listed beside the item.

1. Purchases from other units of government;
2. Emergencies;
3. Group or Cooperative Purchasing Programs;
4. Change Order Work;
5. Gas, Fuel, and Oil;
6. Sole Source Purchases;
7. Information Technology Goods and Services awarded by the North Carolina Office of Information Technology Services;
8. Guaranteed Energy Savings Contracts; (See also G.S. 143-129.4)
9. State Contract Purchases;
10. Federal Contract Purchases
11. Purchase of Used Goods; (See G.S. 143-129 (e)(10))
12. Construction Management at Risk;
13. Previously Bid or "Piggybacking" Contracts; (See G.S. 143-129 (g))
14. Solid Waste Management Facilities; (See G.S. 143-129.2)
15. Use of Unit's Own Forces (force account work); (See G.S. 143-135 & SL 2009-250)
16. Purchases of Goods and Services from Nonprofit Work Centers for the Blind and Severely Disabled. (G.S. 143-129.5)

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

Most Common Exemptions

1. Emergency Purchases

NCGS § 143-129(e)(2) defines emergency purchase as “Cases of special emergency involving the health and safety of the people or their property.” This exception is used in rare circumstances, such as natural disaster or sudden and unforeseeable damage to property. In cases of emergencies, the Department Head or designee may purchase directly from any supplier, supplies or services whose immediate procurement is essential to prevent delays in work, which may affect the life, health, or safety of the Town of Black Mountain employees or citizens. The user department will exercise good judgment and use established suppliers when making emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related. **Not anticipating needs does not constitute an emergency.** Should any purchase exceed the available account budget, the Finance Director and Town Manager should be notified immediately.

- During working hours, the following procedure should be used for emergency purchases:

An emergency purchase request shall be submitted by the requesting department to the Finance Director or Town Manager as soon as practicable. For emergency purchases over \$500.00 the issuance of a purchase order is required as soon as practicable. The requesting department will include in the requisition supporting documentation for the emergency purchase order: item(s) to be purchased with estimated quantities and the reason for the emergency purchase. After verifying available funds, a purchase order number will be issued for the expenditure.

- After working hours, the following procedure should be used for emergency purchases:

An emergency purchase request will be submitted by the requesting department to the Finance Director or Town Manager the next working day. For emergency purchases over \$500.00 the issuance of a purchase order is required as soon as practical. The requesting department will also include any pertinent information associated with the emergency purchase, to serve as supporting documentation and will be attached to the purchase order, including but not limited to: item(s) to be purchased with estimated quantities, and the reason for the emergency purchase.

Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures will be limited and monitored for abuse.

2. State Contract Purchases

Departments may use State of North Carolina contracts to procure available items without bidding if the contractor is willing to extend to the Town the same or more favorable prices, terms, and conditions. Following is a link to the state purchasing and contracting site where items can be searched for by keyword. These procurements do not require BOA approval. <http://www.doa.state.nc.us/PandC/keyword.asp>

3. Cooperative and Group Purchasing Programs

Similar to State Contract Purchases, the Town may make purchases of supplies and equipment through group purchasing programs, which another entity has already carried out a competitive process to establish contracts on behalf of multiple entities at discount prices. These procurements do not require BOA approval.

4. Sole Source

In the rare event there is only one supplier capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Procurement Manager. Whenever Department Heads or designees determine a need to purchase goods from a “sole source”, they will document the reason. The provisions of G.S. 143-129 will require the Town Board of Aldermen approve this sole source exception. A sole source purchase exemption applies when at least one of these conditions exist:

- a. Performance or price competition for a product is not available.
- b. A needed product is available from only once source of supply.
- c. Standardization of compatibility is the overriding consideration.

If one of these conditions applies to the good to be purchased, then the item will be exempt from bidding and the purchase must have board approval. Contact the Procurement Manager for guidance before proceeding.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

5. Piggybacking

The Town can purchase, without bidding, from a supplier that has, within the past 12 months, successfully gone through the competitive bidding process for that item or service and contracted to furnish an item or service to another public agency. The supplier must be willing to supply the same item at the same or more favorable prices and other terms. The contract intended to be copied must be one that was entered into following the award of a public bidding process similar to ours.

North Carolina General Statutes § 143-129(g) allows municipalities, counties, or other subdivisions to piggyback for supplies, materials, or equipment from another governmental entity that has within the previous 12 months, completed a formal bid process, to purchase similar supplies, materials, or equipment if agreed upon by the supplier. The Statute requires approval by the Board of Aldermen and advertisement of intent to award. Federal guidelines may prohibit the option of piggybacking.

6. Grants

When the Town is awarded a grant that has procurement requirements specified by the grantor, the Town will follow those requirements as long as they do not violate North Carolina General Statutes or Federal Uniform Guidance.

7. Use of Federal Funds

When using federal funds, the Town must follow NC Statutes as well as OMB Guidance provided in the Code of Federal Regulations, Subpart D - Post Federal Award Requirements. The thresholds for micro-purchases, small purchases, and when sealed bids are required are set by OMB Guidance provided in the Code of Federal Regulations Title 2 Vol. 1 § 200.67 and §200.88. This guidance includes but is not limited to the following requirements:

- i. **Micro-purchases (\$0 - \$9,999)**
When practical, distribute micro-purchases among qualified suppliers.
- ii. **Small Purchases (\$10,000 – \$249,999)**
 - a. Price rate quotations must be obtained from an adequate number of qualified sources.
 - b. Written procurement procedures to define number and methods for obtaining quotes.
- iii. **Sealed Bid Procedures Required (\$250,000 and higher)**
 - a. Price rate quotations must be obtained from an adequate number of qualified sources;
 - b. Publicly advertised;
 - c. Competitive proposals;
 - d. Non-competitive proposals require written approval and justification (e.g. only one source/vendor available, inadequate competition, emergency).
- iv. **Documentation required (All amounts)**
 - a. Evidence the awarded supplier is not excluded from doing business with the Federal Government.
 - b. When quotes are required, documentation that an attempt was made to contact at least three suppliers to obtain quotes.

View Exhibit C - Procurement Guidance When Using Federal Funds for further guidance.

7.0 Procurement Methods

a. Requisitions

To initiate a requisition request and trigger the procurement cycle for purchase orders, employees shall contact the Finance Department to make the request. The request, combined with the required supporting documentation, appropriate approvals, and sufficient budget gives the Finance Department the authority to issue a purchase order. The Department Head, Finance Director and or Town Manager or designee must approve all requisitions within the requesting department.

b. Purchase Orders

Purchase orders are required for all purchases of \$500 and above.

A purchase order is a contract between the Town and a supplier and is not binding until accepted by the supplier. Obtaining supplies, materials, equipment or services \$500 and over without a purchase order is an

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

unauthorized purchase and is not permitted. **Unauthorized purchases or split purchases to avoid the \$500 threshold are against Town policy and may result in disciplinary action.**

i. Purchase Order Requirements

1. **Submission of a requisition** Purchase orders will not be created without a properly submitted requisition.
2. **Terms and conditions** must clearly define the delivery and performance requirements of the services, supplies, or equipment.
3. **Completion of the purchase order** by the Procurement Manager or designee. The purchase order must be pre-audited, and the signatures of the Procurement Manager and Finance Director must be on the completed document to be valid.
4. **Processing invoice(s) for payment** against a purchase order requires the applicable purchase order number be indicated for the invoice and that the purchase order have sufficient balance to cover the invoice amount. Receipt of goods and/or services must be verified prior to final payment of an invoice.

ii. Blanket Purchase Orders

Blanket Purchase orders can be used when there is a recurring need for expendable goods that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably. Use of this process helps to avoid the creation of numerous purchase orders and contracts for routine purchases. Blanket purchase orders can also be a useful budgetary tool, as they obligate funds and allow easy tracking of recurring purchases throughout the year. A blanket purchase order should be used if the following criteria are applicable:

1. The annual cost can be reasonably estimated;
2. The purchases are paid through invoices (though it can be done if P-Cards are used);
3. There is a single account to which the expenses should be charged.

Examples would include maintenance agreements, purchase of building/cleaning supplies, etc. Requests for blanket purchase orders must, in addition to the required information, indicate the following:

1. Items covered by the blanket purchase order and the amount should be listed in the purchase order comments;
2. If blanket purchase order should be limited to certain department employees, please include their names in the purchase order.

The issued purchase order will instruct the supplier that unauthorized purchases will not be allowed. It is the responsibility of the individual authorized to purchase under a blanket purchase order to ensure that an unspent balance remains to cover the purchases to be made for the remainder of the purchase order period.

iii. Purchase Order Cut-Off Date

Requisitions for materials, supplies, services and equipment (not included in blanket purchase orders or service contracts) for the ending current fiscal year must be submitted on or before a predetermined date provided to departments by the Finance Director. Requisitions of a routine nature that could have been scheduled prior to the cut-off date, and deemed not critical, will be processed in the new fiscal year. This procedure affords the Finance Department the opportunity to complete fiscal year end activities in a timely and proper manner and prepare for the annual audit.

c. Change Orders

- Changing, modifying, or canceling an existing purchase order can be initiated by the issuing department by submitting documentation to the Procurement Manager.
- Approval of change orders is based on the new cumulative amount of the purchase order. Refer to the Types of Purchases section to view approval authorities.
- Changes to a purchase order will not be processed if the scope of services has been rendered or materials have already been received.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
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d. Procurement Cards

Purchases less than \$500 should be obtained by procurement card when possible. Please refer to the Procurement Card Policy.

e. Contracts

All contracts are required to follow the Town of Black Mountain Contracts Policy and Contracts Control Process contained within.

i. Contracts for Services

Contracts are advised for use when the terms and conditions of the Town's purchase order is not sufficient to adequately protect against possible risk, or the scope of work is too complex to be adequately detailed in a purchase order.

ii. Contracts for Goods

In most cases a purchase order is sufficient as a contract for goods. Contracts for goods should be used if the nature of purchase is high risk and is not sufficiently controlled by the terms and conditions in the purchase order.

iii. Contracts for Grants

Any grant the Town awards should be entered into the Town's financial software to obligate funds, and stored in the Town's contract repository.

iv. Multi-year Contracts

Contracts that are not associated with a project ordinance, more than 12 months in length, cross town fiscal years, and require funding from subsequent town budgets require a non-appropriation clause or Board of Aldermen approval.

For example:

1. A contract runs from June – May (12 months) and the total for the entire contract is \$60,000 (\$5,000 per month). The current fiscal year funds \$5,000 and the subsequent fiscal year funds \$55,000. This contract does not require BOA approval because the term is not more than 12 months.
2. A contract runs from June – September (16 months) and the total for the entire contract is \$80,000 (\$5,000 per month). The current fiscal year funds \$5,000 and the subsequent fiscal year funds \$75,000. This contract requires BOA approval because the contract requires funding from more than one fiscal year and the term is more than 12 months.
3. A contract runs from April – June (15 months) and the total for the entire contract is \$75,000 (\$5,000 per month). The current fiscal year funds all the \$75,000. This contract does not require BOA approval because all the funding comes from the current fiscal year, not requiring funding in subsequent fiscal years.

8.0 Delivery and Performance

i. Delivery schedule

The importance of the delivery schedule may be emphasized to the supplier within the bid documents. Delivery requirements will be clearly written and fully understood by all suppliers. If several items are required by the purchase order, there may be a different delivery schedule for each item. It is necessary to clearly indicate the delivery location on the requisition.

ii. Non-performance

If a supplier fails to meet any requirements of the specifications or terms and conditions of the contract or purchase order, the supplier can be cited for non-performance. The seriousness of non-performance will be evaluated by the department and Procurement Manager based upon the circumstances of each violation.

iii. Inspection and testing

Goods and materials should be checked at the time of receipt for damage or defects. The inspection will include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) will be rejected. To protect the Town's rights in the event of a rejection for any reason, the supplier will be informed immediately. Reasons for the rejection must be documented in an email to the Procurement Division in a timely manner.

Title: Procurement Policy	Policy #: Initial	Revision #: Initial
---------------------------	-------------------	---------------------

iv. Supplier relations

Should a department have trouble with a supplier, concerns should be documented in an email to the Procurement Division. Correspondence should be as specific as possible, detailing the circumstances, dates, personnel involved (including titles) and phone numbers. This information will be helpful in determining if the supplier will be considered for future bid awards.

v. Program Compliance Requirements

All written statements, certifications or intentions made by the Bidder will become a part of the agreement between the Contractor and the Town of Black Mountain for performance of this contract. Failure to comply with any of these statements, certifications, or intentions will constitute a breach of the contract. A finding by the Town of Black Mountain that any information submitted either prior to award of the contract or during performance of the contract is inaccurate, false or incomplete, will also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It will be solely at the discretion of the Town of Black Mountain whether to terminate the contract for breach. In determining whether a contractor has made best faith efforts, the Town of Black Mountain will evaluate all efforts made by the Contractor and will determine compliance.

Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes

Requirement	Threshold	Statute
Formal Bids		
Construction or repair contracts	\$500,000 and above (estimated cost of contract)	N.C.G.S §143-129
Purchase of apparatus, supplies, materials and equipment	\$90,000 and above (estimated cost of contract)	N.C.G.S §143-129
Informal Bids		
Construction or repair contracts	\$30,000 to formal limit	N.C.G.S §143-131
Purchase of apparatus, supplies, materials and equipment	\$30,000 to formal limit	N.C.G.S §143-131
Construction methods authorized for building projects		
Separate Prime	Over \$300,000 (estimated cost of project)	N.C.G.S §143-128
Single Prime		
Dual Bidding		
Construction Management at Risk		
Minority-business enterprise requirements – Building Projects		
Projects with state funding	\$100,000 or more	N.C.G.S §143-128.2(a)
Locally funded projects	\$300,000 or more	N.C.G.S §143-128.2(a)
Projects in the informal range	\$30,000 to \$500,000	N.C.G.S §143-131(b)
Limit on use of own forces		
Construction or repair projects	Not to exceed \$125,000 (total project) or \$50,000 (labor only)	N.C.G.S §143-135
Bid bond or deposit		
Construction or repair projects	Formal bids (see above)	N.C.G.S §143-129(c)
Purchase contracts	Not Required	
Performance/payment bonds		
Construction or repair projects	Projects over \$300,000 for each contract over \$50,000	N.C.G.S §143-129(c); N.C.G.S §44A-26
Purchase contracts	Not Required	
General Contractor’s License	\$30,000 and above	N.C.G.S. §87-1
Use of registered architect or engineer required		
Nonstructural work	\$300,000 and above	N.C.G.S. §133-1.1(a)
Structural repair or new	\$135,000 and above construction	
Repair work affecting life safety	\$100,000 and above systems	
Selection of architect, engineer, surveyor, or construction manager at risk		
“Best qualified” selection procedure	All contracts unless exempted	N.C.G.S. §143-64.31
Exemption authorized	Projects where estimated fee is less than \$50,000 or other projects in sole discretion of BOA	N.C.G.S. §143-64.32

Exhibit B - Independent Contractor / Employee Checklist

To assist you in deciding whether a worker is an employee or an independent contractor, complete the following questions. A worker is generally considered to have an employee relationship with the Town if the questions below are answered "YES".

Complete this checklist only for individuals-sole proprietors, and partnerships. Do not complete for employees of a corporation.

NAME: _____

Circle Answer

1. Is the worker currently employed by the Town or has the worker previously been an employee of the Town? Position: _____	Yes No
2. Are the hours of work established or regulated by the Town?	Yes No
3. Are tools and equipment supplied by the Town? <i>Independent contractors use their own equipment.</i>	Yes No
4. Does the worker provide their service only to the Town? <i>Independent contractors may have several contracts with other companies and advertise their services in the phone book or other source.</i> List source: _____	Yes No
5. Is the method of payment by unit of time, (i.e. hourly, weekly or monthly wage)? <i>(Independent contractors are usually paid by job in a lump sum)</i>	Yes No
6. Is training received from or at the direction of the Town - either formally or informally?	Yes No
7. Are repairs to equipment paid by the Town? <i>Independent contractors pay for their own repairs.</i>	Yes No
8. Is the worker required to work at a specific place or to work on the Town 's premises if the work could be done elsewhere? <i>Independent contractors usually have a main office or other facility.</i> Office Location: _____	Yes No
9. Does the worker submit regular oral or written reports to the Town to account for their actions?	Yes No
10. Are business and/or travel expenses directly paid by the Town? <i>Independent contractors pay their own expenses.</i>	Yes No
11. Does the Town restrict the worker from accepting any other work? <i>Independent contractors may have several jobs at one time.</i>	Yes No
12. Does the worker act in the capacity of a foreman for/or a representative of the Town by hiring others, supervising them and paying them at the direction of the Town?	Yes No
13. Does the worker wear a uniform with the Town logo or other means of identification, except for security tags?	Yes No
14. Is insurance coverage (liability, health, etc.) supplied by the Town?	Yes No
15. Does the Town use the worker for any odd jobs that differ from their normal activities?	Yes No
16. Is the relationship between the Town and the worker a continuing one?	Yes No
17. Is the worker free from any liability for quitting a job before the job is completed?	Yes No
18. Does the worker have to perform services in the order or sequence set by the Town?	Yes No

Note: Independent contractors are required to have all necessary licenses to perform the work that they are contracted to perform.

If all questions above are answered **NO**, the worker is an Independent Contractor.

If any question above is answered **YES**, explain the question and send the checklist with the contract to the Finance Department for a determination as to whether the worker is an employee or an Independent Contractor.

Exhibit C - Procurement Guidance When Using Federal Funds

OMB Guidance provided in the Code of Federal Regulations Subpart D - Post Federal Award Requirements, sections 200.318 through 200.326.

	Goods & Supplies	Construction/Repair	Services	
FORMAL	- Formal bidding process required - Publicly advertise - Sealed Bids required - Attempt to get bids from at least three bidders - Award to lowest bidder - Public bid opening	- Formal bidding process required - Publicly advertise - Sealed Bids required - Attempt to get bids from at least three bidders - Award to lowest bidder - Public bid opening	- Request for proposals required - Publicly advertise - Attempt to get quotes from at least two sources - Award to proposal most advantageous to the program, price and other factors considered	\$250,000 or greater
		Informal quotes required	Informal quotes required	\$90,000
INFORMAL	- Informal quotes required - Attempt to get quotes from at least two sources - Award to lowest bidder	- Attempt to get quotes from at least two sources - Award to lowest bidder	- Attempt to get quotes from at least two sources - Award to proposal most advantageous to the program with price and other factors considered	\$10,000
NO QUOTES	No competitive quotes required if price appears to be reasonable	No competitive quotes required if price appears to be reasonable	No competitive quotes required if price appears to be reasonable	\$0

<u>ALWAYS</u>	<u>ALLOWED EXCEPTIONS</u>
- Document procedures - Award on fixed price or not to exceed - Document the awarded supplier is not excluded - Contract or PO contain UG provisions	1) The item is available only from one single source. 2) An urgent need or emergency will not permit a delay for competitive solicitation. 3) The Federal awarding agency or pass-through allows noncompetitive proposals. from doing business with the Federal Gov.

* If seeking a contract with an architect, engineer, survivor, or CMAR the procurement method must follow the Mini-Brooks Act.



Town of Black Mountain, North Carolina

Contracts Policy

Contents

1.0	Policy Information	0-1
2.0	Introduction	0-2
3.0	Purpose.....	0-2
4.0	Definitions.....	0-2
5.0	Policies	0-2
6.0	Required Contract Elements.....	0-3
7.0	Contract Signature Authority	0-3
8.0	Contracts without a financial obligation	0-3
9.0	Contract Control Process.....	0-3
a.	Contract Administrator.....	0-3
b.	Contract Creation	0-3
c.	Contract Routing, Approval, and Execution	0-3
d.	Monitoring and Compliance.....	0-4
e.	Archival.....	0-4
f.	Amendments	0-4
g.	Extensions and Renewals.....	0-4
10.0	Insurance coverage for contracts	0-4
11.0	Practice Points.....	0-4
Exhibit A:	Contract Control Process	0-5
Exhibit B:	Contract Insurance Requirement Guidance	0-6
Exhibit C:	Example Insurance Terms and Conditions.....	0-7

1.0 Policy Information

Category & Subcategory:		Original Effective Date:	7/1/2019	This Revision Effective:	[Revision Effective Date]
Persons Affected:	Eligible Town of Black Mountain Workforce				
Approvals:	Approved By:	Town Manager	Approved By:	Finance Director	
	Date Approved:		Date Approved:		
	Approved By:	Town Board of Aldermen			
	Date Approved:				

Revision History

Effective Date	Version	Section	Summary of Changes	Author

Title: Contracts Policy	Policy # Initial	Revision #: Original
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2.0 Introduction

This policy applies to all contracts entered into by the Town.

3.0 Purpose

To establish a policy and procedure for creating, evaluating, executing, maintaining, managing, and retaining contracts to which the Town is or will be a party. This policy is a companion to and does not replace the Procurement Policy.

4.0 Definitions

- i. **Contract:** Any agreement involving the exchange of obligation(s) or promise(s), either promise(s) to perform or an exchange(s) of something of value. Contracts are sometimes called, among other things:
 - service contracts
 - contracts for the sale of goods
 - agreements
 - memorandums of understanding
 - licenses
 - leases

Oftentimes, contractual obligations can be created by documents that are not readily identifiable as Contracts, such as:

 - grant applications
 - quotes
 - order forms
 - invoices

Contact the Legal Department with questions concerning whether a document or undertaking constitutes a Contract.
- ii. **Designee:** an individual given the authority by the Town Manager or Board of Aldermen to award and sign contracts of certain categories and dollar thresholds.
- iii. **BOA:** abbreviation for Board of Aldermen.
- iv. **Contract Control Process:** the established routing process for all contracts.
- v. **Certificate of Insurance:** a document that verifies a company has insurance coverage under specific conditions.
- vi. **Contract Administrator:** the person assigned for day-to-day responsibility and representation of the Town regarding the specific contract.
- vii. **Handshake Deal:** an informal verbal agreement with no documentation (such agreements should be avoided).

5.0 Policies

- i. Contracts shall comply with Federal law, North Carolina law, and Town of Black Mountain ordinances and policy. Contracts (or aspects of Contracts) inconsistent with law may be void or voidable.
- ii. No Town officer or employee who is involved in making or administering a contract on behalf of the Town or its subparts may derive a direct benefit from the contract except as allowed by law. A violation of this provision is not only a violation of this policy; it could subject the offending Town officer or employee to criminal liability and may render the contract void. *See Generally*, N.C. Gen. Stat. (NCGS) § 14-234.
- iii. Town officers and/or employees shall take into account all costs associated with a purchase or contract and shall not divide purchases or contracts for the purpose of circumventing the requirements set forth herein. The same may constitute a violation of this Policy and state law.
- iv. All contracts shall originate, be routed through, and follow the Contracts Control Process outlined in Exhibit A attached hereto; shall be reviewed by the Town Manager or designee and the Town Attorney, and shall be preaudited as required by law.
- v. Violations of the requirements set forth in this Policy should be reported to the Town's Whistleblower Hotline.
- vi. Contracts that contain a scope which requires the sharing of Protected Health Information (PHI) for certain purposes, a Business Associate Agreement (BAA) must be executed in conjunction with the contract before PHI may be disclosed.

Title: Contracts Policy	Policy # Initial	Revision #: Original
-------------------------	------------------	----------------------

6.0 Required Contract Elements

Contracts are required to address, at minimum, the following elements where applicable:

- i. **Scope of Work:** A detailed description of the deliverables provided by the supplier.
- ii. **Term (length of time):** A specific beginning and ending date or a project start and completion schedule.
- iii. **Maximum Amount Payable:** Specifications of the amount the contract payments cannot exceed. Uncertainty as to the amount of the final obligation under a contract does not excuse the contract from containing a maximum amount payable.
- iv. **Cancellation:** A clause defining the specific conditions under which either party has rights to terminate the contract.
- v. **Indemnification:** A clause protecting the county from legal issues related to supplier performance.
- vi. **Non-assignment:** A clause prohibiting the assignment of specific rights or of the entire contract to another party without the consent of the Town.
- vii. **Governing Law:** A clause specifying that any dispute resulting from the contract shall be determined in accordance with the laws of North Carolina.
- viii. **Insurance:** A clause controlling risks by requiring contractors and supplier to have liability insurance (amounts determined on a case-by-case basis). An example of terms and conditions can be found in Exhibit C.
- ix. **Pre-audit Certification:** All contracts creating a financial obligation are required to have a pre-audit certification, in accordance with NCGS 159-28.
- x. **Non-appropriation Clause:** If a contract is not associated with a project ordinance, more than 12 months in length, cross county fiscal years, and require funding from subsequent town budgets; then a clause allowing the Town to terminate the contract if funding is not available in future fiscal years or Board approval is required.
- xi. **Financial Assurance Clause:** If an agreement is with a public or non-profit organization, then a clause allowing the Town the right to review the financial records of the organization must be included in the contract.

7.0 Contract Signature Authority

- i. Pursuant to North Carolina law and the annual budget ordinance, Town contracts may only be signed by authorized employees. Signature authority is derived solely from the BOA, consistent with NCGS 160A-16.
- ii. The BOA delegates certain signature authority to the Town Manager and authorizes the Town Manager to delegate that authority via the Budget Ordinance.
- iii. The Manager may grant express written or electronic delegation for the signature of certain Contracts on a case-by-case basis.
- iv. Only those with properly delegated authority shall sign contracts or otherwise obligate the Town. Anyone who attempts to bind the Town or its divisions without properly delegated authority may be liable under NCGS§ 143-58.
- v. The Town of Black Mountain's Procurement Policy addresses signature authority for purchases and contracts by type and dollar threshold.

8.0 Contracts without a financial obligation

The Town Manager or the Manager's designee may enter into contracts that do not create a financial obligation if authorized under North Carolina law, provided that any such agreement requiring Board approval receives such approval.

9.0 Contract Control Process

The Contract Control Process is the required process that all contracts must follow (see Exhibit A), as outlined below. Some steps may not apply to Contracts that do not create a financial obligation.

a. Contract Administrator

A Contract Administrator shall be assigned by the Town Manager or Finance Director for every Contract to which the Town is a party. It is the duty of the Contract Administrator to ensure that a contract follows the Contract Control Process.

b. Contract Creation

- i. Contracts should be created using templates provided or approved by the Town Attorney. Deviations from such templates should be identified and reviewed by the Town Attorney prior to execution.
- ii. The Contract Administrator shall manage the negotiation of the contract.

c. Contract Routing, Approval, and Execution

All contracts shall be reviewed and approved by all required parties prior to execution. The Contract Administrator will ensure the appropriate process sequence is utilized based on availability and the nature of the contract. Any significant revisions to the draft of a contract after a review step has been completed will require a follow-up review. Steps should include:

Title: Contracts Policy	Policy # Initial	Revision #: Original
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- i. Review by the Town Attorney will be performed or a justification for lack of review will be provided.
- ii. Review by the Finance Director and or the Town Manager or a justification for lack of review will be provided.

Contracts that create a financial obligation will also require:

- iii. Review and approval by the Town Attorney, Town Manager, Finance Director and Department Director from which the obligation will be incurred.
- iv. Verification by the Procurement Division for compliance with state bidding requirements prior to award.
- v. Pre-audit certification as required by state law.

d. Monitoring and Compliance

The Contract Administrator or other designee will:

- i. Monitor for compliance with terms and take appropriate action concerning the same;
- ii. Maintain relevant documents such as certificates of compliance;
- iii. Track important dates such as renewal and termination dates and take appropriate action concerning the same;
- iv. If required by funding source determine if supplier is subrecipient or contractor, and follow the funding source's prescribed monitoring of subrecipients.

e. Archival

All Town Contracts must be housed in the Town's central Contract Repository. It is the responsibility of the Contract Administrator to ensure contracts are stored in the appropriate repository. Contracts in the Contract Repository should be retrievable by name, the company awarded the contract, the department awarding the contract, date of the contract, and the amount.

f. Amendments

- i. All amendments must be reviewed and approved by the original signing authority.
- ii. If an amendment increases an existing contract beyond an approval threshold, then the contract as a whole must be approved at the increased dollar amount as required.
- iii. In general, all amendments modifying the term, price, and scope of contracts previously approved by the BOA must be reviewed and approved by the BOA.

g. Extensions and Renewals

Any contract extension, renewal, or amendment known before the execution of a contract shall be counted in calculating the total amount of that contract when considering whether BOA approval is required. For Formal Solicitations, the Town Manager should ask BOA to approve the contract and authorize the exercise of all options and extensions that the Town expects to enter.

10.0 Insurance coverage for contracts

Recommended guidance for contract insurance requirements is included in **Exhibits B and C**. All contracts require a certificate of insurance prior to commencement and at any subsequent renewals of the contractor's policies during the life of the contract. The certificate of insurance should be retained with the contract document. When a certificate of insurance is requested, it must name the Town of Black Mountain as an additional insured under general liability and possibly other coverages. Please contact the Finance Director with any questions regarding "additional insureds" as this may vary by Department. The Town Manager must approve any deviations in advance.

11.0 Practice Points

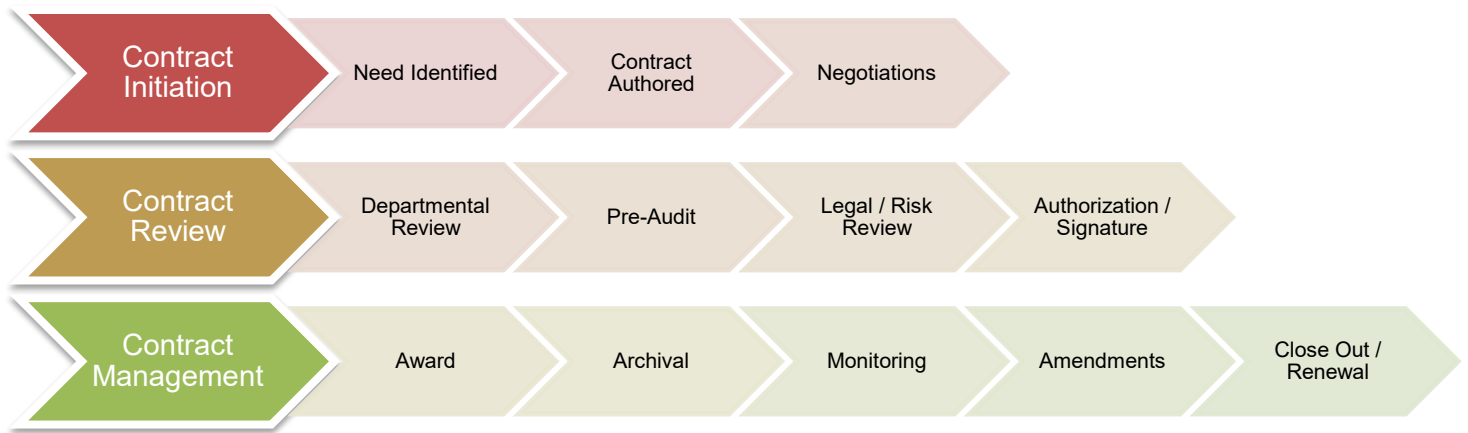
- i. Read the contract before signing it and only sign if the contract has been reviewed by the Town Attorney and all other appropriate departments such as the Town Manager and Finance Director.
- ii. Use town standard form contracts when they exist. If a standard form does not exist, consult with the Town Attorney before entering into a contract.
- iii. Any written contract that creates a financial obligation must include "on its face a certificate stating that the instrument has been preaudited to assure compliance" with NCGS §159-28(a). The certificate must be signed by the Finance Director or a deputy finance officer designated by the governing board for this purpose.
- iv. Avoid contracts that include an auto renewal without any type of notice from the vendor.
- v. Avoid contracts that allow price increases without the Town's approval.
- vi. Town employees should not enter into handshake or verbal agreements. Contracts should be in some written format.

Exhibit A: Contract Control Process

The Town of Black Mountain Contract Control Process is depicted below. Note that Departmental processes may vary, but all contracts that create a financial obligation require risk, legal, and pre-audit review.

Goals of Contract Control Process:

- Ensure all contracts can be easily identified and retrieved when needed
- Provide and require use of Town Attorney-approved contract templates and/or Legal review
- Establish clear roles for contract owners and specialists
- Create a consistent and structured review process across all Town of Black Mountain Departments
- Facilitate the monitoring of contract terms



Title: Contracts Policy	Policy #: n/a	Revision #: 1
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Exhibit B: Contract Insurance Requirement Guidance

The below guidance is not considered to be official policy but has been provided as a guidance for insurance requirements. The Town recommends the Town Attorney review any “High Risk” or “Specialty” exposure contracts as documented in the guidance below. “Medium” and “Low” risk contracts may still be routed through the Town Attorney for review as needed.

TOWN OF BLACK MOUNTAIN FINANCE DEPARTMENT RECOMMENDATIONS TO MINIMUM LIABILITY INSURANCE REQUIREMENTS

VENDOR CLASSIFICATION		Commodities Delivered by Vendor/Common Carrier	Low Risk Exposures*	Medium Risk Exposures*	High Risk Exposures*	Specialty Exposures*	Licensed Professional Consultant-Legal; Acting; Medical; Software; Architect	Public Transportatio n Services	Aircraft Liability Exposure	
Type of Insurance										
Commercial General Liability (CGL) each	Commercial General Liability	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000*	\$1,000,000*	\$1,000,000	\$5,000,000*	\$3,000,000	
	General Aggregate	\$2,000,000	\$2,000,000	\$2,000,000	\$3,000,000*	\$3,000,000*	\$2,000,000	\$5,000,000*	\$3,000,000*	
Auto Liability- Inc BI and PD (AL)	Combined Single Limit per Accident	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000*	\$1,000,000*	\$1,000,000	\$5,000,000*	NA	
	Coverage for Any Auto									
Worker's Compensation & Employers Liability (EL)	Worker's Compensation	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory	
	Each Employee Accident(EL)	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	
	Each Employee Disease (EL)	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	
Professional Services	Per Claim (Errors & Omissions)	NA	\$1,000,000	\$1,000,000	\$3,000,000	\$3,000,000	\$1,000,000	NA	NA	
	Aggregate	NA	\$2,000,000	\$2,000,000	\$3,000,000	\$3,000,000	\$1,000,000	NA	NA	
Medical Professional Services	Per Claim (Always treat as high risk exposure) Higher limits may be required - Check with Attorney	NA	NA	NA	\$1,000,000*	\$1,000,000*	\$1,000,000*	NA	NA	
	Aggregate	NA	NA	NA	\$3,000,000*	\$3,000,000*	\$3,000,000*	NA	NA	
Builder's Risk	Contractor shall purchase and maintain in force insurance on entire work. Insurance shall be written on a completed value form and in an amount equal to the initial contract sum, subject to subsequent modifications of the contract sum	NA	TBD	TBD	TBD	TBD	NA	NA	NA	
Umbrella or Excess Liability	Each Occurrence	NA	NA	\$1,000,000	\$5,000,000	\$5,000,000	TBD	\$10,000,000	\$10,000,000	
	Aggregate	NA	NA	\$1,000,000	\$5,000,000	\$5,000,000	TBD	\$10,000,000	\$10,000,000	
Environment al/Pollution Liability	Each Occurrence	TBD	TBD	TBD	TBD	TBD	NA	TBD	NA	
	Aggregate									
Other Coverage as Required		TBD	TBD	TBD	TBD	TBD	NA	TBD	NA	
	Employee Dishonesty (Crime)									
	Cyber Liability									
	Liquor Liability									
	Waiver of Subrogation on Worker's Compensation (Party to a contract waives the right of their insurer to subrogate against the Town in case of loss.)	Required	Required if available	Required	Required	Required	Required	Required	Required	
	Town of Black Mountain and Dept. Issuing Contract to be named as Additional Insureds on these coverages	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL	
	Comments	*Low Risk Exposures			*Medium Risk Exposures			*High Risk Exposures		Specialty Exposures
	Automobile coverage is only necessary if vehicles are used in the provision of services under the Contract and/or brought on a Town of Black Mountain site.	Word Processing; Financial Services; Insurance Broker			Carpentry; Painting; Pool Cleaning; Movers; Catering			Large Excavation; Grading of Land over \$25,000		Asbestos Removal
	The Per Occurrence and Aggregate limits for specified coverage should apply on a per-location or per-project basis.	Copying; Copier Repair; Copier Lease ; Graphics			Concrete Work; Paving Contractors; Tree Maintenance			Firework Display; Medical Services		Demolition/ Environmental Hazard
	Worker's Comp is required if the contractor/vendor has 3 or more employees. Owner Waiver is acceptable for a Sole Proprietor, Partners, or LLC that has no employees.	Microfilm Services; Consultant under \$10,000			Minor Excavation; Grading of Land <\$25,000; Trade Contractors; Sign Painting; Window Cleaning- 1 story			Hi Tech Installation; Roofing > \$25,000; Water Remediation		Heavy Construction Projects
	Professional Liability may be required on a risk depending on nature of services provided by contract.	Classroom Instruction; Software design			Fork Lift Repair; Fire Extinguisher Testing			Temporary Employment Services		Sensitive Equipment
	*A combination of Umbrella/Excess and primary limits may be used to provide coverage for the amount shown.	Small low risk repair or Service jobs			Electrical Repair; Refrigeration; Pest Control			Road Contractor; Building Construction		
	Contractor agrees to endorse Town of Black Mountain and (Issuing Dept.) as Additional insureds on CGL and AL.	Minor Landscaping; Title Search Firm			HVAC; Plumbing; Roofing; Employee Assistance Program			Major Landscaping Projects		
	Contract language should make Contractor responsible for sub-contractors carrying the same limits.	Sports Instructors			Janitorial; Welding; Elevator Maintenance			Environmental Hazard		
Certificate Holder shall read: Town of Black Mountain										

PROPERTY - Contractor shall not be obligated to maintain property insurance on Contractor's furnishings, fixtures, equipment and personal property. All furnishings, fixtures, equipment, and property of every kind and description of Contractor and of persons claiming by, through, or under Contractor which may be located on Town property shall be at the sole risk and hazard of Contractor and no part of loss or damage to such property from whatever cause shall be the responsibility of, charged to, or borne by the Town.

Title: Contracts Policy	Policy #: n/a	Revision #: 1
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Exhibit C: Example Insurance Terms and Conditions

1. Insurance:

Insurance. Contractor agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Town's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. **The coverage stated is the minimum required, and these may be increased to provide sufficient protection should the contract or project have a greater potential risk of loss or liability for the contractor and/or the Town.** The minimum insurance coverage which the Contractor shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the Contractor with a minimum limit of \$ 1,000,000 per occurrence with a \$ 1,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. The Town of Black Mountain shall be named as an additional insured under the policy.

Professional Liability. Insurance covering the Contractor for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim with a \$2,000,000 aggregate. The policy shall remain in effect two (2) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Medical Professional Liability. Covering Contractor's acts, errors, or omissions in rendering of or failure to render professional health care services in performance of the contract in an amount no less than \$ 1,000,000 per claim with \$ 1,000,000 in the aggregate for the duration of this Agreement. If policy is of a claims made type, such coverage shall be for a minimum of five (5) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

Crime. Policy covering acts of employee dishonesty, forgery or alteration and computer fraud with minimum limit of \$1,000,000 per loss. The policy shall include coverage for all directors, officers, agents and employees of the Contractor.

- a. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- b. The bond or policy shall not contain a condition requiring an arrest and conviction.

Cyber Liability. Providing third party coverage to include security, privacy, regulatory action, event management for all affected persons whose confidential information was compromised or was reasonably likely to have been compromised, cyber extortion, and crisis fund insurance. This policy shall carry a minimum limit of \$ \$250,000 . If policy is of a claims made type, such coverage shall be for a minimum of two (2) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

Property. Contractor shall not be obligated to maintain property insurance on Contractor's furnishings, fixtures, equipment and personal property. All furnishings, fixtures, equipment, and property of every kind and

Title: Contracts Policy	Policy #: n/a	Revision #: 1
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description of Contractor and of persons claiming by, through, or under Contractor which may be located on Town property shall be at the sole risk and hazard of Contractor and no part of loss or damages to such property from whatever cause shall be the responsibility of, charged to, or borne by the Town.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Contractor may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying 1,000,000 liability policy(s). Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

2. Additional Insurance Provisions:

If the Contractor maintains higher limits than the minimums shown above, the Town requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Town.

The Contractor shall provide the Town with certificates of insurance on an approved form, evidencing the above amounts. The Town of Black Mountain and **Name of Financing Institution, if any** shall be named as additional insureds under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Town, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the Town.

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that the Town of Black Mountain and **Name of Financing Institution, if any** are additional insureds on insurance required from subcontractors.

Waiver of Subrogation: Contractor hereby grants to Town a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Town by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement.

Nothing in this section is intended to affect or abrogate the Town of Black Mountain's governmental immunity.

(LEGAL TO PROVIDE SEPARATE SECTION FOR INDEMNIFICATION AND HOLD HARMLESS)



Black Mountain, North Carolina

Procurement Card Policy

Contents

1.0 Policy Information.....	0-1
2.0 Purpose/Introduction.....	0-2
3.0 Applicability	0-2
4.0 Roles & Responsibilities	0-2
5.0 Related Policies	0-3
6.0 Definitions.....	0-3
7.0 General Provisions.....	0-3
8.0 Card Security	0-4
9.0 Purchasing Guidelines	0-5
10.0 Audits	0-8
11.0 Identifying and Reporting Fraudulent, Improper, or Abusive Activity	0-8
12.0 Penalties for Misuse	0-8
13.0 Questions/Contact Information.....	0-8
Exhibit A – Missing Receipt Memo	0-9

1.0 Policy Information

Category & Subcategory:	Purchasing/Procurement Cards	Original Effective Date: Initial	7/1/2019	This Revision Effective:	[Revision Effective Date]
Persons Affected:	Eligible Town of Black Mountain Workforce				
Approvals:	Approved By:	Town Manager	Approved By:	Finance Director	
	Date Approved:		Date Approved:		
	Approved By:	Board of Aldermen			
	Date Approved:				

Revision History

Effective Date	Version	Section	Summary of Changes	Author

Title: Procurement Card Policy	Policy #: Initial	Revision #: [Revision]
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2.0 Purpose/Introduction

The purpose of a procurement card program is to provide an efficient, cost-effective method of purchasing and paying for goods and services costing less than \$500. By using a procurement card (P-Card), the traditional requisition-to-check process and cost is greatly reduced. Employees who have been issued P-Cards may now initiate a transaction in-person, by telephone or by the internet, within the limits of this Policy. Emergency Purchases are exempt as defined in NCGS § 143-129(e)(2) as “Cases of special emergency involving the health and safety of the people or their property.” Refer to Section 6.0 paragraph f of the Procurement Policy for instructions. **Each employee who uses a P-Card must submit receipts and supporting documentation to the Finance Department no later than five business days from the date of the transaction.**

Benefits of the Procurement Card Program

- Transactions are completed quickly and conveniently
- Lower processing costs and less paperwork
- Increased control of expenditures through complete and timely reporting
- Allows cardholder to purchase by phone and internet
- Reduces delivery time
- Bi-monthly payment to one merchant (P-Card provider)
- Improved cash flow management

3.0 Applicability

This policy is applicable Town wide to all personnel who are assigned a P-Card or review P-Card transactions. Department Directors may enact additional requirements dependent upon budget or resources available. Emergencies may preclude the applicability of this policy in certain instances.

4.0 Roles & Responsibilities

Program Administrator (Finance Director or Designee)

Centralized role responsible for all procurement card program details town wide, including requests for new enrollment, maintenance and cancellation of cards and service as the liaison between the Town’s P-Card provider and the Town of Black Mountain. The Program Administrator works with departments in setting up Users and Cardholders as well as troubleshooting and answering department inquiries.

Board Appointed Positions

Person(s) appointed by and reporting to the Governing Board, (i.e., Town Manager).

Cardholder

Town of Black Mountain personnel who have been issued a procurement card and are authorized to make purchases in accordance with this Policy.

Department Director

Person who acts as steward of card activity and who shall maintain active involvement with the transactions for his/her department. The Department Director has authority to authorize the issue of a card and may terminate the use of a card as well as invoke disciplinary action when appropriate. The Department Director or their designee acts as reviewer and approver for all department P-Card transactions, excluding their own. As approver, the Department Director or designee has the responsibility of:

- knowing that the purchase was made for legitimate Town business
- knowing that the purchase was for a public purpose
- reviewing each receipt and making certain all documentation is appropriate

Reviewer

Personnel who are responsible for reviewing cardholder transactions.

Designee

The staff member chosen by the Department Director to act on their behalf during their absence or at appointed times for certain duties or responsibilities.

Title: Procurement Card Policy	Policy #: Initial	Revision #: [Revision]
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5.0 Related Policies

Purchasing Procedures Manual

Travel Policy

Gift Card Policy

Gift Card Procurement Procedure

Electronic Payments Policy and Procedures Manual

6.0 Definitions

Procurement Card (P-Card)

A credit card issued by the Town's procurement card vendor. Also known as a procurement card.

Transactions

A transaction is created when a purchase is made using a P-Card.

Reconciliation/Reallocation

The process of assigning the correct General Ledger Account for each transaction in the reallocation system to assure all transactions post to the correct expense account.

Transaction Limit

- Single Transaction Limit** is the maximum amount of a single transaction: \$4,999.99.
- Monthly Transaction Limit** is the maximum amount of transactions during the billing cycle as determined by the Transaction Limit Tier.

Split Transactions

Transactions that together exceed the maximum amount of a single transaction and were split into more than one transaction to avoid being over the single transaction limit. Split transactions are a violation of the procurement card policy and **are not allowed**.

Available Funds

Remaining balance of the Monthly Transaction Limit on an individual's P-Card.

Merchant Category Codes (MCC)

A series of codes that are used to permit, restrict or block certain merchant types. If a cardholder attempts to use their card at a merchant that has been blocked, the charge will be rejected.

7.0 General Provisions

Requesting a Card

Department heads may propose personnel to be cardholders by completing the Procurement Card Request form. In an effort to prevent fraud, the P-Card provider may request a cardholder's date of birth or other personally identifying information prior to card issuance. Request forms should be forwarded electronically to the Finance Department, attention Program Administrator, for processing.

Each P-Card will have the employee's name on it and shall **ONLY** be used by that cardholder. **NO OTHER PERSON IS AUTHORIZED** to use that card. A violation may result in cardholders having their card revoked and disciplinary action taken. Cardholders are responsible for all purchases charged on their card.

Transaction limits are established in tiers, with lower tiers having a lower transaction limit. A transaction limit tier should be specified on the Procurement Card Request Form in accordance with the need of the employee.

Any desired increase in a transaction limit for an existing procurement card holder must be requested in writing by a Department Director to the Program Administrator. The table below provides guidelines for selecting a transaction limit tier based on general employee roles:

Transaction Limit Tiers

Tier	Employee Role	Monthly Limit
1	Infrequent usage of procurement card; items purchased are not of a critical nature to operations; other procurement methods can be utilized to meet needs if limit is reached.	\$1,000
2	Infrequent usage of procurement card; items typically purchased may be of a higher value. Expected needs of role would be limited at Tier 1.	\$5,000
3	Frequently makes purchases for an entire program, or multiple employees; responsible for supplementing critical activities with procurement card. Expected needs of employee would be limited at Tier 2.	\$10,000
4	Acts as primary purchaser for the Town and/or Tier 3 would be an unreasonable limitation. Also applies to cards that are used as an electronic payment method for suppliers in instances where procurement card is the most reasonable option.	Greater than \$10,000

Monthly limits for Tier 3 and beyond must be requested in writing by a Department Director to the Program Administrator and authorized by the Finance Director and the Town Manager.

The Finance Department shall maintain records of all procurement card requests, limits, cardholder transfers and lost/stolen/destroyed card information.

Preaudit

Cardholders shall follow all procedures set forth by the Town for the preaudit of procurement card transactions in accordance with North Carolina Administrative Code (20 NCAC 03.0409 and 20 NCAC 03.0410) and the Town of Black Mountain Procurement Manual.

Training

Employees that are cardholders or who verify P-Card transactions must review the Procurement Card Policy and receive training from the Finance Department before they can carry out these duties. Recurring training is also required on the schedule established by the Procurement Card Program Administrator; failure to complete recurring training will result in loss of P-Card.

Terms and Conditions

Each cardholder must acknowledge they have read this policy and agree to adhere to the terms within by submitting a signed copy of the Town of Black Mountain Procurement card Program Acknowledgement Letter and Employee Agreement Form.

New cardholders will receive an email at the time the card is requested with instructions and a link to the Policy. Current cardholders will be required to acknowledge and sign as their cards expire and will receive the same email. Before picking up their new card, the cardholder's acknowledgement must be on file with the Program Administrator.

8.0 Card Security

It is the responsibility of cardholders to safeguard their P-Cards and account numbers to the same degree they safeguard their personal credit information. Cardholders shall not allow anyone else to use their card, including supervisors and co-workers. A violation of this trust may result in cardholders having their card revoked and disciplinary action taken.

Lost or Stolen Card

Loss or theft of a card should be reported immediately to the Program Administrator, the cardholder's immediate supervisor and the procurement card vendor. Cardholders should keep the customer service phone number in a safe place separate from the card for quick reference in the case of a lost card.

Title: Procurement Card Policy	Policy #: Initial	Revision #: [Revision
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Cardholder Transfers

If a cardholder moves from one division to another within the same Town Department, a new card is not required. If a cardholder moves from one Department to another, a new card is required. The Department Director must contact the Program Administrator when either event occurs.

Name Change

Changes to a cardholder's name should be reported to the Program Administrator in writing by the cardholder's Department Director so a new card can be requested.

Inactive Cards

Periodically P-Cards shall be reviewed for inactivity. Cards that show no activity within a twelve-month period may either be deactivated or have their transaction limit reduced.

Employee Terminations and Retirement

Upon separation from the Town of Black Mountain due to dismissal, retirement, or resignation, cardholders shall surrender their P-Card and P-Card invoices to their supervisor. The Program Administrator shall be notified immediately by the supervisor to terminate the employee's P-Card.

9.0 Purchasing Guidelines

The P-Card is designed to be an enhancement to the Town's purchasing policy and payment process. It does not replace requirements to comply with existing State or Town laws, regulations, or policies and procedures regarding purchasing and/or travel.

The P-Card is simply a corporate credit card issued to Town of Black Mountain employees. The P-Card can be used at any merchant that accepts credit cards.

Town of Black Mountain Policy states that all purchases \$500 or greater require a Purchase Order.

Emergency Purchases

NCGS § 143-129(e)(2) defines emergency purchase as "Cases of special emergency involving the health and safety of the people or their property." This exception is used in rare circumstances, such as natural disaster or sudden and unforeseeable damage to property. In cases of emergencies, the Department Head or designee may purchase directly from any supplier, supplies or services whose immediate procurement is essential to prevent delays in work, which may affect the life, health, or safety of the Town of Black Mountain employees or citizens. The user department will exercise good judgment and use established suppliers when making emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related. **Not anticipating needs does not constitute an emergency.** Should any purchase exceed the available account budget, the Finance Director and Town Manager should be notified immediately.

During working hours, the following procedure should be used for emergency purchases:

An emergency purchase request shall be submitted by the requesting department to the Finance Director or Town Manager as soon as practicable. For emergency purchases over \$500 the issuance of a purchase order is required as soon as practical. The requesting department will include in the requisition supporting documentation for the emergency purchase order: item(s) to be purchased with estimated quantities and the reason for the emergency purchase. After verifying available funds, a purchase order number will be issued for the expenditure.

After working hours, the following procedure should be used for emergency purchases:

An emergency purchase request will be submitted by the requesting department to the Finance Director or Town Manager the next working day. For emergency purchases over \$500 the issuance of a purchase order is required as soon as practical. The requesting department will also include any pertinent information associated with the emergency purchase, to serve as supporting documentation and will be attached to the purchase order, including but not limited to: item(s) to be purchased with estimated quantities, and the reason

Title: Procurement Card Policy	Policy #: Initial	Revision #: [Revision]
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for the emergency purchase.

Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures will be limited and monitored for abuse.

Transaction Limits

The monthly maximum credit limit on any single P-Card is set by the Transaction Limit Tier. The single transaction limit cannot be greater than **\$5,000.00**. (Emergency transactions may be different and are subject to purchase card transaction limit tiers.) Transactions that cost more than this amount cannot be broken into smaller purchases (split transactions) to meet the single transaction limit. Violations may result in card cancellation, disciplinary action taken, a possible Audit finding, and/or a reference to the violating department in the external auditor's Management Letter. A single transaction of more than **\$5,000.00** may be possible by encumbering funds with a Purchase Order prior to the purchase and getting authorization from the Program Administrator. A lower single or monthly transaction limit may be assigned to your P-Card based on available budgets or as directed by your Department Director.

Authorized P-Card Use

P-Cards may be used at any merchant that accepts credit cards. Cardholders must comply with the Town's purchasing and travel policies and procedures when using the P-Card. The total value of a transaction shall not exceed a cardholder's single purchase limit. Examples of appropriate uses include purchases of:

- Materials
- Equipment
- Supplies
- Accommodations
- Airfare
- Training/Conference Registrations

Unauthorized P-Card Use

Cardholders must comply with the Town's purchasing policies and procedures when using the P-Card. Examples of unauthorized use include, but are not limited to:

- Personal purchases of any kind
- Purchases over the cardholder's transaction limits
- Transactions split to avoid or circumvent the single purchase limit
- Cash refunds or advances, money orders, or wire transfers
- Meals, except as specifically authorized by Department Director (See Meals and Meeting Expenses Policy)
 - o If a meal is authorized by the Department Director, tips charged on the P-Card cannot be in excess of 20%.
 - o Your P-Card is not to be used for meals while travelling if you have requested reimbursement by the per-diem rate. The Travel Policy lists current per-diem rates.
- Gasoline for unauthorized vehicles
- Entertainment expenses
- Use of card by anyone other than the cardholder
- Fines or traffic tickets
- Gift cards
- Controlled substances such as alcoholic beverages or tobacco products
- Electronics and Information Technology equipment and subscriptions not in accordance with the Procurement Manual

Cardholders shall be personally responsible for any expenditures on their card and shall provide, when requested, information about any specific purchase. This does not include disputed charges or fraudulent charges.

Title: Procurement Card Policy	Policy #: Initial	Revision #: [Revision]
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If the P-Card is accidentally used by the cardholder for a personal purchase, the cardholder shall immediately notify the Program Administrator in writing and provide payment via check or money order to “Town of Black Mountain NC” for the exact amount of the purchase. Habitual accidental use of the P-Card may result in the revocation of the card or other appropriate disciplinary action.

Online Accounts or Memberships

Many online vendors offer business or enterprise accounts. Cardholders should avoid adding Town P-Cards to online accounts that may also be used for personal purchases in addition to Town purchases.

Required Backup or Documentation

When purchases are made, the cardholder shall retain the receipt. Receipts **and supporting documentation** must be turned in **within five business days** to the Finance Department for reconciling purposes. If the information below is not on the receipt provided by the merchant, the cardholder must write the information on, or attach it to, the receipt.

- Merchant name and address
- Date of transaction
- Card number charged (partially encrypted)
- Quantity and description of item(s) purchased to include the departmental purpose served by the purchase if the business purpose is not clear (description must be decipherable by anyone reading the receipt)
- Amount charged to card
- Account codes for reallocating charges
- Reference Meals and Meetings Policy for additional documentation which may be required for food purchases authorized by Department Director

Lost Receipt

If the cardholder misplaces or loses the receipt a Missing Receipt Memo must be completed and signed by the cardholder’s department director. The Missing Receipt Memo (Exhibit A) shall be attached to the transaction for reallocation.

Allocation of Charges

All transactions are to be allocated within five business days of the transaction date. Cardholders that do not reallocate their own transactions should give receipts/invoices to the reviewer as soon as the charge is made. Repeated failure to allocate transactions in a timely manner may result in cancellation of P-Card.

Returns and Exchanges

The cardholder is responsible for contacting the merchant when goods, equipment or supplies purchased with the P-Card are not acceptable (incorrect, damaged, defective, etc.) and for arranging a return for credit or exchange. If items are returned for credit, the cardholder is responsible for obtaining a credit receipt from the merchant and **forwarding** that receipt with the supporting documentation **to the Finance Department within five business days**. If items need to be exchanged, the cardholder is responsible for returning the items to merchant and obtaining a replacement as soon as possible.

Disputed Transactions

Each cardholder or reviewer is responsible for resolving any disputed item directly with the merchant. If resolution is not possible, the employee or their supervisor should attempt to dispute the transaction via the Town’s credit card vendor or contact the Program Administrator for assistance.

Retention of Receipts/Invoices

All P-Card receipts/invoices are to be retained in the preferred format (**original copies**) via the appropriate document management system. Retention schedules for NC local governments state that the minimum retention

Title: Procurement Card Policy	Policy #: Initial	Revision #: [Revision]
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for general receipts/invoices is three years. However, certain transactions, such as those associated with a grant or project, may be subject to retention requirements greater than three years. Departments are responsible for implementing a process to retain receipts that are subject to such additional requirements.

10.0 Audits

All P-Card activity is subject to routine monitoring and audits to determine compliance with terms and conditions of the P-Card program. The overall audit objective is to ensure proper management controls are maintained over the authorization and use of the P-Card, to provide feedback for process improvements, and to focus on potentially fraudulent, improper or abusive purchases.

11.0 Identifying and Reporting Fraudulent, Improper, or Abusive Activity

With the common goal to provide citizens of the Town of Black Mountain with an honest, effective and efficient Town government, it is the cardholder's duty to report all suspected instances of fraud and abuse to appropriate management. Should the cardholder be uncomfortable with reporting to management, the cardholder may report it confidentially through the Town's Whistleblower Hotline.

Fraudulent Purchases

Use of a P-Card to acquire goods or services that are unauthorized and intended for personal use or gain constitutes a fraud against the Town.

Improper Purchases

P-Card transactions that are intended for Town use but are not permitted by law, regulations, or Town policy generally are considered improper. P-Card purchases must be delivered directly to a place where official Town business is conducted.

Abusive Activity

Purchases of authorized items at terms (e.g. price, quantity) that are excessive, are for a questionable government need, or both are considered abusive. Costs and quantities should be reasonable and comparable for similar goods and services.

12.0 Penalties for Misuse

A cardholder who makes unauthorized purchases or carelessly uses a P-Card may be liable for the total dollar amount of such purchases, plus any administrative fees charged in connection with the misuse. The Cardholder will also be subject to disciplinary action which may include termination and criminal charges.

13.0 Questions/Contact Information

Questions regarding issues not addressed in the Policy and Procedures Manual should be addressed to the P-Card Program Administrator.

The Finance Director can be reached by calling the Finance Department at 828-419-9303.

Exhibit A – Missing Receipt Memo

**Town of Black Mountain Purchase Card
Missing Receipt Memo**

The following p-card transaction has a missing receipt:

Card Holder Name	
Transaction Date	
Transaction #	
Vendor	
Transaction Amount	

Please outline the purchase with as much detail as possible:

I am aware these charges have occurred to the card listed and verify the transaction is valid.

X	X
Director	Date

TOWN OF BLACKMOUNTAIN PURCHASE CARD PROGRAM ACKNOWLEDGMENT LETTER AND EMPLOYEE AGREEMENT

I, _____, upon receipt of my procurement card will verify the information contained on the card and attest to its accuracy.

I agree to use this VISA purchasing card in accordance with the guidelines outlined in the Town of Black Mountain Purchasing Card Policy and Procedures. I understand that I am being entrusted with a procurement card and will be making financial commitments on behalf of the Town of Black Mountain and will strive to obtain the best value for the Town. Under no circumstance will I use the purchasing card to make personal purchases, either for myself or for others. I agree that should I willfully violate the terms of this agreement and use the purchasing card for personal use or gain, I will reimburse the Town of Black Mountain for all incurred charges and any fees related to the collection of those charges.

I acknowledge receipt of the policy manual. I acknowledge I have read and will follow the established Town of Black Mountain Purchasing Card Policy and Procedures for using the procurement card. I understand I am responsible for submitting required supporting documentation for purchases to the Finance Department no later than five business days from any purchase I make. Failure to abide by Purchasing Card Policy and Procedures may result in either revocation of my card privileges or other disciplinary actions, including termination of employment.

INITIAL IF YOU AGREE: _____

I understand that my card's activities will be audited randomly at which time I will be responsible for producing the necessary documents to support all charges for the requested period of time.

If the card is lost, stolen or misplaced, I will immediately notify the card company via telephone by dialing the number provided by SunTrust. I also will inform the Town's card administrator in the Finance Department of this loss by calling (828) 419-9303 or (828) 419-9301 or **1-800-836-8562**. I understand that failure to notify the Finance Department and/or card company of the theft, loss or replacement of the card could make me personally responsible for any fraudulent use. I also understand that unauthorized use of this card may result in immediate disciplinary action which may include termination of my employment and criminal charges.

INITIAL IF YOU AGREE: _____

I agree to surrender the card immediately upon my retirement or termination of employment, or upon the request of any authorized representative of the Town of Black Mountain. I understand that use of the card after privileges are withdrawn is prohibited.

I hereby affirm that I have read, understand, and agree to the Town of Black Mountain Purchase Card Program Acknowledgment Letter and Employee Agreement. I agree to abide by all policies and procedures listed therein.

Employee Name & Department	(print)	Date
Employee Signature	(print and sign)	Date
Department Head Signature	(print and sign)	Date
Finance Director (or designee) Signature	(print and sign)	Date



Town of Black Mountain, North Carolina

Meals and Meeting Expense Policy

Contents

1.0 Policy Information.....	0-1
2.0 Introduction.....	0-1
3.0 Purpose.....	0-1
4.0 Definitions.....	0-1
5.0 Applicability.....	0-2
6.0 Roles and Responsibilities.....	0-2
7.0 Policy	0-2

1.0 Policy Information

Category & Subcategory:	Expense/Meals and Meetings	Original Effective Date: Initial	7/1/2019	This Revision Effective:	[Revision Effective Date]
Persons Affected:	Town of Black Mountain Eligible Workforce				
Approvals:	Approved By:	Town Manager	Approved By:	Finance Director	
	Date Approved:		Date Approved:		
	Approved By:	Town Board of Aldermen			
	Date Approved:				

Revision History

Effective Date	Version	Section	Summary of Changes	Author

2.0 Introduction

The Town of Black Mountain's policy on food purchasing is designed to ensure public funds used to purchase food for meetings is done so with thoughtful attention to cost effectiveness and appropriate scenarios.

3.0 Purpose

To establish a policy which establishes guidelines for the appropriate purchase of food for Town activities and events. This policy does not address food purchases related to business travel. Refer to the Town Travel Policy for this guidance.

4.0 Definitions

4.1 Food

Food refers to meals, snacks, and beverages.

4.2 Department Director

Director of a given department with authority to make budgetary decisions. Examples include Planning Director.

Title: Meals and Meeting Expense Policy	Policy #: Initial	Revision #: 1
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4.3 Designee

Staff member chosen by the Department Director to act on their behalf during their absence or at appointed time for certain duties or responsibilities.

5.0 Applicability

This policy applies to all Town of Black Mountain departments, including staff support of boards or commissions during or outside of regular business hours. Department Directors may enact additional requirements dependent upon budget or resources available.

Exceptions – The Town recognizes that there may be emergency or extenuating circumstances which merit provision of food for meetings, though not previously planned (e.g., extended public hearing on business-critical topic). These exceptions should be approved by a Department Director. In these situations, Town staff should document and store description of the event and justification for the exception with the receipt or invoice for the purchase.

6.0 Roles and Responsibilities

This policy has been approved by the Board of Aldermen. The Town Manager or designee has delegated authority for the management, storage, and communication of this policy.

7.0 Policy

When meetings of an administrative nature are held that are directly related to the business of the Town, the cost of meals or light refreshments may be paid from budgeted funds with approval from a Department Director or their designee. Food and refreshments may be purchased with budgeted funds for one or more of the following purposes or activities: (the following are examples and not an exhaustive list):

- a. Meetings of the Board, advisory committees, public officials, and community members in supporting and collaborating in program success.
- b. Trainings, workshops, webinars and seminars.
- c. Town-wide employee events (i.e. Employee Appreciation or Employee Health Fair). Such events must be open to all Town employees.
- d. Retreats of departments or other units, or events to recognize a class or unit of employee.
- e. Working lunches when that is the reasonable time available for all parties to attend the meeting.
- f. Meetings with community members regarding collaboration and partnership in the community.

Those planning for food expenses should consider the following principles:

- *Appropriateness*: Meals should be necessary and integral to the business meeting, not a matter of personal convenience. The provision of food for gatherings of employees on a daily basis is not considered an appropriate use of funds. Food may be provided at meetings of employees on an occasional basis. Staff lunches, where work can be conducted during other times of the workday, regular staff meetings, and personal celebrations (i.e., birthday, or baby shower celebrations) do not qualify as appropriate activities. Expenditures should be limited to food and non-alcoholic beverages.
- *Cost Effectiveness*: The expenditure of budgeted funds for food and refreshments should be cost-effective and reasonable. Generally, meal costs should be no more than local GSA per diem meal rates, and light refreshments should be no more than the cost of half of a lunch per diem per attendee. Breakdown of per meal rates can be found at the GSA site at: <https://www.gsa.gov/travel/plan-book/per-diem-rates/meals-and-incidentals-expenses-mie-breakdown>. Those planning these events should get as close an estimate as possible to the actual number of expected attendees. If the meeting is scheduled more than two weeks in advance, ask for an RSVP and this should guide the purchase of food.
- *Documentation* – Meetings must have an agenda and an accurate attendance list should be submitted at the close of the meeting. This documentation should be attached to the receipt or invoice for such purchase and stored in an otherwise conspicuous location for access upon request. Refer to the Food Purchasing Procedure for specific direction.
- *Special Accommodations* – Dietary needs will be met with a one-week advanced notice and will be accommodated with the same consideration for cost effectiveness as outlined above.



Town of Black Mountain, North Carolina

Gift Card Policy

Contents

1.0 Policy Information.....	5-1
2.0 Introduction/Purpose	5-1
3.0 Definitions	5-1
4.0 Applicability	5-2
5.0 Related Policies and/or Statutory References	5-2
6.0 Policy.....	5-2
7.0 Policy Non-Compliance	5-2

1.0 Policy Information

Category & Subcategory:	Gift Cards	Original Effective Date: Initial	7/1/2019	This Revision Effective:	
Persons Affected:	Eligible Town of Black Mountain Workforce				
Approvals:	Approved By:	Town Manager	Approved By:	Finance Director	
	Date Approved:		Date Approved:		
	Approved By:	Town Board of Aldermen			
	Date Approved:				

Revision History

Effective Date	Version	Section	Summary of Changes

2.0 Introduction/Purpose

The purpose of this document is to establish a policy prohibiting the purchase of gift cards. Gift cards are recognized as a cash-equivalent and are susceptible to potential misuse and unnecessary risk exposure. The intent of this policy is to minimize or eliminate these risks.

3.0 Definitions

Gift Card: A gift card is defined as any prepaid stored-value money card issued by a retailer or a bank to be used as an alternative to cash for purchases.

Title: Gift Card Policy	Policy #: Initial	Revision #: [Revision]
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4.0 Applicability

This policy applies to all Town of Black Mountain centers, programs, and employees.

5.0 Related Policies and/or Statutory References

Below are references to relevant policies, procedures, and/or statutory references:

5.1 **NCGS 159-32. Daily Deposits**

5.2 **NCGS 159.28. Budgetary Accounting for Appropriations**

5.3 **IRS TAM 200437030:** In summary, gift cards are treated same as cash and are taxable income when provided to employees because their value is apparent.

5.4 **Town of Black Mountain Procurement Card Policy**

5.5 **Town of Black Mountain Gift Card Procurement Procedure**

6.0 Policy

6.1 Gift cards shall not be purchased for or given to any employee of the Town of Black Mountain.

6.2 No gift cards shall be provided as payment for goods or services. Gift cards provided to suppliers in this manner could be considered a kickback as no invoices can be tied to the gift card in the general ledger.

6.3 Gift cards shall not be acquired with a procurement card. Please refer to the Town of Black Mountain Procurement Card policy.

7.0 Policy Non-Compliance

7.1 Compliance with this policy shall be regularly monitored by the Finance Department, Town Manager or designee. Violations of this policy may result in disciplinary action (including termination and criminal charges), possible Audit finding, and a write-up for the violating department.



Town of Black Mountain, North Carolina

Travel Policy

Contents

1.0 Policy Information.....	6-1
2.0 Purpose/Introduction.....	6-1
3.0 Definitions.....	6-2
4.0 Applicability.....	6-2
5.0 Roles and Responsibilities.....	6-2
6.0 Policy	6-2
PER DIEM MEAL ALLOWANCE AND INCIDENTAL EXPENSES	6-2
LODGING AND TRANSPORTATION	6-3
LOCAL MILEAGE FOR TOWN BUSINESS	6-4
TRAVEL FOR BOARD OF ALDERMEN (BOA) AND BOARD APPOINTED POSITIONS	6-4

1.0 Policy Information

Category & Subcategory:	Travel	Original Effective Date: Initial	7/1/2019	This Revision Effective:	[Revision Effective Date]
Persons Affected:	Eligible Town of Black Mountain Workforce				
Approvals:	Approved By:	Town Manager	Approved By:	Finance Director	
	Date Approved:		Date Approved:		
	Approved By:	Town Board of Aldermen			
	Date Approved:				

Revision History

Effective Date	Version	Section	Summary of Changes	Author

2.0 Purpose/Introduction

The purpose of this policy is to establish a uniform policy that is consistent with the business objectives of the Town of Black Mountain. It provides the guidelines for the authorization and reimbursement of travel expenses incurred by employees when travel is necessary to conduct business on behalf of the Town.

It is the Town's policy to reimburse employees for reasonable expenses incurred when traveling for official Town business, including meetings, conferences, trainings, workshops, and seminars. Travel may be local, in state, out-of-state, foreign and/or overnight.

Title: Travel Policy	Policy #: Initial	Revision
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3.0 Definitions

- 3.1 **Department Director**
Director of a given department with authority to make budgetary decisions. Examples include Planning Director.
- 3.2 **Designee**
Staff member chosen by the Department Director to act on their behalf during their absence or at appointed time for certain duties or responsibilities.
- 3.3 **M&IE**
Meals and incidental expenses such as laundry and room service, tips for services and other fees that may be associated with travel.
- 3.4 **Per Diem**
Daily allowance for M&IE.
- 3.5 **GSA**
US General Service Administration. Web Site for Per Diem rates: <https://www.gsa.gov/travel/plan-book/per-diem-rates>
- 3.6 **Passengers**
Can be staff members; staff from other governing agencies and municipalities; and clients of Town of Black Mountain departments. All passengers using Town or Rental Vehicles must be on official Town business.

4.0 Applicability

These policy and procedures are applicable to all Town of Black Mountain employees. Department Directors may enact additional requirements dependent upon budget or resources available. Emergencies may preclude the applicability of policy in certain instances.

5.0 Roles and Responsibilities

The Town realizes that in the course of providing services and professional development to its employees that staff travel can be a necessity. The Town's responsibility for cost effectiveness should be the guiding principle when considering decisions involving employee travel. Employee travel should be via the most economically viable alternatives and consistent with good business practices.

Employee travel and associated expenses will be authorized only in circumstances that are clearly consistent with the mission of the Town. It will be the responsibility of each Department Director, or their designee, to ensure that all employee travel meets this objective and all reimbursements are made for reasonable business expenses in connection with the authorized travel as defined in this policy.

6.0 Policy

Travel Request

All requests for travel must be approved in advance by the applicable Department Director, or their designee. The Town Manager/Assistant Town Manager and the Department Director must approve foreign travel.

PER DIEM MEAL ALLOWANCE AND INCIDENTAL EXPENSES

Overnight Travel

Ideally, per diem will be requested in advance of travel when possible. If this is not possible, travelers may request to be reimbursed for meals and incidental expenses (M&IE) for overnight travel based upon Federal per diem rates in accordance with GSA. The per diem rate is based upon the city/county where travel is located. Meal receipts are not required and should not be submitted with trip documentation. Incidental expenses include laundry, room service, tips for services and other fees.

Note: If neither the city nor county is listed, then the standard rate for that state applies. This rate is subject to change and will be posted on the GSA web site.

The Town's policy for Per Diem is as follows:

- Breakfast \$8.00, Lunch \$12.00, Dinner \$26.00
- Mileage (IRS prevailing limits)
- Incidentals \$5.00
- Lodging \$150.00 night (pre-tax)

P-Cards shall not be used to pay for meals for which an employee received per diem. See the P-Card policy for details.

Title: Travel Policy	Policy #: Initial	Revision
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Day trip travel reimbursement

The Town will reimburse an employee for lunch per diem rate when traveling out of county on business in which a return to the county for lunch would be time and cost-prohibitive. The Town will reimburse only the registration or meeting fee when lunch is included in the cost of the course/seminar/meeting.

When a day trip creates an extended workday, where the traveler:

- a. Departs before 7 a.m., breakfast can be reimbursed per the per diem rate for the location to which the traveler is going.
- b. Returns home after 6:30 p.m., dinner can be reimbursed per the per diem rate for the location from which the traveler is returning.

Generally, these meals are taxable as wages to the employee because travel must be away from home overnight to be excluded.

LODGING AND TRANSPORTATION

Transportation expenses shall be reimbursed based on the most economical mode of transportation that reasonably meets the official travel needs.

The use of a P-Card for Booking for Lodging and Air Travel will be required unless the Department does not have access to a P-Card at the time of booking. Use of personal credit cards is discouraged for this purpose as the Town is unable to recoup sales tax and P-Card rebates and this use will be at the discretion of the Department Director. Reimbursement for lodging will be limited to \$150.00 per night (pre-tax). An exception would be if the traveler is attending a conference and the conference hotel or other hotel sponsored by the conference charges a higher conference rate.

Accommodations should only be made at a venue that is a legally established provider of lodging. Those employees booking accommodations should consult the local government rate at the lodging establishment and compare with other available rates when booking. Booking non-refundable rates is discouraged.

Air Travel

Air travel must be approved in advance by the Town Manager, Assistant Town Manager, and the Department Director. Booking of air travel should be done using available coach rates that best suit the work schedules and budget of the Department. Employee time away from work shall be a consideration in deciding the mode of travel.

Employees who choose a mode of transportation other than flying due solely to personal considerations when coach airfare is the least expensive means of travel will be reimbursed based on the least expensive cost., either airfare or actual expenses. Alternate modes of transportation cannot take away from employee's work schedule.

Ground transportation including travel to/from the airport and place of lodging, and travel to/from place of lodging to place of business should be by the most reasonable mode of travel available taking into consideration both employee safety and schedule constraints. This includes taxi and/or shuttle services and public transportation. The use of a rental vehicle for this purpose must have the prior approval of the Town Manager, Assistant Town Manager, and Department Director or their designee.

Foreign Travel

Foreign travel must be approved in advance by the Town Manager, Assistant Town Manager, and the Department Director. The same requirements and recommendations from Air Travel section above applies to Foreign Travel as well.

Town Vehicles

Town vehicles may be used for travel outside of the county when approved by the Department Director or his designee. These decisions should be made considering the department's need for town vehicle usage.

Vehicle Rental

Vehicle rentals must be approved in advance by the Town Manager, Assistant Town Manager, and the Department Director. A rental vehicle may be requested by employees for official Town business through a written request submitted to the Department Director. Upon approval, any reservations should be made as far in advance as possible to ensure timeliness of pickups by the rental car vendor.

When using a rental vehicle for travel, fuel purchases are to be made only with a Town of Black Mountain procurement card.

Title: Travel Policy	Policy #: Initial	Revision
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Personal Vehicles

If an employee is traveling out of county on business, the use of town vehicles or rental vehicles would be encouraged over the use of personal vehicles and the Department Director or their designee should approve the use of personal vehicles for out of county travel. The numbers of employees traveling and how many vehicles would be used as well as ADA compliance are considerations in this decision.

If an employee chooses to use their personal vehicle instead of a rental vehicle, the reimbursement will be at the standard mileage rate allowed by the Internal Revenue Service and is calculated from the employee's regularly assigned place of work or duty station to destination.

Family Members and Personal Travel The Town of Black Mountain does not pay for or reimburse a traveler for the transportation, lodging, meals or other expenses of a traveler's family or traveling companion(s). It is the responsibility of the traveler to identify any expenses pertaining to family or companions.

LOCAL MILEAGE FOR TOWN BUSINESS

Travel in a personal vehicle from the office to visit a client or establishment, store, another department, post office, etc. for a work-related activity is a travel expense that would be reimbursed at the current IRS mileage rate. Travel from home to work, from office to lunch, or any other personal travel may not be claimed as local travel expense.

Employees whose job duties do not normally incur mileage may claim mileage for use of personal vehicle on Town business in the local area, provided the Department Director or their designee approves it in advance.

If you are traveling from home to a location before going to work, you may only claim additional mileage that is more than your normal daily commute. Example: you live in Woodfin (North Asheville) and drive to Office Depot on Tunnel Road, and then to work at a Town office in downtown Black Mountain. You do not claim mileage from your home in Woodfin, to Office Depot, to work. You only claim mileage equivalent to leaving from your office and going to Office Depot.

TRAVEL FOR BOARD OF ALDERMEN (BOA) AND BOARD APPOINTED POSITIONS

All travel for Board-appointed positions will be approved by the Mayor or Vice-Mayor of the Board of Aldermen. The Board of Aldermen will be advised if any of these positions travel out of state or out of the country.

Any business travel by members of the Board of Aldermen outside of North Carolina will require notification to the Mayor and/or Vice-Mayor of the Board of Aldermen prior to approval or reimbursement of said travel.

RESOLUTION #R-19-11

RESOLUTION TO REJECT OFFER OF PORTIONS OF HEMPHILL PROPERTY

WHEREAS, Mary Hemphill did in her Will devise certain property to the Southern Appalachian Highlands Conservancy to be used as a park, that property being all the property acquired by the Hemphills from Simms, hereinafter called the Hemphill property; and

WHEREAS, any property not used for a park will remain an asset of the estate of Mary Hemphill to pass with the residue of the estate; and

WHEREAS, the operation of parks is not the mission of the Southern Appalachian Highlands Conservancy (the "Conservancy") and it desires to convey to the Town any of the property that will be used as a park; and

WHEREAS, the existing access to the Simms property is by way of a single lane road which passes through a single lane box tunnel and over an unprotected railroad crossing; and

WHEREAS, there is a second possible access to the Hemphill property over an easement to Sunset Drive, which said easement is held by Wm. Michael Begley; and

WHEREAS, Wm. Michael Begley has proposed to grant such easement to the Town for an access to the Hemphill property if he can acquire a portion of the Hemphill property to improve the ability to develop property he owns adjoining the Hemphill property; and

WHEREAS, the Town, once it is conveyed the Hemphill property, cannot convey any of the property as that would violate the terms of the Will of Mary Hemphill, but if the Town refuses to accept any part of the Hemphill property, the Conservancy will also refuse to accept that part and it will remain property of the estate of Mary Hemphill, which will be able to sell such property to Wm. Michael Begley, generating funds to pay other expenses of the estate; and

WHEREAS, the Town has considered the usefulness of the property which Wm. Michael Begley has determined to be essential to his plans and finds that if it rejects such parts of the property, the ability to develop the property as a park will not be hindered, and that the safety of access to the property will be enhanced if it acquires access from Sunset Drive.

NOW THEREFORE BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain that it does reject the offer of that portion of the Hemphill property described on the Buncombe County Tax Maps as PIN #0619-55-7327-00000, and that strip of land twenty feet in width bounded on its southern edge by the northern boundary of that property of Wm. Michael Begley shown on the Buncombe County Tax Maps as PIN #0619-65-0344-00000 if the following conditions are met.

1. That Wm. Michael Begley commits to provide and can adequately convey to the Town an easement from Sunset drive to the Hemphill property which said easement crosses the eastern portions of those properties shown on the Buncombe County Tax Maps as PIN numbers

0619-65-0344-00000 and 0619-65-1108-00000, and that such easement is of adequate width for two way traffic. Such determination shall be made within thirty days by examination of title and interests in the proposed easement by the Town Attorney.

2. That Wm. Michael Begley, does commit to the creation of a twenty foot wide easement over the northern portion of that parcel shown on the Buncombe County Tax maps as PIN #0619-55-7327-00000 for a future greenway in the event the Town is able to extend its greenway system to the Hemphill property in the future, if he purchases that property from the estate of Mary Hemphill, and the Estate of Mary Hemphill commits to imposing this obligation on any other purchaser of the property if it is not sold to Wm. Michael Begley.

I move the adoption of the foregoing Resolution:

Alderman

READ, APPROVED AND ADOPTED this the ____ day of June, 2019.

Don Collins, Mayor

Angela Reece, Town Clerk

Ordinance #O-19-14

**AN ORDINANCE TO ESTABLISH THE COMPENSATION POLICY
FOR THE MAYOR AND ALDERMEN**

WHEREAS, the Charter for the Town of Black Mountain and the North Carolina General Statutes authorize the payment of salaries to the Mayor and the members of the Board of Aldermen for the Town of Black Mountain; and

WHEREAS, the Board of Aldermen provided for the termination of the payment of salaries to the Mayor and the Aldermen by Ordinance No. 0-17-11 adopted June 12, 2017, and for reinstatement of such salaries by Ordinance No. 0-19-13 adopted May 13, 2019, and the Board now wants to repeal Ordinance No. 0-17-11 and Ordinance No. 0-19-13 before they take effect for the reasons set out herein; and

WHEREAS, the Charter for the Town of Black Mountain prohibits the passage of an ordinance changing the amount of salaries paid to the Mayor or the Board of Aldermen which takes effect during the current terms of office of the members of the Board of Aldermen who adopt such ordinance, but N.C.G.S. Section 160A-3 provides that if a general law that is adopted after the enactment of the Charter limits the power of the city provided in the later adopted general law, that general law will supersede the Charter; and

WHEREAS, the Charter provision affecting salaries for the Mayor and Aldermen was enacted in 1951, and in 1972 the state legislature adopted N.C.G.S. Section 160A-64 which provides that the board of aldermen may fix its own compensation and the compensation of the mayor by adoption of the annual budget ordinance; and

WHEREAS, the Board of Aldermen desires to conform its policy and practice for setting the salaries of the aldermen and the mayor to N.C.G.S. Section 160A-64.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen that Ordinance No. 0-17-11 and Ordinance No. 0-19-13 are hereby revoked and the salaries of the aldermen and mayor shall be established and fixed each year as a part of the budget ordinance pursuant to N.C.G.S. Section 160A-64.

I move the adoption of the foregoing ordinance.

Alderman

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

Donald S. Collins, Mayor

ATTESTED:

Angela Reece, Town Clerk

Richard B. Stone (1925-1998)
William H. Christy
Bryant D. Webster
James M. Ellis
Barrett W. McFatter

bill@stoneandchristy.com
Direct 828.357.4575



May 14, 2019

Josh Harrold, Town Manager
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

Via Email (josh.harrold@townofblackmountain.org) and US Mail

Re: Offer to purchase

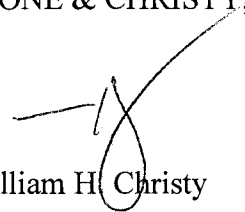
Dear Josh:

Per our phone conversation yesterday, I am writing on behalf of my client, Black Mountain Machine & Fabrication, Inc. to express its interest in purchasing the building and property owned by the Town on US Highway 70 that formerly housed the Black Mountain Maintenance Department (which is known as Buncombe County Tax PIN # 0609-32-7975-00000). My clients are prepared to offer the sum of \$350,000.00 to purchase this property, and are prepared to pay \$20,000.00 for an earnest money deposit. They will have to obtain financing to purchase this, but believe that the financing will not be a problem.

I understand that there is a process that the Town must go through if it in fact decides to sell any property, and we request that the Board of Alderman review this proposal, and we hope that the response will be received favorably. If there are any questions please do not hesitate to contact me. With best regards I remain

Sincerely,

STONE & CHRISTY, P.A.



William H. Christy

WHC;cam

cc: client

828.669.7642 www.stoneandchristy.com fax: 828.669.5678
110 N. Dougherty Street, Black Mountain, North Carolina 28711

Article 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

In the discretion of the council, a city may: (i) hold, use, change the use thereof to other uses, or (ii) sell or dispose of real and personal property, without regard to the method or purpose of its acquisition or to its intended or actual governmental or other prior use. (1981 (Reg. Sess., 1982), c. 1236.)

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

- (1) Private negotiation and sale;
- (2) Advertisement for sealed bids;
- (3) Negotiated offer, advertisement, and upset bid;
- (4) Public auction; or
- (5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of similar items. Real property, of any value, and personal property valued at thirty thousand dollars (\$30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at thirty thousand dollars (\$30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to

dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9; 1997-174, s. 6; 2001-328, s. 4; 2005-227, s. 3.)

§ 160A-267. Private sale.

When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. A notice summarizing the contents of the resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 24.)

§ 160A-268. Advertisement for sealed bids.

The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall be begun not less than 30 days before the date fixed for opening bids. (1971, c. 698, s. 1.)

§ 160A-269. Negotiated offer, advertisement, and upset bids.

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)

§ 160A-270. Public auction.

(a) Real Property. – When it is proposed to sell real property at public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require the highest bidder at the sale to make a bid deposit in a specified amount. The council shall then publish a notice of the sale at least once and not less than 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be

reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may readvertise the property for sale.

(b) Personal Property. – When it is proposed to sell personal property at public auction, the council shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property at public auction. The resolution or order shall identify the property to be sold and set out the date, time, place, and terms of the sale. The resolution or order (or a notice summarizing its contents) shall be published at least once and not less than 10 days before the date of the auction.

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or for all auctions under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all requirements of subsections (a) and (b) of this section apply to electronic auctions. (1971, c. 698, s. 1; 1973, c. 426, s. 43; 2001-328, s. 5; 2005-227, s. 4; 2006-264, s. 74.)

§ 160A-271. Exchange of property.

A city may exchange any real or personal property belonging to the city for other real or personal property by private negotiation if the city receives a full and fair consideration in exchange for its property. A city may also exchange facilities of a city-owned enterprise for like facilities located within or outside the corporate limits. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the properties to be exchanged, stating the value of the properties and other consideration changing hands, and announcing the council's intent to authorize the exchange at its next regular meeting. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1.)

§ 160A-272. Lease or rental of property.

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 30 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

- (1) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.
- (2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.
- (3) For the operation and use of components of a wired or wireless network, for a term up to 25 years; provided, however, that the lease is entered into with a private broadband provider or a cooperative in connection with a grant agreement pursuant to G.S. 143B-1373 and is for a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served.

(d) Notwithstanding subsection (a) of this section, any lease by a city of any duration for components of a wired or wireless network shall be entered into on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions and shall not be used to subsidize the provision of competitive service. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 26; 2009-149, ss. 2, 3; 2010-57, s. 2; 2010-63, s. 2(b); 2011-150, s. 1; 2014-120, s. 34; 2015-246, s. 9; 2018-5, s. 37.1(c).)

§ 160A-272.1. Lease of utility or enterprise property.

Subject to this Article and G.S. 160A-321, a city-owned utility or public service enterprise, or part thereof, may be leased. (1979, 2nd Sess., c. 1247, s. 27; 2018-5, s. 37.1(d).)

§ 160A-273. Grant of easements.

A city shall have authority to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as a grant of an easement. (1971, c. 698, s. 1.)

§ 160A-274. Sale, lease, exchange and joint use of governmental property.

(a) For the purposes of this section, "governmental unit" means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property.

(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the Department of Transportation, shall be taken only after approval by the Department of Administration. Action with regard to State property under the control of the Department of Transportation shall be taken by the Department of Transportation or its duly authorized delegate. Provided, any county board of education or board of education for any city administrative unit may, upon such terms and conditions as it deems wise, lease to another governmental unit for one dollar (\$1.00) per year any real property owned or held by the board which has been determined by the board to be unnecessary or undesirable for public school purposes. (1969, c. 806; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1975, c. 455; c. 664, s. 9; c. 879, s. 46; 1977, c. 464, s. 34; 2001-328, s. 6.)

§ 160A-275. Warranty deeds.

Any city, county, or other municipal corporation is authorized to execute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when, in the opinion of the governing body, it is in the best interest of the city, county, or other municipal corporation to convey by warranty deed. Members of the governing boards of counties, cities, and other municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to governmentally owned property unless they act in fraud, malice, or bad faith. (1945, c. 962; 1955, c. 935; 1969, cc. 48, 223, 332; c. 1003, s. 5; 1971, c. 698, s. 1.)

§ 160A-276. Sale of stocks, bonds, and other securities.

A city may sell through a broker without complying with the preceding sections of this Article shares of common and preferred stock, bonds, options, and warrants or other rights with respect to stocks and bonds, and other securities, when the stock, bond, or other right or security has an established market and is traded in the usual course of business on a national stock exchange or over-the-counter by reputable brokers and securities dealers. The city may pay the usual fees and taxes incident to such transactions. Nothing in this section authorizes a city to deal in its own bonds in any manner inconsistent with Chapter 159 of the General Statutes, nor to invest in any securities not authorized by G.S. 159-30. (1973, c. 426, s. 44.)

§ 160A-277. Sale of land to volunteer fire departments and rescue squads; procedure.

(a) A city, upon such terms and conditions as it deems wise, with or without monetary consideration may lease, sell or convey to a volunteer fire department or to a volunteer rescue squad any land or interest in land, for the purpose of constructing or expanding fire department or rescue squad facilities, if the volunteer fire department or volunteer rescue squad provides fire protection or rescue services to the city.

(b) Any lease, sale or conveyance under this section must be approved by the city council by resolution adopted at a regular meeting of the council upon 10 days' public notice. Notice shall

be given by publication describing the property to be leased or sold, stating the value of the properties, the proposed monetary consideration or lack thereof, and the council's intent to authorize the lease, sale or conveyance. (1979, c. 583.)

§ 160A-278. Lease of land for housing.

A city may lease land upon such terms and conditions as it deems wise to any person, firm or corporation who will use the land to construct housing for the benefit of persons of low income, or moderate income, or low and moderate income. Such a housing project may also provide housing to persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income. Despite the provisions of G.S. 160A-272, a lease authorized pursuant to this section may be made by private negotiation and may extend for longer than 10 years. Property may be leased under this section only pursuant to a resolution of the council authorizing the execution of the lease adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased, stating the value of the property, stating the proposed consideration for the lease, and stating the council's intention to authorize the lease. (1987, c. 464, s. 9.)

§ 160A-279. Sale of property to entities carrying out a public purpose; procedure.

(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply. Provided, however, that a city or county may convey to any public or private entity, which is authorized to receive appropriations from a city or county, surplus automobiles without compensation or without the requirement that the automobiles be used for a public purpose. Provided, however, this conveyance is conditioned upon conveyance by the public or private entity to Work First participants selected by the county department of social services under the rules adopted by the local department of social services. In the discretion of the public or private entity to which the city or county conveys the surplus automobile, when that entity conveys the vehicle to a Work First participant it may arrange for an appropriate security interest in the vehicle, including a lien or lease, until such time as the Work First participant satisfactorily completes the requirements of the Work First program. This subsequent conveyance by the public or private entity to the Work First participant may be without compensation. The participant may be required to pay for license, tag, and/or title.

(b) Notwithstanding any other provision of law, this section applies only to cities and counties and not to any other entity which this Article otherwise applies to.

(c) Repealed by Session Laws 1993, c. 491, s. 1.

(d) This section does not limit the right of any entity to convey property by private sale when that right is conferred by another law, public, or local. (1987, c. 692, s. 1; 1993, c. 491, s. 1; 1998-195, s. 1.)

§ 160A-280. Donations of personal property to other governmental units.

(a) A city may donate to another governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused. The governing board of the city shall post a public notice at least five days prior to the adoption of a resolution approving the donation. The resolution shall be adopted prior to making any donation of surplus, obsolete, or unused personal property. For purposes of this section a sister city is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas. The agreement or memorandum of understanding establishing the sister city relationship shall be signed by the mayors or chief elective officer of both the donor and recipient cities.

(b) For the purposes of this section, the term "governmental unit" shall have the same meaning as defined by G.S. 160A-274(a) and shall include North Carolina charter schools.

(c) The authority granted to a city under this section is in addition to any authority granted under any other provision of law. (2007-430, s. 1; 2009-141, ss. 1, 2, 3.)



TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Angela Reece, Town Clerk

(828)419-9310

BOARDS AND COMMISSIONS VACANCIES

Honorable Mayor and Board of Aldermen. Please find the information attached for your 2019 Boards & Commissions applications and vacancies. I sent an email notification to all boards & commission members on April 22, 2019 notifying them of their status and asking them to consider re-applying for their seat if they are eligible. Some individuals indicated they do not wish to re-apply while others have submitted their applications for re-appointment. I have attached the applications for your consideration.

The Town of Black Mountain has vacancies on the following Boards and Commissions:

- **ABC Board**

1 term ending 2022

Bill Christy was appointed in 2012 to serve an unexpired term with 1 year remaining and again in 2013 to a regular term and again in 2016 for his second full term. The second term is up in 2019 and he is **not eligible** to serve a consecutive third full term.

You received **1 application**.

1. Roger Hibbard has applied for appointment.

- **Greenways Commission**

2 terms ending 2022

2 unexpired terms ending 2020

Julie White was appointed in 2013 and again in 2016 and has served two full term. The second term is expiring in 2019 and she is **not eligible** to serve a consecutive third full term.

Robyn Josephs was appointed to a term in 2016 and is eligible to serve a second term but has not re-applied.

Vacant: Amy Parker resigned (3-20-19) an unexpired term ending in 2020.

Vacant: Jennifer Billstrom resigned (2-7-19) an unexpired term ending in 2020.

You received **3 applications**.

1. Julie White (requesting consideration for appointment to a consecutive **third full term**).
2. Ann Lutz
3. Elizabeth Williams

- **Historic Preservation Commission**

2 terms ending 2022

AND 1 unexpired term ending June 2020

Lauronda Teeple was appointed to a term in 2016 and is eligible to serve a second term but has not re-applied. (She has applied to sit on the Planning Board)

Shannon-Heather Wall was appointed to a term in 2016 and is eligible to serve a second term but has not re-applied.

Vacant: Debra Wooton was appointed to a term in 2017 and resigned in 2018. She was re-appointed to this term in June 2018 and resigned again on 2/15/2019. The term ends in 2020.

You received **2 applications.**

1. Amanda Vollrath
2. Susan Leive (*Citizen Academy Graduate*)

- **Planning Board**

3 terms ending 2022

Peter Vazquez was appointed to serve a full term in 2013 and again in 2016. He is ***not eligible*** to serve a third term.

Lisa Milton was appointed to an unexpired term in 2015 and to a full term in 2016 and is eligible to serve a second term but has not re-applied.

Jesse Gardner was appointed to serve a full term in 2016 and is eligible to serve a second term but has not re-applied.

You received **2 applications.**

1. Lauronda Teeple
2. Chris Collins

- **Recreation Commission**

3 terms ending 2022

AND 1 unexpired term ending June 2021

Terry McElrath was appointed to a full term in 2013 and again in 2016. She is ***not eligible*** to serve a third term.

Larry Brank was appointed to a full term in 2013 and again in 2016. He is ***not eligible*** to serve a third term.

Carolyn Johnson was appointed to a full term in 2016 and is eligible to serve a second term but has not re-applied.

Vacant: Jerry Bryson was appointed to a full term in 2018 and resigned (5/28/19). The term ends in 2020.

You received **5 applications.**

1. Michael Nerder (*Citizen Academy Graduate*)
2. Marcus Duarte
3. Lee Reading
4. Steven Giles
5. Elizabeth Williams

- **Urban Forestry Commission**

1 term ending 2022

AND 1 unexpired term ending June 2020

AND 1 unexpired term ending June 2021

Rhea Bockhorst was appointed to serve an unexpired term with 2 years remaining and is eligible to serve a second full term. He has submitted his application requesting re-appointment.

Vacant: Don Wooton was appointed to a full term in 2017 and resigned (2-25-19). Term ends in 2020.

Vacant: Matthew Putnam was appointed to a full term in 2018 and resigned (5-23-19). Term ends in 2021.

You received **3 applications.**

1. Rhea Bockhorst (Re-applying for seat)
2. Scott Abla
3. Emily Sampson

- **Zoning Board of Adjustment**

**3 regular terms ending 2022
AND 3rd Alternate**

John DeWitt was appointed to a regular term in 2016 and is eligible to serve a second term. He has submitted his application for re-appointment.

Robert Osmundsen was appointed to an unexpired term in 2016 and was reappointed to full term in 2017. He is eligible to serve a second full term. He has submitted his application for re-appointment.

Vacant: Jillian Ballard was appointed in 2017 and resigned (3-23-19). The term ends in 2019.

You received **2 applications for re-appointment to seats.**

1. John DeWitt
2. Robert Osmundsen
3. ** Ted Mattson (1st Alternate eligible for appointment into full term).

Per your policy you will need to appoint Ted Mattson (1st Alternate) into a regular term and move the remaining two Alternates forward.

Janet McKimpson (2nd Alternate) – Moves into 1st Alternate seat
Charlotte McRaine (3rd Alternate) – Moves into 2nd Alternate seat

3rd Alternate

You will need to appoint a 3rd Alternate. We have received no applications for 3rd Alternate.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 10, 2019

SUBJECT: Public Hearing to Close a Portion of an Unopened, Platted Street known as Campbell Street
#R-19-12

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9A
Department:	Planning and Development Services
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: Adjoining property owners are requesting to close a portion of an unopened, platted street known as Campbell Street that runs between their properties to allow for extra land. The space is not currently used for any access or utilities and the bottom part of the street was closed in 1986.

The Town has the authority to close dedicated but unopened streets within its jurisdiction on its own motion.

MOTION FOR CONSIDERATION:

1. To open the public hearing for **Resolution #R-19-12** to Close Unopened, Platted Street Known as Campbell Street.
2. To close the public hearing.
3. To approve **Resolution #R-19-12** for the street closure.

FUNDING SOURCE: N/A

ATTACHMENTS: **Resolution #R-19-12**, Map, Petition, Staff Memo

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve **Resolution #R-19-12** as presented.



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue S Black Mountain S North Carolina S 28711
Phone: 828-419-9300 s Fax: 828-669-2030 s TDD: 1-800-735-2962

Date: March 25, 2019

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

RE: Remaining Portion of Campbell Street Right-of-Way Closure Request

Please find pertinent information attached.

Summary

The Planning Board has recommended the petition of Josh Scala to close a portion of Campbell Street.

The Planning Board has made a complimentary application to close the remaining portion of Campbell Street.

All property owners have been notified and the petitioner has agreed to wait an additional thirty days to sync up the public hearings.

Definitions

The land use code defines the following terms:

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property or those across a street.)

Adjacent: Either abutting or being directly across a street.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Right-of-way: 1) A The strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

3.6.2 Dedication and closures of rights-of-way or land to the town.

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen

Does not apply.

- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:
 - 1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties do not sign the petition, notice

to abutting property owners shall be given as required by NCGS. If the request is generated from town staff or a board or commission, the fee shall not apply.

Josh Scala submitted a petition for street closing request on January 3, 2019.

The Planning Board recommended the closure at their February 25, 2019 meeting.

*N.C.G.S. 160A-299 (a) states that when a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, **a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records** and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley.*

2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way if any (utilities, etc.) and information on possible future uses from any of the town's adopted plans, and place the issue on the next planning board agenda if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.

The remaining right-of-way is approximately 297' in length.

Currently there are no uses in the right-of-way.

The right-of-way does not contain a sewer line or water line.

The right-of-way is not identified on any town plans.

3. The planning board will review the request and make a recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way into town control or maintenance, to close any additional areas of right-of-way in addition to the petition, or not accept the petition and leave the right-of-way as an offering.

Staff finds it reasonable to consider this complimentary request.

4. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
 - a. Right-of-way identified is not part of adopted town plans.

The remaining right-of-way closure is not identified in any of the following plans:

Bike Plan, Comprehensive Plan, Greenway Master Plan, Stormwater Master Plan, Recreation and Parks Master Plan, Pedestrian Plan, Wellhead Protection Plan, Hazard Mitigation Plan or Veteran's Park Master Plan.

- b. Right-of-way is not necessary for current or future utilities.

All utilities are located on Craggy Street and W. College Street

- c. Right-of-way in its current condition pose a hazard to public health, safety or welfare.

The right-of-way does not pose a threat to public health, safety or welfare.

- d. Right-of-way is along a drainage that is part of a stormwater management plan.

There are no stormwater systems on this right-of-way nor is it along any drainage system.

- e. Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.

The right-of-way is not a current corridor and is not identified on the Greenway Master Plan or the Pedestrian Plan for future corridors or roadways. All lots have access from either Craggy Street or W. College Street.

- f. Abutting property owners have signed the petition in favor of the closure.

Does not apply.

- 5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact additional abutting property owners to get their input before making a determination.

The Planning Board has made a complimentary application to close the remainder of the right-of-way.

- 6. Planning board recommendation is forwarded to the board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.

If the Planning Board recommends the closure then the next step would be a call for public hearing before the Board of Aldermen.

- 7. Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.

This item will be handled by Planning staff.

8. Board of aldermen holds a public hearing and accepts or rejects the petition for closure.

The public hearing will be advertised and held at a regularly scheduled meeting of the Board of Aldermen.

Town of Black Mountain
North Carolina

Date: Jan. 3, 2019

**TO THE BOARD OF ALDERMEN OF THE
TOWN OF BLACK MOUNTAIN**

We, the undersigned, being ^{some} ~~(some)~~ (all) of the owners of the property adjoining the street or alley described below, do hereby petition the Board of Aldermen of the Town of Black Mountain, to close the following described street or alley:

The alley between W. College and Craggy Street.
Its called Cambell Street when it crosses
Central Ave. It runs North to South. It is 40 ft
Wide. PER PB 198 PG: 20. 120.15 ft long.

The undersigned petitioners do certify that the closing of the above described street or alley will not be contrary to the public interest and that no individual owning property in the vicinity of said street or alley, and if it is located in a subdivision, no individual owning property in said subdivision, will be deprived of reasonable means of ingress and egress to his/her property.

The following persons, in addition to the petitioners, own property adjoining the above described street or alley:

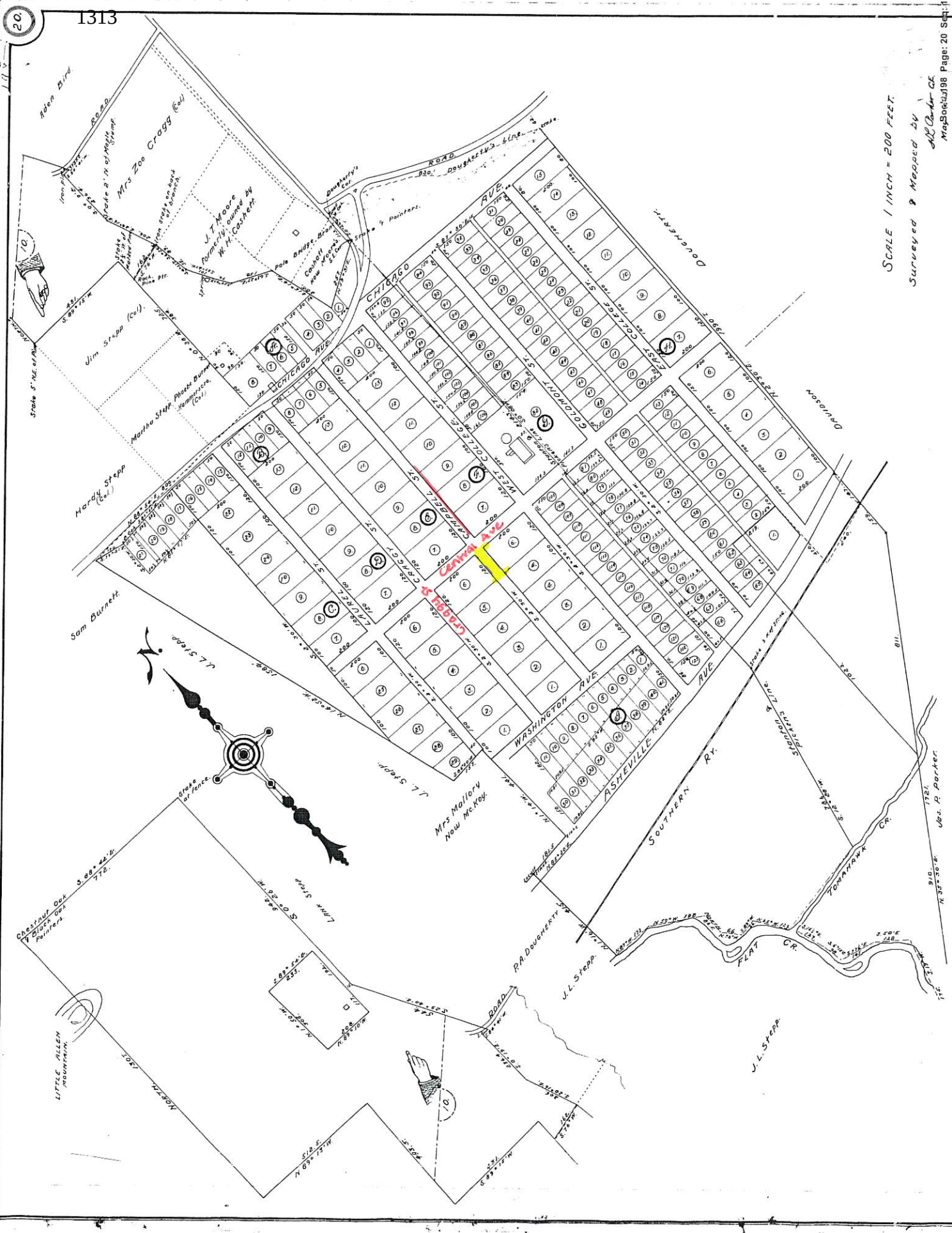
<u>NAME</u>	<u>ADDRESS</u>
<u>Kash</u>	<u>204 Craggy Street Black Mountain, NC 28711</u>
<u>Eleanor McNeil</u>	<u>204 Craggy St Black Mountain NC 28711</u>
<u>Thomas & Lillian Long</u>	<u>9432 Onion Patch Dr Burke, VA 22015</u>
	<u>113 West College St. Black Mtn, NC 28711</u>

WHEREFORE, your petitioners respectfully request the Board of Aldermen of the Town of Black Mountain to adopt a resolution ordering the closing of the above described street or alley.

Witness our signatures the day and year first above written.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>

pd. check # 2607
JT
1/3/19



SCALE 1 INCH = 200 FEET.
 Surveyed & Measured by
 M. L. Parker, C.E.
 May 30, 1918 Page 20 of 21

198/861

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003543901

Pymt Method Invoice

Net Amt: \$388.80

Run Times: 4

No. of Affidavits: 1

Run Dates: 05/09/19, 05/16/19, 05/23/19, 05/30/19

Text of Ad:

TOWN OF BLACK MOUNTAIN
RESOLUTION OF INTENT # R-19-07

RESOLUTION DECLARING THE INTENT OF THE BOARD OF ALDERMEN OF THE TOWN OF BLACK MOUNTAIN TO CONSIDER THE CLOSING OF A PORTION OF AN UNOPENED, PLATTED PORTION OF CAMPBELL STREET AND TO HOLD A PUBLIC HEARING ON THIS ISSUE JUNE 10, 2019

WHEREAS, G.S. 160A-299 authorizes the Board of Aldermen of the Town of Black Mountain to permanently close public streets or alleys; and

WHEREAS, The Town of Black Mountain has received a request from the adjoining property owners to close that unopened, platted portion of Campbell Street; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request, did recommend that the unopened portion of Campbell Street be closed; and

WHEREAS, the Board of Aldermen of the Town of Black Mountain must set a public hearing to consider any comments concerning the above referenced request before taking any action; and

WHEREAS, in accordance therewith, the Board of Aldermen of the Town of Black Mountain desires to take the following actions:

DESCRIPTION:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a point in the western edge of the right of way of Campbell Street, said point being the northeast corner of Lot 6, Block E, Plat Book 198 at Page 20, Buncombe County Registry; thence from said Beginning and with the eastern boundary of said Lot 6, Block E, South 2° 30' West 110 feet to a point in the western edge of Campbell Street; thence South 87° 30' East 40 feet to a point in the western boundary of Lot 6, Block F, Plat Book 198, Page 20, the southwest corner of that property described in Deed Book 899 at Page 303, Buncombe County Registry; thence with the western boundary of said Lot 6, Block F, North 2° 30' East 110 feet to the northwest corner of said Lot 6, Block F, thence with the southern edge of the right of way of Central Avenue North 87° 30' West 40 feet to the BEGINNING, being the northern portion of that part of Campbell Street lying between Central Avenue and Washington Avenue.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain:

Section 1. Pursuant to G.S. 160A-299, the Board of Aldermen declares its intent to close the remainder of an unopened portion of Campbell Street.

Section 2. A public hearing on the question of closing said street is hereby called at Town Hall, 160 Midland Avenue, Black Mountain, N.C. 28711 on Monday, June 10, 2019 at 6:00 p.m.

Section 3. Following the public hearing called hereby, the Board of Aldermen shall consider the passage of an order closing the street identified above.

Section 4. The Town of Black Mountain Town Clerk is hereby directed to publish this Resolution once a week for four successive weeks in the Black Mountain News, or other newspaper of general circulation in the area.

Section 5. The Town of Black Mountain Zoning Administrator is hereby directed to transmit by registered or certified mail

to each owner of property abutting upon that portion of said street a copy of this Resolution.

Section 6. The Town of Black Mountain Zoning Administrator is further directed to cause adequate notices of the proposed closing and of the public hearing to be posted as required by G.S. 160A-299.

I move the adoption of the foregoing resolution:

Vice Mayor Maggie Tuttle

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 this the 8th day of Don Collins, Mayor

ATTEST:

Don Collins, Major

Angela Reece, Town Clerk

Josh Harrold, Town Manager

Published in the Black Mountain News for four consecutive weeks on 5/9, 5/16, 5/23, and 5/30, 2019
Posted to the town bulletin board on 4/11/19.

May 9, 16, 23, 30, 2019
0003543901

RESOLUTION #R-19-12

RESOLUTION TO CLOSE A PORTION OF AN UNOPENED, PLATTED PORTION OF CAMPBELL STREET

WHEREAS, the Town of Black Mountain has received a request from the adjoining property owners to close that unopened, platted portion of Campbell Street; and

WHEREAS, the Planning Board for the Town of Black Mountain did recommend that the street be closed; and

WHEREAS, the Town of Black Mountain has the authority to close dedicated streets within its jurisdiction on its own motion pursuant to N.C.G.S. 160A-299; and

WHEREAS, the unopened, platted portion of Campbell Street to be closed is more particularly described as follows:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a point in the western edge of the right of way of Campbell Street, said point being the northeast corner of Lot 6, Block E, Plat Book 198 at Page 20, Buncombe County Registry; thence from said Beginning and with the eastern boundary of said Lot 6, Block E, South 2° 30' West 110 feet to a point in the western edge of Campbell Street; thence South 87° 30' East 40 feet to a point in the western boundary of Lot 6, Block F, Plat Book 198, Page 20, the southwest corner of that property described in Deed Book 899 at Page 303, Buncombe County Registry; thence with the western boundary of said Lot 6, Block F, North 2° 30' East 110 feet to the northwest corner of said Lot 6, Block F, thence with the southern edge of the right of way of Central Avenue North 87° 30' West 40 feet to the BEGINNING, being the northern portion of that part of Campbell Street lying between Central Avenue and Washington Avenue.

WHEREAS, the Board of Aldermen of the Town of Black Mountain considered the above referenced request at its regular meeting at 6:00 p.m. on the 8^h day of April, 2019 and for good cause shown, the Board of Aldermen declared its intent to close the described unopened, platted portion of Campbell Street; and

WHEREAS, a copy of the resolution adopted by the Board of Aldermen at their April 8, 2019 meeting was published in the Black Mountain News for four (4) consecutive weeks; and

WHEREAS, notice of the adoption of the resolution of intent and the public hearing on the closing of the described unopened, platted portion of Campbell Street was posted at two prominent places along said street no later than April 12, 2019; and

WHEREAS, a public hearing was held to received public comment at the regular meeting of the Board of Aldermen in the Board meeting room in the Town Hall Building on Monday, June 10, 2019 at 6:00 p.m.; and

WHEREAS, it appears to the satisfaction of the Board of Aldermen that closing the described unopened, platted portion of Campbell Street is not contrary to the Town, and that no individual owning property in the vicinity of said unopened, platted portion of Campbell Street would be hereby deprived of reasonable means of ingress or egress; but

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain that:

1. Pursuant to the North Carolina General Statute Section 160A-299, that unopened, platted portion of Campbell Street described shall be permanently closed to public use.
2. The closing is subject to the retention by the Town of easements for any existing water, sewer, or other existing utility lines.
3. Pursuant to North Carolina General Statute Section 160A-299, a certified copy of this resolution and order shall be filed in the Office of the Register of Deeds for Buncombe County, North Carolina, if and at such time as the contingencies set out above are met.

I move the adoption of the foregoing resolution:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this the 10th day of June, 2019.

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Josh Harrold, Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 10, 2019

SUBJECT: Public Hearing to Close the Remainder of an Unopened, Platted Portion of Campbell Street
#R-19-13

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9B
Department:	Planning and Development Services
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: At their February 2019 meeting, the Planning Board voted to recommend the closure the remainder of the unopened, platted portion of Campbell Street that was left after recommending the closure of the unopened, platted portion of Campbell Street that was petitioned by Josh Scala.

The Town has the authority to close dedicated but unopened streets within its jurisdiction on its own motion.

MOTION FOR CONSIDERATION:

1. To open the public hearing for **Resolution #R-19-13** to Close Remaining Unopened, Platted Portion of Campbell Street.
2. To close the public hearing.
3. The approve **Resolution #R-19-13** for the street closure.

FUNDING SOURCE: N/A

ATTACHMENTS: **Resolution #R-19-13**, Map, Petition, Staff Memo

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve **Resolution #R-19-13** as presented.



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue S Black Mountain S North Carolina S 28711
Phone: 828-419-9300 s Fax: 828-669-2030 s TDD: 1-800-735-2962

Date: February 25, 2019

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

RE: Portion of Campbell Street Right-of-Way Closure Request

Please find pertinent information attached.

Pages 7 – 11:	Staff Memo
Page 12:	Petition
Page 13:	Map (original plat)
Page 14:	Map (Scala survey)
Pages 15:	Notice to Property Owners
Page 16:	Letter from Fire Department
Page 17:	GIS Map
Page 18-20:	Resolution R-86-9
Page 21:	Map (identifying 1986 closure and petitioned closure)

Summary

Josh and Katharine Scala, Eleanor McPhail and Thomas and Lillian Logan have filed a petition (page 12) to close a portion of Campbell Street that abuts Central Avenue. The portion that is being requested is approximately 120.15' in length. The Fire Department does not foresee any issues with the closing of this portion of Campbell Street.

All owners abutting Campbell Street (from Central Avenue south) have been notified of the petitioned closure and a copy of the notice is provided in this packet.

A portion of Campbell Street was closed in 1986 and this is referenced in Resolution R-86-9 along with a map showing the 1986 closure and the petitioned closure.

Lot #8586 (labeled as lot 2 on GIS map) has a 20' deeded driveway easement to Craggy Street. This easement is recorded in Plat Book 87 at Page 28.

Lot #9222 (labeled as Lot 1 on GIS map) has access from Washington Avenue to W. College Street.

The Planning Board may choose to make a complimentary petition for the remaining approximate 300' of Campbell Street. If the board chooses to make this complimentary petition, it will be a separate process.

The board may ask the original petitioner if they would not mind waiting an additional thirty days to sync up the public hearings but it cannot be required.

Definitions

The land use code defines the following terms:

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property or those across a street.)

Adjacent: Either abutting or being directly across a street.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Right-of-way: 1) A The strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

3.6.2 Dedication and closures of rights-of-way or land to the town.

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen

Does not apply.

- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:

1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties do not sign the petition, notice to abutting property owners shall be given as required by NCGS. If the request is generated from town staff or a board or commission, the fee shall not apply.

Josh Scala submitted a petition for street closing request on January 3, 2019. The petition was signed by Josh and Katharine Scala, owner of 204 Craggy Street; Eleanor McPhail, owner of 99999 Craggy Street; and Thomas and Lillian Logan, owner of 113 W College Street. Josh Scala submitted check #2607 for the amount of \$300.00 for the petition. A copy of the petition and two maps are attached.

*N.C.G.S. 160A-299 (a) states that when a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, **a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records** and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley.*

2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way if any (utilities, etc.) and information on possible future uses from any of the town's adopted plans, and place the issue on the next planning board agenda if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.

The requested right-of-way closure is approximately 120.15' in length per a survey recorded in Plat Book 181, Page 72 (attached).

Currently there are no uses in the right-of-way.

The right-of-way does not contain a sewer line or water line.

The right-of-way is not identified on any town plans.

3. The planning board will review the request and make a recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way

into town control or maintenance, to close any additional areas of right-of-way in addition to the petition, or not accept the petition and leave the right-of-way as an offering.

Staff finds it reasonable to consider this petition request.

4. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
 - a. Right-of-way identified is not part of adopted town plans.

The requested right-of-way closure is not identified in any of the following plans: Bike Plan, Comprehensive Plan, Greenway Master Plan, Stormwater Master Plan, Recreation and Parks Master Plan, Pedestrian Plan, Wellhead Protection Plan, Hazard Mitigation Plan or Veteran's Park Master Plan.

- b. Right-of-way is not necessary for current or future utilities.

All utilities are located on Craggy Street and W. College Street

- c. Right-of-way in its current condition pose a hazard to public health, safety or welfare.

The right-of-way does not pose a threat to public health, safety or welfare.

- d. Right-of-way is along a drainage that is part of a stormwater management plan.

There are no stormwater systems on this right-of-way nor is it along any drainage system.

- e. Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.

The right-of-way is not a current corridor and is not identified on the Greenway Master Plan or the Pedestrian Plan for future corridors or roadways. All lots have access from either Craggy Street or W. College Street.

- f. Abutting property owners have signed the petition in favor of the closure.

The owners of 204 Craggy Street, 113 W. College Street and 99999 Craggy Street have signed the petition. These are the owners that abut the portion of the right-of-way that is requested to be closed.

5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact

additional abutting property owners to get their input before making a determination.

If the Planning Board makes a complimentary petition to close the remaining portion of Campbell Street, it will be a separate petition with a separate process.

6. Planning board recommendation is forwarded to the board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.

If the Planning Board recommends the closure then the next step would be a call for public hearing before the Board of Aldermen.

7. Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.

This item will be handled by Planning staff.

8. Board of aldermen holds a public hearing and accepts or rejects the petition for closure.

The public hearing will be advertised and held at a regularly scheduled meeting of the Board of Aldermen.

Date: Feb 25, 2019

**TO THE BOARD OF ALDERMEN OF THE
TOWN OF BLACK MOUNTAIN**

We, the undersigned, being the Town of Black Mountain Planning Board ~~(some) (all) of the owners of the property adjoining the street or alley described below~~, do hereby petition the Board of Aldermen of the Town of Black Mountain, to close the following described street or alley:

remaining portion of Campbell Street

297' x 40'

The undersigned petitioners do certify that the closing of the above described street or alley will not be contrary to the public interest and that no individual owning property in the vicinity of said street or alley, and if it is located in a subdivision, no individual owning property in said subdivision, will be deprived of reasonable means of ingress and egress to his/her property.

The following persons, in addition to the petitioners, own property adjoining the above described street or alley:

<u>NAME</u>	<u>ADDRESS</u>
<u>Eleanor McPhail</u>	<u>99999 Craggy St</u>
<u>Dwayne Tillman</u>	<u>210 Craggy St</u>
<u>Charles & Lynn Freeman</u>	<u>214 Craggy St</u>
<u>Robert Charles Taylor</u>	<u>104 Washington Ave</u>
<u>James Inabnett Heirs</u>	<u>109 W College St</u>
<u>Buford & Carolyn Copeland</u>	<u>111 W College St</u>
<u>Malcolm B Durham Et Al</u>	<u>115 W College St</u>

WHEREFORE, your petitioners respectfully request the Board of Aldermen of the Town of Black Mountain to adopt a resolution ordering the closing of the above described street or alley.

Witness our signatures the day and year first above written.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
<u>The Town of Black Mountain Planning Board</u>		
<u>For</u>		<u>Against</u>
<u>Peter Vazquez</u>		
<u>Pam Norton</u>		
<u>Lisa Milton</u>		
<u>Jesse Gardner</u>		
<u>Mike Rains</u>		
<u>Scott Reed</u>		

Member Jennifer Willet was absent

Campbell Street Right-of-Way



March 7, 2019

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003540330

Pymt Method Invoice

Net Amt: \$382.32

Run Times: 4

No. of Affidavits: 1

Run Dates: 05/09/19, 05/16/19, 05/23/19, 05/30/19

Text of Ad:

TOWN OF BLACK MOUNTAIN
RESOLUTION OF INTENT # R-19-08

RESOLUTION DECLARING THE INTENT OF THE BOARD OF ALDERMEN OF THE TOWN OF BLACK MOUNTAIN TO CONSIDER THE CLOSING OF THE REMAINDER OF AN UNOPENED, PLATTED PORTION OF CAMPBELL STREET AND TO HOLD A PUBLIC HEARING ON THIS ISSUE JUNE 10, 2019

WHEREAS, G.S. 160A-299 authorizes the Board of Aldermen of the Town of Black Mountain to permanently close public streets or alleys; and

WHEREAS, The Town of Black Mountain has received a request from the Planning Board to close that remainder of an unopened, platted portion of Campbell Street; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request, did recommend that the requested unopened portion of Campbell Street be closed; and

WHEREAS, the Board of Aldermen of the Town of Black Mountain must set a public hearing to consider any comments concerning the above referenced request before taking any action; and

WHEREAS, in accordance therewith, the Board of Aldermen of the Town of Black Mountain desires to take the following actions:

DESCRIPTION:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a point in the western edge of Campbell Street, said point being the southeast corner of Lot 3, Block E, Plat Book 198, Page 20, Buncombe County Registry; thence from said Beginning and with the western edge of the right of way of Campbell Street, North 2° 30' East 310 feet to a point in the eastern boundary of Lot 6, Block E; thence South 87° 30' East 40 feet to a point in the eastern edge of Campbell Street, the southwest corner of that property described in Deed Book 899 at Page 303, Buncombe County Registry; thence South 2° 30' East 310 feet to the southwest corner of Lot 3, Block F, Plat Book 198, Page 20; thence North 87° 30' West 40 feet to the BEGINNING, and being a portion of Campbell Street lying between Central Avenue and Washington Avenue.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain:

Section 1. Pursuant to G.S. 160A-299, the Board of Aldermen declares its intent to close the remainder of an unopened portion of Campbell Street.

Section 2. A public hearing on the question of closing said street is hereby called at Town Hall, 160 Midland Avenue, Black Mountain, N.C. 28711 on Monday, June 10, 2019 at 6:00 p.m.

Section 3. Following the public hearing called hereby, the Board of Aldermen shall consider the passage of an order closing the street identified above.

Section 4. The Town of Black Mountain Town Clerk is hereby directed to publish this Resolution once a week for four successive weeks in the Black Mountain News, or other newspaper of general circulation in the area.

Section 5. The Town of Black Mountain Zoning Administrator is hereby directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution.

Section 6. The Town of Black Mountain Zoning Administrator is further directed to cause adequate notices of the proposed closing and of the public hearing to be posted as required by G.S. 160A-299.

I move the adoption of the foregoing resolution:

Vice Mayor Maggie Tuttle

READ, APPROVED AND ADOPTED, by a vote of 5__ to 0__ this the 8th day of April, 2019.

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Josh Harrold, Town Manager

Published in the Black Mountain News for four consecutive weeks on 5/9, 5/16, 5/23, and 5/30.
Posted to the town bulletin board on 4/11/19.

May 9, 16, 23, 30, 2019
0003540330

RESOLUTION #R-19-13

RESOLUTION TO CLOSE REMAINING UNOPENED, PLATTED PORTION OF CAMPBELL STREET

WHEREAS, the Town of Black Mountain has received a request from the Town of Black Mountain Planning Board to close the remaining unopened, platted portion of Campbell Street; and

WHEREAS, the Planning Board for the Town of Black Mountain did recommend that the remainder of the street be closed; and

WHEREAS, the Town of Black Mountain has the authority to close dedicated streets within its jurisdiction on its own motion pursuant to N.C.G.S. 160A-299; and

WHEREAS, the remaining unopened, platted portion of Campbell Street to be closed is more particularly described as follows:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a point in the western edge of Campbell Street, said point being the southeast corner of Lot 3, Block E, Plat Book 198, Page 20, Buncombe County Registry; thence from said Beginning and with the western edge of the right of way of Campbell Street, North 2° 30' East 310 feet to a point in the eastern boundary of Lot 6, Block E; thence South 87° 30' East 40 feet to a point in the eastern edge of Campbell Street, the southwest corner of that property described in Deed Book 899 at Page 303, Buncombe County Registry; thence South 2° 30' East 310 feet to the southwest corner of Lot 3, Block F, Plat Book 198, Page 20; thence North 87° 30' West 40 feet to the BEGINNING, and being a portion of Campbell Street lying between Central Avenue and Washington Avenue.

WHEREAS, the Board of Aldermen of the Town of Black Mountain considered the above referenced request at its regular meeting at 6:00 p.m. on the 8th day of April, 2019 and for good cause shown, the Board of Aldermen declared its intent to close the described remaining unopened, platted portion of Campbell Street; and

WHEREAS, a copy of the resolution adopted by the Board of Aldermen at their April 8, 2019 meeting was published in the Black Mountain News for four (4) consecutive weeks; and

WHEREAS, notice of the adoption of the resolution of intent and the public hearing on the closing of the described remaining unopened, platted portion of Campbell Street was posted at two prominent places along said street no later than April 12, 2019; and

WHEREAS, the Planning Board, by a vote of 7-0, joined in the petition to close the remaining unopened, platted portion of Campbell Street; and

WHEREAS, a public hearing was held to received public comment at the regular meeting of the Board of Aldermen in the Board meeting room in the Town Hall Building on Monday, June 10, 2019 at 6:00 p.m.; and

WHEREAS, it appears to the satisfaction of the Board of Aldermen that closing the described remaining unopened, platted portion of Campbell Street is not contrary to the Town, and that no individual owning property in the vicinity of said remaining unopened, platted portion of Campbell Street would be hereby deprived of reasonable means of ingress or egress; but

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain that:

1. Pursuant to the North Carolina General Statute Section 160A-299, that remaining unopened, platted portion of Campbell Street described shall be permanently closed to public use.
2. The closing is subject to the retention by the Town of easements for any existing water, sewer, or other existing utility lines.
3. Pursuant to North Carolina General Statute Section 160A-299, a certified copy of this resolution and order shall be filed in the Office of the Register of Deeds for Buncombe County, North Carolina, if and at such time as the contingencies set out above are met.

I move the adoption of the foregoing resolution:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this the 10th day of June, 2019.

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Josh Harrold, Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 10, 2019

SUBJECT: Building Permit Ordinance Text Amendment, Public Hearing

AGENDA INFORMATION

Agenda Location:	New Business
Item Number:	9C
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The updated ordinance reflects requirements of the building permit, to ensure the town has authority to require these documents in order to have a building permit issued. The origin of this amendment is to require sewer permits or MSD service approval prior to acquiring a building permit.

MOTION FOR CONSIDERATION: Approve the text amendment as presented

FUNDING SOURCE: N/A

ATTACHMENTS: Draft Ordinance #*O-19-11*

MANAGER’S COMMENTS AND RECOMMENDATIONS:

ORDINANCE NO. #O-19-11

ORDINANCE TO AMEND APPENDIX A, SECTIONS 2.1.4 AND 2.1.5 THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

WHEREAS, the North Carolina Building Code: Administrative Code and Policies Chapter 1 Section 106.3.1 requires the Town utilize a permit application, and obtain information needed for that purpose, and;

WHEREAS, changes in other regulatory requirements created a need to update Appendix A, Sections 2.1.4 and 2.1.5 of the Town of Black Mountain Code of Ordinances.

NOW, THEREFORE, BE IT RESOLVED that Appendix A, Chapter 2 Section 2.1, is amended to read as follows

2.1.4 - Town zoning authorization and building permit required.

A. Permit required before work is begun. Failure to obtain a written permit prior to beginning of construction shall be a misdemeanor as provided in N.C.G.S. §160A-417(f) and constitute a violation of this article and subject the offender to a civil penalty of \$50.00 per day, with each day after the beginning of work being a separate violation. A stop order will be issued and remain in effect until the work done is removed or a permit is properly applied for and approved. Penalties may be waived in cases of emergency repairs or hardship as determined by the building inspector. Questions concerning whether or not specific work or jobs need a permit should be directed to the town building inspector's office.

B. Zoning, stormwater and fire safety authorization required. No building permit will be issued until the town zoning administrator has provided his or her authorization that the proposed structure or use is compliant with the zoning district in which it is located. The town fire prevention inspector must provide his or her authorization that the project is compliant with the town fire district ordinance. The permit must also be reviewed and approved by the storm water and floodplain administrator.

C. Permits issued for approved developments and lots only. The building permit shall not be issued for construction of infrastructure in a new subdivision until the preliminary plat is approved, and building permits for construction on new lots which are created by the subdivision of land shall not be issued until the subdivision plat is approved. Building permits for existing lots shall be issued if the

D. False statements. False statements on any application for a permit shall be grounds for immediate revocation or denial of such license or permit. |

2.1.5 - Application for a building permit.

A. Applications for building permits shall include a site plan or plot plan drawn to scale showing:

1. The actual dimensions and shape of the lot to be built upon.
2. Exact sizes, location, and dimensions of the proposed building or alteration.
3. Location of the lot with respect to adjacent rights-of-way.
4. Location and dimensions of off-street parking and ingress and egress to such space.

B. Approval and proof of payment of required MSD service application or facilities fee (whichever is applicable as determined by MSD) or approval from Buncombe County Health Department for septic installation. |

C. Proof of the availability of potable water to project and evidence that any required easements or encroachment permits have been obtained.

D. Any additional information that may be applicable and lawfully required by the building inspector which at a minimum, includes the following:

1. Two sets of plans
2. Premise number from energy utility
3. Stormwater control plan, if stormwater control measures are required
4. Residential stormwater solution worksheet, if stormwater control is required
5. Manual J calculations
6. Boundary line survey
7. Elevation certificate
8. Buncombe County Sediment and Erosion Control Permit, if required

9. Lien Agent Appointment
10. House numbers on the outside of the house, visible from the street (if a remodel)
11. New mechanical systems are required to have a duct blast test.

READ, APPROVED AND ADOPTED by a vote of ____ to ____ on this 10th day of June, 2019.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

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BLACK MOUNTAIN NC 28711
USA

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PUBLIC NOTICE

**BLACK MOUNTAIN
BOARD OF ALDERMEN**

FY18-19 BUDGET PUBLIC HEARING

Monday, June 10, 2019 at 6:00 p.m.

The Town of Black Mountain's Budget and Five Year Capital Improvement Plan for FY19-20 has been submitted to the Board of Aldermen on **Wednesday April 17, 2019** and a copy was made available for public inspection in the office of the Town Clerk, 160 Midland Ave., Black Mountain, NC as required in NC G.S. 159-12.

The Board of Aldermen will hold a public hearing on the FY19-20 Budget and Five Year Capital Improvement Plan during their regularly scheduled meeting on **Monday, June 10, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC.

The meeting is open to the public.

/s/Angela L. Reece
Angela L. Reece
Town Clerk

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Angela Reece, Town Clerk at 419-9310 or by email at

www.townofblackmountain.org

Please visit www.townofblackmountain.org to obtain agenda packets and other meeting information.

Posted to the Town Bulletin Board
5/16/19

Published in the Black Mountain News
5/23/19, 5/30/19

0003573826

Minutes Follow this Section

*** 5/20/19 Budget Workshop Minutes to be added shortly.



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
May 9, 2019

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, May 9, 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, May 13, 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 - absent
Alderman Larry B. Harris
Alderman Carlos Showers
Alderman Ryan Stone – absent
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebke, Assistant Town Manager
Angela L. Reece, Town Clerk
Ron Sneed, Town Attorney

Shawn Freeman, Police Chief
Scottie Harris, Fire Chief
Jessica Trotman, Planning Director
Joshua Henderson, Recreation Director
Jamey Matthews, Public Works Director

The Board reviewed the items that were proposed for the May 13, 2019 regular session meeting and made no changes.

Mayor Don Collins opened the meeting. Town Manager, Josh Harrold presented the proposed agenda to the Board of Aldermen. Pastor Mary Katherine Robinson of Black Mountain Presbyterian Church will give the invocation.

Town Manager, Josh Harrold discussed **Item 5C**, Call for Public Hearing for Building Permit Ordinance Text Amendments stating this ordinance will clarify the process necessary to connect to the MSD sewer system regarding proper permitting.

Town Manager, Josh Harrold discussed **Item 5D**, Black Mountain Center for the Arts Mural stating BMCA has requested to replace a mural on the side of the building. The rendering presented to the Board for consideration depicted the art center in action. Manager Harrold stated

Black Mountain Board of Aldermen
Agenda Workshop Minutes –May 9, 2019

if the Board approved the representation then the item will go before the Historic Preservation Commission for artwork approval as it is in the historic district. Attorney Sneed reminded the Board of Aldermen to keep in mind they are not approving the artwork but merely approving a modification to their building.

Town Attorney, Ron Sneed discussed **Item 7A**, Hemphill Property Update recalling prior meeting conversations with the Town Attorney regarding the property. Alderman Larry B. Harris inquired of the Attorney the reasonableness of approaching accepting the property in a similar manner in which the town closes a street and Attorney Sneed advised it was not. Alderman Harris stated this matter is unique due to the potential right-of-way acquisition and future development needs of the town.

Town Manager, Josh Harrold discussed **Item 8A**, Mayor and Board Compensation. As requested, Manager Harrold presented the Board with a draft ordinance for discussion to restore Mayor and Aldermen compensation in the future.

Town Manager, Josh Harrold discussed **Item 8B**, Tax Collection Agreement with Buncombe County reminding everyone that the County collects property taxes for the Town with over a 99% success rate. Manager Harrold stated the Town has historically paid a \$2% fee which equates to approximately \$75K - \$85K annually. Alderman Larry B. Harris clarified this contract is a renewal of current services.

Town Manager, Josh Harrold discussed **Item 8C**, Sidewalk Contract Approval presenting three sidewalk contracts to the Board for their consideration. Manager Harrold stated Phase I sidewalk construction at the intersection of Highway 9 and Blue Ridge Road is in progress with NCDOT due to round-a- bout construction at the intersection of Highway 9. Manager Harrold stated this portion of sidewalk will be funded within the round-a-bout project. Manager Harrold stated Phase II will encompass Dogwood Lane to the end of Cheshire and cost around \$18,000 for design and approximately \$100,000 for construction. Manager Harrold stated Phase III will encompass Cheshire to Lakey Gap Road and cost around \$30,000 for design and approximately \$115,000 for construction. Manager Harrold recalled Board of Aldermen inquiries regarding the possibility of securing federal funds to pay for portions of this and advised federal funding will not be accessible until 2022 if approved, and said there is no guarantee the Town would be awarded funding for the project. Manager Harrold stated over the past few years projects of this type have become more competitive. Manager Harrold discussed the sidewalk contract for Black Mountain Avenue recalling discussions regarding this section over the past few months stating the cost for design is approximately \$25,500.

Town Manager, Josh Harrold discussed **Item 8D**, Lake Tomahawk Dam Repair Design contract approval stating staff noticed some seepage on back side of the dam that faces Cragmont Road a few months ago and contacted engineers to assess the situation. Manager Harrold stated the engineer advised it was normal for earthen dams to experience seepage. Alderman Larry B. Harris inquired if this could have resulted from the tree removal several years ago and Manger Harrold stated the engineer advised it was possible for some water to be flowing out of where old tree roots have decayed but said we will not know for certain until a report is prepared.

Town Manager, Josh Harrold discussed **Items 8E, 8F, and 8G**, Contracts for Art in the Afternoon, Montessori School, and Golf Course Snack Shop. Manager Harrold stated Art in the Afternoon

Black Mountain Board of Aldermen
Agenda Workshop Minutes –May 9, 2019

has been operating in the Carver Center under a Memorandum of Understanding and stated he recommends a formal lease of this space similar to the Montessori School who also operates there. Manger Harrold stated the Montessori School has requested additional space and an amendment to their lease. Manager Harrold stated the annual Golf Couse Snack Shop lease is expiring and will need to be renewed.

Town Manager, Josh Harrold discussed **Item 8H**, Urban Forestry Commission powers and duties text amendment stating the Urban Forestry Commission is transitioning into a more educational role and has requested text amendments to reflect this.

There was no further discussion on the agenda.

Alderman Larry B. Harris stated Marcus Duarte has requested to address the Board of Aldermen regarding relocating Park Rhythms to the downtown area. Mayor Collins allowed Mr. Duarte to address the Board. Mr. Duarte addressed the Board of Aldermen requesting consideration for relocation of some or all of the Park Rhythm's events to the downtown area citing positive impacts on budget, economics, and logistics. A copy of Mr. Duarte's request is made part of and attached to these minutes. Mr. Duarte stated his goal would be for the Town's Recreation and Parks Department to continue hosting the event and for his group to be a support type role. Alderman Carlos Showers inquired regarding Alcohol and Police Chief Freeman clarified that alcohol may not be consumed outside of the restaurants designated areas as is now. Alderman Showers stated he wished the events to remain family friendly. Alderman Harris stated he does not feel it is very responsible to move people away from our downtown and allow food vendors from surrounding municipalities to come service the event and said he is in favor of a trial move. The Board left this item open for discussion further when all members are present at the regular meeting.

There being no further discussion, on a motion by Alderman Larry B. Harris with a vote of 3-0 Mayor Don Collins adjourned the meeting at 5:35 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor

Don Collins
Maggie Tuttle
Carlos Showers
Tim Raines
Ryan Stone
Larry Harris
Josh Harrold

Marcus Duarte – Resident of 110 Church Street for 28 years and Owner of The Red Radish Catering Company and Little Sprout Carryout. We just completed out 21st year of small business ownership in Black Mountain and currently upcoming Board Member of the Black Mountain Chamber.

I am here representing the Black Mountain Hospitality Group and over 35 of the Downtown Retailers and Restaurateurs.

We are here to ask the town leadership to:

- 1. Move the Park Rhythms Concert Series from Lake Tomahawk to Downtown Black Mountain at the intersection of Cherry/Sutton Street.**
- 2. Consider a name change of “Town Rhythms”.**
 - We see many potential positive changes in this move.
 - Building on the annual successes of Holly Jolly and 4th of July Street party.
 - We can use this series to develop a culture of collaboration and support between town sponsored functions and the independent small business owners and shop keepers of Black Mountain.
 - It will bring business to local foodservice operations and allow shopkeepers to stay open for families to stroll & shop.

Budget:

- The town spends \$10,000 annually to bring in Entertainment to the 7 Concerts at Lake Tomahawk.
- In addition, the Parks and Rec. Department solicits donations from town businesses.
- As independent owners, we find better value of our advertising dollars to promote business in our shopping district, rather than supporting events that allow our customer base to be pulled away.

Economic Impact:

- If 100 concert goers decide to come early and eat in local restaurants, spending an average of \$15 - that would be a \$11,000 to \$15,000 stimulus of our downtown economy over the course of 7 concerts.
- Support of over 35 independently owned and operated local businesses.(See Below)

Logistics:

- By setting up a portable stage at the end of Cherry Street (in the loading zone next to the depot) for an 8-week period, this would save the town labor of breaking down and setting up weekly.
- This would also provide an excellent platform for advertising the upcoming concerts and encouraging downtown visitors to come back for the concerts.
- Parking can be accommodated by using the new town services parking lot and the SunTrust lot.

Other thoughts:

- Collaborate with the Black Mountain Tailgate Market and solicit vendors to a supplemental 7 -week market on Sutton in front of the old Depot.
- Parks and Recreation could set up a Kid Zone on Sutton in Front of the Town Memorial.

Current Support:

Antiques on Sutton
Europa
Periwinkles
Curiosity Shop
Sassafras on Sutton
Spice it Up
Louise's
Town Pump
Dark City Deli
Mountain Fairy Hair
Lookout Brewing
Berliner Kindl
Design Driven
Pizza Machine
Que Sera
Foothills Meats
Bella Gallery
Seven Sisters
The Hop
Bad Craft
Black Mountain Ale House
Black Mountain Brewing
Kilwins
Merry Wine Market
Town Hardware
Hey Hey Cupcake
Fresh Pizza
Common House Fly
Veranda
Tysons
The Red Radish
Little Sprout Carryout
Chiffenrobe
Mountain Nest
Visions of Creation
CW Moose







**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
SPECIAL CALL PERSONNEL POLICY MEETING MINUTES**

May 9, 2019

PERSONNEL POLICY

THE BLACK MOUNTAIN BOARD OF ALDERMEN held a special call meeting on Thursday May 9, 2019 at 5:30 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to discuss the Town proposed personnel policy.

1. CALL TO ORDER

Mayor Collins called the meeting to order at 5:37 p.m. with the following members present:

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

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, Assistant Town Manager/Financial Services Director
Angela L. Reece, Town Clerk
Ronald E. Sneed, Attorney
Susan Russo Klein, Attorney
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief
Jessica Trotman, Planning Director
Jamey Matthews, Public Services Director
Joshua Henderson, Recreation Services Director

Mayor Don Collins called the meeting to order and opened the floor for discussion.

Town Manager Harrold began the discussion of the revised Town Personnel Policy (*draft*) which is made part of and included in these minutes. Manager Harrold stated the policy was updated to reflect current human resources law and policy and procedures with the assistance of Attorney Susan Russo Klein and was also reviewed by Attorney Ron Sneed. Attorney Klein discussed the policy with the Board of Aldermen stating this document governs any employee of the Town of Black Mountain. Alderman Larry B. Harris inquired regarding the employee pay schedule as it is referred to within the policy. Attorney Klein stated the personnel policy is a mechanism for the Town Manager to conduct surveys and make recommendations to the Board of Aldermen regarding the pay schedule. Alderman Larry B. Harris directed Town Manager Harrold to review the pay schedule and bring back any recommendations at a later date. Alderman Harris discussed the option of having a whistleblower hotline made available to employees and directed Town

Black Mountain Board of Aldermen
Special Call PERSONNEL POLICY Meeting Minutes – May 9, 2019

Manager Harrold to contact Buncombe County and make inquiries regarding the service they are using to see if it will be cost effective for the Town. Board members agreed this was beneficial to the employees and Attorney Klein stated a hotline provided employees additional avenues to report legal or ethical concerns regarding other employees. Attorney Sneed agreed.

Mayor Don Collins inquired regarding procedures for drug testing of employees. Attorney Klein stated every employee is subject to an initial drug test but said additional drug testing can only happen in certain circumstances. Mayor Collins inquired regarding random drug testing of every employee and Attorney Klein stated random drug testing only applies to safety sensitive positions due to case law prohibiting public employers from randomly drug testing employees unless they are in safety sensitive positions. Attorney Klein stated this does not apply to reasonable suspicion. Alderman Tim Raines inquired regarding drug testing in the event of an accident. Attorney Klein stated this falls under the reasonable suspicion and said any accident that causes offsite medical care, substantial property damage or any workers comp injury is subject to drug testing.

Attorney Klein discussed the significance of being a public employer with the Board of Aldermen and staff stating the policy governs hiring, disciplining, firing, and promotion and said it is very important for any employment action to be thoroughly documented. Attorney Klein stated it was also vital that information documented be kept in a confidential file and reminded everyone that certain elements regarding public employee's files are a matter of public record as defined in NC GS 160A-168. Attorney Klein and Attorney Sneed discussed staff evaluations and procedures with the Board. Alderman Larry B. Harris stated the Board has included a provision in the budget ordinance requiring the Town Manager to make the Board aware of any pay raise outside of the initial pay raise for new employees. Attorney Klein advised the amount of the raise and reasons for it are public record but stated any other discussion regarding a raise must be discussed in closed session.

Attorney Klein suggested implementing additional staff training such as annual anti-discrimination and harassment training.

Alderman Larry B. Harris moved to adopt the Town of Black Mountain Personnel Policy as amended. The motion passed by a vote 3-0.

There was no further discussion.

There being no further business, on a motion by Alderman Larry B. Harris, with a vote of 3-0 Mayor Don Collins adjourned the meeting at 6:08 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor

Josh Harrold Town Manager



PERSONNEL POLICY RESOLUTION OF THE TOWN OF BLACK MOUNTAIN

WHEREAS, the Mayor and Town Aldermen of the Town of Black Mountain recognizes the importance of its municipal employees in meeting the service needs of Town residents; and

WHEREAS, it is the desire of the Mayor and Town Aldermen to maintain a municipal work force composed of qualified, competent, dedicated employees; and

WHEREAS, the Mayor and Town Aldermen recognize the necessity of equitable rates of pay and reasonable conditions of employment in the maintenance of such a work force; and

WHEREAS, it is the desire of the Mayor and Town Aldermen to establish a system of personnel administration that will assure equity of compensation and fair and reasonable employee treatment consistent with the needs of the Town and the circumstances of the situation which may be faced from time to time;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN ALDERMEN OF THE TOWN OF BLACK MOUNTAIN that the following rules and regulations shall govern the appointment, classification, salary, promotion, demotion, and employment conditions of the employees of the Town of Black Mountain, North Carolina, replacing, where appropriate, the existing articles and sections on personnel, pay plans, class specifications, and benefits.

ADOPTED:

REISSUED:

Black Mountain Personnel Policy Manual

TABLE OF CONTENTS

ARTICLE I. POLICY.....	6
SECTION 1. EMPLOYMENT RELATIONSHIP	6
SECTION 2. RIGHTS.....	6
SECTION 3. DISCLAIMER.....	6
ARTICLE II. GENERAL PROVISIONS.....	6
SECTION 1. PURPOSE	6
SECTION 2. COVERAGE.....	6
SECTION 3. DEFINITIONS.....	6
SECTION 4. MERIT PRINCIPLE	7
SECTION 5. RESPONSIBILITY OF TOWN ALDERMEN.....	8
SECTION 6. RESPONSIBILITY OF TOWN MANAGER	8
SECTION 7. RESPONSIBILITY OF DEPARTMENT HEADS.....	8
ARTICLE III. CLASSIFICATION PLAN	8
SECTION 1. ADOPTION	8
SECTION 2. ALLOCATION OF POSITIONS	8
SECTION 3. ADMINISTRATION OF THE POSITION CLASSIFICATION PLAN	8
SECTION 4. AMENDMENT OF POSITION CLASSIFICATION PLAN	9
ARTICLE IV. THE PAY PLAN	9
SECTION 1. ADOPTION	9
SECTION 2. MAINTENANCE OF THE PAY PLAN	9
SECTION 3. USE OF PAY RANGES	9
SECTION 4. PAYMENT AT LISTED RATE	10
SECTION 5. SALARY OF TRAINEE	10
SECTION 6. PAY RATES IN PROMOTION, DEMOTION, TRANSFER, RECLASSIFICATION AND COMPLETION OF INTRODUCTORY PERIOD	10
SECTION 7. PAY RATES IN SALARY RANGE REVISIONS	10
SECTION 8. PAY FOR PART-TIME WORK	11
SECTION 9. OVERTIME/COMPENSATORY TIME	11
SECTION 10. USE OF COMPENSATORY TIME	12
SECTION 11. MERIT PAY AWARDS	13
SECTION 12. MERIT BONUS AWARDS	13
SECTION 13. PAYROLL DEDUCTIONS	14
SECTION 14. PAY FOR STORM RELATED SNOW AND DEBRIS REMOVAL	14
ARTICLE V. RECRUITMENT AND EMPLOYMENT	15
SECTION 1. STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY POLICY	15
SECTION 2. IMPLEMENTATION OF EEO POLICY	15
SECTION 3. RECRUITMENT.....	15
SECTION 4. JOB ANNOUNCEMENTS	16
SECTION 5. APPLICATION FOR EMPLOYMENT	16
SECTION 6. APPLICATION RESERVE FILE	16
SECTION 7. QUALIFICATION STANDARDS.....	16
SECTION 8. SELECTION	16
SECTION 9. APPOINTMENTS	17
SECTION 10. INTRODUCTORY PERIOD OF EMPLOYMENT	17
SECTION 11. PERFORMANCE EVALUATION	18
SECTION 12. NOTIFICATION OF DISCIPLINARY ACTION	18

Black Mountain Personnel Policy Manual

SECTION 13. PROMOTION	18
SECTION 14. DEMOTION	18
SECTION 15. TRANSFER.....	19
SECTION 16. REDUCTION IN FORCE.....	19
SECTION 17. TRANSFERENCE OF ACCUMULATED SICK LEAVE	19
SECTION 18. CRIMINAL BACKGROUND CHECK POLICY.....	19
SECTION 19. DISABILITY ACCOMODATION	21
ARTICLE VI. WORK CONDITIONS AND EXPECTATIONS	22
SECTION 1. WORK PERIOD	22
SECTION 2. ON CALL	22
SECTION 3. VOLUNTEER SERVICE	23
SECTION 4. SAFETY	23
SECTION 5. CONFLICT OF INTEREST AND POLITICAL ACTIVITY	24
SECTION 6. OUTSIDE EMPLOYMENT	26
SECTION 7. LIMITATION OF EMPLOYMENT OF RELATIVES.....	26
SECTION 8. CONFORMANCE TO IMMIGRATION LAW REQUIREMENTS	27
SECTION 9. SELECTIVE SERVICE REQUIREMENTS.....	27
SECTION 10. CONFIDENTIAL INFORMATION.....	27
SECTION 11. CONTROLLED SUBSTANCES.....	27
SECTION 12. USE OF TOWN OWNED EQUIPMENT	27
SECTION 13. TRAVEL AND EXPENSE REIMBURSEMENT.....	28
SECTION 14. DISCRIMINATION AND SEXUAL HARRASSMENT	29
SECTION 15. SURRENDER OF PROPERTY	30
SECTION 16. CREDIT CHECK	30
SECTION 17. BI-ANNUAL DRIVING RECORDS CHECK	30
SECTION 18. SEARCHES.....	30
SECTION 19. PROFESSIONAL APPEARANCE.....	30
SECTION 20. PROFESSIONAL BEHAVIOR.....	31
SECTION 21. SOCIAL MEDIA	31
SECTION 22. WORKPLACE MONITORING	32
SECTION 23. WHISTLEBLOWER PROTECTION	32
ARTICLE VII. LEAVES OF ABSENCE	33
SECTION 1. HOLIDAYS	33
SECTION 2. EFFECT OF HOLIDAYS ON OTHER TYPES OF LEAVE	34
SECTION 3. HOLIDAY – WHEN WORK IS REQUIRED	35
SECTION 4. VACATION LEAVE	35
SECTION 5. SICK LEAVE	36
SECTION 6. VOLUNTARY SHARED LEAVE	37
SECTION 7. FAMILY MEDICAL LEAVE	37
SECTION 8. LEAVE WITHOUT PAY	38
SECTION 9. WORKERS’ COMPENSATION LEAVE	39
SECTION 10. BEREAVEMENT LEAVE	39
SECTION 11. TEMPORARY DISABILITY LEAVE	39
SECTION 12. MILITARY LEAVE	40
SECTION 13. CIVIL LEAVE.....	41
SECTION 14. EDUCATIONAL LEAVE WITH PAY	41
SECTION 15. LIGHT DUTY	41
SECTION 16. ADVERSE WEATHER POLICY	41
ARTICLE VIII. SEPARATION, DISCIPLINARY ACTIONS AND REINSTATEMENT	42

Black Mountain Personnel Policy Manual

SECTION 1. TYPES OF SEPARATION.....	42
SECTION 2. DISCIPLINARY ACTIONS	43
SECTION 3. EMPLOYEE APPEAL	45
SECTION 4. REINSTATEMENT.....	45
ARTICLE IX. GRIEVANCE PROCEDURE	45
SECTION 1. POLICY AND PURPOSE.....	45
SECTION 2. DEFINITION	46
SECTION 3. PROCEDURE	46
SECTION 4. BACK PAY AWARDS	47
ARTICLE X. INSURANCE AND RETIREMENT BENEFITS	47
SECTION 1. INSURANCE BENEFITS	47
SECTION 2. UNEMPLOYMENT INSURANCE	47
SECTION 3. OLD AGE AND SURVIVOR'S INSURANCE	47
SECTION 4. RETIREMENT BENEFITS.....	47
SECTION 5. 401K PLAN AND LAW ENFORCEMENT SEPARATION ALLOWANCE	47
SECTION 6. WORKERS' COMPENSATION	48
SECTION 7. RETIREE HEALTH INSURANCE BENEFITS	48
SECTION 8. RETIREE LIFE INSURANCE BENEFITS	48
ARTICLE XI. PERSONNEL RECORDS AND REPORTS	49
SECTION 1. PERSONNEL RECORDS MAINTAINED.....	49
SECTION 2. PUBLIC PERSONNEL RECORDS DEFINED	49
SECTION 3. ACCESS TO PERSONNEL RECORDS	49
SECTION 4. CONFIDENTIAL INFORMATION.....	50
SECTION 5. RECORDS OF FORMER EMPLOYEES.....	51
SECTION 6. RECORDS OF APPLICANTS	51
SECTION 7. REMEDIES OF EMPLOYEES OBJECTING TO MATERIAL IN FILE	51
SECTION 8. PENALTY FOR PERMITTING ACCESS TO CONFIDENTIAL FILE BY UNAUTHORIZED PERSON	51
SECTION 9. PENALTY FOR EXAMINING AND/OR COPYING CONFIDENTIAL MATERIAL WITHOUT AUTHORIZATION	51
SECTION 10. DESTRUCTION OF RECORDS REGULATED	51
ARTICLE XII. SUBSTANCE USE / ABUSE	52
SECTION 1. PURPOSE	52
SECTION 2. SCOPE AND APPLICATION	52
SECTION 3. DEFINITIONS	52
SECTION 4. APPLICANTS.....	52
SECTION 5. EMPLOYEES	54
SECTION 6. SEVERABILITY AND EFFECT	58
SECTION 7. RESERVATIONS.....	59
SECTION 8. DOCUMENT FOR FILE.....	59
SECTION 9. CONFIDENTIALITY.....	59
SECTION 10. NOTIFICATION TO EMPLOYEES OF POLICY	59
APPENDIX A HEALTHCARE REQUEST AND AUTHORIZATION.....	60
APPENDIX B SUBSTANCE ABUSE LAST CHANCE ASSISTANCE AGREEMENT.....	61
ARTICLE XII. IMPLEMENTATION OF POLICY	63
SECTION 1. CONFLICTING POLICIES REPEALED	63
SECTION 2. SEVERABILITY	63

Black Mountain Personnel Policy Manual

SECTION 3. VIOLATIONS OF POLICY PROVISIONS 63

SECTION 4. EFFECTIVE DATE 63

Black Mountain Personnel Policy Manual

Article I. Policy

Section 1.

The employment relationship between the Town and the employee is terminable at the will of either party at any time, with or without cause and with or without notice. No employee, officer, agent or representative of the Town has any authority to enter into any agreement or representation, verbally or in writing, which alters, amends, or contradicts this provision or other provisions in these policies. Any exception to this policy of "at will" employment must be expressly authorized in writing, approved by the Aldermen, and executed by the officers designated by the Town Aldermen.

Section 2.

None of the benefits or policies set forth herein is intended because of their publication to confer any rights or privileges upon employees or to entitle them to be or remain employed by the Town. The contents of this document and procedure herein are presented as a matter of information. They are not conditions of employment.

Section 3.

These personnel policies are not a binding contract, but merely a set of guidelines for the implementation of personnel policies. No policy can address every situation that might arise, and this Personnel Policy contains only general statements of the Town's personnel policies. The Town explicitly reserves the right to modify any of the provisions of these policies at any time and without any notice to employees. Notwithstanding any of the provisions within these policies, employment may be terminated at any time, either by the employee or by the Town, with or without cause and with or without advance notice.

Article II. General Provisions

Section 1. Purpose

The purpose of these policies is to establish a personnel system which will recruit, select, develop and maintain an effective and responsible work force. These policies are established under the authority of the General Statutes of North Carolina.

Section 2. Coverage

This policy shall cover all regular and introductory or probationary employees except as specifically exempted. The Town Manager, Town Attorney, members of the Town Aldermen, members of advisory boards and councils, and part-time employees will be excluded except in sections where specifically included.

Section 3. Definitions

- (a) *Introductory Employee* A person appointed to a budgeted position who has not yet completed the introductory or probationary period.
- (b) *Part-time Employee* An employee, either regular or temporary, who is regularly scheduled less than the number of hours per workweek designated by the Town Aldermen as full-time.

Black Mountain Personnel Policy Manual

- (c) *Full-time Employee* An employee, either regular or temporary, who is regularly scheduled to work the number of hours per workweek designated by the Town Aldermen as full-time.
- (d) *Regular Employee* An employee who has successfully completed the prescribed introductory period shall be considered regular. However, all Town positions are subject to budget review and approval each year by the Town Aldermen, and all employees' work and conduct must meet standards of performance and behavior. Therefore, reference to "regular" employees or permanent positions should not be construed as a contract or right to perpetual funding or employment.
- (e) *Temporary Employee* A person appointed to serve in a position for a defined time period, usually less than six months.
- (f) *Grievance* A claim or complaint based upon an event or condition which affects the circumstance under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.
- (g) *Adverse Action* A demotion, dismissal, reduction in pay, layoff, suspension, or undesirable transfer.

Section 4. Merit Principle

The purpose of this policy and the rules and regulations set forth is to establish a fair and uniform system of modern personnel administration for all employees of the Town.

The Town shall embrace the following merit system principles in administering its personnel program:

- (a) Applicants and employees shall be assured of fair treatment in all aspects of personnel administration without regard for political affiliation, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, genetic information or veteran status. Individuals shall likewise be treated with proper regard for their privacy and constitutional rights as citizens.
- (b) Employees shall be recruited, selected, trained, and advanced on the basis of their ability, knowledge, skill, and performance.
- (c) Employees shall be retained on the basis of the adequacy of their performance. They shall be guided in ways to correct inadequate performance and separated when inadequate performance cannot be corrected.
- (d) Employees shall be protected against coercion for partisan political purposes.
- (e) Employees shall receive equitable and adequate pay and benefits and eligible employees may receive merit pay increases based upon their performance subject to the availability of funds.

Black Mountain Personnel Policy Manual

Section 5. Responsibility of Town Aldermen

The Town Aldermen will establish personnel policies and rules, including the classification and pay plan.

The Town Aldermen will adopt or provide for rules and regulations, resolutions or ordinances concerning personnel policies and other measures that promote the hiring and retention of capable, diligent, and honest employees under the authority of the North Carolina General Statutes, to be administered by the Town Manager.

Section 6. Responsibility of the Town Manager

The Town Manager shall administer the affairs of the Town within the authority granted by the adoption of the Council-Manager form of government. The Town Manager shall be responsible for assisting in the preparation and maintenance of the position classification plan and the pay plan, and shall perform such other duties in connection with a modern personnel program as are required. The Town Manager will prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the Town. All matters dealing with personnel shall be routed to the Town Manager, who shall maintain a complete system of personnel files and records. The Town Manager may perform any or all of these duties and responsibilities or assign them to staff employees.

Section 7. Responsibility of Department Heads

The head of each Town department, with the approval of the Town Manager, shall manage operations and supervise employees assigned to the department under such rules, regulations and procedures as may be required by the Town Manager's standard operational procedures manuals or guidelines as appropriate.

Article III. Classification Plan

Section 1. Adoption

The position classification plan, as amended from time to time, is hereby adopted as the position classification plan for the Town.

Section 2. Allocation of Positions

The Town Manager shall allocate each position covered by the classification plan to its appropriate class in the plan.

Section 3. Administration of the Position Classification Plan

The Town Manager shall be responsible for the administration and maintenance of the position classification plan so that it will accurately reflect the duties performed by employees in the classes to which their positions are allocated. Department heads shall be responsible for bringing to the attention of the Town Manager (1) the need for new positions, and (2) material changes in the nature of duties, responsibilities, working conditions or other factors which may affect the classification of any existing position.

When the Town Manager finds that a substantial change has occurred in the nature or level of duties and responsibilities of an existing position, the existing class specification shall be revised

Black Mountain Personnel Policy Manual

or reallocated to the appropriate class within the existing classification plan, or the position classification plan shall be amended establishing a new class to which the position may be allocated.

Section 4. Amendment of Position Classification Plan

Classes of positions shall be added and deleted from the position classification plan by the Town Manager.

Article IV. The Pay Plan

Section 1. Adoption

The schedule of pay ranges and class titles assigned to pay ranges, as amended from time to time, is hereby adopted as the pay plan for the Town. Pay ranges shall include a minimum rate, a midpoint rate and a maximum rate for each class.

Section 2. Maintenance of the Pay Plan

The Town Manager shall be responsible for the administration and maintenance of the pay plan. The pay plan is intended to provide equitable compensation for all positions, reflecting differences in duties and responsibilities, the rates of pay for comparable positions in private and public employment in the area, changes in the cost of living, the financial conditions of the Town and other factors. To this end, the Town Manager shall from time to time make comparative studies of all factors affecting the levels of pay ranges and shall recommend to the Town Aldermen such changes in pay ranges as appear to be warranted. Any actual changes to salary or compensation of any employee for any reason (except cost of living increases previously approved by the Town Alderman) shall be approved by the Town Aldermen based on the employee's core personnel information before such change takes effect.

Section 3. Use of Pay Ranges

Pay ranges are intended to furnish administrative flexibility in recognizing individual performance among employees holding positions in the same class by rewarding employees for meritorious service. The following general provisions will govern the granting of increases within the pay range:

- (a) The minimum rate established for the class is the normal hiring rate, except in those cases where unusual circumstances appear to warrant appointment at a higher rate. Appointment above the minimum rate may be made with the approval of the Town Manager when deemed necessary and in the best interest of the Town. Above-the-minimum appointments will be based on such factors as the qualifications of the applicant being higher than the desirable education and experience for the class, a shortage of qualified applicants available at the minimum rate, or other similar factors.
- (b) Rates above the minimum rate are reserved to reward employees for meritorious service. Each year, the Town Manager may require department heads to consider the eligibility of employees to receive salary increases and to recommend such advancement or retention at the same rate. Department heads shall consider all factors affecting employee performance and shall submit their recommendation in writing, giving the reasons to advance or retain the employee at the same rate.

Black Mountain Personnel Policy Manual

Section 4. Payment at a Listed Rate

All employees covered by the pay plan shall be paid at a rate within the pay range established for their respective job classes except for employees whose present salaries are above the established maximum rate following transition to a new pay plan.

Section 5. Salary of Trainee

An applicant hired or an employee promoted to a position in a higher class who does not meet all the established requirements of the position be appointed at a rate in the pay plan below the minimum established for the position. In such cases, a plan for training, including a time schedule, will be prepared.

Section 6. Pay Rates in Promotion, Demotion, Transfer, Reclassification, and Completion of Introductory Period

When an employee is promoted, demoted, transferred, or reclassified, the rate of pay for the new position will be established in accordance with the following rules:

- (a) Promotion: An employee who is promoted shall receive no more than a 7.5% award in base salary or an increase to the minimum rate of the new pay range, whichever is higher.
- (b) Demotion: The salary of an employee who is demoted shall be paid within the job classification and pay scale for the new job based on the employee's qualifications and the job itself.
- (c) Transfer: An employee transferring from a position in one class to a position in another class assigned the same pay range shall continue to receive the same salary.
- (d) Reclassification: An employee whose position is reclassified to a class having a higher pay range shall receive a 2.5% award in base salary or an increase to the minimum rate of the new pay range, whichever is higher. If the position is reclassified to a lower pay range and the employee is receiving a salary above the maximum rate established for the new class, the salary of the employee shall be maintained at that level until such time as the employee's pay range is increased above the employee's current salary.
- (e) Introductory Period: An employee who successfully completes the introductory period may receive a pay award. Police officers may receive a pay award after completing their six-month introductory period. All other employees may receive a pay award after completing a twelve-month introductory period.

Section 7. Pay Rates in Salary Range Revisions

When salary ranges are changed, the salaries of employees whose positions are allocated to that class shall be affected as follows:

- (a) When a class of positions is assigned to a higher pay range, employees in that class shall receive a 5% pay increase or an increase to the minimum rate of the new range, whichever is higher.
- (b) When a class of positions is assigned to a lower pay range, the salaries of employees in that class will remain unchanged. If this assignment to a lower pay range results in an employee

Black Mountain Personnel Policy Manual

being paid at a rate above the maximum rate established for the new class, the salary of the employee shall be maintained at that level until such time as the employee's pay range is increased above the employee's current salary.

- (c) When an adjustment is made to a pay range to reflect market changes, or as a result of a complete revision to the classification and pay plan by a consulting firm resulting in reclassification, employees in classes within that pay range may or may not receive adjustments, depending on the Town's financial condition or recommendations from the consultants.

Section 8. Pay for Part-Time Work

The pay plan established by this policy is for full-time service. An employee appointed for less than full-time service will be paid an amount determined by using the hourly rate of the position classification assigned.

Section 9. Overtime/Compensatory Time

To the extent that local government jurisdictions are so required, the Town will comply with the Fair Labor Standards Act (FLSA).

The Town Manager, following FLSA regulations, shall determine which jobs are "non-exempt" and are, therefore, subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions.

Non-exempt employees in the general work force will be paid at a straight time rate for hours up to the FLSA established limit for their positions (usually 40 hours in a 7-day period). The Town may elect to pay employees overtime pay at one and one-half their regular rate of pay or award one and one half hours of compensatory time for each hour worked over the established limit for their positions in lieu of cash payments, in accordance with the provisions of the Fair Labor Standards Act.

Non-exempt sworn law enforcement officers in the Police Department shall receive one and one half hours of compensation time or overtime pay at one and one-half their regular rate of pay, in the Town's discretion, for all hours in excess of 171 hours in a designated 28-day work period.

Non-exempt employees who qualify as firefighters under the FLSA shall receive one and one half hours of compensatory time or overtime pay at one and one-half their regular rate of pay, in the Town's discretion, for all hours in excess of 212 hours in a designated 28 day work period.

In determining eligibility for overtime in a work period, only hours actually worked shall be considered. Pay for time not worked on sick leave, annual leave, and compensatory leave will not be counted when determining these threshold hours for overtime eligibility. Whenever practical, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees. When time off within the work period cannot be granted, overtime worked will be accrued as compensatory time at a time-and-one-half rate, in accordance with FLSA regulations.

A non-exempt law enforcement, firefighter or emergency response employee may not accrue more

Black Mountain Personnel Policy Manual

than 480 hours of compensation time. Non-exempt employees in the general work force may not accrue more than 240 hours of compensation time.

Overtime work must be of an unusual, unscheduled, or emergency nature and must be approved by the employee's supervisor. Failure to obtain supervisory approval in advance for overtime may result in disciplinary action. Additional work time must be recorded on an employee's time sheet in order to accrue overtime/compensatory time. The department head is responsible for ensuring that overtime hours are authorized, recorded, and properly documented for compensatory time off or overtime pay in accordance with established policy. Hours are only accumulated after an employee works the maximum designated number of hours as established by the FLSA and set forth hereinabove.

The Town reserves the right to make cash payments for any overtime worked in situations that it deems appropriate. Examples of these situations include but are not limited to:

1. Employee staffing levels demonstrably below that required to perform what is determined to be an essential task;
2. Emergency situations;
3. Call-back situations as approved by the appropriate supervisory personnel;
4. The availability of sufficient funds to pay financial responsibilities incurred by the town; and
5. Other situations that may be authorized by the Town Manager.

Cash payments at a rate of one and one-half the affected employee's regular rate of pay for overtime work shall be made only when authorized, in advance, by the Town Manager.

Employees in positions determined to be "exempt" from FLSA (as Executive, Administrative, or Professional staff) will not receive pay for hours worked in excess of their normal work periods. These employees may be granted occasional compensatory leave by their department heads or the Town Manager where the convenience of the department allows.

Section 10. Use of Compensatory Time

It is the responsibility of the department head to administer the compensatory time policy to ensure that employees do not accrue excessive levels of compensatory time. When possible, department heads shall provide time off, on an hour-for-hour basis, within the same pay period as the additional time expected to be worked.

Employees should be allowed to use part or all of the accrued time within a reasonable period, unless doing so would unduly disrupt the department's operations.

Use of compensatory leave should be approved and taken in the same manner as annual leave. Compensatory leave must be exhausted before annual leave can be taken.

Any unused accrued compensatory time balance will be paid out at termination of employment for non-exempt employees.

Black Mountain Personnel Policy Manual

Section 11. Merit Pay Awards

When the quality of an employee's performance is worthy of special recognition, the employee's salary may be advanced within the same assigned pay range. Such merit award shall be done only after recommendation of the department head, with the approval of the Town Manager, and based on the quality of the individual's work performance. Any such increases in wages and salaries are subject to availability of funding.

Merit awards shall not be granted automatically. When an employee's productivity, behavior, attendance or work quality need to be improved, the department head shall deny a merit award with the approval of the Town Manager, and the employee shall be told where improvement needs to be made.

A merit award within the applicable pay range may be granted to deserving full-time employees in accordance with the following provisions:

- (a) When a new employee has completed a year of continuous service, including the initial introductory period, and annually thereafter following a year of continuous service.
- (b) A promoted employee shall be eligible for a merit award after a year of continuous service from the date of promotion.
- (c) When such an award will not exceed the maximum salary rate for the class of the position. In those cases where receipt of a merit award would move an employee's salary beyond the maximum rate of pay for their pay range, the employee's salary will be moved to the maximum rate of pay and he/she will receive the remainder of the increase as a bonus.
- (d) When the work of the employee is determined to be within the requirements contained in the Town of Black Mountain's Performance Evaluation guidelines, as documented on the employee's performance evaluation. All employee awards are subject to availability of funding.
- (e) An employee's annual merit award shall not exceed five percent (5%).

Section 12. Merit Bonus Awards

The purpose of the merit bonus is to provide an alternative reward system to employees who have reached the maximum salary rate in their pay range or who have exhibited performance worthy of special recognition.

In lieu of merit pay awards as provided for in Section 11, a merit bonus may be awarded to an employee who has reached the maximum rate of pay for the range in which his or her position is classified. The merit bonus payment (if any) shall be awarded based on the performance of the employee as reflected on the annual performance evaluation. Merit bonuses to employees who have reached their maximum rate of pay may not exceed 2.5% of their annual gross pay rate.

In circumstances where an employee has performed in a manner that is worthy of special recognition, and except as provided above, the department head may recommend a merit bonus of

Black Mountain Personnel Policy Manual

up to 5% of the employee's annual gross pay rate. Any combination of merit pay award and merit bonus may be recommended to reward employees who have not reached the maximum rate for the pay range in which their position is classified for performance deserving of special recognition; however, in no circumstance shall the merit pay award and merit bonus, as totaled together on an annual basis, exceed 5% of the employee's annual gross rate of pay.

An employee who has completed his or her initial introductory period and performs the duties and responsibilities of his or her position in an outstanding manner, and whose work generally is above expectations, shall be eligible to be considered for an outstanding performance award. An outstanding performance award shall be recommended by a department head, shall be in writing, shall state the reason for such recommendation and shall be submitted to the Town Manager for approval, subject to approval by the Town Aldermen. Outstanding performance awards may be granted in any dollar amount not to exceed \$750.00. Outstanding performance awards are separate from the maximum merit pay award and merit bonus.

Section 13. Payroll Deductions

Only payroll deductions specifically mandated or authorized by federal, state, or Town act may be deducted at each period from each employee's pay.

Section 14. Pay for Storm Related Snow and Debris Removal

This policy provides compensation to employees who are required or who volunteer to participate in storm related snow and debris removal. (Debris is defined as any material blocking streets or impeding traffic.) The policy will allow the department head to utilize the resources of other departments in long-term operations. The Town Manager or his or her designee will have the authority to implement this policy in the event of inclement weather at such time that the Public Works Department's snow and/or debris operations extends past the first twenty-four (24) hour period. At this time, personnel will be assigned to shifts up to twelve (12) hours. The Public Works Director shall be responsible to appoint shift supervisors for each assigned work period. The policy will be terminated when the twenty-four (24) hour operations ceases. A period of normal operations must exist for a twenty-four (24) hour period before the policy can be implemented again.

This policy will apply only to full and part time employees of the Town who are actively employed by the Town at the time the policy is implemented and to public safety volunteers and auxiliary members who are actively enrolled in the Black Mountain Fire and Police Departments. Employees who are employed by the Public Works Department will be required at the onset of each event to designate in writing (see Form 1, on file with department head) whether they elect to accrue compensatory time or be paid in lieu of compensatory time for overtime hours worked in accordance with Article IV, Section 9, Overtime, in the Black Mountain Personnel Policy. Employees who are assigned to departments other than the Public Works Department may be asked by their department head to assist in the snow and debris removal operation during their regularly scheduled hours of work. These employees will be paid their regular rate of pay while they are working their regular hours of duty. Employees from departments other than the Public Works Department who are off duty and volunteer to assist during the snow/debris removal operation after their regularly scheduled work hours will be required to designate in writing their understanding of this policy (see Form 2, on file with department head) and willingness to accept

Black Mountain Personnel Policy Manual

the established flat hourly rate of pay for all hours worked over their regularly scheduled work hours.

The established hourly rate of pay for off-duty employees from department other than the Public Works Department who volunteer to assist in the snow/debris removal operation will be Pay Plan Grade 7, Minimum Rate of Pay of the Salary Schedule, as adopted.

The shift supervisors will be responsible for keeping accurate records of the hours worked by all employees and volunteer/auxiliary members on a time sheet separate from the department's regular time sheet. This time sheet along with the required signed forms will be turned in to the Public Works Director for submission to the Payroll Office. Employees will be paid in accordance with the Town's regular bi-weekly pay schedule.

No employee will be allowed to work more than twelve hours in a work period during the time the policy is implemented.

Article V. Recruitment and Employment

Section 1. Statement of Equal Employment Opportunity Policy

It is the policy of the Town to foster, maintain, and promote equal employment opportunity. The Town shall select employees on the basis of the applicants' qualifications and without regard to political affiliation, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, genetic information or veteran status. Applicants with disabilities shall be given equal consideration with other applicants for positions if such applicants can, with or without reasonable accommodation, perform the essential requirements of the position.

Section 2. Implementation of EEO Policy

All personnel responsible for recruitment and employment shall continue to review regularly the implementation of this Personnel Policy and relevant practices to assure that equal employment opportunity based on reasonable performance-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of political affiliation, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, genetic information or veteran status, or retaliation for reporting instances of such discrimination. Notices with regard to equal employment matters shall be posted in conspicuous places on Town government premises in places where notices are customarily posted. In addition, the Town will comply with the provisions contained within the Americans With Disabilities Act (ADA) as amended. It is the Town Manager's responsibility to ensure compliance and make recommendations for actions to bring the organization into compliance.

Section 3. Recruitment

All opportunities for employment except those positions that will be filled from within shall be publicized, including applicable salary ranges and employment qualifications. Information on job openings and hiring practices may be provided to recruitment sources including organizations and various media serving the appropriate labor market. In addition, notice of vacancies shall be posted

Black Mountain Personnel Policy Manual

at designated conspicuous sites within Town buildings. Individuals shall be recruited from a geographic area as wide as is necessary to ensure that well-qualified applicants are obtained for Town service.

Section 4. Job Announcements

Employment announcements shall contain assurances of equal employment opportunity and shall comply with federal and state statutes regarding discrimination in employment matters.

Section 5. Applications for Employment

All persons expressing interest in employment with the Town shall be given the opportunity to file an application for employment when a position is vacant or when the Town is advertising to fill such positions. Applications will remain active only for that vacant position available.

Section 6. Application Reserve File

Upon inquiring, each potential applicant shall be informed of the current job openings. Applications will be held in reserve file in accordance with the Records Retention Schedule issued by the NC Division of Archives and History.

Section 7. Qualification Standards

- (a) Employees shall meet the employment standards established by the position classification plan and such other reasonable, job-related minimum standards of character, aptitude, knowledge, skills, abilities, and physical condition as may be established by the Town Manager with the advice and recommendation(s) of department heads. These qualifications may also include the requirements that applicants be drug-free prior to entering the workforce.

Some positions mandate pre-employment physicals due to occupational requirements. The costs of these physicals will be borne by the Town. Successful completion of the physical is a precondition to any final offer to a candidate.

- (b) Qualifications shall be reviewed periodically to assure that requirements are fair and conform to the actual job performance requirements.
- (c) The Town may employ an applicant in a trainee capacity who does not meet all minimum qualifications for a particular job if the deficiencies can be eliminated through orientation and on-the-job training within one year.

Section 8. Selection

Department heads shall make such investigations and conduct such examinations as deemed appropriate to assess fairly the aptitude, education and experience, knowledge and skills, character, physical fitness, and other qualifications required for positions in the service of the Town. All selection devices administered by the Town or by persons or agencies for the Town shall be valid measures of job requirements.

Black Mountain Personnel Policy Manual

Section 9. Appointments

It is the Town's policy to create career opportunities for its employees when possible. Therefore, when a current employee applying for a vacant position possesses the best qualifications of all applicants, that applicant shall be given priority consideration. However, if other applicants possess comparable qualifications and if the Town would continue any historical discriminatory employment practices by automatically promoting or transferring the current employee without considering other applicants, then the Town must carefully consider the qualifications of other applicants in filling this position.

Section 10. Introductory Period of Employment

An employee appointed to a regular position shall serve an introductory period of six (6) months. New police employees are required to serve a twelve (12) month probationary period as required by the state. This time period is to be considered a continuation of the selection process, and does not change the nature of the employee's at-will status. An employee serving an introductory or probationary period following initial appointment may be dismissed with or without cause and without right of appeal at any time during the introductory or probationary period. A regular employee serving an introductory period following a promotion shall be demoted as provided in this Article if unable to perform assigned duties of the new job satisfactorily.

Following successful completion of an employee's introductory period, the quality of his or her performance shall continue to be reviewed and appropriate instruction and counsel shall be provided in methods for improving job performance.

An introductory employee whose work is unsatisfactory shall receive a written warning before being terminated by the department head. If the employee's work continues to be unsatisfactory during the introductory period, the employee may be terminated.

An employee serving an introductory period following initial employment in a regular position will receive all benefits provided in accordance with this policy, with the following exception or as otherwise provided:

- (a) Employees may accumulate vacation leave but will not be permitted to take vacation leave during the introductory period. Employees may accrue sick leave but will not be permitted to use accrued sick leave during the introductory period.
- (b) Employees serving in an introductory period following promotion will continue to receive all benefits provided in accordance with this policy.

In unusual cases, for specific reasons approved by the Town Manager, the introductory period may be extended for a maximum of an additional six (6) months. In such cases, the employee must be notified of the purpose of the extension, the conditions and performance expectations, and the length of time of the extension. However, sick and vacation leave may be used by the employee in this extended introductory period with prior approval of the department head. Likewise, police personnel serving in the second half of their twelve (12) month probationary period may use accumulated sick and vacation with prior approval of the Police Chief.

Black Mountain Personnel Policy Manual

Section 11. Performance Evaluation

A supervisor shall evaluate performance beginning with the employee's first day on the job. Through open communications with his or her supervisor, the employee should obtain a clear understanding of what is expected related to job performance and a periodic assessment of his or her job strengths and weaknesses.

A formal evaluation shall be completed for an employee prior to the completion of his or her introductory period and at least once each year thereafter. The Town's performance evaluation program provides a system for appraising the employee's work.

Section 12. Notification of Disciplinary Action

When an employee is suspended, demoted, or dismissed, the department head shall immediately provide the employee with written notice of the charges against him or her, the action taken, effective date of action, and the recourse(s), if any, available to the employee in accordance with Articles VIII and IX of this Personnel Policy.

Section 13. Promotion

Department heads shall endeavor to anticipate retirements and turnover and to have employees trained to assume positions of greater responsibility. In filling vacancies an effort shall be made to promote qualified employees from within the Town work force before seeking an outside replacement.

When a vacancy occurs, the supervisor and/or department head in whose department the vacancy occurs shall review all applications received, including those from current Town employees wishing to be promoted into the position. If a current Town employee is chosen for promotion, the department head shall forward the employee's name to the Town Manager with recommendations for classification and salary and reasons for selecting the employee over other applicants. After receiving such comments, the Town Manager shall make an appointment, if appropriate, and determine the starting salary.

Candidates for promotion shall be chosen on the basis of existing or anticipated job openings, on their qualifications, and on their work records. Employees being promoted must meet the qualification standards to include education, training, and experience for the classification to which the promotion is being made.

Section 14. Demotion

Any employee who fails to maintain high standards of personal conduct or whose work in his or her present position is unsatisfactory may be demoted provided the employee shows promise of becoming a satisfactory employee in another position. Such a demotion shall be preceded by the warning procedures outlined for cases involving inability to perform duties or failure in performance of duties. An employee who wishes to accept a position with less complex duties and responsibility may be demoted for reasons other than unsatisfactory performance of duties or failures in personal conduct.

In all cases involving demotion the employee shall be provided with written notice citing the recommended effective date, reasons for demotion, and appeal rights available, if any, in

Black Mountain Personnel Policy Manual

accordance with Articles VIII and IX of this Personnel Policy.

Section 15. Transfer

An employee who has successfully completed an introductory period may be transferred to the same or similar class in a different department. As vacancies occur in other departments to which an employee would be eligible for transfer, the employee shall notify his or her supervisor of interest in the transfer and submit notice of a desire for transfer to the various department head(s) for consideration. If a department head wishes to hire that employee, the employee must request a transfer to that specific department and have the transfer approved by the Town Manager. The Town Manager, in his or her sole discretion, may waive the requirement that an employee have successfully completed an introductory period prior to transfer.

Section 16. Reduction in Force

In the event that a reduction in force becomes necessary the quality of each employee's past performance and the needs of the Town as well as seniority shall be considered in determining those employees to be retained. Regular employees who are to be terminated due to reduction in force shall normally be given at least 10 working days' notice of the anticipated layoff.

Section 17. Transference of Accumulated Sick Leave

The Town of Black Mountain will allow new employees who are vested members of the North Carolina State and Local Government Retirement Program to transfer up to 120 hours of accumulated sick leave at the employee's request. The employee must provide documentation from his or her former agency within 30 days as to the exact amount of sick leave that has been accumulated.

Section 18. Criminal Background Check Policy

CRIMINAL BACKGROUND/DMV RECORDS CHECK POLICY AND PROCEDURES FOR APPLICANTS; CRIMINAL CHARGES AND CONVICTIONS REPORTING PROCEDURES FOR EMPLOYEES

Purpose of Policy: The purpose of this policy is to safeguard Town assets, employees, and the Town of Black Mountain citizens. This policy will assure that employees and prospective employees are an asset to the Town and citizens rather than a liability.

Responsibilities: It shall be the responsibility of the Human Resources Coordinator, under the direction and final authority of the Town Manager, to evaluate criminal background checks within the guidelines as described in this policy. This policy shall provide for fair and unbiased treatment regardless of political affiliation, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, genetic information or veteran status of a candidate. This policy shall comply with the Fair Credit Reporting Act, Americans with Disabilities Act, Equal Employment Opportunity Commission guidance, and other federal and state laws.

Black Mountain Personnel Policy Manual

APPLICANT CRIMINAL BACKGROUND CHECK PROCEDURES:

Communication: The criminal background requirement will be announced on all vacancy announcements through all means of advertisement.

Procedures for Conducting Applicant Criminal Background Checks: All positions (full-time, part-time, and temporary) within the Town of Black Mountain shall require a criminal background check. Applicants shall complete a Criminal Background Check Consent Form prior to the check being conducted. Refusal to sign disclosure authorization statement will constitute grounds to discontinue any employment consideration for that candidate. All background checks will be discussed with management on an as-needed basis. It shall be the management staff's responsibility to maintain background check results in a highly confidential manner. The highest level of management or department head shall review and approve the background checks in relation to the essential functions of the job. It shall be the responsibility of the Human Resources Coordinator, under the direction of the Town Manager, to qualify or disqualify applicants for hire in all Town departments. Should there be a disagreement between the Human Resources Coordinator and the department head on the results of the check, the Town Manager shall be the final authority.

BACKGROUND CHECK PROCEDURES FOR EMPLOYEES:

All employees will be required to report any criminal convictions and/or charges to Human Resources and the department head in writing by the end of the following business day, not to exceed 48 hours. If verbal notice is given, the employee shall provide a written statement within 48 hours of the convictions/charges. Convictions/charges to be reported include, but are not limited to: detention, criminal summons, civil summons, expired driver's license, warrant for arrest, order for arrest, traffic violations, etc. Minor citations such as expired inspection stickers, expired license plates, warning tickets, parking tickets, improper equipment, or any other non-moving violations shall be excluded from reporting procedures.

Employees who are promoted, demoted, or transferred to other positions within Town employment shall be required to have a criminal background check conducted prior to moving into the position. The Town of Black Mountain shall have the right to perform criminal background checks on any current employee for reasonable cause. Based on the severity of convictions/charges, offenses seven years or older may be alleviated from the disqualification criteria.

Disciplinary Action: Employees failing to report convictions/charges shall be subject to disciplinary action up to and including termination. Convictions/charges reported shall be evaluated in terms of the nature of the essential job functions versus convictions/charges to determine continued employment or disciplinary action.

GENERAL INFORMATION:

Description of Criminal Background Check: A criminal background check shall consist of a review of national criminal records to include convictions and/or charges, felonies, misdemeanors,

Black Mountain Personnel Policy Manual

and traffic violations that appear. In addition, a United States National Sex Offender Registry search shall be conducted. Maiden names shall also be checked.

Interpretation of Criminal Background Checks: The final determination to qualify/disqualify a background check shall be made by the Human Resources Coordinator, and in consultation with the department head if necessary, under the direction of the Town Manager. Disqualifying information is identified based upon the nature of convictions/charges versus the essential functions in the job and the associated risks, dates of convictions/charges, and the candidate's record since the date of the conviction.

Professional discretion and consistent application must be used to ensure that only job-related disqualifications occur. **Examples of disqualifying criteria include, but are not limited to:** embezzlement or fraud conviction of an accountant applicant, sexual harassment judgment against a management applicant, or drunk-driving conviction against an individual whose essential job functions require the operation of a motor vehicle. Based on the severity of convictions/charges, offenses seven years or older may be alleviated from the disqualification criteria. The Board of Aldermen shall be the final decision maker for the Town Manager, and the Town Manager and Human Resources Coordinator shall be the final decision makers for the department heads.

Notification of Disqualification and Appeal Procedures: In the event that disqualifying information is revealed during the background check process, applicants shall be notified in writing that the conditional offer of employment is being withdrawn. Applicants shall have the right to appeal the disqualifying decision to the Town Manager in writing within five business days from the date of receipt of the rejection notification letter. Applicants applying for the position of Town Manager shall appeal to the Board of Aldermen.

Employees will be notified in writing of the criminal convictions/charges. They shall have the right to appeal any disciplinary action or employment decisions related to convictions/charges by using the guidelines set forth in the Town of Black Mountain's Personnel Policy, Article IX, Grievance Procedure.

Recordkeeping: Evidence that a background check was conducted, date and type of background check, and a sufficient record of a disqualifying outcome must be maintained. A copy of the disqualification notification to the applicant and the background check record must be retained in the position vacancy file.

Evidence of a background check that results in an employee being approved for hire and employee checks should be filed separately from their personnel files. However, background information that includes infractions, and other personal information will not be retained beyond its usefulness in approving the individual for employment, even if such information is favorable to the employee, unless a specific need for such records exists.

Section 19. Disability Accommodation

The Town is committed to complying fully with the Americans with Disabilities Act (ADA). The Town is also committed to ensuring equal opportunity in employment for qualified persons with

Black Mountain Personnel Policy Manual

disabilities. The Town conducts all its employment practices and activities on a non-discriminatory basis.

The Town's hiring procedures are intended to provide meaningful employment opportunities for persons with disabilities. Upon request by an applicant with a disability, the Town will make reasonable accommodations to allow the applicant to submit an application for a position. The Town only makes pre-employment inquiries regarding an applicant's ability to perform the duties of the job.

Reasonable accommodation is available to an employee with a disability when the disability affects the performance of job functions. The Town makes its employment decisions based on the merits of the situation in accordance with defined criteria, not the disability of the individual. It is the employee's responsibility to let the employer know of any disability that affects his or her ability to perform required job functions. Once the employee has informed his or her supervisor, department head, or the Human Resources Coordinator, the designated Town employee will work with the employee to identify reasonable accommodations that permit the employee to perform his or her job duties within any limitations caused by his or her disability, so long as the reasonable accommodation does not cause the Town undue hardship.

Qualified individuals with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as job assignments, classifications, organizational structures, position descriptions, lines of progressions, and seniority lists.

Article VI. Work Conditions and Expectations

Section 1. Work Period

The work period is defined as seven consecutive days. Full-time, non-exempt, employees (other than public safety shift employees) normally work 40 hours per work period and are subject to the overtime provisions set forth within these policies. Police officers' and firefighters' work schedules will be established and maintained in accordance with FLSA, and work periods will be set as 28 consecutive days. Non-exempt police officers, regardless of rank, receive overtime or comp time, in the Town's discretion, after 171 hours of work over 28 consecutive days. Non-exempt firefighters, regardless of rank, receive overtime or comp time, in the Town's discretion, after 212 hours of work over 28 consecutive days.

Exempt employees in administrative, professional or managerial positions shall work the number of hours necessary to assure the satisfactory performance of their duties.

When the activities of a particular department require some other schedule to meet work needs, the Town Manager may authorize department heads to create deviations from the normal schedule.

Section 2. On Call

The nature of several jobs performed by Town employees require that those employees be on call, that is, be available and ready to work, for emergencies. Such on-call duty is an integral part of the routine duties and responsibilities of some jobs. Employees required to be on call shall serve on call on a weekly (7-day) basis. Employees shall not be awarded additional compensation for

Black Mountain Personnel Policy Manual

on-call duty because the pay and classification system already recognizes this duty in the regular base rate of pay.

In the event employees are called back, including those on-call to perform assigned duties outside of normal working hours, they will receive a minimum of two hours of compensation time if these hours called in yield overtime within the work period. Overtime compensation will be made in accordance with the FLSA and the overtime provisions of this Policy.

Those employees who are on call and cannot be located to perform their duties in the event of being called back, will be subject to disciplinary action.

Section 3. Volunteer Service

The Town encourages and shall permit employees to participate as members of a volunteer emergency service to the extent that such volunteer activities do not interfere with the employee's responsibilities in the Town service. Employees are allowed to use vacation leave accruals if they choose to volunteer during the normal scheduled work period. However, no employee will be required or will be allowed to volunteer his or her time to the Town to perform the same or similar work performed as a regular employee.

Section 4. Safety

It is the intent of the Town to provide for an ongoing program that assures a safe, healthy work environment for all employees and complies with all safety laws and regulations. To that end, each supervisor shall be responsible for:

- (a) Providing safe work procedures and environments;
- (b) Implementing safety policies and programs;
- (c) Informing and training employees in safe work habits;
- (d) Detecting and correcting unsafe practices and conditions;
- (e) Investigating accidents and preparing accident reports; and
- (f) Encouraging employees to report unsafe conditions and to submit practical safety suggestions.

Likewise, each Town employee shall be responsible for:

- (a) Developing and maintaining safe work habits;
- (b) Promptly reporting all accidents and injuries;
- (c) Pointing out what are believed to be dangerous practices and working conditions;
- (d) Assisting with investigations of accidents;
- (e) Taking proper care of safety equipment;

Black Mountain Personnel Policy Manual

- (f) Wearing proper clothing and avoiding loose sleeves, cuffs, rings, bracelets, and long hair around moving machinery;
- (g) Knowing the location and use of fire extinguishers, the location of fire exits, and the best method for reporting a fire; and
- (h) Abiding by all safety laws and regulations.

In addition to the above provisions, the Town will maintain a safety manual which details safety related procedures and responsibilities. Employees shall be expected to comply with those provisions.

It is important that the Town retains certain personal information about employees. Employees should notify their supervisor as soon as there is a change to the employee's mailing address, telephone numbers, emergency contact information and other related information.

Section 5. Conflict of Interest and Political Activity

Applicability.

This policy is complies with NCGS §14-234 (Public officers or employees benefiting from public contracts) and NCGS §133-32 (prohibits gifts and favors). Nothing in this policy is intended to supplant, nor can it override the provisions of NCGS §14-234 and NCGS §133-32. The provisions of this section shall be applicable to all elected officials and appointed officials of the Town, as well as all Town employees.

Conflicts resulting in Financial Gain

(a) Definitions. For the purposes of this section, the following definitions shall apply:

- (1) *Conflict of interest* means any act in which a public official or employee receives a direct or indirect gain as a result of the exercise of their official responsibilities or as a result of using the position to which they have been elected or appointed. In any case in which a conflict of interest may be present, elected officials, appointed officials and appointed staff should make the circumstances known to the Mayor or Board of Aldermen; and all employees appointed by the Town Manager should make the circumstances known to the Town Manager for a determination as to whether a conflict of interest does exist.
- (2) *Elected officials* mean those individuals elected to a position as Mayor or Alderman.
- (3) *Appointed Officials* mean any person appointed to a Town Board or Commission, as well as Town employees appointed directly by the Board of Aldermen.
- (4) *Employee* means any person hired directly by the Town of Black Mountain, including full-time, part-time and seasonal personnel.
- (5) *Immediate family* is defined as a spouse, children, parents or siblings of an official or employee.

(b) Specific acts creating conflicts. The following acts are deemed to be in conflict with the

Black Mountain Personnel Policy Manual

Town's best interest:

- (1) For an elected official, appointed official or employee to solicit, give or receive gifts of more than token value (\$25) which are in any way connected with their employment;
- (2) For an elected official, appointed official or employee or any member of their immediate family to benefit personally from any purchase of goods or services or to derive personal gain from any transaction in which they have an influence;
- (3) For an elected official, appointed official or employee to loan or to borrow from individuals or concerns that do business with the Town, except banks and other financial institutions;
- (4) For an elected official, appointed official or employee to serve as an officer, director, employee or consultant of, or to receive income from, any enterprise doing business with the Town, or to seek to do so, unless the relationship has been fully disclosed and has been approved by the Town Manager, in the case of an employee, and Mayor or Board of Aldermen in the case of an elected official and employees appointed directly by the Board of Aldermen;
- (5) For an elected official to interfere with the performance of duties of the Town Manager or any other employee of the Town;
- (6) For an employee to use or permit others to use Town employees, materials or equipment for personal purposes;
- (7) For an employee to accept compensation from non-Town-related enterprises for services or time for which the employee is being paid by the Town;
- (8) For an elected official, appointed official or employee to disclose to any person any information which may be used by the recipient for personal gain unless such information is in the public domain and generally available to others;
- (9) For an employee to accept any outside employment in accordance with Section 6 of this Article;
- (10) For an employee to engage in any political or partisan activity while on duty;
- (11) For any employee to use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- (12) For an employee to be required as a duty of employment or as a condition for employment, promotion, or tenure of office to contribute funds for political or partisan purposes;
- (13) For an employee to coerce, solicit or compel contributions for political or partisan purposes by another employee of the Town;
- (14) For an employee to be a candidate for the Town Board of Aldermen;
- (15) For an employee to acquire a monetary interest in any property, transaction, or enterprise or gain any monetary benefit which may be affected by such information or official action, or to intentionally aid another to do so;
- (16) For an employee who will derive a direct benefit from a contract with the public agency he or she serves to influence any other person who is involved in making or administering the contract;
- (17) For any employee involved in preparing plans, specifications, or estimates for public contracts, awarding or administering public contracts, or inspecting or supervising construction performed pursuant to a public contract, to receive or accept any gift or favor from any contractor, subcontractor or supplier who has a

Black Mountain Personnel Policy Manual

contract with the Town, has performed under a contract with the Town or may bid on a contract with the Town in the subsequent year;

(18) To take any other action defined as a conflict of interest under applicable law.

(c) Reporting a violation. Any allegation of violation of state law involving an elected official should be reported to the Board of Aldermen who, if they determine that the complaint of violation has merit, should report the alleged violation to the District Attorney. Any allegation of violation of this policy involving an appointed official who reports directly to the Board of Aldermen should be reported to the Board of Aldermen. Any allegation of violation of this policy involving an appointed official who reports directly to the Town Manager should be reported to the Town Manager. Any allegation of violation of this policy involving an employee should be reported to the Town Manager.

(d) Penalty for violation. Any violation of this section shall be deemed to be a conflict of interest and shall subject such violating employee to dismissal or other disciplinary action or such legal action as permitted by the appropriate laws or ordinances.

Section 6. Outside Employment

The work of the Town will take precedence over other occupational or special interest of employees which may interfere or be perceived as creating a conflict or interference. All outside employment for salaries, wages, or other compensation and all self-employment must be reported to and approved by the employee's department head and the Human Resources Coordinator. If the outside employment is similar to or related to the employee's primary job responsibility, the Town Manager must also approve the outside employment. Outside employment causing or perceived as a conflict of interest shall be disapproved. The Town Manager shall be responsible for the final decision as to whether outside employment constitutes a conflict of interest. Failure to disclose outside employment prior to commencing such work is a violation of this policy and is subject to the penalties set forth in Section 5(d) of this Article.

Section 7. Limitation of Employment of Relatives

(a) The employment of members of an immediate family within the same department at the same time is discouraged, but may occur contingent upon prior approval of the Town Manager. In no case, however, shall two (2) members of an immediate family be employed at the same time if such employment would result in an employee directly or indirectly supervising a member of his or her immediate family. This section shall not apply to part-time, or temporary employees and shall not apply to volunteers.

(b) Approval of the employment of immediate relatives within the same department at the same time shall be based upon the Town Manager's best judgment as to the ability of the departmental supervisory personnel to manage the workplace to which immediate relatives are assigned and the apparent ability of the relatives to work together amicably within the department. The Town Manager shall also consider the proximity in which the individuals will be working, the relation of the two relatives, as well as the number of other personnel employed within the department.

(c) This policy shall not be retroactive, and no action will be taken concerning those members of the same family employed in conflict with Section 7(a) above prior to the adoption of

Black Mountain Personnel Policy Manual

this policy.

- (d) Immediate family is defined for the purpose of this section as spouse, mother, father, guardian, children, sisters, brothers, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those names, or anyone living as a part of the same household.

Section 8. Conformance to Immigration Law Requirements

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States.

Section 9. Selective Service Requirements

All male employees and male applicants between the ages of 18 and 25 must furnish proof that they are registered for selective service and a copy of such proof shall be a part of their personnel file.

Section 10. Confidential Information

No elected official, appointed official or employee shall, without the approval of his or her department head or the Town Manager, disclose confidential information concerning the property, government, or affairs of the Town. No elected official, appointed official or employee shall use such information to advance the financial or other private interest of themselves or others.

Section 11. Controlled Substances

No employee shall use intoxicating beverages or non-prescribed controlled drugs of any kind while on duty. For purposes of this Personnel Policy, "illegal drugs" or "controlled substances" refers to illegal drugs that are controlled substances under federal law, which are not being used under the supervision of a licensed health care professional and in accordance with law. No employee shall report for duty while under the influence of an intoxicant or non-prescribed controlled substance. Any employee who uses prescription medication and reasonably suspects it may affect job performance or safety must notify their supervisor. The Town will make reasonable accommodations to permit a disabled employee to perform their job while under the influence of the prescribed medication. The Town's substance abuse, testing, referral and rehabilitation administrative policy contained in Article XII of the Town's Personnel Policy will apply in most other circumstances. The Town Manager is responsible for administration of this program.

Section 12. Use of Town-Owned Equipment

The personal use of any Town-owned equipment or supplies by any employee, elected or appointed official or individual is prohibited.

Use of Town-owned vehicles is governed by the following:

- (a) Vehicles owned by the Town may be provided to one or more employees in connection with Town business and shall be used only on Town business. When the vehicle is not used in the Town's business, it must be kept on the Town's business premises. Pursuant to federal and state law, neither the employee, nor any individual whose use would be taxable to the employee, may use the Town vehicle for personal use.

Black Mountain Personnel Policy Manual

- (b) For bona fide non-compensatory business reasons, the Town may require certain employees to commute to and from work in Town vehicles that are not exempted by IRS regulations. In accord with federal and state law, an employee may not use the Town-owned vehicle for personal use other than commuting. Under these conditions the Town will account for commuting use as specified and required in IRS regulations.

Section 13. Travel and Expense Reimbursement

Employees, elected and appointed officials may, from time to time, be involved in out-of-town travel to attend schools, business meetings, conferences, etc. All reasonable expenses (e.g., meals, lodging, etc.) shall be reimbursed at actual costs, while travel in a personal car will be reimbursed at a mileage rate consistent with prevailing IRS limits to the extent authorized by the Town Board of Aldermen for non-taxable reimbursements authorized by the Town Board. A Travel Authorization and Expense Form must be completed for all travel advances and reimbursements.

Advances of travel and expenses must be authorized by the Department Head. The Town Manager shall have the authority to approve or disapprove all requests for travel advances. Such requests shall be made at least ten (10) work days in advance of the actual expenses except in emergency situations.

Transportation If a Town vehicle can be used, the Town will reimburse the employee in the amount of written receipts for gasoline expenditures. When an employee is authorized to travel in a personal car, reimbursement will be made at the current mileage rate consistent with prevailing IRS limits.

Lodging Cost of lodging will be reimbursed. At the end of a trip, lodging will be paid if an employee is unable to return home before 9:00 p.m. Employees attending meetings, conferences, etc., where lodging is offered and available at a government facility, shall be required to use such accommodations.

Meals Reimbursement for meal expenses shall be guided by reasonableness. Meal expenses shall ordinarily be reimbursable only when incurred on out-of-town travel or when the meal itself is the occasion of a business meeting. All travel claims must be supported by detailed documentation, usually in the form of receipts or similar vouchers. The maximum allowable reimbursable expense for meals shall be listed on the Travel Authorization and Expense Form. In lieu of reimbursement of actual expenses, employees may request per diem payment of all three meals rather than submit receipts. The per diem payment allowable shall be listed on the Travel Authorization and Expense Form.

Registration Fees The registration fee for conferences or other authorized events will be reimbursed. A receipt must be submitted for any registration fee paid either by the employee or from a travel allowance.

The Town Manager, upon the recommendation of the Assistant Budget and Finance Officer, may deny reimbursement of any questionable, unsupported, or excessive expense claims submitted by employees.

Black Mountain Personnel Policy Manual

Any violation of the provisions in this section shall be deemed improper conduct and may subject the employee to discharge or other disciplinary action.

Section 14. Discrimination and Sexual Harassment

- (a) The Town intends to provide a work environment free of any intimidation, hostility, or harassment based on or motivated by discrimination. The Town prohibits any discrimination and/or harassment based on a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, genetic information, veteran status or political affiliation.
- (b) The Town views such conduct as a very serious matter, and no form of such discrimination or harassment will be tolerated.
- (c) Examples of discrimination or harassment include, but are not limited to, the following when they are directed towards a protected class listed in Section 14(a):
 - (1) Physical or mental abuse;
 - (2) Insults, jokes, slurs or comments about a person's body, dress or appearance;
 - (3) Unwelcome sexual advances or requests for sexual favors, or reprisals or threats of reprisal after an employee's negative response to sexual advances;
 - (4) Promises or opportunities for advancement, demotion, pay raises or deductions, favorable or unfavorable changes to schedules, references or other benefits or disadvantages;
 - (5) Visual conduct such as leering, making sexual gestures, or displaying discriminatory or harassing objects, pictures, cartoons, or posters;
 - (6) Physical conduct such as touching, assault or impeding or blocking movement;
 - (7) Retaliation for reporting or threatening to report harassment or discrimination;
 - (8) Any offensive behavior or language that creates a hostile or intimidating work atmosphere because of its discriminatory content.
- (d) If an employee feels he or she has been subjected to any form of harassment and/or discrimination, the employee should firmly and clearly tell the person engaging in the harassing and/or discriminatory conduct that it is unwelcome, offensive, and should stop at once. Additionally, the employee should report immediately any discrimination and/or harassment to his or her immediate supervisor. If the employee is unable or unwilling to report discrimination or harassment to his or her supervisor, she or he may report the behavior to the employee's department head or the Human Resources Coordinator.
- (e) The Town will promptly conduct an investigation into any complaint of discrimination or harassment. While the Town cannot promise confidentiality, it will conduct its investigation in as sensitive and confidential a manner as possible. A timely resolution of each complaint will be reached and communicated to the employee and the other parties involved. Appropriate corrective action, up to and including termination, will be taken promptly against any employee engaging in discrimination and /or harassment. Retaliation against any employee for filing a complaint or participating in an investigation is strictly prohibited. However, any employee who knowingly makes a false claim of harassment and/or discrimination will be subject to corrective action, up to and including termination.

Black Mountain Personnel Policy Manual

Section 15. Surrender of Property

An employee who is suspended or separates from employment for any reason shall be required to return all items of equipment and supplies, including uniforms, owned by the Town. Employees agree that the Town may deduct from an employee's final paycheck the reasonable costs of any Town property the employee fails to return promptly upon separation from employment.

Section 16. Credit Check

The Town of Black Mountain will conduct a credit check on applicants to whom a conditional offer of employment is made when the position involves money-handling responsibilities and when promoted to a department requiring the handling of money. Employees subject to this policy are required to sign written authorization for the Town to conduct such a credit check as a precondition of employment. All credit checks will be conducted in accordance with the Fair Credit Reporting Act.

Section 17. Bi-annual Driving Records Check

The Town of Black Mountain will conduct a driving records check on applicants after an offer of employment is made but before the applicant begins work when the job duties involve driving a Town or personal vehicle, and thereafter on a bi-annual basis. Employees subject to this policy are required to sign written authorization for the Town to conduct such a driving records check as a precondition of employment.

Section 18. Searches

The Town may conduct a search of Town property at any time, including as part of an investigation into theft or substance abuse by an employee, theft by an employee, or other circumstances in which the Town may reasonably seek evidence of a crime or violation of Town policy. The Town may search workstations, desks, Town-issued computers and phones, Town voicemail and email, files, Town vehicles or other Town property. The Town may use surveillance equipment at any time in any work or office area, subject to applicable law. The Town may also ask an employee to consent to a search of his or her person or property if it has a reasonable suspicion and legitimate interest in doing so. Searches shall only be conducted by law enforcement personnel and must be approved by the Town Manager or his or her designee in consultation with the ranking law enforcement officer on duty at the time the search is requested by the supervisor. Failure of any employee to comply with this policy may result in disciplinary action, up to and including termination. The Town reserves the right to seize all drugs, paraphernalia, weapons or other contraband found on Town property, and will turn over such contraband to and cooperate with authorities for prosecution of any illegal acts.

Section 19. Professional Appearance

Whenever an employee is working, that employee represents the Town. At work, employees should be clean, well groomed, and wear appropriate clothes for their position. If an employee is required to be in uniform, it is the employee's responsibility to keep his or her uniform neat and clean at all times. If an employee is required to wear a nametag for his or her position, he or she must display a nametags at all times.

If a supervisor finds that an employee's personal appearance is inappropriate, that employee will

Black Mountain Personnel Policy Manual

be asked to leave work and return properly dressed and groomed. If an employee is asked to leave, he or she will not be paid for the time away from work. Employees should contact their supervisor with questions about appropriate professional appearance for their department, including requests for accommodations based on disabilities, religious beliefs or other legal rights.

Section 20. Professional Behavior

Employees are expected to behave professionally and conduct themselves ethically in ways that protect the interest and safety of all employees and the Town. While it is impossible to list every action that defines professionalism and ethics, the following lists some examples. Employees who behave unprofessionally or unethically may be subject to disciplinary action, up to and including termination of employment:

- Employees should be aware of and act in accordance with their positions as Town employees, both while at work and while off-duty.
- Employees should behave respectfully towards other employees and the general public. Disrespectful conduct includes rudeness, coercion, intimidation, threats, using vulgarity, and gambling or fighting while working.
- Employees should behave honestly and with integrity.
- Employees should abide by the laws, regulations and ordinances applicable to them.
- Employees are expected to remain in their assigned work area(s) and perform their job duties faithfully during regularly scheduled work hours. Assigned work areas are defined as the area where a manager has asked the employee to perform work related duties and where the employee can be expected to be found by his or her supervisor.
- Employees should cooperate and support each other in conducting Town business.
- Employees should speak civilly to and about one another. Excessive, false or harmful gossip about other employees is unprofessional, whether communicated orally or in writing. This is not intended to prohibit employees from engaging in discussions about work conditions protected by law.
- Employees are expected to accept bona fide job assignments. Willful disobedience of instructions, walking off the job without authorization, or uncooperative or inappropriate conduct is unprofessional.
- Employees are expected to be punctual. Excessive absenteeism or tardiness is unprofessional.

Section 21. Social Media

Employees who publish on any social media in their official capacity should refer to their departmental social media guidelines.

The Town recognizes employees' rights to post on social media in their individual or personal capacities under the First Amendment. Employees should use common sense and discretion when posting. Employees who publish on any social media in their individual or personal capacity should follow these guidelines:

- (a) Employees may list their Town position in their personal social media accounts, but they are not authorized to speak or comment on behalf of the Town.
- (b) Employees may not attribute their personal statements, opinions, or beliefs to the Town. If

Black Mountain Personnel Policy Manual

an employee is commenting on personal social media on matters of public concern, the employee must clearly express that he or she is not speaking on behalf of the Town. An example of this disclaimer might be "These views are mine alone and do not necessarily reflect the views of the Town of Black Mountain".

- (c) Employees may not disclose confidential Town information.
- (d) Employees may not use the Town logo or trademarks.
- (e) Employees may not post any material that: (i) infringes upon the rights of any other person, including harassment, hate speech or libel; (ii) constitutes a criminal offense; (iii) violates the privacy rights of fellow employees; or (iv) meaningfully impairs the efficiency of the Town as a workplace.
- (f) Personal use of social media while on duty, including during breaks, must not be excessive such that it interferes with the employee's work or work of others.
- (g) Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected by law.

Section 22. Workplace Monitoring

As a public agency, many Town communications are public record. The Town may conduct workplace monitoring to help ensure quality control, employee safety, security, and public satisfaction. No communication while working or using Town property should be offensive, harassing, or abusive.

Email sent for normal business transactions are public records. The Town may review work emails to comply with public records law.

Employees who regularly communicate with the public may have their work telephone conversations monitored or recorded.

All computer equipment, services, or technology that furnished to employees by the Town are the property of the Town. The Town reserves the right to monitor computer activities and data that is stored in its computer systems. The Town also reserves the right to access any Town data that the employee may write, send, or receive by computer, smartphone, or other electronic device, whether such device is the property of the Town or the employee, subject to the requirements of Section 18 of this Article.

The Town may perform other surveillance of non-private workplace areas. Because the Town is sensitive to employees' legitimate privacy rights, the Town will make every effort to guarantee that workplace monitoring is always done ethically and respectfully.

Section 23. Whistleblower Protection

The Town is committed to operating ethically and within the law. Employees who report illegal or unethical conduct are protected against unlawful retaliation and discrimination. Employees who

Black Mountain Personnel Policy Manual

observe such conduct should promptly report to 1) the HR Coordinator, 2) the Town Manager, 3) the Board of Aldermen, or 4) the Town Attorney. Reporting should be done to the first person listed above, unless that person is unavailable or is the person believed to be engaged in the wrongful conduct. In such event, the employee should report to the next person on the list above. An employee may submit a report anonymously. An employee may report a crime directly to law enforcement.

The person receiving the report of illegal or unethical conduct is charged with ensuring the report is investigated and referred to the proper authorities. All reports will be taken seriously and addressed promptly, discreetly and professionally. The employee charged with investigating the report will use his or her best efforts to maintain the reporting employee's confidentiality unless the investigation cannot proceed without revealing that information or it is required by applicable law. In such case, the investigating employee should use his or her best efforts to inform the reporting employee prior to or as soon thereafter as is practicable of the release of his or her identity, and take such additional steps as are deemed prudent and necessary to ensure the reporting employee does not suffer any retaliation or discrimination as a result of his or her report.

Retaliation against any employee who reports illegal or unethical conduct under this Personnel Policy is strictly prohibited. Any employee engaged in retaliatory behavior, including an unnecessary release of the reporting employee's identity, will be subject to discipline, up to and including termination of employment. Any employee who knowingly files a misleading or false report, or without a reasonable belief as to its truth or accuracy, is not protected under this policy and may be subject to discipline.

Article VII. Leaves of Absence

Section 1. Holidays

- (a) General Employees The following days, and other days as the Town Aldermen may designate, are holidays with pay for full-time employees and appointed officials of the Town working the regular work week.

New Year's Day	Labor Day
Martin L. King Day	Veteran's Day
Easter Friday	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas - see schedule

When a holiday, other than Christmas Day, falls on Saturday then the prior Friday shall be observed as the holiday. When the holiday, other than Christmas, falls on a Sunday then the following Monday shall be observed as the holiday.

When Christmas Day falls on:



The Town observes:



Black Mountain Personnel Policy Manual

Sunday	Friday and Monday
Monday	Monday and Tuesday
Tuesday	Monday and Tuesday
Wednesday	Monday, Tuesday and Wednesday
Thursday	Wednesday, Thursday and Friday
Friday	Thursday and Friday
Saturday	Friday and Monday

For employees having a work week with more hours than the basic work week, holiday leave shall be granted in the same proportion as their work week is to a forty (40) hour work week.

In order to be eligible for holiday pay, an employee must have been in pay status for a minimum of four (4) hours before and after the holiday, unless excused by the Town Manager or department head with an approved leave with pay.

- (b) Public Safety Employees Public safety employees will observe holidays on the actual holiday and not the designated holiday observed by the Town. The following days, and other days as the Town Aldermen may designate, are holidays with pay for public safety employees:

New Year's Day	Veteran's Day
Martin L. King Day	Thanksgiving Day
Easter Sunday	Day after Thanksgiving
Memorial Day	Christmas Eve
Independence Day	*Christmas Day
Labor Day	

*When Christmas Day falls on Wednesday, Public Safety Departments will observe Monday, Tuesday, and Wednesday.

*When Christmas Day falls on Thursday, Public Safety Departments will observe Wednesday, Thursday, and Friday.

For employees having a work week with more hours than the basic work week, holiday leave shall be granted in the same proportion as their work week is to a forty (40) hour work week.

In order to be eligible for holiday pay, an employee must have been in pay status for a minimum of four (4) hours before and after the holiday, unless excused by the Town Manager or department head with an approved leave with pay.

Section 2. Effect of Holidays on Other Types of Leave

Regular holidays which occur during a vacation, sick or other leave period of any appointed official or employee of the Town shall be paid as holiday pay, and shall not be considered as vacation, sick or other leave.

Black Mountain Personnel Policy Manual

Section 3. Holiday - When Work Is Required

Police Department - Employees who are scheduled to work on regularly scheduled holidays shall be granted 8 hours of additional leave time to be taken within the pay period. In cases where the department head cannot schedule the 8 hours of leave within the pay period, the employee will be paid 8 hours of holiday pay (at the employee's regular hourly rate) within the pay period in addition to their regular pay. Employees whose regular day off falls on a scheduled holiday will be scheduled to take a substitution holiday within the work period, or shall be granted 8 hours "holiday compensatory time", in the Department Head's discretion. "Holiday compensatory time" shall be paid as any "overtime compensatory time" and shall be granted in compliance with the Fair Labor Standards Act.

Fire Department - Employees who are scheduled to work on regularly scheduled holidays will be paid 8 hours of holiday pay (at the employee's regular hourly rate) within the pay period in addition to their regular pay.

Section 4. Vacation Leave

Vacation leave shall be used for rest and relaxation and may be used for medical appointments.

(a) Initial Appointment Introductory employees serving a probationary period following initial appointment may accrue vacation leave but shall not be permitted to take vacation leave during the introductory period.

(b) Vacation Leave (Annual Leave) - Manner of Accumulation Any employee working the basic work week of 40 hours shall accrue vacation leave at the following rates:

<u>Years of Completed Aggregate Service</u>	<u>Vacation Leave Hours Earned Per Pay Period</u>
0 but less than 3	3 hours per pay period
3 but less than 10	4 hours per pay period
10 but less than 15	5 hours per pay period
15 but less than 20	6 hours per pay period
20 + years	7 hours per pay period

Vacation leave earned by employees having a work week with more hours than the basic work week shall be determined in accordance with the formula as set forth in the payroll manual.

(c) Vacation Leave - Maximum Accumulation Annual leave may accrue up to 240 hours maximum until the last day of the pay period containing December 31 of each calendar year. When an employee separates from service, payment for accrued annual leave shall not exceed 240 hours. During the last day of the pay period containing December 31, any employee with more than 240 hours shall have the excess accumulation canceled so that no more than 240 accrued hours carries forward to the pay period following in the new calendar year. The accrued leave in excess of 240 hours which is not carried forward will automatically be transferred into that employee's sick leave account.

Black Mountain Personnel Policy Manual

Employees are cautioned not to retain excess accumulation of annual leave until late in the calendar year. Due to the necessity to keep all Town functions in operation, large numbers of employees cannot be granted annual leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having annual leave scheduled or in receiving any exception to the maximum accumulation rule.

(d) Vacation Leave - Manner of Taking Leave Vacation leave may be taken as earned by a regular employee subject to the approval of the department head.

(e) Vacation Leave - Terminal Pay of Vacation Leave An employee who is separated shall be paid for vacation leave accrued to the date of separation not to exceed a maximum of 240 hours. Except as otherwise provided in this Policy, **employees who do not give adequate notice (2 weeks for most employees, unless otherwise posted in the employee's department) will not be paid for their accrued vacation upon termination.**

(f) Vacation Leave - Payment for Accumulated Vacation upon Death The designated beneficiary of an employee who dies while employed by the Town shall be entitled to payment for all accrued vacation leave credited to the employee's account, not to exceed 240 hours, at the time of death.

Section 5. Sick Leave

Sick leave with pay is not a right which an employee may demand but a privilege granted by the Town Aldermen for the benefit of a full-time employee when sick. Sick leave may be granted to an employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examination or treatment, or exposure to a contagious disease when continuing work might jeopardize the health of others. Sick leave may be used when an employee must care for a spouse, child or the employee's mother or father upon prior approval of the department head.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave, when possible, or not later than two (2) hours after the beginning of a scheduled work day.

- (a) Sick Leave - Manner of Accrual Each full-time regular and introductory employee working the basic work week of 40 hours shall accrue sick leave at a rate of 12 days annually which equates to 3.69 hours per bi-weekly period for regular employees.
- (b) Sick Leave - Maximum Accrual Sick leave shall accumulate with no maximum accumulation, and may be used as credit for service under the NC Local Governmental Employee's Retirement System.
- (c) Sick Leave - Physician's Certificate The employee's supervisor or department head may require a physician's certificate concerning the nature of the illness and the employee's physical capacity to resume duties for each occasion on which an employee uses sick leave.

Black Mountain Personnel Policy Manual

- (d) Sick Leave – No Terminal Pay of Sick Leave An employee who is separated shall not be paid for sick leave accrued prior to separation.
- (e) Sick Leave - No Payment for Accumulated Sick Leave upon Death The designated beneficiary of an employee who dies while employed by the Town shall not be paid for accrued sick leave credited to the employee's account.

Section 6. Voluntary Shared Leave

Regular employees may donate and receive leave earned by others through sharing arrangements. Donations by employees are to be done on a one-on-one arrangement and are required to follow the procedures and rules contained in the Voluntary Shared Leave Program created and administered by the Town Manager.

The Town Manager will account for shared leave on a prorated basis. The Town Manager will create and enforce equitable minimum levels of vacation balances and eligibility requirements for recipients. The Town Manager shall have sole discretion to interpret the eligibility and procedures necessary for employees to use shared leave.

Section 7. Family Medical Leave

The Town will comply with the provisions of the Family Medical Leave Act (FMLA). Except as otherwise provided below, employees are entitled to take leave without pay for up to 12 weeks for reason contained within the Act. If an employee elects to use paid leave for leave authorized within the Family Medical Leave Act, such paid leave will run concurrently with the 12 week FMLA leave. For recordkeeping purposes, the 12-month period for FMLA will be measured by the calendar year. Family Medical Leave is available as follows:

- (a) Eligible employee An employee who has been employed with the Town for at least twelve (12) months and who has worked at least 1,250 hours during the past 12 months is entitled to a total of twelve (12) work weeks of family and medical leave either paid through the election of accrued leave or unpaid during a twelve (12) month period for one or more of the following reasons:
 - 1. For the birth of a son or daughter, or the placement of a son or daughter with the employee for adoption or foster care;
 - 2. To care for the employee's son, daughter, spouse, or parent where that child, spouse or parent has a serious health condition;
 - 3. For a serious health condition that makes the employee unable to perform the essential functions of the employee's position;
 - 4. For any qualifying exigency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active duty or call to covered active duty status; or
 - 5. An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member.
- (b) Definitions applicable. All terms in this Section 7 are defined by FMLA, as amended from time to time. As of the date of publication of this Personnel Policy, FMLA

Black Mountain Personnel Policy Manual

defines these terms as follows:

1. *Parent* means a biological, adoptive, step or foster father or mother, or any other individual who was in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents “in law.”
2. *Child* means a son or daughter, including a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.
3. *Spouse* means a husband or wife recognized by State law.
4. *Serious health condition* means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

(c) Employee Responsibility: It is the employee’s responsibility to notify the Town in writing at least thirty days in advance before the date on which the leave is to begin when the need for leave is foreseeable, such as an expected birth or a planned medical treatment. When circumstances prevent the employee from giving thirty days’ notice, the employee is to provide written notice as soon as practicable. When an employee’s need for leave is due to a serious medical condition of the employee or a member of the employee’s family, a certification issued by a health care provider must be furnished as soon as possible. All certificates must contain these statements: (1) the date on which the serious health condition began, (2) the probable duration of the condition, (3) the appropriate medical facts known by the health care provider regarding the condition, and (4) a statement that the employee is unable to perform the functions of his or her position. If the leave request is to care for a family member, the certificate must contain a statement that the employee is needed to provide such care.

(d) The Town Manager shall provide procedures for employees and departments to use in administering this section and shall follow the minimum standards for administration required by FMLA.

Section 8. Leave Without Pay

A regular employee with at least two (2) years of service may be granted a leave of absence without pay for up to one (1) year by the Town Manager. The employee shall apply in writing to the Town Manager for leave, stating the reason and the length of time for the leave of absence request. The Town Manager shall have sole discretion in approving or disapproving the leave of absence.

If a leave of absence is approved, the employee is obligated to return to duty no later than the last date approved by the Town Manager. Upon returning to duty after being on leave without pay, the employee shall return to the same position held at the time leave was granted or to one of like classification, seniority and pay. If the employee decides not to return to work, the supervisor should be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been approved by the Town Manager, shall be considered a resignation without notice.

An employee shall retain all unused vacation and sick leave while on leave without pay. An

Black Mountain Personnel Policy Manual

employee ceases to earn or accrue leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the Town's group insurance plans. If the leave without pay, including workers' compensation leave as described below, will continue beyond 30 consecutive days, employees may continue in the various insurance plans as allowed by the rules and regulations of the insurance carriers by paying for both employee and dependent premium payments for the duration of such leave without pay. These arrangements require prior acknowledgment and agreement by both Town and employee affected. Any other benefits continuation issues should also be resolved prior to the commencement of the unpaid leave.

Section 9. Workers' Compensation Leave

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accumulated vacation and sick leave to supplement Workers' Compensation Leave pay up to the total amount of the employee's regular wages. Once all leave has been exhausted, the employee will automatically continue in a Workers' Compensation leave status. Upon reinstatement, an employee's salary will be computed on the basis of the last salary earned plus any increment or other salary increase to which the employee would have been entitled during the disability covered by Workers' Compensation.

Temporary employees will be placed in a leave without pay status and will receive all benefits for which they may be adjudged eligible under the Workers' Compensation Act.

Section 10. Bereavement Leave

An employee may receive up to twenty-four (24) hours' leave at full pay without charge to vacation leave or sick leave when attending the funeral of an immediate family member. (Immediate family member shall be defined as spouse, mother, father, guardian, children, sister, brother, grandparents and grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those names, or anyone living in the same household.) Additional time to settle affairs of the family may be taken with the approval of the department head and should be charged to vacation leave. Leave to attend funerals of other than the immediate family may be granted by the department head and charged to vacation leave.

Section 11. Temporary Disability Leave

Accumulated sick leave is available to employees for the period of temporary disability in the same manner as for any other illness and subject to FMLA leave.

Leave without pay may be used by the employee prior to, during or after the disability ends as long as a doctor's certification continues to support the disability. The employee may elect to use accumulated vacation leave (1) before going on sick leave, (2) after accumulated sick leave has been exhausted, and/or (3) after the temporary disability has ended. If an employee is temporarily disabled and has exhausted all accumulated sick leave, that employee may be eligible to receive leave without pay for personal disability under the provisions of Section 8 of this article. If an employee wishes to retain all accumulated sick leave and vacation leave, leave without pay may be taken for the entire period.

Reinstatement to the same position or one of like classification, seniority and pay shall be made upon the employee's return to work.

Black Mountain Personnel Policy Manual

Section 12. Military Leave

Military leave shall be granted to regular employees of the Town for certain periods of service in the uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994. No agent or employee of the Town shall discriminate against any employee of the Town or applicant for Town employment because of their membership, application for membership, performance of service, application for service or obligation for service in the uniformed services.

The following are definitions of terms used in this policy:

Service in the Uniformed Service – The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- Active duty (extended active duty; mobilization or call up of reserve components),
- Active duty for training of reserve components (annual training- usually 2 weeks or special schools),
- Initial active duty for training (initial enlistment in reserve or National Guard),
- Inactive duty training (drills - usually on weekends),
- A period for which a person is absent to determine fitness of the person to perform such duty.

Uniformed Services –

- Armed Forces and the Reserve Components (Army, Navy, Air Force, Marine Corps, Coast Guard, Army and Air National Guard),
- Commissioned Corps of the Public Health Services, and
- Any other category of persons designated by the President in time of war or national emergency.

National Guard – A reserve of the U. S. Armed Forces. The N.C. Army and Air National Guard respond to the governor as Commander in Chief and serve as the military arm of state government and respond to the President of the United States in time of war.

Periods Eligible for Leave with Pay - Leave with pay, up to the maximum of 120 hours annually, shall be granted to:

- (1) Members of the Uniformed Services for:
 - Active duty for training (annual training or special schools),
 - Inactive duty training (drills – usually on weekends)If the drill is not scheduled on the employee's off-days, the employee has the option of requesting that the work schedule be rearranged, or the employee may use any unused portion of the 120 hours leave with pay, vacation leave, or leave without pay.
 - *Upon call-up (mobilization) or order to Federal active duty for an employee in one of the Reserve Component. (See exception below.)
- (2) Civil Air Patrol members.

***Exception:** Leave is extended to six months for reservists called to active duty. After six months, the Town will pay the difference between the gross military pay and the gross pay

Black Mountain Personnel Policy Manual

from his or her current position with the Town. While taking military leave, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. Regular employees have all job rights specified in the Uniformed Services Employment and Reemployment Rights Act and Veterans' Readjustment Assistance Act.

The Town shall require the employee to provide notification of upcoming duty and/or schedule changes as soon as known. In addition, the Town shall require verification of duty served. Military leave time hours may not be accumulated or carried over from year to year.

The employee may elect to use vacation leave to cover any unpaid portion of the military leave.

Military leave and other rights under this Section 12 do not apply to any service member whose discharge is other than honorable.

Section 13. Civil Leave

A Town employee called for jury duty or as a court witness for the federal or state governments or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated vacation or sick leave. The Town will offset the amount of any court fees paid to the employee from paid civil leave, so that the employee will receive their regular wages.

While on civil leave, benefits and leave shall accrue as though on regular duty.

Section 14. Educational Leave with Pay

A leave of absence with pay during regular working hours will be granted to an employee to take courses required by the Town as a condition of employment. The Town shall reimburse the employee for tuition, fees, and books for the courses, provided the employee submits a receipt for such expenses.

An employee on educational leave with full pay shall continue to earn vacation and sick leave and any other benefits to which Town employees are entitled.

Section 15. Light Duty

In the event of an injury, either on duty or off duty related, an employee is expected to return to duty when authorized by competent medical authority. Some light duty may be authorized but only with work within the department assigned and only within work limits described by the employee's medical authority. The department head is responsible for supervision and assignment of light duty within these guides. If light duty is not available within the department the Town Manager may make accommodations within other departments. Once released by the medical authority the employee is expected to return to perform the full range of regular work within the position description of the position assigned.

Section 16. Adverse Weather Policy

- (a) Accounting for time not worked Employees not working in mandatory operations who anticipate problems in transportation should be permitted and encouraged to avail themselves of vacation leave or earned compensatory time when encountering difficulty in

Black Mountain Personnel Policy Manual

reporting for work or when leaving early due to adverse weather conditions.

When it has been determined that services will be suspended, time lost will be charged to vacation leave, compensatory time, or (if both are unavailable) leave without pay.

In either of the above, employees may be allowed to make up time in accordance with the provisions outlined below.

Employees who are on prearranged vacation leave, comp leave, or sick leave will charge leave to the appropriate account with no provision for make-up time.

- (b) Make-up time provisions because of adverse weather conditions Where operational needs allow, the Town will make reasonable efforts to arrange schedules whereby employees will be given an opportunity to make up time not worked (either due to suspension of services or voluntary action by employee) rather than charging it to leave. There are very few opportunities for such time to be made up without the employee working more than 40 hours during a workweek. Since hours worked in excess of 40 during a workweek would constitute overtime under Federal regulations, it will be necessary for make-up time for non-exempt employees to be limited to the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holidays, sick leave, civil leave, etc. (Time will be computed on an hour for hour basis for employees who volunteer to make up adverse weather time on a holiday.) Time must be made up within six months from the occurrence of the absence. If time is not made up within six months, vacation leave must be charged, or the employee's pay will be adjusted to deduct the time not worked as leave without pay.
- (c) Special Provision When catastrophic, life-threatening weather conditions occur, as created by hurricanes, tornadoes, or floods, and it becomes necessary for authorities to order evacuation from the place of employment, the following provisions will prevail:
 - 1. Employees who are required to evacuate will not be required to make up time that is lost from work during the period officially declared hazardous to life and safety. Employees required to remain at work may be relieved administratively for a period of time necessary to assure the safety of their family.
 - 2. Employees required to work in such emergency situations will be compensated in accordance with the Town's overtime work policy.

Article VIII. Separation, Disciplinary Actions, and Reinstatement

Section 1. Types of Separation

All separations of employees from positions in the service of the Town shall be designated as one of the following types and shall be accomplished in the manner indicated:

- (a) Resignation: A minimum of two (2) weeks' notice is expected of all resigning personnel. Such notice should be given to the department head (or in the case of department heads, to the Town Manager). **Employees who do not give at least two (2) weeks' notice will forfeit payment for all accrued vacation leave.**

Black Mountain Personnel Policy Manual

An employee's failure to report to work without contacting his or her supervisor for three consecutive scheduled work days shall be deemed a voluntary resignation without notice.

- (b) Reduction in Force: In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's past performance, organizational needs, and seniority, in that order, in determining those employees to be retained. Employees who are laid off because of reduction in force shall be paid at least an amount equal to the amount that employee earns during one pay period. No regular employee shall be separated while there are temporary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary employee.
- (c) Disability: If an employee becomes unable to work due to a disability and no reasonable accommodation permitting the employee to continue to work is available, the employee and the Town will determine the appropriate time for the employee to separate from work, subject to ADA requirements. Please see Article V, Section 19 for more information on accommodations for disability.
- (d) Death: All unpaid wages and other compensation due in accordance with Article VII, Section 4 of these policies will be paid to the designated beneficiary of a deceased employee. The Town may require documentation in the form of Letters Testamentary or Letters of Administration to pay the appropriate representative if no beneficiary has been designated. The date of death shall be recorded as the separation date for computing compensation due.
- (e) Termination: If an employee is terminated, such termination shall be effective at the end of employee's regular schedule for the calendar day on which the employee is given notice of termination. A written summary giving the circumstances and facts leading to the dismissal shall be prepared. A copy of the summary shall be mailed to the employee by certified mail and one copy shall be filed in the employee's personnel file.

Section 2. Disciplinary Actions

An employee may be suspended, demoted, or terminated by the department head because of failure in performance of duties or failure in personal conduct. The form of discipline and the number of disciplinary actions that take place before an employee is terminated will depend on each employee's situation. These guidelines are not all-inclusive, and are not intended to apply to every situation. These guidelines do not alter the nature of the at-will employment between the employee and the Town.

The department head shall provide the employee with a written notice of any disciplinary action including the recommended effective date, reasons for the action, and appeal rights available to the employee.

- (a) Failure in Performance of Duties Failure in the performance of duties includes any aspects of the employee's job which are not performed as required to meet the standards set by the Town Manager.

Black Mountain Personnel Policy Manual

The following causes relating to failure in the performance of duties are representative, but not all-inclusive, of those considered to be adequate grounds for suspension, demotion or dismissal:

- (1) Inefficiency, negligence or incompetence in the performance of duties;
- (2) Careless, negligent or improper use of Town property or equipment;
- (3) Physical or mental incapacity to perform duties;
- (4) Discourteous treatment of the public or other employees;
- (5) Absence without approved leave;
- (6) Habitual improper use of leave privileges;
- (7) Habitual tardiness or failure to report for work at the time and place directed by the employee's supervisor;
- (8) Insubordination by failing to follow a lawful order by a supervisor;
- (9) Violation of any Personnel Policy.

Prior to making a decision to terminate employment, the employee will have the opportunity to discuss the dismissal and the reasons for the dismissal recommendation with the department head or Town Manager.

- (b) Failure in Personal Conduct An employee may be suspended, demoted or dismissed for causes relating to personal conduct detrimental to Town service without warning in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons.

The following causes relating to failure in personal conduct are representative, but not all-inclusive, of those considered to be adequate grounds for suspension, demotion, or dismissal:

- (1) Fraud in securing appointment;
- (2) Conduct unbecoming a public officer or employee;
- (3) Conviction of a felony or of a misdemeanor which would adversely affect performance of duties, or the entry of a plea of "no contest" to either;
- (4) Misappropriation of Town funds or property;
- (5) Falsification of Town records for personal profit or to grant special privileges;
- (6) Reporting to work under the influence of or using alcohol or illegal drugs while at work;
- (7) Willful damage or destruction of property;
- (8) Willful acts that would endanger the lives and property of others;
- (9) Acceptance of gifts in exchange for "favors" or "influence";
- (10) Incompatible outside employment or conflict of interest;
- (11) Violation of political activity restrictions;
- (12) Insubordination by intimidation, harassment, or abuse of another in the workplace.

- (c) Disciplinary Suspension An employee who is suspended for disciplinary reasons shall be relieved temporarily of all duties and responsibilities and shall receive no compensation for the period of suspension. The employee may not use vacation leave, compensatory time or other methods of compensation during the suspension period.

Black Mountain Personnel Policy Manual

(d) Immediate Disciplinary Suspension An employee may be suspended without notice by the department head for causes related to personal conduct in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. When a department head suspends an employee, he or she shall tell the employee to leave Town property at once and remain away until further notice.

(e) Non-Disciplinary Suspension During the investigation of any serious policy violation of an employee, the hearing or trial of an employee on any criminal charge, or during the course of any civil action involving an employee, the department head may suspend the employee without pay for the duration of the proceedings as a non-disciplinary action. However, the investigation, hearing, trial, or civil action must involve matters that may form the basis for disciplinary suspension, demotion or dismissal in order for the non-disciplinary suspension to be allowed.

Full recovery of pay and benefits for the period of non-disciplinary suspension may be authorized by the Town Manager, if the suspension is terminated with full reinstatement of the employee.

Section 3. Employee Appeal

A regular employee wishing to appeal a demotion, suspension or dismissal may present the matter in accordance with the provisions of the grievance procedure prescribed in Article IX of these policies.

Section 4. Reinstatement

An employee who resigns while in good standing or who is dismissed because of reduction in force may be reinstated with the approval of the Town Manager. An employee who enters extended active duty with the Armed Forces of the United States, the Public Health Service or with a Reserve Component of the Armed Forces will be granted reinstatement rights as allowed by the Veterans Readjustment Assistance Act.

An employee who is reinstated under this Section 4 shall be credited with previous service and previously accrued sick leave and will receive all benefits provided in accordance with this policy and state law. The salary paid a reinstated employee shall be as close as reasonably possible, given the circumstances of each employee's case and position after reinstatement, to the salary level previously attained by the employee in the salary range for the previous class of work, plus any across-the-board pay increases.

Article IX. Grievance Procedure

Section 1. Policy and Purpose

It is the policy of the Town to provide a means whereby employees may freely discuss grievances with supervisors and to provide a procedure for the presentation and mutual adjustment of points of disagreement that arise between employees and their supervisors. The purposes of this policy are:

- (a) to provide employees a procedure by which their complaints can be considered

Black Mountain Personnel Policy Manual

rapidly, fairly, and without reprisal;

- (b) to encourage employees to express themselves about the conditions of employment which affect them as employees;
- (c) to promote better understanding of policies, practices and procedures that affect employees;
- (d) to develop in supervisors a greater sense of responsibility in their dealings with employees.

Section 2. Definition

A grievance is any dispute concerning the interpretation or application of this Personnel Policy, or any other policy, practice or procedure affecting working conditions for the Town. A grievance might involve alleged safety or health hazards, unfair or discriminatory supervisory practices, misapplication of department work rules, unsatisfactory physical facilities or equipment or other complaints related to conditions of work or disciplinary action. Complaint processes involving issues covered by other parts of this policy are excluded from this procedure. Nothing herein shall be interpreted to change the status of any employee from that of an employee at will.

Section 3. Procedure

When an employee has a grievance, the successive steps described below are to be taken toward resolution of the matter.

The number of days indicated at each step of the grievance procedure should be considered as the maximum number of working days allowed for presentation of and response to the grievance at that level. However, when mutually agreed upon, time limits given below may be extended by those concerned.

Employees who use this procedure shall be free from discrimination, coercion, restraint or reprisal.

Step One. The employee with a grievance shall present the matter orally or in writing to his or her department head within seven (7) calendar days of its occurrence or within seven (7) calendar days of the time the employee learns of its occurrence. If the exact date cannot be established for the occurrence of a grievance circumstance, the seven (7) calendar day limit will be extended for a reasonable time period, as determined by the Town. The grievance shall specify the relief that the employee seeks from the grievance procedure. The department head is encouraged to consult with any employee or officer deemed necessary to reach a correct, impartial, and equitable determination and shall give the employee an answer as soon as possible, but within five (5) working days of receiving the notice of grievance.

Step Two. If the decision is not resolved in Step One, or if the employee fails to receive an answer within the designated period provided in Step One, or if the employee cannot submit a grievance to his or her department head because that person is the subject of the complaint, the employee may file the grievance in writing with the Town Manager within seven (7) calendar days. The grievance shall specify the relief expected from the use of this procedure.

Black Mountain Personnel Policy Manual

The Town Manager, or his or her designee, shall hold a hearing thereon, consult with whatever sources the Town Manager deems appropriate, and allow the employee to present his or her case.

The Town Manager shall review the case data and render a decision in writing within seven (7) working days after receipt, with one copy sent to the employee by certified mail and one copy placed in the employee's personnel file. There shall be no appeal from this decision.

Section 4. Back Pay Awards

Back pay and benefits may be awarded to reinstated employees who missed work due to disciplinary actions. Such determinations shall be made by the Town Board of Aldermen upon the recommendation of the Town Manager.

Article X. Insurance/Retirement Benefits

Town employee benefits are described below. Employees should refer to the Human Resources Coordinator for more detailed information about benefits. If there is any conflict between the benefit plan documents and this Personnel Policy, the benefits plan documents will be controlling.

Section 1. Insurance Benefits

The Town offers group hospitalization, life insurance and a separate death benefit which is offered through the North Carolina Local Governmental Employees' Retirement System to employees. The Town may make other group insurance plans available for its employees upon authorization of the Town Board of Aldermen.

Regular, full-time employees are eligible for these benefits as outlined in each plan.

Section 2. Unemployment Insurance

In accordance with the North Carolina General Statutes, local governments are covered by unemployment insurance. Eligible Town employees may apply for unemployment compensation through the local office of the Employment Security Commission.

Section 3. Old Age and Survivor's Insurance

The Town, to the extent of its lawful authority and power, has extended social security benefits for its eligible employees and eligible groups and classes of such employees.

Section 4. Retirement Benefits

The Town provides retirement benefits for its employees through the North Carolina Local Governmental Employees' Retirement System (NCLGERS).

All employees who are budgeted to work 1000 hours or more annually are required to join the NCLGERS retirement plan according to the NC General Statutes.

Section 5. 401K Plan & Law Enforcement Separation Allowance

The Town provides a contribution to a 401K plan for regular, full-time employees as well as active

Black Mountain Personnel Policy Manual

law enforcement personnel. The Town also provides a monthly separation allowance to retired law enforcement officers as required in Chapter 143, Article 12E and Article 12D of the General Statutes of North Carolina.

Section 6. Workers' Compensation

All employees are covered with workers' compensation insurance as required by North Carolina General Statutes. This insurance provides payment of medical bills and lost wages as allowed. Employees are required to notify the Town as soon as possible after an accident. Failure to notify the Town may jeopardize an employee's claim for workers' compensation benefits.

Section 7. Retiree Health Insurance Benefits

Any employee who, upon retirement, qualifies for a monthly retirement benefit in accordance with the provisions of the North Carolina Local Government Employees' Retirement System (NCLGERS) may be eligible for a continuation of their individual health insurance coverage under the Town's group health insurance plan. As a participant in the State Health Plan, former Town employees who now qualify as NCLGERS retirees become eligible for a continuation of health insurance coverage under the guidelines of that Plan. Unless contradicted by the guidelines of the State Health Plan, a NCLGERS retiree from the Town of Black Mountain is eligible for continuation of their health insurance benefits after providing that the retiree has fifteen (15) years of service with the Town immediately preceding retirement. In the event that State Health Plan guidelines for retiree qualification are contradictory to those set forth by this policy, the guidelines of the State Health Plan shall dictate eligibility. The cost of the insurance is paid entirely by the Town for the retiree only and is provided until the expiration of the benefit as prescribed by the guidelines of the State Health Plan. The qualifying employee may also elect to continue dependent coverage under the provisions of the State Health Plan by paying the full amount prescribed by the Plan for the elected dependent coverage. Cost for dependent coverage is deducted directly from the retiree's benefit check by the State Health Plan prior to the monthly remittance.

The Town currently operates a disease management program in conjunction with the provision of the group health insurance program. Retirees who remain eligible for the continuation of group health insurance benefits under the provisions of the above-prescribed policy also remain eligible for the provision of the disease management programs. To maintain eligibility, retirees must abide by all program guidelines. Disease management benefits are also available to dependents of retirees so long as the dependents are covered through the provision of the retiree health insurance program. Due to the uncertainty of future funding for the disease management program, the Town of Black Mountain reserves the right to eliminate this benefit at any time in the future and no retiree currently eligible for the benefit shall consider its provision as permanent and irrevocable. No retiree who was originally hired by the Town after May 1, 2008, nor their dependents, regardless of their participation in the retiree health insurance program, shall be eligible for the disease management program.

Section 8. Retiree Life Insurance Benefits

Retiring employees have the option of continuing the MIT Life Insurance coverage at their expense. This benefit is billed through the Town and the retiree pays 100% of the cost of the coverage on an annual basis.

Black Mountain Personnel Policy Manual

Article XI. Personnel Records and Reports

Section 1. Personnel Records Maintained

Such personnel records as are necessary for the proper administration of the personnel system will be maintained by the Town Manager or his designee. The Town shall maintain, in personnel records, only information that is relevant to accomplishing personnel administration purposes.

Section 2. Public Personnel Records Defined

The following information on each Town employee are part of an employee's public personnel record:

- (a) Name;
- (b) Age;
- (c) Date of original employment or appointment to Town service;
- (d) Current position title;
- (e) Current salary;
- (f) Date and amount of most recent change in salary;
- (g) Date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification;
- (h) Date and general description of the reasons for each promotion with that municipality.
- (i) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the municipality. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the municipality setting forth the specific acts or omissions that are the basis of the dismissal;
- (j) Office to which employee is currently assigned.

Section 3. Access to Personnel Records

As required by North Carolina General Statutes, any person may have access to the information listed in Section 2 of this Article for the purpose of inspection, examination, and copying during the regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town Aldermen may adopt. Access to such information shall be governed by the following provisions:

- (a) All disclosures of records shall be accounted for by keeping a written record (except for authorized persons processing personnel actions) of the following information: name of employee; information disclosed; date information was requested; name and address of the person to whom the disclosure is made; and purpose for which information is requested. This information must be retained for a period of two years.

Black Mountain Personnel Policy Manual

- (b) Upon request, the record of disclosure shall be made available to the employee to whom it pertains.
- (c) Any individual examining a personnel record may copy the information. Any available photocopying facility may be provided and the cost may be assessed to the individual.
- (d) Any person denied access to any record shall have a right to compel compliance with these provisions by application to a court for a writ of mandamus or other appropriate relief.

Section 4. Confidential Information

All information contained in the Town employee's personnel file, other than the information listed in Section 2 of this Article will be maintained as confidential and shall be open to inspection only in the following instances:

- (a) The employee or his or her duly authorized agent may examine all portions of the employee's personnel file, except (1) letters of reference solicited prior to employment, and (2) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his or her patient.
- (b) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (c) A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (d) By order of a court of competent jurisdiction, any person may examine such portion of the employee's personnel file as may be ordered by the court.
- (e) An official of an agency of the state or federal government, or any political subdivision of the state, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of the personnel records to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, such official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (f) An employee may sign a written release, to be placed with his or her personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (g) The Town Manager, with concurrence of the Town Aldermen may inform any person of the employment or non-employment, promotion, demotion, suspension, or other disciplinary reasons for that personnel action. Before releasing the information, the Town Manager shall determine in writing that the release is essential to maintaining the public trust and confidence in the administration of services or to maintain the level and quality

Black Mountain Personnel Policy Manual

of Town services. This written determination shall be retained in the office of the Town Clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

- (h) Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.
- (i) A record shall be made of each disclosure and placed in the employee's file (except of disclosures to the employee and the supervisor).

Section 5. Records of Former Employees

The provisions for access to records of former employees is subject to this Article XI.

Section 6. Records of Applicants

Applications and other information gathered with respect to an applicant will be kept confidential. The Town will not release this information without written permission from the applicant.

Section 7. Remedies of Employees Objecting to Material in File

An employee who objects to material in his or her file may place in the file a statement relating to the material considered to be inaccurate or misleading. The employee may seek the removal of such material in accordance with established grievance procedures.

Section 8. Penalty for Permitting Access to Confidential File by Unauthorized Person

North Carolina General Statutes provide that a public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars (\$500.00).

Section 9. Penalty for Examining and/or Copying Confidential Material Without Authorization

North Carolina General Statutes provide that any person not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00)

Section 10. Destruction of Records Regulated

No person may destroy, sell, loan, or otherwise dispose of any public record except as allowed by North Carolina General Statutes. Whoever unlawfully removes a public record from the offices where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined no less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

Black Mountain Personnel Policy Manual

ARTICLE XII. SUBSTANCE USE/ABUSE

Section 1. Purpose. It is the Town's policy to maintain a safe and healthy working environment for employees, and a productive and effective workforce for the citizens of Black Mountain. The Substance Use/Abuse Policy is intended to provide a safe working environment, protect employees' privacy, and ensure a clear guidelines for testing for drug and alcohol use. Accordingly, employees are prohibited from possessing, using, being under the influence of, transferring, manufacturing or selling alcohol, illegal drugs, or legal drugs without a valid prescription while at work. Violation of this policy will result in disciplinary action, up to, and including termination.

Section 2. Scope and Application. This policy applies to all Town employees except sworn law enforcement personnel and applicants for sworn law enforcement positions, who are tested for substance abuse in accordance with state law and Police Department policy.

Section 3. Definitions.

- (a) *Substance abuse* is defined as the use or presence of illegal drugs or alcohol in an employee's system during working hours.
- (b) *Applicant* is defined as any person seeking employment with the Town to whom a provisional offer of employment has been made.

Section 4. Applicants.

- (a) **Scope and Application of Section 4.** This Section of the Policy applies to all applicants for employment with the Town. All offers of employment are subject to the terms and conditions of this Policy.
- (b) **Applicant Drug Testing.** All applicants must undergo a pre-employment drug screen test. Testing will be conducted in accordance with state law.
- (c) **Contingent Employment.** Any offer or acceptance of employment is contingent upon the applicant successfully completing his or her drug test. No applicant shall be required to submit to a drug test until after the applicant has been offered a provisional offer of employment. The Town will withdraw an offer of employment if the test results are positive for illegal drugs or for the presence of prescription drugs (such as barbiturates, amphetamines, opiates, etc.) unless the applicant has a current prescription. No one shall be permitted to begin work until the results of the test have been obtained.
- (d) **Posting.** The following language will be displayed where it may be easily seen by employees and persons seeking employment:

All applicants will be subject to and must successfully pass a pre-employment drug screen and criminal background check.
- (e) **Application Form.** Employment application form(s) for employment with the Town shall include the following language:

Black Mountain Personnel Policy Manual

Employment with the Town of Black Mountain is contingent upon the successful completion of a drug screening test to be administered after a provisional offer of employment is made. Successful completion of the test means that the person tested negative for illegal drugs.

- (f) Release. Before taking the drug screening test, applicants must sign a “SPECIFIC HEALTHCARE REQUEST AND AUTHORIZATION” form. See Appendix A. Failure to sign the form or cooperate in the test procedure as requested shall be deemed a withdrawal of the individual’s application for employment.

- (g) Communication of Test Results by the Medical Review Officer.

- (1) Negative Test Results. If the drug screening test results is negative, the laboratory will so advise the Human Resources Coordinator. The applicant then is permitted to begin work. The laboratory will not refer negative test results to the Town’s Medical Review Officer (hereinafter referred to as “MRO”), unless otherwise requested to do so.
 - (2) Adulterated or Unreadable Samples. If a drug screening test cannot be accurately performed because a urine sample is not authentic, or has been adulterated, contaminated or otherwise made impossible to analyze properly, the following procedures shall be used, unless otherwise dictated by applicable law:
 - a. If a urine sample is obviously not authentic (as example: when an applicant substitutes cold tap water for urine), the laboratory will so inform the Town. The Town then shall inform the applicant that the sample is not acceptable and the offer of employment will be withdrawn.
 - b. If the urine sample cannot be properly analyzed because of contamination or adulteration, the laboratory will so inform the Town. The Town then shall inform the applicant that he or she cannot be determined to be qualified for work and is requested to discuss the test with the MRO. The MRO will ask the applicant to provide an explanation for the contaminated or adulterated sample.
 - i. If the MRO advises the Town that the applicant failed to provide a satisfactory explanation, the Town shall advise the applicant that the offer of employment has been withdrawn.
 - ii. If the MRO advises the Town that the applicant provided a satisfactory explanation, the applicant will be permitted to repeat the drug-screening test, in which a new urine sample will be collected and analyzed.
 - (3) Positive Test Results – In the event a drug-screening test is positive (positive drug test results must be confirmed by the laboratory using Gas Chromatography/Mass Spectrometry hereinafter referred to as “GCMS”), the following procedures should be followed:
 - a. The laboratory will inform the Town’s MRO that the drug screening test is positive, and will convey such details of the test as the MRO deems necessary. The MRO will consult with the applicant to determine whether or not there is a satisfactory explanation for the positive test results.

Black Mountain Personnel Policy Manual

- b. If a satisfactory explanation is provided, the MRO will advise the Town that the applicant's test was negative, and the applicant will be permitted to begin employment.
 - c. If a satisfactory explanation is not provided, the MRO will so advise the Town. The Town will advise the applicant that the offer of employment has been withdrawn.
- (4) Confidentiality. Because of the sensitive nature of drug screening tests, extreme caution shall be exercised to maintain the confidentiality of the results. No statement nor any other information concerning an applicant's drug screening results shall be made available to other members of management, except those having a need to know. No other person, including friends and/or members of the applicant's family, shall be notified or given information concerning the applicant's drug screening results.

Section 5. Employees.

- (a) Scope and Application of Section 5. This Section of this Policy applies only to employees of the Town.
- (b) Voluntary Referral for Counseling and/or Rehabilitation.
- (1) Policy. The Town recognizes and accepts that early treatment is the key to rehabilitation for substance abusers; therefore, employees are encouraged to voluntarily request help. The Town will not discriminate against employees who voluntarily request referral to counseling and/or rehabilitation, but such requests do not excuse employees from otherwise complying with this Policy.
 - (2) Posting. The Town shall post the name and telephone number of the Town's recommended rehabilitation and counseling service, at a location where it may be seen by all employees.
 - (3) Procedure for Volunteering For Assistance. An employee may volunteer for assistance by requesting help from the Human Resources Coordinator, department head, or a supervisor. If an employee contacts a department head or supervisor concerning a substance abuse problem, the department head or supervisor shall assist the employee in setting up an appointment with the Human Resources Coordinator for referral to recommended counseling or rehabilitation service, but shall not attempt to diagnose the problem nor counsel the employee.
- (c) Prohibitions for all Employees.
- (1) The possession, use, distribution, transfer, manufacture, or sale of alcohol, illegal drugs, or legal drugs without a valid prescription on Town property or while working is specifically prohibited. An employee who violates this prohibition is subject to disciplinary action up to and including termination of employment. Any circumstances that indicate the violation of state, federal or local laws may be reported to appropriate law enforcement officials, and the Town will cooperate in any criminal prosecution(s).
 - (2) Reporting for work under the influence of illegal drugs or alcohol is prohibited. If the Town has a reasonable suspicion that an employee is under the influence of illegal drugs or alcohol, that employee will be required to take a drug test as

Black Mountain Personnel Policy Manual

described below. If the results of the drug test are positive, the employee will be disciplined per this Policy, up to and including termination. This prohibition includes prescription drugs, unless the employee has a current valid prescription.

- (d) Searches. Where a supervisor reasonably suspects that an employee or group of employees may possess illegal drugs or alcohol at work, the Town may conduct a search of the employee(s) workspace as set forth in Art. VI, Section 18 of this Personnel Policy.
- (e) Drug and/or Alcohol Screening Criteria. If a supervisor reasonably suspects that an employee is under the influence of drugs or alcohol while on the job, he or she will promptly require the employee to submit to drug testing in accordance the criteria set forth below. Time permitting, the supervisor will consult with the Human Resources Coordinator, but testing should take place as soon as reasonably practicable. The supervisor and/or his or her designee will escort the employee to the testing site under the following circumstances:
 - (1) Post-Accident or Incident. Employees shall be required to submit to a drug screen and alcohol test in any of the following accident or incident situations:
 - a. When an accident or incident for which the employee is responsible results in personal injury requiring immediate or off-site medical attention; or,
 - b. When an accident or incident for which the employee is responsible results in substantial damage to property; or,
 - c. When an accident is attributable to an employee in a safety-sensitive position (as defined in Section 5(e)(3) of this Article.
 - (2) For Cause Testing of Employees. Employees shall be required to submit to a drug screen and alcohol test when the Town has reasonable suspicion that the employee is impaired by drugs and/or alcohol, or in possession of illegal drugs or alcohol, while at work.

While it is impossible to list every factor which might lead to a decision to test an employee, examples of criteria leading to a reasonable suspicion of drug or alcohol use or possession may include:

- a. Direct observation of drug or alcohol use on the job by a credible person;
 - b. Direct observation of the symptoms of drug or alcohol use on the job by a credible person, such as:
 - i. reddened eyes or dilated pupils;
 - ii. odor of alcohol or drugs;
 - iii. slurred speech; and/or
 - iv. difficulty in motor coordination.
 - c. A pattern of erratic, abnormal behavior that reasonably appears to be the result of drug or alcohol use on the job;
 - d. An arrest or conviction for a drug-related event;
 - e. Evidence that an employee tampered with a drug test; or
 - f. Other reasonable, articulable evidence that the employee is under the influence of illegal drugs or alcohol while on the job.
- (3) Random Drug Testing of Employees. Employees whose positions are safety-

Black Mountain Personnel Policy Manual

sensitive will be randomly tested. The following are safety-sensitive positions subject to random drug testing are:

- a. Employees required to have commercial driver's license certification as required by the Department of Transportation;
- b. All emergency services dispatchers;
- c. All armed law enforcement officers;
- d. All firefighters;
- e. All employees whose primary job duties include the operation of a motor vehicle;
- f. Lifeguards; and
- g. Emergency medical technicians.

The Human Resources Coordinator will be responsible for supplying the drug testing collection facility a roster of employees in safety-sensitive positions to be randomly tested. This roster will be separated by work group to ensure that all groups are represented equally. The collection facility will be responsible for maintaining a computerized random list by work group to ensure that the number of employees tested each year represents approximately 50% of the total number of employees eligible for testing. The facility will also be responsible for notifying by name to the Town's Human Resources Coordinator the employees selected to report to the collection facility for random testing. The Human Resources Coordinator will then inform each selected employee's supervisor the schedule to report for testing.

Any employee who refuses to participate in a random test required herein is subject to disciplinary action, including, but not limited to, termination of employment. An employee who is unable to participate in a test due to illness, vacation, excused absence or some other reason satisfactory to management, shall be tested as soon thereafter as reasonably possible.

(f) Testing Procedure.

- (1) Before an employee is requested by a supervisor to submit to a drug and/or alcohol-screening test under this policy, the supervisor shall consult with the Human Resources Coordinator and the Town Manager, if possible. The employee shall be told that, in accordance with the Town's Substance Abuse Policy, he or she is being requested to submit to an alcohol or drug screening test. Take care not to state any conclusions or speculations as to whether or not the employee is abusing any substances. The person making the request shall complete the "SPECIFIC HEALTHCARE REQUEST AND AUTHORIZATION" form. See Appendix A.
- (2) The employee shall be requested to sign the "SPECIFIC HEALTHCARE REQUEST AND AUTHORIZATION" form (Appendix A) prior to being tested. Failure of an employee to sign the consent to testing may be grounds for disciplinary action, up to and including dismissal.
- (3) All tests shall be conducted in accordance with applicable laws and procedures.
- (4) The employee may be permitted to continue to work pending the results of the drug or alcohol screening test if, in the Town's sole discretion, the employee's return to

Black Mountain Personnel Policy Manual

- work will not endanger the employee, fellow employees or members of the public.
- (5) If the employee refuses to cooperate or refuses to take the drug and/or alcohol-screening test, he or she shall be suspended pending final decision on termination of employment.

- (g) Vehicle Operation and Transportation – Impaired Employees. If the Town has a reasonable suspicion that an employee may be impaired by drugs or alcohol, and thus appears to be unable to drive safely, the Town shall arrange or provide for transportation for the employee. If the employee refuses to accept such transportation, and insists upon driving and is not in a Town vehicle, the employee should be discouraged from driving, but shall not be forcibly restrained.

If the employee insists on driving and is preparing to drive a vehicle owned by the Town, the Town employee and officials may take any reasonable action to prevent that person from driving but shall not use physical force to stop the individual, unless such actions are undertaken by sworn law enforcement personnel who have been properly trained regarding the use of force in such situations. All actions taken by any Town employee to persuade or restrain an employee under this section shall be immediately reported to their supervisor and documented in writing.

Regardless of the ownership of the vehicle, the employee shall be informed that the Town will notify local law enforcement authorities if the employee attempts to drive and the Town shall so notify the authorities if such driving occurs.

- (h) Communication of Test Results by the Medical Review Officer.

- (1) Negative Test Results. If the drug screening test result is negative, the laboratory will so advise the Human Resources Coordinator, who will notify the employee of the test result. The laboratory will not refer negative test results to the MRO, unless otherwise requested to do so. If an employee has been suspended pending the results of the drug-screening test, the employee may, at the Town's sole discretion, be reinstated with back pay and benefits.
- (2) Adulterated or Unreadable Samples. If a drug screening test which cannot be accurately performed because a urine sample is not authentic, or has been adulterated, shall be considered reasonable evidence of an employee's failure to cooperate with the Town in administering this Policy. (See Section 4(g)(2) for a description of such samples). The MRO will discuss the test with the employee and request an explanation. If the employee provides a satisfactory explanation, a new drug or alcohol-screening test may be performed at the Town's discretion. If the employee does not provide a satisfactory explanation, he or she is subject to disciplinary action up to and including termination of employment.
- (3) Positive Test Results. In the event a drug-screening test is positive (positive drug test results must be confirmed by the laboratory using GCMS), the following procedures should be followed:
 - a. The laboratory will inform the Town's designated MRO that the drug screening test is positive, and will convey such details of the test as the MRO deems

Black Mountain Personnel Policy Manual

necessary. The MRO will consult with the employee to determine whether or not there is a satisfactory explanation for the positive test results.

- b. If a satisfactory explanation is provided, the MRO will advise the Town that the employee's test was negative, and the employee will be so informed and will be reinstated with back pay and benefits, as appropriate.
 - c. If a satisfactory explanation is not provided, the MRO will so advise the Human Resources Coordinator, who shall meet with the employee with another member of management to advise the employee of the test results. Upon confirmation of a positive test result, the employee's supervisor shall consult with the Human Resources Coordinator and determine the appropriate disciplinary action, up to and including termination. If the Town determines that suspension is an appropriate disciplinary action, the employee must obtain appropriate treatment, execute and comply with the requirements of the "LAST CHANCE ASSISTANCE AGREEMENT" (Appendix B) as a condition of continued employment.
- (i) Failure of an Employee to Cooperate. Employee compliance with the Town's Substance Abuse Policy is a condition of employment. Failure or refusal of an employee to cooperate and participate in the program, sign any requested document, or submit to requested testing shall be grounds for disciplinary action, up to and including termination.
- (j) Time Off for Counseling/Rehabilitation and Return to Work. Employees may use available paid and unpaid leave in accordance with Article VII of this Policy for work time lost for counseling and/or rehabilitation. Employees may be terminated after a positive drug test in accordance with this Policy, but if the Town instead elects to take disciplinary action short of termination, the Town may require the employee to participate in drug or alcohol counseling or rehabilitation. In such event, it will be a condition of continued employment that the employee consents to (1) providing certification by the treatment facility that the employee has satisfactorily completed treatment and is fit to return to duty; and (2) taking a drug screen and alcohol test which generates a negative test result.
- (k) Medical Benefits for Counseling and/or Rehabilitation. Medical benefits for counseling and/or rehabilitation shall be available as provided in the Town's medical insurance plan provided for full-time employees. Such benefits available will depend upon the medical diagnosis by the employee's physician in conjunction with the Town's Benefit Plan.
- (l) Effect of a Positive Test after Referral. After an employee has been referred for counseling or rehabilitation under this Substance Abuse Policy, a condition of continued employment is that the employee promises to remain drug-free. A subsequent positive drug test may result in termination of employment.

Section 6. Severability and Effect. If any part of this Policy is determined to be void or unenforceable under state or federal law, the remainder of the Policy will remain in full force and effect.

Black Mountain Personnel Policy Manual

Section 7. Reservations. No part of this Policy, nor any of its procedures, is intended to affect Town employees' at-will status, the Town's right to manage its workplace, or its right to discipline its employees. This policy is not a guarantee of employment, continued employment, or any terms or conditions of employment, except as specifically provided herein. This Policy does not create an express nor implied contract between the Town and any employee. It is impossible to anticipate every situation which may arise in regard to drug/alcohol abuse. Therefore, the Town Manager's office is responsible for the overall implementation of this Policy and the administration of drug/alcohol abuse problems.

The Town reserves the right to interpret, change, modify, amend, or rescind this Policy in whole or in part.

Section 8. Document for the File. The employee may decide to appeal the request or requirement of a drug test, or any resulting disciplinary action; legal action is also a possibility. In addition, the personnel file must contain information about the current incident in case future problems occur. Therefore, *documentation is very important*. Be sure that the employee's personnel file contains written documentation of observations which led to the concern for performance deficiencies, and copies of the signed consent form.

Section 9. Confidentiality. All information involving medical examinations, counseling, rehabilitation and/or treatment of an individual employee or applicant shall be treated as confidential medical information. All such information will be available only to those Town officials and designated medical and professional persons who have a valid need to know. Such information will not be provided to any other party without the employee's written consent, except pursuant to administrative or legal procedure or process. Any employee who willfully discloses such information in violation of Town policy will be subject to discipline up to and including dismissal.

Section 10. Notification to Employees of Policy. The Town's Substance Abuse Policy is included in the Town's Personnel Policy. Employees are given a copy of the Personnel Policy when hired and are required to sign a form indicating they have read the Personnel Policy.

SPECIFIC HEALTHCARE REQUEST AND AUTHORIZATION

APPENDIX "A"



Please complete this form and forward it to the Urgent Care Center where you intend to send your employee. This form provides the request and authorization for the needed health care for your employee without which we cannot proceed. Please include your insurance carrier claim number in the appropriate space below (when applicable).

1. You may fax the completed **Specific Healthcare Request & Authorization** form to the Urgent Care Center where you intend to send your employee, **or**
2. You may ask your employee to deliver the completed **Specific Healthcare Request & Authorization** form to the Front Desk Staff upon arrival at the Urgent Care Center.

This employee is being sent to Sisters of Mercy Urgent Care for the health care indicated in the appropriate space(s) below.

PLEASE PRINT CLEARLY

EMPLOYEE

SAMPLE

OF BIRTH

SOCIAL SECURITY #

INSURANCE CARRIER CLAIM #

- ☐ I authorize care for this *work-related injury*.
- ☐ I authorize healthcare and/or diagnostic tests listed below.
- ☐ I do not authorize care for the injury/illness

COMPANY

NAME OF AUTHORIZING PERSON

DATE

TITLE

EMAIL

PHONE

FAX

HEALTHCARE SERVICES REQUESTED	INDICATE ANY VARIATIONS FROM ORIGINAL HEALTH CARE SERVICES REQUESTED FOR EMPLOYEES*

*As shown on Sisters of Mercy Urgent Care Comprehensive Employer Health Care Request (Form 202 BI-Spec)

All reports and information regarding this employee's care will be sent to the Company Contact Person for Work-Related Care as previously provided by your company. If there have been any changes in this regard, please advise our Workers' Compensation/Industrial Representative at 828-252-9266.

PLEASE CHECK THE URGENT CARE LOCATION WHERE YOU ARE SENDING YOUR EMPLOYEE

- ☐ **URGENT CARE NORTH** • 155 Weaverville Blvd, Weaverville, NC • phone: 828.645.5088 fax: 828.645.6095
- ☐ **URGENT CARE SOUTH** • 1812 Hendersonville Rd., Asheville NC • phone: 828.274.1462 fax: 828.274.9044
- ☐ **URGENT CARE EAST** • 2313 US Hwy. 70, Swannanoa, NC • phone: 828.686.4988 fax: 828.686.4983
- ☐ **URGENT CARE WEST** • 8 New Leicester Hwy., Asheville, NC • phone: 828.252.4878 fax: 828.252.4103

OUR MISSION: Sisters of Mercy Urgent Care, Inc. exists to provide cost-effective quality-oriented healthcare to the residents, businesses, and industries of the southeastern United States, adhering to the Core Values of the Sisters of Mercy, which are: sacredness of life, dignity of the individual, justice, mercy, service, and excellence.

Form 202 B&I-Spec

Black Mountain Personnel Policy Manual

TOWN OF BLACK MOUNTAIN

“APPENDIX B”

SUBSTANCE ABUSE

LAST CHANCE ASSISTANCE AGREEMENT

SAMPLE

Name of Employee: _____
Last First Middle

1. I voluntarily acknowledge that I have violated the Town's Substance Use/Abuse policy, and I acknowledge that the Town has the right to terminate my employment for violation of this Policy. Under this Last Chance Assistance Agreement, the Town agrees to refrain from terminating me on the date entered below in exchange for my agreement to obtain treatment.

2. I promise to fully cooperate and participate in counseling and/or rehabilitation program in accordance with instructions and requirements of program administrators. I understand that any Town approved leave of absence to continue in a counseling or rehabilitation program may be reviewed on a weekly basis.

3. I authorize my counseling or rehabilitation representatives to confer with the Human Resources Coordinator (or designee) regarding my attendance, progress and suitability for continued employment or return to active employment, as the case may be, including the disclosure of medical/psychiatric evaluations and substance abuse testing of me.

4. I understand that as a pre-condition to my returning to work, I must test negative on a drug test administered in accordance with the Town Personnel Policy. I also understand and agree that I will willingly submit to random, unannounced drug testing at any time after my return to work, and that if I test positive on any such test, or if I refuse to take a test as requested, I will be subject to immediate termination.

5. If I have received treatment for drug abuse, I understand and agree that my future employment depends upon my remaining free of drug abuse for the entire duration of my continued employment, and that this “LAST CHANCE” opportunity afforded me by the Town is conditioned accordingly. I further understand and agree that nothing herein alters the nature of my at-will employment, my right or the Town's right to terminate or modify our employment relationship at any time and for any reason.

6. If I have received treatment for alcohol abuse, I understand and agree that for the entire duration of my continued employment, I will not use alcohol in a manner that violates Town policy.

7. I further understand and agree that I will be held to the same attendance, performance, safety, behavioral, and other standards as every other employee of the Town, and if my drug or alcohol use causes me to violate those standards, I will be subject to discipline or discharge on the same basis as other employees who violate those standards for other reasons. I further understand

Black Mountain Personnel Policy Manual

and agree that I may be tested for drug or alcohol use based on reasonable cause; after an accident or incident which caused or reasonably could have caused personal injury or property damage in which my inaction or action was a contributing factor; or otherwise in accordance with Town policy.

8. I understand that upon my continued active employment or return to active employment, I must meet all established standards of conduct and job performance required of any other employee.

SIGNED:

SAMPLE

Employee

Date

APPROVED:

Supervisor

Date

Black Mountain Personnel Policy Manual

Article XIII. Implementation Of Policy

Section 1. Conflicting Policies Repealed

All policies, ordinances or resolutions that conflict with the provisions of these policies are hereby repealed.

Section 2. Severability

If any provision of these policies or any rule, regulation or order thereunder or the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies or such rules, regulations or orders to persons or circumstances other than those held invalid will not be affected thereby.

Section 3. Violations of Policy Provisions

An employee violating any of the provisions of these policies shall be subject to disciplinary action, in addition to any civil or criminal penalty which may be imposed for the violation of the same.

Section 4. Effective Date

These policies shall become effective upon adoption.

Black Mountain Personnel Policy Manual

Acknowledgement of Receipt of Personnel Policy Manual

I, _____ (employee), acknowledge receipt of the Town of Black Mountain Personnel Policy Manual.

I clearly understand that this Personnel Policy Manual does not create a contract for employment and that the Town may change or modify the procedures in this Personnel Policy Manual at any time, with or without prior notice. The provisions of this Personnel Policy Manual are guidelines; accordingly, this Personnel Policy Manual is not a contract and does not abrogate the at-will employment status of any employee. Regardless of any part of this Personnel Policy Manual or another, the Town may terminate any employee for any reason or for no reason at any time, with or without notice, in compliance with applicable law.

I HAVE READ AND UNDERSTAND THE POLICIES OUTLINED BY THE TOWN OF BLACK MOUNTAIN, AND AGREE TO BE BOUND BY THE TOWN'S RULES AND REGULATIONS DURING MY EMPLOYMENT WITH THE TOWN. I UNDERSTAND THAT VIOLATING THE POLICIES AND RULES SET OUT IN THIS EMPLOYMENT MANUAL MAY LEAD TO DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION.

Print Name: _____

Signature: _____

_____ Date

Print Name: _____

Witness Signature: _____

_____ Date

*Signed and witnessed copies of this Acknowledgement of Receipt of Personnel Policy Manual must be on file for all employees.

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TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Date: **May 13, 2019** Time: **6:00 p.m.** **Regular Session Minutes**

*The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at www.townofblackmountain.org. Click on **Town Government** and select **Mayor and Board of Alderman** to download materials for all Town board meetings.*

 **Conserve resources; print only when necessary.**

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door.

*Should you need other assistance or accommodation for this meeting, please contact
Town Clerk Angela Reece at 419-9310, or by email at townclerk@townofblackmountain.org
(828) 419-9300 / TDD (800) 735-2962*

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 6:00 p.m. with the following members present:

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

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, Assistant Town Manager/Finance Director
Angela Reece, Town Clerk
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance. Pastor Mary Katherine Robinson of Black Mountain Presbyterian Church gave the invocation.

Mayor Collins thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. The re-broadcast of each regular meeting is shown throughout the month on Charter Cable's Buncombe County Channel 192 at 8:00 p.m. on Sundays. Meetings initially air the same week in which they occur and are shown weekly until the next regularly scheduled meeting. Citizens may also go to the Town website www.townofblackmountain.org at any time and view the most recent regular meeting of the Board.

Mayor Collins reminded citizens attending the meeting to remain quiet so as not to disturb others. In his announcements Mayor Collins recognized Fire Chief, Scottie Harris. Chief Harris presented Police Chief Shawn Freeman an American Flag depicted on a wooden frame from the

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

Fired Department thanking and recognizing the Police Department in honor of National Police Week.

2. PROCLAMATION AND AWARD RECOGNITION

- A. Proclamation Honoring Student Athlete – Alderman Tim Raines presented a proclamation honoring Chesney Gardner for her outstanding academic and athletic accomplishments. Ms. Gardner has been awarded the Female Athlete of the Year receiving the Pat Best Memorial Trophy. The Mayor and Board of Aldermen are pleased and proud to honor this outstanding student-athlete for her commitment to sport and for being a fine example of American Youth.

3. CITIZEN COMMENTS

*Individuals wishing to address the Board are asked to sign in at the entrance to the board room, indicating the topic(s) or agenda item(s) you wish to discuss, so that the chair may group speakers according to topic. The chair will recognize individuals requesting to address the Board. **Comments by any one speaker shall be limited to three (3) minutes.** If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

Judy Eubanks of Black Mountain Tennis Association addressed the Board of Aldermen requesting consideration for two new upper tennis courts at Lake Tomahawk. Ms. Eubanks stated an estimate is currently around \$120,000 and stated the price continues to increase annually.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

- A. Historic Preservation Commission Annual Report – *Jennifer Tipton, Zoning Administrator* presented the Annual Historic Preservation Commission to the Board of Aldermen. The Commission meets the third Wednesday of each month at Town Hall at 6:00 p.m.
- B. Rainbow Recycling Annual Flower Pot Recycling Event – *Marilyn Sobanski* presented the Annual Rainbow Recycling Flower Pot Recycling Event to the Board of Aldermen and public encouraging everyone to participate on Saturday May 18, 2019 from 9:00 a.m. through 3:00 p.m. in the rear parking lot of the Black Mountain Library.

5. CONSENT AGENDA

All items on the consent agenda are considered routine, to be enacted by one motion without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the consent agenda and considered separately.

Town Manager, Josh Harrold presented the consent agenda to the Board of Aldermen.

- A. Adoption of Minutes

Motion: *To adopt the minutes of April 4, 2019 (Agenda Session), April 8, 2019 (Regular Session), and April 25, 2019 (Budget Workshop).*

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

B. Call for Public Hearing for FY2019-20 Budget

#O-19-10

Motion: *To call for the Budget Public Hearing for the FY2019-20 Budget, to be held on Monday, June 10, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

C. Call for Public Hearing for Building Permit Ordinance Text Amendments

#O-19-11

Motion: *To call for a public hearing for building permit ordinance text amendments to be held on Monday, June 10, 2019 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

Manager Harrold stated this amendment adds language which will require proof of having a septic system or approval to connect to MSD sewer.

D. Black Mountain Center for the Arts Mural

Manager Harrold stated the Black Mountain Center for the Arts has requested consideration to add a mural to the side of the building. The building is owned by the Town and leased by the Center. Attorney Ron Sneed clarified that the Board is only considering whether or not they will permit a mural to be painted on a Town owned building if the request makes it through the other processes such as Historic Preservation Commission review to obtain a certificate of appropriateness.

Vice Mayor Maggie Tuttle moved to approve consent items A-D as presented.

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

6. CITIZEN COMMENTS

*The chair will recognize individuals requesting to address the Board regarding the specific New Business or Unfinished Business items below. Comments by any one **speaker shall be limited to three (3) minutes.***

*If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

Stephanie Sulzman of *Art in the Afternoon* addressed the Board of Aldermen requesting consideration of an additional school year before entering into a lease to continue utilizing town owned property (Carver Center). Ms. Sulzman stated when her program began in 2008 it served 6 students per day and said it now serves 30-38 students per day. Ms. Sulzman proposed signing a longer term lease in August to account for additional students and to allow her to continue paying a living wage to her staff. Ms. Sulzman stated in 2017 she paid \$7,000 to the Town for use of the space at the Carver Center and proposed paying \$12,000 per year with a lease.

Erin Vannote of the *Swannanoa Valley Montessori School* addressed the Board of Aldermen stating she respected and appreciated the obligation the Town has toward leasing public property to a nonprofit entity (such as Montessori School) at fair market rate and stated she is requesting an amendment to the current lease which will be expiring in 2022 to allow for additional use of the office space at the Carver Center that was vacated when the Parks and Recreation Department

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

vacated the building. Ms. Vannote stated the school is interested in acquiring the additional office space and would request the Town provide cost estimates for the upcoming school year. Ms. Vannote reminded the Board that her costs heavily depend on student enrollment and asked for consideration when deciding on an estimate for the use of the additional space if approved.

7. UNFINISHED BUSINESS

A. Hemphill Property

Attorney Ron Sneed reminded the Board of previous discussions regarding access to the Hemphill property. Attorney Sneed recalled prior discussions and the proposal of an offer of an easement in exchange for non-acceptance of a portion of the Hemphill property. Attorney Sneed stated Attorney Mike Begley has requested this exchange to construct homes on his adjoining property in exchange for an easement that would allow a secondary access to the park property onto Sunset Drive. Attorney Sneed reminded the Board that the only access to the park property is underneath the railroad through a box culvert and asked for direction from the Board regarding the proposal. Alderman Larry B. Harris stated he feels this decision is similar to considerations the Board gives to street closures with regard to access and growth of tax base and said he is in favor of the exchange. Mayor Don Collins recalled prior discussions regarding a future greenway easement through the property in question stating he would support the decision if an easement could be guaranteed.

Alderman Larry B. Harris moved to proceed with consideration of the offer for the June meeting. The motion was approved by a vote of 4-0.

8. NEW BUSINESS

Alderman Larry B. Harris moved to amend the agenda to ADD New Item 8I, Downtown Parking and Circulation Study contract to the agenda. The motion was approved by a vote of 4-0.

A. Compensation of Mayor and Board of Aldermen

#O-19-13

Attorney Sneed recalled the passage of an ordinance in 2017 (O-17-11) eliminating compensation of the Board of Aldermen and reminded the Board that the intent of that ordinance was to utilize those funds to support another position within the Public Works department. Attorney Sneed stated the Town Charter prohibits changes to Board compensation during the term of any current member and reminded everyone that O-17-11 would not take place until each member's current seat was up for re-election which is scheduled in 2019. Attorney Sneed stated, if passed, Senate Bill 138 will change the election cycle to even year elections and will affect the prior ordinance changing the effective date to 2020. Attorney Sneed stated there was nothing prohibiting the Board from receiving compensation currently other than it being budgeted within the budget ordinance. Attorney Sneed stated the Board may choose to enact a new ordinance (O-19-13) to restore compensation but said the same principal applies and the compensation may not be altered during the current term of any member according to his interpretation of the Town Charter. Attorney Sneed stated the new ordinance could take effect in 2021 (if Senate Bill 138 is

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

not passed) or will take effect in 2022 with the passage of Senate Bill 138. Attorney Sneed advised the Board that Senator Edwards has added an amendment to Senate Bill 138 adding the Town of Biltmore Forrest to the even year election cycle which has caused the bill to stall in the General Assembly. Alderman Larry B. Harris stated he felt it was important that governing boards be compensated for the amount of work they do and said compensation also attracts qualified candidates to be interested in serving. Alderman Harris stated he did not regret the past decision and said he does support a new ordinance to restore compensation. Alderman Harris stated a board member is always free to decline compensation if they so choose or delegate the funding toward a charitable cause.

Alderman Larry B. Harris moved to reinstate compensation for the Board of Aldermen and Mayor as previously existed prior to the passage of O-17-11. The motion was approved by a vote of 4-0.

B. Tax Collection Agreement-Buncombe County

Town Manager Harrold stated Buncombe County currently collects taxes for the Town of Black Mountain and said the agreement is due for renewal. Manager Harrold stated the cost is approximately \$70,000 to \$80,000 annually for this service with a collection rate of over 99%.

Alderman Larry B. Harris moved to approve the tax collection agreement with Buncombe County as presented. The motion was approved by a vote of 4-0.

C. Sidewalk Contract Approval

- Dogwood Lane to Cheshire Phase II (\$18,000 survey/design)
- Cheshire to Lakey Gap Road Phase III (\$35,000 survey/design)
- Black Mountain Avenue (\$25,500 survey/design)

Town Manager Harrold presented three sidewalk contracts to the Board of Aldermen for consideration. Manager Harrold recalled interest by the Board to seek federal funding toward the projects and advised the application process is released in January 2020 and if approved the funding would not be available until 2022. Manager Harrold stated this type of funding has become very competitive. Alderman Larry B. Harris clarified proceeding with the survey/design work does not preclude the Town from applying for the funding when available. Manager Harrold stated the Black Mountain Avenue sidewalk would be essentially an even cost versus having a greenway spur in that area and said a sidewalk will fit in nicely with existing infrastructure into the downtown area.

Alderman Larry B. Harris moved to approve three sidewalk contracts; Dogwood Lane to Cheshire Phase II (\$18,000 survey/design); Cheshire to Lakey Gap Road Phase III (\$35,000 survey/design); and Black Mountain Avenue (\$25,000 survey/design) as presented. The motion was approved by a vote of 4-0.

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

D. Lake Tomahawk Dam Repair Design Contract Approval

Town Manager Harrold stated seepage issues at Lake Tomahawk Dam was brought to his attention in March 2019 and said staff reached out to NC Dam Safety requesting an assessment. Manager Harrold stated S&ME Engineering came out to conduct an assessment and presented a contract in the amount of \$24,850 to complete engineering and design services for Tomahawk Dam repairs. Manager Harrold stated much of the work is Dam maintenance that is needed such as installing toe drains. Alderman Harris recalled prior work on the Dam to remove trees and vegetation which was required by the State several years ago and inquired regarding possible workmanship issues. Manager Harrold stated the engineering firm would prepare an extensive report.

Vice Mayor Maggie Tuttle moved to approve Lake Tomahawk Dam Repair Design Contract with S&ME Engineering in the amount of \$24,850 as presented. The motion was approved by a vote of 4-0.

Attorney Ron Sneed discussed leasing options with the Board recalling the Montessori School having a current lease which outlines the space being used and price per square foot. The Montessori School is requesting to utilize additional space left vacant by the Parks and Recreation Department when they moved out. Attorney Sneed stated Art in the Afternoon has been operating under an MOU (Memorandum of Understanding) since their establishment at the Carver Center at a per student rate. Attorney Sneed stated over time the program has grown and is using exclusive space at the Carver Center. Attorney Sneed stated the Montessori School is currently paying \$3,200.00 per month and said the additional space being requested is an additional 840 sq. feet which would increase the monthly rent to \$4,060.00. Attorney Sneed stated if you applied the same math to Art in the Afternoon for the space they occupy their monthly rent would be \$2,087 which is beyond the program means to pay. Attorney Sneed stated if the Board chooses to allow the Montessori School to expand into the additional space without increasing their price per square foot and you apply the math to the space for Art in the Afternoon the monthly rent comes out to be \$1,695.00. Attorney Sneed recalled previous conversations regarding leasing public space at “market rate” and stated this situation is unique in that it would be vacant if not leased. Attorney Sneed inquired regarding the utility bill and major maintenance and stated if the Board passed this cost along to both programs then it would add approximately \$1,200.00 per month to the rent which would not be feasible for either program to continue operations. Attorney Sneed stated the Board would need to consider the value of having a tenant occupying the building. Attorney Sneed stated the Board would also need to consider the perception of giving an advantage to a business stating the Town could operate a program like Arts in the Afternoon and is free to contract services similar to those out but said it was prohibited from operating a school which could be considered an advantage to one business over another. Attorney Sneed stated he is not aware of any other school in town seeking to occupy the space. Attorney Sneed stated a short term lease (under one year) may be approved by the Board and a longer term lease considered at a later date for Art in the Afternoon. Board members conceded the provision for termination of the lease for use by the

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

Town would need to be included in the Art in the Afternoon lease. Alderman Larry B. Harris stated if an issue arises regarding unfair competition the Board would have the option to terminate the leases.

E. Art in the Afternoon Lease Approval

The Board directed Attorney Ron Sneed to draft a lease for Art in the Afternoon through August 2019 in the amount of \$1,000 per month to present at the next regularly scheduled meeting.

F. Montessori School Lease Approval

The Board directed Attorney Ron Sneed to prepare an amendment to the Montessori School Lease to include additional space at no additional cost to present at the next regularly scheduled meeting.

G. Golf Course Snack Shop Lease Approval

Town Manager Harrold stated this lease is a renewal and is \$333.33 per month for the Golf Course Snack Shop. Attorney Sneed stated this property has been historically difficult to occupy. Alderman Showers stated he felt an increase to \$400.00 per month is in order due to the nature of this being a business. Vice Mayor Maggie Tuttle stated she is in favor of leaving the lease as-is through the 2019 season but said she is interested in advertising and pursuing alternate options in 2020. Alderman Larry B. Harris stated he agreed with Vice Mayor Tuttle. Alderman Showers stated he has concerns that the lease period is well underway. Alderman Tim Raines stated he also agreed with Vice Mayor Tuttle.

Vice Mayor Maggie Tuttle moved to approve the Golf Course Snack Shop Lease as presented. The motion passed by a vote of 4-0.

H. Ordinance to Amend Section 20-287 Powers, Duties and Responsibilities of the Urban Forestry Commission #O-19-12

Town Manager Harrold stated the Urban Forestry Commission submitted a proposal to amend their powers and duties to focus more on educational. Alderman Larry B. Harris inquired regarding procedures of measuring distances along curbing for street trees etc. Planning Director Trotman stated NC State University has excellent guidelines in place for street trees and stated the Public Works Director also weighs in on these types of decisions.

Alderman Larry B. Harris moved to adopt Ordinance #O-19-12 as presented. The motion was passed by a vote of 4-0.

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

I. Downtown Parking and Circulation Study Contract – NCDOT

Town Manager Harrold recalled prior discussions regarding downtown circulation and parking and reminded everyone the Town received grant funding for this project. The total project cost is \$35,000 and the Town's match is \$7,000. Manager Harrold stated addressing parking on Cherry Street would be first priority if the contract is approved.

Vice Mayor Maggie Tuttle moved to approve the Downtown Parking and Circulation Study Contract as presented. The motion was approved by a vote of 4-0.

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Board regarding the specific topic of the public hearing. Public hearing comments by any on speaker shall be limited to ten (10) minutes. The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each Public Hearing.

A. Public Hearing to temporarily close State Street for the annual Christmas Parade
#O-19-07

***Alderman Carlos Showers moved to open the public hearing.
The motion was approved by a vote of 4-0.***

Planning Director Jessica Trotman stated NC General Assembly gives power to municipalities to close state maintained streets in certain circumstances through adoption of local ordinances. Director Trotman stated this ordinance allows the Town to temporarily close State Street for the annual Christmas Parade.

There were no citizen comments.

***Vice Mayor Maggie Tuttle moved to close the public hearing.
The motion was approved by a vote of 4-0***

***Alderman Larry B. Harris moved to approve Resolution #O-19-07 for the temporary street closure for the annual Christmas Parade.
The motion was approved by a vote of 4-0***

B. Public Hearing to temporarily close State Street for the annual Veterans Day Parade
#O-19-08

***Alderman Larry B. Harris moved to open the public hearing.
The motion was approved by a vote of 4-0.***

Planning Director Jessica Trotman stated this ordinance allows the Town to temporarily close State Street for the annual Veterans Day Parade.

Black Mountain Board of Aldermen
Regular Session Minutes – May 13, 2019

There were no citizen comments.

***Vice Mayor Maggie Tuttle moved to close the public hearing.
The motion was approved by a vote of 4-0***

***Vice Mayor Maggie Tuttle moved to approve Resolution #O-19-08 for the
temporary street closure for the annual Veterans Day Parade.
The motion was approved by a vote of 4-0***

10. COMMUNICATION FROM STAFF

- A.** Town Attorney – Attorney Sneed – none at this time
- B.** Josh Harrold - Manager Harrold reminded citizens that town offices would be closed on Monday May 27, 2019 for Memorial Day. Manager Harrold advised projects would be accepted for the state SPOT in August and encouraged the Board to begin thinking of what types of projects they may wish to include. Manager Harrold reminded citizens to apply for Town Boards and Commissions and encouraged them to visit the website for further information and to obtain an application.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Alderman Larry B. Harris discussed the condition of North Fork Road and stated he would like to see more attention given to this road and suggested contacting NCDOT to come out and assess it. Alderman Harris stated he would like to see this included in the SPOT if eligible.

12. ADJOURNMENT

There being no further business, on a motion made by Vice Mayor Maggie Tuttle and with a vote of 4-0, Mayor Don Collins adjourned the meeting at 7:26 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
BUDGET WORKSHOP CIP MEETING MINUTES
May 20, 2019

THE BLACK MOUNTAIN BOARD OF ALDERMEN held a budget workshop and capital improvement plan meeting on Monday May 20, 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 discuss the FY2019-20 budget and capital improvement plan projects for the Town as well as discuss the Town's purchasing card (P-Card) policy. The next scheduled budget workshop and capital improvement plan meeting is scheduled for Monday, May 20, 2019 at 5:00 p.m. at Town Hall.

1. CALL TO ORDER

Mayor 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 Harris
Alderman Tim Raines
Alderman Carlos Showers
Alderman Ryan Stone

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, Assistant Town Manager/Financial Services Director
Angela L. Reece, Town Clerk
Ronald E. Sneed, Attorney - absent
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief
John Wilson, Deputy Fire Chief
Jessica Trotman, Planning Director
Jamey Matthews, Public Services Director
Joshua Henderson, Recreation Services Director

Mayor Don Collins called the meeting to order and opened the floor for discussion.

Town Manager Harrold began the discussion with items requested for follow-up by the Board from the last budget meeting.

Winterization of restrooms at Veterans Park

Manager Harrold stated the cost to install heaters and hand dryers in the current restrooms at Veterans Park is approximately \$2,800. Manager Harrold stated maintenance funds are budgeted each year to upkeep the public restrooms at Cherry Street and Lake Tomahawk and suggested accounting for this in the same manner. Mayor Collins inquired if this included insulation at the

Black Mountain Board of Aldermen
Budget Workshop CIP Meeting Minutes – May 20, 2019

Veterans Park facility and Manager Harrold clarified this figure did not include insulation. Manager Harrold stated the maintenance budget at the Cherry Street facility was \$3,500 and \$5,000 at Town Square facility and said there is enough funds left in the budget to complete the maintenance at Veterans Park. Assistant Town Manager Luebke stated the current budget also accounts for paying for port-a-potty services throughout the colder months which would be eliminated if the maintenance is performed to winterize the facility.

NC-9 Sidewalk Funding

Manager Harrold recalled discussions for Powell Bill Funds being used to begin the sidewalk project on NC-9. Alderman Larry B. Harris stated he prefers to begin the project using Powell Bill Funds and to have staff apply for funding through NCDOT for road modernization in hopes of obtaining funding for the next fiscal year.

Professional Development for Administration

Manager Harrold provided a list of courses for each Administrative Department staff and reminded the Board new employees require additional training to be successful in their roles such as employment law and finance courses.

Whistleblower Hotline

Manager Harrold stated staff have placed inquiries with Navax Global (currently being used by Buncombe County) for implementation of a whistleblower hotline and said the startup cost is approximately \$2,900.00. Alderman Larry B. Harris stated this is a prudent decision to implement.

Maintenance & Repair line item- Fire Department

Manager Harrold stated the cost to provide all full time Fire Department employees with two sets of turnout gear is approximately \$36,000. Assistant Manager Luebke stated this will not impact fund balance as previously thought due to the implementation of fire inspection fees and the revenue it will generate.

Comprehensive Plan Update

Manager Harrold stated this update would be a much more in depth update than the last one conducted in 2014 to account for all the changes that have occurred and would involve more public input and public meetings. Manager Harrold stated he feels \$45,000 is reasonable for this type of plan and said he has seen some cost as much as \$100,000. Manager Harrold stated he has spoken with Land of Sky regarding the update and said they did not have interest at this time due to staffing. Alderman Larry B. Harris inquired regarding utilizing retired consultants as independent contractors and suggested seeking additional quotes.

Black Mountain Board of Aldermen
Budget Workshop CIP Meeting Minutes – May 20, 2019

Option to Lease Town Vehicles rather than Purchase

Manager Harrold stated he would like to explore leasing options for town vehicles rather than continuing to purchase them. Manager Harrold stated staff would be able to have newer vehicles and to replace them earlier. Assistant Town Manager Luebbe stated currently vehicles are used until they are obsolete and said the return is next to nothing when the Town sells them. Manager Harrold stated this option could be more cost effective. Alderman Larry B. Harris stated he has explored both options and stated each option has merit and is not something to dismiss. Assistant Manager Luebbe stated used town vehicles are on average 12 years old and sale for \$1,000 to \$2,000 on GovDeals.

Property Inquiry- Offer to Purchase

Manager Harrold advised the Board an offer to purchase the old Public Works building has been made. Board members agreed they would like investigate this option further at the next regularly scheduled meeting. Board members agreed the sale and/or retention of the building directly impacts the budget.

There was no further discussion regarding budgetary items.

Procurement Policy Manual

Manager Harrold presented a draft Procurement Policy Manual to the Board of Aldermen for their consideration. Manager Harrold highlighted areas of the proposed manual with regards to contracts stating as the town continues to grow more and more contracts will come before the Board for consideration. Manager Harrold stated the manual will lay out a process to guide staff as to what contracts are appropriate to bring before the Board of Aldermen. Manager Harrold stated contracts are coming before the Board two to three times after they have been initially approved and/or budgeted for. Manager Harrold discussed page 1-4 of 1-17 stating the contracting thresholds come directly from NC General Statutes.

Manager Harrold discussed the purchasing card (P-Card) policy on page 6-1 stating since he has become Town Manager the purchasing card purchases have been cut in half. Manager Harrold stated this policy is to give employees a clear direction of acceptable use and to promote accountability. Alderman Larry B. Harris inquired regarding the preaudit process and compliance. Assistant Town Manager Dean Luebbe stated there are no financial transactions exempt from the preaudit process and said transactions are limited to \$500.00 or less without a purchase order being assigned. Alderman Larry B. Harris clarified that every transaction is subject to the preaudit process as NC Administrative Code (20NCAC 03.0409 and 20 NCAC 03.0410).

Alderman Harris inquired if this policy will slow down administrative processes and Manager Harrold stated it would minimally but is worth the clarification. Alderman Harris reminded everyone that this policy was a suggestion of the Auditor. Alderman Harris encouraged staff to

Black Mountain Board of Aldermen
Budget Workshop CIP Meeting Minutes – May 20, 2019

come back before the Board with any changes once the policy has been adopted if they experience any slowdown in the administration of it.

Manager Harrold stated the draft procurement policy also includes a whistleblower reference.

Manager Harrold announced the Appalachian Regional Commission (ARC) has awarded and additional \$450,000 to complete the access road to the Avadim Project in the Black Mountain Commerce Park. He said there have been difficulties in preparation of the site and said the project faced cost overruns. The Board of Aldermen extended their thanks and appreciation to Congressman McHenry's office for supporting the additional funding for this project.

Board members inquired regarding funding for the annual fireworks show on the Fourth of July and Manager Harrold stated staff are currently raising funds and have put together a sponsorship packet which is available on the Town's website at www.townofblackmountain.org.

The Board will hold the Budget Public Hearing on Monday, June 10, 2019 at 6:00 p.m. at Town Hall.

There was no further discussion.

There being no further business, on a motion by Vice Mayor Maggie Tuttle and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 5:49 p.m.

ATTEST:

Don Collins, Mayor

Angela L. Reece, Town Clerk

Josh Harrold Town Manager