



TOWN OF BLACK MOUNTAIN

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

Date: **June 14, 2021** Time: **6:00 p.m.**

Regular Session Agenda

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 Council** to download materials for all Town Council meetings.

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

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Town Clerk at 419-9310, or by email at townclerk@townofblackmountain.org

(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

- Welcome
- Prayer – Dr. David Phillips, First Baptist Church
- Pledge of Allegiance
- Announcements

2. PROCLAMATIONS, AWARDS & RECOGNITION

A. Proclamation in honor of Council Member Tim Raines

3. CITIZEN COMMENTS

Individuals wishing to address the Council are asked to sign in at the entrance to the Council 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 Council. **Comments by any one speaker shall be limited to three (3) minutes.**

To send comments **prior to the meeting**, please call Town Hall at 828-419-9310 or email comments to Comments@townofblackmountain.org. The Clerk will compile them and present them to the Mayor for consideration.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

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 the May 10, 2021 regular session meeting, the May 6, 2021 agenda meeting, the May 13, 2021 special call meeting, the May 20, 2021 special call meeting, and the May 27, 2021 special call meeting.

B. Call for Public Hearing for Text Amendments to add Conditional Zoning

Motion: *To call for a public hearing for text amendments to add conditional zoning to be held on Monday, July 12, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

C. Call for Public Hearing to Close Portion of Unopened, Platted Portion of Right-of-Way Parallel and Between W. College Street and Goldmont Street (Southern End)

Motion: *To call for the public hearing to close an unopened, platted portion of right-of-way parallel and between W. College Street and Goldmont Street (southern end) to be held on Monday, August 9, 2021 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

D. Adoption of the Buncombe Madison Hazard Mitigation Plan

Motion: *To approve **Resolution #R-21-11** to adopt the Buncombe Madison Hazard Mitigation Plan.*

E. Appropriate budgeted funds from Contingency

Motion: *To approve contingency fund appropriations.*

F. Consideration of Revisions to the Town's Purchasing and Uniform Guidance Policies

Motion: *To approve revised purchasing policy and the Uniform Guidance Policy.*

G. Budget Amendment to recognize Covid-19 relief funds received from the county and budget additional funds in expense lines used to pay for approved Covid-19 expenses.

Motion: *To approve or deny the budget amendment as presented.*

H. Budget Amendment to approve proceeds from the sale of 2992 Hwy 70 to pay down the debt principle.

Motion: *To approve or deny the budget amendment as presented.*

I. Budget Amendment to transfer funds from the Fire Department Special Revenue Fund to purchase Fitness Equipment for the Fire Station.

Motion: *To approve or deny the budget amendment as presented.*

J. Budget Amendment to transfer funds from Police Department Forfeiture Treasury fund balance to purchase two police vehicles.

Motion: *To approve or deny the budget amendment as presented.*

K. Resolution to accept American Rescue Plan Funds #R-21-10

Motion: *To adopt Resolution #R-21-10 to accept ARP Funds.*

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

6. CITIZEN COMMENTS

The chair will recognize individuals requesting to address the Council 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.

To send comments prior to the meeting, please call Town Hall at 828-419-9310 or email comments to Comments@townofblackmountain.org. The Clerk will compile and present written comments to the Mayor for consideration.

7. UNFINISHED BUSINESS

A. Riverwalk Greenway Update

8. NEW BUSINESS

A. Planning Board Appointment

Planning Board - (1) vacancy/ unexpired term ending June 30, 2022

Motion: *To appoint _____ to fill an unexpired term ending June 30, 2022 by a vote of _____ for and _____ against*

B. Fire Protection, Ambulance and Rescue Service Agreement.

Motion: *To approve the Fire Protection, Ambulance and Rescue Service Agreement as presented.*

C. Black Mountain Greenways and Trails Committee Pollinator Garden Proposal

Motion: *To approve or deny the proposed renovation of Charlotte St. Garden.*

D. Ordinance to create a Grant Project Fund Ordinance for the American Rescue Plan Act transactions

#O-21-09

Motion: *To adopt ordinance O-21-09 as presented.*

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Council 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 for Text Amendments to Open Space Requirements in Major Subdivisions (Continued from the May 10, 2021 Regular Session Meeting)

#O-21-04

Motion:

To open the public hearing for **Ordinance #O-21-04** for amendments to open space requirements in major subdivisions.

To close the public hearing.

To adopt **Ordinance #O-21-04** (statement of consistency included) as presented [or as amended].

B. Public Hearing to Create a Stormwater Utility Ordinance #O-21-06

Motion:

To open the public hearing for **Ordinance #O-21-06** to create a stormwater utility ordinance.

To close the public hearing.

To adopt **Ordinance #O-21-06** as presented [or as amended].

C. Public Hearing to Create a Stormwater Utility Fund

Motion:

To open the public hearing to create a stormwater utility fund. **#O-21-08**

To close the public hearing.

To adopt as presented [or as amended].

D. Public Hearing for Elevate Black Mountain

Motion:

To open the public hearing for Elevate Black Mountain.

To close the public hearing.

To approve Elevate Black Mountain as presented [or as amended].

E. Public Hearing for Text Amendments to Comply with Chapter 160D

Motion:

To open the public hearing for **Ordinance #O-21-05** for amendments to the Land Use Code to comply with Chapter 160D.

To close the public hearing.

To adopt **Ordinance #O-21-05** (statement of consistency included) as presented [or as amended].

10. COMMUNICATION FROM STAFF

A. Town Attorney – Ron Sneed

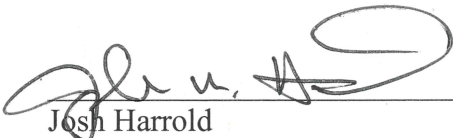
B. Town Manager – Josh Harrold

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

12. CLOSED SESSION

- A. Closed session to discuss personnel matters as permitted by North Carolina General Statute 143-318.11(6).

13. ADJOURNMENT



Josh Harrold
Town Manager



PUBLIC NOTICE

BLACK MOUNTAIN TOWN COUNCIL

REGULAR SESSION MEETING

Monday, June 14, at 6:00 p.m.

The Black Mountain Town Council will meet for their monthly Regular Session Meeting on **Monday, June 14, 2021 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.

Savannah M. Parrish

**Savannah Parrish
Town Clerk**

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Please visit www.townofblackmountain.org to obtain agenda packets and other meeting information.

Posted to the Town Bulletin Board 05/24/21



**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
AGENDA WORKSHOP MEETING MINUTES
May 6, 2021**

THE BLACK MOUNTAIN TOWN COUNCIL held an agenda workshop on Thursday, May 6, 2021 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 10, 2021 at 6:00 p.m.

1. CALL TO ORDER

Mayor Larry B. Harris called the meeting to order at 5:00 p.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone
Council Member Tim Raines
Council Member Archie Pertiller
Council Member Pam King
Council Member Doug Hay

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Assistant to Manager/ Town Clerk
Ron Sneed, Town Attorney

Mayor Larry Harris opened the meeting. Town Manager, Josh Harrold presented the proposed agenda to the Town Council.

There will be no presentations from boards, commissions, or staff.

Manager Josh Harrold presented each **Items 5A – 5N**, the consent agenda.

Manager Harrold informed the council that engineer Fred Grogan would be present at the upcoming regular session meeting to discuss **Item 7A**, the Riverwalk Greenway Update.

The Town Council voted to remove agenda **Item 8E**, Planning Board Appointment in order to first have the appointment policy in place.

Council Member Archie Pertiller moved to remove Item 8E from the agenda. The motion passed by a vote of 5-0.

Manager Harrold continued the presentation of the new business agenda items with minimal discussion.

There was some discussion concerning the public hearings concerning proper procedures concerning rezoning.

Attorney Sneed brought the proposed Buncombe County Library Master Plan to the council's attention. The Buncombe County Commissioners have not yet heard the plan or voted on it. As it is currently written, the plan class for Black Mountain Library to be closed, consolidated with the Swannanoa Library, and relocated. Attorney Sneed requested public records related to the plan in order to further inform the council at the regular session meeting on Monday, May 10, 2021.

Council Member Pam King shared further information concerning the proposed library plan.

Mayor Larry B. Harris suggested continuing the discussion of the library at the special call meeting on Thursday, May 13, 2021 at 8:31.

Manager Harrold stated that the City of Asheville has approached Black Mountain and Buncombe County concerning the Transit Bus Route 170. The city is requesting financial assistance for Route 170. Manager Harrold requested ridership data.

There being no further discussion Mayor Larry B. Harris adjourned the meeting at 5:31 p.m.

ATTEST:

Savannah Parrish, Assistant to Manger/Town Clerk

Larry B. Harris, Mayor



TOWN OF BLACK MOUNTAIN

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

Date: **May 10, 2021**

Time: **6:00 p.m.**

Regular Session Minutes

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CALL TO ORDER

Mayor Larry Harris called the meeting to order at 6:00 p.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone
Council Member Archie Pertiller
Council Member Ryan Stone
Council Member Tim Raines
Council Member Doug Hay
Council Member Pam King

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Town Clerk
Jennifer Tipton, Senior Admin
Ron Sneed, Town Attorney

Mayor Harris welcomed everyone and led the Pledge of Allegiance. Mayor Harris offered the invocation.

PROCLAMATIONS, AWARDS & RECOGNITION

Mayor Harris read a proclamation in recognition of the pro bono work done by local attorneys, Barrett McFatter and Bill Christy.

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.

Manager Josh Harrold and Finance Director Tammy Holland presented the consent agenda to the Town Council.

- A. Adoption of Minutes
Motion: *To adopt the minutes of April 8, 2021 Agenda Workshop and the April 12, 2021 Regular Session Meeting.*
- B. Fire Department Donation Budget Amendment
Motion: *To approve the budget amendment as presented.*
- C. Duke Energy Grant Budget Amendment
Motion: *To approve the budget amendment as presented.*
- D. Police Department Revenue Budget Amendment
Motion: *To approve the budget amendment as presented.*
- E. Tomahawk Dam Repair Budget Amendment
Motion: *To approve the budget amendment as presented.*
- F. Fire Department Special Revenue Fund Budget Amendment
Motion: *To approve the budget amendment as presented.*
- G. Powell Bill Budget Amendment
Motion: *To approve the budget amendment as presented.*
- H. Call for Public Hearing for Text Amendments to Comply with Chapter 160D **#O-21-05**
Motion: *To call for a public hearing for text amendments to comply with Chapter 160D to be held on Monday, June 14, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*
- I. Call for Public Hearing for Elevate Black Mountain
Motion: *To call for a public hearing for Elevate Black Mountain to be held on Monday, June 14, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*
- J. Call for Public Hearing to Close Portion of Unopened, Platted Portion of Right-of-Way Parallel and Between W. College Street and Goldmont Street and Central Avenue **#R-21-08**
Motion: *To call for the public hearing to close an unopened, platted portion of right-of-way parallel and between W. College Street, Goldmont Street, and Central Avenue to be held on Monday, July 12, 2021 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*
- K. Call for Public Hearing to Create a Stormwater Utility Ordinance **#O-21-06**
Motion: *To call for a public hearing to create a stormwater utility ordinance to be held on Monday, June 14, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*
- L. Call for Public Hearing to Create a Stormwater Utility Fund
Motion: *To call for a public hearing to create a stormwater utility fund to be held on Monday, June 14, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*
- M. Resolution to Provide Matching Funds for Ninth Street Bridge Replacement
#R-21-07

Motion: To approve **Resolution #R-21-07** to provide matching funds in the amount of \$136,000 for the Ninth Street Bridge replacement.

N. Approval of Contract for Audit Services.

Motion: *to approve contract for audit services for the fiscal year ending June 30, 2021.*

Vice Mayor Ryan Stone moved to approve consent items A-N as presented. The motion was approved by a vote of 5-0

CITIZEN COMMENTS

Manager Harrold read the following citizen comment:

Charlotte McRaine - I applaud staff for the draft of the new procedures for reviewing applications for Boards and Commissions and making recommendations of applicants to the Town Council. I did note, however, that that section of the policy did not specify how the actual nomination and election of those applicants would be handled by the Town Council. Will the Nomination-and-Ballot process specified for Town Council vacancies also be used for Boards and Commission vacancies? Since staff noted that this is the preferred methodology, it seems appropriate that the policies and procedures should be clarified to indicate that this methodology will apply to ALL board, commission and council vacancies.

UNFINISHED BUSINESS

Manager Harrold presented an update on the Riverwalk Greenway. Fred Grogan of Michael Baker Engineering entered the meeting to present. Mr. Grogan stated that he felt that the only two viable options are the route Hemphill property or the route through town. Manager Harrold stated he would need guidance from the Town Council in order to decide how to move forward. There was some discussion from the Town Attorney, the Mayor, and the Council on the best way to move forward.

NEW BUSINESS

Julia Weatherford of the Greenways Trails Committee joined the meeting to present information concerning funds the committee would like to donate to the town. The donation would be for the specific use of making drainage improvements to the greenway near the Community Garden. The funding is being made available through previous funding raising efforts in the name of the town Greenway system. The Greenway Commission voted unanimously to accept the funding and project.

Council Member Archie Pertiller moved to accept the donations from the Greenways Trails Committee. The motion was approved by a vote of 5-0.

Manager Harrold presented the draft of the Board and Commissions Appointment Policy to the council. Several suggestions were made by the council to amend the draft policy.

Council Member Doug Hay moved to approve policy as amended. The motion was approved by a vote of 5-0.

Erin Van Note, Executive Director of Black Mountain Montessori joined the meeting to present the proposed playground changes to the council. Black Mountain Montessori School, located at the Carver Center, is seeking to renovate the existing playground on the east side of the building. She stated that the Montessori School is also asking the Town for help by providing labor for the renovation. Should the Montessori School move from the Carver Center, the new playground equipment would remain at the Carver Center.

Council Member Archie Pertiller moved to approve the request to renovate the playground. The motion was approved by a vote of 5-0.

Manager Harrold presented the Personnel Policy Amendment. The Town participates in the NC Blue Cross Blue Shield State Health Plan. It is therefore required that policies adhere to any changes required by the State Health Plan. As of January 1, 2021, new employees are not eligible for continuation of their health insurance benefits after providing that the retiree has 15 years of service with the Town immediately preceding retirement

Council Member Pam King moved to amend the personnel policy as presented. The motion was approved by a vote of 5-0.

Manager Harrold presented the proposed career ladder for the Black Mountain Fire Department. The career ladder will add Driver Operator to the classification chart as well as add duties and requirements to the Senior Firefighter position. This would allow employees at the fire department to promote and earn raises more easily.

Council Member Tim Raines moved to approve career ladder. The motion was approved by a vote of 5-0.

PUBLIC HEARINGS

Public Hearing for Voluntary Annexation for 201 and 207 Old Toll Road

Vice Mayor Ryan Stone moved to public hearing for the proposed voluntary annexation for 201 and 207 Old Toll Road (PIN #'s: 0619-87-6495.00000 and 0619-87-7613.00000). The motion was approved by a vote of 5-0.

Jennifer Tipton stated that Brownie and Elizabeth Newman have purchased 201 and 207 Old Toll Road. The properties are located outside of city limits and the Newman's would like to place additional structures on the properties and will need additional water from the Town so they are seeking voluntary annexation of these two parcels.

There were no public comments.

Council Member Pam King moved to close the public hearing. The motion was approved by a vote of 5-0.

Council Member moved to adopt Ordinance #O-21-03 as presented. The motion was approved by a vote of 5-0.

Public Hearing for Rezoning of 201 and 207 Old Toll Road

Vice Mayor Ryan Stone moved to open the public hearing to rezone 201 and 207 Old Toll Road from R-1 to UR-8. The motion was approved by a vote of 5-0.

Jennifer Tipton stated that the Newmans requested UR-8 zoning, which is consistent with the comprehensive plan and surrounding parcels.

There were no public comments.

Vice Mayor Ryan Stone moved close the public hearing. The motion was approved by a vote of 5-0.

Council Member Archie Pertiller moved to adopt Zoning Ordinance #Z-O-21-01 (statement of consistency included) to rezone 201 and 207 Old Toll Road from R-1 to UR-8. The motion was approved by a vote of 5-0.

Public Hearing to Close Portion of Unopened, Platted Portion of Right-of-Way Parallel and Between W. College Street and Goldmont Street

Vice Mayor Ryan moved to open the public hearing for Resolution #R-21-06 to Close Unopened, Platte Portion of Right-of-Way Parallel and Between W. College Street and

Goldmont Street. The motion was approved by a vote of 5-0.

Jennifer Tipton stated that Planning Board has submitted a petition to close a larger area of the right-of-way between Goldmont Street and W. College Street. The requested portion runs from north Goldmont Street to the intersection of Ash Street and Central Avenue. The right-of-way is not identified in any adopted plans nor is part of a proposed greenway or roadway system. The right-of-way is not part of a stormwater system nor is it in any drainage area. The Planning Board recommended the closure with a vote of 5-1 at the February 22, 2021 meeting.

Manager Harrold read the following public comments:

1. Gretchen Glass- I am writing today to support the closure of the utility right-of-way between Goldmont Street and West College Street. Acquiring the alley behind our property will allow us to expand our yard, as we are currently building an addition on our house. The possibility of having an area to add a shed will certainly help us with much needed storage space because we do not have a garage. This alley is currently left without proper maintenance and it is growing between our fence posts, looking unsightly. Proper maintenance will also deter dangerous pests such as snakes and ticks, which will help keep our families safe. Use of this unassigned property has also caused neighborhood conflicts in the past. Allowing property owners adjacent to the utility right-of-way to obtain each corresponding portion of the alley will permanently end such discrepancies. I support the Town of Black Mountain's option provided to those opposing the closure of the utility right-of-way to individually contact the tax office to decline the movement of their own property lines. This option offers a solution to each property owner without affecting the preferences of their neighbors. There appears to be many benefits to home owners who wish to gain the alley space adjacent to their properties. Thank you for presenting this option to us and I very much look forward to obtaining, maintaining, and putting this space to proper use.
2. James Full and Courtney Halcomb - My wife and I plus several abutters have supported closure multiple times over the last couple years. In a new letter to Council, we will state the positive reasons for which this was initiated. Prior correspondence in the Public Record should be included in the consideration by Council. We have plans to maintain and improve the native vegetation on the abandoned overgrown section, contain/absorb rain fall, and willingly accept adding the additional square footage to the tax rolls, to the benefit of Black Mountain (and Buncombe County).

Council Member Archie Pertiller moved to close the public hearing. The motion was approved by a vote of 5-0.

Council Member Archie Pertiller moved to approve Resolution #R-21-06 for the right-of-way closure. The motion was approved by a vote of 5-0.

Public Hearing for Text Amendments to Open Space Requirements in Major Subdivisions

Vice Mayor Ryan Stone move to open the public hearing for Ordinance #O-21-04 for amendments to open space requirements in major subdivisions. The motion was approved by a vote of 5-0.

Jennifer Tipton presented the proposed amendment, which would increase the amount of

open space requirements for major subdivisions. The amendment changes the requirement from five percent to fifteen percent. The changes is in response to feedback from citizens about providing more greenspace and open space for developments. The Planning Board voted 7-0 to recommended the amendment at their March 22, 2021

Council Member Archie Pertiller moved to close the public hearing. The motion was approved by a vote of 5-0.

Vice Mayor Ryan Stone moved to continue this public hearing at the regular session meeting to be held on June 14, 2021. The motion was approved by a vote of 5-0.

COMMUNICATION FROM STAFF

Town Attorney – Ron Sneed mentioned that there is a proposal to modernize the Buncombe County Library System, which would require the closure and relocation of the Black Mountain Library. The Buncombe County Commissioners will hear the presentation later in the month, but will not vote immediately on the proposal.

Attorney Sneed also reviewed several bills in the state legislature that could impact the Town should they pass.

Town Manager – Josh Harrold shared that town hall would be closed for Memorial Day on May 31, 2021. He also informed the council that guidance from the United States Treasury concerning the American Rescue Plan Act was released, and will be reviewed by staff.

COMMUNICATION FROM MAYOR AND TOWN COUNCIL

Mayor Harris informed the public that there would be a special call meetings on May 13, 2021.

ADJOURNMENT

There being no further business Mayor Larry B. Harris adjourned the meeting at 7:34 p.m.

ATTEST:

Savannah M. Parrish Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager



TOWN OF BLACK MOUNTAIN TOWN COUNCIL
SPECIAL CALL MEETING MINUTES
May 13, 2021

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special called meeting on Thursday, May 13, 2021 at 8:30 a.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC. The purpose of this meeting is for the Town Council is to discuss a Stormwater Utility and the proposed Buncombe County Library Master Plan.

1. CALL TO ORDER

Mayor Larry B. Harris called the special meeting to order at 8:30 a.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone
Council Member Archie Pertiller
Council Member Doug Hay
Council Member Pam King
Council Member Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Assistant to Manager/Town Clerk
Ron Sneed, Town Attorney
Anna Stearns, Attorney
Jessica Trotman, Planning Director

Attorney Ron Sneed began the discussion concerning the library. He presented the resolution of opposition to the Buncombe County Library Master Plan, which is included and made part of these minutes.

Council Member Pam King stated that she met with Buncombe County Library Director, Jim Blanton. She learned that the report will be presented to the Buncombe County Commissioners on May 15, 2021. The master plan is part of a larger push from the county to evaluate the state of their buildings. Council Member stated that she felt it would be important to communicate to the decision makers in the county that the Black Mountain Library is a valuable community anchor. Council Member King shared that there would be a considerable amount of time for public input on this matter.

Mayor Larry B. Harris read Resolution #R-21-09, Resolution in Opposition to the Buncombe County Master Plan.

Vice Mayor Ryan Stone moved to adopt #R-21-09 as presented. The motion was approved by a vote of 5-0.

Attorney Sneed exited the meeting at 8:41 a.m.

Manager Josh Harrold gave a brief overview of the Stormwater Utility. Planning Director Jessica Trotman began a presentation to the council. The presentation is included and made part of these minutes.

Director Trotman shared that the town has been issued a notice of deficiency by NC DEQ. A complete analysis of the cost of bringing the town into compliance with the NPDES permit could not be completed by staff, who cited a lack of historical data on stormwater-related expenditures and unknown variables associated with the existing MS4 system. The 2010 stormwater capital plan estimated more than \$15 million of hard infrastructure improvements would be needed to address needs at the time. A notice of deficiency sets a series of administrative needs to be completed by staff and council, which are already underway.

Director Trotman then presented the plan to establish a utility, which will collect fees related to the control and treatment of stormwater that can be used to fund a municipal stormwater management program. It provides maintenance, improvements, planning, regulation, permitting and administrative functions for the Town's stormwater collection system.

Director Trotman presented five rate models to the town council. Staff recommended a flat tier rate and annual stand-alone billing to establish and fund it. There was some discussion on billing amongst Attorney Anna Stearns, staff, and council.

The Town Council will vote on establish the stormwater utility and the stormwater utility fund in public hearings at the regular session meeting on Monday, June 14, 2021.

There being no further discussion Mayor Larry B. Harris adjourned the meeting at 9:33 a.m.

ATTEST:

Savannah Parrish, Assistant to Manger/Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager



TOWN OF BLACK MOUNTAIN TOWN COUNCIL
SPECIAL CALL MEETING MINUTES
May 20, 2021

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special called meeting on Thursday, May 20, 2021 at 8:30 a.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC. The purpose of this meeting is for the Town Council is to discuss Elevate Black Mountain, the comprehensive plan.

1. CALL TO ORDER

Mayor Larry B. Harris called the special meeting to order at 8:30 a.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone
Council Member Archie Pertiller
Council Member Doug Hay
Council Member Pam King
Council Member Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Assistant to Manager/Town Clerk
Ron Sneed, Town Attorney
Anna Stearns, Attorney
Jessica Trotman, Planning Director

Mayor Larry B. Harris read a letter in support of Galen School of Nursing.

Vice Mayor Ryan Stone moved to approve the letter of support for Galen School of Nursing. The motion was approved by a vote of 5-0.

Nate Baker, from Clarion Associates, joined the council meeting via Zoom to present the final draft of Elevate Black Mountain to the Town Council. The presentation is included and made part of these minutes.

Mr. Baker explained to the council that the purpose of the comprehensive plan is to answer the following three questions:

1. Where are we?
2. Where are we going?
3. How do we get there?

Mr. Baker shared certain themes that emerged during the public input portion of the development of Elevate Black Mountain. The plan is meant to be citizen-input driven, which the input forming the foundation.

- Protect open space and address environmental sustainability
- Protect, enhance, and replicate Black Mountain's downtown pattern
- Address housing affordability and cost of living
- Invest in parks and community spaces and programming
- Expand safe local and regional transportation options
- Support local businesses
- Bolster opportunities for citizen involvement

Mr. Baker briefly presented each chapter of the proposed plan to the Town Council. Mayor Larry Harris inquired as to the annexation requirements. Manager Harrold clarified that should a developer or property owner desire water from the Town of Black Mountain, they are required by ordinance to submit a voluntary annexation application. There was some discussion concerning Avadim Business Park.

Council Member King thanked staff for their work on the comprehensive plan, and stated that the council should consider the town's current staffing levels and ability to implement the plan.

The Town Council will vote on the adoption of Elevate Black Mountain in a public hearing during the regular session meeting on June 14, 2021.

There being no further discussion Mayor Larry B. Harris adjourned the meeting at 9:20 a.m.

ATTEST:

Savannah Parrish, Assistant to Manger/Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager



TOWN OF BLACK MOUNTAIN TOWN COUNCIL
SPECIAL CALL MEETING MINUTES
May 27, 2021

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special called meeting on Thursday, May 20, 2021 at 8:30 a.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC. The purpose of this meeting is for the Town Council is to discuss Chapter 160D - A New Land Use Law for North Carolina.

1. CALL TO ORDER

Mayor Larry B. Harris called the special meeting to order at 8:30 a.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone – **absent**
Council Member Archie Pertiller
Council Member Doug Hay
Council Member Pam King
Council Member Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Assistant to Manager/Town Clerk
Anna Stearns, Attorney
Jessica Trotman, Planning Director

Mayor Larry B. Harris opened the meeting and introduced attorney Anna Stearns, who presented to the Council.

Attorney Stearns gave a brief history of the changes. The new Chapter 160D of the North Carolina General Statutes consolidates current city- and county-enabling statutes for development regulations into a single, unified chapter. Chapter 160D is effective now, but local governments have until July 1, 2021 for the development, consideration, and adoption of necessary amendments to conform local ordinances to this new law. All city and county zoning, subdivision, and other development regulations, including unified-development ordinances, will need to be updated by that date to conform to the new law. Cities and counties that have zoning ordinances must have an up-to-date comprehensive plan or land use plan by July 1, 2022.

The proposed ordinance for the Town would include changes that are not mandated by the State of North Carolina, but that are recommended by the attorneys. These changes include

additional definitions of uses added to Chapter 1, and to clarify regulation of lots, uses, structures.

The presentation made by Attorney Stearns is included and made part of these minutes.

There was some discussion concerning how the new ordinance would impact annexation and rezoning requests.

The Town of Black Mountain Town Council will vote of the adoption of **Ordinance #O-21-05** for amendments to the Land Use Code to comply with Chapter 160D in a public hearing held during the regular session meeting on June 14, 2021.

Manager Josh Harrold reminded the public that that there would be a budget workshop on Thursday, June 3, 2021 at 8:30 a.m.

Manager Harrold announced to the Council and to the public that Council Member Tim Raines will be resigning from the council after the June 14, 2021. Council Member Raines stated that it had been an honor and a privilege to serve. Mayor Harris thanked him for his service to the Town.

Mayor Harris brought to the attention of the Council two infrastructure projects that he would like for Council to consider funding with monies received through the American Rescue Plan Act.

There being no further discussion Mayor Larry B. Harris adjourned the meeting at 9:31 a.m.

ATTEST:

Savannah Parrish, Assistant to Manger/Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 14, 2021

SUBJECT: Call for Public Hearing for Text Amendments to add Conditional Zoning
#O-21-07

AGENDA INFORMATION

Agenda Location:	CONSENT AGENDA
Item Number:	5B
Department:	Planning and Development Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: Conditional zoning provides flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. With the changes being required with the implementation of 160D, conditional zoning will allow Town staff to have greater control of developments while allowing for more flexible developments. The proposed amendments lay out the requirements for conditional zoning and the processes an applicant must take to achieve a conditional zoning designation. The Planning Board recommended approval of the text amendments as written by a vote of 6-0 at their May 24, 2021 meeting.

MOTION FOR CONSIDERATION: To call for a public hearing for text amendments to add conditional zoning to be held on Monday, July 12, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: Ordinance # **O-21-07**

MANAGER'S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the next regularly scheduled meeting on Monday, July 12, 2021, or as soon thereafter as possible.



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, July 12, 2021, at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, July 12, 2021, at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for text amendments to add conditional zoning districts.

The meeting is open to the public.

Savannah Parrish
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, Savannah Parrish, Town Clerk at 419-9310 or by email at townclerk@townofblackmountain.org.

Posted to the Town Bulletin Board 06/15/2021
Published in the Black Mountain News 06/24/2021 and 07/01/2021

www.townofblackmountain.org

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 14, 2021

SUBJECT: Call for Public Hearing to Close Portion of Unopened, Platted Portion of Right-of-Way Parallel and Between W. College Street and Goldmont Street (Southern End)
#R-21-12

AGENDA INFORMATION

Agenda Location:	CONSENT AGENDA
Item Number:	5C
Department:	Planning & Development
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The Planning Board has submitted a petition to close the southern end of the right-of-way between Goldmont Street and W. College Street. The requested portion runs from the intersection of Central Avenue/Ash Street south to US 70 Hwy. The requested closure is approximately 848 feet in the length and 15 feet wide. The right-of-way is not identified in any adopted plans nor is part of a proposed greenway or roadway system. The right-of-way is not part of a stormwater system nor is it in any drainage area. The Planning Board recommended the closure with a vote of 6-0 at the May 24, 2021 meeting.

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

MOTION FOR CONSIDERATION: To call for the public hearing to close an unopened, platted portion of right-of-way parallel and between W. College Street and Goldmont Street (southern end) to be held on Monday, August 9, 2021 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: Resolution of Intent **#R-21-12**, Map

MANAGER'S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the next regularly scheduled meeting or as soon thereafter as possible.



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, August 9, 2021 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, August 9, 2021 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for a right-of-way closure parallel and between W. College Street and Goldmont Street (southern end).

The meeting is open to the public.

Savannah Parrish
Town Clerk

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*Posted to the Town Bulletin Board 07/01/2021
Published in the Black Mountain News 07/01/2021, 07/08/2021, 07/15/2021, and 07/22/2021*

www.townofblackmountain.org



TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

BoA Regular Session
June 14, 2021
Agenda Item

RESOLUTION OF INTENT # R-21-12

**RESOLUTION DECLARING THE INTENT OF THE TOWN COUNCIL OF THE
TOWN OF BLACK MOUNTAIN TO CONSIDER THE CLOSING OF AN UNOPENED,
PLATTED PORTION OF RIGHT-OF-WAY PARALLEL AND BETWEEN W.
COLLEGE STREET AND GOLDMONT STREET (SOUTH END) AND TO HOLD A
PUBLIC HEARING ON THIS ISSUE AUGUST 9, 2021**

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

WHEREAS, The Town of Black Mountain Planning Board has initiated a petition to close that unopened, platted portion of right-of-way parallel and between W. College Street and Goldmont Street (south end); and

WHEREAS, the Planning Board for the Town of Black Mountain did recommend that the unopened, platted portion of right-way parallel and between W. College Street and Goldmont Street (south end) be closed; and

WHEREAS, the Town Council 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 Town Council 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 and being more particularly described as follows:

BEING all of that fifteen-foot wide alley located in the southern portion of Block G as shown on that plat recorded in Plat Book 198 at Page 20, Buncombe County Registry, said block being bounded on the North by an unnamed fifty foot wide right-of-way, on the East side by Goldmont Street, on the South by Asheville Avenue, and on the West By West College Street, said alley having as its eastern boundary the following described line:

BEGINNING at a point located in the northeastern corner of Lot 107, Block G, as laid down and shown on that plat recorded in Plat Book 198 at Page 20, Buncombe County Registry, and running thence along and with the eastern boundary of Lots 107 thru 123, Block G, as shown on said plat, South 2° 30' West approximately 854 feet to a point in the southeastern corner of Lot 123, Block G, and in the northern margin of the right-of-way of Asheville Highway (now U.S. Highway 70) as shown on said plat.

TOWN OF BLACK MOUNTAIN

160 Midland Avenue

Black Mountain, NC 28711

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

Section 1. Pursuant to G.S. 160A-299, the Town Council declares its intent to close the unopened, platted portion of right-of-way parallel and between W. College Street and Goldmont Street (south end).

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, August 9, 2021 at 6:00 p.m.

Section 3. Following the public hearing called hereby, the Town Council 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:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this the 14th day of June, 2021.

ATTEST:

Larry Harris, Mayor

Savannah Parrish, Town Clerk

Josh Harrold, Town Manager

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: June 14, 2021

SUBJECT: Resolution to Adopt Buncombe Madison Hazard Mitigation Plan

#R-21-11

AGENDA INFORMATION

Agenda Location:	CONSENT AGENDA
Item Number:	5D
Department:	Planning & Development
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The current Buncombe Madison Hazard Mitigation Plan is set to expire in July of this year. Buncombe and Madison Counties have been working to update the regional hazard mitigation plan which assesses the community's natural hazard risks and determines how to lessen vulnerability when disaster strikes. The proposed resolution supports the updates and adoption of the updated plan.

MOTION FOR CONSIDERATION: To approve ***Resolution #R-21-11*** to adopt the Buncombe Madison Hazard Mitigation Plan.

FUNDING SOURCE: N/A

ATTACHMENTS: ***Resolution #R-21-11***, PowerPoint presentation

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve ***Resolution #R-21-11*** as presented.

RESOLUTION #R-21-11

RESOLUTION TO ADOPT THE BUNCOMBE MADISON REGIONAL HAZARD MITIGATION PLAN

WHEREAS, the Town of Black Mountain is vulnerable to an array of hazards that can cause loss of life and damages to public and private property; and

WHEREAS, the Town of Black Mountain desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the development and implementation of a hazard mitigation plan can result in actions that reduce the long-term risk to life and property from natural hazards; and

WHEREAS, it is the intent of the Town Council of the Town of Black Mountain to protect the citizens and property from the effects of natural hazards by preparing and maintaining a local hazard mitigation plan; and

WHEREAS, it is also the intent of the Town Council of the Town of Black Mountain to its obligation under North Carolina General Statutes, Chapter 166A; North Carolina Emergency Management Act and Section 322: Mitigation Planning, of the Robert T. Stafford Relief and Emergency Assistance Act to remain eligible to receive state and federal assistance in the event of a declared disaster affecting the Town of Black Mountain; and

WHEREAS, the Town of Black Mountain, in coordination with Buncombe and Madison Counties and the participating municipalities within those Counties, has prepared a multi-jurisdictional hazard mitigation plan with input from the appropriate local and state officials; and

WHEREAS, the North Carolina Emergency Management and the Federal Emergency Management Agency have reviewed the Buncombe Madison Regional Hazard Mitigation Plan for legislative compliance and has approved the plan pending the completion of local adoption procedures.

NOW, THEREFORE, BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA HEREBY:

1. Adopts the Buncombe Madison Regional Hazard Mitigation Plan; and
2. Agrees to take such other official action as may be reasonably necessary to carry out the proposed actions of the Plan.

I move the adoption of the foregoing resolution:

Council Member

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ this 14th day of June, 2021.

Larry Harris, Mayor

ATTEST:

Savannah Parrish, Town Clerk

Josh Harrold, Town Manager

BUNCOMBE MADISON REGIONAL HAZARD MITIGATION PLAN



Buncombe Madison

Regional Hazard Mitigation Plan



MITIGATION OVERVIEW



“mit-i-gate”

1: to cause to become less harsh or hostile.

2: to make less severe or painful.



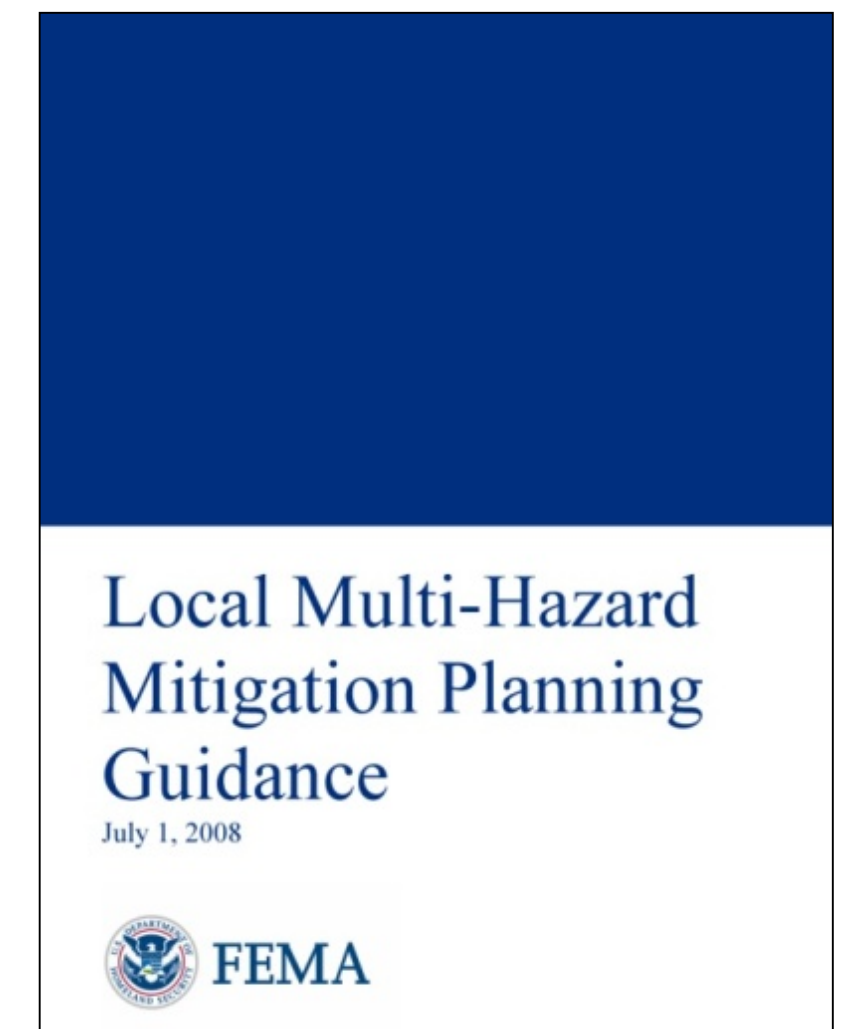
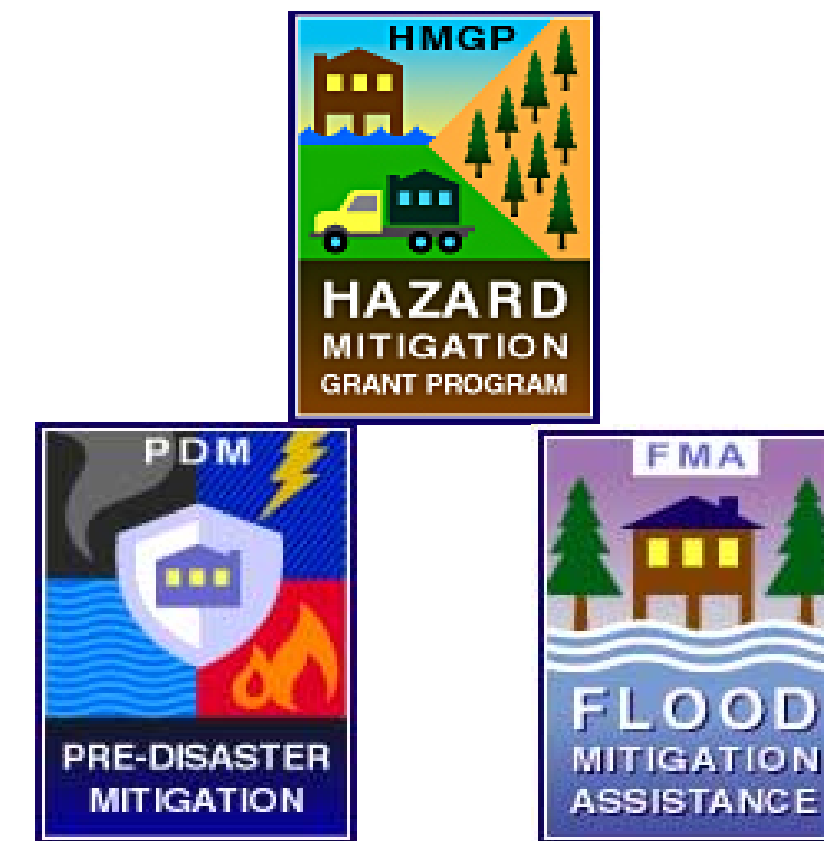
Hazard Mitigation

Any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

DISASTER MITIGATION ACT OF 2000



- Revitalized Federal Planning Requirements
 - State and Local Hazard Mitigation Plans
- Federal Grant Funding Eligibility
 - Hazard Mitigation Grant Program (HMGP)
 - Building Resilient Infrastructure and Communities (BRIC) Program
 - Replaced Pre Disaster Mitigation (PDM)
 - Flood Mitigation Assistance (FMA)
- DMA 2000 is intended to facilitate cooperation between state and local authorities on risk reduction measures and expedite funding allocation



PARTICIPATING JURISDICTIONS

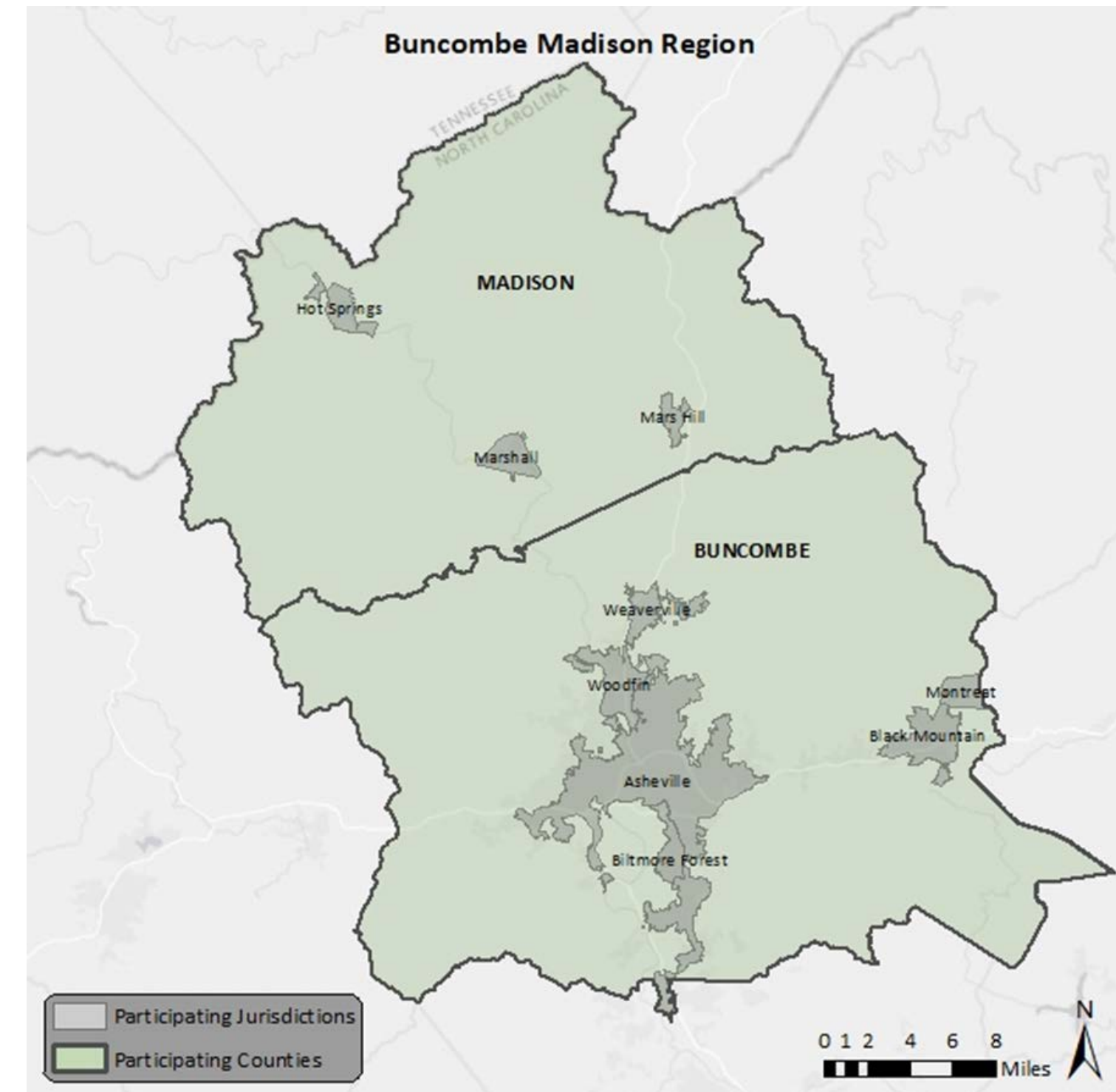


Buncombe County

- Asheville
- Biltmore Forest
- Black Mountain
- Montreat
- Weaverville
- Woodfin

Madison County

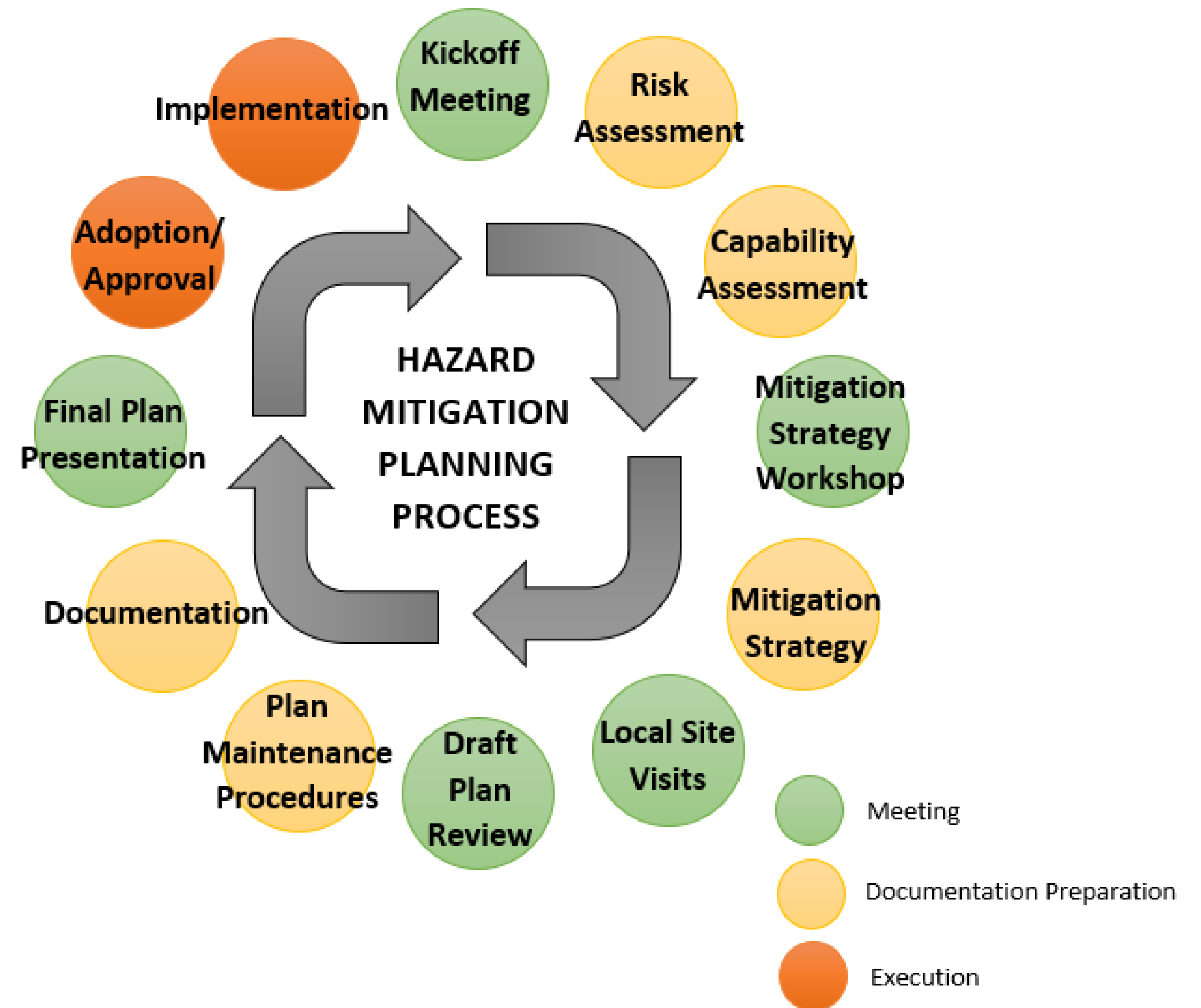
- Hot Springs
- Marshall
- Mars Hill



PROJECT TASKS



1. Planning Process
2. Risk Assessment
3. Capability Assessment
4. Mitigation Strategy
5. Plan Maintenance
6. Documentation



PRESIDENTIAL DISASTER DECLARATIONS



Since the last plan (2015)

- DR-4393 – Hurricane Florence (Madison County)
 - September 14, 2018
- DR-4487-NC – COVID-19 Pandemic
- DR-4543 – Severe Storms, Tornadoes and Flooding (Madison County)



Buncombe County – Flat Creek rising during Hurricane Florence

Source: <https://www.blackmountainnews.com/story/news/2018/09/16/eastern-buncombe-county-officials-prepared-florence-approaches/1327286002/>

CONCLUSIONS ON HAZARDS RISK



HIGH RISK

Severe Winter Weather
Tornadoes / Thunderstorms
Flood
Cyber
Geological Hazards (Landslides)

MODERATE RISK

Drought
Wildfire
Hazardous Substances
Hurricane /Coastal Hazards
Earthquake
Dam Failure
Infectious Disease

LOW RISK

Terrorism
EMP
Radiological Emergencies

THINK OF MITIGATION IN THIS WAY...



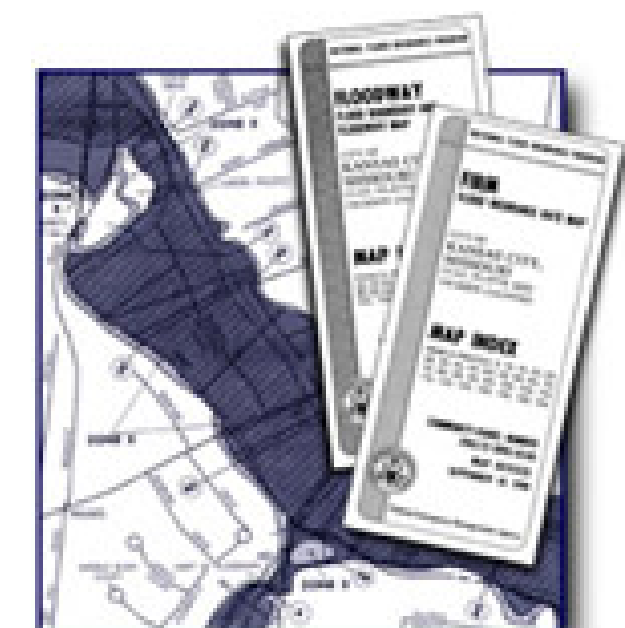
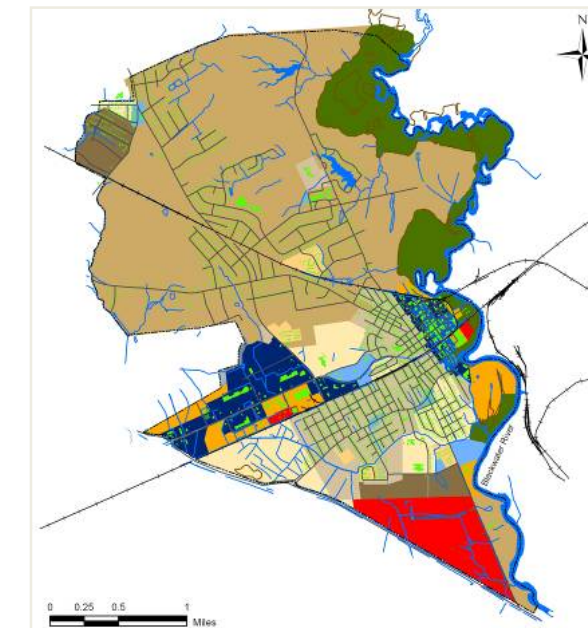
1) We want to mitigate hazard impacts on the existing development in our communities

- Houses, businesses, infrastructure, critical facilities, etc.



2) We want to ensure that future development is conducted in a way that doesn't increase our vulnerability

- Best done by having good plans, policies and procedures in place



MITIGATION TECHNIQUES



Prevention	Property Protection	Natural Resource Protection	Structural Projects	Emergency Services	Public Education/Awareness
Planning and zoning Building codes Open space preservation Floodplain regulations Stormwater management regulations Drainage system maintenance Capital improvements programming Setbacks	Acquisition Relocation Building elevation Critical facilities protection Retrofitting Safe rooms, shutters, shatter-resistant glass Insurance	Floodplain protection Watershed management Riparian buffers Forest management Erosion and sediment control Wetland preservation and restoration Habitat preservation	Reservoirs Dams, levees, dikes Floodwalls Stormwater diversions Detention/ retention basins Channel modification Storm sewers	Warning systems Emergency response equipment Shelter Operations Evacuation planning and management Emergency response training and exercises Sandbagging for flood protection Temporary shutters	Outreach projects Speaker series/ demonstration events Hazard map information Real estate disclosure Library materials School children educational programs Hazard expositions

MITIGATION ACTION PLAN



Action #	Description	Hazard Addressed	Priority	Lead Agency/ Department	Potential Funding Sources	Implementation Schedule	Status
P-2	Develop a policy to minimize public services to proposed new structures that will be located in 100-year floodplain areas.	Flood	Medium	City Planning	Local	2019	No policy has been developed as of 2014. This is to be completed in 2019 pending funding, staff resources and political will.

PUBLIC SURVEY



- Hosted an online survey for the plan – 92 responses

Buncombe Madison Regional Hazard Mitigation Plan - Public Survey

surveyplanet

We need your help!

Buncombe and Madison Counties and the municipalities within the counties are working together to become less vulnerable to natural disasters, and your participation in the process is important to us!

The counties, along with local jurisdictions and other partners, are working to update the multi-jurisdictional Regional Hazard Mitigation Plan. This plan identifies and assesses our community's natural hazard risks and identifies strategies that determine how to best minimize or manage those risks.

This survey is an opportunity for you to share your opinions and participate in the mitigation planning process. The information you provide will help us better understand your hazard concerns and can lead to mitigation activities that should help lessen the impacts of future hazard events.

Email optional

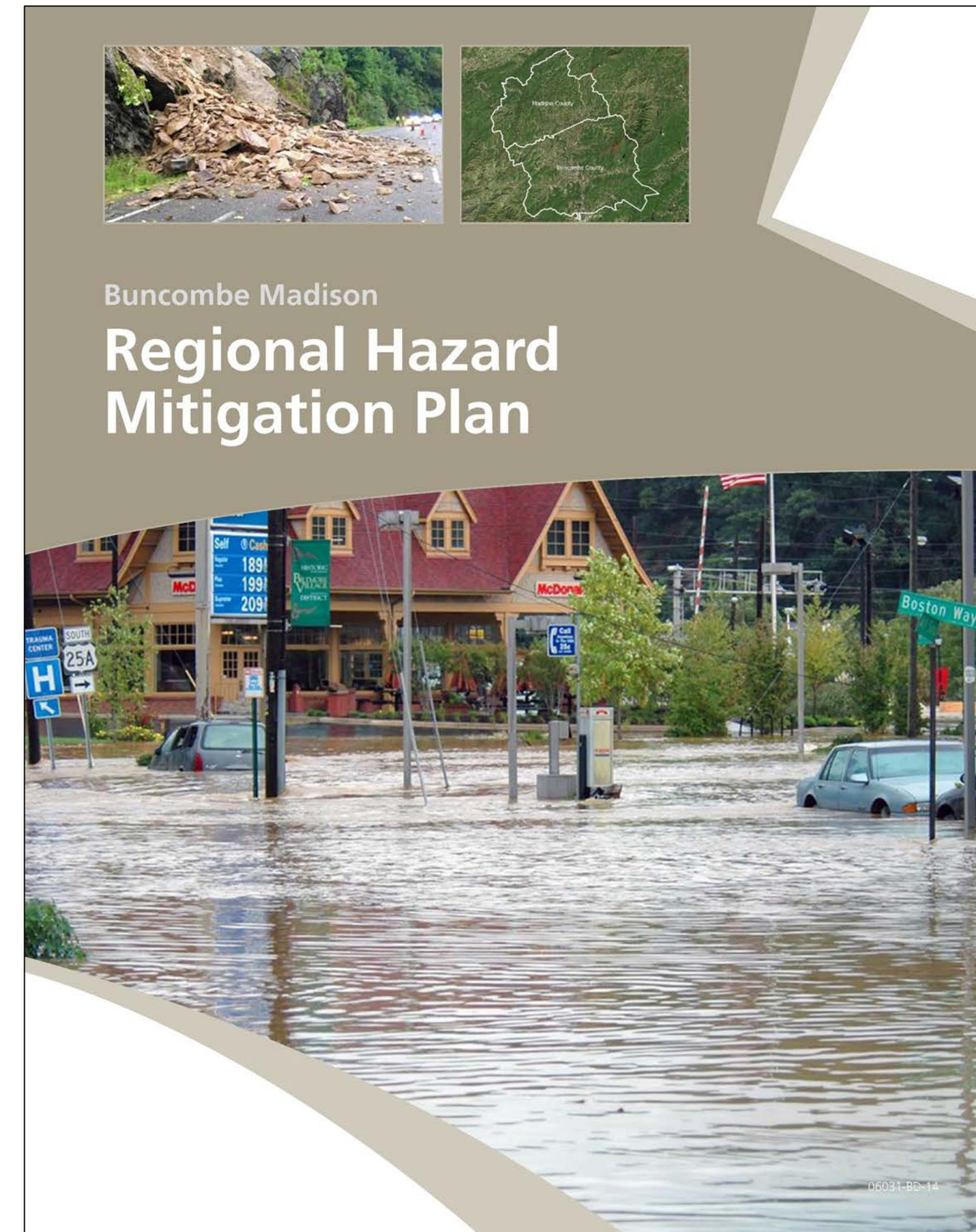
Begin

[Privacy Policy](#) | [GDPR](#)

NEXT STEPS



- Plans will be presented to local governing body Councils and Boards between now and Plan Expiration
- Current plan expires **July 6, 2021**



QUESTIONS, ISSUES OR CONCERNS



- Nathan Slaughter
 - (919) 415-2726
 - nslaughter@espassociates.com

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14th, 2021

SUBJECT: Appropriate budgeted funds from Contingency

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5E
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY:

The General Fund contingency account budget for fiscal year 2021 is \$25,000. Finance is requesting approval for the use of contingency budget for the following items:

1. Pedestrian Crossing Signs	\$7,130.00
2. Town Plant Containers	\$10,570.00
3. Attorney Fees for Black Mountain Ave Property	\$5,900.00
Total Contingency Funds Used	\$23,600.00

<i>Contingency Balance Remaining</i>	<i>\$1,400.00</i>
--------------------------------------	-------------------

MOTION FOR CONSIDERATION:

Motion to approve contingency fund appropriations.

ATTACHMENTS:

Budget Adjustment

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



BUDGET ADJUSTMENT REQUEST FORM

DATE: 05/27/21

FUND: General

DEPARTMENT:

Fund-Function-Dept-Account Number	Account Desc	Debit	Credit
10-00-5000-331	Contingency		\$23,600.00
10-20-5600-380	Non-Capital Equipment	\$7,130.00	
10-00-5000--760	Beautification	\$10,570.00	
10-00-5000-040	Professional Services	\$5,900.00	
Total:		\$23,600.00	\$23,600.00

Department - Insert reason for line item adjustment:

Transfer of Contingency Funds needed for Pedestrian Crossing Signs, Plant Containers, Attorney Fees

Prepared by:

Department Head signature:

Budget Adjustments must be approved by the Department Head before being submitted to Finance

Department heads may request re-allocation of dollars from one line item into another line item within their department or Grant Administrators may request reallocation between lines in grant funds. The Town Manager must approve any transfer between departments in the General Fund. Transfers between funds or increases or decreases to the total bottom line of any funds budget in any fund is a Budget Amendment and requires Board approval.

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14th, 2021

SUBJECT: Consideration of Revisions to the Town's Purchasing and Uniform Guidance Policies

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5F
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY:

The purpose of this revision is to establish guidelines that meet or exceed all applicable state and federal procurement requirements, to give structure to the Town of Black Mountain's procurement methods, and to set guidelines for Town Departments.

MOTION FOR CONSIDERATION:

Motion to approve revised purchasing policy and the Uniform Guidance Policy

ATTACHMENTS:

Purchasing Policy
Uniform Guidance Policy

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.

TOWN OF BLACK MOUNTAIN, NC PURCHASING POLICY



Adopted: June 14, 2021

Town of Black Mountain Purchasing Policy

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Town of Black Mountain Purchasing Policy

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Town of Black Mountain Purchasing Policy

GLOSSARY

Bid: a multi-step process required of the Town by North Carolina General Statutes. Quotes from three separate vendors are required during any bid process unless the good or service to be supplied is produced by only one vendor. If 3 bids are unattainable, the Town Manager must approve the process to move forward.

Informal Bid: A bid on items \$30,000.00 and above. Request for quotes are not required to be advertised to the public. Purchases in this category do not need to be approved by Town Council.

Formal Bid: A bid on items \$90,000.00 and above or on services \$500,000.00 and above. Public advertisement of the request for quote and bid process must be made, bids must be opened in public forum, and Town Council must approve the winning bid.

Quote: a price provided by a vendor on a provided good or service.

Informal Quote: a quote received via verbal communication, email, website, catalog, or fax.

Formal Quote: A price quote received via U.S. Mail, email, fax, or hand delivery.

Requisition: input into the financial system by a department to request the generation of a purchase order by the Finance Department prior to a purchase.

Purchase Order (PO): authorization for the purchase of goods sent by the Finance Department to a vendor prior to the purchase.

Request for Qualifications (RFQ): A request sent to a vendor to provide written documentation showing qualifications to perform a service or supply a product.

Request for Written Proposal (RFP): A request sent to a vendor for a written proposal on a certain good or service.

Encumbering: to commit a given amount of money to the payment of an order.

Purchasing/ Procurement: interchangeable, how the Town obtains needed goods and services.

Department Head: The individual authorized to make purchasing decisions on behalf of his/her department.

Vendor: provider of a good or service.

S/MWBE: Small Business, Minority-Owned Business Enterprise and Women-Owned Enterprise

HUB: Historically Under-utilized Business

Town of Black Mountain Purchasing Policy

I. FORWARD

This purchasing policy is intended for use as a guide to the Town of Black Mountain's purchasing methods and practice. When used properly, the policies and procedures established herein will enable the Town to obtain needed goods and services efficiently and economically. The goal of this policy is to give structure to the Town of Black Mountain's procurement methods and to set guidelines for Town Departments.

The understanding and cooperation of all employees is essential in order for the Town to maximize the value of each taxpayer dollar spent. While this manual does not answer all procurement related questions, it provides a sound foundation for Town procurement methods.

The goals of the Town's purchasing program are as follows:

1. To comply with legal and ethical requirements of public purchasing and procurement.
2. To meet or exceed the procurement requirements for purchase of goods (supplies, materials, and equipment), services, and construction or repair projects.
3. To assure vendors that impartial and equal treatment is afforded to all who conduct business with the Town.
4. To receive maximum value for money spent by awarding purchase orders to the lowest responsible, responsive bidder, taking into consideration quality, performance, support, delivery schedule, previous performance, business location, and other relevant factors.
5. To provide Town Departments the required goods and services in a timely manner in the proper quantity and quality while providing necessary documentation to the Town Finance Department.
6. To professionally administer the search for sources of supplies, the development of new sources, the selection of suppliers, negotiations, commitments, follow-ups, and adjustments.
7. To promote positive and healthy business relationships through effective communications, informed and fair purchasing practice, and adherence of ethical standards.
8. To maximize the standardization of products used within and among departments in order to minimize stock levels and obtain better prices for necessary goods and services.

If the procedures and guidelines established in this manual are followed, each department will be capable of efficiently managing, controlling, and planning available resources to meet present and future needs in order to help the Town meet set goals. Any questions or concerns about this manual or the established procedures should be directed to the Town Finance Department.

This manual is effective immediately following Town Council adoption and supersedes all previous purchasing or procurement instructions or directives.

Town of Black Mountain Purchasing Policy

II. GENERAL GUIDELINES

2.1 Local Buying

It is the desire of the Town of Black Mountain to contract with vendors within the Town and Buncombe County whenever possible. This can be accomplished by ensuring that local vendors, who have goods or services available that are needed by the Town, are included in the competitive purchasing process. The Town has a responsibility to its citizens and local businesses; however, the Town must ensure taxpayer money is spent with prudence and to ensure that maximum value is obtained for each public dollar spent. **The Town cannot and will not make purchasing decisions based exclusively on the location of the vendor;** however, every effort will be made to encourage qualified local vendors and suppliers to compete for Town business. Vendors will be selected on a competitive basis. The Town will not use vendors who have been debarred by Federal, State, or Local governments.

2.2 Planning

It is imperative that all Town Departments take time to properly plan purchases. Purchasing plans should be made for goods and services to be purchased in both the near and distant future; thereby minimizing small orders and last minute purchases. Proper planning will increase the capability of each department to purchase its goods and services in larger quantities to obtain the maximum discount possible. Planning will also reduce the number of trips required to obtain materials and minimize clerical or supervisory time costs associated with the procurement and purchasing process.

2.3 Buying Proper Quality

Quality and service are as important as price when considering goods for purchase; it is the duty of the requesting department to secure the most cost-effective good or service that will meet but not exceed the requirements for which the goods or services are intended. In some instances, the lowest price does not necessarily mean the lowest cost. A higher price, higher quality product may save the Town from excess expenses in the future. It is the requesting Department Head's responsibility to take this into consideration and determine what purchase is best for the citizens of the Town when making a purchase.

2.4 Authorization

Purchases less than \$500.00 do not require a Requisition or a Purchase Order (PO) and may be made upon the approval of the deputy finance officer in the department the purchase is made. In order to meet the pre-audit requirements of GS. 159-28 each department shall be appointed a deputy finance officer for purchases less than \$500. The approval of this policy by the Council, designates the Department Heads and Senior Accountant as Deputy Finance Officers for pre-audit purposes on purchases under \$500. Purchases should only be authorized for necessary goods when proper documentation is provided and that sufficient undesignated funds are available within their departmental budget within the current fiscal year to make the purchase. Each invoice will be authorized using the pre-audit stamp with signature and date before

Town of Black Mountain Purchasing Policy

forwarding to Finance for payment. This pre-audit authorization signature verifies that the goods and / or services have been received, the budgeted funds are available, and the invoice has been coded to the proper account number.

2.5 Conflict of Interest

Pursuant to N.C.G.S. § 14-234, no elected official or employee who is involved in making or administering a contract on behalf of the town may derive a direct benefit from the contract, except as provided in N.C.G.S. § 14-234(b), or as otherwise allowed by law. An elected official or employee who will derive a direct benefit from a contract with the town, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract. To preclude any appearance of impropriety, each individual shall disclose any personal interest he/she may have in regard to contracts. No elected official or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the Town. Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids, or requests for proposals shall be excluded from competing for such requirements.

2.6 Compliance

The Town will follow all applicable local, state, and federal procurement requirements when expending any funds. Should the Town have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

Contracts Funded with federal grant or loan proceeds must be procured in a manner that conforms to all applicable Federal laws, policies, and standards, including those under the Town's Uniform Guidance Policy, to the extent that the standards do not violate state law, unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

2.7 Evasion

No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.

2.8 Contract Requirements

1. **Written.** All contracts shall be in writing
2. **Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

Town of Black Mountain Purchasing Policy

3. **Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.
4. **Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding if applicable for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award. **All grants and contracts must be approved by the Town Manager and follow additional procurement guidelines found in the UG Procurement Policy.**
5. **Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal and state laws, regulations, executive orders, and terms and conditions.
6. **Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will only be used if no other form of contract is suitable and the contract includes a "Not to Exceed" amount.
7. **Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.
8. **Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
9. **Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy. These may also be referred to as HUB.
10. **Documentation.** Documentation must be submitted to and maintained by the Finance Department detailing the history of all procurements. The documentation

Town of Black Mountain Purchasing Policy

should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract.

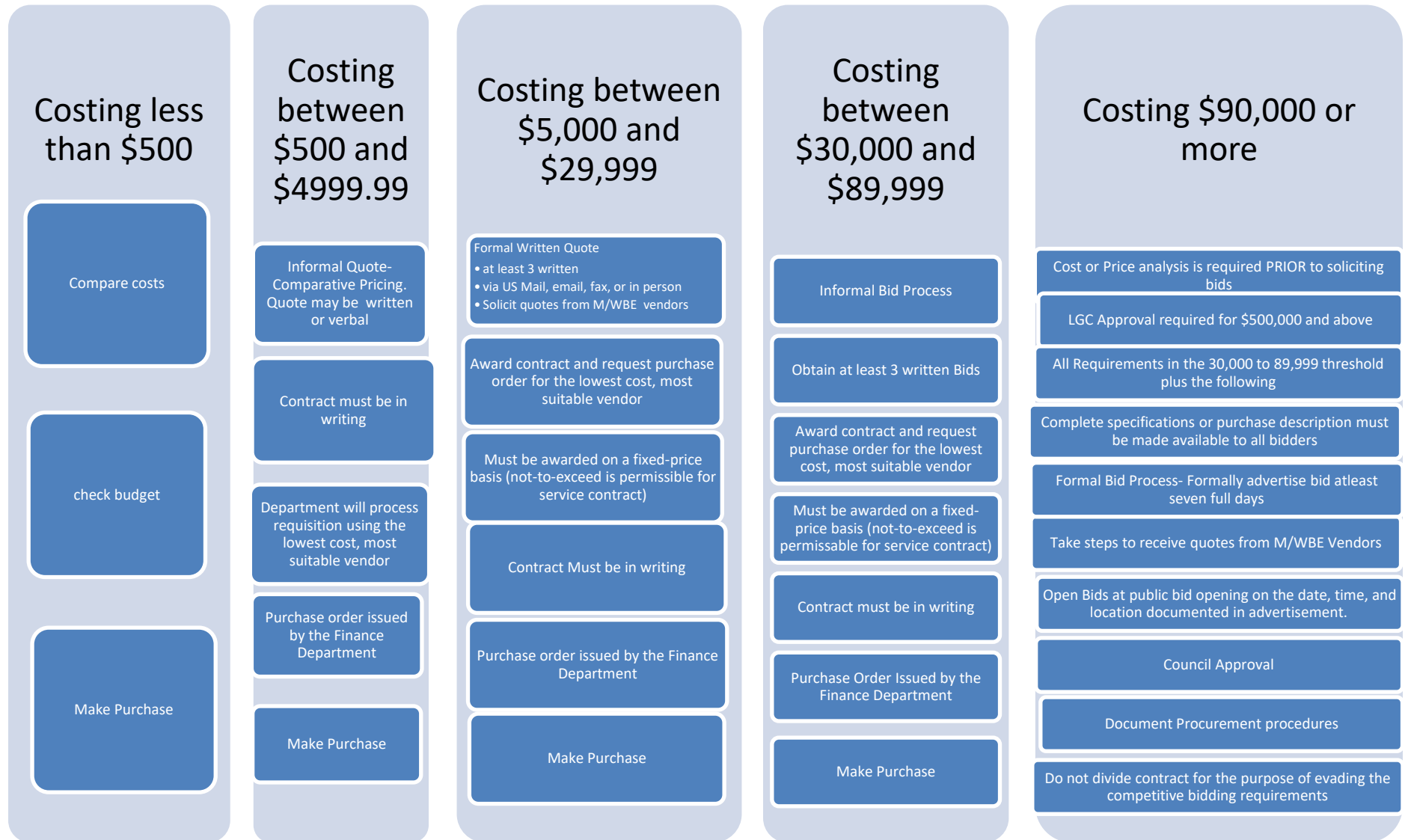
11. **Contractor Oversight.** The Requesting Department must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
12. **Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.
13. **Dead Line.** All invoices to be paid during the upcoming week must be submitted to Accounts Payable no later than 12:00 PM each Wednesday (except for Holiday weeks) in order to be processed and paid by that Friday. The late approval of invoices does not constitute an emergency and Town resources will not be used to compensate for poor planning. All items received after the deadline will be processed in the next week's Accounts Payable batch. Checks that need to be picked up at Town Hall by the Department or the Vendor will need to be picked up after 12:00 PM on that Friday following the check run.
14. **Sales Tax Report.** Contractors must complete an affidavit of sales tax paid during the life of the contract. This must be received **before** final payment can be issued. A contract sales tax report sample is included in the appendix section of this policy.

***Further information on dollar thresholds can be found here:

<http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Dollar%20Thresholds%20Chart%202013.pdf>

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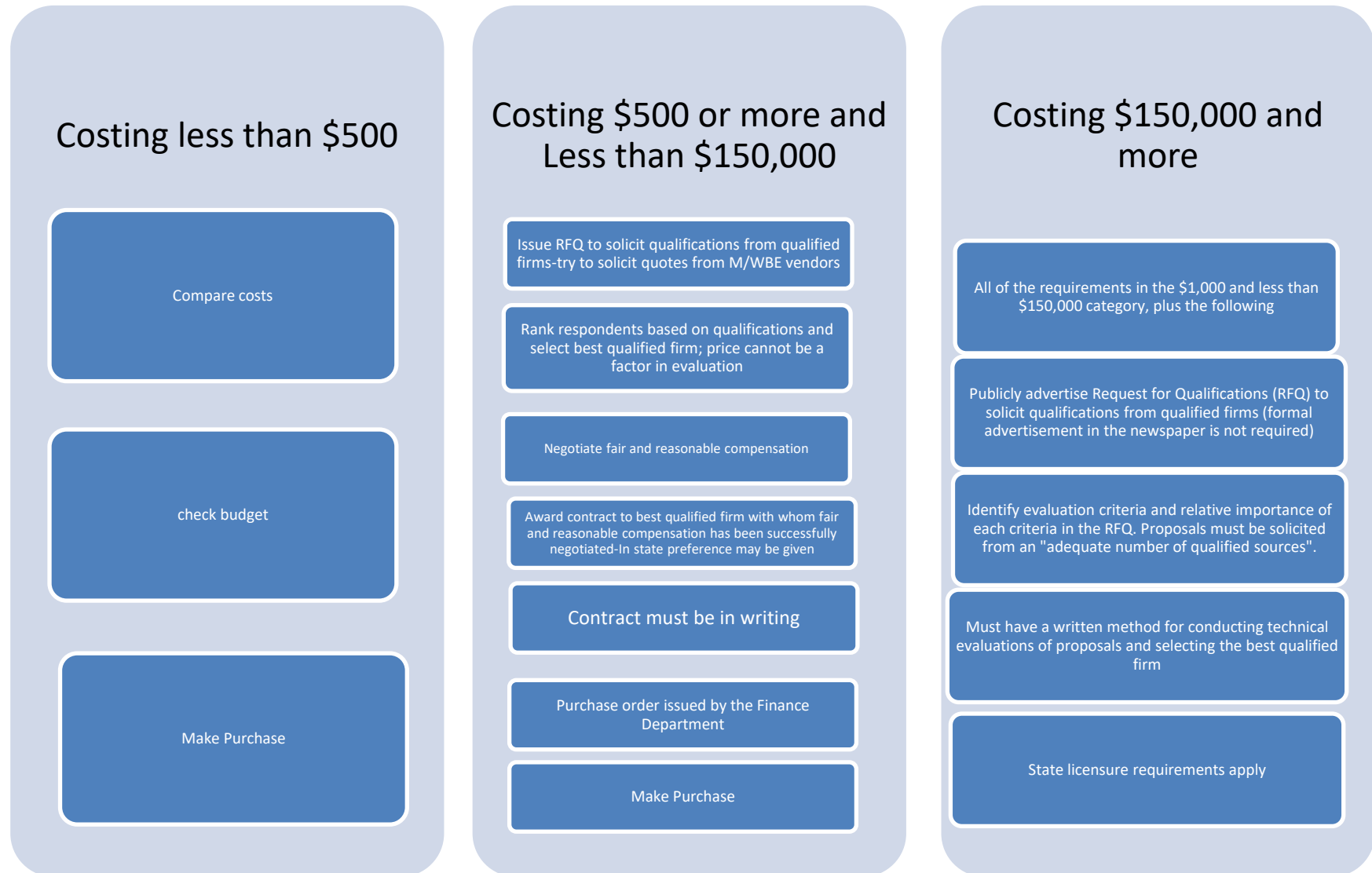
2.9 PURCHASING FLOW CHART- **CONTRACTS****



****Purchases using any federal funds must comply with the requirements of the Town's UG Procurement Policy****

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2.10 PURCHASING FLOW CHART-ARCHITECTURAL AND ENGINEERING SERVICES CONTRACT**



****Purchases using any federal funds must comply with the requirements of the Town's UG Procurement Policy****

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III PURCHASING PROCEDURE

3.1 Purchases less than \$500.00

Purchases less than \$500 do not require a Requisition or a Purchase Order (PO) and may be made upon the approval of the department head. In order to meet the pre-audit requirements of N.C.G.S. § 159-28, each person with a department head role and the Senior Accountant, has been designated by the Town Council, with the approval of this policy, as a Deputy Finance Officer for the pre-audit of purchases less than \$500. These purchases may be made by utilizing the Town's Procurement/Credit Card process, check requests, or vendor accounts. Please see the guidelines for acceptable Procurement/Credit Card purchases in section X of this policy. Every purchase should follow a cost comparison to ensure a competitive price and quality for each good and service purchased. Issues that may override the price comparison process may include delivery time and material specifications.

3.2 Purchases between \$500.00 and \$4,999.99 (except for Architectural and/or Engineering professional services)

Purchases in this price range may be obtained by the requesting department(s) through an informal quote process. Obtaining supplies, materials, equipment, or services without obtaining a purchase order is an unauthorized purchase in accordance with N.C.G.S. § 159-28. Any employee doing so may be held personally liable for payment and may face disciplinary actions.

1. No minimum number of quotes is required however, it is encouraged that every attempt is made to acquire at least three (3) quotes. The informal quotes may be received through verbal communications, email, or fax. Verbal quotes must be noted in typed or hand written form documenting price, date quoted, name of vendor, and name of the individual representative of the vendor. Quotes are to be scanned and submitted with the requisition request prior to purchase; after the PO is issued and approved, a purchase may be made.

ALL PURCHASES \$500.00 AND ABOVE REQUIRE A PURCHASE ORDER. THE DIVIDING OF A CONTRACT TO AVOID THE PURCHASE ORDER OR COMPETITIVE BIDDING REQUIREMENTS IS STRICTLY PROHIBITED.

Obtaining supplies, materials, equipment or services without a purchase order is an unauthorized purchase (except for emergency situations outlined in this policy). Unauthorized purchases are classified as a personal expense and will be paid for by the employee. Furthermore, if a purchase order is not obtained prior to the ordering or purchasing of item the employee must obtain written approval and signature on the face of the invoice from the Town Manager before the invoice is paid. All instances of employees not complying with the purchasing policy will be documented in the employee's personnel file and will be a factor used by the Town Manager in the employee's annual evaluation.

Town of Black Mountain Purchasing Policy

3.3 Purchases between \$5,000.00 and \$29,999.99 (except for Architectural and/or Engineering professional services)

Purchases in this price range are obtained through the formal quote procedure

1. Obtain price or rate quotes from 3 qualified sources.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers.
3. Award the contract on a fixed-price basis or not-to-exceed basis.
4. Award the contract to the lowest responsive, responsible bidder.
5. Contract must be in writing.
6. Document procurement procedures (similar to keeping a record of bids as required under state law for informal bidding; N.C.G.S. § 143-131).
7. Do not divide the contract for the purpose of evading competitive bidding requirements.

3.4 Purchases between \$30,000.00 and \$89,999.99 (except for Architectural and/or Engineering professional services)

Purchases in this range must be obtained through informal bids.

1. In the formal quote process, the requesting department is required to receive at least three (3) quotes via U.S. Mail, email, fax, or hand delivery. The required three written quotes are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.
2. Departments are responsible for sending a request for proposal (RFP) and will allow vendors sufficient time to respond to the request based on the complexity of the request.
3. RFPs in the informal bid range may or may not be advertised to the public. A minimum of three (3) vendors, if available, will receive the RFP. Every effort will be made to obtain at least three (3) quotes. Quotes in the informal bid range may be submitted through U.S. Mail, email, fax, or hand delivery. No verbal quotes are acceptable in the informal bid price range.
4. Purchases in the informal bid range do not require Town Council approval. In this range, a no bid may be accepted as a bid. In accordance with N.C.G.S. § 143-129, a Request for Written Quotation will be used for purchases of \$30,000 to formal limits with or without advertising. The required three written informal bids are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.
5. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers
6. Cost or price analysis is not required prior to soliciting bids.
7. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
8. Award the contract to the lowest responsive, responsible bidder.

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3.5 Purchases \$90,000.00 and above (except for A/E professional services)

Purchases in this range must be obtained through formal bids. Shall be procured using a combination of the most restrictive requirements and state formal bidding procedures (N.C.G.S. § 143-129) as follows:

1. Cost or price analysis is required PRIOR to soliciting bids. For all procurements costing \$90,000 or more, a cost or price analysis is required prior to soliciting bids, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.
2. Complete specifications or purchase description must be made available to all bidders.
3. Every effort will be made to obtain at least three (3) bids.
4. The bid must be formally advertised in a newspaper of general circulation for at least seven (7) full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the Town Council. Advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the Town Council the right to reject any or all bids only for "sound documented reasons."
5. Written bids in this range must be submitted in a sealed envelope and must be opened at a public bid opening.
6. The supporting documentation and all bids received are to be scanned and submitted with/ attached to the purchase requisition prior to purchase; after the purchase order is issued and approved, a purchase may be made.
7. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers
8. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
9. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis.
10. Town Council approval is required for purchase contracts unless the Town Council has delegated award authority to an individual official or employee. Any and all bids may be rejected only for "sound documented reasons."
11. Contract must be in writing
12. All procurement procedures must be documented
13. Do not divide the contract for the purpose of evading competitive bidding requirements

3.6 Construction and repair contracts costing \$500,000 and above

Contracts in this category shall be procured using a combination of the most restrictive requirements and state formal bidding procedures (N.C.G.S. § 143-129) as follows:

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1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the Town Council. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the Town Council the right to reject any or all bids only for "sound documented reasons."
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis
8. Award the contract to the lowest responsive, responsible bidder. Council's approval is required and cannot be delegated. The Town Council may reject and all bids only for "sound documented reasons."
9. Contract must be in writing.
10. Document procurement procedures.
11. Do not divide the contract for the purpose of evading competitive bidding requirements.

3.7 Contracts for Architectural and Engineering Services costing under \$150,000

Shall be procured using the state "Mini-Brooks Act" requirements (N.C.G.S. § 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the request.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers
3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.

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6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Town Council approval is not required.
7. Contract must be in writing

3.8 Contracts for Architectural and Engineering Services costing \$150,000 or more

Shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publicly advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Town Council's approval is not required.
11. Contract must be in writing
12. State licensure requirements apply.
13. May use in-state geographic preferences for procuring Architectural and/or Engineering services, provided that this leaves an appropriate number of qualified firms to compete for the contract give the nature and size of the project.

IV. VENDOR SELECTION

4.1 Selection Policy

Vendors will be selected on a competitive basis. Formal bids and informal bids will be solicited by the Requesting Department. Bid awards, purchase orders and/ or contracts will be issued to

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the lowest, responsive, responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. The Town of Black Mountain will not use vendors who have been debarred by Federal, State, or Local governments.

4.2 Gifts and Gratuities

Town employees are prohibited from soliciting or accepting any rebate, money, entertainment, gift, or gratuity (with the exception of mementos and novelties of nominal value) from any person, company, firm or corporation to which any purchase order or contract is, or might be awarded. The Town will not tolerate circumstances that produce, or reasonably appear to produce, conflicts between the personal interests of an employee and the interests of the Town. Accordingly, the Town may terminate, at no charge to the Town, any purchase order contract if it is found that substantial gifts or gratuities were offered to a Town employee. The Town may also take disciplinary action, including dismissal, against a Town employee who solicits or accepts gifts or gratuities of any value whatsoever.

4.3 Exceptions

Non-competitive contracts are allowed only under the following conditions (If the contract is federal or state funds or pass-through agency please see Town's UG Policy for requirements):

1. **Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the Town Council.
2. **Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.
3. **Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
4. **Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
5. **Awarding Agency Approval.** A contract may be awarded without competitive bidding so long as awarding the contract without competition is consistent with state law.

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V. SPECIAL PROCUREMENT PROCEDURES

5.1 Blanket Purchase Order

Blanket purchase orders will be issued to selected vendors for the procurement of certain items after competitive pricing has been completed and if budgeted funds are available. Blanket purchase orders are intended to expedite the procurement of frequently needed and repetitious supplies. Blanket purchase orders should be made for goods and services when the amount of clerical or administrative work otherwise involved is impractical. Examples of items procured through a blanket purchase order include: janitorial services, maintenance service contracts, chemicals, temporary personnel services, automotive parts, and others. Blanket purchase orders will encumber the Requesting Department's funds for any amounts remaining on the purchase order.

Requisition for blanket purchase orders must include all required information along with the following additional information:

1. Time period the purchase order is valid
2. Items covered by the blanket purchase order
3. The Not to Exceed (NTE) amount
4. A listing of all personnel approved to purchase from the blanket purchase order
5. Approval by the Finance Director or Senior Accountant.

All vendor delivery tickets/invoices must be signed by an authorized Town employee indicating receipt of the goods and/ or services. All delivery tickets/invoices from blanket purchase orders must be provided to Accounts Payable as supporting documentation for invoice processing immediately upon receipt.

5.2 Emergency Purchases

In cases of emergencies declared by the Mayor, the Department Head or the Town Manager may purchase directly from any vendor the supplies or services, whose immediate procurement is essential to prevent delays in work which may affect the life, health, or safety of Town of Black Mountain employees or citizens. *Not anticipating needs does not constitute an emergency.*

The using department shall exercise good judgment and use established vendors, if possible, when making emergency purchases. Always obtain the best possible price and limit purchases to those items that are emergency related. First, determine if a true emergency does exist. Second, anticipate needs and avoid emergency situations whenever possible. Emergency orders are always costly. Vendors usually charge top prices if supplies or services must be obtained on an emergency basis.

During regular working hours, follow standard purchasing procedure as usual as soon as time and the situation permits.

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During emergency or special working hours, the following procedure should be used for emergency purchases: verify funds are available and if needed complete a budget amendment request and email to the Finance Officer. The packing slip or invoice received should be coded with the account(s) to be charged and signed, scan/ attach a brief explanation of the nature of the emergency and forward to Accounts Payable with the invoice. Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures should be limited and will be monitored for abuse.

5.3 Sole Source of Supply

In the event there is only one vendor capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Town Manager. When a Department Head must purchase goods from a sole source, he/ she shall document on the requisition why only one company or individual is capable of providing the goods required. If this is a purchase over \$4,999 the Town Manager must give written approval in order to proceed with the purchasing process. The provisions of N.C.G.S. § 143-129 will be followed requiring Council's approval for sole source exception for all purchases made at or above statute levels.

5.4 Single Brand Convenience

The Town recognizes in certain scenarios it is efficient to purchase items from a single provider rather than a variety of vendors. In such cases, exceptions may be made to standard purchasing procedure; given proper documentation is provided. The purchaser should note reasons buying from a certain vendor will be more efficient in the long run and attach such documentation to each requisition.

Example: One brand of printer Town-wide would allow the same type of ink cartridge to be ordered and reduces time cost related to finding multiple brands. This also allows the Town to buy ink cartridges in bulk from a single provider, further reducing cost.

5.5 State of North Carolina Purchase Contract

All Departments may use the State of North Carolina Department of Administration Purchase and Contract Division whenever possible for procurement of capital and non-capital items. It shall be the responsibility of Department Heads to familiarize themselves with this purchasing method and to check for needed goods and services which are available through this resource at a lower cost than many other vendors offer. This system expedites the purchase of goods, offers pricing compatible with quotes received from formal and informal bids, and satisfies North Carolina General Statutes. Examples of goods on State Contract are: vehicles, office furniture, copiers, janitorial supplies, copier paper, light bulbs, etc. Contact the Finance Department with questions regarding goods on State Contract.

The State of North Carolina Interactive Purchasing System can be found on the web at www.ips.state.nc.us/ips/Default.aspx.

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The North Carolina E-Procurement System can be found on the web at <http://eprocurement.nc.gov/>

5.6 Piggybacking

The Department Head may use the piggybacking process whenever necessary to purchase apparatus, supplies, materials, and equipment. Contracts in the informal range can be used as a tool to solicit additional bids, but no Council action is necessary. For purchases of \$90,000 and above, the provisions of N.C.G.S. § 143-129 will be followed.

5.7 Professional Services

Normal competitive procedures are difficult to use in securing professional services such as attorneys, planners, and other professionals who, in keeping with the standards of their discipline, will not enter into a competitive bidding process. When an agreement between a professional service company and the Town is established, a purchase order with the proposed amount shall be issued to satisfy accounting and statutory requirements. Purchases from professionals shall otherwise follow N.C.G.S. § 143-64.31 and 64.32.

5.8 Service Contracts

All service contracts, for which the contractor will perform work while on Town property, must be accompanied by a standard contract form. The contract must follow all signature procedures and contain all necessary insurance and payment options. The completed and signed contract must be signed by the Town Manager, pre-audited by the Finance Director, and be filed in the office of the Town Clerk. The executed contract should be scanned and attached to the department requisition that is forwarded to the Finance Department. The Town will not enter into contractual agreements that are subject to automatic renewal and will attempt to structure contracts to coincide with the fiscal year. Service contracts may be renewed annually, without the bidding process, by the Town Manager.

Contracts authorized by Town Council through direct award or budget authorization may be executed by the Town Manager. Subsequent orders changing the original contract, which do not exceed the approved cost of the contract, will be executed by the Town Manager.

Town Council must approve all contracts that meet any of the following criteria:

1. Contracts \$90,000 and more
2. Contracts with terms greater than one year

5.9 Vendors with Town Accounts

The Town should have accounts with certain vendors, where possible, in order to expedite the purchasing process for frequently needed minor items. In the event the Town has an account with a certain vendor, Town employees should not use purchase/credit cards to obtain goods or services from the vendor. Proper purchasing procedures should be followed and only authorized purchases should be charged to Town accounts.

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5.10 Tax Exemption

The Town of Black Mountain is exempt from all federal excise taxes. However, the Town is not exempt from sales tax and all invoices should include such, unless they are for purchase of resale items. Sales tax is not considered a cost factor since municipalities file for a refund as provided for by the NC General Statutes.

5.11 Purchases Order/Spending Cut-off Date

In preparation for the annual audit and the fiscal year-end, it is necessary that the Town impose a spending deadline annually. The Finance Director will issue an email each year with the cutoff date for purchase/credit cards and all other spending. The spending deadline will not pertain to normal recurring monthly expenses, emergency purchases or emergency repairs.

VI. DELIVERY AND PERFORMANCE

A completed and accepted purchase order by the parties concerned must produce the intended results or objectives before it can be considered a successful or completed purchase. The terms and conditions must clearly define the delivery and performance requirements of the services, supplies, or equipment.

The importance of the delivery schedule will be emphasized to the vendor. Delivery requirements will be clearly written and fully understood by all vendors. 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.

6.1 Partial Deliveries

Some purchase orders may list several items. It is possible the vendor may complete timely delivery on some items, which is referred to as "partial delivery". Upon receipt of a partial delivery, photocopy the purchase order; attach a copy of the signed delivery receipt and forward to the Finance Department along with the vendor invoice indicating which lines of the purchase order are to be paid.

6.2 Non-Performance

If a vendor fails to meet any requirements(s) of the specifications or terms and conditions of the contract or purchase order, the vendor can be cited for non-performance. The seriousness of non-performance will be evaluated based upon the circumstances of each violation.

VII. INSPECTION AND TESTING

Life and safety as well as successful operation of expensive equipment and supplies may depend upon how well a purchased item meets design and performance specifications. Goods and materials should be checked at the time of receipt for damage or defects. The inspection shall include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) shall be rejected as outlined below.

Town of Black Mountain Purchasing Policy

7.1 Rejection

In order to protect the Town's rights in the event of rejection, for whatever reason, the vendor shall be informed immediately. Reasons for the rejection must be documented in memo form and forwarded to the Finance Department in a timely manner. Along with all other quotes or bids.

7.2 Damaged Goods

One of the major reasons for immediately inspecting the goods or materials upon receipt is to detect any visible damage. It is necessary that all damage including evidence of concealed damage shall be documented by memo, attached to a copy of the purchase order, forwarded to the Finance Department, reported to the vendor as soon as possible, and informs the vendor of the damaged goods. When it is apparent that the extent of the damage causes the goods to be worthless, they will not be accepted.

VIII. SALE OF TOWN PROPERTY

The Finance Director has been authorized by the Town Council to declare as surplus single asset or property or a group of items with a value of up to \$30,000.00, to set its fair market value, and to convey title to the property and to advertise electronically the sale of any personal property. The Finance Director shall approve a Sale of Property Authorization form **prior** to the sale or disposal of any Town property. The Finance Department shall keep all approved forms, which will record a description of the property sold or exchanged, and the amount of money or other considerations received for each sale or exchange. N.C.G.S. § 160A-265 through 280 should be referenced before the sale of any Town property in order to ensure statutes and procedure are followed properly. Once sale approval is received the item will be posted on the GovDeals site to sale. All sales not being sold through The GovDeals site will require Town Manager and Finance approval.

IX. ELECTRONIC PAYMENTS

Town Council has authorized the Town of Black Mountain to engage in electronic payments as defined by G.S. 159-28. As required by NC Administrative Code 20 NCAC 03 .0409 and NC Administrative Code NCAC 03 .0410, this policy outlines procedures for pre-auditing obligations that will be incurred by electronic payments and procedures for disbursing public funds by electronic transaction.

9.1 Pre-audit of Electronic Transactions

Before each transaction is made, the individual making the transaction must ensure that:

Town of Black Mountain Purchasing Policy

1. There is an appropriate budget ordinance or project/grant ordinance appropriation authorizing the obligation
2. Sufficient monies remain in the appropriation to cover the amount that is expected to be paid out in the current fiscal year if the expenditure is accounted for in the budget ordinance/resolution or the entire amount if the expenditure is accounted for in the a project/grant ordinance

The Finance Department will enter an encumbrance in the accounting system for each department in an adequate amount to cover one month's purchases for the P-Card.

For specific purchasing guidelines on P-Cards, see section X

X. PURCHASE/CREDIT CARDS

Purchase/Credit cards exist to provide departments a flexible and efficient way to make **small** purchases. Purchase/Credit cards empower the cardholder to acquire necessary materials to conduct business and/or deliver services in a more convenient and expeditious manner. Purchase cards should not be used to procure items or services not directly related to Town business. The Department Head and the Finance Department are responsible for ensuring the pre-audit requirements are met for each purchase. Please see the following guidelines when using a Town credit or purchase card:

1. Employees should make every effort to purchase goods through state contract and/or set up a Town account with vendors that they use often.
2. All purchases, when possible, need to be processed via a check using the Town's normal AP process.
3. Purchase/credit cards should not be used to procure items or services not directly related to Town business.
4. All shipped items, purchased with a Town purchase/credit card, must be shipped to a Town office or Town owned location.
5. Personal use of the card is not allowed and will be considered as terms for card revocation as well as employee disciplinary action.
6. Charges to the card are limited by a monthly and per transaction dollar amount. In addition, some vendors are blocked based on their Merchant Category Code (MCC). Transaction dollar limits and allowable merchant categories are established for each card account.
7. Cardholder should be aware that splitting transactions in order to remain within the transaction limit or monthly limit is prohibited.
8. Reviewer and Approvers of card transactions need to make certain purchases are applied to the correct expense account, it is a valid Town expense, and are reviewed daily.
9. Itemized receipts are required for **ALL** items. Failure to comply can result in card revocation.

10.1 Employee Responsibilities

Town of Black Mountain Purchasing Policy

No purchase over \$500.00 shall be made using the purchase/credit card system without a Purchase Order unless the purchase falls under the items not requiring a PO (See appendix). Purchase/credit cards assigned to employees may have approval limits set by Department Heads below the \$500.00 policy threshold. If an employee needs to make a purchase above the limit set by the Department Head, the employee should consult with the Department Head before making a transaction. The Department Head will need to request Finance to increase the transaction limit and the duration of the increase.

1. The purchase/credit card that each cardholder receives shall only be used by the cardholder. No other person is authorized to use this card. The cardholder may make transactions on behalf of others in their department/ division; however, the cardholder is responsible for all purchases charged to their card.
2. The total value of a transaction shall not exceed a cardholder's single purchase limit. Payment for a purchase shall not be split into multiple transactions to stay within the single purchase limit.
3. The cardholder is responsible for maintaining receipts of all card transactions and providing to Finance immediately upon availability. All receipts must be coded, pre-audited, and approved. Failure to provide receipts in a timely manner may result in the cardholder losing the privilege of using a Town purchasing card.
4. Purchase/credit cards may be used for lodging and for training/ professional activities. Purchase/credit cards cannot be used for meals during employee travel. Cardholders should consult the Town's Travel Policy for more information.

10.2 Receipts and Receipt Submission

Receipts should be collected and kept for all transactions. A detailed receipt should be provided for all purchases. If a detailed receipt is not obtained from the vendor, a Lost/ Missing Receipt Form and a detailed list of what was purchased will be required. The Lost/Missing Receipt Form must be signed by the Department Head, if lost/missing receipt is for a Department Head purchase then the Town Manager must sign the form. Repeated lost or missing receipts will result in a cardholder losing the privilege associated with a Town purchasing/credit card. Receipts should be approved, coded, and pre-audited.

10.3 Unauthorized Purchases

Certain items should not be purchased by Town employees. Any of the following items listed below have been deemed inappropriate for purchase by Town employees:

1. Personal purchases
2. A single purchase that exceeds the cardholder's single purchase limit
3. Cash advances
4. Gift Cards
5. Alcoholic beverages
6. Purchase of in-room movies, meals, etc., during a hotel/ motel stay while on Town business

Town of Black Mountain Purchasing Policy

7. Clothing- All clothing purchases should follow the guidelines of the clothing allowance policy. Only items that contain the town logo, safety items, or tactical gear are allowed to be purchased with a credit card.

10.4 Consequences of Improper Use

A cardholder who makes unauthorized purchases or carelessly uses a purchase/credit card will be liable to the Town of Black Mountain for the total dollar amount of such purchases plus any administrative fees charged by the bank or card company in connection with the misuse. The cardholder's employment may also be terminated and will be subject to legal action.

Cardholders are expected to obtain the best prices available on purchases. Purchase of an item above market prices where the vendor gives the employee any form of gift, bonus, or premium whether in the form of cash or merchandise is considered a kickback, is illegal, and can result in disciplinary action up to and including termination of employment and lawful prosecution. Town policy strictly forbids anything in exchange for making a purchase.

It is unlawful to "split" a purchase in order to fall under the thresholds set forth in this policy.

If an employee does not follow the guidelines set forth in this purchasing policy the employee's use of a town credit card will be terminated.

XI. FRINGE BENEFITS

Any item purchased for an employee must be a valid business expense and not considered wages to the individual. Clothing, non-monetary awards, meals, travel, and other items may be considered wages depending on circumstances. Awards of cash or cash equivalents are always considered wages regardless of the amount awarded. Any award of cash or cash equivalents must be pre-approved by the Town Manager. All awards and purchases considered wages to an employee must be processed through payroll and will be subject to all applicable taxes. Please contact the Finance Department with any questions.

Town of Black Mountain Purchasing Policy

XII. EXHIBITS

Exhibit A. Items Not Requiring a Purchase Order

Exhibit B. Requisition Request

Exhibit C. Quote Form

Exhibit D. Contractors Sales Tax Report

Exhibit E. Lost/Missing Receipt Form

Exhibit F. Contracts and Purchasing NC Thresholds

Exhibit G. Sale/Disposal of Town Property Authorization Form

Town of Black Mountain Purchasing Policy

EXHIBIT A

Items Not Requiring a Purchase Order

1. Legal ads
2. Dues
3. Claim or refund payments (Citizens filing for damages/ reimbursement)
4. Insurance
5. Medical examinations
6. Petty cash expenditures & replenishing funds
7. Postage
8. Refunds
9. Building rental
10. Debt Service Payments
11. Equipment Lease Payments
12. Tuition and training or other fees for approved educational purposes
13. Utilities (electric, water, sewer, cable, internet, natural gas, trash, etc.)
14. Approved travel arrangements and accommodations

Town of Black Mountain Purchasing Policy

EXHIBIT B

Requisition Request



TOWN OF BLACK MOUNTAIN Requisition Worksheet Form

REQUISITION INFORMATION	
DATE	
REQUESTER NAME	
DEPARTMENT	
VENDOR NAME	

For Finance Department Use Only
Purchase Order #

QTY	DETAILED ITEM DESCRIPTION	GL Account	UNIT PRICE	TOTAL ITEM COST

Total Request

Instructions: Complete all fields and Remit to the Finance Department. Attach additional sheets if necessary, if purchase is over . All requisition 5,000 and over require at least 3 written quotes. Please see the Town of Black Mountain purchasing policy for additional requirements

Town of Black Mountain Purchasing Policy

EXHIBIT C

Quote Form



Town of Black Mountain

QUOTE FORM

Employee Name: Department:

DATE QUOTES OBTAINED: DATE GOODS ARE REQUIRED: DEPT WILL PICK UP
EMERGENCY ORDER

	VENDOR 1 NAME	VENDOR 2 NAME:	VENDOR 3 NAME:
VENDOR #:			
CONTACT:			
PHONE #:			
TOTAL QUOTE:			

ACCOUNT #	QTY	ITEM DESCRIPTION	UNIT	TOTAL

REASON(S) QUOTES NOT OBTAINED /EXPLANATION OF SOLE SOURCE OR EMERGENCY:

All Requisition \$5,000 and over received without obtaining three written quotes must be approved by the Town Manager prior to requisitions approval. Except in the case of an emergency

Town of Black Mountain Purchasing Policy

EXHIBIT E

LOST OR MISSING RECEIPT FORM



P-CARD MISSING AFFIDAVIT RECEIPT

Missing Receipt Affidavits lacking the required information or documentation will be returned to the authorized signer. Please read the instructions (shaded box) below.

- ☐ Attached is a copy or fax of the receipt

☐ -OR - I certify that I have contacted the merchant and was unable to obtain a copy of the receipt. Therefore, I have attached the following:

☐ A copy of the packing slip or invoice that confirms items and pricing.

I, undersigned, certify (a) that the expense described above, on P-Card was lost or not obtained, and (b) that this expense has not yet nor will be submitted to the Town of Black Mountain or any other organization for reimbursement or tax purposes. Please provide the following for this transaction.

Vendor: _____

Amount: _____

Date of Transaction: _____

Signature of Cardholder/Card User: _____

Required

Date: _____

Authorized Signature: _____

Required

Date: _____

P-Card Administrator Signature: _____

Required

Date: _____

Town of Black Mountain Purchasing Policy

EXHIBIT F

CONTRACTS AND PURCHASING NC THRESHOLDS

Dollar Thresholds in North Carolina Public Contracting Statutes Dollar limits and statutory authority current as of November 1, 2015 		
Requirement	Threshold	Statute
Formal bidding	<i>(estimated cost of contract)</i>	
Construction or repair contracts	\$500,000 and above	G.S. 143-129
Purchase of apparatus, supplies, materials, and equipment	\$90,000 and above	G.S. 143-129
Informal bidding	<i>(actual cost of contract)</i>	
Construction or repair contracts	\$30,000 to formal limit	G.S. 143-131
Purchase of apparatus, supplies, materials, and equipment	\$30,000 to formal limit	G.S. 143-131
Construction methods authorized for building projects	Over \$300,000 <i>(estimated cost of project)</i>	G.S. 143-128(a1)
Separate Prime		
Single Prime		
Dual Bidding		
Construction Management at Risk (G.S. 143-128.1)		
Design-Build and Design-Build Bridging (G.S. 143-128.1A; G.S. 143-128.1B)		
Public Private Partnership (P3) (G.S. 143-128.1C)		
Historically Underutilized Business (HUB) requirements		
Building construction or repair projects		
– Projects with state funding (verifiable 10% goal required)	\$100,000 or more	G.S. 143-128.2(a)
– Locally funded projects (formal HUB requirements)	\$300,000 or more	G.S. 143-128.2(j)
– Projects in informal bidding range (informal HUB requirements)	\$30,000 to \$500,000*	G.S. 143-131(b)
*Note: Formal HUB requirements should be used for informally bid projects costing between \$300,000 and \$500,000		
Limit on use of own forces (force account work)	<i>(not to exceed)</i>	G.S. 143-135
Construction or repair projects	\$500,000 (total project cost) or \$200,000 (labor only cost)	
Bid bond or deposit		
Construction or repair contracts (at least 5% of bid amount)	Formal bids (\$500,000 and above)	G.S. 143-129(b)
Purchase contracts	Not required	
Performance/Payment bonds		
Construction or repair contracts (100% of contract amount)	Each contract over \$50,000 of project costing over \$300,000	G.S. 143-129(d); G.S. 44A-26
Purchase contracts	Not required	
General contractor's license required	\$30,000 and above	G.S. 87-1
Exemption	Force account work (see above)	
Owner-builder affidavit required	Force account work (see above)	G.S. 87-14(a)(1)
Use of licensed architect or engineer required		
Nonstructural work	\$300,000 and above	G.S. 133-1.1(a)
Structural repair, additions, or new construction	\$135,000 and above	
Repair work affecting life safety systems	\$100,000 and above	
Selection of architect, engineer, surveyor, construction manager at risk, or design-build contractor		
"Qualification-Based Selection" procedure (QBS)	All contracts unless exempted	G.S. 143-64.31
Exemption authorized	Only projects where estimated fee is less than \$50,000	G.S. 143-64.32
From <i>A Legal Guide to Purchasing and Contracting for North Carolina Local Governments</i> , 2nd ed., by Frayda S. Bluestein, © 2004 by the School of Government, The University of North Carolina at Chapel Hill. All rights reserved.		

Town of Black Mountain Purchasing Policy

EXHIBIT G

CONTRACTS AND PURCHASING NC THRESHOLDS

TOWN OF BLACK MOUNTAIN

SALE/DISPOSAL OF TOWN PROPERTY AUTHORIZATION



The Department Head is required to obtain authorization from the Finance Director **prior** to the sale or disposal of any Town Property, regardless of value. Include any additional relevant information necessary. Please attach a photo of the item sold if available.

Complete the table below prior to the disposal of property:

PROPERTY SOLD		SALE PROCEEDS ESTIMATE	
PROPERTY CONDITION		DEPT/BUDGET WHICH MADE THE ORIGINAL PURCHASE	
YEAR		CITY I.D. #	
MILEAGE		VIN / SERIAL #	
MAKE		LISENCE PLATE#	
MODEL			

Other description, notes:

Department Head Signature: _____ Date: ____/____/____

Finance Director Signature: _____ Date: ____/____/____

Complete the table below after the disposal of property:

NAME OF INDIVIDUAL OR BUSINESS THAT PROPERTY WAS SOLD TO:		DATE PAYMENT RECEIVED BY CITY:	
SALE PROCEEDS ACTUAL	\$	SIGNATURE OF CITY EMPLOYEE RECEIVING PAYMENT:	

This completed/ signed and authorized form must be submitted to the Finance Department along with the proceeds of any sale of property. If an item is scrapped or disposed of with no proceeds this completed/ signed and authorized form must be submitted to the Finance Department within 5 days of the disposition of property.



Town of Black Mountain Uniform Guidance Procurement Policy

I. Purpose

When spending federal grant and loan award funds, local governments are required to adopt written procurement policies that conform to applicable federal law and the Uniform Guidance. The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal or state funds are being used in whole or in part to pay for the cost of the contract or purchase. (2 C.F.R. § 200.318(a)) This policy contains language found in the relevant sections of the Uniform Guidance, 2 C.F.R. Part 200, relating to procurement requirements. When entering into contracts, the Town of Black Mountain staff will also consult any other relevant Town policies, grant award documents and federal grantor agency to determine whether additional procurement requirements apply. The policy containing the most restrictive guidelines and requirements must be used.

II. Policy

- A. **Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded in whole or in part by federal or state financial funds (direct or reimbursed), regardless of match requirements. This policy also includes expenditures under grants and loans where the Town is a sub-grantee or sub-recipient of federal or state funds.

All federal or state funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The requirements of this policy also apply to any sub recipient of federal or state funds. Town departments may be required to follow additional policies to the extent required by a particular federal agency or federal grant, and in the event of a conflict the grantor's requirements shall take precedence over this policy. The town department that received the federal or state funding is responsible for ensuring compliance with this policy and all other grant requirements.

- B. **Compliance with Federal and State Law.** All procurement activities involving the expenditure of federal or state funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200.326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the



Town of Black Mountain Uniform Guidance Procurement Policy

funds. The Town staff will follow all applicable local, state, and federal procurement requirements.

- C. **Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. If the low bidder is deemed unable to perform successfully, any awards to other than the lowest bidder must be approved by the Town Manager.
- D. **No Evasion.** No contract or purchase may be divided to bring the cost under bid thresholds or to evade any requirements under Town local purchasing requirements, this policy or state and federal law.
- E. **Contract Requirements.** All contracts for services or purchases paid for in whole or in part with federal or state funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II. All contracts shall be signed by the Town Manager and pre-audited by the Finance Officer as required by N.C.G.S. 159-28.
- F. **Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development of estimates or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.
- G. **Approval and Modification.** The administrative procedures contained in this policy are administrative and may be changed as necessary by the Town's Finance Department to comply with state and federal law.

III. General Procurement Standards and Procedures:

The following standards and procedures apply to all federal or state funded purchases or contract solicitations:

- A. **Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.



Town of Black Mountain Uniform Guidance Procurement Policy

- B. Cost Reduction.** Town departments are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. Town departments are further encouraged to use value engineering clauses in federal or state contracts for construction or repair that are sufficient size to offer reasonable opportunities for cost reductions.
- C. Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.
- D. Notice of Federal and State Funding.** All bid solicitations must acknowledge the use of federal and state funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- E. Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal and state laws, regulations, executive orders, and terms and conditions of the funding award.
- F. Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this policy.
- G. Cost plus percentage of cost contracts are prohibited.**
- H. Time and materials contracts are prohibited in most circumstances.** Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.
- I. Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used when preparing specifications only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.



Town of Black Mountain Uniform Guidance Procurement Policy

- J. Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
- K. Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this policy.
- L. Documentation.** Documentation detailing all procurements must be submitted to and will be maintained by the Finance Department. The documentation should include the procurement method used, contract type, basis for contractor or vendor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.
- M. Cost Estimate.** For all procurements costing \$250,000 or more, the Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer. Requesting departments are expected to be aware of the Contractor Conflict of Interest requirements and exclusions detailed in this policy, when estimating project costs.
- N. Contract Requirements.** All federal and state contracts must be in writing. The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy. All contracts must be signed by the Town Manager.
- O. Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder's list. The Requesting department is expected to check the federal debarment list prior to negotiating or awarding any contract.
- P. Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.



Town of Black Mountain Uniform Guidance Procurement Policy

- Q. Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for “or equal” products, or other unnecessary requirements that have the effect of restricting competition.
- R. Geographic Preference.** No contract or purchase shall be awarded on the basis of a geographic preference unless specifically allowed by the type of purchase.
- S. Purchase Orders.** All purchases using federal or state funds, regardless of dollar amount, must have a purchase order issued prior to ordering goods, or receiving goods or services.

IV. Specific Procurement Procedures

The Requesting Department shall solicit bids in accordance with the requirements under this section of the policy based on the type and cost of the contract.

- A. Service Contracts** (except for Architectural and Engineering Services) and **Purchase Contracts costing less than \$10,000** shall be procured using the Uniform Guidance “*Micro-Purchase*” procedure (2 C.F.R. § 200.320(a)) as follows:
 - 1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
 - 2. To the extent practicable, purchases must be distributed among qualified suppliers.
 - 3. The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.
- B. Service Contracts** (except for Architectural and Engineering Services) and **Purchase Contracts costing \$10,000 up to \$90,000** shall be procured using the Uniform Guidance “*Small Purchase*” procedure (2 C.F.R. § 200.320(b)) as follows:
 - 1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency may have issued guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued). If “adequate number” is not defined or specified by the grantor agency, the requesting department should attempt to obtain at least three quotes.



Town of Black Mountain Uniform Guidance Procurement Policy

2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids, under the small purchase procedure.
4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
5. Award the contract to the lowest responsive, responsible bidder.
6. The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.

C. Purchase Contracts costing \$90,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “*Sealed Bid*” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.
3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. **A minimum of 2 bids must be received in order to open all bids.**
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. **Governing board approval is required** for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”
7. The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.

D. Service Contracts \$90,000 and above Local government service contracts are not subject to state competitive bidding requirements. The Town of Black Mountain does not require competitive proposals (RFPs) for service contracts under its local policy, therefore Requesting departments may follow the UG small purchase



Town of Black Mountain Uniform Guidance Procurement Policy

procedure for service contracts costing \$10,000 up to \$250,000, and then follow the UG sealed bid or competitive proposal method for service contracts costing \$250,000 or more. Service Contracts \$10,000 up to \$250,000 shall be procured using the Uniform Guidance

“Small Purchase” procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency may have issued guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued). If “adequate number” is not defined or specified by the grantor agency, the requesting department should attempt to obtain at least three quotes.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids, under the small purchase procedure.
4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
5. Award the contract to the lowest responsive, responsible bidder.
6. The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.

E. Service Contracts (except for Architectural and Engineering Services) **costing \$250,000 and above** may be procured using the Uniform Guidance ***“Competitive Proposal”*** procedure (2 C.F.R. § 200.320(d)) when the “Sealed Bid” procedure is not appropriate for the particular type of service being sought. The requesting department must document the particular situation and have the Town Manager approve the use of the Competitive Proposal procedure when under these circumstances. The procedures are as follows:

1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321. Documentation of steps taken must be provided to the Finance Department in purchase order package.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.



Town of Black Mountain Uniform Guidance Procurement Policy

6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
 7. Award the contract on a fixed-price or cost-reimbursement basis.
 8. The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.
- F. Construction and repair contracts costing less than \$10,000** shall be procured using the Uniform Guidance *“Micro-Purchase”* procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
 2. To the extent practicable, contracts must be distributed among qualified suppliers.
- F. Construction and repair contracts costing \$10,000 up to \$250,000** shall be procured using the Uniform Guidance *“Small Purchase”* procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued). If “adequate number” is not defined or specified by the grantor agency, the requesting department should attempt to obtain at least three quotes.
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321. Documentation of steps taken must be provided to the Finance Department in purchase order package.
 3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
 4. Award the contract on a fixed-price or not-to-exceed basis. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.
 5. The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.
- G. Construction and repair contracts costing \$250,000 up to \$500,000** shall be procured using the Uniform Guidance *“Sealed Bid”* procedure (2 C.F.R. § 200.320(c)) as follows:
1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
 2. Complete specifications must be made available to all bidders.



Town of Black Mountain Uniform Guidance Procurement Policy

3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321. Documentation of steps taken must be provided to the Finance Department in purchase order package.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for "sound documented reasons."
9. Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.

H. Construction and repair contracts costing \$500,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "***Sealed Bid***" procedure (2 C.F.R. § 200.320(c)) along with state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321. Documentation of steps taken must be provided to the Finance Department in purchase order package.



Town of Black Mountain Uniform Guidance Procurement Policy

5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
 6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
 7. Award the contract on a firm fixed-price basis.
 8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject all bids only for "sound documented reasons." The Requesting Department must obtain a purchase order, regardless of dollar amount, prior to ordering or obtaining goods and prior to issuing a notice to proceed or services being rendered.
- I. Construction or repair contracts involving a building costing \$300,000 and above must comply with the following additional requirements under state law:**
1. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
 2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
 3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).
- J. Contracts for Architectural and Engineering Services costing under \$250,000 shall be procured using the state "*Mini-Brooks Act*" requirements (G.S. 143-64.31) as follows:**
1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321. Documentation of steps taken must be provided to the Finance Department in the purchase order package.
 3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Requesting Department.
 4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
 5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.



Town of Black Mountain Uniform Guidance Procurement Policy

6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

K. Contracts for Architectural and Engineering Services costing \$250,000 or more shall be procured using the Uniform Guidance ***“Competitive Proposal”*** procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321. Documentation of steps taken must be provided to the Finance Department in purchase order package.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”). If “adequate number” is not defined or specified by the grantor agency, the requesting department should attempt to obtain at least three quotes.
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.



Town of Black Mountain Uniform Guidance Procurement Policy

V. Exceptions

Non-competitive contracts are allowed **only** under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal or state funds:

- A. Sole Source.** A contract or purchase using federal or state funds may be awarded without competitive bidding when the item is available from only one source. The Requesting Department shall document the justification for and lack of available competition for the item. ***A sole source contract must be approved by the governing board.***
- B. Public Exigency.** A contract or purchase may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding. The Town Manager must approve any purchases made using the public exigent exception.
- C. Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this policy does not result in a qualified winning bidder. Inadequate competition conditions must be approved by the Town Manager prior to contract negotiation or award.
- D. Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
- E. Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal or state funds so long as awarding the contract without competition is consistent with state law.

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14th, 2021

SUBJECT: Budget Amendment

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5G
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Tammy Holland, Finance Director

BRIEF SUMMARY:

1. Covid Relief Payment from Buncombe County- To recognize covid relief funds received from the county and budget additional funds in expense lines used to pay for approved covid expenses.

Budget Impact:

Increase Misc. Revenue	10-00-3815-800	\$84,687.91
Increase Capital Outlay-Streets	10-20-5600-730	\$25,000.00
Increase Capital Outlay-Public Buildings	10-00-5000-730	\$28,148.54
Increase Department Supplies-Police	10-10-5100-330	\$1,688.52
Increase M&R Equipment-Fire	10-10-5300-160	\$9,923.73
Increase M&R Equipment-Public Buildings	10-00-5000-154	\$19,927.12

MOTION FOR CONSIDERATION: To approve or deny the budget amendments

ATTACHMENTS: BUDGET AMENDMENT

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



BUDGET AMENDMENT REQUEST FORM

DATE:

05/28/21

BUDGET NUMBER

Fund-Function-Dept-Account Number	Account Desc	DEBIT	CREDIT
10-00-3815-800	Misc Reveune		\$84,687.91
10-20-5600-730	Capital Outlay	\$25,000.00	
10-00-5000-730	Capital Outlay	\$18,963.79	
10-10-5100-330	Department Supplies	\$1,688.52	
10-10-5300-160	M&R Equipment	\$9,923.73	
10-00-5000-154	M&R Equipment	\$19,927.12	
10-00-5000-730	Capital Outlay	\$9,184.75	
Total:		\$84,687.91	\$84,687.91

REASON FOR BUDGET AMENDMENT

Recognize Covid Reimbursement from Buncombe County

Entered by:

Department Head signature:

Budget Adjustments must be approved by the Department Head before being submitted to Finance

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14th, 2021

SUBJECT: Budget Amendment

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5H
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Tammy Holland, Finance Director

BRIEF SUMMARY:

1. The town sold property located at 2992 Hwy 70 in fiscal year 20. The board approved to use the proceeds of this sale to pay down the debt for property located on Black Mountain Ave. A budget amendment is needed to appropriate these funds from existing fund balance in fiscal year 21.

Budget Impact:

Increase Appropriated Fund Balance	10-00-3815-800	\$515,000.00
Increase Debt Principle Black Mountain Ave	10-20-5600-730	\$515,000.00

MOTION FOR CONSIDERATION: To approve or deny the budget amendments

ATTACHMENTS: BUDGET AMENDMENT

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



BUDGET AMENDMENT REQUEST FORM

DATE:

05/27/21

BUDGET NUMBER

Fund-Function-Dept-Account Number	Account Desc	DEBIT	CREDIT
10-00-3905-900	Appropriated Fund Balance		\$515,500.00
10-00-5000-911	Debt Principle Black Mountain Ave	\$515,500.00	
Total:		\$515,500.00	\$515,500.00

REASON FOR BUDGET AMENDMENT

Budget Amendment to pay down debt principle on Black Mountain Ave property with proceeds from the sale of 2992 Hwy 70 property in 2019

Entered by:

Department Head signature:

Budget Adjustments must be approved by the Department Head before being submitted to Finance

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14th, 2021

SUBJECT: Budget Amendment

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5I
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Tammy Holland, Finance Director

BRIEF SUMMARY:

1. The Fire Department is using revenue received in the Special Revenue Fund to purchase exercise equipment for the fire station. A budget amendment is needed to transfer funds from the Special Revenue Fund to the Fire Department operating budget.

Budget Impact:

Increase Transfer Out-Special Revenue Fund	42-00-5000-900	\$20,000.00
Increase Transfer In-General Fund	10-00-3900-900	\$20,000.00

MOTION FOR CONSIDERATION: To approve or deny the budget amendments

ATTACHMENTS: BUDGET AMENDMENT

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



BUDGET AMENDMENT REQUEST FORM

DATE:

05/14/21

BUDGET NUMBER

Fund-Function-Dept-Account Number	Account Desc	DEBIT	CREDIT
42-00-5000-900	Transfer Out	\$20,000.00	
10-00-3900-900	Transfer In		\$20,000.00
Total:		20,000.00	20,000.00

REASON FOR BUDGET AMENDMENT

Transfer of Fire Department Special Revenue Received to purchase fitness equipment for the Fire Station

Entered by:

Department Head signature:

Budget Adjustments must be approved by the Department Head before being submitted to Finance

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14th, 2021

SUBJECT: Budget Amendment

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5J
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Tammy Holland, Finance Director

BRIEF SUMMARY:

1. The Police Department is using revenue received in prior years from US Treasury Forfeiture Division to purchase two patrol vehicles. A budget amendment is needed to appropriate funds from existing fund balance.

Budget Impact:

Increase Appropriated Fund Balance	40-00-3005-900	\$84,500.00
Increase Capital Vehicles	40-10-3005-511	\$84,500.00

MOTION FOR CONSIDERATION: To approve or deny the budget amendments

ATTACHMENTS: BUDGET AMENDMENT

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



BUDGET AMENDMENT REQUEST FORM

DATE:

05/14/21

BUDGET NUMBER

Fund-Function-Dept-Account Number	Account Desc	DEBIT	CREDIT
40-00-3005-900	Appropriated Fund Balance		\$84,500.00
40-10-3005-511	Capital Vehicles	\$84,500.00	
Total:		\$84,500.00	\$84,500.00

REASON FOR BUDGET AMENDMENT

Treasury Forfeiture funds from previous years needed to purchase 2 PD vehicles.

Entered by:

Department Head signature:

Budget Adjustments must be approved by the Department Head before being submitted to Finance



**RESOLUTION
FOR RECEIVING FEDERAL FUNDS
UNDER THE AMERICAN RESCUE PLAN ACT (ARPA) AND AUTHORIZE THE TOWN MANAGER TO
EXECUTE AGREEMENTS AND EXPEND FUNDS ON BEHALF OF THE TOWN**

WHEREAS, the State of North Carolina will appropriate funding from the federal American Rescue Plan Act (ARP A) to fund necessary Coronavirus State and Local Fiscal Recovery Funds; and

WHEREAS, the North Carolina General Assembly will provide for the distribution of funds to eligible municipalities and townships; and

WHEREAS, before receiving a payment, the municipality is required to adopt a resolution affirming that the funds will only be spent on federal guidance related expenses as required under the ARP Act; and

WHEREAS, all transactions related to ARPA funds will be kept in a special revenue account that is not co-mingled with other funds to prevent the accidental inclusion of non-ARP Local Fiscal Relief Funds transactions; and

WHEREAS, there are certain conditions imposed on the allowable expenditure of ARPA grant funds, expenditures are limited to areas including: public health, addressing negative economic impacts, replacing lost revenues, providing premium pay for essential workers, and investing in water, sewer, and broadband infrastructure; and

WHEREAS, the Town of Black Mountain will provide to the State of North Carolina and the US Treasury any unspent balance of the funds received; and

NOW, THEREFORE, BE IT RESOLVED BY THE BLACK MOUNTAIN TOWNCOUNCIL:

- The town of Black Mountain does hereby request American Rescue Plan Act (ARPA) funding to be distributed by the State of North Carolina and by adopting this resolution affirm that the revenue will only be used for the purposes prescribed in the ARPA guidance as described in 31 CFR, Part 35, and any applicable regulations, for necessary expenditures incurred due to the public health emergency connected with the COVID-19 pandemic, budget and certify such to the State Director of Office of Budget and Management and the Town of Black Mountain Finance Officer; and
- The Town of Black Mountain will comply with the procedures created by the North Carolina General Assembly and the US Treasury Department to receive funds under the America Rescue Plan Act.
- That Except where prohibited by ARPA grant requirements, or state or federal laws, the Town Manager is authorized to make and enter into contracts on behalf of the Town to expend the grant funds received.

Duly adopted by the Town Council of Black Mountain on this the 14th day of June, 2021.

Larry B. Harris
Mayor

ATTEST:

Savannah Parrish
Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: June 14, 2021

SUBJECT: Planning Board Vacancy

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8A
Department: Administration
Contact: Savannah Parrish, Town Clerk
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY:

A member of Planning Board recently resigned, leaving a vacancy for an unexpired term ending June 30, 2022. The Planning Board reviewed applications for the unexpired vacant seat. The Planning Board voted 5-1 to recommend Shawn Slome for appointment to the unexpired vacant seat with Pam Norton voting against.

MOTION FOR CONSIDERATION:

To appoint _____ to fill an unexpired term ending June 30, 2022 by a vote of _____ for and _____ against

ATTACHMENTS:

Planning Board Applications

MANAGER'S COMMENTS AND RECOMMENDATIONS:



Town of Black Mountain

160 Midland Avenue, Black Mountain, NC 28711

Phone (828) 419-9300 Fax (828) 669-4204

TDD 800-735-2962

www.townofblackmountain.org



The Town of Black Mountain Board of Aldermen have adopted this application for use by individuals interested in appointment to the Town's advisory boards and commissions. To ensure that your application will receive full consideration, please answer all questions **completely**. Incomplete applications will **NOT** be considered. Applications accepted through **Friday April 24, 2020 by 5:00 p.m.** to the Town Clerk.

Return this application either in person, by mail/fax/email to: Town Clerk, Town of Black Mountain, 160 Midland Ave., Black Mountain, NC 28711. townclerk@townofblackmountain.org Fax (828)669-4204

APPLICANT INFORMATION

NAME: Joe Landenslayer DATE: 7/3/2020

PREFERRED NAME: _____

HOME ADDRESS: 724 Azalea Ave, Blk. Mtn. NC 28711

MAILING ADDRESS (if different): PO Box 1437

CITY, STATE and Zip: Blk. Mtn. NC 28711

Do you live inside the town limits of Black Mountain? Yes ☒ No _____

EMAIL ADDRESS (this is mainly how we will communicate with you): josephgerard@bellsouth.net

PHONE NUMBER(S): MAIN 828-712-3895 EMERGENCY 828-712-3896

ADVISORY BOARD/COMMISSION PREFERENCE

Please list the name of the board or commission to which you are applying or seeking reappointment. (You may apply for more than one, however you must submit a separate application for each board or commission you apply for.) Applicants will only be considered for one board or commission seat.

Board or Commission: Planning Board Are you seeking re-appointment? Yes _____ No X

Why do you wish to serve the Town (or continue serving) in this capacity?
If additional space is needed please attach a separate sheet.

see attached

EDUCATION & CERTIFICATIONS

Please list your educational background and any certifications you have. Include names of all schools attended.

see attached

EXPERIENCE & CIVIC INVOLVEMENT

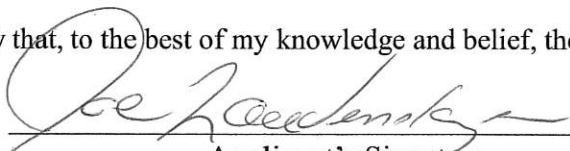
Please describe any experience you have that would contribute to the purpose of the Board or Commission in which you are applying. Please list the names of all civic organizations in which you currently hold membership.

See attached

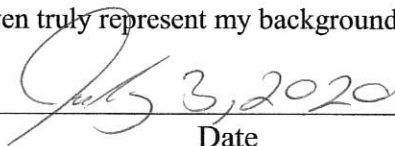
CERTIFICATE OF APPLICANT

This application is a public record.

I certify that, to the best of my knowledge and belief, the statements given truly represent my background and experience.



Applicant's Signature



Date

Thank you for your interest in appointment to the Town of Black Mountain's Boards and Commissions. Individuals selected for appointment by the Board of Aldermen will assume their position on the date of Board of Aldermen approval and after they are sworn in. The Town Clerk will contact you to make arrangements for swearing in. All Town of Black Mountain Advisory Boards and Commissions must operate by the ethics, policies and laws set forth in the Boards & Commissions Handbook.

The Handbook and additional information may be viewed on the Town's website at
www.townofblackmountain.org

Continuation of application to the Planning Board

Joe Laudenslayer

Question: Why do you wish to serve the Town in this capacity?

I moved to Blk. Mtn. in 1995. I purchased commercial property in the downtown area and a home where I lived for 11 years. During this time, I served as president of a downtown merchants' association called Business to Business from 1996 to 2000. I served as president of the Chamber of Commerce from 2002-2004 (thereabouts). After this, I served as a member of the Planning Board for 5 years.

I 2006, I built a new home just outside of town limits and I was no longer eligible to serve on any committee or board in town. I recently have moved back within town limits and I am looking to get involved again.

We have seen growth of our town through the years and it has been good for residents and those who visit our town. I'd like to join the planning board and continue to encourage smart growth that doesn't take away from the characteristics of Blk. Mtn. that make it a special place to live.

Education and Certifications:

Graduated Kenmore East High School and after that, I completed trade school. This enabled me to become self-employed at age 23 and I have been successfully self-employed since.

Experience and Civic Involvement:

- Self-employed business owner who works with the public
- Past president of downtown merchants' association, Business to Business
- Past president of Chamber of Commerce
- Past member of the Planning Board (served 5 years)



Town of Black Mountain

160 Midland Avenue, Black Mountain, NC 28711

Phone (828) 419-9300 Fax (828) 669-4204

TDD 800-735-2962

www.townofblackmountain.org



The Town of Black Mountain Board of Aldermen have adopted this application for use by individuals interested in appointment to the Town's advisory boards and commissions. To ensure that your application will receive full consideration, please answer all questions **completely**. Incomplete applications will **NOT** be considered. Applications accepted through **Monday December 7, 2020 by 5:00 p.m.** to the Town Clerk.

Return this application either in person, by mail/fax/email to: Town Clerk, Town of Black Mountain, 160 Midland Ave., Black Mountain, NC 28711. townclerk@townofblackmountain.org Fax (828)669-4204

APPLICANT INFORMATION

NAME: Shawn Slome DATE: 12/01/2020

PREFERRED NAME: Shawn Slome

HOME ADDRESS: 115 3rd Street

MAILING ADDRESS (if different): _____

CITY, STATE and Zip: Black Mountain, NC 28711

Do you live inside the town limits of Black Mountain? Yes x No _____

EMAIL ADDRESS (*this is mainly how we will communicate with you*): shawn.slome@gmail.com

PHONE NUMBER(S): MAIN 919-491-1217 EMERGENCY 919-815-6445

ADVISORY BOARD/COMMISSION PREFERENCE

Please list the name of the board or commission to which you are applying or seeking reappointment. (You may apply for more than one, however you must submit a separate application for each board or commission you apply for.) Applicants will only be considered for one board or commission seat.

Board or Commission: Planning Are you seeking re-appointment? Yes _____ No x

Why do you wish to serve the Town (or continue serving) in this capacity?

If additional space is needed please attach a separate sheet.

As a Black Mountain resident, I greatly appreciate the qualities that make our town a great place to live.
I am interested in supporting our community by helping the town make sound and wise decisions relating to the issues that come before it.

As a former retail business owner, I understand the importance of supporting a vital local economy and having a healthy tax base.
As a former commercial real estate broker and investor, I appreciate the need to balance responsible and managed growth with market forces.

Having recently retired, I have time to devote to the demands of serving on a town board or committee.
My own principle of putting fairness ahead of self interest will support giving a chance for all voices to be heard and considered.

I enjoy being of service and I believe I can contribute to the betterment of our town.

EDUCATION & CERTIFICATIONS

Please list your educational background and any certifications you have. Include names of all schools attended.

BA in Biology UNC-Chapel Hill

Real Estate Brokerage License - Inactive

Mediation and Facilitation Training with the Dispute Settlement Center of Durham

Retail business TWIG Green Living was awarded the Best Small Business for 2011 by the Triangle Business Journal

EXPERIENCE & CIVIC INVOLVEMENT

Please describe any experience you have that would contribute to the purpose of the Board or Commission in which you are applying. Please list the names of all civic organizations in which you currently hold membership.

Organized and helped implement the Black Mountain Board of Alderman Candidates forum hosted by Indivisible Black Mountain. Serves as a business mentor with SCORE Asheville and is liaison to the Black Mountain Chamber of Commerce.

Volunteer and member of the Development Committee of Bounty and Soul.

Volunteer at the Dr. John Wilson Community Garden of Black Mountain.

Pre-covid served on the staff at the Kiwanis Thrift Shop as well as with the Black Mountain Children's Home Thrift Shop.

Pre-election, managed the voter registration drive for DemocracyNC in Black Mountain.

Served on the Chapel Hill / Carrboro Chamber of Commerce board of directors and was awarded the Chair's Award for Excellence in Service to the Chamber for leadership and Board service to the Chamber 2013-2019.

Member of the Board of Directors of the PTA Thrift Shop in Carrboro, NC

Founded and operated successive retail and wholesale retail businesses spanning 26 years.

CERTIFICATE OF APPLICANT

This application is a public record.

I certify that, to the best of my knowledge and belief, the statements given truly represent my background and experience.

Shawn Slome

Applicant's Signature

Decmeber 4, 2020

Date

Thank you for your interest in appointment to the Town of Black Mountain's Boards and Commissions. Individuals selected for appointment by the Board of Aldermen will assume their position on the date of Board of Aldermen approval and after they are sworn in. The Town Clerk will contact you to make arrangements for swearing in. All Town of Black Mountain Advisory Boards and Commissions must operate by the ethics, policies and laws set forth in the Boards & Commissions Handbook.

The Handbook and additional information may be viewed on the Town's website at

www.townofblackmountain.org

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 14, 2021

SUBJECT: Agreement with Buncombe County for provision of, and payment for, Fire Protection, Ambulance and Rescue Services in the East Buncombe Fire District

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8B
Department:	Town Attorney
Contact:	Town Attorney
Presenter:	Town Attorney

BRIEF SUMMARY: The Town contracts with Buncombe County to provide fire protection services, first responder services, emergency rescue services within the East Buncombe Fire District, as well as operational locations and first responder assistance to ambulance services in that fire district. The proposed agreement renews and updates that agreement.

MOTION FOR CONSIDERATION: To approve the Agreement for Fire Protection, Ambulance and Rescue Services within the East Buncombe Fire District

FUNDING SOURCE: N/A

ATTACHMENTS: Proposed agreement

MANAGER'S COMMENTS AND RECOMMENDATIONS:

STATE OF NORTH CAROLINA

AGREEMENT FOR
FIRE PROTECTION, AMBULANCE and RESCUE SERVICES
COUNTY OF BUNCOMBE

THIS AGREEMENT ("Agreement") is dated as of 1st day of July, 2021, and is by and between BUNCOMBE COUNTY, NORTH CAROLINA, a public body politic and corporate of the State of North Carolina ("County"), and the Town of Black Mountain, a North Carolina Municipal Corporation, by and through its Black Mountain Fire Department (Town and Fire Department collectively hereinafter referred to as "Department").

Whereas, in 2016 the County took actions to create and establish nineteen (19) coterminous Service Districts for purposes of Fire Protection Services as well as Ambulance and Rescue Services ("Service Districts") in Buncombe County pursuant to North Carolina General Statutes Article 16, Chapter 153A.

Whereas, pursuant to GS §153A-233 a county may contract for fire fighting and fire prevention services with a city and may for these purposes appropriate funds not otherwise limited by state law.

Whereas, pursuant to GS §160A-293 a city is authorized to provide fire protection services to rural or unincorporated areas pursuant to an agreement with a county.

Whereas, the Department agrees to contract with County to provide fire protection and other emergency services in the East Buncombe Fire Protection & Ambulance and Rescue Service District ("District").

Whereas, Chapter 159 of the North Carolina General Statutes provides that the county budget ordinance may be in any form that the Board of County Commissioners of any county deems most efficient in enabling it to make the fiscal policy decision embodied therein and provides for a fund for each special district whose taxes are collected by the County.

Whereas, County levies and collects a special tax in the East Buncombe Fire Protection & Ambulance and Rescue Service District and is responsible for appropriating the funds derived therefrom for fire protection and other services in said District.

Whereas, County and Department desire to enter into this agreement for the Department to furnish fire protection and other emergency services within the District.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable considerations, the parties hereto contract and agree as follows:

1. This Agreement shall be valid for a term of three (3) years, beginning July 1, 2021, and may be extended for an additional term of the same number of years upon written request of Department which shall include certification that Department has been continuously in

compliance with the requirements of the Office of State Fire Marshal and, if the Department has contracted to provide emergency medical and/or ambulance services, certification will be provided that all county Emergency Medical System ("EMS") and North Carolina Office of EMS requirements have been complied with.

2. For each fiscal year, County agrees to appropriate and make funds available to the Department from the special tax levied in the said District. The amount of such service tax levy shall be determined by the Board of the County Commissioners from year to year based on the needs projected in the budget request jointly submitted by the Department and the County staff to the County Commissioners and as approved by and deemed necessary by the County Commissioners for furnishing fire protection and other emergency services within the District. The County will collect the funds from the special tax as may be levied as provided by law.

3. The funds collected by the County as a result of the tax collected in the District and the ail-responding sales tax revenue due to the District will be paid over to said Department by the last day of each month. Ad valorem property tax amounts will be distributed to the Department in equal monthly installments throughout the fiscal year. For purposes of this agreement, "equal monthly installments" shall be defined as 1/12th of the budgeted ad valorem tax for that fiscal year. The method for distributing Registered Motor Vehicle and Sales Taxes will continue to be to be distributed to the Department by the last day of each month as collected throughout the fiscal year. The County shall pay the Department all taxes which are levied and collected by the County for the District.

4. Department will furnish fire protection and first responder emergency medical services up to the EMT intermediate level under this contract and other emergency services as part of the Buncombe County EMS System. Department shall provide the necessary equipment, personnel and those things necessary for furnishing fire protection and the emergency services it performs for the District. The services provided shall be in accordance with minimum requirements from OEMS and State Fire Marshal.

5. The tax levied and collected by the County and paid to the Department by the County shall be used for fire department operations, fire protection and other emergency services for the District and other areas of response as dispatched and to meet the standards established by this agreement.

6. The Department will provide the County with a copy of the Town Audited Annual Comprehensive Financial Report annually.

7. Further, the Department agrees to comply with the County budgeting procedures and other procedures provided for by state law. Budget procedures and deadlines will be determined during the County's annual budget process, generally being communicated by the Buncombe County Budget Office to the Department by mid-March of every calendar year during the term of this Agreement. The Department agrees to submit budget estimates at a minimum of category level (e.g., personnel expenses, operating expenses, capital, etc.) with requested tax rate clearly stated to the Buncombe County Budget & Management Services Office by the budget submission

deadline provided. Should the Department fail to provide the required budget estimates by April 20th of any calendar year then the tax rate for the District will automatically default to the rate in effect for the preceding fiscal year.

8. The Town shall deposit and record the taxes levied and collected in a separate Special Revenue Fund for use by the Town to render the fire protection and other emergency services to the District. Financial reporting should allow reconciliation between municipal and nonprofit revenues and expenditures. If the County determines that the Department has failed to render the fire protection and other emergency services to the District as provided in this Agreement, then the County shall give the Department ninety (90) days advance written notice that the funds allocated are subject to suspension. If during the said ninety (90) day period, the Department makes improvements satisfactory to the County, no suspension shall occur. During the ninety (90) day grace period, the Department is not relieved of its responsibility to provide fire protection and other emergency services in a manner otherwise consistent with the terms of this Agreement.

9. The Department shall use the funds subject to this Agreement in accordance with the annual Department Budget. The parties further agree as follows:

1. The Department agrees to utilize a formal bidding processes in compliance with North Carolina laws.
2. The Department and County agree that the purchase via state contract or "add-on" purchase to a contract competitively bid by another department party to this Agreement, or by another North Carolina unit of government meets the requirements of this section.
3. Department and the County agree that, in the event of a bona fide emergency, the Department may proceed with emergency purchases without Seeking formal or informal bids as described herein.

10. The Department shall obtain and keep in force during the term of this agreement the following minimum insurance coverage:

- a. Worker's Compensation — at the statutory limits in compliance with applicable State and Federal laws. The Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.
- b. Employer's Liability - with minimum limits of \$1,000,000 each accident/ \$1,000,000 disease each employee/ \$1,000,000 disease policy limit.
- c. Commercial General Liability - covering all operations performed by the Contractor with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate.
- d. Professional Health Care Liability - covering the Contractor's acts, errors, or omissions in the rendering of or failure to render professional health care services with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate
- e. Business Automobile Liability - covering all owned, non owned, and hired vehicles

used in performance of the contract. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/under insured motorist coverage per NCGS 20-279.21.

- F. Excess or Umbrella Liability — shall extend an additional \$1,000,000 limit / \$3,000,000 aggregate over the underlying commercial general liability, professional health care liability, and business auto liability insurance. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

11. The Department shall provide the County with certificates of insurance evidencing the above amounts. The liability certificates shall name Buncombe County as additional insured under the policies. The certificates shall provide that policies shall not be canceled or changed until thirty (30) days written notice has been given to the County. All insurance shall be procured from reputable insurers authorized to do business in North Carolina.

12. Providing and maintaining adequate insurance coverage is a material obligation of the Department and is of the essence of this contract. The Department may meet its requirements of maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. The Department shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Department shall not be interpreted as limiting the Department's liability and obligations under the contract.

13. The Department shall take all actions as required to meet and maintain a 95 Rating for Initial Certification/Re-Inspection of Fire Departments in North Carolina, or better, with the North Carolina Department of Insurance.

14. The Department shall continuously comply with all applicable laws, ordinances and regulations. In particular, all fire protection services of Department shall comply with the requirements of the Office of State Fire Marshal as well as provisions of the North Carolina Administrative Code, Title 11, Department of Insurance, Chapter 5, Fire and Rescue Services Division, as same may be updated, amended or replaced from time to time to time. Cases in which the Department loses or receives a reduced rating will be examined by the County Department of Emergency Services.

15. Because of the Department's reliance on public funds for its operations, the public has a continuing interest in the Department's planning and decision-making processes. To ensure public trust, the Department agrees to develop and maintain a (5) Year Capital Plan. The Capital Plan will provide a documented inventory of all of the Department's buildings, vehicles and equipment with a single unit cost greater than a specific threshold that is defined by the Fire Department. Additionally, the plan will project future capital needs of the Department for at least five future years The Capital Plan should be updated annually and reflect the following information:

- a. Item Type (e.g., building, vehicle, equipment)
- b. Item description (e.g., location, make, model)
- c. Date of Purchase
- d. Acquisition Price
- e. Age of Equipment
- f. Estimated Replacement Date
- g. Estimated Cost to Replace the Item
- h. Method to Replace the Item (e.g., Bank Financing, Reserves)

16. Because of the Department's extensive reliance on public funds for its operations, the public has a continuing interest in the Department's current debt. The Department agrees to develop and maintain a Debt Schedule. The Debt Schedule will provide a documented inventory of all Departmental debt including, but not limited to, bank loans, equity lines, credit cards, and other financing instruments. The Debt Schedule should be updated annually and reflect the following information:

- a. Debt Type (e.g., loan, credit)
- b. Debt Purpose (e.g., building, vehicle)
- c. Date of Debt Origination
- d. Debt Balance
- e. Estimated Debt Payoff Date

17. The Department agrees to actively participate in future assessment and study of Fire District Personnel Classification and Compensation structures. The Classification and Compensation structure will be developed with input from the Departments during a County-sponsored Salary Study to be completed by the completion of this agreement.

18 All documentation requested in this Agreement shall be sent electronically to FireDistricts@buncombecounty.org . Buncombe County will work with Departments to establish a template and/or format for documentation required in this agreement.

19. The Department shall continuously comply with all applicable laws, ordinances and regulations. In particular, all emergency medical, rescue, and/or ambulance services of Department shall comply with all such services requirements of the Department of Health and Human Services as well as pertinent provisions of the North Carolina Administrative Code, Title 10A, Department of Health and Human Services, Chapter 13, NC Medical Care Commission, Subchapter 13P, Emergency Medical Services and Trauma Rules, as same may be updated, amended or replaced from time to time. Also, the Department must be continuously in compliance with all County EMS and the North Carolina Office of EMS requirements and retain all necessary' licenses and permits from the North Carolina Office of EMS.

20. Department shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, the performance of this Agreement or the actions of the Department its officials, employees, or students under this

Agreement up to the limits of its insurance. Department shall indemnify the County in all instances except where the County IS primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. And, that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

21. Termination for Convenience. This Agreement may be terminated by either party at the end of any fiscal year by giving written notice of intent to terminate to the other party at least one hundred eighty (180) days prior to the expiration of the then current fiscal year.

22. Termination for Cause. In the event that Department fails to maintain applicable certifications and applicable permits from the Office of State Fire Marshal and/or the North Carolina Office of EMS and/or should Department be in default of any of the terms of this Agreement or should any unsatisfactory condition make the termination of this Agreement in the best interests of the District then this Agreement may be terminated by County by giving Department sixty (60) days advance written notice of termination.

23. Confidentiality. Department acknowledges that the County by law must comply with Chapter 132, Public Records, of the North Carolina General Statutes. The County may be required to disclose and provide to any third party that makes a public record request for any information, data, instruments, documents, studies or reports prepared or assembled by the Department and provided to the County in compliance with this Contract. As provided in GS §132-1.2, Confidential Information, the Department may designate or indicate as "confidential" or as a "trade secret" any information it provides to the County at the time of the Department's initial disclosure of any information to the County. Information in the custody of the County that meets the criteria of GS §132-1.2 would not be disclosed to a third party by the County.

24. Governing Law. The parties intend that this Agreement shall be governed by the law of the State of North Carolina as follows:

a. Mediation

- I. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter.
- ii, The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

b. Legal Proceedings

- I. Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina:

25. Miscellaneous.

- a. Notice. Except as otherwise provided in this Agreement, all notices and communications required to be sent pursuant to the terms of this Agreement shall be in writing and shall be delivered by hand delivery, email, certified mail, return receipt requested, or by Federal Express or similar overnight courier service, addressed as follows: County: County Manager, 200 College Street, Asheville NC 28801, Or email to: _____; Department: Town Manager, 106 Midland Avenue, Black Mountain, NC 28711, or email to Josh.Harrold@townofblackmountain.org. All such notices and other communications, which are addressed as provided in this Paragraph, shall be effective upon receipt. The parties hereto may from time to time change their respective addresses for the purpose of notice to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents.
- b. Whole Agreement. This Agreement contains all of the agreements and representations between the parties with respect to the subject matter hereof. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both parties.
- c. Severability/Survival. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect. The covenants contained in this Agreement, which by their terms require their performance after the expiration or termination of this Agreement, shall be enforceable notwithstanding the expiration or termination of this Agreement.
- d. Execution. This Agreement shall only become binding when signed by both Department and County. The parties intend that emailed signatures constitute original signatures and that an email-transmitted Agreement containing signatures of the parties is binding on the parties having signed such email-transmitted Agreement. The parties agree that the Uniform Electronic Transactions Act shall be applicable and enforceable as to such execution and delivery.
- e. Duplicate Counterparts. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement.

The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

- f. Authority. The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of Town and County, to grant the rights granted under this Agreement, and to undertake the obligations undertaken in this Agreement.

- g. Captions. The captions or headings in this Agreement are inserted only as a matter of convenience and for reference and they in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.

Attest:

Town of Black Mountain
By: _____
Mayor

Town Clerk

Attest:

County of Buncombe
By: _____
County Manager

County Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 14, 2020

SUBJECT: Black Mountain Greenways and Trails Committee Pollinator Garden Proposal

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 8C
Department: Administration
Contact: Savannah Parrish, Town Clerk
Presenter: Ann Lutz, BMGTC

BRIEF SUMMARY: Proposal for renovation of garden strip on Charlotte Street that is part of the Village Greenway. Village Greenway is a short, safe passage between the Primary and Elementary Schools. The section under discussion runs behind the Super 8 Motel.

MOTION FOR CONSIDERATION: To approve or deny the proposal.

FUNDING SOURCE: N/A

ATTACHMENTS: N/A.

MANAGER'S COMMENTS AND RECOMMENDATIONS: \

To: Town Council

From: Black Mountain Greenways and Trails Committee. (BMGTC)

Date: 5-22-2021

Proposal for renovation of garden strip on Charlotte Street that is part of the Village Greenway. Village Greenway is a short, safe passage between the Primary and Elementary Schools. The section under discussion runs behind the Super 8 Motel.

This section has been problematic as far as maintaining the plantings due to invasive grasses. Attempts to weed and plant in this area are hindered, making the area unsightly. Replanting will decrease the maintenance needs as this area will require little mowing.

The BMGTC seeks permission to replant this area as a Pollinator Garden. The Pollinator Garden could become an educational area for the schools through the use of a National Wildlife Federation curriculum.

Timeline: June to destroy invasive grasses.

July to seed hard fescue grass.

Fall to seed and plant perennial pollinator plants.

Execution of project by Emily Sampson and BMGTC volunteers.

Steps: Town or volunteers to mow grass on this section of Village Way prior to application of Vantage to kill grass. Emily Sampson will apply Vantage. Reapplication if needed. Vantage has been used in other Town projects and has a 12 hour re-entry from application. Recommend signage to alert public to the project prior to spray.

Volunteers will remove remaining burdock and other invasives.

Volunteers will seed hard fescue and water for about 2 weeks for germination. May need town water delivery or use nearby Motel water if possible.

Volunteers will plant fall perennials.

Coordinate with Public Works regarding mowing restrictions once the garden is installed.

Budget: costs expected to be under \$3,000.00. Funds donated by BMGTC.

A second phase may be proposed for the remaining greenway section near the creek in 2022.

Thank you for your consideration.

Ann Lutz

BMGTC



TOWN OF BLACK MOUNTAIN

Agenda Item Summary

Meeting Date: June 14th, 2021

SUBJECT: American Rescue Plan Grant Funding

AGENDA INFORMATION

Agenda Location: New Business
Item Number: 8D
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Tammy Holland, Finance Director

BRIEF SUMMARY:

The American Rescue Plan Act of 2021 provides grant funding for projects that relate directly to COVID-19 recovery efforts. The Town of Black Mountain will receive \$2,390,000 in grant funds from the American Rescue Plan. This agenda item has been prepared to create a Grant Project Fund Ordinance for the American Rescue Plan Act transactions. The budget ordinance appropriates \$2,390,000 for Council to expend over four years (through December 31, 2024) for projects and initiatives that meet the legal requirements of the grant funds.

An additional agenda resolution accepts the funding from the State of North Carolina and authorizes the Town Manager to expend funds on behalf of the Town Council in a manner that meets grant fund requirements.

MOTION FOR CONSIDERATION: Request for Town Council to adopt a grant project ordinance for the American Rescue Plan Project establishing a multi-year fund authorizing \$2,390,000 in appropriations and grant revenue required for the completion of the project in accordance with the requirements set forth by the American Rescue Act of 2021 grant requirements and all relevant North Carolina state statutes.

ATTACHMENTS: Ordinance

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



Ordinance # O-21-09

**Town of Black Mountain
Grant Project Fund Ordinance
for the American Rescue Plan Act**

Be it ordained by the Town Council of the Town of Black Mountain that, pursuant to Chapter 159 of the General Statutes of North Carolina, The Local Government Budget and Fiscal Control Act provides alternative budget methods to account for capital or grant projects. A local government may, in its discretion, authorize and budget for a capital project or a grant project in a project ordinance adopted pursuant to G.S. 159-13.2. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year; and the following Grant Project Fund Ordinance is hereby adopted as follows:

Section 1. The project authorized will be the Town of Black Mountain ARPA Grant Project.

Section 2. The Finance Officer is hereby directed to account for all American Rescue Plan receipts by means of a Grant Project fund established pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes. Funds from American Rescue Plan may be expended only for those authorized in the American Rescue Plan Act and in accordance with subsequent guidance from the US Treasury and the NC Local Government Commission.

Section 3. The project will be completed in accordance with the requirements set by the American Rescue Act of 2021 grant requirements and all relevant North Carolina state statutes.

Section 4. The Grant Project Fund is to remain operational for a period not to exceed five years.

Section 5. The Finance Director is authorized to create a multi-year Grant project fund to account for the project.

Section 6. The following anticipated grant revenues are hereby adopted for the American Rescue Plan Grant Project Fund:

<u>Project/Fund Name</u>	<u>Account Number</u>	<u>Account Name</u>	<u>Revenue Amount</u>
America Rescue Plan Act	49-00-0000-300	Grant Revenue	\$2,390,000

Section 7. The following anticipated appropriations are hereby adopted for the American Rescue Plan Grant Project Fund:

<u>Project/Fund Name</u>	<u>Account Number</u>	<u>Account Name</u>	<u>Expenditure Amount</u>
America Rescue Plan Act	49-00-5000-900	Transfer Out for Capital Projects	\$2,390,000

Section 8. The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable

Section 9. Copies of this grant project ordinance shall be furnished to the Town Clerk, the Town Manager and the Finance Director for the direction in carrying out this project.

Section 10. Authorized project expenditures represent appropriations necessary for the completion of projects and therefore do not require re-appropriation in any subsequent fiscal year. However, per G.S. 159-13.2 information on project ordinances will be included in the annual budget. Each year the finance officer shall include in the budget, information in such detail as he or the governing board may require concerning each grant project or capital project. This information will be detailed for any new project funds expected to be authorized by project ordinance during the budget year and also include information on projects authorized by previously adopted project ordinances which have remaining appropriations available for expenditure during the budget year.

Duly adopted by the Town Council of Black Mountain on this the 14th day of June, 2021.

Larry B. Harris
Mayor

ATTEST:

Savannah Parrish
Town Clerk

**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION**

Meeting Date: June 14, 2021

Continued from the May 10, 2021 Meeting

SUBJECT: Public Hearing for Text Amendments to Open Space Requirements in Major Subdivisions **#O-21-04**

AGENDA INFORMATION

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

BRIEF SUMMARY: The proposed amendment increases the amount of open space requirements for major subdivisions. The amendment changes the requirement from five percent to fifteen percent and addresses feedback from citizens about providing more greenspace and open space for developments. The Planning Board voted 7-0 to recommended the amendment at their March 22, 2021 meeting and determined that the amendment is consistent with the comprehensive plan because it calls for more open and greenspace and is reasonable and in the public interest because it incorporates concerns from citizens to have more greenspace in developments.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-21-04*** for amendments to open space requirements in major subdivisions.
2. To close the public hearing.
3. To adopt ***Ordinance #O-21-04*** (statement of consistency included) as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance # O-21-04***

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve ***Ordinance #O-21-04*** as presented.

ORDINANCE #0-21-04

AN ORDINANCE TO AMEND CHAPTER 3, SECTION 3.5.6, OPEN SPACE REQUIREMENTS (MAJOR SUBDIVISIONS ONLY), OF THE TOWN OF BLACK MOUNTAIN LAND USE CODE

WHEREAS, the Town of Black Mountain Planning Board is charged with reviewing and updating land use planning, zoning and subdivision regulations; and

WHEREAS, the Planning Board made a commitment to the Town Council to review the text of the Land Use Code in the years since its adoption to address any residual inconsistencies in the text and to look for opportunities to clarify or improve text; and

WHEREAS, upon recommendation of the Planning Board, the following text amendments are consistent with the comprehensive plan and reasonable in the public interest because it incorporates concerns from citizens and requires more open and green space for subdivisions;

WHEREAS, the Town of Black Mountain has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety and welfare; and

WHEREAS, the Town Council find that the land use code text amendment is reasonable and in the public interest because of the following findings:

- Incorporates feedback from citizens to require more open and green space for subdivisions

WHEREAS, the Town Council find that this amendment is consistent with the Town of Black Mountain Comprehensive Plan 2014 update in the following ways:

- Vision Statement 4: Recreation, Parks, and Open Space – requires more open and green space for subdivisions which can be used for passive recreational areas

WHEREAS, after notice duly given, a public hearing was held on May 10, 2021, as part of the regularly scheduled Town Council meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, BE IT RESOLVED that Chapter 3, Section 3.5.6, of the Town of Black Mountain Land Use Code, be amended with the following (additions are underlined in bold and deletions are shown as red struck text):

Chapter 3

Section 3.5.6 – Open space requirements (major subdivisions only).

- A. All major subdivisions must dedicate the equivalent of ~~five~~ **15** percent of the total land area of the original parcel or combination of parcels used in the subdivision as dedicated, common open space.
- B. Designation of easements to the town for parks or greenways according to the town's pedestrian plan, greenway master plan or recreation and parks plan may qualify for the dedicated open space requirements but must be approved by the planning board.
- C. Land designated as open space on a final plat shall be dedicated to a neighborhood association or other entity, or shall be considered to be offered for dedication to the town. The town may accept control of the open space through:
1. Express action by the ~~board of aldermen~~ **town council**;
 2. Approval of the final plat with areas specifically dedicated to the Town of Black Mountain for the purpose of open space, park and/or greenway development as accepted by the ~~board of aldermen~~ **town council**; or
 3. Conveyance of fee simple marketable title (unencumbered financially and environmentally) to the property to the town at the time of final plat recordation, subject to approval by the ~~board of aldermen~~ **town council**.
 4. Until such time as the dedication has been accepted, land so offered may be used for open space purposes and be maintained by the underlying or abutting property owner or similarly by an owners' association. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use.
- D. Requirements concerning land dedicated to the town for recreational purposes. The ~~board of aldermen~~ **town council** must approve property dedications being offered to the town for parks and greenways facilities at the time of final plat approval. The ~~board of aldermen~~ **town council** may request review by the recreation and parks commission before making their determination. Dedications should meet the following criteria:
1. Unity. Dedicated area shall form a single parcel of land, except where the ~~board of aldermen~~ **town council** determines that two or more parcels or a linear easement across multiple parcels would be in the best interest of the public given the type and distribution of space needed to serve the development. In such cases, the ~~board~~ **council** may require that such parcels be connected by a dedicated strip of land or **access easement** be at least 20 feet in width ~~or that an easement for access be granted.~~
 2. Usability. At least on-half of the total land dedicated shall be located outside of areas of special flood hazard, alluvial soils, lakes or other water bodies, and at least 75 percent of the total land dedicated shall be located outside of wetlands. Land dedicated only for greenways need not follow the requirements of this subsection.
 3. Shape. Dedicated land shall be sufficiently shaped and proportional to be usable for proposed recreational facilities and activities, such as greenways, athletic fields, playground area, tennis courts, swimming pools, etc.
 4. Access. Public access to dedicated land shall be provided by adjoining street frontage or by a dedicated public easement which connects the dedicated land to a public street or right-of-way, or from adjacent property, as determined by the ~~board of aldermen~~ **town council**.
 5. Greenway dedications shall be a minimum of 15 feet in width.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 10th day of May, 2021.

Larry Harris, Mayor

ATTEST:

Savannah Parrish, Town Clerk

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: June 14, 2021

SUBJECT: Public Hearing to Create a Stormwater Utility Ordinance

#O-21-06

AGENDA INFORMATION

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

BRIEF SUMMARY: The stormwater utility ordinance is being created to comply with the NPDES permit.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-21-06*** to create a stormwater utility.
2. To close the public hearing.
3. To adopt ***Ordinance #O-21-06*** as presented [or as amended]

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance # O-21-06***

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt ***Ordinance #O-21-06*** as presented.

ORDINANCE #0-21-06

AN ORDINANCE TO ESTABLISH A STORMWATER MANAGEMENT UTILITY

WHEREAS, Article XIV, Section 5 of the Constitution of North Carolina provides, “it shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions ... to control and limit the pollution of our air and water”; and

WHEREAS, The Town of Black Mountain values protecting and preserving the natural resources that are a benefit to its citizens and an important aspect of the Town’s heritage and identity; and

WHEREAS, Section 402(p) of the Federal Clean Water Act requires that local governments obtain and comply with the terms of National Pollutant Discharge Elimination System (“NPDES”) permits for stormwater discharges from municipal storm sewer systems; and

WHEREAS, the North Carolina Department of Environmental Quality issued to the Town of Black Mountain a Notice of Violation on February 28, 2020, for noncompliance with the requirements of the Town of Black Mountain’s NPDES Municipal Separate Storm Sewer System Permit (“MS4 Permit”); and

WHEREAS, the Town of Black Mountain is required to cure the existing violations of its MS4 Permit by developing a stormwater management plan addressing all known compliance deficiencies, including those detailed in the audit report; and

WHEREAS, the audit report found that the Town of Black Mountain was deficient in maintaining “adequate funding and staffing to implement and manage the provisions of the Stormwater Plan and meet all requirements of the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit”; and

WHEREAS, the Town of Black Mountain Town Council adopted a resolution on May 11, 2020 acknowledging “the requirement to provide adequate funding and staffing to implement a Stormwater Management Program that complies with its NPDES MS4 Permit and approved Stormwater Management Plan”; and

WHEREAS, the Town of Black Mountain’s stormwater management program funding is insufficient to provide the construction, maintenance and administration of appropriate infrastructure including conveyance systems, stormwater management controls and programming efforts required to comply with the requirements of the MS4 Permit; and

WHEREAS, establishing a Stormwater Management Utility will facilitate the establishment of an effective Stormwater Management Program as required by the MS4 Permit and would be reasonable and in the best interest of the public.

NOW, THEREFORE, BE IT ORDAINED that there is hereby established a Stormwater Management Utility for the Town of Black Mountain; and

BE IT FURTHER ORDAINED that the Stormwater Management Utility shall be managed and administered in accordance with the policies and procedures hereinafter set forth; and

BE IT FURTHER ORDAINED that the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended by adding new sections in Article IV of Chapter 48, to be numbered 48—241 – 48-249, which sections read as follows:

Section 48-241 thru -249. Reserved.

BE IT FURTHER ORDAINED that the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended by adding an Article in Chapter 48, to be numbered Article V, which is to read as follows:

Article V. – STORMWATER

Division 1. – Generally

Sec. 48-251. Purpose

It is the purpose of this section to establish a stormwater management utility and an associated stormwater management enterprise fund as an identified fiscal and accounting fund to finance the cost of comprehensively addressing the stormwater management needs of the town and its citizens. This Article provides a schedule of rates, fees, charges, and penalties necessary to assure that all aspects of the stormwater management program are managed in accordance with all federal, state and local laws, rules, and regulations.

Sec. 48-252. Establishment

- (a) **There is hereby established a stormwater management utility to provide for the management, protection, control, regulation, use, construction, and enhancement of the Town's stormwater system and facilities. The utility will be administered by the Planning Director, who shall, with consent of the Town Manager, have the authority to designate another town employee, within or without the planning department, to carry out those duties and responsibilities required for management of the utility and the programs it administers.**

Sec. 48-253. Jurisdiction

The boundaries and jurisdiction of the stormwater management utility shall extend to the corporate limits of the town, including all areas hereafter annexed thereto.

Sec. 48-254. Definitions

For purposes of this Article, words, terms, and phrases used herein shall have the meaning giving to them in Section 1.2, Chapter 1, of the Land Use Code, except those words, terms, and phrases defined as follows:

- (a) **Impervious surface area: Impervious surface area is a developed area of land that prevents or significantly impedes the infiltration of stormwater into the soil. Typical impervious surface areas include, but are not limited to, the following: roofs, sidewalks, walkways, patios, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces, provided, however, that swimming pools and wooden decks are not considered impervious surfaces for purposes of this ordinance.**

Sec. 48-255 thru -259. Reserved

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 14th day of June, 2021.

Larry Harris, Mayor

ATTEST:

Savannah Parrish, Town Clerk

**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: June 14, 2021**

SUBJECT: Public Hearing to Create a Stormwater Utility Fund

#O-21-08

AGENDA INFORMATION

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

BRIEF SUMMARY: The stormwater utility fund is to hold the funds generated from the stormwater utility and will be used for stormwater projects and other items related to the NPDES permit.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-21-08*** to create a stormwater utility fund.
2. To close the public hearing.
3. To adopt ***Ordinance #O-21-08*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance #O-21-08***

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt ***Ordinance #O-21-08*** as presented.

ORDINANCE #0-21-08

AN ORDINANCE TO ESTABLISH A STORMWATER MANAGEMENT ENTERPRISE FUND

WHEREAS, Article XIV, Section 5 of the Constitution of North Carolina provides, “it shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions ... to control and limit the pollution of our air and water ...”; and

WHEREAS, The Town of Black Mountain values protecting and preserving the natural resources that are a benefit to its citizens and an important aspect of the Town’s heritage and identity; and

WHEREAS, Section 402(p) of the Federal Clean Water Act requires that local governments obtain and comply with the terms of National Pollutant Discharge Elimination System (“NPDES”) permits for stormwater discharges from municipal storm sewer systems; and

WHEREAS, the North Carolina Department of Environmental Quality issued to the Town of Black Mountain a Notice of Violation on February 28, 2020, for noncompliance with the requirements of the Town of Black Mountain’s NPDES Municipal Separate Storm Sewer System Permit (“MS4 Permit”); and

WHEREAS, the Town of Black Mountain is required to cure the existing violations of tis MS4 Permit by developing a stormwater management plan addressing all known compliance deficiencies, including those detailed in the audit report; and

WHEREAS, the audit report found that the Town of Black Mountain was deficient in maintaining “adequate funding and staffing to implement and manage the provisions of the Stormwater Plan and meet all requirements of the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit”; and

WHEREAS, the Town of Black Mountain Town Council adopted a resolution on May 11, 2020 acknowledging “the requirement to provide adequate funding and staffing to implement a Stormwater Management Program that complies with its NPDES MS4 Permit and approved Stormwater Management Plan”; and

WHEREAS, the Town of Black Mountain’s stormwater management program funding is insufficient to provide the construction, maintenance and administration of appropriate infrastructure including conveyance systems, stormwater management controls and programming efforts required to comply with the requirements of the MS4 Permit; and

WHEREAS, Chapter 160A, Article 16, of the North Carolina General Statutes authorizes the Town of Black Mountain to establish a public enterprise to furnish the town and its citizens with stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater

and drainage systems of all types and to finance the costs of such public enterprise by levying taxes, borrowing money, and appropriating any other revenue therefor, as well as to establish and revise, from time to time, a schedule of rates, fees, charges and penalties for the services to be provided by such public enterprise; and

WHEREAS, establishing a Stormwater Management Enterprise Fund will facilitate the establishment of an effective Stormwater Management Program as required by the MS4 Permit and would be reasonable and in the best interest of the public.

NOW, THEREFORE, BE IT ORDAINED that there is hereby established a Stormwater Management Enterprise Fund for the Town of Black Mountain; and

BE IT FURTHER ORDAINED that the Stormwater Management Enterprise Fund shall be managed and administered in accordance with the policies and procedures hereinafter set forth; and

BE IT FURTHER ORDAINED that the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended by adding an Article in Chapter 48, to be numbered Article V, which is to read as follows:

Article V. – STORMWATER

Division 1. – Generally

Sec. 48-250. Authority

Pursuant to N.C.G.S. Article 16 of Chapter 160A, the Town of Black Mountain is authorized to establish an enterprise fund to furnish the town and its citizens with stormwater management programs.

Sec. 48-251. Purpose

It is the purpose of this section to establish a stormwater management utility and an associated stormwater management enterprise fund as an identified fiscal and accounting fund to finance the cost of comprehensively addressing the stormwater management needs of the town and its citizens. This Article provides a schedule of rates, fees, charges, and penalties necessary to assure that all aspects of the stormwater management program are managed in accordance with all federal, state, and local laws, rules, and regulations.

Sec. 48-252. Establishment

(b) There is hereby established a stormwater management enterprise fund. The enterprise fund is established for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater management utility including but not limited to, rents, rates, fees, charges and penalties as may be established, after notice and a public hearing by the town council and other funds that may be transferred

or allocated to the stormwater management utility. All revenues and receipts of the stormwater management utility shall be placed in the stormwater management enterprise fund and all expenses of the utility shall be paid from the stormwater management enterprise fund, except that other revenues, receipts, and resources not accounted for in the stormwater management enterprise fund may be applied to stormwater management programs, and stormwater and drainage systems as deemed appropriate by town council.

Division 2 – Stormwater Service Charges

Sec. 48-260. Fees Charged

(a) A stormwater utility fee shall be assessed each calendar year to the owner of record as of January 1 of each parcel of land located wholly or partially within the corporate limits of the Town of Black Mountain, except those parcels owned by the United States of America, the State of North Carolina, Buncombe County, or the Town of Black Mountain. The owner of each parcel of land annexed into the Town shall be assessed a stormwater utility fee for the then-current calendar year, which fee shall assessed on the date the annexation petition is approved by the Town Council and shall not be subject to proration.

Sec. 48-261. Schedule of rates, fees, charges, and penalties.

(a) The annual stormwater utility fee shall be assessed according to a schedule of rates, fees, charges, and penalties adopted annually by the Town Council.

(b) Fees shall be assessed using a flat tiered system based on the intensity of the principal use of each parcel. Any parcel classified as mixed-use shall be assessed the stormwater utility fee associated with the most intensive use occurring on the property. The principal use shall be determined by the Planning Director who shall base such determination on:

- (1) any zoning certificate issued for the parcel;
- (2) classification of parcels made by the Buncombe County Tax Assessor;
- (3) use categories assigned in the Permitted Uses Table of Chapter 4 of the Black Mountain Land Use Code;
- (4) images and personal observations of the use occurring on the property; and
- (5) any other resource tending to show the principal use actually occurring on the parcel.

(c) The principal use of each parcel shall be categorized as residential, commercial, institutional, industrial, or undeveloped.

(d) The following tier classifications shall be used to determine the annual stormwater utility fee assessed to each parcel.

- (1) Tier 1 – Residential, Minimal Impact. Each parcel upon which the primary use is single-family residential dwellings, including duplexes, condominiums, and townhomes, shall be assessed at the Tier 1 rate.
- (2) Tier 2 – Commercial and Institutional, Moderate Impact. Each parcel upon which the principal use is neither residential nor industrial, including, but not limited by way of limitation, retail establishments; medical offices; restaurants; professional services; automotive services; fitness centers, spas and salons; religious services;

- apartment complexes; and residential care facilities, shall be assessed at the Tier 2 rate.
- (3) Tier 3 – Undeveloped. Each parcel upon which there is no residential, industrial, commercial, institutional, or other non-residential use and which remains in its natural, vegetative state, shall be assessed at the Tier 3 rate.
 - (4) Tier 4 – Exempt Impacts. Each parcel owned by the Town of Black Mountain, Buncombe County, the State of North Carolina, or the United States of America.
 - (5) Tier 5 – Industrial, Heavy Impact. Each parcel upon which the principal use is light or heavy industrial, including, but not limited by way of limitation, asphalt; mining; warehousing; and processing facilities shall be assessed at the Tier 3 rate.

Sec. 48-262. Exemptions and Credits.

(a) There shall be no exception, credit, offset, or other reduction in stormwater service charges granted based upon age, race, tax status, economic status, or religion of the customer, or any other condition unrelated to the stormwater utility's cost of providing stormwater management services and facilities.

(b) The owner of any parcel shall be eligible to receive an annual credit against the assessed stormwater utility fee in recognition of on-site or off-site systems, facilities, measures, and actions taken by customers that exceed minimum requirements for stormwater management, provided that such credit shall be conditioned upon the continuing performance of the systems, facilities, measures, or actions upon which the credits are granted for the remainder of the calendar year, and the maximum credit shall not exceed fifty percent (50%) of the original assessed fee.

(c) The Planning Director shall prepare a Stormwater Credit and Incentive Manual setting forth the appropriate credit application process, eligibility criteria, and standards upon which such credits are given.

(d) Credits shall be in the amounts set forth in the schedule of rates, fees, charges, and penalties adopted annually by the Town Council.

(e) This subsection shall be effective January 1, 2024.

Sec. 48-263. Billing and Collection.

(a) The owner of record as of January 1 of each calendar year of every parcel of land subject to this ordinance shall be liable for payment of the annual stormwater utility fees, along with any associated charges and penalties.

(b) Bills for stormwater utility fees shall be sent at regular, periodic intervals no less frequently than annually.

(c) Billing and collection of stormwater utility fees shall be administered by the Planning Director who is hereby authorized to develop such policies and procedures as are necessary to effectuate the purpose and intent of this section.

(d) Failure to receive a stormwater utility fee bill is not a basis for nonpayment.

(e) Stormwater utility fees not paid by the date when due shall be declared delinquent and shall be subject to additional fees and charges as provided in the schedule of rates, fees, charges, and penalties adopted annually by the Town Council.

(f) A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by N.C.G.S. § 160A-175 and does not subject the offender to criminal penalties.

Sec. 48-264. Reserved.

Sec. 48-265. Appeals.

(a) In the event a property owner disputes the stormwater utility charges assessed to that owner's property, including determination of the applicable tier rate or determination of applicable credits, the owner may apply for a redetermination. The Planning Director shall make a decision to approve or deny the application within thirty (30) days of receipt of the completed application. The Planning Director's decision shall be in writing, and if a denial, shall state the reasons for the denial.

(b) In the event the application for a redetermination is denied, the applicant may appeal the denial to the Town Manager by filing a written notice of appeal with the Office of the Town Manager within ten (10) calendar days of the date of denial. The Town Manager shall review the application for redetermination, including supporting evidence provided with the application, and make a decision to allow or deny the appeal within thirty (30) days of receipt of the completed notice of appeal. The decision shall be in writing, and if denied, shall state the reasons for the denial.

(c) The decision of the Town Manager may be appealed to Superior Court in the nature of certiorari.

(d) If an application for redetermination is approved, the stormwater fee shall be adjusted accordingly for the specific parcel and the adjusted rate shall apply to the next regularly generated bill for the entirety of the billing period.

Sec. 49-266. Use of Funds.

Revenues generated from stormwater management utility fees, charges, and penalties shall be held in the enterprise fund, which shall be and remain separate and apart from other city funds and shall be used only to fund stormwater management programs and infrastructure. Service charges and fees shall not be used for general or other governmental or proprietary purposes of the town except to pay for costs incurred by the town in rendering serves to the stormwater management utility.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 14th day of June, 2021.

Larry Harris, Mayor

ATTEST:

Savannah Parrish, Town Clerk

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: June 14, 2021

SUBJECT: Public Hearing for Elevate Black Mountain

AGENDA INFORMATION

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

BRIEF SUMMARY: In 2019, The Town of Black Mountain contracted with Clarion and Associates and Chipley consulting to undertake an update to the 2014 Comprehensive Plan. There were one-on-one interviews and public meetings before Covid-19 put a halt to public gatherings. In mid-2020, the Town continued progress on the update with online meetings and surveys. The plan has been through a public comment period and the Planning Board recommended the plan be forwarded to the Town Council for adoption at their February 22, 2021 meeting with a vote of 6-0.

MOTION FOR CONSIDERATION:

1. To open the public hearing for Elevate Black Mountain.
2. To close the public hearing.
3. To approve Elevate Black Mountain as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Elevate Black Mountain Plan

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve Elevate Black Mountain as presented.



**THE TOWN OF
BLACK MOUNTAIN**
Public Draft | May 2021

Acknowledgments

Preparation of the Elevate Black Mountain Comprehensive Plan was a collaborative process involving numerous town officials, stakeholders, and community members.

Town Council

- Larry Harris, Mayor
- Pam King, Council Member
- Doug Hay, Council Member
- Ryan Stone, Council Member
- Archie Pertiller, Jr., Council Member
- Tim Raines, Council Member
- Don Collins, Former Mayor
- Maggie Tuttle, Former Vice Mayor
- Jennifer Willet, Former Alderman

Planning Board

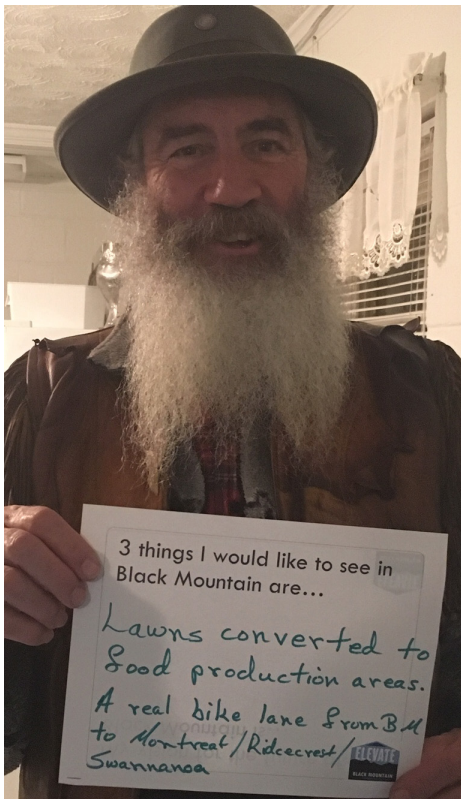
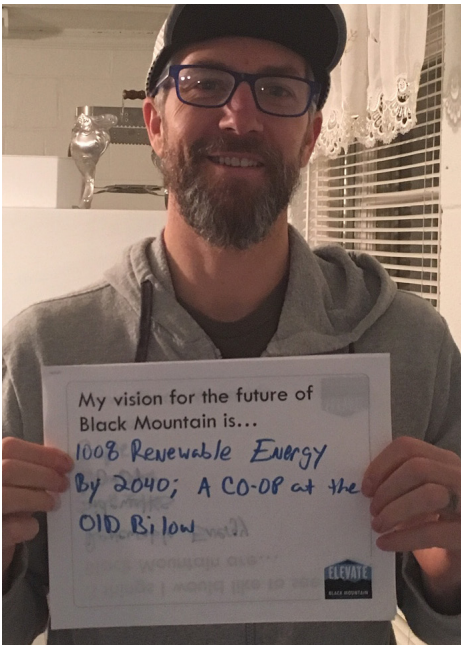
- Christopher Collins, Chair
- Pam Norton, Vice Chair
- Lauronda Teeple
- Jesse Gardner
- Rick Earley
- Kathy Phillips
- Chas Fitzgerald

Town Staff

- Jessica Trotman, Planning Director
- Jennifer Tipton
- Jake Hair

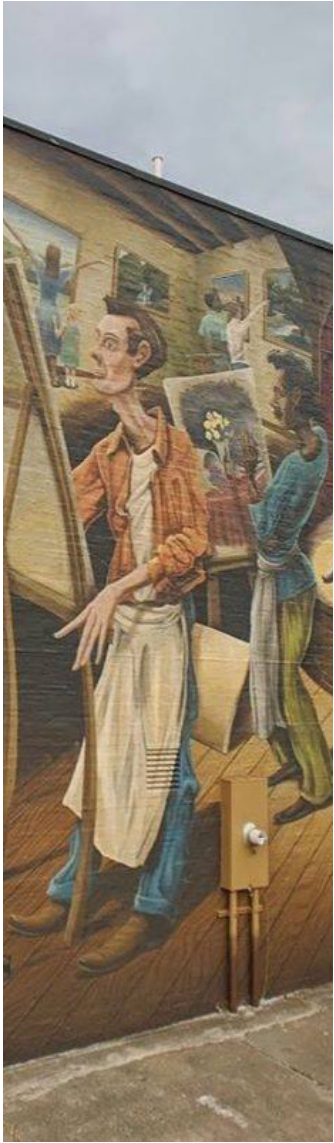
Consultants

- Clarion Associates**
- Nate Baker
- Leigh Anne King
- Addie Sherman
- Holly White
- Chipley Consulting**
- Sealy Chipley



100%RENEWABLEENERGYBY2040IC
ANAFFORDTOLIVEHEREGREENWAYS
COMMUNITYGARDENSLOCALFOODS
BLACKMOUNTAINCOMMERCEPARKV
ETERANSPARKCELEBRATETHESWANN
ANOARIVERMORESIDEWALKSANDBI
KELANESNEWCOMMUNITYCENTERBL
UERIDGEROADINTERCHANGEOPENS
PACEPROTECTIONHISTORICPRESERV
ATIONWALKABLEDOWNTOWNCOM
MUNITYENGAGEMENTGROWTHMAN
AGEMENTNEIGHBORHOODPLANNIN
GAFFORDABLEHOUSINGSAFETYHIG
HQUALITYPARKSANDRECREATIONIN
CLUSIVEGOVERNANCEAGINGINPLAC
ETRAFFICCALMINGLAKETOMAHAW
KADVENTURETOURISMSMALLSCALE
MANUFACTURINGSTORMWATERMAN
AGEMENTGREENROOFSCHAMBEROF
COMMERCEBEAUTIFICATIONCOMMI
TTEFLOCIALLYOWNEDBUSINESSES

CONTENTS



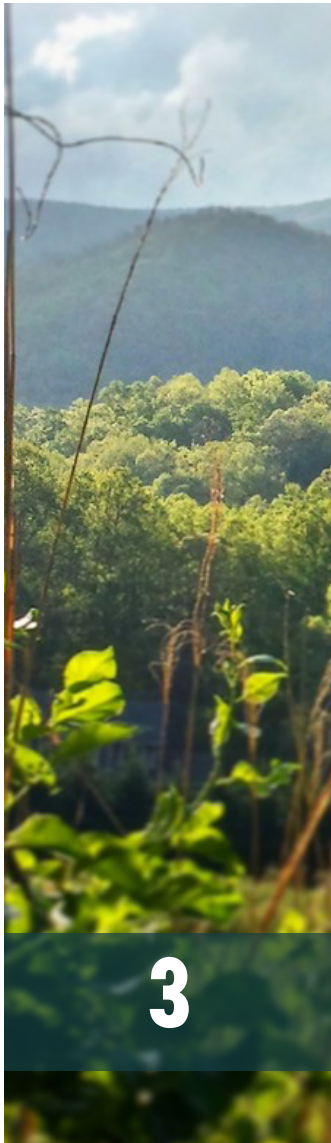
INTRO



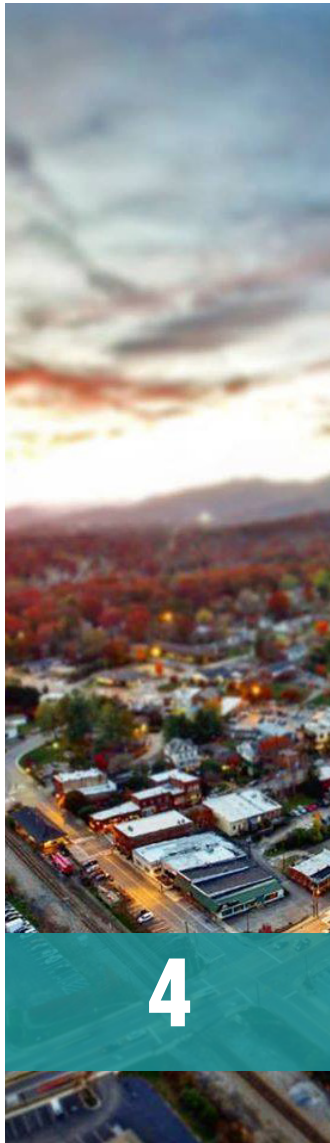
FUTURE LAND
USE



WALKABLE &
LIVABLE



GREEN &
RESILIENT



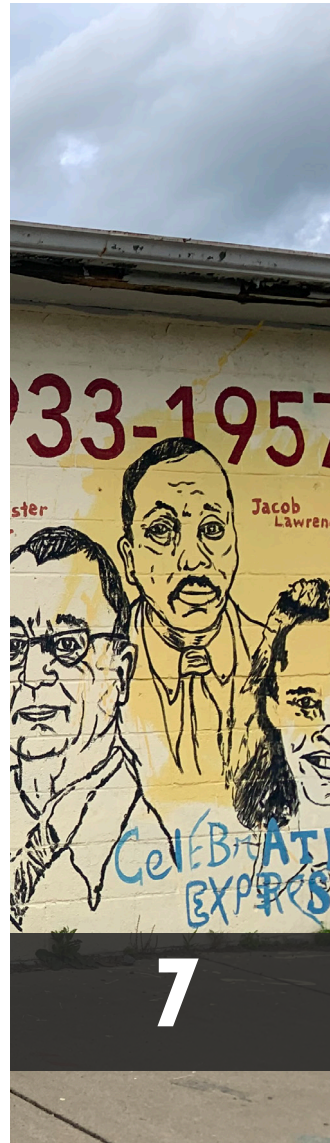
VIBRANT
ECONOMY



CIVIC
ENGAGEMENT



CONNECTED &
ACCESSIBLE



IMPLEMENTA-
TION
MATRIX



First public meeting, Black Mountain Church of God, 1/27/2020

Executive Summary

Black Mountain, North Carolina is a place people want to live, work, and visit. The town hosts eclectic neighborhoods, a charming downtown, restaurants, breweries, and industry. Its location among the mountains, yet near the bustling City of Asheville, makes it increasingly attractive.

Black Mountain's attractiveness as a place to be is both an opportunity and a challenge. As the town grows, it must protect, maintain, and enhance the character of the places that make Black Mountain special, while growing in an environmentally and fiscally sustainable pattern and expanding affordable living and traveling options for people of all incomes.

To address the challenges and opportunities facing Black Mountain, the town initiated a long range comprehensive planning process. *Elevate Black Mountain* is the broadest public policy document for the Town of Black Mountain. It sets forth the long-range community vision for five different topic areas: land use, environmental sustainability, economic development, civic engagement, and transportation. It serves to connect existing and future community plans under one umbrella to ensure cohesion between them. The plan also includes goals the community wants to achieve, and the specific policies and actions to help achieve them.

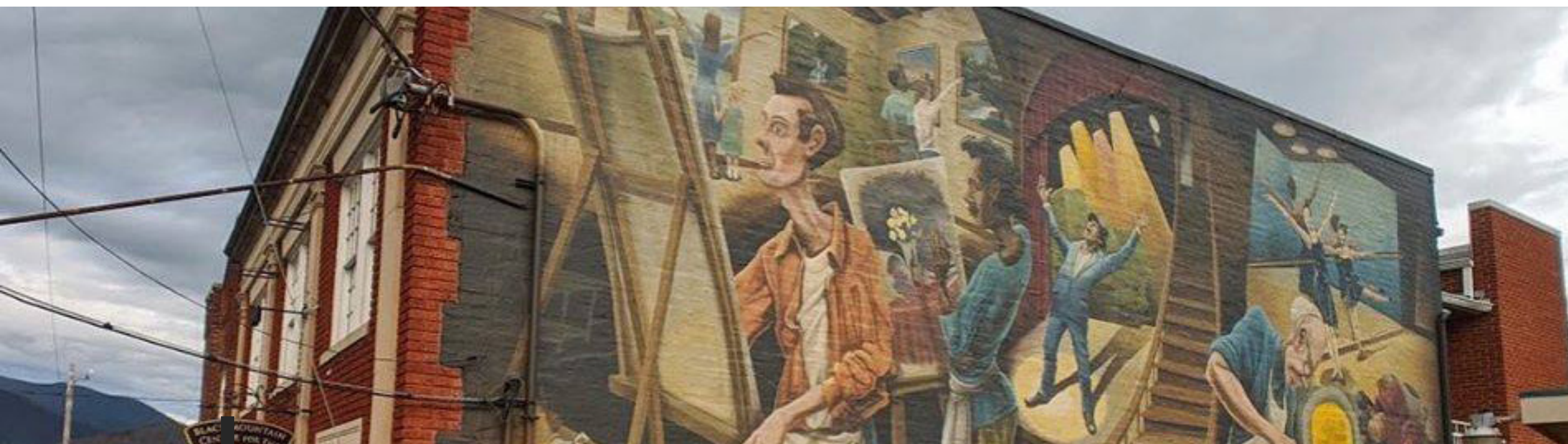
Elevate Black Mountain was developed through a robust planning and community engagement process that involved over 300 residents through in-person interviews and workshops, online meetings, online surveys, paper surveys, planner office hours, and emails. Furthermore, the planning process was informed by analyses that helped tell the story of the current trends and conditions. While many planning analyses informed this plan, four key trends and conditions are identified in the document. They are:

1. Black Mountain is increasingly interlinked to the growing region, with residents and workers commuting to work between jurisdictions.
2. Nearly all recent housing construction has been limited primarily to single-family homes and duplexes.
3. On average, Black Mountain households currently spend over 50% of their income on housing and transportation.
4. The town is undergoing demographic changes, including an aging population.

The planning process began in the second half of 2019. The first major community engagement events took place in January 2020. By March, North Carolina began feeling the public health and economic impacts of the COVID-19 public health crisis. The pandemic caused uncertainty while adding to and exposing challenges already facing Black Mountain and the region. The *Elevate Black Mountain* project went on hold during the summer months as more was learned about the virus and how to best manage it at the state and local level. In many ways, the pandemic also brought to the forefront issues related to social and economic precarity, affordable housing, community safety, wages, and access to critical goods and services.

By September 2020, the planning process resumed, mostly online amidst the public health crisis and following guidelines for maintaining physical distancing to avoid person-to-person transmission of the virus. Resident participants built on community-based goals and vision and developed strategies for how to achieve them.

Planning for the future is key to building a community that reflects all our values, while guiding and prioritizing decision-making. Planning is important both in times of uncertainty and times of stability, and is more important now than ever. The *Elevate Black Mountain* Comprehensive Plan was created during an unprecedented time in our history, but it is intended to help guide the community over the next decade and beyond.



INTRO

Black Mountain is a special place. River fog rises from the valley and clouds wrap high ridges; red and yellow colors explode each October; and history is hidden around corners across town. Residents are drawn to Black Mountain for many reasons—for its access to jobs and opportunities throughout the region, and the ability to escape into the lush green mountains. Our town is home to a diverse population of new and long-time residents.

We are a small town that has grown and continues to grow amidst a changing global, national, and regional economy. That makes the Elevate Black Mountain Comprehensive Plan important now more than ever. Elevate Black Mountain builds off unprecedented levels of community engagement to set the stage for our future.

Why Plan? Why Now?

Planning for the future is an important way to create an agreed upon collective community vision, and achieve it by prioritizing and acting upon goals, policies, and actions. Planning also helps to be efficient with limited resources and govern communities in a fiscally balanced way.

The Elevate Black Mountain planning process began in the second half of 2019. There were three key motivations for initiating the plan. They included:

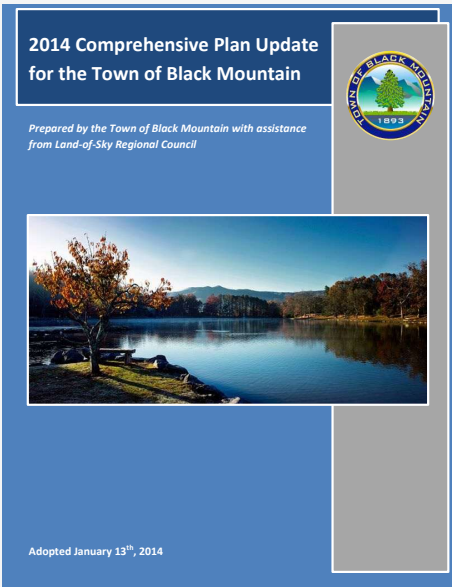
- 1. To address rapid regional growth, coupled with rising housing prices and uneven growth in wages
- 2. To take advantage of a key opportunity to revisit topics in the previous comprehensive plan
- 3. To conduct a genuine, robust communitywide dialogue about Black Mountain's future

The first major community engagement events took place in January 2020. By March, North Carolina began feeling the public health and economic impacts of the COVID-19 public health crisis.

The pandemic caused uncertainty and added to and exposed significant challenges already facing Black Mountain and the region. The Elevate Black Mountain project went on hold during the summer months as more was learned about the virus and how to best manage it at the state and local level. In many ways, the pandemic also brought to the forefront issues related to social and economic inequality, affordable housing, community safety, wages, and access to critical goods and services.

By September 2020, the planning process resumed, mostly online amidst the public health crisis and following guidelines for maintaining physical distancing to avoid person-to-person transmission of the virus. The plan was created during an unprecedented time in our history, but it is intended to help guide the community over the next decade and beyond.

The 2014 Comprehensive Plan Update for the Town of Black Mountain



Black Mountain's former comprehensive plan provided guidance on land use and housing, environment and natural resources, transportation, utilities, parks, recreation, and health, economic development, and historic and cultural resources. The plan was built through public engagement that took place in 2013. The plan served the community well and helped create the Black Mountain that exists today.

The Elevate Black Mountain Comprehensive Plan builds on the 2014 plan update's concepts, while updating goals, policies, and actions, and providing land use guidance, to address new planning trends and conditions. Elevate Black Mountain reflects the community aspirations of current residents.

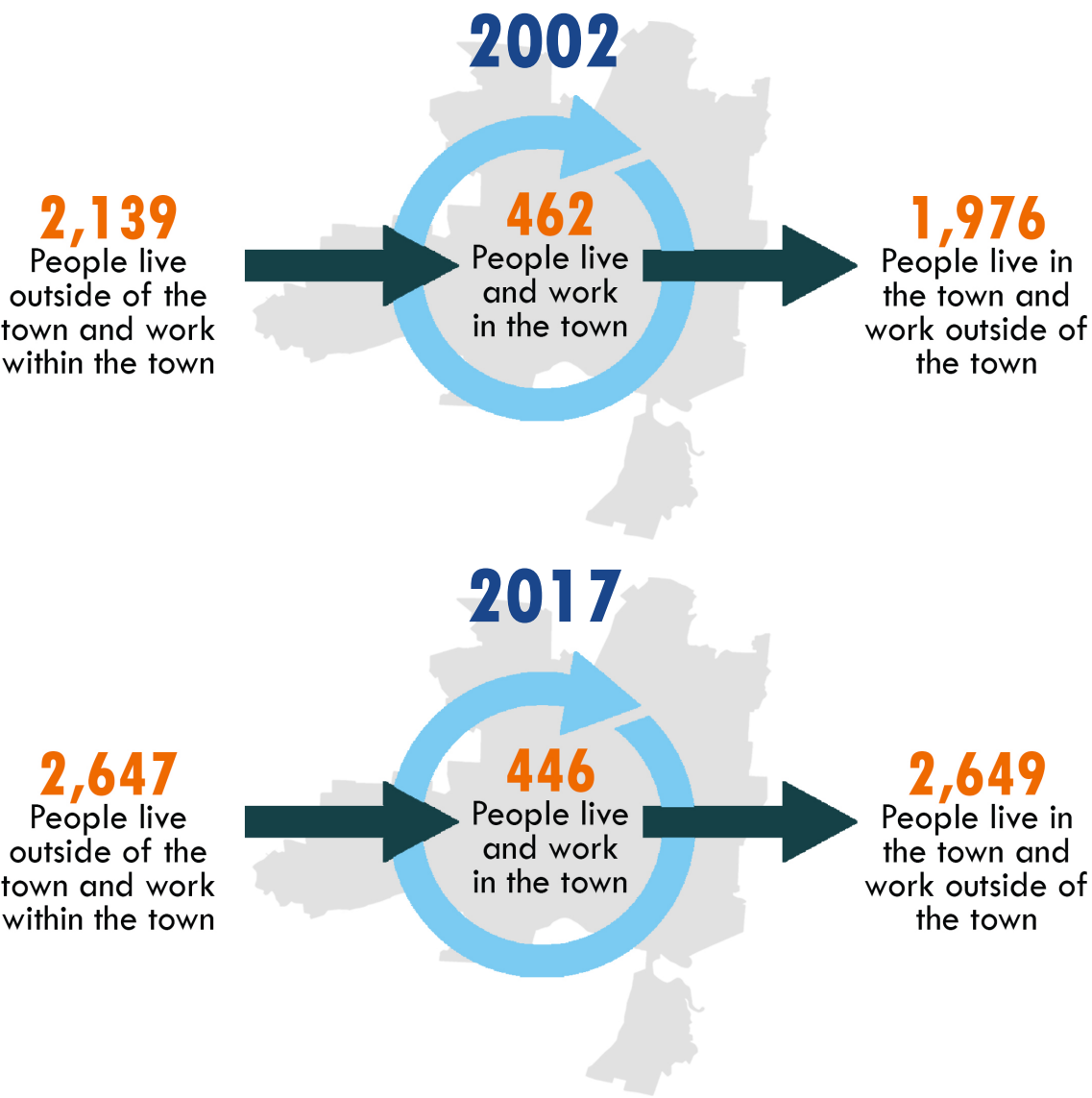
4 Key Planning Trends & Conditions

To plan for the future, it is important to understand the current trends and conditions that are impacting Black Mountain and which form the fact-based foundation for the planning process and the plan's policies. While there are many influences, below are four key trends and conditions.

1 Black Mountain is increasingly interlinked to the growing region, with residents and workers commuting between jurisdictions.

Why it Matters

As population grows throughout Buncombe County and the region, Black Mountain and its environmental quality, economy, housing market, and transportation networks are increasingly interlinked with the region, necessitating greater interjurisdictional cooperation and collaborative regional planning.

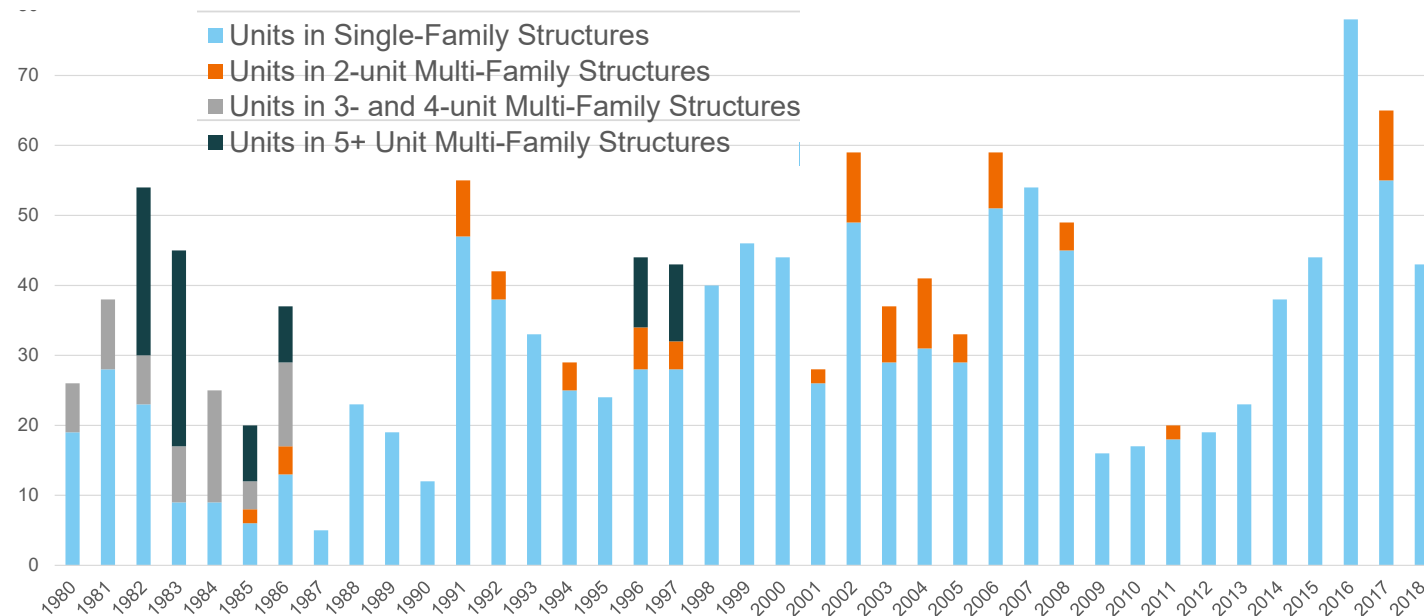


2 After 1997, all newly constructed housing units were single family houses or duplexes.

Why it Matters

The limited housing types produced in Black Mountain over the past two decades have somewhat restricted the housing options available to Black Mountain residents. With growing housing prices, this may be a trend worth further investigation.

Housing Units Permitted By Year

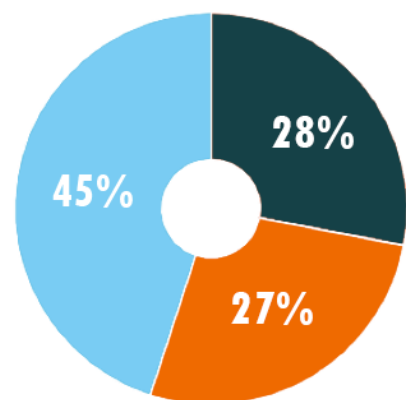


3 On average, Black Mountain households currently spend over 50% of their income on housing and transportation.

Why it Matters

Many residents face higher costs of living, without receiving a proportional increase in income. Due to a variety of factors, including automobile-dependent built patterns and limited transportation and housing options, housing + transportation costs now make up 55% of average Black Mountain household expenditures.

● Housing
● Transportation
● Remaining Income



\$11,865

Annual Transportation Costs



1.64

Autos Per Household



21,087

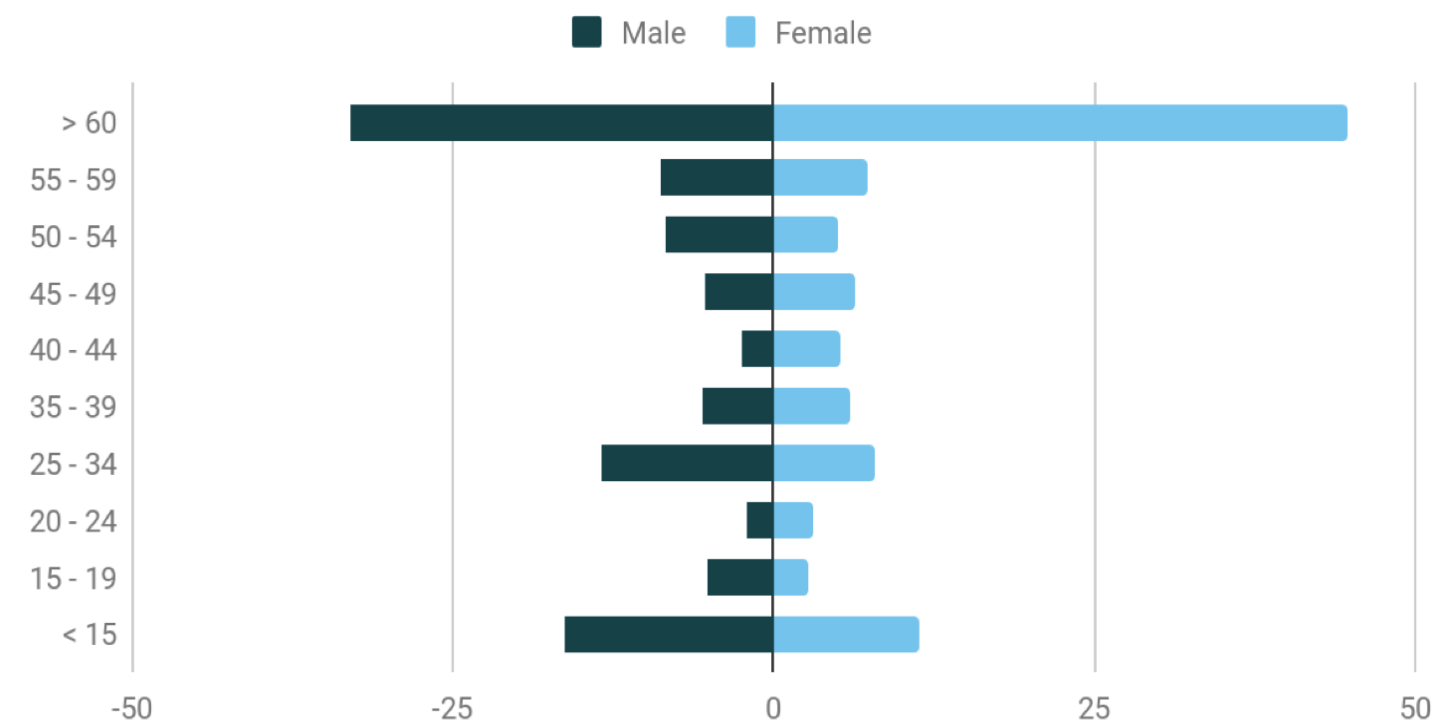
Average Household VMT

4 The town is undergoing demographic changes, including an aging population.

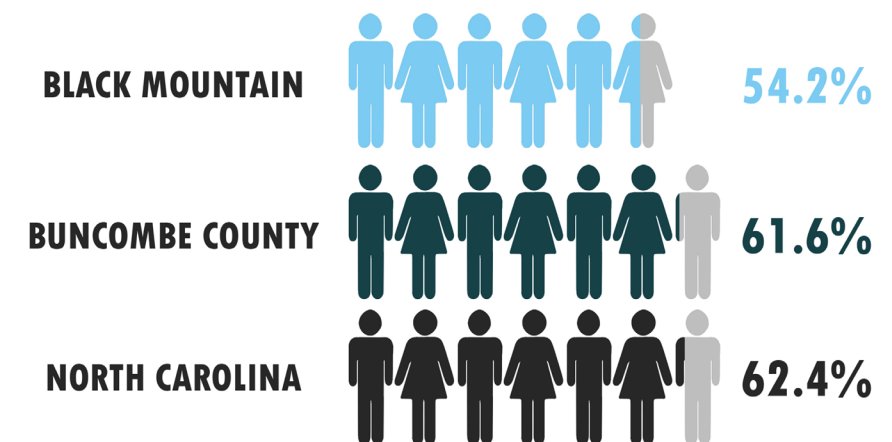
Why it Matters

Black Mountain is a multigenerational town with needs to accommodate individuals and families at all stages of life from young families with children in school, to young professionals and entrepreneurs, to retirees. All of these age groups benefit from neighborhoods and built patterns designed with a diverse array of housing, work, civic, shopping, and travel choices. It can also be useful to monitor demographic trends as they relate to economic and fiscal impacts to the town.

Black Mountain Population by Age



% of Residents in the Labor Force



Planning Black Mountain's Future

What is the Comprehensive Plan?
The comprehensive plan is a community's broadest public policy document. It sets forth the long-range vision for transportation, housing, development, the environment, and other local government services and facilities. It serves to connect existing and future community plans under one cohesive umbrella. The plan also includes goals the community wants to achieve, and the specific policies and actions to help achieve them.

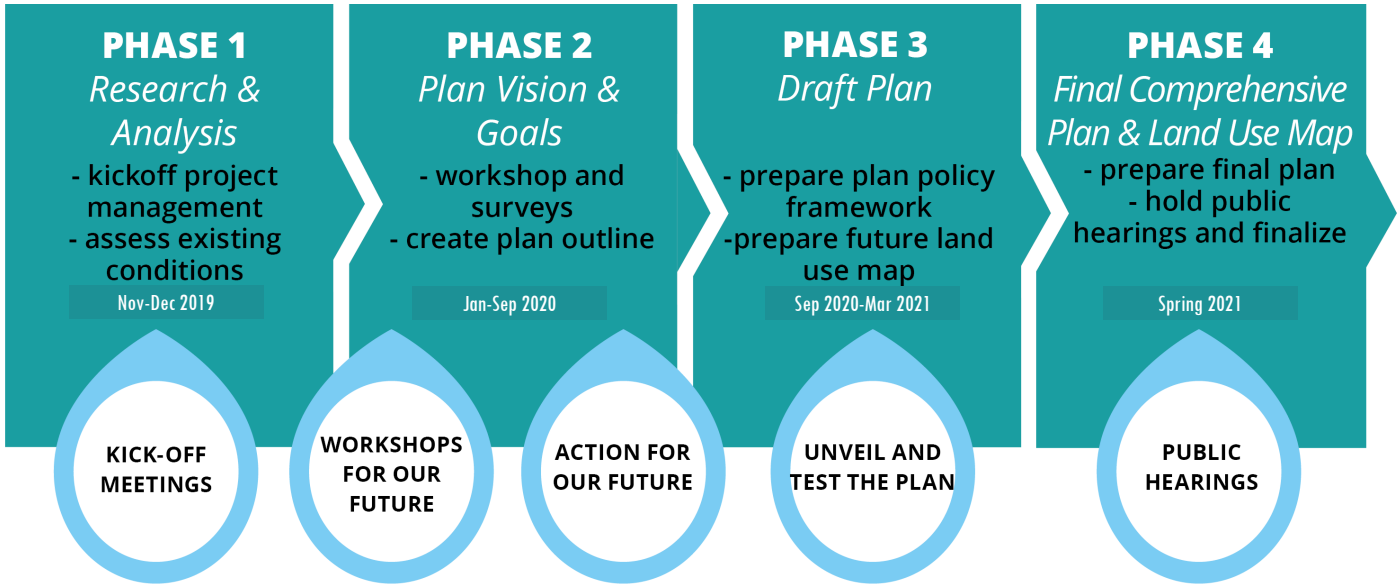


About Elevate Black Mountain
Elevate Black Mountain was developed through a robust planning and community engagement process that involved over 300 residents through in-person interviews and workshops, online meetings, online surveys, paper surveys, planner office hours, and emails. The result is a community-based plan to guide the community as it grows and changes. The Community Vision sets the plan's direction. Each of the five policy chapters provides additional guidance to achieve the community vision. This plan is intended to be readable, accessible and user-friendly.



Second public meeting, Meadowbrook Free Will Baptist, 2/17/2020

Planning Process



The Community Vision

Black Mountain will be a thriving community with a vibrant downtown surrounded by livable neighborhoods. The town strives to offer everyone the opportunity to live, work, play, access the arts, and be civically engaged. We embrace our community's special mountain character and unique identity as a foundation for economic development, environmental stewardship, and a future of opportunity.



Walkable and Livable

Black Mountain is a distinct mountain town that is affordable, livable, human-scale, and grounded in its historic character.



Green and Resilient

New growth is green, resilient, and embodies the values of responsible environmental stewardship.



Vibrant Economy

The Town's vibrant, innovative, and diverse economy provides dignified jobs with living wages.



Civic Engagement

The Town engages with the community to offer excellent services and facilities.



Connected and Accessible

Residents have the freedom to safely and realistically get around using multiple travel modes.

How To Use This Plan

Chapter Guidance

Each chapter includes chapter guidance as reflected under the plan’s Community Vision statement. The chapter guidance is supported by the goals and policies.

Goals

Goals are high-level and long term and aim to present steps that work toward achieving the vision and the chapter guidance. Each goal contains more specific policies.

Residents have the freedom to safely and realistically get around using multiple travel modes.

Transportation planning is key to maintaining the cherished characteristics of the town, the quality of life that current residents enjoy, and the ability to get between places conveniently and safely. With growing local and regional growth pressures, it is clear that expanding the number of realistic travel modes available to people is a key strategy to limit growing traffic congestion and travel times, manage transportation spending, reduce automobile collision rates, reduce per capita energy consumption, and be economically competitive.



Goal 6.1

Multiple safe and realistic transportation mode options for residents

POLICIES

- 6.1.1 Enhance street intersection safety, pedestrian crossings, and other traffic-calming measures.
- 6.1.2 Prioritize physical barriers, such as curbs, on-street parking, trees, curbs, or bollards, between automobile lanes and non-automotive infrastructure.
- 6.1.3 Encourage alleys in new development and redevelopment to reduce conflicts between pedestrians and turning vehicles.
- 6.1.4 Manage growth around freeway interchanges through land use planning.

Goal 6.2

Non-automotive transportation network

POLICIES

- 6.2.1 Establish a connected network of local and regional protected bicycle lanes, paths, and greenways.
- 6.2.2 Expand the Town’s sidewalk and street tree network within both new and existing development.
- 6.2.3 Expand short term and long term bicycle parking in areas of activity.
- 6.2.4 Support future initiatives that would expand access to regional and interstate rail transportation.

Goal 6.3

Right-sized, well-located parking

POLICIES

- 6.3.1 Maximize use of current parking supply by promoting shared parking and way-finding for existing parking.
- 6.3.2 Recognize the high cost of free parking and work to reduce parking.
- 6.3.3 Encourage land patterns that support and encourage non-auto modes of travel.
- 6.3.4 Locate surface and structured parking in the rear of buildings, with on-street parallel parking.

Goal 6.4

An enhanced and user-friendly transit network

POLICIES

- 6.4.1 Provide safe, visible and accessible transit stops and transit lines.
- 6.4.2 Coordinate infrastructure and land use planning to facilitate future local and regional transit expansion.
- 6.4.3 In coordination with regional planning agencies, enhance and expand regional transit options, especially rapid transit.

Goal 6.5

Well-planned freight corridors

POLICIES

- 6.5.1 Identify key freight corridors that accommodate large vehicles.
- 6.5.2 Reduce freight conflicts with other modes of transportation modes. Reduce the need for freight trucks to travel through retail and residential areas.
- 6.5.3 Support access of industrial properties to regional roads through transportation and land use planning.

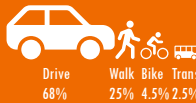
“I would love to see more lanes, trails, and parking for cyclists, more pedestrian infrastructure, more transportation options for seniors, and more public transportation.”

-Black Mountain Resident

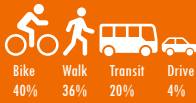
What Black Mountain Residents Said

During the Elevate Black Mountain public engagement process, residents juxtaposed the way they travel around today against the way they would prefer to be able to travel around if they had the choice.

How Black Mountain Residents Travel Around Today



How Black Mountain Residents Wish They Could Travel



These results show that Black Mountain residents have few transportation options and that most people have to own and operate a car to get to the places they need on a daily basis. Respondents indicated they would prefer to be able to bike walk and take the bus, in addition to driving.

Elevate Black Mountain Big Ideas

Manage growth locally and regionally; work to ensure that new development is green, sustainable, and unique to the charm and history of Black Mountain.

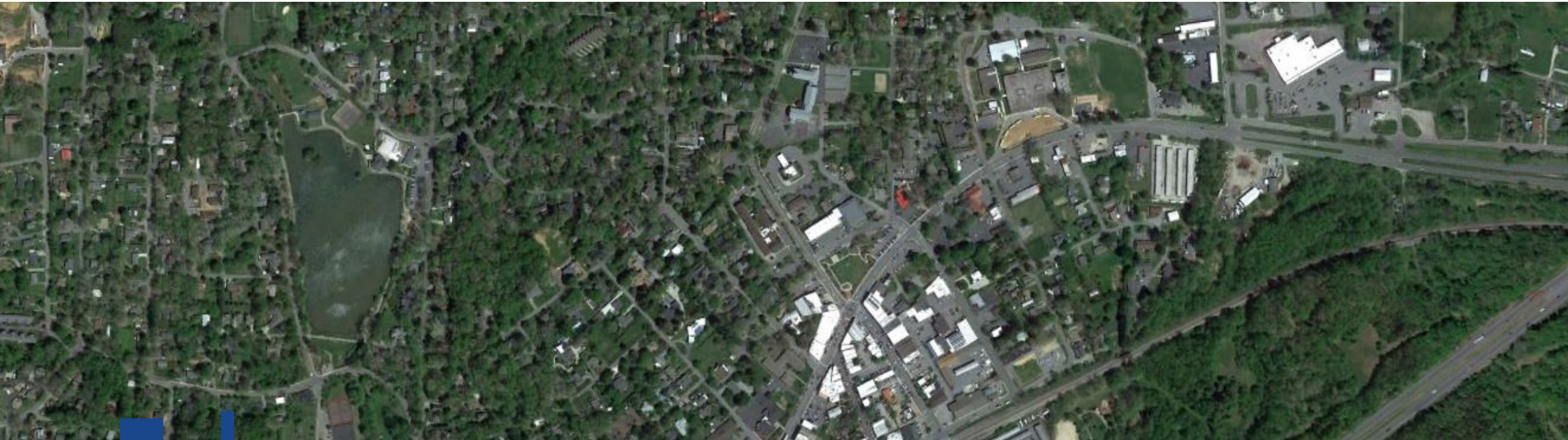
Update the town’s zoning and implement plan policy to support walkable development that increases active travel options for current and future generations.

Seek to prioritize affordability and cost of living so that all residents that work in Black Mountain have the option to live here and residents who live here already are not forced to move away.

Address key needs as discussed in the plan, such as stormwater management, affordable housing, a community center, and community planning with robust engagement.

Policies

Policies provide more specific direction for achieving the goals and vision. While the actions listed in the Implementation Matrix are proactive, policies provide Town staff, appointed officials, the Town Council, developers, business owners, and residents ongoing guidance for decision-making.



1 | FUTURE LAND USE



How to Use This Section

The Future Land Use Map

The Future Land Use Map (next page) depicts how Black Mountain should grow in the future, based on current trends and conditions and future needs and community values. This map identifies character areas, which are types of places that share attributes of urban form and function including the size and type of buildings and their relationship to the street, the surrounding street and block pattern, parking and access, as well as land uses or types of development. Character areas are not zoning but do help to provide guidance for planning, zoning, and development decisions. Multiple zoning district areas may fit appropriately into a given character area, while some character areas may require the adoption of new zoning district areas differing from the ones that exist today.

How Future Land Use Relates to Zoning

Zoning is an important regulatory tool to ensure the orderly development of the Town of Black Mountain and land where the Town is anticipated to grow over the coming decades. Zoning in Black Mountain is administered through its zoning map and linked to the Town’s Land Use Code, which stipulates permitted uses, dimensional standards, and development standards.

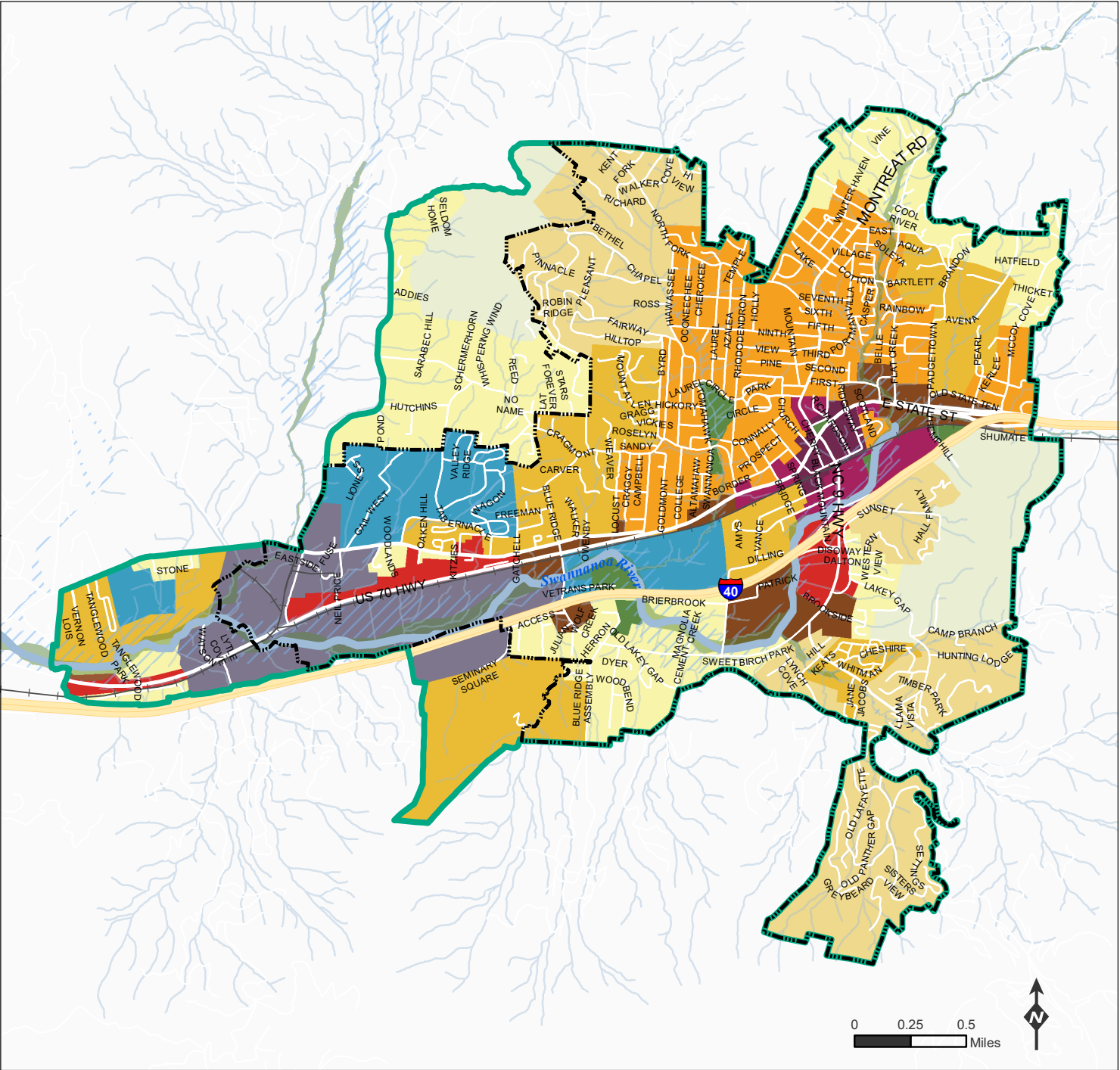
Black Mountain zoning regulations divides the Town into various residential, commercial, industrial, business, and mixed use zoning district areas. The Land Use Code

describes what type of land use and specific activities are permitted in each zoning district, and also regulates how buildings, signs, parking, and other development may occur on a property. The zoning regulations also provide procedures for rezoning and other development activities.

The zoning map and zoning regulations provide property owners in Black Mountain with certain rights to development, while the Elevate Black Mountain Comprehensive Plan provides guidance to decision-makers regarding the land use and character of future development on a property. The Future Land Use Map should be used as a guide for future rezoning decisions by the Town’s Planning Board and Town Council, but does not have the authority of law that the Land Use Code does.

The Future Land Use Map provides guidance regarding land development, annexation, and capital planning decisions. The Future Land Use Map is not parcel-specific. To best interpret which category should apply to a property located in an edge condition where the categories change from one to another, discretion should be used to identify the most appropriate fit given the site conditions and surrounding context.

FUTURE LAND USE MAP



How are the Zoning Map and the Future Land Use Map different?



Future Land Use Map	Zoning Map
Displays broad categories of land use areas	Describes zoning districts applied to specific parcels
Represents a long range vision	Provides rules and regulations of development on individual parcels
Encourages sustainable patterns of growth	Encourages sound project-level site planning
Provides predictability in long term planning decisions	Discourages land use conflicts between properties
Can be amended in response to changes in community’s goals	Can be amended with guidance from the Elevate Black Mountain Comprehensive Plan

Activity and Employment

- Downtown
- Downtown Edge
- Commercial
- Walkable Mixed Use
- Heavy Industry and Warehousing
- Institutional Campus

Neighborhoods

- Core Neighborhood
- Complete Neighborhood
- Mountain Residential
- Valley Residential
- Conservation Residential

Boundaries

- Black Mountain Town Boundary
- Planning Area

Downtown

DESCRIPTION

Downtown is the historic, cultural, and civic heart of Black Mountain. Development includes historic buildings, as well as buildings from the past several decades, and supports a mix of retail, restaurants, employment, and some residential. Buildings are located up to the sidewalk, are short in width, and include ample windows and doors along first floors.

OPPORTUNITIES

- » Retain historic character through preservation and adaptive reuse of buildings
- » Ensure new development is contextually compatible, high quality architecture
- » Enhance streetscapes with street trees, wider sidewalks, pedestrian amenities, and burying overhead wires
- » Economic development through events and placemaking

PRIMARY USES

- » Commercial/Mixed Use
- » Office
- » Civic

SECONDARY USES

- » Mixed Use Residential

DESIRED CHARACTERISTICS

Building Height	2 stories (up to 3 with incentives)
Building Setback	0-10 ft
Lot Width	15-75 ft
Block Length	300-500 ft
Parking	Shared parking behind buildings, on-street parking



Downtown Edge

DESCRIPTION

Downtown Edge encompasses lands generally located adjacent to downtown and where there are opportunities to extend the pedestrian-oriented character of downtown and establish gateways. Development includes high quality building design that supports a mix of retail, restaurants, employment, and residential. Sidewalks are wide with street trees adjacent to the curb. First floors include ample windows and doors.

OPPORTUNITIES

- » Break up large lots into short connected blocks with rear alleys, civic space, and pedestrian-oriented buildings
- » Use creative and inspiring architecture, street trees, green building, and signage to establish gateways into downtown

PRIMARY USES

- » Commercial/Mixed Use
- » Office
- » Mixed Use Residential

SECONDARY USES

- » Civic

DESIRED CHARACTERISTICS

Building Height	3 stories (More with incentives)
Building Setback	0-20 ft
Lot Width	20-200 ft
Block Length	400-800 ft
Parking	Shared surface & structured parking behind buildings, on-street parking



Walkable Mixed Use

DESCRIPTION

Walkable Mixed Use areas are strategic nodes where the built environment should transition over time to walkable mixed use development. Buildings should be located adjacent to the sidewalk with translucent first floor frontages. A vertical mix of uses is encouraged, with retail or other residentially-compatible uses on the first floor and residential or office uses on upper floors.

OPPORTUNITIES

- » New sidewalks, street trees, and protected bike lanes
- » Zoning Map changes that enable a smooth transition over time to a new built pattern

PRIMARY USES

- » Commercial/Mixed Use
- » Mixed Use Residential

SECONDARY USES

- » Office
- » Civic

DESIRED CHARACTERISTICS

Building Height	3 stories (More with incentives)
Building Setback	0-20 ft
Lot Width	40-300 ft
Block Length	400-1,000 ft
Parking	Shared surface & structured parking behind buildings, on-street parking



Commercial

DESCRIPTION

Commercial areas include lands along major transportation corridors with existing commercial development. Buildings in these areas typically include large setbacks from the street with surface parking located between the building and the street. These are generally expected to remain automobile-oriented in character.

OPPORTUNITIES

- » New sidewalks and street trees
- » Redevelopment opportunities could include adding rear access through alleys, dedicating new and shorter blocks
- » Landscaping and stormwater retrofits in parking lots
- » Green building retrofits

PRIMARY USES

- » Commercial
- » Office
- » Light industrial

SECONDARY USES

- » Mixed Use Residential

DESIRED CHARACTERISTICS

Building Height	1-3 stories (More with incentives)
Building Setback	15-50 ft
Lot Width	400-1,000
Block Length	400-1,200
Parking	Shared surface with landscaping, pedestrian and bicycle facilities, and low impact development stormwater principles



Industry and Warehousing

DESCRIPTION

Industry and Warehousing areas include buildings and lands for large- and small-scale manufacturing, warehousing, assembly, and other similar uses. Uses in this area are often incompatible with residential uses due to sounds, vibrations, smells, or hazards. Where these lands abut residential uses, measures should be taken to physically buffer the uses and limit any harmful or hazardous impacts.

INTENT

- » Key areas for economic development and employment
- » Enhance access to local and regional transit service
- » Ensure land is used efficiently
- » Encourage new development to use low impact development and green building techniques

PRIMARY USES

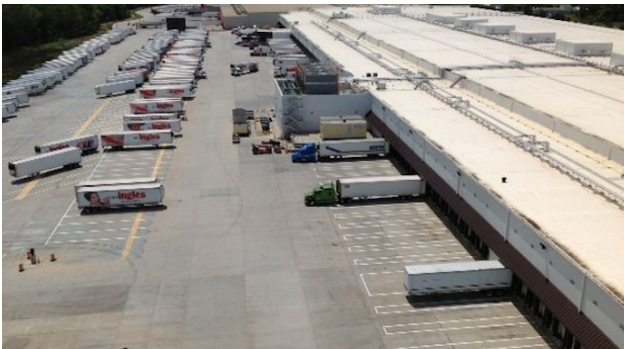
- » Manufacturing
- » Warehousing

SECONDARY USES

- » Extraction
- » Storage
- » Limited commercial

DESIRED CHARACTERISTICS

Building Height	15-50 ft
Building Setback	0-50 ft
Lot Width	50-1,200 ft
Block Length	600-2,000 ft
Parking	Surface parking to the side, rear, and front (side and rear preferred), and low impact development stormwater principles



Institutional Campus

DESCRIPTION

Institutional Campus areas include the continued and future use, expansion, and new development of academic, religious, government, and similar types in a campus arrangement. These areas should generally maintain the overall design integrity of the campus or facility setting and include a variety of different uses that meet the daily and weekly needs of residents, visitors, and workers.

INTENT

- » Protect and enhance green space
- » Low impact development stormwater and green building techniques
- » Pedestrian and bicycle facilities

PRIMARY USES

- » Residential (variety)
- » Open space and trails
- » Institutional uses

SECONDARY USES

- » Limited commercial
- » Civic

DESIRED CHARACTERISTICS

Building Height	1-4 stories
Building Setback	Varied
Lot Width	Varied
Block Length	Varied
Parking	Surface parking to the side, rear, and front, and low impact development stormwater principles



Core Neighborhood

DESCRIPTION

Core Neighborhoods are the neighborhoods surrounding the downtown and include primarily single family homes, with some additional residential types, nonresidential buildings, and short term rental units. Neighborhoods within this area include several characteristics, with a mix of building sizes, ages, setbacks, and street infrastructure.

OPPORTUNITIES

- » Neighborhood planning initiatives
- » Low impact development retrofits
- » Where possible, new sidewalks, bicycle facilities, and street trees
- » Contextually-compatible infill

PRIMARY USES

- » Medium- to high-density residential

SECONDARY USES

- » Home-based businesses
- » Secondary dwellings

DESIRED CHARACTERISTICS

Building Height	2-3 stories
Building Setback	10-25 ft
Lot Width	45-75 ft
Block Length	200-1,000 ft
Parking	Rear and side garages, driveways, on-street



Complete Neighborhood

DESCRIPTION

Complete Neighborhoods are new walkable neighborhoods with a mix of housing types and uses, arranged to make daily needs accessible within a 5-10 minute walk or bike ride. Blocks generally include alleys, with buildings located close to the street. Buildings are designed and oriented to frame the public realm using pedestrian-oriented features like front porches and stoops.

OPPORTUNITIES

- » Master planned communities
- » Protection of open space with compact clusters of walkable mixed-use development
- » Wide sidewalks and street trees
- » Green building designs, LID, and renewable energy

PRIMARY USES

- » Mix of residential types
- » Mixed use commercial

SECONDARY USES

- » Secondary dwellings
- » Home-based businesses

DESIRED CHARACTERISTICS

Building Height	2-4 stories
Building Setback	0-20 ft
Lot Width	25-60 ft
Block Length	200-1,000 ft
Parking	Rear and side garages, driveways, on-street



Mountain Residential

DESCRIPTION

Mountain Residential areas are low density residential areas with sometimes steep and mountainous terrain. These lands are primarily accessible to automobiles and can sometimes be challenging to provide services.

OPPORTUNITIES

- » Ensure Mountain Residential areas limit development and visual impacts on the natural environment
- » Use low impact development techniques for stormwater management

PRIMARY USES

- » Residential

SECONDARY USES

- » Trails and open space
- » Home-based businesses

DESIRED CHARACTERISTICS

Building Height	1-2 stories
Building Setback	25-35 ft
Lot Width	100 ft min
Block Length	n/a
Parking	Driveways, garages



Valley Residential

DESCRIPTION

Valley Residential areas are areas which predominantly include single family homes of varying ages, sizes, and setbacks. Over time, some Valley Residential areas may evolve through redevelopment. Where large redevelopment projects occur, new development should take a more compact form that enhances the streetscape and creates a variety of housing and commercial options.

OPPORTUNITIES

- » Large-scale redevelopment efforts should resemble complete neighborhood development principles using walkable design.
- » Neighborhood and area planning

PRIMARY USES

- » Medium density residential
- » Neighborhood-oriented commercial

SECONDARY USES

- » Home-based businesses

DESIRED CHARACTERISTICS

Building Height	2-3 stories
Building Setback	10-30 ft
Lot Width	35-100 ft
Block Length	500-1,000
Parking	Driveways, garages



Conservation Residential

DESCRIPTION

Conservation Residential areas include large contiguous tracts of land where conservation of open space and protection of the watershed is a priority. Various low impact economic opportunities are available, including conservation subdivisions with large amounts of dedicated open space. Where development occurs, it should use best practices in conservation and sustainable design.

OPPORTUNITIES

- » Rural economic opportunities, like summer camps, campsites, trails
- » Cluster residential neighborhoods with land conservation
- » Permanent conservation through land purchase or purchase of development rights

PRIMARY USES

- » Forest, open space
- » Passive recreation
- » Cluster residential

SECONDARY USES

- » Low impact rural economic opportunities

DESIRED CHARACTERISTICS

Building Height	1 story
Building Setback	n/a
Lot Width	n/a
Block Length	n/a
Parking	Use gravel, impervious pavement



Parks and Open Space

DESCRIPTION

Parks and Open Space areas are permanently protected active and passive open space areas. These areas can be either natural or used primarily for recreational purposes, and include fields, trails, benches, playgrounds, and other limited types of development that supports the open space use.

OPPORTUNITIES

- » Permanent open space protection
- » Public land acquisition or dedication
- » Purchase of development rights and open space easements
- » Community facilities and programming

PRIMARY USES

- » Recreation facilities
- » Trails and open space
- » Wildlife habitat

SECONDARY USES

- » Low impact development

DESIRED CHARACTERISTICS

Building Height	n/a
Building Setback	n/a
Lot Width	n/a
Block Length	n/a
Parking	Use gravel, impervious pavement



Black Mountain Development Principles

This section lists eight principles that apply generally to all new development and provides guidance for growth in Black Mountain. These principles should be used to ensure land is developed in an efficient manner that maintains and enhances the town’s cherished character and creates a greener more walkable pattern.

Principle 1

Development of underutilized land within the town’s existing built areas that is served by infrastructure is a priority over undeveloped land on the town’s edge.

It is preferable to accommodate growth in locations within the existing town limits that are appropriate for and can support new development. Infill and redevelopment will occur in a strategic manner that considers community needs like access to amenities, transportation service, and the quality and quantity of open space.

Principle 2

Quality design is emphasized for all uses to create an attractive, distinctive public and private realm—architecture, streetscape, corridors, gateways, and edges—that distinguishes the town.

Public areas (streets, sidewalks, parks, streetscapes, etc.) and private areas (building facades, lawns, landscaping, parking lots, driveways, etc.) will be planned and designed to celebrate a sense of place and character by balancing function, appearance, and affordability, while allowing for creative differences, innovation, and diversity of design that is true to Black Mountain.

Principle 3

Compact, human-scale development that integrates a mix of uses (residential, commercial, office, institutional, civic etc.) and connects with existing developed areas is encouraged in strategic locations.

Places will be created with multiple uses— residential, commercial, and institutional, among others—in proximity to each other, perhaps on the same site and/or in the same structure. Close attention will be given to the compatibility of those uses and their surroundings. Uses will be arranged in a manner that maximizes pedestrian activity.

Principle 4

Places throughout Black Mountain are well connected and designed to balance the needs of pedestrians, drivers, cyclists, and transit users.

Opportunities will be sought to improve the street pattern and connectivity, thereby increasing travel options, potentially decreasing vehicle miles, reducing congestion, and improving safety.

- » A connected street pattern will be the preferred network for future development and redevelopment unless prevented by streams, steep slopes, or other barriers.
- » Well-connected streets will be designed with short blocks and include sidewalks to facilitate walking.
- » Streets and trails will have high connectivity within and between neighborhoods and commercial districts.
- » Bicycle and pedestrian paths and supporting amenities will be integrated into new development and areas undergoing redevelopment.

Principle 5

Downtown features a vibrant mix of businesses, residences, retail, restaurant, entertainment, and civic uses, and a distinctive human-scale character that is cherished by residents and visitors.

As the historic and civic heart of Black Mountain, downtown will be a focus for thoughtful design efforts, strengthening community and placemaking. Revitalization efforts will include both public and private investment.

- » Downtown edge areas will be leveraged to attract new development and help strengthen the town’s gateways into downtown.
- » Adaptive reuse of underutilized buildings will be encouraged.
- » New buildings should frame streets and civic spaces and create “outdoor rooms.” Redevelopment of the surrounding sides of the Town Square with attention to detail is a key opportunity for placemaking and economic development.

Principle 6

The town’s established neighborhoods are maintained, while new residential developments have the characteristics of complete neighborhoods, including sidewalks, mixed housing types, parks, and easy access to basic retail needs.

Complete neighborhoods will include a variety of land uses (residential, commercial, civic, and recreational areas), building types, and housing types. They will have an identifiable center that offers basic services such as grocery stores and specialty shops.

The neighborhoods will support a variety of travel options and be well-connected to adjacent neighborhoods and districts. They will seamlessly integrate the members of diverse, multi-generational communities living in proximity to one another.

Principle 7

A network of connected greenways and green infrastructure will protect wildlife habitat and sensitive natural areas and provide recreational opportunities.

Future development will contribute to expanding the quantity, quality, access to, and connections between the town’s parks, open space, and recreational amenities.

Principle 8

Environmentally-sensitive and sustainable practices will be incorporated into future developments.

Development will be designed to reduce potentially negative impacts on environmental features such as stream corridors, slopes, important viewsheds, wetlands, and wildlife habitat.

- » The town will continue efforts to protect watersheds, wetlands, and floodplain areas in development or redevelopment.
- » New construction will use context-sensitive design to reduce impacts on existing site features.
- » New development should use green building practices. Projects should minimize the consumption of resources and use recycled building materials.
- » Green stormwater management is important, along with protections to the watershed.
- » Infill and redevelopment will maintain or enhance the urban tree canopy.

Utility Service and Annexation Criteria

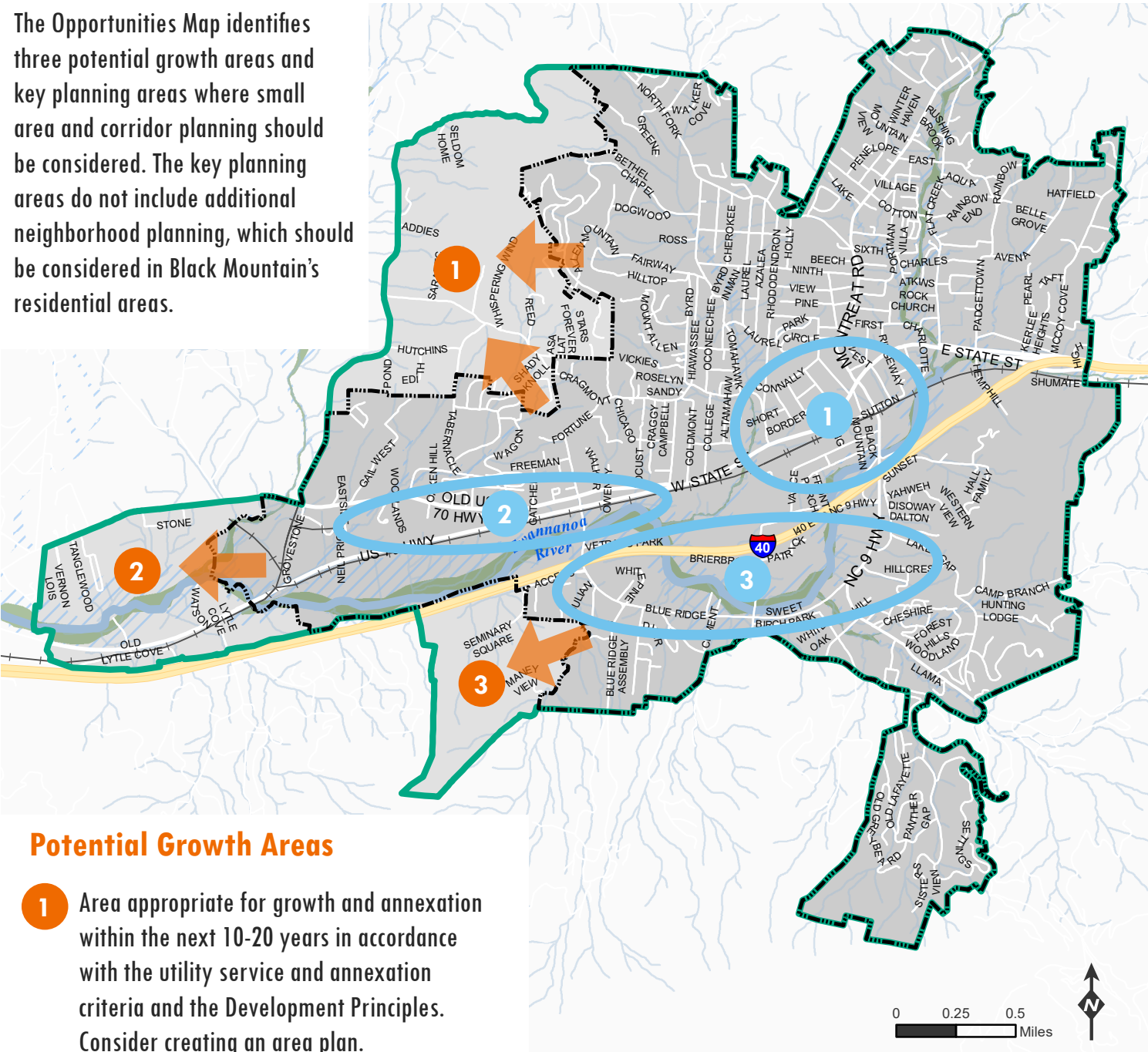
It is the town’s policy that if a property owner requests public water services, they must voluntarily request annexation into Black Mountain and receive approval by the Town. There are long-term efficiencies and advantages of public systems compared to individually-maintained septic systems and wells.

To assist with annexation and utility extension decisions, the following criteria should be evaluated for individual requests. Specifically, requests that support the following should be considered for approval:

Criteria 1	Aligns with the Comprehensive Plan Consistent with the Comprehensive Plan, specifically the Future Land Use and Opportunities Maps
Criteria 2	Contiguous with Town Boundary Portion of the site lies contiguous with town boundary
Criteria 3	Creates Logical Town Boundaries Expansion of logical town boundaries and service areas and elimination of unincorporated islands within the town’s corporate limits
Criteria 4	Consistent with Interjurisdictional Agreements Consistent with any relevant existing interjurisdictional agreements
Criteria 5	Supported by Public Services Adequately supported by current or future town services, including public safety and other services
Criteria 6	Demonstrates Community Benefits Community benefits clearly assessed against the fiscal benefits and costs
Criteria 7	Utility Service Adequate utility services to the site can be provided by utility providers
Criteria 8	Supported by Public Schools Framework Considers public schools expansion/services plans
Criteria 9	Consistency with Transportation Investments Proposal location situated in an area prioritized for transportation projects

OPPORTUNITIES MAP

The Opportunities Map identifies three potential growth areas and key planning areas where small area and corridor planning should be considered. The key planning areas do not include additional neighborhood planning, which should be considered in Black Mountain’s residential areas.



Potential Growth Areas

- 1 Area appropriate for growth and annexation within the next 10-20 years in accordance with the utility service and annexation criteria and the Development Principles. Consider creating an area plan.
- 2 Area appropriate for growth prior to 2045 in accordance with the utility service and annexation criteria.
- 3 Area appropriate for growth prior to 2045 in accordance with the utility service and annexation criteria.

Key Planning Areas

- 1 Area appropriate for downtown plan.
- 2 Area appropriate for small area/corridor planning.
- 3 Implement and regularly update the Blue Ridge Road Small Area Plan.

Ideas and Opportunities



Active transportation, public health, and the built environment

Studies show that the built environment - including buildings, streets, trees, parks, and more - directly impact transportation options available to people. Bicycle and pedestrian-friendly districts and neighborhoods result in more people using active modes of transportation, and result in better health outcomes.

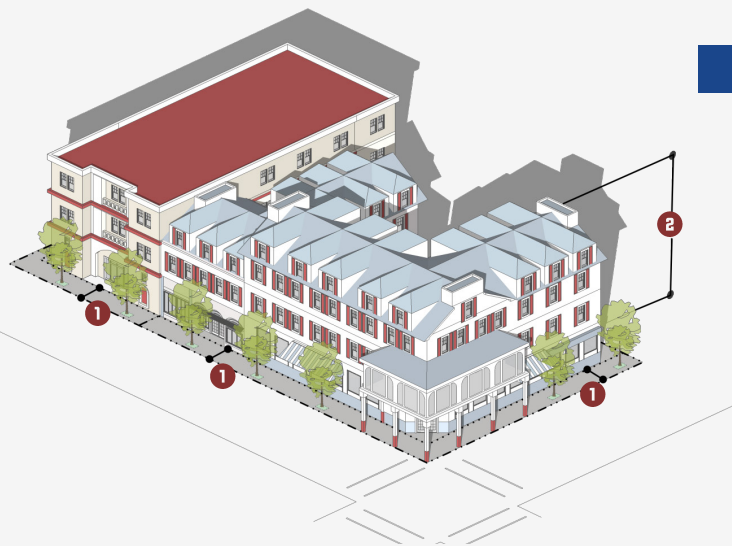
Pedestrian-friendly design

High quality building design and town layout can be key to a community’s economic vibrancy quality of life, and sustainable growth. Communities use different approaches to achieve the design they want. Some communities adopt a community design handbook (like that pictured to the right from Eugene, OR) to identify key design principles as they relate to the existing community character.



Regulatory options

Black Mountain’s zoning regulations do not construct the town, but they do serve as the DNA that determines what new development looks like, where and how buildings are arranged, and the uses that occupy them. Increasingly, communities are easing restrictions on uses, clarifying and simplifying development review processes to make them more understandable to the public, and modifying building form, design, and dimensional standards to encourage walkable form.



Gateways

Gateways can mark primary entrances into Black Mountain and provide the opportunity to announce your entrance into a special, unique, and memorable place. Using distinct design features gateways can communicate Black Mountain’s unique history, access to nature, and commitment to environmental excellence and quality of life. Gateways can take many forms including signs, graphics, landscaping, lighting, unique buildings, and other forms of public art.

Terminating Vistas

A terminating vista is a building, monument, or natural feature that stands at the end or in the middle of a corridor, so that when looking up the street the view ends with the site. Terminating vistas help create memorable places, and elevate the site’s importance. Common terminating vistas include government buildings, like town halls, religious buildings and towers, or mountains.



Outdoor Rooms

Outdoor rooms are places that naturally attract people through design and activation of spaces. Outdoor rooms, are often streets, plazas, and squares that are fully enclosed by well-designed buildings with active street frontages and uses. Tree canopies help to enclose outdoor room spaces while water features, statues, or other features further help to activate the space and give it life.





2 | WALKABLE & LIVABLE

What makes Black Mountain such a special place? How can we keep it special while the town and surrounding region rapidly grow? Black Mountain is a place people want to live in and visit. The town hosts eclectic neighborhoods and housing options, a charming downtown, restaurants, breweries, and industry.

Its location among the mountains, yet near the bustling City of Asheville, make it increasingly attractive, which is both an opportunity and a challenge. As the town grows, it must protect, maintain, and enhance the character of the places that make Black Mountain special, while growing in an environmentally and fiscally sustainable pattern and expanding living and traveling options for people of all incomes.

Black Mountain is a distinct mountain town that is affordable, livable, human-scale, and grounded in its historic character.

To achieve the vision of a livable and walkable community requires a variety of creative solutions. As the town grows, it will prioritize growth where there is existing infrastructure rather than unrestrained outward growth. Therefore, Black Mountain supports infill development and redevelopment, however, such development must support and enhance the character of the town’s historic and human-scale built patterns.



*“More walkable public and community areas.
More sidewalks.”*

-Black Mountain Resident

Naturally occurring affordable housing is existing housing that is currently affordable for modest-income homeowners and renters, often found in in-town and older suburban neighborhoods in danger of decline or gentrification.



Goal 2.1

Complete neighborhoods with diverse housing options and walkable daily needs, jobs, and services

POLICIES

- 2.1.1** The Future Land Use Map guides zoning and development decisions and new zoning and development regulations.
- 2.1.2** Build a network of active mixed-use walkable centers that are well-connected by multimodal corridors.
- 2.1.3** In new multi-building developments, promote a variety of housing types, mix of uses, and walkable pattern.

Goal 2.2

Social housing that is affordable to everyone, including workers and low-wealth residents

POLICIES

- 2.2.1** Support low income and workforce housing, mixed throughout the town.
- 2.2.2** Prioritize construction and preservation of permanent affordable housing and housing that is affordable to individuals and families at 60 percent AMI and below.
- 2.2.3** Using incentives, regulations, and other strategies, and to the extent possible, strive to achieve 10 percent affordable units in new multi-unit residential construction projects.

Goal 2.3

A town that maintains an affordable cost-of-living for low- and middle-income residents

POLICIES

- 2.3.1** Consider both the cost of housing and the cost of transportation as the town develops (transportation costs rise as distances increase).
- 2.3.2** Expand the variety of housing types (townhomes, small multifamily, etc.) and housing tenure (own, rent, cooperative, etc.) in appropriate locations and using contextually-compatible approaches.
- 2.3.3** Preserve the Town’s stock of naturally occurring affordable housing (NOAH) using zoning and other innovative planning tools.

Goal 2.4

Unique community character that celebrates the Town’s history, provides gateways, enhances safety, and creates active and exciting places

POLICIES

- 2.4.1** Support identification, stewardship, preservation, and improvements of historic properties and the town’s historic district.
- 2.4.2** Use the town’s walkable and special historic character as a guide for design of new development.
- 2.4.3** Encourage reuse and rehabilitation of existing homes and buildings.
- 2.4.4** Identify, protect, and enhance terminating vistas, both built and natural. Identify and protect cherished mountain views.

Goal 2.5

Leveraging of the arts and support of creative public places

POLICIES

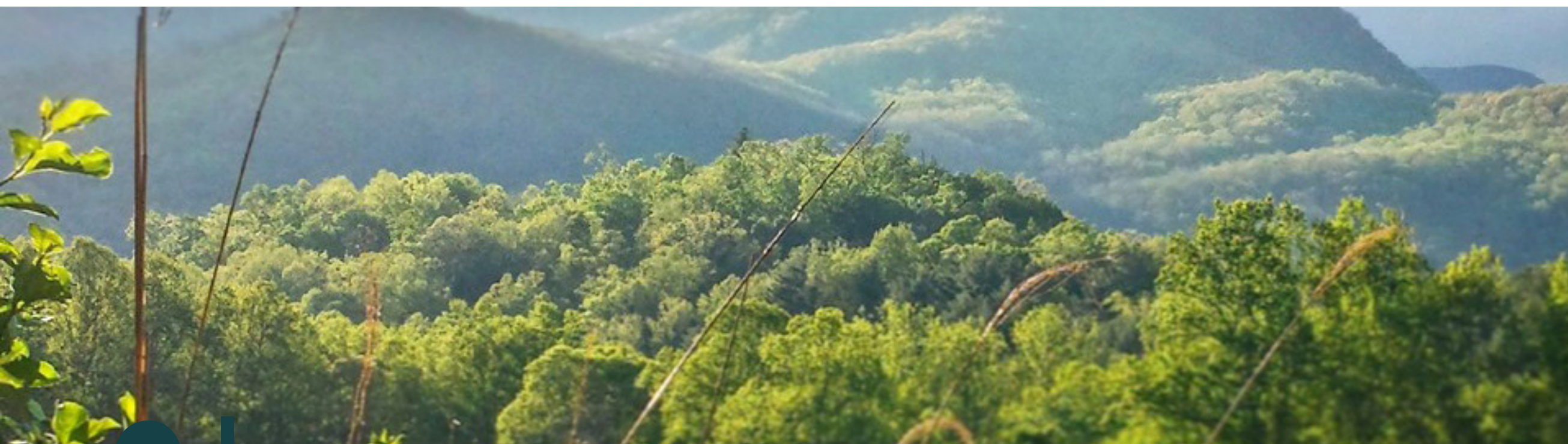
- 2.5.1** Incorporate art into new public and private development, civic spaces, gateways, and infrastructure projects.
- 2.5.2** Create and enhance gateways into Black Mountain and between different distinct areas within the town.
- 2.5.3** Support and carry out demonstration projects, especially using art, to test and display building and transportation retrofit opportunities.

Goal 2.6

An active environment that supports physical activity and healthy living

POLICIES

- 2.6.1** New growth should use best practice principles of walkable design to improve human health through active modes of transportation.
- 2.6.2** Enhance the pedestrian realm, through high quality building design, like transparent first floor facades that front onto streets and public spaces and architectural detailing, where appropriate.



3 | GREEN & RESILIENT

Black Mountain, and communities across the country and around the world, are turning toward sustainable development approaches as a tool to enhance quality of life, reduce long term energy costs, lower greenhouse gas emissions and pollution, and make their local economies more competitive. By building a greener and more resilient town, we can ensure we leave our town better to future generations than we inherited it from past generations.

To achieve a truly sustainable future, the Elevate Black Mountain Comprehensive Plan sets a vision and charts a new course for the future of our town. In achieving a sustainable town, we will also capitalize on the many fiscal benefits that accrue from energy efficiency.

New growth is green, resilient, and embodies the values of responsible environmental stewardship.

As it grows, Black Mountain will protect natural water systems and manage development. The town will grow sustainably by using design approaches that serve to minimize impacts on the natural environment and enhance energy resiliency. Conservation efforts will maintain the health of the watershed, manage stormwater flows, and help guarantee the quality of the environment for future generations. Black Mountain will support nature not just in parks, yards, and open spaces, but also along streets and on buildings.



“Make caring for the environment the underpinnings of all we do when making town decisions”

-Black Mountain Resident

What Black Mountain Residents Said

During the Elevate Black Mountain public engagement process, in-person and online participants expressed a strong interest in sustainability and protection of open space.

When residents were asked about what is most important to them as the community grows and changes the #1 response (46% out of 8 choices) was to protect open space.

When residents were asked what they value most about living in Black Mountain, nearly a quarter of responses were access to the natural environment.

Goal 3.1

Efficient and fiscally balanced growth that prioritizes use of existing utilities and service areas

POLICIES

- 3.1.1** Intentionally manage outward growth to balance protecting community character and natural areas while directing desired growth to identified centers.
- 3.1.2** Use the Utility Service and Annexation Criteria to ensure new growth is within or contiguous to Town boundaries.
- 3.1.3** Ensure new growth is consistent with the Black Mountain Development Principles and other principles of smart growth planning and design.

Goal 3.2

Conserved green spaces and green corridors that are integrated throughout the Town

POLICIES

- 3.2.1** Protect floodplains, steep hillsides, wetlands, and other ecologically valuable areas and corridors from development.
- 3.2.2** Promote environmental stewardship through education outreach programs, classes, signage, public art, or other methods.
- 3.2.3** Encourage public access to green space within walkable and bikable distances to residential properties.

Goal 3.3

A sustainable and resilient watershed that uses natural approaches to address stormwater

POLICIES

- 3.3.1** To protect water quality, use low impact development practices, like bioswales, rain gardens, and impervious pavement that use or mimic natural processes.
- 3.3.2** Expand green infrastructure features throughout the built environment, like street trees and green roofs and walls.
- 3.3.3** Promote use of local plant species and limit or eliminate the planting of invasive plant species.
- 3.3.4** Update and continue to maintain the stormwater master plan and focus on the plan’s long term capital investments.

Goal 3.4

Energy efficient buildings and transportation options

POLICIES

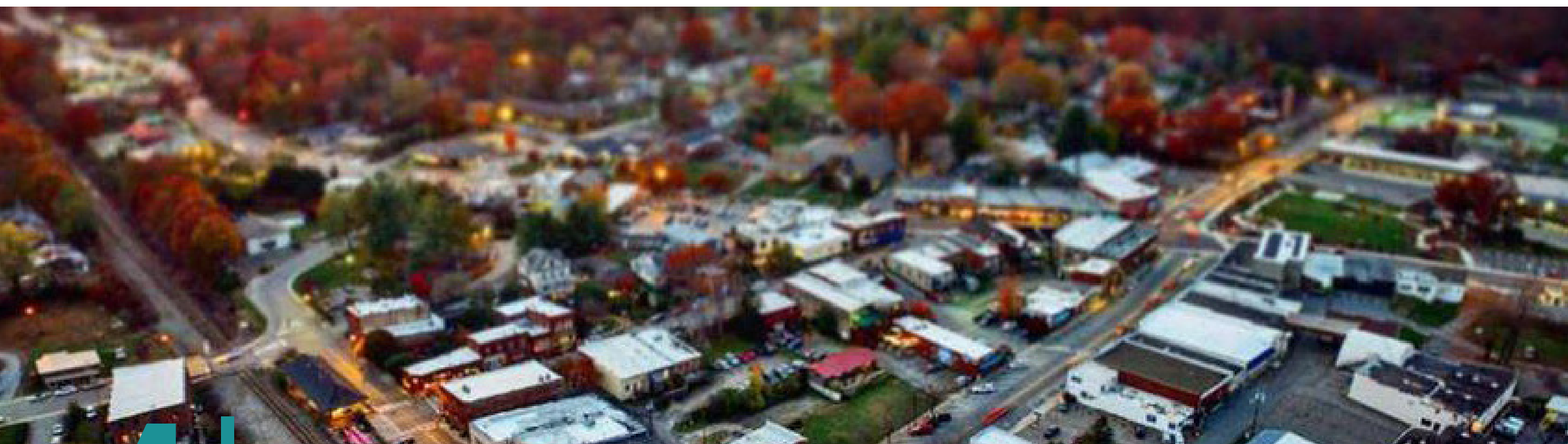
- 3.4.1** Promote long term town-wide sustainability planning, with goals and policies for climate mitigation and energy resilience.
- 3.4.2** Promote green and energy-efficient building using tools, such as the development ordinance, incentives, and public investments.
- 3.4.3** Construct new public buildings to LEED standards.
- 3.4.4** Ensure new infrastructure projects incorporate green energy. Consider Asheville’s green Capital Improvement Program as a model.

Goal 3.5

Active and accessible public parks, trails, plazas, greens, and squares

POLICIES

- 3.5.1** Expand and enhance street tree infrastructure between sidewalks and street curbs and lining public spaces.
- 3.5.2** Create outdoor rooms by centralizing public space, fronting buildings onto them, and incorporating high quality design with public art and sustainable features.
- 3.5.3** Celebrate the Swannanoa River by orienting the frontage of buildings adjacent to and nearby to face the river. The Blue Ridge Road area is a key opportunity.



4 | VIBRANT ECONOMY

The Black Mountain economy has recently seen an explosion in its tourism sector, but it has a manufacturing foundation and a strong working class history. Today the most common jobs for Black Mountain workers are in retail trade, accommodation and food services, manufacturing, and health care. Black Mountain also has a high number of residents who are not working, with 54% of residents in the labor force compared to 62% for Buncombe County. Many of those are retirees. About one third of the town's workers commute into Asheville.

Today, Black Mountain's economy is inextricably linked with the labor and jobs available throughout Buncombe County and the region, and the features that support the town's high quality of life including the historic character, culture of education, and access to parks, trails, and nature.

The Town’s vibrant, innovative, and diverse economy provides dignified jobs with living wages.

Black Mountain will have high quality employment opportunities for a growing and changing population. The town delivers innovation by supporting business development, entrepreneurship, and labor force training. It also prioritizes the economic opportunities for those most in need and seeks to work with regional partners to balance the distribution of, and transportation connections between, jobs and residences.



“Encourage businesses and municipal enterprises to pay a living wage.”

“Diversify the local economy.”

-Black Mountain Residents

Goal 4.1
A strong, diversified economy

- POLICIES
- 4.1.1 Leverage existing economic assets by promoting businesses that are actively investing in Black Mountain and providing good jobs.
 - 4.1.2 Support Black Mountain’s independent businesses and ensure existing resources are adequately advertised to existing and prospective small business. Foster a spirit of entrepreneurship and information-sharing.
 - 4.1.3 Support the development and growth of worker-owned businesses as a means of promoting higher wages, upward mobility, and a diversity of locally-owned services.

Goal 4.2
A competitive workforce

- POLICIES
- 4.2.1 Support regional job training opportunities like the NCWorks Career Center, Mountain Area Workforce Development, and Goodwill’s Buncombe County Career Connections Centers.
 - 4.2.2 Support expanded pre-K and childcare services, in conjunction with Buncombe County and other regional partners.
 - 4.2.3 Collaborate with partners to expand access to high quality, affordable internet services.

Goal 4.3
A renowned outdoor tourism destination

- POLICIES
- 4.3.1 Invest in placemaking initiatives that create active streets, plazas, and public art. Encourage developments that are environmentally, socially, and financially sustainable, use renewable energy, green infrastructure, and reduce pollution.
 - 4.3.2 Support marketing efforts that highlight Black Mountain’s natural assets and position as a key destination for outdoor activities.
 - 4.3.3 Support local outdoor running and biking events.

Goal 4.4
Innovation through arts, culture, and creativity

- POLICIES
- 4.4.1 Capitalize on Black Mountain’s existing arts infrastructure to strengthen the town as a center for art and culture.
 - 4.4.2 Consider an incubator space for local entrepreneurs, artists, and musicians.
 - 4.4.3 Where practical, promote hiring of local artists for public art projects.
 - 4.4.4 Encourage incorporation of public art on new development projects of a certain size.

Goal 4.5
Thriving manufacturing, including small-scale

- POLICIES
- 4.5.1 Support the town’s existing manufacturing economic base.
 - 4.5.2 Ensure an adequate amount of land and space for small- and medium-scale manufacturers through land use planning and zoning policy.
 - 4.5.3 Encourage the growth of small-scale artisans and homegrown manufacturing and assemblage.

Goal 4.6
A connected food economy with access to local foods

- POLICIES
- 4.6.1 Build and strengthen the local food economy through the Black Mountain Farmers Market. Consider ways of creating or attracting a local food cooperative.
 - 4.6.2 Support local restaurants, food incubators, food-related events, and other initiatives.
 - 4.6.3 Support community gardens, like the community garden in Veterans’ Park, throughout the town to expand local food production and foster a strong sense of community.



5 | CIVIC ENGAGEMENT

The people of Black Mountain are the town's greatest strength and key to the town's governance and decision-making. The town offers many services to serve its people, both directly and indirectly. The town provides parks and recreation services and facilities, emergency services, clean water, planning and development services, and administrative and financial services. It also serves as a leader and a convener to facilitate collaboration and communication with non-profit, institutional, business, and regional partners.

Black Mountain residents, and residents in communities across the state, are continuing to act collectively through their local governments to provide needed services and improve quality of life.

The Town engages with the community to offer excellent services and facilities.

The Town of Black Mountain seeks to support all of its people by providing a variety of excellent facilities, services, and programs that promote the health, safety, and welfare of all who live, work, and visit the town. Growth and change in Black Mountain should be leveraged as an opportunity to advance quality of life, while ensuring the maintenance and growth of quality services, stewardship of town resources, and community engagement in coordinated planning efforts with regional jurisdictions and community institutions.



Goal 5.1

Equitable engagement opportunities for residents

POLICIES

- 5.1.1 Continue to make governance and government decision-making accessible and transparent to all residents.
- 5.1.2 Promote ongoing, community-driven neighborhood and small area planning that delivers area-specific targeted zoning, capital investment, and programmatic solutions throughout Black Mountain.
- 5.1.3 Actively seek to include hard-to-reach populations in engagement efforts. Where possible, track participant demographics to identify participation gaps.

Goal 5.2

High quality parks and public spaces

POLICIES

- 5.2.1 Continue to plan ahead for the development or expansion of future needs for park facilities.
- 5.2.2 As the town grows, seek to maintain service levels for parks and recreation, fire, police, public works, planning, and other town departments.
- 5.2.3 Encourage or require the dedication of new public spaces in master-planned developments, including playgrounds, pocket parks, and neighborhood parks.

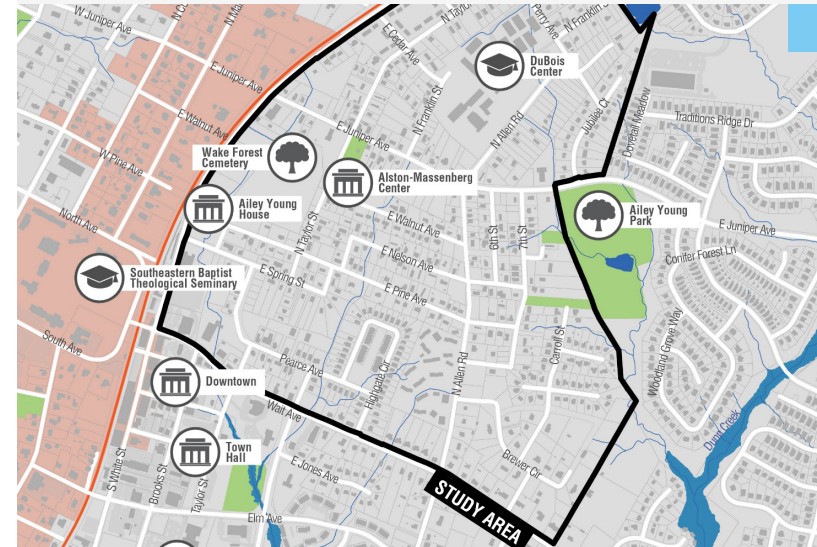
Goal 5.3

Excellent public services and facilities

POLICIES

- 5.3.1 As the town grows, ensure high quality services and infrastructure are maintained or improved. Support improvements especially within areas of need through strategic planning and CIPs.
- 5.3.2 Ensure new growth and development is fiscally balanced in the long run while directing more growth to areas with existing services and infrastructure.
- 5.3.3 Continue to coordinate with local and regional partners to plan for and administer affordable housing, transportation, environmental, educational, and economic development opportunities.

Ideas and Opportunities



Neighborhood Planning

Neighborhood planning offers residents ongoing opportunities to think proactively about the future of their communities and create strategies to achieve it. The image to the left comes from the Wake Forest, NC Northeast Community planning effort, a community-driven effort which seeks to address housing, zoning, public facilities, economic opportunities, transportation infrastructure, and preservation of community character.

Incubators and Coop Space

Launch Chapel Hill was founded in 2013 to provide co-working space and resources for businesses in Orange County. Launch is a collaborative investment between the Town of Chapel Hill, Orange County, and other public and private partners. Their mission is to develop the entrepreneurial ecosystem that allows entrepreneurs to build and grow their businesses in the area. They offer networking opportunities, coworking space, and learning events.



Workforce Housing

More and more communities are seeking to form regional partnerships to tackle the challenge of providing permanent affordable and workforce housing infrastructure, key to the health of the local economy as areas grow. Several North Carolina communities are using creative methods to fund housing projects, like issuing bonds, establishing trust funds, creating community land trusts, and affordable housing ordinances like that in the Town of Davidson, North Carolina.



6 | CONNECTED & ACCESSIBLE

How we travel between the places we need to reach on a daily basis impacts our quality of life, physical and mental health, our fiscal and economic health, the quality of the air and greenhouse gas emissions, and relationships with our friends and neighbors. Today, Black Mountain residents travel predominantly by car and on foot to reach their daily needs. According to the Center for Neighborhood and Transportation Technology, Black Mountain households spend an average \$12,000 per year on transportation, 27 percent of their income, and drive 21,000 miles.

Many residents want to expand the number of realistic transportation options they have available to them to include driving, walking, biking, and transit. To achieve that, the Town should coordinate land use planning and transportation investments to advance these goals

Residents have the freedom to safely and realistically get around using multiple travel modes.

Transportation planning is key to maintaining the cherished characteristics of the town, the quality of life that current residents enjoy, and the ability to get between places conveniently and safely. With growing local and regional growth pressures, it is clear that expanding the number of realistic travel modes available to people is a key strategy to limit growing traffic congestion and travel times, manage transportation spending, reduce automobile collision rates, reduce per capita energy consumption, and be economically competitive.



Goal 6.1

Multiple safe and realistic transportation mode options for residents

POLICIES

- 6.1.1 Enhance street intersection safety, pedestrian crossings, and other traffic-calming measures.
- 6.1.2 Prioritize physical barriers, such as curbs, on-street parking, trees, curbs, or bollards, between automobile lanes and non-automotive infrastructure.
- 6.1.3 Encourage alleys in new development and redevelopment to reduce conflicts between pedestrians and turning vehicles.
- 6.1.4 Manage high quality, mixed-use growth around freeway interchanges through land use planning.

Goal 6.2

Non-automotive transportation network

POLICIES

- 6.2.1 Establish a connected network of local and regional protected bicycle lanes, paths, and greenways.
- 6.2.2 Expand the Town’s sidewalk and street tree network within both new and existing development. Enhance connectivity between denser neighborhoods and services.
- 6.2.3 Expand short term and long term bicycle parking in areas of activity.
- 6.2.4 Support future initiatives that would expand access to regional and interstate rail transportation and other rapid transit options.

Goal 6.3

Right-sized, well-located parking

POLICIES

- 6.3.1 Maximize use of current parking supply by promoting shared parking and way-finding for existing parking.
- 6.3.2 Implement the most recent parking study.
- 6.3.3 Encourage land patterns that support and encourage non-auto modes of travel.
- 6.3.4 Wherever possible, locate surface and structured parking in the rear of buildings, with on-street parallel parking.

“I would love to see more lanes, trails, and parking for cyclists, more pedestrian infrastructure, more transportation options for seniors, and more public transportation.”

-Black Mountain Resident

Goal 6.4

An enhanced and user-friendly transit network

POLICIES

- 6.4.1 Provide safe, visible and accessible transit stops and transit lines.
- 6.4.2 Coordinate infrastructure and land use planning to facilitate future local and regional transit expansion.
- 6.4.3 In coordination with regional planning agencies, like Asheville Rides Transit (ART) and Mountain Mobility; enhance and expand regional transit options.
- 6.4.4 Coordinate with Amtrak to ensure any new passenger rail service includes a stop in Black Mountain.

Goal 6.5

Well-planned freight corridors

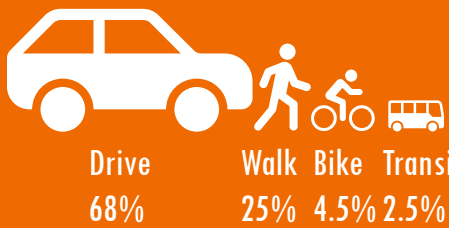
POLICIES

- 6.5.1 Continue to identify key freight corridors that best accommodate large vehicles.
- 6.5.2 Reduce freight conflicts with other modes of transportation modes. Reduce the need for freight trucks to travel through retail and residential areas.
- 6.5.3 Support access of industrial properties to regional roads through transportation and land use planning.

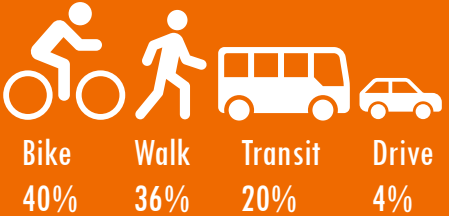
What Black Mountain Residents Said

During the Elevate Black Mountain public engagement process, residents juxtaposed the way they travel around today against the way they would prefer to be able to travel around if they had the choice.

How Black Mountain Residents Travel Around Today



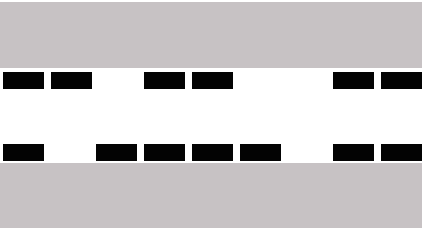
How Black Mountain Residents Wish They Could Travel



These results show that Black Mountain residents have few transportation options and that most people have to own and operate a car to get to the places they need on a daily basis. Respondents indicated they would prefer to be able to bike walk and take the bus, in addition to driving.

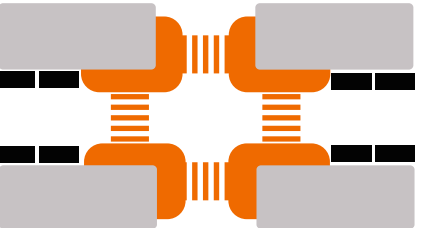
TRAFFIC CALMING STREET DESIGN TOOLBOX

The selection of traffic calming features below illustrates strategies proven to encourage lower vehicle speeds, improve travel safety, and enhance non-automotive travel.



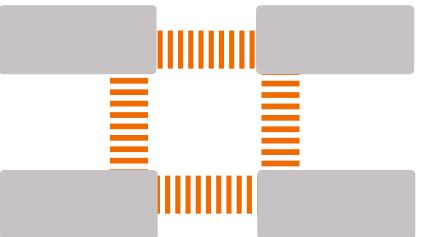
On Street Parking

On street parallel parking slows traffic and provides a barrier between moving vehicles and pedestrians.



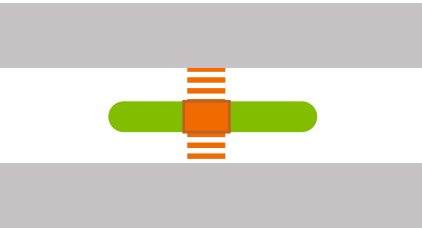
Bulbouts

Bulbouts shorten the distance for pedestrians crossing the street and slow vehicles as they turn corners.



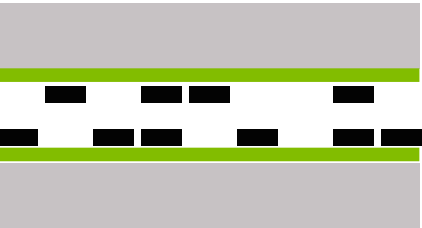
Marked Pedestrian Crossings

Pedestrian crossings, painted or marked with pavers, enhance visibility for pedestrians and slow traffic.



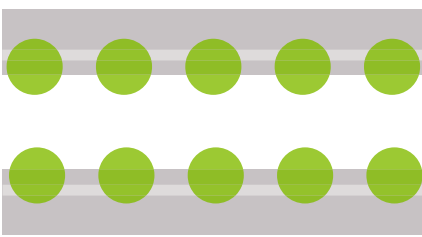
Pedestrian Island

Pedestrian Islands encourage drivers to slow in anticipation of pedestrians and offer a refuge for people crossing the street.



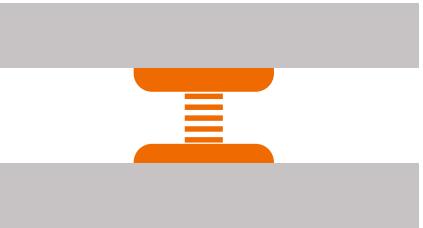
Protected Bike Lanes

Pavement markings and signage designate exclusive space for bicyclists using these lanes, which help create predictable movements for cyclists and cars.



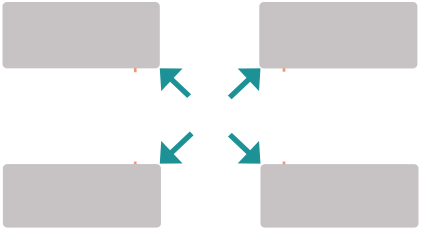
Street Trees and Sidewalks

Street trees offer shade and a protective barrier for pedestrians. Sidewalks/multi-use paths should be on both sides of the street.



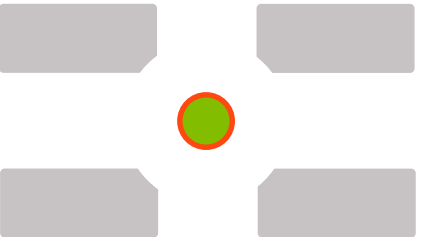
Mid-block Choker

Mid-block chokers shorten the distance to cross the street. This element can be combined with LID infrastructure for stormwater.



Pedestrian-Friendly Curbs

Neighborhood curb radii between 5 and 15 feet reduce pedestrian crossing distances and slow moving vehicles.



Traffic Circles and Roundabouts

Traffic circles slow traffic at neighborhood intersections. Roundabouts offer alternatives to traffic lights at larger intersections.

Ideas and Opportunities



Multimodal design

Multimodal street right-of-ways evenly split travel space between automobile and non-automotive infrastructure. Key elements of multimodal design are pictured in the image to the left from the National Association of City Transportation Officials. Some elements include (from left to right) a well-designed building facade, space for outdoor seating, sidewalks, space for street lamps, trees, and benches, bicycle facilities, stormwater infrastructure, and on-street parking.

Low Impact Development

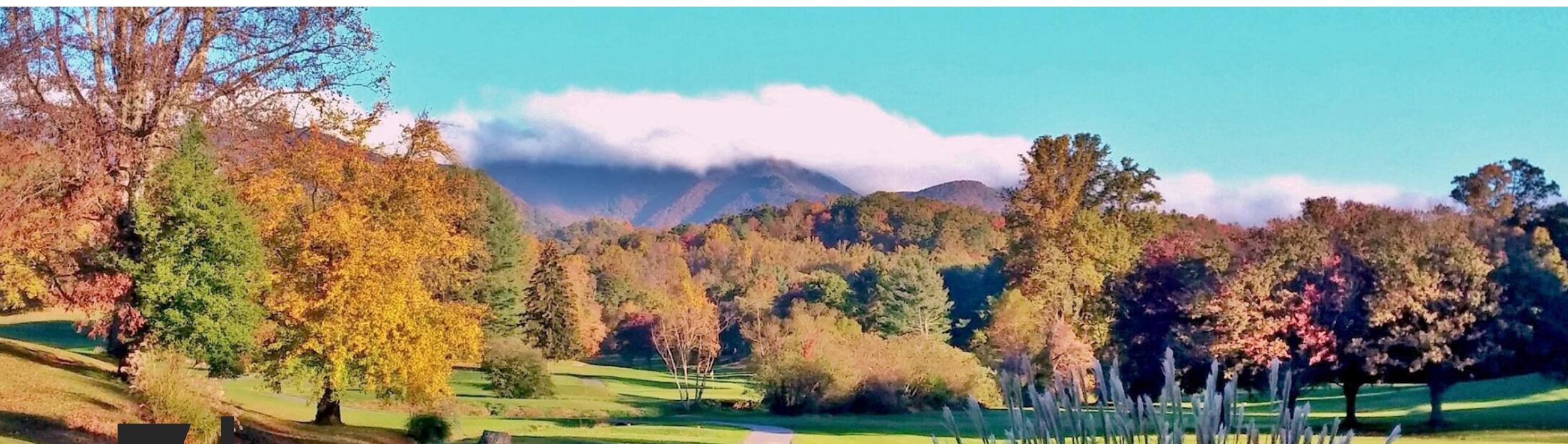
Swales within the street right-of-way, rain gardens, and other natural low impact stormwater infrastructure can double as traffic calming infrastructure. This infrastructure creates additional green space and provides a natural filter and retention area for stormwater runoff. It also improves street safety by reducing street widths and creating shorter crossing distances for pedestrians.



Demonstration Projects

New infrastructure and retrofits are costly, which is why transportation projects can often take so long to implement. Now many communities are testing out new ways of retrofitting their existing infrastructure. Demonstration projects can be used as a low-cost method of testing out new infrastructure designs, such as this bike lane built using plants, astroturf, and chalk. A car lane is quickly transformed into a comfortable bike lane with on-street parking.





7 | IMPLEMENTATION MATRIX

The Implementation Matrix lists the blueprint for action to implement the goals of Elevate Black Mountain. The matrix is a tool for prioritizing implementation actions and tracking the status of their implementation. This matrix can be used and updated regularly. This matrix can also be reviewed by the Town Council as they prepare budgets, capital improvement programming, and strategic planning exercises. Each action is tied directly to the chapters and goals of Elevate Black Mountain, and the policies in the plan can be used to help to guide their implementation. There is not necessarily an action for every policy. The actions also designate a lead Town department, the action's priority, how long the action is expected to take, and the status of the action's implementation which is to be updated as implementation progresses.



Walkable and Livable

Black Mountain is a distinct mountain town that is affordable, livable, human-scale, and grounded in its historic character.

ACTIONS

A.2.1 Conduct a Comprehensive Rewrite of the LUC

- To implement the recommendations of this comprehensive plan, the town's land use code (LUC) should be rewritten. Key elements to adjust include:
- » Establish infill and redevelopment context sensitive standards that allow flexibility and enhance character
 - » Update form and design standards to reinforce walkable, compact development objectives
 - » Modernize zoning districts to align with the vision for new nodes of activity; consider form-based zones
 - » Revise block length and connectivity standards to be consistent with this plan
 - » Establish a UDO with conditional zoning; improve multifamily housing provisions
 - » Consider requiring centrally-located dedication of park or civic spaces in master planned communities
 - » Consider ways of incorporating public art into new projects
 - » Create incentives (including but not limited to height and density) for green and sustainable building practices; consider sustainable building standards for certain types of development
 - » Consider formalizing the Utility and Annexation Criteria
 - » Revise parking requirements to include a maximum parking allowance, and location in the rear of the building in areas intended for more walkable mixed use development
 - » Remove barriers, create incentives, and streamline development review for infill development
 - » Consider initiating zoning map changes to targeted areas in Black Mountain

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	2 Yrs	Awaiting Action

A.2.2 Prioritize and conduct small area, corridor, and neighborhood plans

- » Use the Opportunity Areas Map to identify key small area, corridor, and neighborhood planning projects
- » In downtown, consider strategies for creating a four-sided outdoor room of the Black Mountain Town Square. If public safety were to be relocated, retain ownership and consider active uses within an iconic building
- » In downtown, consider strategies for burying of overhead wires, widening of sidewalks, and planting of street trees
- » Consider new development standards along Broadway Avenue that create a mixed-use walkable corridor and gateway into downtown
- » Ensure large sites accommodate small walkable blocks and civic space

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	1.5 Yrs Each	Awaiting Action

A.2.3 Create a Community Design Handbook

- » Create a community design handbook that considers Black Mountain's cherished built pattern for new development and redevelopment
- » Incorporate design criteria into the LUC

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	M	2 Yrs	Awaiting Action

A.2.4 Implement the Blue Ridge Road Small Area Plan

- » Evaluate and track progress on the plan implementation

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	10 Yrs	Started

A.2.5 Conduct a housing plan

- » Partner with Buncombe County to conduct a housing study and plan
- » Prioritize strategies for building and permanently protecting low income housing
- » Consider adopting an affordable housing ordinance, similar to Davidson, NC
- » Consider an affordable/workforce housing nexus study
- » Consider support for a community land trust and a housing trust fund
- » Evaluate the LUC and zoning map for ways to diversify the town's housing types while maintaining town character; ensure there are no barriers to construction of affordable housing
- » Study impacts of short-term rentals and opportunities to adopt modern regulations to address them
- » Conduct build-out analysis

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	2 Yrs	Awaiting Action



Green and Resilient

New growth is green, resilient, and embodies the values of responsible environmental stewardship.

ACTIONS

A.3.1 Conduct a Sustainability Plan

To implement the recommendations of this comprehensive plan, the town should develop and implement a sustainability plan. The plan should:

- » Include a greenhouse gas inventory
- » Conduct an energy/sustainability survey of town buildings
- » Establish public sector and private sector energy and climate goals and strategies
- » Involve collaboration with regional partners
- » Continue to explore solar installation on town-owned buildings; collaborate with Buncombe County
- » Identify areas where energy consumption can be reduced in town buildings

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, All	M	1.5 Yrs	Awaiting Action

A.3.2 Adopt stormwater best practices

- » Coordinate with Buncombe County, NCDOT, and other partners to ensure best practices for stormwater are carried out and incorporated into engineering handbooks
- » Update the LUC to incorporate directly or by reference best practices for stormwater management
- » Evaluate current practices to ensure they are resulting in intended stormwater management
- » Construct downtown stormwater control measures (SCMs) with grant support from DWQ
- » Identify stormwater SCMs that could be incorporated into downtown streetscapes
- » Create stormwater utility
- » Incentivize low impact development
- » Implement the Stormwater Management Plan
- » Maintain compliance with the NPDES Phase II Regulations

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Public Works	H	Ongoing	In Progress

A.3.3 Reduce waste and expand recycling

- » Develop citizen education/outreach program for waste reduction and recycling
- » Partner with local specialized recycling organizations for educational outreach and events
- » Consider ways of adopting innovative practices that promote a new waste stream by moving it from a linear disposal system to a circular one.

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Public Works	H	Ongoing	Awaiting Action

A.3.4 Evaluate and update municipal regulations for sustainability

- » Incorporate NCDEQ’s Conservation Planning Tool into development review process
- » Increase open space requirements (this could be based on use or size of project)
- » Increase incentives for LEED construction
- » Develop guidelines for water-efficient landscaping

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	Ongoing	Awaiting Action

A.3.5 Conduct stream restoration and preservation projects

- » Continue to identify areas for stream restoration and/or preservation
- » Coordinate with state agencies and other partners for stream restoration projects
- » Seek grant opportunities for stream restoration and/or preservation projects

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	Ongoing	Started



Vibrant Economy

The Town's vibrant, innovative, and diverse economy provides dignified jobs with living wages.

ACTIONS

A.4.1 Create a downtown business strategy

- » Consider a variety of financial investments and assessments to finance improvements, like special taxing districts, special assessments, bonds, or other strategies, in the downtown district and other commercial districts

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	H	4 Yrs	Awaiting Action

A.4.2 Develop an economic development strategic plan

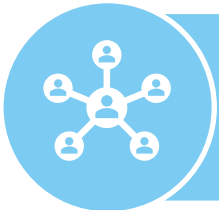
- » Consider opportunities to build on and find synergies between Black Mountain's current assets: outdoor economy, art and culture, food, small-scale manufacturing
- » Expand the town's professional staff for economic development, such as hiring an economic programs coordinator
- » Develop programs to support small business owners through capacity building and promotion activities
- » Consider expanding and diversifying grocery store and market options
- » Find strategies to fund workforce housing; consider conducting a housing nexus study
- » Find more opportunities to hold events that draw spending from throughout the region; consider artist night outs
- » Find opportunities to enhance connection to high quality, affordable internet
- » Consider overhauling or updating Black Mountain's branding, to make it more consistent with the town's green, active, and inclusive values
- » Ensure sustainable balance between housing and jobs; protect and design space for employment uses

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	M	3 Yrs	Awaiting Action

A.4.3 Establish an incubation and cooperative working space

- » Consider development of incubation spaces to help seed homegrown business development

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning	M	5 Yrs	Awaiting Action



Civic Engagement

The Town engages with the community to offer excellent services and facilities.

ACTIONS

A.5.1 Build a new community center and expand recreation capacity

- » Build a new community center and expand Black Mountain's recreation facilities
- » Adopt joint use agreements with local schools for gyms, playgrounds, and fields
- » Identify areas for pocket parks and develop pocket parks

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Parks & Rec, Planning	H	4 Yrs	Awaiting Action

A.5.2 Implement the Parks and Recreation Master Plan

- » Implement, monitor, and update the parks and recreation master plan

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Parks & Recreation	H	10 Yrs	Started

A.5.3 Continue to grow town's online and in-person engagement activities

- » Continue to improve organization, use, and functionality of the town's website and general online presence to make it more accessible, user-friendly, and interactive
- » Promote town activities and business through social media
- » Consider a town newsletter (update citizens on board decisions, projects, budget, sanitation updates, etc.)
- » Conduct community-based neighborhood planning; seek grant funding to conduct plans
- » Track and provide regular progress reports on plan and action item implementation

Responsible Department	Priority (H, M, L)	Time Horizon	Status
All	H	2 Yrs	Started

A.5.4 Enhance and maintain town's infrastructure and services

- » Ensure new developments can be served by existing infrastructure
- » Make a priority list of infrastructure needs and budget accordingly or seek grant funding if applicable
- » Coordinate with Police, Fire, Parks & Recreation, Public Works and all relevant town staff
- » Monitor and address Buncombe County's State of the County's Health Report metrics and recommendations
- » Continue to provide excellent public safety services; Ensure budget priorities meet the needs of the community (ex. ladder truck, installation of emergency signals at police and fire stations).

Responsible Department	Priority (H, M, L)	Time Horizon	Status
All	M	Ongoing	Started



Connected and Accessible

Residents have the freedom to safely and realistically get around using multiple travel modes.

ACTIONS

A.6.1 Implement the Black Mountain Bike Plan

- » Evaluate and update status of the plan's Action Steps for Implementation

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Public Works	H	10 Yrs	Awaiting Action

A.6.2 Implement the Black Mountain Parking and Circulation Study (2020)

- » Implement the plan's priority actions

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Public Works	M	10 Yrs	Started

A.6.3 Modernize transportation infrastructure standards and programs

- » Assess and revise Black Mountains street construction standards in new development to ensure consistency with best practices and implement the goals of creating multimodal travel corridors (i.e. installation of sidewalks and greenways)
- » Consider a sidewalk incentives grant or cost-sharing program developed to complete connections where there are currently gaps in infrastructure specifically along town roads.
- » Develop an easement banking program

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Public Works	H	3 Yrs	Awaiting Action

A.6.4 Complete the Blue Ridge Road Interchange

- » Continue to collaborate with NCDOT for the design and construction of the Blue Ridge Road Interchange to include complete street considerations.
- » Continue to advocate for modernization of Blue Ridge Road, including multiple model recommendations in the Blue Ridge Road Small Area Plan.

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Public Works	M	5 Yrs	Started

A.6.5 Improve State and local roads

- » Continue to collaborate with NCDOT for safety improvements such as signalization, intersection improvements, road diets as deemed necessary, and modernization of Blue Ride Road and Montreat Road.
- » Increase resurfacing and maintenance on local roads to meet best practices

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Public Works	M	10 Yrs	Started

A.6.6 Implement Greenway Master Plan (2019)

- » Continue to implement the Greenway Master Plan, develop community partnerships for the promotion of the greenway system and development of amenities and small trail sections.

Responsible Department	Priority (H, M, L)	Time Horizon	Status
Planning, Parks & Rec	H	10 Yrs	Started



TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: June 14, 2021

SUBJECT: Public Hearing for Text Amendments to Comply with Chapter 160D
#O-21-05

AGENDA INFORMATION

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

BRIEF SUMMARY: The North Carolina General Assembly passed S.L.2020-25(S. 720), known as Chapter 160D, and it became effective on June 19, 2020. Chapter 160D consolidates, reorganizes, and modernizes the state's planning and development regulation statutes and repeals the existing statutes that are collected and merged into this new chapter of the General Statutes. Due to Covid-19, the state allowed extra time for the amendments to be made to local ordinances and are now mandatory by July 1, 2021. The amendments address all mandatory changes made by Chapter 160D and also address some sentence structure and readability. The Planning Board made a recommendation to move the forward the amendments to the Town Council as presented at their May 24, 2021 meeting by a vote of 6-0.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-21-05*** for amendments to the Land Use Code to comply with Chapter 160D.
2. To close the public hearing.
3. To adopt ***Ordinance #O-21-05*** (statement of consistency included) as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance # O-21-05***, Land Use Code 160D Amendments in its entirety

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve ***Ordinance #O-21-05*** as presented.

ORDINANCE #O-21-05

AN ORDINANCE AMENDING THE TEXT OF THE TOWN OF BLACK MOUNTAIN LAND USE CODE

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A, now Section III of Chapter 1 of 160D, of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and amend said regulations from time to time in the interest of the public health, safety and welfare; and

WHEREAS, the Town of Black Mountain's Land Use Code must at all times comply with and conform to the requirements of North Carolina's General Statutes; and

WHEREAS, Session Law 2019-111, enacted on July 11, 2019 reorganized, recodified, and consolidated existing statutes authorizing municipalities and county governments to enact land use and development regulations; and

WHEREAS, Session Law 2020-25 requires that all local governments amend existing land development regulations to comply with the revised statutes no later than July 1, 2021; and

WHEREAS, after notice duly given, a public hearing was held on April 26, 2021 at the regularly scheduled meeting of the Town of Black Mountain Planning Board;

WHEREAS, the Town of Black Mountain Planning Board has reviewed the proposed text amendments to the Land Use Code (LUC) and recommends that it is consistent with the Comprehensive Plan because the proposed amendments consolidate, reorganize and modernize the development regulations for the Town of Black Mountain consistent with Vision Statement 9: Community Planning

WHEREAS, the Town of Black Mountain Planning Board recommends the proposed text amendments for enactment by the Town Council;

WHEREAS, after notice duly given, a public hearing was held on June 14, 2021 at the regularly scheduled meeting of the Town Council; and

WHEREAS, the Town Council find this Ordinance is consistent with the Town's Comprehensive Plan because the proposed amendments consolidate, reorganize and modernize the development regulations for the Town of Black Mountain consistent with Vision Statement 9: Community Planning and that it is reasonable and in the public interest to maintain land use regulations in accordance with North Carolina General Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLACK MOUNTAIN, MEETING IN REGULAR SESSION ON JUNE 14, 2021 AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:

That the Land Use Code appended to the Black Mountain Code of Ordinances be amended as follows:

Section 1. The phrase "Board of Aldermen" is deleted in each place that such phrase appears and replaced with the phrase "Town Council."

Section 2. The phrase “Zoning Board of Adjustment” is deleted in each place that such phrase appears and replaced with the phrase “Board of Adjustment.”

Section 3. The phrase “fire inspector” is deleted in each place that such phrase appears and replaced with the phrase “fire marshal.”

Section 4. Section 1.1 of Chapter 1 of the Land Use Code is hereby amended as follows:

1.1.2 - Authority and jurisdiction.

These regulations are adopted pursuant to the authority granted by **Chapter 160D** of the North Carolina General Statutes (NCGS), ~~Article 19; Sections 160A-381 through 160A-392.~~ The provisions of this code shall be applicable to all property within the town limits ~~and its extra-territorial jurisdiction.~~

1.1.3 - Purpose and intent.

A. , in order to protect and promote the health, safety and general welfare of the town ~~and any of its extra-territorial jurisdictions~~ in accordance with the General Statutes of the State of North Carolina and the Town of Black Mountain Code of Ordinances. It is also the intent of the Town of Black Mountain ~~Board of Alderman~~ **Town Council** that the ~~is~~ land use ~~development~~ code . . .

...

1.1.4 - No use or sale of land or buildings except in conformity with ordinance provisions.

A. **Development** regulations set forth **herein** shall be considered minimum regulations and shall apply uniformly to each class or kind of structure or land ~~except as~~ **unless** specifically **otherwise** provided ~~for elsewhere within the land use code.~~

B. No person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his/her control except in accordance with all of the applicable provisions of this ~~ordinance code.~~

...

1.1.5 - Relationship with adopted plans.

The administration, enforcement, and amendment of this ~~ordinance~~ **code** shall be . . .

1.1.6 - Relationship with other regulations and existing ~~ordinances~~ **development regulations**.

A. When provisions of this ~~ordinance~~ **code** require a greater width or size of yards, ~~or require~~ a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ~~ordinance or~~ regulation, provisions of this code shall govern. When the provisions of any other statute or local ~~ordinance or~~ regulation require a greater width or size of yards, ~~or require~~ a lower height of a building, or ~~require~~ a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this ~~ordinance~~ **code**, the provisions of that statute or regulation shall govern.

B. To the extent that the provisions of this ~~article~~ **code** are tied to specific zoning districts, ~~these~~ provisions will not supersede, repeal, or replace the existing regulations until such time as they are located and adopted as amendments to the zoning map. Existing zoning district regulations will remain as part of ~~the land use~~ **this** code until such time as they are formally removed from, or replaced on the zoning map through the map revision process.

1.1.7 - Relationship with existing permits, vested rights currently effective, and applications and violations in process.

A. It is not intended that this ~~ordinance code~~ repeal, abrogate, annul, impair, or interfere with any existing easements, valid covenants, deed restrictions, agreements, or vested rights which have been established pursuant to ~~G.S. 160A-385~~. **NCGS § 160D-108 and -108.1.**

B. It is not intended that this ~~ordinance code~~ repeal, abrogate, annul, impair, or interfere with any existing building permits previously adopted or issued pursuant to law and currently effective.

C. Variances, appeals, conditional use and special use permits, subdivision plans, site plan approvals, and other similar development approvals that are valid before the effective date of this ~~ordinance code~~ will remain valid until their expiration date. Development may be completed in accordance with such approvals even if such building, development, or structure does not fully comply with provisions of this ~~ordinance code~~. If building is not commenced and diligently pursued in the time allowed under the original approval or any extension granted, then the building, development or structure must meet the standards of ~~this ordinance~~ **these regulations** in effect at the time of re-application.

D. All suits at law or in equity and all prosecutions resulting from the violations of any ~~zoning ordinance~~ **development regulation** heretofore in effect which are pending in any of the courts of North Carolina or of the United States, shall be prosecuted to their finality, unless the act or structure which failed to comply with the prior ~~ordinances~~ **regulations** being prosecuted is in compliance with ~~this ordinance~~. **these regulations**.

1.1.8 - Separability.

If any section or specific provision of this ~~ordinance code~~ or any ~~regulating regulation~~ or district boundary arising from it is found by a court to be invalid or unenforceable for any reason, the decision of the court shall not affect the validity or enforceability of any other section, provision, standard, or district boundary of these ~~development~~ regulations except the provision in question. The other portions of these ~~development~~ regulations not affected by the decision of the court shall remain in full force and effect.

Should any section or provision of this ~~ordinance code~~ be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ~~ordinance code~~ as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

1.1.9 - Previous ordinance repealed.

~~Otherwise, these regulations~~ **This code** shall generally supersede, repeal, and replace the previous Town of Black Mountain ~~Title XV Land Usage Regulations and Provisions~~ **Land Use Code**, upon the effective date of ~~March 14, 2010~~. **July 1, 2021.**

Section 5, Section 1.2.1 and 1.2.2 of Chapter 1 of the Land Use Code are hereby amended as follows:

1.2.1 - Purpose.

These ~~development~~ regulations are written to achieve the purposes for which they are adopted and in support of the town's comprehensive plan. Guidance for interpretation and definitions are included herefor reference and apply to ~~the land use codes~~ **this code** in ~~their~~ **its** entirety.

1.2.2 – Guidance for interpretation.

A. Interpretations shall be guided by statements of intent or purpose within the context of

the **development** regulations. . .

B. All words used in this ordinance shall have their common, dictionary definition, unless specifically defined below or within the context of a specific chapter of the ~~ordinance~~**code**.

C. Interpretation of commonly used terms and words.

...

3. The words “person” or “one” or “no one” includes ~~an individual, partnership,~~ firm, association, **jointventure, public or private** corporation, trust~~-company,~~ **estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina** and ~~individual.~~**its agents and political subdivisions, or other legal entity.**

...

D. **Whenever any provision of the development regulations refers to or cites a section of the North Carolina General Statutes and that section of the general statutes is later amended or superseded, the development regulations shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.**

Section 6. Section 1.2.3 of Chapter 1 of the Land Use Code is hereby amended as follows (new definitions shall be inserted in alphabetical order):

1.2.3 – Definitions.

...

Administrative decision: Decision made in the implementation, administration, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in these development regulations. Also known as “ministerial”.

Administrative hearing: A proceeding to gather facts needed to make an administrative decision.

...

Adult establishment: An adult bookstore, adult motion picture theatre, adult mini motion picture theatre, or adult live entertainment business as defined in N.C.G.S. § 14-202.10.

...

Assisted living facility: A facility offering a combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living.

Automobile parking: Parking of operational and street legal motor vehicles on a temporary basis within an offstreet parking area.

Automobile services or stations: ~~(Also see “neighborhood fueling facility” which is distinct from this category)~~ Any building, garage, land area, or other premises or portion thereof, used for dispensing or selling vehicular fuels, or servicing and repair of automobiles. **(also see “neighborhood fueling facility” which is distinct from this category).** This term shall include:

...

Bank: A freestanding building, with or without a drive-up window, for the custody, loan, or exchange of money; for the extension of credit; and for facilitating the transmission of funds.

...

Bed and breakfast home: A private, owner-occupied residences with ~~no more than six~~**one to four** guest rooms where overnight accommodations and a morning meal are provided to transients for compensation, and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The ~~home owner~~**homeowner** shall reside on site and employment shall not exceed the equivalent of one full-time employee in addition to the owner.

Bed and breakfast inn: A private, owner-occupied business with ~~at least seven but not more than 12~~**five to twelve** guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast inn is operated primarily as a business. The ~~home owner~~**homeowner** shall reside on site and employment shall not exceed the equivalent of three full-time **employees in addition to the owner.**

Bedroom: ~~A room planned and intended for sleeping, separated from other rooms.~~ **See sleeping room.**

Boarding house or rooming house: A dwelling unit or part thereof in which, for compensation, lodging and meals are provided on a minimum of a weekly basis for **at least** three, but less than ten, unrelated individuals and where the owner or manager is a full-time resident of said establishment. Excludes hotels, motels, bed and breakfast homes and bed and breakfast inns.

...

Building: **A structure with a roof and walls built for permanent use. When used in reference to a residential structure, any one- or two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for habitation for living, sleeping, cooking, or eating purposes or any combination thereof, including accessory structures.**

Building, height of: The height of a building or structure as measured according to the guidelines of this code (see ~~4.5.2~~**4.5.2**).

...

Carnival: **Any aggregation of shows or riding devices, games of skill or chance, or any combination of shows and riding devices, or any combination of several enterprises, such as revolving wheels, merry-go-rounds, giant swings, panoramas, musical and theatrical entertainments, or riding devices, whether carried on or engaged in or conducted in any field, park, or in a building or enclosure, and whether carried on, engaged in, or conducted as one enterprise or by several concessionaires, and whether one admission fee is charged for admission to all such shows or entertainments, or separate fee for admission is charged for each amusement.**

...

Child care or day care center: An establishment providing for the care, supervision and protection of children that meets the North Carolina Licensing Standards for Day Care Centers. **This term includes nursery schools, preschools, day care centers for individuals, and other similar uses but excludes public and private educational facilities or any facility offering care to individuals for a full 24- hour period.**

...

Communication tower: A structure intended to furnish radio, cellular or television or other point-to-point communication services, whether by wire or radio, but not including amateur radio antennas affected and controlled by FCC regulations codified in **Chapter 47**, Section 97, of the Code of Federal Regulations.

...

~~Conditional use: A means by which special conditions may be imposed in the furtherance of the purpose and intent of the land use code or to protect the health, safety and welfare of the town's citizens as regards a specific development request.~~

~~Conditional use permits: A permit granted by the zoning board of adjustment as a prerequisite to any use or development listed as a conditional use. See also "Special use."~~

...

Conservation subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located and permanent open space is provided.

...

Determination: A written, final and binding order, requirement, or determination regarding an administrative decision.

Developer: ~~Any~~A person ~~or firm engaged in~~ who undertakes any development ~~or redevelopment~~ and who is the owner of the property. To be developed or who has been authorized by the owner to undertake development on that property.

Development: The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site or demolition of any structure; excavation, grading, filling, clearing or alteration of land; the subdivision of land as defined in N.C.G.S. 160D-802; the mitigation or substantial use of land or the intensity of use of land.

Development approval: An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including but not limited to zoning permits, site plan approvals, special use permits, variances, and certificates of occupancy.

Development permit: A development approval in writing that is required prior to commencing development or undertaking any activity, project, or development, including any of the following: zoning permits, site plan approvals, special use permits, variances, certificates of appropriateness, plat approvals, development agreements, building permits, subdivision plat approvals, driveway permits, and sign permits.

Development regulation: A zoning regulation, subdivision regulation, erosion and sedimentation control regulation, flood plain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, state building code enforcement, or any other regulation that regulates land use or development.

...

Discharge: The introduction, either directly or indirectly, of any effluent, whether illicit or non-illicit, into North Carolina surface waters. (See chapter 8.2, Phase II Stormwater Ordinance).

...

Driving Range: A limited area on which golf players drive golf balls from a central driving tee, such area to include the driving tee and other incidental activities pertaining to this activity.

...

Duplex or two-family ~~residence~~ residences: **A detached building which includes two individual dwelling units.** A duplex may be held in single ownership ~~and~~ or may be subdivided as a town home or condominium. It is a building designed as a single structure with two residential units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling unit.

Dwelling: Any building that contains one or two dwelling units used, intended, or designed as to be built, used, rented, leased, let or hired out to be occupied or that are occupied for living purposes.

Dwelling unit: ~~A room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen~~ A single unit providing complete independent living facilities and designed as a residence for one or more persons, including permanent provisions for one household or family living, sleeping, eating, cooking and sanitation, including the following types:

Accessory dwelling or accessory apartment: A dwelling unit located on the same lot as a detached single-family house such as garage apartments or “granny flats,” but which is smaller in size than the ~~principle~~ **principal** structure.

...

Townhouse or ~~town-home~~ townhome: A single household dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical, common fire-resistant walls. A subdivision of property within a ~~town-home~~ **townhome** development, duplex or special use permit shall include the footprint of the structure directly underneath the dwelling unit plus any yard area designated to that unit as part of an approved master plan or building permit.

...

Evidentiary hearing: A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

...

Garden Market: A place of business where retail and wholesale products and produce are sold to the consumer. These centers, which may include a nursery and/or greenhouses, import most of the items sold, and may include plants, nursery products and stock, potting soil, hardware, power equipment and machinery, hoes, rakes, shovels, and other garden and farm variety tools and utensils.

Golf Course: A tract of land laid out with at least nine holes for playing a game of golf and improved with tees, greens, fairways, and hazards. A golf course includes a clubhouse and shelters as accessory uses.

...

Home occupation: An occupation conducted in a dwelling unit or accessory building that is incidental and subordinate to its use for residential purposes by its occupants, and causes no change in the exterior of the dwelling. ~~See chapter 5.~~

Hospital: An institution providing health services primarily for human in-patient medical or surgical care for the sick or injured and included related facilities such as laboratories, out-patient facilities, and staff offices which are ~~in~~ an integral part of the facility. This term includes sanatorium ~~sanitorium sanatorium.~~

...

Industrial park: A tract of land, used primarily for industrial and related uses, that is under unified control and is planned, and developed, ~~and operated as an integrated facility for a number of individual industrial uses~~ whole in a single development operation or businesses, programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open space, and other site features and improvements.

...

Laboratories and research facilities: A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

...

Legislative decision: The adoption, amendment, or repeal of a regulation, including the decision to approve, amend, or rescind a development agreement.

Legislative hearing: A hearing to solicit public comment on a proposed legislative decision.

Lumber yard: An area used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products, but not including the manufacture or fabrication of lumber, lumber products, or firewood.

Manufactured home or manufactured housing: A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein, or for which the manufacturer has voluntarily filed a certification required by the Secretary of HUD and which complies with the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974.

...

~~**Manufactured housing:** Factory-built, single-family structures that meet the National Manufactured Home Construction and Safety Standards Act (42 USC Sec. 5401), commonly known as the HUD (U.S. Department of Housing and Urban Development) code.~~

...

Medical clinic: A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis, including emergency treatment, diagnostic services, training, administration, and services to outpatients, employees, or visitors. The term "clinic" includes immediate care facilities, where emergency treatment is the dominant form of care provided at the facility.

...

Meeting Hall: A building designed for public assembly containing at least one room of at least 2,400 gross square feet.

...

Mixed-use structure: A building containing residential in addition to non-residential uses.

...

Nonconforming: The state of not complying with the current ordinance. This term may apply to a lot, structure, or use which was lawful prior to the adoption, revision or amendment of the ordinance but that now fails by reason of such adoption, revision, or amendment, to conform to ~~the~~ current ~~ordinance~~ **development** regulations.

...

~~*Owner:* The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property.~~

Outdoor Theater: An establishment for the performing arts with open-air seating for audiences. Such establishments may include related services such as food and beverage sales and other concessions.

Owner or landowner: The holder of the title to land in fee simple. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

Plat, final subdivision: The final map ~~representing a tract of land~~ showing the boundaries and location of individual properties and streets on which the exact subdivision plan is presented for approval and which, if approved, will be financially guaranteed or submitted to the county register of deeds for recording.

...

Quasi-judicial decision: A decision involving the findings of facts regarding a specific application of development regulations and that requires the exercise of discretion when applying the standards of the regulation.

...

Site plan: A scaled drawing and supporting documents showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on a parcel or parcels of land, which may include site-specific details such as building areas, building height, floor area, setbacks and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review.

...

Sleeping room, sleeping unit, or bedroom: A room designated as sleeping or bedroom on the plans and permit application. When no plan or permit application is available, a sleeping room, sleeping unit, or bedroom shall be defined as a room with a closet set up to act as a space for a person to sleep.

Special use permit: A ~~type of conditional use~~ permit ~~that is~~ issued by the ~~zoning~~ board of adjustment ~~which involves a master-planned use of property for the development or redevelopment of new multiple dwelling or multiple commercial units, and other~~

~~types of land uses~~ **in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance, these regulations to authorize a specific use of land as required by these regulations.**

...

Subdivider: Any person, ~~firm, or corporation~~ who subdivides or develops any land deemed to be a subdivision as herein defined.

...

Subdivision, exempt: The types of land divisions or combinations that are exempt from state and local subdivision ~~definitions~~ **regulations** (per ~~G.S. 160A-376, or any successor statute~~) and ~~enumerated in of the land use code.~~ **N.C.G.S. § 160D-802.**

Subdivision, major: A subdivision ~~which meets the specifications set forth in the definition of, other than an exempt~~ subdivision ~~and is not exempted from that definition (see chapter 3),~~ and which requires the extension of public right-of-way and/or public streets, or where the entire tract to be subdivided is greater than five acres, or where the subdivision will result in five or more lots after the subdivision is complete.

Subdivision, minor: A subdivision ~~which meets the specifications set forth in the definition of, other than an exempt~~ subdivision ~~and is not exempted from that definition and,~~ which involves no new public streets or roads, and where the entire tract to be subdivided is five acres or less in size, and where four or fewer lots will result after the subdivision is complete.

Substantial progress: For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation.

“Substantial progress” ~~for purposes of determining whether an approved plan is null and void~~ is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

...

Tavern: An establishment serving alcoholic beverages in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and snacks may be available for consumption on the premises.

Tenant: Any person who ~~alone, jointly or severally with others~~ occupies a dwelling unit under a verbal or written lease or holds a legal tenancy in a dwelling.

...

Wholesale establishment: An establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. This is not considered a general commercial use.

Section 7. Section 1.3.1 of Chapter 1 of the Land Use Code is hereby amended as follows:

1.3.1 - Nonconforming uses, structures, and lots.

A. Any use, structure, or lot which does not conform to the requirements of ~~the town's land use~~**this** code but which existed before the effective date of this chapter as a legal "pre-existing nonconformance" and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of ~~the Land Use~~**this** code . . .

B. This section shall not apply to any feature which is the subject of a variance from particular **development** regulations that has been granted by the ~~zoning~~ board of adjustment ~~subsequent to the adoption of this Code~~. . . .

C. Subject to the conditions and exceptions set out in the following sections, ~~any a~~ **nonconforming** lot, building, structure, or use of land existing at the time of the enactment of ~~these land use codes~~**this code** or any amendment thereto ~~that does not conform to the requirements of the district in which it is located~~ may be continued or maintained ~~subject to the following provisions. They~~**provided that such nonconformity** shall not be:

~~1. Changed to another nonconforming use;~~

~~2.1.~~ Enlarged or extended except in conformity with this chapter;

~~3.2.~~ Reestablished after a discontinuance of 180 days; **or**

~~4.3.~~ Extended beyond ~~the~~ adopted amortization period if applicable ~~(as with the sign ordinance).~~ (~~§ 1, 9-9-2019~~) .

Section 8. Section 1.3.2 of Chapter 1 of the Land Use Code is hereby amended as follows:

1.3.2 - Single-family units or replacement manufactured homes on nonconforming lots in residential districts.

A single-family dwelling unit, ~~or a~~ replacement manufactured home meeting the criteria set forth in ~~manufactured housing regulations (chapter~~ **Section 5).**~~14,~~ shall be . . .

B. Variance of any district regulations other than lot size requirements ~~shall be~~**is** obtained ~~through~~**from** the ~~action of the zoning~~ board of adjustment.

C. A replacement, nonconforming manufactured home may be placed within 180 days after the previous home is removed and shall conform to the setback standards of the district in which it is located **if possible**, and, ~~when this~~**in the event it** is not possible **to conform to the setback standards of the district**, the replacement manufactured home shall not increase the nonconformity of the **current** setback ~~of the district~~ requirements and shall be placed to achieve the maximum ~~amount of~~ setback ~~required under the ordinance as~~ possible.

Section 9. Section 1.3.3 of Chapter 1 of the Land Use Code is hereby amended as follows:

1.3.3 - Nonconforming structures occupying conforming lots.

. . .

C. Any ~~mult-family~~ **multi-family** dwellings . . .

D. An existing nonconforming structure may be incorporated within a new special use permit request as long as the other structures and components of the master plan conform to the special use **permit** requirements.

. . .

Section 10. Section 1.3.4 of Chapter 1 of the Land Use Code is hereby amended as follows:

1.3.4 - Nonconforming use of structures, buildings, or land.

A. A legally established nonconforming use may be continued subject to the following limitations:

1. When a nonconforming use . . .

~~2. A nonconforming use of a structure may be enlarged or extended only:~~

a. ~~Where such alteration does not enlarge or increase the nonconformance of the structure, or~~

b. ~~Where such alteration is required by law or an order from the building safety director, fire chief or the planning and development director to ensure the safety of the structure.~~

~~2.3.~~ A nonconforming use . . .

B. A nonconforming use of land or buildings or structures shall not be changed to any new use other than a use listed as permitted or ~~conditional~~ **special use** within the district in which it is located.

Section 11. Subsections 1.3.5(B) and (C) of Chapter 1 of the Land Use Code are hereby amended as follows:

B. If a nonconforming vacant lot adjoins and has continuous frontage with one or more other lots in the same ownership, ~~then neither~~ the owner of the nonconforming lot ~~nor his successors in interest may~~ **may not** take advantage of the provisions of this section without combining these adjoining lots.

C. A lot ~~hat~~ **that** is only . . .

Section 12. Subsections 1.3.6(C) and (D) of Chapter 1 of the Land Use Code are hereby amended as follows:

C. Any nonconforming building . . . :

. . .

3. Within 180 ~~successive~~ days of ~~the~~ **a** fire; . . . ;

D. Any nonconforming building or any building containing a nonconforming use which has been damaged by fire to an extent exceeding 50 percent of its structure or 50 percent of its value at the time of the destruction, shall cause any repair, reconstruction, or re-~~use~~ **use to be** in conformity with the provisions of this chapter.

Section 13. Section 1.4 of Chapter 1 of the Land Use Code is hereby amended as follows:

SECTION 1.4 - ADMINISTRATION AND PROCEDURES

1.4.1 - Town staff.

A. The provisions of the land use code shall be administered . . . , and as provided by the N.C.G.S. ch. 160A. This may include, but **will** not be limited to, the following assignments:

1. A zoning administrator is assigned the duty and authority to administer and enforce the zoning and general provisions of ~~the land use~~ **these development** regulations.

. . .

7. Ensuring development compliance with ~~local land use~~ **these development** regulations, North Carolina General Statutes and the state building code.

C. Conflicts of interest.

No staff member shall make a final decision on an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on

the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by these development regulations or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

1.4.2 - Boards and commissions.

A. In accordance with ~~title~~ chapter 2, article III of the Town of Black Mountain Code of Ordinances . . .

B. All meetings of town boards and commissions are open to the public and shall follow the procedures provided in the Black Mountain Code of Ordinances, ~~title~~ chapter 2, article III and in the Town of Black Mountain's Boards and Commissions ~~Manual~~ Handbook.

C. The following boards and commissions have specific powers and duties with respect to the land use code:

1. The town ~~board of aldermen~~ council is the elected, governing body of the town and shall:

a. ~~Adopt text for and amendments to~~ Amend this ~~chapter~~ code and adopt a statement describing how its action is consistent with the comprehensive plan ~~and~~/or other adopted plans;

b. Adopt new zoning maps and amendments to zoning maps and adopt a statement describing how its action is consistent with the comprehensive plan ~~or~~ and other adopted plans;

c. Adopt amendments to the comprehensive plan and adopt new plans; ~~d. Approve final plats for major and minor subdivisions;~~

~~d. e.~~ Accept or close platted or granted rights-of-ways; and

~~d.f.~~ Carry out additional powers and duties as set forth in local and state regulations.

2. The town *planning board*..shall:

a. Advise and comment on text or zoning map amendments and provide a written recommendation to the board of aldermen that addresses how amendments are consistent or inconsistent with the comprehensive plan ~~and~~/or other adopted plans;

b. Recommend amendments to the comprehensive plan or other land use and land development plans or ~~land use codes~~ development regulations as well as to initiate studies or other planning initiatives;

. . .

~~g. Advise on planning initiatives that promote housing affordability and diversity;~~

~~h. Research and pursue grants and resources, including partnerships with housing and community development agencies to facilitate development and redevelopment of property to meet community housing needs; and~~

~~i. Maintain data on housing information and educate the public on affordability issues.~~

3. The town *board of adjustment* . . . shall have the authority to:

- a. Hear and decide appeals of staff interpretations of ordinances;
- b. Consider and grant variances; ~~and~~
- c. Consider and issue ~~conditional and~~ special use permits;
- d. Hear and decide appeals where it is alleged that there is error in any order, decision, interpretation or determination made by zoning officials;
- e. ~~Have the authority to~~ Vary or modify any of the regulations or provisions of ~~this ordinance~~ the development regulations so that the spirit of the ~~ordinance~~ development regulations is observed, public safety and welfare secured, and substantial justice is done. No change in permitted uses may be authorized by variance;
- f. Impose appropriate conditions that are reasonably related to ~~the~~ a special ~~or conditional~~ use application or to a variance request;

...

~~D. Advisory committees.~~

~~1. From time to time the board of aldermen may appoint one or more individuals to help carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the aldermen may appoint advisory committees to consider the thoroughfare plan, pedestrian plan, stormwater management plan or other issues.~~

~~2. Nothing in this section shall prevent the board of aldermen from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the board of aldermen.~~

1.4.3 - Board and commission member conduct and conflict of interest.

~~A. Each board and commission purpose, authority and general procedures are provided in the town's manual of boards and commissions and as described in title III of the Town Code of Ordinances. Boards and commissions may also adopt rules and procedures for their conducting business.~~

~~B.A. No member . . .~~

~~C.B. Members of the board of aldermen, and appointed boards providing advice to the board of aldermen,~~ shall not vote on ~~recommendations~~ any advisory or legislative decision regarding ~~any zoning map or text amendment~~ a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business or other associational relationship.

C. Members of appointed boards exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

...

1.4.5 - Procedures for development applications.

The general provisions of this section apply to all development applications and procedures under ~~this ordinance, unless otherwise stated. (See chapter 2 for building permits; chapter 3 for subdivisions; chapter 4 for zoning regulations; chapter 5 for specified uses; chapter 6 for conditional use permits; and for special use permits).~~ **these development regulations, unless otherwise stated.**

A. Application forms are available through the ~~department~~ **on-line portal** and on the town's website.

B. Authority to file applications. . . .

1. Applicant is not the owner. If ~~the~~ applicant is not the owner . . .

2. Applicant is not the sole owner. If ~~the~~ applicant is not the sole owner . . .

C. Simultaneous processing. Whenever two or more forms of review and approval are required under this ordinance (e.g., a rezoning, development agreement or a special use permit), the applications for those development approvals may, at the option of the planning director, be processed simultaneously, so long as all applicable state and local requirements are satisfied for ~~both applications.~~ **each application.** However, whenever ~~this ordinance requires these development regulations require~~ two types of review for the same approval (e.g., a master plan for subdivision and a final plat for subdivision), those two review and approval procedures must be completed as separate steps in the order specified.

D. Completeness. The burden of presenting a complete application to the planning department or to the permit issuing board shall be upon the applicant. Applications will not be acted upon until such time as the application is complete. An application shall be deemed complete if it is submitted in the required form, includes all requested information, and is accompanied by the applicable fee. A determination of application completeness shall be made within five (5) working days of application filing. If an application is determined to be incomplete, the planning director shall provide written notice to the applicant along with the explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within twenty (20) working days, the application shall be considered withdrawn.

E. Amendment. An applicant may revise a development application for any of the following reasons.

1. **To address deficiencies provided as part of the technical review;**

2. **To make limited changes that directly respond to specific requests or suggestions made by a reviewing board or staff in response to a reviewing board, as long as they constitute only minor additions, deletions, or corrections and do not include substantive changes to the development proposed in the application. Additional application fees to defray the additional costs of processing the revised application may be required; or**

3. **To have the application reviewed under a new rule or ordinance change that went into effect after the applicant received a written notice of application submittal acceptance, but prior to receiving a written decision on the application.**

For any other amendment for which approval has not been granted, the application shall be withdrawn and a revised application shall be submitted and reviewed as a new application. The revised application may be subject to additional application fees to defray the additional costs of processing the revised application.

F. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of these development regulations remains at all times on the applicant.

1.4.6 - ~~Applications and technical review.~~ **Technical review required.**

...

B. A pre-application consultation and technical review is required for:

1. Work impacting the exterior of any structure within **the** historic ~~or conservation~~ districts;
2. Major and minor subdivisions;
3. Special use ~~applications;~~ **permits;**
4. ~~Conditional use applications;~~
- 5.4. Any work within a flood hazard area as indicated on the FIRM maps;
- 6.5. Projects within the ICD, OI-**6** or ~~C-3~~**CB** districts; or
- 7.6. Projects adjacent to US Highway 70 within the US70 overlay district.

C. ~~A sketch or concept~~ plan of the project should be prepared for the consultation, drawn approximately to scale (1 inch = 60 feet). Sketch plans for subdivisions, special use permits and institutional campus development have specific, **additional** requirements. All ~~other~~ sketch plans shall contain at a minimum: **the following information as applicable:**

1. The name and address of the ~~developer;~~ **owner;**
2. ~~The proposed name and location of the subdivision;~~
- 3.2. ~~The approximate~~ Total acreage of the ~~proposed subdivision;~~ **subject parcel;**
- 4.3. ~~The tentative~~ **proposed site layout, including** street and lot arrangement, ~~including~~ designation of driveways, parking lots, open space, greenways, and stormwater management areas;
- 5.4. Topographic lines and drainages; and
- 6.5. Other information believed necessary to obtain the opinion of the planning department staff as to the proposed ~~subdivision's~~ **project's** compliance with the requirements of this ~~ordinance.~~ **code.**

D. The planning director, zoning administrator, building inspector ~~or other staff as appointed or invited by the planning director,~~ **and fire marshal** shall meet with the property owner or developer as soon as conveniently possible to review the sketch plan and to provide technical comments. **Other staff or agencies may be invited by the planning director.** ...

~~E. The burden of presenting a complete application to the planning department or to the permit issuing board shall be upon the applicant.~~

~~F. Applications will not be forwarded on to a board or commission for consideration until such time as the application is complete and any required fees have been paid.~~

~~H. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this code remains at all times on the applicant.~~

1.4.7 - Timing of submittals.

Any application, sketch plan, master plan, or plat that must go before the planning board, historic preservation commission ~~or~~, board of ~~aldermen~~ **adjustment, or town council** must be submitted at least 14 days prior to the regularly scheduled meeting in order to be placed on that meeting's agenda. ~~The zoning board of adjustment, which does not have regularly scheduled meetings, will schedule hearings in response to applications in such a way as to meet all NCGS public notification requirements, usually within two to four weeks after a complete submittal is provided to the planning and development services department.~~

1.4.8 - Administrative and permit fees.

The ~~board of aldermen~~ **town council** may adopt a schedule of fees for permits and processing costs associated with the administration of ~~the land use code (see appendix).~~ **these development regulations.**

A. *Fees to be paid.* No application shall be processed until the established fee has been paid.

B. *Refund of fees.* Application fees are not refundable except where the planning director determines that an application was accepted in error, or **in** the **event the** fee paid exceeded the amount due, ~~in which case~~ the amount of the overpayment will be refunded to the applicant; ~~or if a project qualified for a rebate under the town's building regulations.~~

~~1.4.8 - Uses of right.~~

~~Uses or categories of uses not designated as permitted by right or as conditional or special uses, shall be prohibited. Conditional and special uses are permitted upon compliance with additional regulations as set out in the town's ordinances and under any such additional conditions as specified by the board of adjustment.~~

~~1.4.9 - Special use and conditional use permits.~~

~~Special use permits and conditional use permits are required for certain uses designated within the code in order to ensure the goals of the comprehensive plan or other adopted plans are considered and to minimize negative impacts on neighboring properties. These permits must be issued by the zoning board of adjustment which shall hear requests for all conditional and special use permits and consider permits in accordance with guidelines set forth.~~

Section 14. Section 1.5 of Chapter 1 of the Land Use Code is hereby amended as follows:

SECTION 1.5 — AMENDMENTS **TO LAND USE REGULATIONS AND ZONING MAP**

1.5.1 - Amendments to the land use code text and the zoning map.

A. These ~~land use~~ **development** regulations . . .

C. No text or map amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning board for review and recommendation.

~~1. For formal applications for a zoning map or text amendment submitted with all accompanying documentation and fees, the planning board shall have 30 days within which to submit its report. If the planning board fails to submit a report within the required 30-day period, it shall be deemed to have approved the~~

~~proposed amendment and the application shall be advanced to the board of aldermen.~~

~~2. For informal requests or suggestions for zoning map or text amendments, the planning board does not have to respond within 30 days but shall take the matter into advisement in their deliberations and determine how and at what time the recommendation or request shall be handled.~~

1.5.2- Requirements for consideration of zoning map and text amendments.

~~B. After the required review and report by the planning board, the board of aldermen may undertake the necessary steps to amend the land use code.~~

1.5.3- Reconsideration of zoning map amendments.

The ~~board of aldermen~~ **town council** shall not reconsider a proposed amendment to the zoning map for a period of six months from the date of the determination of the prior request; unless, the planning board recommends that reconsideration be given after ~~there has been~~ a substantial change ~~of in the~~ character ~~to of~~ the area or evidence of factors or conditions ~~exist which that~~ were not considered by the planning board or the ~~board of aldermen~~ **town council** in previous deliberations and which might substantially alter the basis upon which the previous determination was made.

1.5.4- Procedure for map or text amendments.

A. *Board initiation of amendments.* A proposed amendment to the text of the ~~land use code~~ **development regulations** or the ~~zoning on the~~ official zoning map may be initiated by the ~~board of aldermen, town council or~~ the planning board, ~~the zoning board of adjustment, or by~~ **whether on their own initiative or upon** recommendation of any town board or commission **submitted** to the planning board.

B. *Citizen petitions for amendments.* **Any citizen of Black Mountain** may ~~be made request~~ **an amendment to the text of this code or the official zoning map** by submitting an application ~~form obtained from~~ to the planning department. Completed forms, ~~plus together with~~ any additional information the applicant feels to be pertinent, shall be filed with the planning department ~~for staff to forward on to the planning board.~~ The property owner or the holder of a conditional sales contract may request an amendment to the ~~land use code~~ **development regulations** for a particular piece of property.

...

E. *Petition fees* Recommendations for changes to the ~~code~~ **development regulations** text or map that come from town appointed boards or commissions shall not require a petition fee.

Notice of planning board meeting to consider proposed map amendment. ~~Proposed text and/or map changes shall be submitted to the planning board for review and recommendation. Before~~ **When** a **zoning** map amendment is ~~presented to the planning board~~ **proposed**, staff shall prominently post a notice of the public ~~hearing~~ **meeting** on the site of the proposed rezoning or on an adjacent public street or highway right-of-way **at least 10 but not more than 25 days prior to the date of the hearing.** When multiple parcels are included within a proposed zoning amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed amendment and the date of the public ~~hearing~~ **meeting.** If the zoning map amendment affects more than 50 properties, owned by ~~a total of~~ at least 50 different property owners, ~~the board of aldermen~~ **staff** may publish a notice of the hearing,

provided that each advertisement shall not be less than one-half of a newspaper page in size as long as the property owners residing outside the newspaper circulation are still notified by mail. ~~The planning board shall have 30 days within which to submit a recommendation to the board of aldermen with a statement of whether the proposed amendment is consistent with the comprehensive plan or other officially adopted plan applicable. If the planning board fails to act within the required 30-day period, it shall be deemed to support and recommend the proposed amendment and the application shall proceed to the board of aldermen.~~

~~F. The planning board makes a recommendation to the board of aldermen in writing that addresses plan consistency and other matters as deemed appropriate by the planning board. However,~~

*Proposed text and/or map changes shall be submitted to the planning board for review and recommendation. **The planning board shall, within 30 days, submit a recommendation to the town council with a statement describing whether the proposed amendment is consistent with the comprehensive plan and other officially adopted plans as applicable.*** A comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan or other officially adopted plans shall not preclude consideration or approval of the proposed amendment by the ~~governing board~~ **town council**. **If the planning board fails to act within the required 30-day period, the town council may act on the amendment without the planning board report.**

G. *Public hearing required.* Before enacting an amendment to ~~this code~~ **the development regulations** or official zoning map, the ~~aldermen~~ **council** shall first hold a public hearing. ~~Staff shall place notification of the public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.~~

H. **Notice of hearing required.** ~~Posting of property.~~ When a zoning map amendment is proposed, **public notice of the public hearing shall be posted, advertised, and mailed as follows:**

1. Staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so ~~to provide reasonable notice to interested persons.~~ ~~Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed zoning map amendment and the date of the public hearing. If the zoning map amendment affects more than 50 properties, owned by a total of at least 50 different property owners, staff may publish a notice of the hearing, provided that each advertisement shall not be less than one-half of a newspaper page in size as long as property owners residing outside the newspaper circulation area are still notified by mail. Notice shall also be posted on the town website indicating the date and time of the hearing.~~ **as to provide reasonable notice to interested persons.**

2. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to

be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

3. Staff shall mail a notice of the hearing to all property owners within 200 feet of the subject property by first class mail at the last addresses listed for such owners on the county tax records. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date scheduled for the hearing. If the zoning map amendment affects more than 50 properties, owned by at least 50 different property owners, in lieu of mailed notice, staff may publish a notice of the hearing as an advertisement in a newspaper of general circulation within the Town of Black Mountain, provided that such advertisement shall not be less than one-half of a newspaper page in size and all property owners residing outside the newspaper circulation area must still be notified by mail.

~~K.J.~~ Written statement of consistency. Per ~~G.S. 160A-383~~ N.C.G.S. § 160D-605, in adopting or rejecting any zoning amendment, the ~~governing board~~ **town council shall also adopt a brief statement describing whether its action is consistent ~~with all applicable officially adopted plans and explaining why the board of aldermen consider the action taken to be reasonable and in the public interest.~~ **or inconsistent with an adopted comprehensive plan.****

~~J.K.~~ Changes in the zoning map. . . .

Section 15. Section 1.6 of Chapter 1 of the Land Use Code is hereby amended as follows:

SECTION 1.6 - CERTIFICATE OF COMPLIANCE AND OCCUPANCY REQUIRED

1.6.1 - Certificate of compliance and occupancy required.

A. No building shall be used or occupied, or re-used or reoccupied, for commercial, institutional or industrial purposes, and no new residential construction shall be occupied until a certificate of compliance and occupancy, or "C.O." is obtained from the ~~office of the~~ building inspector or his/her designee, stating that the building, any building and/or site improvements, or the proposed use ~~complies~~ with the provisions of ~~this ordinance.~~ **these development regulations.** . . .

B. Applications for a CO must be submitted to the ~~building inspections office~~ **planning department** and shall be accompanied by a site plan, approved final plat, or other such plans and specifications as the building inspector, fire ~~inspector~~ **marshal** and zoning administrator may require in order to render a decision regarding the conformity of the proposed use, reuse, construction or renovation, to the applicable **development** regulations.

C. The CO shall be issued only when the building inspector, fire ~~inspector~~ **marshal** and zoning administrator certify that the project is in compliance with applicable **development** regulations and the site and building improvements have been completed in accordance with the previously submitted and approved plans.

D. The fire ~~code official~~ **marshal** and . . .

Section 16. Subsections 1.7.4, "Decisions of the zoning board of adjustment," 1.7.5, "Appeals from decisions of the zoning board of adjustment," and 1.7.6 "Reserved" are deleted in their entirety and the remaining portions of Section 1.7 of Chapter 1 of the Land Use Code are hereby amended as follows:

SECTION 1.7 - APPEALS AND VARIANCES

1.7.1 - General procedures.

A. Any persons or interested parties wishing to seek a variance shall file an ~~appeal~~ **application** . . .

D. Upon receipt . . . :

1. The ~~zoning~~ board of adjustment shall hold ~~a public~~ an evidentiary hearing . . .
2. Staff shall place notification of the ~~public~~ evidentiary hearing. Staff shall place notification of the ~~public~~ evidentiary hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date ~~fixed~~ scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.
3. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the hearing; to the owner of the property that is ~~in~~ the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearing; and to any other persons entitled to receive notice as provided by the ~~land use code~~ development regulations. In the absence of evidence to the contrary, notice will be mailed to the town may rely on owner reflected in the county tax listing to determine property owners of property entitled to mailed notice and at the address where county tax notices are sent. The notice must be deposited in the mail at least ten days but not more than 25 days, prior to the date ~~of~~ scheduled for the hearing. Within that same time period, ~~the town~~ staff shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
4. The concurring vote of four-fifths of the board of adjustment shall be necessary to grant a variance. A majority vote of the members shall be required for all other quasi-judicial matters or to ~~overturn~~ determine an appeal made in the decision nature of an administrative official certiorari.

...

~~G. Variance request pertaining to property, signs, or structures within the towns designated historic districts or conservation district, or on structures designated on the National Register, must be reviewed by the town's historic preservation commission and a recommendation in the form of a certificate of appropriateness provided prior to the board of adjustment's deliberations.~~

1.7.2 - Appeals of administrative decisions.

A. The ~~zoning~~ board of adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official charged with the enforcement of the town's ~~land use code~~ development regulations.

1. ~~Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision to the board of adjustment.~~ An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.
2. An appeal of an administrative ~~The official who made the~~ decision ~~shall give written notice to the~~ must be made within 30 days from receipt of the written notice of the administrative decision, which written notice shall be delivered to the person seeking the determination and the owner of the property that is the subject of the ~~decision and to the party who sought the decision, if different from the owner.~~ ~~The written notice shall be delivered by certified mail, return receipt requested, personal delivery, electronic mail, or by first class mail.~~
3. ~~The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal.~~ determination. Any other person ~~with~~ who has

standing ~~to~~ under N.C.G.S. §160D-1402(c) or the town may appeal ~~shall~~ a decision to the board of adjustment within 30 days from ~~any source~~ receipt of actual or constructive notice of the ~~decision within which to file an appeal~~ determination. In the absence of evidence to the contrary, notice given pursuant to N.C.G.S. § 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

~~4.3.~~ It shall . . .

4. The owner of the property that is the subject of the decision and the party who sought the decision, if different from the owner, shall be entitled to written notice of the appeal. The written notice shall be delivered by certified mail, return receipt requested, personal delivery, electronic mail, or by first-class mail.

. . .

6. An appeal of a notice of violation or other enforcement order stays the enforcement of the action appealed from and accrual of fines assessed unless the official~~s~~ who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ~~ordinance~~ development regulations. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board ~~of adjustment~~ shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a ~~permit~~ development approval or otherwise affirming that proposed use of property is consistent with the ~~ordinance~~ development regulations shall not stay the further review of an application for ~~permits or permissions~~ development approval to use such property; in these situations, the appellant or local government may request ~~that, and~~ the board may grant, a stay of a final decision of ~~permit applications or~~ development approval, including building permits affected by the issue being appealed.

. . .

8. The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed by the local government, shall be present at the hearing as a witness. The appellant shall not be limited at the evidentiary hearing to matters stated in ~~the~~ a notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. When hearing an appeal, the board ~~of adjustment~~ may reverse, affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all of the powers of the official who made the decision.

9. When hearing an appeal pursuant to ~~N.C.G.S. 160A-400.9~~ § 160D-9047(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in ~~N.C.G.S. 160A-393~~ § 160D-1402(k).

10. Any aggrieved party may appeal from the decision of the board of adjustment ~~may be made by an aggrieved party and may be made~~ to the Superior Court of Buncombe County in the nature of certiorari. Any such petition for writ of certiorari ~~the superior court~~ shall be filed no later than 30 days after a written copy of the decision of the board of adjustment is delivered as provided in section 1.7.1.D.6.

1.7.3- Variances.

A. The board of adjustment shall authorize upon ~~appeal~~ application in specific cases such

variance from the terms of the town's ~~land use code~~ **development regulations** as will not be contrary to the public interest and where owing to special conditions, a literal enforcement of the provisions of town ~~ordinances~~ **zoning regulations** will, in an individual case, result in practical difficulty or unnecessary hardship. Variances are intended to provide limited relief from regulations in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the ~~land use code~~ **development regulations** and in a way that the spirit of the town **zoning** regulations shall be preserved, public safety and welfare secured, and substantial justice done.

B. Variance requests pertaining to property, signs, or structures within the town's designated historic district, or on structures designated on the National Register, must be reviewed by the town's historic preservation commission and a recommendation in the form of a certificate of appropriateness provided prior to the board of adjustment's deliberations.

...

~~B.C.~~ The existence of a nonconforming use . . .

~~C.D.~~ In no event shall the board of adjustment grant a variance which would:

...

3. Conflict with the North Carolina State Building Code, the ~~fire prevention~~ **North Carolina Fire** Code, or any other state code unless otherwise authorized by laws and regulations.

4. Permit the creation of a nonconforming lot.

5. Deviate from the sign regulations within the sign ordinance unless the requested variance is within the town's historic district ~~or conservation district~~ and the variance would further the goals of the town's historic preservation commission.

~~D.E.~~ A variance may be granted . . . :

1. That unnecessary hardship would result from the strict application of the ~~ordinance~~ **development regulations**. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

2. That the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; **A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;**

...

4. That the requested variance is consistent with the spirit, purpose, and intent of the ~~ordinance~~ **development regulations**, such that public safety is secured, and substantial justice is achieved.

~~E.F.~~ After the board of adjustment approves a variance, the applicant shall follow all appropriate procedures set forth in these regulations for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.

Section 17. Section 1.8 of Chapter 1 of the Land Use Code is hereby deleted and replaced with the following new section entitled "Certificates of Appropriateness":

SECTION 1.8 - CERTIFICATES OF APPROPRIATENESS

1.8.1 - Application for certificate of appropriateness.

A. Applications for a certificate of appropriateness shall be obtained from, and when completed, filed with the planning director or his or her designee. The application shall be filed two weeks prior to the next regularly scheduled meeting of the commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application. The names and mailing addresses of property owners filing and/or subject to the application, and the addresses of property within 100 feet on all sides of the property, which is subject to the application, must also be filed.

B. Applicants for projects involving new construction or extensive alterations and/or additions to existing structures may request a technical review with staff prior to submitting the application.

1.8.2 - Major and minor works.

A. Major works—Major work projects involve a change in the appearance of a building or landscape and are more substantial in nature than minor work projects. Certificates of appropriateness for major works may only be approved and issued by the historic preservation commission.

B. Minor works— Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the landmark or property in the historic district. Certificates of appropriateness for minor works may be approved and issued by the planning director or his or her designee. If an application for a certificate of appropriateness for a minor work is disapproved by the planning director, the application shall be forwarded to the historic preservation commission for consideration. No application may be denied without formal action by the historic preservation commission. All minor works applications approved by the planning director or his/her designee shall be forwarded to the commission for their information in time for its next scheduled meeting.

1.8.3 - Criteria to determine appropriateness.

A. No certificate of appropriateness shall be issued unless the commission finds that the application complies with the historic district design standards.

B. The following review criteria, in addition to the design standards, shall be considered, where relevant, to make findings of fact indicating the extent to which the application for a certificate of appropriateness is or is not congruous with the historic aspects of the designated landmark or district:

1. Lot coverage, defined as the percentage of the lot area covered by primary structures.
2. Setback, defined as the distance from the lot lines to the building.
3. Building height.
4. Spacing of buildings, defined as the distance between adjacent buildings.
5. Proportion, shape, positioning, locating, pattern, sizes and style of all elements of fenestration and entry doors.

6. Surface materials and textures.
7. Roof shapes, forms and materials
8. Use of regional or local architectural traditions.
9. General form and proportion of buildings and structures; and the relationship of additions to the mainstructure.
10. Expression of architectural detailing.
11. Orientation of the building to the street.
12. Scale, determined by the size of the units of construction and architectural details in relation to the human scale, and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
13. Proportion of width to height of the total building facade.
14. Archaeological sites and resources associated with standing structures.
15. Effect of trees and other landscape elements.
16. Major landscaping which would impact known archaeological sites.
17. Style, material, size and location of all outdoor advertising signs.
18. Appurtenant features and fixtures, such as lighting.
19. Structural condition and soundness.
20. Walls—Physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combinations of these.
21. Ground cover or paving.
22. Significant landscape, archaeological and natural features.

C. The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole standards used in reviewing applications of the State of North Carolina for certificate of appropriateness.

1.8.4 - Demolition.

A. An application for a certificate of appropriateness authorizing the relocation, demolition, removal or destruction of a designated landmark or a building, structure or site within the historic district may not be denied except as provided in section subsection (C) below. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The commission shall reduce the period of delay if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

B. If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the town council, the demolition or destruction of any building, site or structure located on the

property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 180 days or until the town council takes final action on the designation, whichever comes first.

C. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

D. The town council may enact a regulation to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such regulation shall provide appropriate safeguards to protect property owners from undue hardship.

1.8.5 - Hearing procedures.

A. The historic preservation commission shall receive applications for certificates of appropriateness. The commission shall review such application according to the review criteria, the historic district design standards and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings and shall approve or disapprove such application as provided in paragraph F. of this section.

B. Prior to issuance or denial of a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. A written notice of the proposal shall be sent to the applicant and to owners of property (i.e., lots, parcels or tracts of land) within 100 feet of the property for which an application for a certificate of appropriateness has been applied for.

C. Applications for certificates of appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed approved and a certificate shall be issued.

D. Prior to the issuance or denial of a certificate of appropriateness that applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.

E. In cases where the commission deems it necessary, it may hold an evidentiary hearing concerning an application for a certificate of appropriateness, which hearing shall follow the procedures set forth for quasi-judicial hearings in N.C.G.S. § 160D-406.

F. The historic preservation commission's final action on an application for a certificate of appropriateness shall be by the passage of a motion to take one of the following actions:

1. Approve the application for a certificate of appropriateness as proposed;
 2. Approve the application for a certificate of appropriateness subject to specific conditions and/or modifications of the proposal presented in the application for a certificate of appropriateness;
 3. Disapprove the application for a certificate of appropriateness as proposed or modified.
- G. An appeal of the commission's action in granting or denying any certificate may be taken to the board of adjustment (a) by any aggrieved party, (b) shall be taken within 30 days of the written decision and (c) shall be in the nature of certiorari.

H. Written notice of the intent to appeal to the Board of adjustment from the historic commission must be sent to the town clerk postmarked within 30 days following the filing of the written decision with the town clerk.

I. Appeal from the decision of the board of adjustment shall be made to the superior court of Buncombe County in accordance with N.C.G.S. §160D-1402.

J. In the case of properties owned by the State of North Carolina or its agencies, appeals may be taken to the North Carolina Historical Commission which shall render its decision within 30 days from the date of appeal by the state is received by the historical commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the commission.

1.8.6 - Certificate issuance; expiration; enforcement.

A. Passage of a motion to approve, with or without modification, an application shall constitute the issuance of a certificate of appropriateness by the historic preservation commission. The application and the duly approved minutes of the commission shall constitute the written documentation of such issuance.

Following the meeting a certificate shall be mailed to the property for which a certificate has been issued. The certificate shall be posted on the premises, in a location visible from the street, while the work is in progress. Minutes of a historic preservation commission meeting shall be approved before the end of the next meeting.

B. A certificate of appropriateness shall be valid for a period of six months from the date of issuance for the purpose of obtaining any development approval. A certificate of appropriateness shall expire six months after the date of issuance if the work authorized by the certificate has not been commenced. If, after commencement, the work is discontinued for a period of six months, the permit shall immediately expire.

C. Compliance with certificates of appropriateness shall be enforced by the planning director or his or her designee. Failure to comply with a certificate of appropriateness shall be a violation of the development regulations and is punishable according to established procedures and penalties for such violations. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other regulations or laws.

D. In case any building, structure, site, area or object designated as a landmark or located within the historic district is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the regulations, the commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

1.8.7 - Conditions for certain approvals.

A. In the event that the commission, in considering an application for a certificate of appropriateness, shall find that a building or structure for which a development permit is requested is to be an authentic restoration or reconstruction of a building or structure which existed at the same location but does not meet the requirements of the underlying

district, said building or structure may be authorized to be restored or reconstructed at the same location where the original building or structure was located, provided the board of adjustment authorizes such as a special exception and no use other than that permitted in the district in which such is located is made of said property. Such conditions as may be attached to the historic preservation commission approval and those conditions as may be set by the Board of adjustment shall be included in any certificate of appropriateness related thereto.

B. If the commission finds that an application for a certificate of appropriateness concerning any porches, steps, posts, fences, walls or other items extending over, on or within public rights-of-way to be necessary for the authentic restoration, reconstruction or maintenance thereof, and will not impede or block pedestrian traffic or constitute a hazard to public safety, such findings shall be transmitted to the town council for its consideration in authorizing or denying such encroachments into rights-of-way.

C. If the town council authorizes such encroachment, any items restored, reconstructed or maintained on, over or within a public right-of-way shall be the responsibility of the owner, and the owner shall agree to protect and hold the Town of Black Mountain harmless against any and all liability, cost damage or expense suffered as a result of the restoration, reconstruction or maintenance thereof. The lowest point of any such item projecting over any sidewalk shall be at least nine feet above the sidewalk immediately below.

Section 18. Chapter 1 of the Land Use Code is amended to add a new Section numbered 1.9 entitled "Vested Rights and Permit Choice" which reads as follows:

SECTION 1.9. - VESTED RIGHTS AND PERMIT CHOICE.

1.9.1 – Generally.

A. A statutory vested right is established when:

1. A site-specific vesting plan is approved;
2. A final plat is approved for the initial phase of a multi-phase development;
3. A development agreement is approved and entered into pursuant to Chapter 160D, Article 10 of the North Carolina General Statutes.
4. For all other types of development, when a development permit has been issued;

B. During the period that a statutory vested right exists, no amendment to this land use code shall be applicable or enforceable without the written consent of the owner, except as specifically provided in this section.

C. The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but do not affect the allowable type or intensity of use, or regulations that are general in nature and are applicable to all property subject to the regulations of the Development Regulations of the Town of Black Mountain, including, but not limited to flood hazard prevention, building, fire, plumbing, electrical and mechanical codes and general regulations of the town.

D. A vested right is not a personal right but shall attach to and run with the land. Successors in title may exercise such right under the same conditions and for the same time that the

original applicant could have exercised such right.

E. Nothing in this section shall be construed to preclude the establishment of a vested right under one or more common law principles.

F. A development permit or approval shall expire, and the period of vested rights shall terminate, unless work authorized by the permit has substantially commenced, on the date which is:

1. For a site-specific vesting plan, as specified in section 1.8.2 below;
2. For a multi-phase development of at least twenty-five (25) acres, seven (7) years from the date the site plan for the initial phase of the development was approved by the planning board;
3. Specified in the approved development agreement;
4. For all other development permits or approvals, the date which is one (1) year from the date the permit was issued or approval was given, whichever is later;
5. For an incomplete development project in which development work is intentionally and voluntarily discontinued, the date which is two (2) years from the date work was last performed on the site.

G. Substantial commencement of work shall be determined by planning director based on any of the following:

1. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days;
2. The development has installed substantial on-site infrastructure; or
3. The development has received and maintained a valid building permit for the construction and approval of a building foundation.

H. Development permits or approvals, other than site-specific vesting plans, that would otherwise expire according to paragraph (F), may be extended for additional periods of one (1) year if the permit-issuing authority determines that:

1. the permit has not yet expired;
2. the permit holder has proceeded with due diligence and in good faith; and
3. conditions have not changed so substantially as to warrant a new application.

1.9.2 – Site-specific vesting plans

A. The following types of development approvals are site-specific vesting plans for purposes of this section:

1. Any development for which a special use permit is required;
2. Major and minor subdivisions.

B. Approval of a site-specific vesting plan may contain conditions as provided in this code.

Conditional approval establishes a vested right for purposes of this section, except that a condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained.

C. Approval of a site-specific vesting plan may be conditioned upon subsequent reviews by the approving authority or administrative staff to ensure compliance with the terms and conditions of the original approval.

D. Approval of a site-specific vesting plan may be revoked for failure to comply with applicable conditions.

E. Once established, a vested right pursuant to a site-specific vesting plan precludes any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of property allowed by these development regulations, except under one or more of the following conditions:

1. With the written consent of the affected landowner;

2. The town council, by ordinance issued after notice and a public hearing, determines that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;

3. To the extent the landowner receives compensation for all costs, expenses, and other losses incurred, together with interest as provided in N.C.G.S. § 160D-106;

4. The town council, by ordinance issued after notice and a public hearing, determines that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the approval authority of the site-specific vesting plan; or

5. A state or federal law or regulation precludes development as contemplated, in which case the approval authority may modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

F. A vested right for a site-specific vesting plan remains vested for a period of two years from the date the first development approval or permit is issued for the site. The period of vested rights may be extended by the approving authority for subsequent periods of one (1) year each up to a total of five (5) years.

1.9.3 - Permit Choice

A. If an applicant submits a complete application for a development permit or approval and a development regulation is amended before the permit decision, the applicant may choose which version of the rule or ordinance (the former version or the new version) applies to the application.

B. When a development requires multiple permits, the applicant may choose the version of each of the applicable development regulations upon submittal of the application for the initial development permit. This provision is applicable for subsequent development permit applications filed for the same development project within 18 months of the date following the approval of the initial permit. For purposes of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

1.9.4 - Vested rights relative to annexation.

A. A vested right may be established for a single- or multi-tract development outside of the town's jurisdiction but seeking voluntary annexation upon the effective date of the town's action or ordinance relating thereto and as described in a preliminary plat or master plan approved by the town planning board and the town council. In such cases, the following also apply:

1. Approval of a site-specific development plan may contain a variance from the proposed zoning district or other terms and conditions as may reasonably be necessary to protect the health, safety, and welfare of the citizens of the town and of the prospective residents or businesses of the proposed development.

2. A petition for annexation filed with the Town of Black Mountain under N.C.G.S. § 160A-31 or N.C.G.S. § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under N.C.G.S. § 160D-108.

3. A statement that declares that no zoning vested right has been established under N.C.G.S. § 160D-108, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

B. The applicable zoning district shall be established at the time of annexation.

Section 19. Section 1.9 of Chapter 1 of the Land Use Code entitled “Development Agreements” is renumbered as Section 1.10 and amended to read as follows:

SECTION 1.~~9~~**10** - DEVELOPMENT AGREEMENTS

~~1.9.1~~ **1.10.1** - Authority and purpose.

~~A. This ordinance of the land use code is adopted~~ Pursuant to the authority ~~contained in~~ ~~granted by~~ ~~N.C.G.S. 160A-400.22~~ **§ 160D-1001, et seq.,** which states ~~that~~ a local government may establish procedures and requirements to consider and enter into development agreements with developers for projects involving developable property of any size (including property that is subject to an executed brownfields agreement pursuant to ~~G.S.~~ Part 5 of Article 9 of Chapter 130A. ~~A development agreement must be approved by the town board of aldermen by the General Statutes), the Town of Black Mountain may, upon approval of an ordinance, by the town council, enter into development agreements as provided in this section.~~

~~B. Whenever any provision of this ordinance refers to or cites a section of the North Carolina General Statutes and that section of the general statutes is later amended or superseded, the ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.~~

~~C. This ordinance shall be effective throughout the town's planning jurisdiction which comprises the area within the corporate boundaries of the town as well as any area described in an adopted and/or amended ordinance by the town board of aldermen. Such planning jurisdiction may be modified from time to time in accordance with G.S. 160A-360 to 160A-365 and G.S. 160A-22 to 160A-58.28.~~

~~D.~~ **B.** The intent of development agreements is to . . .

E. C. Development agreements are also intended to provide assurances of vested rights ~~for a period of up to five years~~ **indefinitely**, unless a timeframe is otherwise provided in the development agreement itself, in cases where a project may be constructed over time or in phases.

~~1.9.2~~ **1.10.2** - Relationship to zoning, subdivision, and other ~~ordinances~~ **regulations**.

A. In conjunction with this ~~ordinance~~ **code**, all development proposals shall meet any and all local, state, and federal requirements which include but are not limited to the North Carolina Building Code, North Carolina Fire Code, and ~~American~~ **Americans with** Disabilities Act (ADA), and local stormwater and flood hazard prevention ordinances.

...

D. ~~A situation that did not constitute a lawful~~ **An unlawful**, nonconforming ~~situation under the zoning ordinance does~~ **use, structure, or lot shall** not ~~achieve~~ **be rendered a** lawful nonconforming ~~status~~ **use, structure, or lot** under this ordinance unless specified in the development agreement.

~~1.9.3~~ **1.10.3** - Procedure.

...

B. ~~Staff recommendation~~ **Following the technical review**, the development agreement and a development sketch plan shall be forwarded to the planning board for public input and planning board comment.

C. Before a development agreement is presented to the planning board, staff shall prominently post a notice of the public ~~hearing~~ **meeting** on the site of the proposed development agreement or on an adjacent public street or highway right-of-way no later than ten days prior to the meeting. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed development agreement and the date ~~of~~ **scheduled** ~~for~~ the public ~~hearing~~ **meeting** no later than ten days prior to the meeting.

D. **The planning board shall consider all of the following:**

1. Applicable zoning designation . . .

~~C. E.~~ The ~~board of aldermen~~ **town council** shall review . . .

F. Notice of the public hearing shall be provided as follows:

~~D. 1.~~ Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten days **but** no more than 25 days before the date ~~fixed~~ **scheduled** for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

~~1. 2.~~ ~~Posting of property. When a development agreement is proposed,~~ Staff shall prominently post a notice of the public hearing on the site of the proposed development agreement or on an adjacent public street or highway right-of-way. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed development agreement and the date of the public hearing. ~~Notice shall also be posted on the town website indicating the date and time of the hearing.~~ **The mailed notice must include the location of the property, the development uses proposed on the site and a place where a copy of the development agreement can be obtained.**

3. Notice shall also be posted on the town website indicating the date and time of the

hearing.

~~E. G.~~ The ~~board of aldermen~~town council shall . . .

~~F. H.~~ Development agreements shall be . . .

~~1.9.4~~ **1.10.4** - No use of land or buildings except in conformity with development agreement provisions.

A. No person may use, or occupy any land or buildings . . .

B. For purposes of this ~~ordinance~~section, the use or occupancy of a building or land relates to anything and everything that is done to, on, or in that building or land.

~~1.9.5~~ **1.10.5** - Adopted permit fees shall apply.

Fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, ~~conditional-use permits~~, special use permits, subdivision plat approval, zoning amendments, variances, and other administrative relief shall be applied in accordance with the published fee schedule.

Section 20. Section 1.10 of Chapter 1 of the Land Use Code entitled “Enforcement and Penalties” is renumbered as Section 1.11 and amended to read as follows:

SECTION 1.~~10~~**11** - ENFORCEMENT AND PENALTIES

~~1.10.1~~ **1.11.1** - Authority and purpose.

A. ~~The provisions of this land use code~~These development regulations shall be enforced by the town ~~board of aldermen~~council and ~~the planning and development~~administrative staff through their authority to abate ~~any~~ violations, **and to** enjoin, restrain, and prosecute any person violating ~~this ordinance~~these development regulations pursuant to North Carolina law.

B. ~~The purpose of~~ This section ~~is to establish~~establishes the procedures by which the town seeks corrections of violations of ~~this ordinance~~these development regulations. It also sets forth the remedies and penalties that apply to violations of ~~this ordinance~~these development regulations. The provisions of this ~~article~~section are intended to encourage the voluntary correction of violations, ~~where possible~~.

~~1.10.2~~ **1.11.2** - Unlawful to violate ~~this ordinance~~development regulations.

It shall be unlawful for any person to develop or use any building or structure ~~within the town or it's ETJ~~ in violation of ~~this land use code~~Any these development regulations. Failure to comply with a requirement, prohibition, or limitation imposed by ~~the land use code~~these development regulations, or the terms or conditions of any permit or other development approval or authorization granted pursuant to this land use code shall constitute a violation of the town Code of Ordinances.

~~1.10.3~~ **1.11.3** - Responsible party.

For the purposes of this code, the responsible person or party shall include but not be limited to:

A. A person or firm maintaining the condition that results in or constitutes a violation. This could

include but not be limited to an architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation ~~off this ordinance.~~ **of these development regulations.**

~~B. Responsibility for use or development. This includes~~ The owner of the land on which the violation occurs, any tenant or occupant of the property, or any person, who has control over, or responsibility for, its use or development.

C. The holder of a development approval.

~~1.10.4~~ **1.11.4** - Complaints, investigations, and inspections.

A. Whenever a violation of ~~this ordinance~~ **these development regulations** occurs . . .

~~B. The town planning and development department staff as assigned must provide documentation of complaint investigations and may issue a notice of violation as a result of an investigation.~~

~~C. B.~~ Under the powers of this article, the enforcement officers . . . , shall have the authority to enter onto land within the town's jurisdiction to inspect for violations of ~~this code~~ **these development regulations** or to investigate complaints.

~~1.10.5~~ **1.11.5** - Warning of violation.

On determining that a violation exists, the planning and development department staff ~~shall provide the person alleged to be violating this code~~ **may issue** a written warning, ~~unless the act in violation of the code creates an imminent risk of harm to persons or property.~~ The written warning shall **which shall** include a description of the violation, ~~state~~ **and** the actions necessary to correct the violation, and invite the ~~alleged violator~~ **person responsible for the violation** to meet with the ~~planning director, building inspector or zoning administrator~~ **enforcement official** to discuss the violation and how it may be corrected. ~~The planning director may provide the alleged violator additional written warnings of the violation.~~ **The warning shall be delivered by personal delivery, electronic delivery, or first-class mail to the responsible party. If the violation creates an imminent risk of harm to persons or property, the enforcement official shall not provide a warning, and shall proceed immediately to issue a notice of violation as set out in Section 1.11.6.**

~~1.10.6~~ **1.11.6** - Notices of violations and right to appeal.

~~A. The person or persons responsible for such violation shall be notified in writing in the form of a citation indicating the nature of the violation and the action necessary to correct it.~~ **When work or activity has been undertaken in violation of State law, this code or the terms of a development approval, a written notice of violation may be issued by the responsible enforcement official.** ~~The citation~~ **The notice of violation** shall be ~~served upon the offending party or responsible property owner property owner or party in interest personally or by certified or by certified mail, return receipt requested.~~ **delivered by personal delivery, electronic delivery, or first-class mail to all responsible parties. The notice of violation may be posted on the property.**

~~B. The notice of violation shall include a description of the violation and the actions necessary to correct~~

~~B. Remedial action shall be~~ **the violation and shall require such remedial action be** taken

within a prescribed time period, ~~but~~ not to exceed 90 . . .

~~G.~~ Enforcement officers may waive penalties . . .

~~D.~~ ~~Any person who is served a notice of~~ **If the violation and correction order at issue is a violation of the State Building Code, the property owner or party responsible for the violation** may appeal ~~that determination~~ **the issuance of the citation to the Commissioner of Insurance pursuant to N.C.G.S. § 160D-1127.**

~~E.~~ **For all other violations, the property owner or party responsible for the violation may appeal the issuance of the citation** to the board of adjustment within 30 days of the date of the receipt of the written ~~notice of violation and correction order~~ **citation** by filing an appeal application with the town clerk. ~~If a person who receives a notice of violation and correction order does not appeal the determination within the time established in this section, then that person may not later appeal to the board of adjustment the subsequent imposition of any remedy or penalty provided in this article.~~

~~F.~~ The town may use any combination of the ~~following~~ actions and penalties **provided in this section** to prevent, correct, stop, abate, or penalize a violation of the ~~land use code~~ **development regulations.**

1.11.7 - Stop work orders (orders to cease and desist).

~~A. —The violation notice shall order discontinuance of uses of land or buildings in violation of this chapter; removal of illegal buildings or structures; discontinuance of illegal work being done to insure compliance with, or to prevent, continued violation of its provisions.~~

~~B.~~ **A.** Whenever land is disturbed or a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of ~~the land use code~~ **these development regulations**, the planning director, zoning administrator, fire or building inspector or other enforcement ~~agent of the town~~ **official** may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped ~~upon investigation or inspection.~~

1. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.

2. **A copy of the order shall be delivered to all responsible parties by personal delivery, electronic delivery, or first-class mail.**

~~2.~~ **3.** The enforcement officer may revoke **and require the return of** any **development permit** ~~(e.g., Building certificate of occupancy)~~ by written notification to the permit holder when violations of ~~this ordinance~~ **these development regulations** have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of ~~this ordinance~~ **these development regulations**, or a permit has been mistakenly issued in violation of ~~this ordinance~~ **these development regulations.**

B. **When a stop work order is issued as the result of a violation of the State Building Code, any responsible party may appeal to the North Carolina Commissioner of Insurance as provided in N.C.G.S. § 160D-1114.**

C. **When a stop work order is issued as the result of a violation other than a violation of the**

State Building Code, any responsible party may appeal to the board of adjustment within 30 days of the date the order is issued by filing an appeal application with the town clerk.

~~C. D.~~ Failure to correct the violation, ~~file an appeal within 30 days, except when the ordinances provide for a shorter appeal period, of any determination under this section~~**appeal**, or ~~to contact the planning department with a request for an extension and a plan of time~~ for correcting the violation, shall constitute a waiver of any objection to said determination and of the right to an administrative hearing and adjudication, and the order shall therefore be final and binding.

~~D. In the event that any violation is not cured within the period specified pursuant to the stopwork order, a hearing may be set by the planning director or building inspector, depending on the nature of the violation, or the town may pursue civil penalties.~~

~~1.10.8~~ **1.11.8** - Court injunctions or order of abatement.

A. *Injunction.* The planning director, zoning administrator or building inspector, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction ~~and order of abatement~~ to correct a violation of ~~the land use code~~**these development regulations**. Any person violating ~~this ordinance~~**these development regulations** shall be subject to the full range of equitable remedies provided in ~~G.S. ch. 160A~~**chapter 160D of the North Carolina General Statutes**.

B. *Order of abatement.* In addition to an injunction, town enforcement agents may apply for and the court may enter ~~into an order of abatement as part of the judgment in the case. An order of abatement, which~~ may direct any of the following actions:

...

4. Other actions necessary to bring the property into compliance with ~~this code~~**these development regulations**.

C. *Execution of court decisions.* If the responsible party fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt; ~~and~~**the town may execute the order of abatement and place. The town shall have** a lien on the property for the cost of executing the order **in the nature of a mechanic's and materialman's lien**. . . .

~~1.10.9~~ **1.11.9** - Permit revocation, disapproval of subsequent permits and repeat violations.

A. *Permit revocation.* If a person fails to comply with the terms ~~and conditions~~ of a permit or development approval ~~granted under this ordinance~~, the ~~planning and development department staff~~**responsible enforcement official** may revoke the permit or development approval.

B. *Disapproval of subsequent permits and development approvals.* As long as a violation of ~~the land use code~~**these development regulations** continues and remains uncorrected, the planning director may withhold, and the planning director and other town boards may disapprove, any request for permit or development approval or authorization provided for by ~~this ordinance~~**these development regulations** for the land on which the violation occurs.

...

~~1.10.10~~ **1.11.10** - Civil penalties.

A. Pursuant to N.C.G.S. § 160A-175, the town may impose civil penalties in the form of fines for violation of its ~~ordinances.~~ **development regulations.** Subsequent citations for the same violation may be issued by the ~~building inspector or zoning administrator or other enforcement agent~~ **official** if the offender does not pay the citation (except as otherwise provided in a warning citation) after it has been issued, unless ~~the offender has sought an appeal to the actions of the staff through the board of adjustment.~~ **citation is pending.**

...

Section 21. Section 2.1.1 of Chapter 2 of the Land Use Code is hereby amended to read as follows:

2.1.1 - Building codes adopted.

A. The North Carolina State Building Code is the basis for all building inspections as authorized in N.C.G.S. ~~160A-417, including those conducted within the city.~~ **106D-1104.** The code includes: ~~Volume I, General Construction; Volume I-B, One and Two Family~~ **North Carolina Residential Building Code; Volume I-C, Accessibility Code; Volume I-D, Regulations for Manufactured Homes; Volume II, Plumbing Code; Volume III, Mechanical Code; Volume IV, Fuel Gas Code; Volume V,** ~~North Carolina Energy Conservation Code; Volume VI,~~ **North Carolina Mechanical Code, North Carolina Plumbing Code, North Carolina Fuel Gas Code, North Carolina Administrative and Enforcement; Volume VII, National Electrical Code Codes and Policies, Regulations for Manufactured Homes;** and all subsequent editions and amendments. The code is hereby adopted by reference as fully as though set forth in this section, to include any and all future amendments thereto that may, from time to time, be adopted and approved by the state.

B. In addition, the town adopts locally the following recommended practices of the International Residential Code the same as if set out at length herein: **as the same may be amended from time to time:**

1. Appendix ~~FAF~~ **Radon Control Methods**
 1. ~~Appendix G: Swimming Pools, Spas, and Hot Tubs~~
 2. ~~Appendix M: Wood Decks~~
 3. ~~Appendix O: Construction Practice for Slab on Grade~~

Section 22. Section 2.1.2 of Chapter 2 of the Land Use Code is hereby amended to read as follows:

2.1.2. - Plumbing code addition.

Water line leak prevention and shut-off valves. ~~In order~~ To minimize leaks and conserve water, the Town of Black Mountain requires a test of 100 pounds of pressure on all water supply piping to structures in new construction, and ~~if existing on replacement~~ **are being replaced in existing structures.** A shut-off valve shall be required between the town meter and the structure it is serving that is externally accessible in order to isolate or shut-off all water to the structure without accessing the town meter per ~~Chapter V, Section 52.26 of the Town Public Works Regulations [section]~~ **48-163.** The shut-off valve shall be located within three feet of the town's meter. ~~This allows temporary shut-off of water to address leaks for seasonal rental properties or if the structure is to remain unoccupied for an extended period.~~

Section 23. Section 2.1.4 of Chapter 2 of the Land Use Code, entitled “Town zoning authorization and building permit required” is hereby amended and Section 2.1.5 is

renumbered as subparagraph (C) of Section 2.1.4, with the entire section to read as follows:

~~2.1.4 Town zoning authorization and building permit required.~~

2.1.4 - Permits.

~~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.~~

Except as specifically hereinafter modified, permits shall be issued in accordance with Section 204.3 of the North Carolina State Building Code: Administrative Code and Policies.

~~A.B.~~ Zoning, stormwater and fire safety ~~authorization~~ **certification** required. No building permit ~~will~~ **shall** be issued until:

- ~~1. the town~~ zoning administrator has ~~provided his or her authorization~~ **certified** that the proposed structure ~~or~~ **and** use is compliant with the zoning district in which it is located. ~~The town fire prevention inspector must provide his or her authorization;~~
- ~~2. the planning director or subdivision administrator has certified~~ that the project is compliant with the ~~town~~ **terms or conditions of any existing development approval;**
- ~~3. the fire marshal has certified that the project is compliant with the~~ fire ~~district~~ **code;**
- ~~4. The stormwater administrator has certified that the project is compliant with the~~ **stormwater** ordinance. ~~;~~ **and**
- ~~5. The permit must also be reviewed and approved by the storm water and floodplain administrator.~~ **has certified that the project is compliant with the flood damage prevention ordinance.**

~~B.C.~~ Permits issued for approved developments and lots only. ~~The~~ **No** building permit shall ~~not~~ be issued for construction of infrastructure in a new **major or minor** 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-C.~~ Application for a building permit. ~~Applications for~~ **No** building permits shall ~~include~~ **be issued until a complete permit application has been submitted to the building inspector.** The building inspector **shall make available a list of information which must be submitted with the application.** ~~site plan or plot plan drawn 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. The application shall include all the information required by the most current version of the North Carolina Building Code.~~

~~E. 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~~
- ~~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.~~

Section 24. Section 2.1.6 of Chapter 2 of the Land Use Code, entitled “Certificates of occupancy and compliance” is hereby deleted in its entirety. A new Section numbered 2.1.5, entitled “Certificates of occupancy and compliance” is hereby inserted in Chapter 2 of the Land Use Code, said new section to read as follows:

2.1.5- Certificates of occupancy and compliance.

A. No building used for commercial, institutional or industrial purposes shall be used or occupied, nor shall a change in occupancy occur, nor shall the use of the building or part of a building change, until a certificate of compliance and occupancy, or "C.O." is obtained from the building inspector.

B. No new residential structure shall be occupied until a certificate of compliance and occupancy is obtained from the building inspector.

C. A residence shall not be converted to a non-residential use until a certificate of compliance and occupancy is obtained from the building inspector.

D. Applications for a CO must be submitted to the planning department and shall be accompanied by a site plan, applicable fees, approved final plat, or other such plans and specifications as the building inspector, fire marshal and zoning administrator may require regarding the conformity of the proposed use, reuse, construction or renovation to the applicable development regulations.

E. The CO shall be issued only when the building inspector, fire marshal and zoning administrator certify that the project is in compliance with applicable development regulations and the site and building improvements have been completed in accordance with the previously submitted and approved plans.

F. A temporary certificate of compliance may be issued permitting occupancy for a

stated period of specific portions of a building or system that the inspector finds safe for occupancy prior to final completion of the entire building or system.

Section 25. Chapter 2 of the Land Use Code is further modified as follows:

- a. Section 2.1.7 entitled “Reserved” is hereby renumbered as Section 2.1.6.
- b. Section 2.1.8 entitled “Town building and zoning inspections” is hereby deleted in its entirety.
- c. Section 2.1.9 entitled “Time limitations on permits” is hereby deleted in its entirety.
- d. Section 2.1.10 entitled “Public right-of-way to be maintained” is hereby renumbered as Section 2.1.7.
- e. Section 2.1.11 of Chapter 2 of the Land Use Code, entitled “Building permit fees and available incentives” is hereby renumbered as Section 2.1.8 and amended as follows:

~~2.1.11~~ **2.1.8** - Building permit fees and available incentives.

- A. Permit fees are established by the ~~board of aldermen~~ **town council** and are published in a schedule of building permit and inspection fees available through the ~~building inspections office~~ **planning department**.
- B. The town provides building and permit fee incentives for construction that meets town goals related to the environment and community development.
 1. To encourage energy efficient, high performance and sustainable building practices, the town will provide a ~~50-percent~~ rebate ~~up to~~ **of 50% or \$500.00, whichever is greater**, for construction projects certified by the NC Healthy Built Homes Program or a Certified Level in the LEED rating systems. Contact the Western North Carolina Green Building Council website for up-to-date information at www.wncgbc.org.
 2. To encourage new home and rental development to be available at median to low-income market prices, the town will provide a ~~50-percent~~ rebate ~~from~~ **equal to 50% of** the calculated building permit fee for construction projects ~~that are~~ developed . . .

Section 26. Section 2.1.12 of Chapter 2 of the Land Use Code, entitled “Unsafe residential buildings condemned” is hereby deleted in its entirety. A new Section numbered 2.1.9 entitled “Unsafe buildings condemned,” is added to Chapter 2 of the Land Use Code, which new section shall read as follows:

2.1.9 - Unsafe buildings condemned.

- A. The building inspector is appointed to exercise the powers of condemnation as provided in Article 11 of Chapter 160D of the North Carolina General Statutes.**
- B. Inspection of non-residential buildings. The inspector may make periodic inspections for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures. The inspector shall have the right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.**
- C. Inspection of residential buildings. The inspector may make periodic inspections of residential buildings or structures following the provisions of Section 2.2.6(B).**
- D. Defects to be corrected. When the inspector finds any defect in a building or structure or finds that the building or structure has not been constructed in accordance with applicable**

state and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be the inspector's duty to notify the owner or occupant of the defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property. The notice required by this subsection shall be sent by certified mail, return receipt requested, to the owner's or occupant's last known address or by personal service.

E. *Condemnation.* Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

F. *Failure to take corrective action.* If the owner of a building or structure that has been condemned as unsafe shall fail to take prompt corrective action, the inspector shall give written notice by certified mail, return receipt requested, to the owner's last known address or by personal service, of all of the following:

1. That the building or structure is in a condition that appears to meet one or more of the following:
 - a. Constitutes a fire or safety hazard;
 - b. Is dangerous to life, health, or other property;
 - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children; or
 - d. Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance;
2. That an administrative hearing will be held before the inspector at a designated place and time not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the Town of Black Mountain at least once not later than one week prior to the hearing.

G. If, after a hearing, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall issue an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps within such period as the inspector may prescribe; provided, however that such period shall not be less than sixty days unless the inspector finds that there is imminent danger to life or other property.

H Any owner who has received such an order may appeal to the town council by giving notice of appeal in writing to the town clerk within 10 days following issuance of the order. The town council shall hear and render a decision in the appeal within a reasonable time. The council may affirm, modify and affirm, or revoke the order. In the absence of an appeal, the order of the inspector shall be final.

I. If the owner of a building or structure fails to comply with an order issued pursuant to N.C.G.S. §160D-1120 from which no appeal has been taken, or fails to comply with an order of the town council following an appeal, the owner shall be guilty of a Class 1 misdemeanor. In lieu of civil or criminal penalties, the town council may authorize the

initiation of appropriate actions or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

Section 27. Section 2.1.13 of Chapter 2 of the Land Use Code, entitled “Maintenance standards for nonresidential structures” is hereby renumbered as Section 2.1.10, and subsections (B) thru (G) are hereby deleted, and subsection (A) is hereby amended as follows:

~~2.1.13~~ **2.1.10** - Maintenance standards for nonresidential structures.

A. ~~[In general.]~~ All non-residential ~~premises~~**structures** shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the ~~building~~**structure** from any unauthorized admittance from humans, animals, or birds. All non-residential ~~premises~~**structures** shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby. Without ~~limitation of~~**limiting** the foregoing ~~requirement~~, the existence of any of the following conditions shall be deemed ~~to be~~ a violation of this section and must be corrected:

- 1.** ~~(a) (1)~~ Such damage by fire, wind or other causes as to render the building unsafe;
- 2.** ~~(2)~~ Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the town;
- 3.** ~~(3)~~ Defects significantly increasing the hazards of fire, accident or other calamities;
- 4.** ~~(4)~~ Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health **and** sanitation problems;
- 5.** ~~(5)~~ Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
- 6.** ~~(6)~~ The building and environs surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions;
- 7.** ~~(7)~~ The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets, and other similar objects;
- 8.** ~~(8)~~ Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
- 9.** ~~(9)~~ Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
- 10.** ~~(10)~~ Floors or roofs shall have adequate support members and strength to be reasonably safe;
- 11.** ~~(11)~~ Steps, railings, landing, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse.

Section 28. Section 2.2 of Chapter 2 of the Land Use Code, entitled “Minimum Housing Code” is hereby amended as follows:

2.2.1 - Purpose.

In accordance with ~~G.S. Ch. 160A, art. 18~~ **Article 12 of Chapter 160D of the North Carolina General Statutes**, and the North Carolina Rental Agreement Act, ~~the purpose of this chapter of the code is~~ **adopted** to protect . . .

2.2.2 - Applicability.

A. The provisions of this **Minimum Housing** Code are applicable to all existing dwelling **units** and all dwelling units hereafter constructed, renovated or repaired within the Town of Black

Mountain which are used or intended for use as rental property for human habitation.

B. This ~~ordinance~~**Minimum Housing Code** applies only to renter occupied dwellings. Owner occupied dwellings in which a room or portion of the structure in which the owner resides is leased or rented, and owner-occupied manufactured homes on rented lots, such as a manufactured home park, are exempt from this ~~ordinance~~**Minimum Housing Code**.

2.2.3- Minimum documentation for dwellings and dwelling units.

A. Every renter occupied dwelling or dwelling unit shall comply with all of the minimum housing standards as established by this ~~ordinance~~**code**. No person shall rent any dwelling or dwelling unit which does not comply with all of the minimum housing standards established by this ~~ordinance~~**code**.

B. Owners or agents of renter occupied dwellings may voluntarily provide one of the following to the town as documentation to ensure compliance:

...

5. A safety checklist as completed by the ~~town building~~ inspector or other qualified building inspector issued within the previous three years.

...

~~D.—No person shall rent any manufactured home that was built before June 15, 1976, unless they can provide documentation that the home has been renovated and complies with the Housing and Urban Development (HUD) Code for Manufactured Home Construction and Safety Standards.~~

2.2.4- Minimum standards of fitness for dwellings and dwelling units.

A. Notwithstanding any other methods available for determining whether a dwelling is fit for human habitation, the ~~building~~ inspector shall apply the minimum standards set forth below:

...

iv. All outlets, switches, wiring and light fixtures shall be safe and operable. No extension cords shall be spliced or used as fixed wiring ~~of~~**in** a dwelling. Electrical odor, flickering lights, visibly frayed wiring, broken switch plates or outlet plates or failure of circuit-tester check shall be evidence of an unsafe electrical system.

...

v. Stove piping placed and secured with:

- (a) Minimum 18-inch masonry surrounding thimble as clearance separation from combustible;
- or
- (b) Minimum nine-inch air separation for insulated listed stove piping; or

~~* Minimum one-inch air clearance surrounded by six-inch glass fiber insulation and ventilated assembly; or~~

...

2.2.5- Unsafe conditions.

~~A.~~ The ~~building~~ inspector shall determine that a dwelling is unsafe and represents a threat to life and property, if any of the following conditions exist:

1. No operating heating facilities that would maintain a minimum room temperature of 68 degrees at a point three feet ~~from~~**above** the floor in all habitable rooms: **with an outside temperature of 20 degrees Fahrenheit.**

...

2.2.6– Enforcement.

...

B. Inspections allowed. The ~~building~~ inspector may inspect a ~~property under~~ **residential structure when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist. Reasonable cause includes any** one or more of the following ~~conditions~~:

1. The landlord or owner has a history of more than two verified violations of the **building code, fire code, or minimum** housing ~~ordinances or codes~~ **code** within a 12-month period;
2. **There has been** ~~After receipt of~~ a complaint that substandard conditions exist within ~~a~~ **the** building or **there has been** a request that ~~a~~ **the** building be inspected;
3. The inspection department has actual knowledge of an unsafe condition within the building; or
4. Violations of the local ordinance or codes are visible from the outside of the property.

Inspections shall occur during reasonable hours, upon presentation of proper credentials.

~~C. Notice of violation.~~ If it appears to the ~~building~~ inspector that the dwelling or dwelling unit does not meet the minimum standards contained in this ~~ordinance~~ **code**, the ~~building~~ inspector shall issue a written notice of violation **pursuant** to the ~~owner or other party~~ **provisions** of interest, ~~which notice may be served upon the owner or other party in interest by the building inspector and/or by an officer of the Black Mountain Police Department. The notice of violation shall identify the systems or components which are not in compliance with this ordinance and provide specific measures to be taken in order to bring the dwelling into compliance.~~ **Section 1.10.6.** The owner shall, ~~within 30 calendar days if the building is occupied or 90 calendar days if the building is unoccupied, make life safety or sanitary emergency repairs or~~ perform such work as is necessary to bring the dwelling unit into compliance. **within 30 calendar days if the building is occupied.** The building inspector may grant extensions of time for completion of the required measures, but shall not be obligated to do so.

~~D. Waivers.~~

1. In the event that the building inspector issues a notice of violation as to one or more plumbing, electrical, mechanical, structural, or fire safety components, the ~~building~~ inspector may approve such components without further correction upon receipt of a report from an appropriately licensed contractor, architect, or engineer affirming that such components are in compliance with this ~~ordinance~~ **code**. Such report must be provided within 15 days after the notice of violation is served.
2. The ~~building~~ inspector may waive any violation of this ~~ordinance~~ **code** when all of the following conditions are met:
 - a. The condition for which the waiver is sought is not one of the conditions set forth in **(section 2.2.5 (unsafe conditions))** of this ~~ordinance~~ **code**; and
 - b. The condition for which the waiver is sought is an element of the fundamental and original construction of the dwelling. "Fundamental and original construction" includes foundation dimensions, ceiling height, organization of habitable space, and any other condition governed by the original structure of the dwelling; and
 - c. There exists a demonstrable alternate means of meeting the intent of this ~~ordinance~~ **code**.

~~E. Appeals.~~ The property owner or other parties in interest may appeal the ~~decision~~ **termination** of the ~~building~~ inspector ~~finding a violation of the minimum housing~~

~~code to the zoning board of adjustment within ten days of the notice of violation. Such appeal shall be heard by the zoning board of adjustment in the same manner~~accordance with section 1.7.2, provided ~~for other appeals to~~ however that ~~board. The town, owner,~~the notice of appeal must be filed within ten days from the rendering of the inspector's determination or ~~other parties in interest may~~ further appeal the findings of the zoning board of adjustment to the superior court for Buncombe County, North Carolina within 15 days after receipt ~~service~~ of the order issued by the zoning board of adjustment. Such appeal proceedings shall be made in the nature certiorari said court shall review the findings of fact and order of the zoning board of adjustment to determine whether there was evidence to support its findings and that its ruling was not arbitrary, whichever shall last occur. The board may reverse or capricious. The property owner affirm, wholly or ~~other parties in interest~~ partly, or may ~~appeal the~~ modify the decision or order appealed from, and may make any decision ~~of the building and order that in its opinion ought to be made in the matter, and, to that end, has all the powers of the~~ inspector ~~finding a violation of the building code to the commissioner of insurance within ten days of receipt of the notice of violation.~~

~~F. — Violations, remedies and penalty. The owner of any dwelling or dwelling unit or other parties in interest, who fails to comply with an order of the building .~~ The concurring vote of four members is required to reverse or modify the decision of the inspector ~~or the zoning board of adjustment, shall be subject to penalties allowed under G.S. 160A-175..~~ The board may also, when unnecessary hardships would result from carrying out the strict letter of this code, adapt the application of the code to the necessities of the case to the end that the spirit of the code is observed, public safety and welfare secured, and substantial justice done.

Section 29. Section 2.3 of Chapter 2 of the Land Use Code, entitled “Flood Damage Prevention Ordinance” is hereby amended as follows:

Article 1. - Statutory Authorization, Findings of Fact, Purpose and

Objectives Section A. - Statutory authorization.

The ~~Legislature of the State of~~ North Carolina General Assembly has in G.S. ch. 143, art. 21, pt. 6; G.S. ch. 160 AD, art. 19, pts. 3, 5, 89, pt. 2, sect. 923; and G.S. ch. 160A, art. 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

~~Therefore, the Board of Aldermen of the Town of Black Mountain, North Carolina, does ordain as follows:~~

...

Article 2. - Definitions

...

Accessory structure (appurtenant structure) means a structure detached from a principal building and located on the same ~~parcel of property as the principal structure and the use of which is~~ lot and incidental and subordinate to the ~~use of the~~ principal ~~structure~~ building or use. ...

~~*Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.~~

...

Floodplain management regulations means this ordinance and other zoning ~~ordinances~~ regulations, subdivision regulations, building codes, health regulations, special purpose ~~ordinances~~ regulations, and other applications of police power. . . .

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. **The term does not include long-term storage, manufacture, sales, or service facilities.** ~~The term does not include long-term storage, manufacture, sales, or service facilities.~~

...

Remedy a violation means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ~~ordinance~~ regulations or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

...

~~Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.~~

...

~~Variance is a grant of relief from the requirements of this ordinance.~~

...

Section E. - Variance procedures.

(1) The zoning board of adjustment ~~as established by the Town of Black Mountain, hereinafter referred to as the "appeal board"~~, shall hear and decide requests for variances from the requirements of this ordinance.

~~2. Before approving a variance request, the zoning board of adjustment shall first hold a public hearing. Staff shall prominently post a notice of the public hearing on the site of the variance request or on an adjacent street or highway right of way not less than ten days nor more than 25 days before the date fixed for the hearing. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the variance request and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing. Staff shall place notification of the public hearing pursuant to the process set forth in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten days nor more than 25 days before the date fixed for the hearing. section 1.7 of this code. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.~~

(2)(3) Variances may be issued for:

...

(3)(4) In passing upon variances, the ~~appeal~~ board **of adjustment** shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

~~(4)~~(5) A written report addressing each of the above factors shall be submitted with the application for a variance.

~~(5)~~(6) Upon consideration of the factors listed above and the purposes of this ordinance, the ~~appeal~~ board **of adjustment** may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.

~~(6)~~(7) Any applicant to whom . . .

~~(7)~~(8) The floodplain administrator shall . . .

~~(8)~~(9) Conditions for variances: . . .

~~(9)~~(10) A variance may be issued . . .

...

Article 6. - Legal Status Provisions

...

~~Section D. — Effective date.~~

~~This ordinance shall become effective January 6, 2010.~~

~~Section E. — Adoption certification.~~

~~I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the board of aldermen of the Town of Black Mountain, North Carolina, on the 9th day of November, 2009.~~

~~READ, APPROVED AND ADOPTED, by a vote of 5 to 0, on the 9th day of November, 2009. (Certifications in the Public Record).~~

Section 30. Section 3.1(B) of Chapter 3 of the Land Use Code, is hereby amended as follows:

B. The requirements ~~within~~**of** this chapter apply to all ~~types of~~ subdivisions ~~as enumerated herein. As used in this ordinance, the definition of the word "subdivision" is defined in G.S. 160A-376, as now or hereafter amended. For purposes of this ordinance, "subdivision" means any division of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale or building development including any divisions of land involving the dedication of a new street or a change in existing streets; provided, that the following shall not be included within the definition or be subject to the regulations prescribed by this chapter;~~ **except:**

...

~~3.~~ Public acquisition for transportation corridors such as purchase of land for roadway widening or the establishment of rights-of-ways.

~~4.~~ Single ownership tract division where **the** entire area . . .

~~6.~~ The division of land ~~jointly inherited for~~ **pursuant to** the ~~purpose~~**terms** of ~~conveying a single lot~~ **probated will** or ~~parcel to each tenant in common, all~~ **accordance**

with intestate succession under Chapter 29 of ~~whom inherited~~ the ~~land by intestacy or by will~~. North Carolina General Statutes.

...

10. Division of land for the purpose of habitat preservation, protection of ridge tops, surface waters, wetland or other natural features, for the protection of an archeological site, or for the purposes of creating a stormwater management facility, without meeting subdivision standards for lot size, access, or road frontage if the following conditions are met:

- a. Maintenance responsibility is established with a recognized land trust, the town or other responsible entity;**
- b. The tract is placed in conservation in perpetuity; and**
- c. The town may retain access for the purpose of public safety protection.**

Section 31. Section 3.2.2 of Chapter 3 of the Land Use Code, is hereby amended as follows:

3.2.2 - No subdivision without approval.

A. No real property, including property declared under the NC Condominium Act (G.S. 47C-1 et seq.), lying within the town's jurisdiction shall be subdivided except in conformance with applicable provisions of this chapter. ~~Violations shall be subject to civil penalties.~~

...

~~E. The town reserves the right to inspect, reject, stop or otherwise cease the construction of all service facilities or improvements in the event the same are not being constructed in accordance with plans, specification standards, policies, or other requirements of the town set forth in this section.~~

Section 31. Sections 3.2.3 and 3.2.4 of Chapter 3 of the Land Use Code are deleted in their entirety.

Section 32. Section 3.3 of Chapter 3 of the Land Use Code, is hereby amended as follows:

~~For all subdivisions of land as defined in, the following categories of subdivisions shall be used to determine the procedures required for review:~~

3.3.1- Minor subdivision.

A. A minor subdivision is defined as ~~a subdivision~~ **the division of a tract or parcel of land** where:

1. No new public streets or roads are proposed (except for private driveway easements with each driveway easement serving no more than three lots; ~~and~~);

2. ~~Where~~ **No part of the tract or parcel to be divided has been divided under this section in the previous ten years; and**

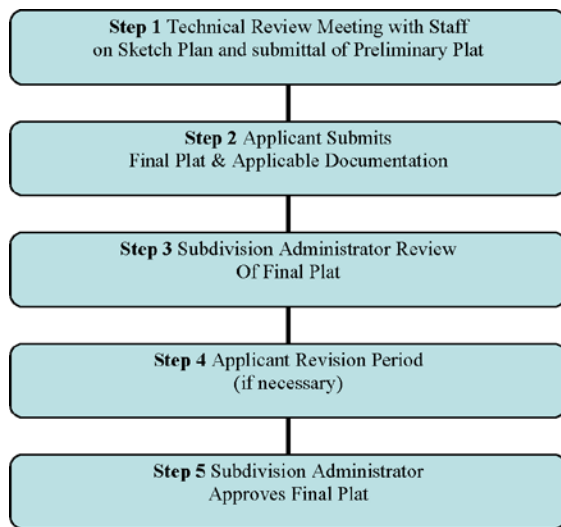
3. **No more than** four ~~or fewer~~ lots will result ~~after~~ **from** the ~~subdivision is complete.~~ **division;**

B. **The resultant lots shall conform with all requirements of this Land Use Code.**

~~C.B.~~ The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the applicant; **and where the resultant lots will not constitute a new phase of an existing development.**

~~D.C.~~ The applicant . . .

E.D. The following procedures shall be followed for minor subdivisions. The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



Step 1. Pre-application meeting ~~with sketch plan and submittal of preliminary plat~~

A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a ~~sketch plan~~ **preliminary plat** of the proposed development to the meeting that meets the requirements set forth in the land use code.

B. The subdivision administrator shall review ~~a sketch plan with the applicant~~ **preliminary plat** for ~~general~~ compliance with ~~requirements, the zoning and eligible uses, and other needs. The public works, fire chief or police chief, local NCDOT district representative or other representative may be invited to review the sketch plan depending on the determination of the staff reviewer.~~ **this land use code and shall inform the applicant of any deficiencies.** Additional information concerning the proposed subdivision may be required at the request of the ~~administering staff.~~ **subdivision administrator.**

C. One copy of the preliminary plat shall be retained as a part of the record of the subdivision administrator with one copy being returned to the subdivider or his authorized agent along with comments made by the subdivision administrator concerning the plat as generated during the ~~sketch plan~~ review. No improvements shall be made until the preliminary plat is filed with the subdivision administrator.

Step 2. Applicant submits final plat

The subdivider shall submit the final plat in accordance with the requirements of ~~and based on consultation and sketch plan comments and any improvements made since the preliminary plat was filed.~~ **section 3.4.**

Step 3. Review of final plat by subdivision administrator

The subdivision administrator shall review the final plat in accordance with the requirements of this ~~ordinance any other applicable ordinances. Any revisions to the approved final plat shall be considered in accordance with (vested rights) of the land use code.~~ **code.**

Step 4. Applicant revision period (if necessary)

If the proposed plat is not approved, the The applicant ~~shall~~ **may** revise the plat in accordance with the comments provided by the subdivision administrator and ~~other applicable agencies.~~ **may resubmit the plat** ~~All necessary revisions shall be made prior to~~

~~for approval by the subdivision administrator.~~

Step 5. Subdivision administrator approval of final plat

~~A. The subdivision administrator shall decide approval, disapproval, approve or approval subject to minor modifications~~ **disapprove the plat** within 15 days of submission ~~of the plat for minor subdivisions.~~

~~B. Approval shall be null and void unless the final plat is offered for filing and recording in the office of the register of deeds of Buncombe County within 90 days from the date of approval.~~

~~B.C.~~ The subdivider shall bring a recorded copy to the subdivision administrator for the file. No permit shall be issued for individual lots until a recorded copy is provided.

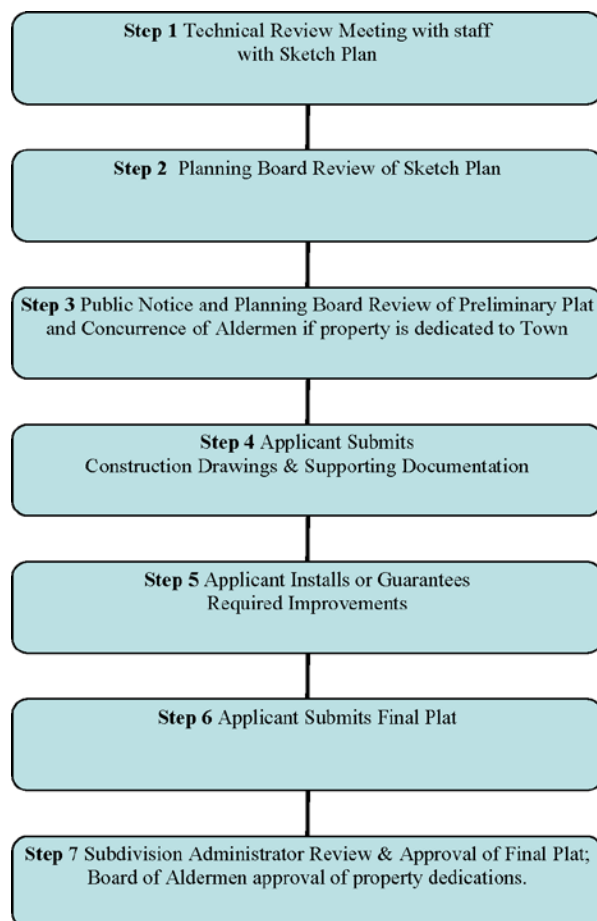
3.3.2- Reserved.

3.3.3- Major subdivision.

~~A major~~ **Any** subdivision ~~is defined as a~~ **of land, other than an exempt** subdivision ~~or where:~~

~~• There are new public roads or rights of way for dedication to the town, or More than four lots will result after the minor subdivision is complete,~~ **is a major subdivision subject to review and approval as provided below.**

The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



Step 1: Pre-application meeting with sketch plan

A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth in ~~section 4.2.~~ **section 1.4.6.**

B. The subdivision administrator shall review the sketch plan with the applicant for ~~general compliance with requirements, the zoning and eligible uses, and other needs.~~ **this land use code.** The public works ~~director,~~ fire ~~chief~~ **marshal,** local NCDOT district representative, **Metropolitan Sewerage District representative,** or other agency representative may be included in the technical review of the sketch plan. The ~~town staff~~ **subdivision administrator** shall advise the ~~subdivider~~ **applicant** of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of the preliminary and final plats.

...

Step 3: Planning board review and approval of preliminary plat

A. ~~After reviewing the plat and making a recommendation,~~ **The applicant shall submit preliminary plat to** the subdivision administrator ~~who~~ shall place the item on the agenda of the next regularly scheduled planning board meeting; ~~along with his or her recommendation as to whether the preliminary plat should be approved.~~

B. **Notice shall be given as provided in Section 1.5.4(F).** ~~The property shall be posted ten to 25 days prior to the planning board meeting and notice made in local paper and town website to inform the public that the property is under consideration for a major subdivision and said posting shall include the date of the planning board meeting to review the preliminary plat.~~

C. **Before the Planning Board reviews the preliminary plat, the following agencies shall be given an opportunity to make recommendations concerning the proposed subdivision plat:**

1. **the district highway engineer as to the any proposed state streets, state highways, and related drainage systems;**

2. **the county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;**

3. **the fire marshal; and**

4. **the stormwater and floodplain administrator(s)**

~~D.C.~~ The planning board shall review the plat ~~in accordance for conformity~~ with the requirements of this ~~ordinance, the zoning ordinance,~~ **land use code** and ~~any other applicable ordinance.~~ **shall either approve, approve with modifications, or deny the application for approval of the preliminary plat.**

Step 4: Applicant submits construction drawings and supporting documentation

Following preliminary plat approval, the applicant ~~Subdivider~~ shall submit engineer sealed construction drawings and supporting documentation for each individual phase or phases of development. The public works director, **building inspector** and fire ~~inspector~~ **marshal** shall review and approve the construction drawings for all public roads, private roads and water infrastructure. **If the preliminary plat was approved with modifications by the planning board, the applicant shall also submit a revised plat reflecting such changes.**

Step 5: Infrastructure/improvements installed or guaranteed

A. **Following** ~~Upon approval of by~~ the ~~preliminary plat~~ **public works director, building inspector and fire marshal,** the subdivider may proceed with the installation of or arrangement for

required improvements in accordance with the approved preliminary plat and the requirements of this ordinance.

B. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this ordinance or guaranteed their installation.

C. Following the completion of the improvements and infrastructure, the subdivider shall provide as-built construction drawings to the public works director and the fire ~~inspector~~ marshal.

Step 6: Applicant submits final plat

A. The ~~subdivider~~ applicant shall submit a final plat to the subdivision administrator that meets the requirements of section 3.4.

~~B. The final plat shall be prepared by a registered land surveyor currently licensed and registered in the state by the state board of registration for professional engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. 47-30 as amended, in the Manual of Practice for Land Surveying in North Carolina, and Buncombe County.~~

~~B.C. The subdivider~~ The applicant shall submit the final plat within two years after the planning board's approval of the preliminary plat; otherwise, such prior approval of the preliminary plat shall become null and void. In the event ~~that the subdivider allows the previously approved preliminary, final plat to expire, the subdivider approval~~ shall not be ~~required to resubmit~~ granted unless and until the applicant resubmits the preliminary plat for approval. by the planning board.

C. If required, evidence of formation of a legally constituted homeowner's association and any maintenance agreements with the homeowner's association shall be submitted to the planning department with the final plat.

Step 7: Subdivision administrator review and approval of final plat

A. The subdivision administrator shall:

1. review the final plat for compliance with the approved preliminary plat ~~and;~~
2. ensure that the final plat meets the requirements of ~~The town shall~~ section 3.4;
3. verify that all required infrastructure improvements have been completed ~~by conducting an on-site visual inspection of such improvements. Otherwise the improvements shall be guaranteed or that a financial guarantee has been provided as set forth in accordance with section 3.5.7.~~

B. The subdivision administrator shall ~~decide approval, disapproval, or approval~~ approve, disapprove, or approve subject to minor modifications within 15 days of submission of the plat.

C. The applicant ~~Approval shall be null and void unless final~~ file the plat ~~is offered for filing and~~ recording in the Office of the Register of Deeds ~~of~~ for Buncombe County within 90 days from ~~the~~ date of approval.

~~Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. 47-30, as amended.~~

~~D. The subdivider~~ and shall bring a recorded copy to the planning and development department for filing with the town clerk. No permits shall be issued for individual lots until a recorded copy is provided.

~~3.3.4 Subdivision for the purpose of conservation.~~

~~Subdivision for the purpose of conservation (distinct from a "conservation subdivision plan"). A single property may be subdivided for the purpose of habitat preservation, protection of ridge tops, surface waters, wetland or other natural features, for the protection of an archeological site, or for the purposes of creating a stormwater management facility, without meeting subdivision standards for lot size, access, or road frontage if the following conditions are met:~~

- ~~A. Maintenance responsibility is established with a recognized land trust, the town or other responsible entity;~~
- ~~B. The tract is placed in conservation in perpetuity; and~~
- ~~C. The town may retain access for the purpose of public safety protection.~~

Section 33. Section 3.4 of Chapter 3 of the Land Use Code, is hereby amended as follows:

SECTION 3.4 - SUBDIVISION REQUIREMENTS

3.4.1 - Sketch plans.

~~A. Minor subdivision sketch plans.~~

~~The subdivider shall submit to the subdivision administrator a sketch plan of the proposed subdivision containing the following information:~~

- ~~1. The name of the subdivision and the proposed use and the name, address, and phone number of the owner.~~
- ~~2. A vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses.~~
- ~~3. Location of significant natural features such as water courses, ponds, rock outcroppings or forest and topography.~~
- ~~4. Location of flood hazard areas from FIRM map.~~
- ~~5. Location of existing or proposed utilities.~~
- ~~6. The boundaries of the tract and the portion of the tract to be subdivided.~~
- ~~7. Total acreage of the tract and acreage of the portion of the tract to be subdivided.~~
- ~~8. Existing street and lot layout and dimensions, including right-of-ways.~~
- ~~9. Proposed new lot layout and dimensions and any rights-of-way or driveways to be built. Minimum driveway right-of-way shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~
- ~~10. A statement from the town water department and from MSD that there is adequate water and sewer service may be provide lot(s), or a statement from the Buncombe County Health Department that indicates that the created lots either already have service or are appropriate for septic systems.~~

B. Major subdivision sketch plans.

The subdivider shall submit to the planning director or his/her designee seven copies of a sketch plan on

11" × 17" or smaller paper of the proposed subdivision containing the following information at a

minimum:

1. The name of the subdivision ~~and~~, the proposed use and the name, address, and phone number of the owner.

...

9. Existing street and lot layout and dimensions, including rights-of-ways.

...

11. Designated open space, . . . with the planning **director** and the recreation and parks directors.

3.4.2 - Preliminary and final plat submittal requirements.

A. For minor subdivisions, the applicant shall submit one 18" × 24" or larger preliminary plat and one 11" × 17" or smaller ~~copies~~ of the preliminary plat along with a completed checklist to the subdivision administrator in both hard copy and digital format;

B. For major subdivisions, the applicant shall submit eight 18" × 24" or larger plats along with a completed checklist to the planning and development department in both hard **copy** and digital format;

Section 34. Section 3.5 of Chapter 3 of the Land Use Code, is hereby amended as follows:

SECTION 3.5 - SUBDIVISION DESIGN STANDARDS

3.5.1 - Lots.

...

B. For subdivisions in traditional neighborhood development (TND), institutional campus development (ICD) zoning districts, or **projects developed pursuant to a** special use permit ~~subdivisions~~, the lot lay-out shall conform to the approved master plan.

C. Street right-of-way, setback requirements from North Carolina surface water streams as designated on USGS topography maps, sidewalks and other publicly dedicated areas shall not be included in the calculation of lot size. The location of structures and their setbacks shall be indicated on the preliminary plat. Qualified conservation subdivision plans shall meet district density requirements, but have flexibility in all other lot requirements as long as ~~it~~ **the proposed subdivision** meets the site capacity analysis.

D. Duplexes on a single lot and zero lot line dwellings are allowed within all districts, except heavy industrial (HI-0), ~~as long as they meet the minimum~~ **provided that** requirements **are met** for minimum lot size for single-family use including density and perimeter setbacks of the district in which they are located. A duplex meeting all the requirements for a single-family lot shall be counted as one residential density unit or RUA for the designated density of the zoning district in which ~~they are~~ **the duplex is** located.

E. Duplexes may be subdivided as a two-unit ~~town-home~~ **townhome** or condominium for the purpose of separate ownership of the two individual units as long as:

...

4. Common areas and maintenance requirements, such as that for driveways, open space and stormwater management areas are enumerated as part of the subdivision, or provided under common ownership in a ~~town-home~~ **townhome** or condominium plan.

5. Triplexes or other multi-dwelling units of three or more units must follow guidelines of applicable special use category or multi-family requirements.

3.5.2 - Streets.

A. Unless a lot is set aside for conservation in perpetuity, all lots ~~to be platted~~ shall . . .

B. **All streets, driveways, and ~~recorded driveway or right-of-ways~~ of way therefore** shall be ~~as indicated~~ **designed and constructed according to the requirements set out** in the Town of Black Mountain standards and Details Manual.

. . .

D. ~~Reserved.~~ Any access serving more than three lots shall be considered a road. Roads ~~providing access to more than four lots must be constructed to requirements as indicated in the Town of Black Mountain Standards and Details Manual and~~ may be dedicated to the town upon **approval of** a written street dedication request.

E. ~~One-way roads shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

F. The fire ~~inspector~~ **marshal** and public works director may authorize a variance up to 20 percent (up to eight feet variation on right-of-way, and up to four-foot variation on total travel surface), based on topography, landscape context, traffic and public safety needs.

G. ~~Every street shall be designed to accommodate storm drainage standards as indicated in the Town of Black Mountain Standards and Details Manual.~~

H. ~~The grade of streets shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

I. G. The town may accept streets for ownership and maintenance one year after the completion date of the final road surfacing ~~upon a written~~. **Application for** street ~~dedication request and upon approval~~ **acceptance must be made in writing approved** by the public works director and fire ~~inspector~~ **marshal**.

H. **Final plans for** ~~All roads, including private streets, cul-de-sacs and T-turnarounds within a major subdivisions~~ shall ~~meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. Final plans will~~ include a statement by a licensed professional engineer that ~~road is~~ **all roads are** in compliance with the Town of Black Mountain Standards and Details Manual.

~~1.~~ I. In a conservation subdivision,

~~2. — In a special use permit, the design of any shared parking and loading areas which are also serving to access more than three residential units must be in compliance with the Town of Black Mountain Standards and Detail Manual.~~

~~K.~~ J. No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving shall be as indicated in the Town of Black Mountain Standards and Details Manual ~~and certified by a licensed engineer.~~

L. ~~Reserved.~~

K. Traffic impact studies may be required for subdivision roads connecting to the town or NCDOT system per Section 3.5.8 of ~~the Town of Black Land Use~~ **this** code or NCDOT guidelines.

L. Where curbs are provided on streets or where curbs and sidewalks are constructed within a subdivision, any construction shall be in full compliance with the provisions of G.S. 163-44.14 which sets forth standards for providing curb ramps or curb cuts for handicapped persons.

O. ~~Entrances into subdivisions which intersect with a major thoroughfare shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~P. —Property lines at street intersections shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~Q.~~ **M.** Pre-existing roads which do not meet these standards may be incorporated into a subdivision ~~plat~~ only upon approval of the fire ~~department~~ **marshal** and public works director. Where pre-existing roads do not have a designated right-of-way, right-of-way shall be established to cover at least the maintenance area of the roadway (back of ditch to back of ditch).

N. If an existing street serving the proposed development does not meet minimum town street standards, the developer shall make the necessary improvements to bring the street up to town standards or shall make a payment to the town to cover the cost of such improvements.

3.5.3 - Utilities.

A. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. The town requires connection to existing public water and sewer lines if any such lines are located within 300 feet of the property boundary, unless topography ~~or right-of-way~~ does not allow such connection **or requisite easements cannot be obtained.** The installation of all said systems except wells or septic tanks serving only one connection shall be required prior to final plat approval unless financially guaranteed.

...

3.5.5 - Pedestrian circulation (major subdivisions only).

A. All major subdivisions ~~and special use developments~~ shall have a plan for internal pedestrian circulation as well as points of connectivity with exterior transportation corridors.

B. Major subdivisions ~~that are not qualified as,~~ **other than** conservation subdivisions, shall provide a network of sidewalk or greenway trails to serve all ~~occupiable~~ lots. The total length of these facilities shall be equal or greater than the total of linear feet of new roadway as measured at the centerline. As part of preliminary plat review, the planning board may require, ~~or as part of special use permits, the zoning board of adjustment may require, the following:~~ **that the applicant:**

...

~~C. —The location and specifications of sidewalks or trails shall be shown on preliminary plats and master plans under consideration by the building inspector for issuance of a building permit.~~

~~D.~~ **C.** Whenever practicable, . . .

~~E.~~ **D.** Sidewalks shall . . .

~~F.~~ **E.** Sidewalks shall . . .

3.5.6 - Open space requirements (major subdivisions only).

A. All major subdivisions must dedicate the equivalent of five percent of the total land area of the original parcel or combination ~~or~~ **of parcels** used in the subdivision as dedicated, common open space.

...

~~D. Requirements concerning land dedicated to the town for recreational purposes. The board of aldermen must approve property dedications being offered to the town for parks and greenways facilities at the time of final plat approval. The board of aldermen may~~ **The town council may, prior to approving the final plat or otherwise accepting dedication of land,** request review by the recreation and parks commission before making their determination. Dedications should meet the following criteria:

...

3.5.7 - Improvement guarantees.

...

B. The town may ...

1. Surety performance bond(s) shall be obtained from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be payable to the Town of Black Mountain and shall be in an amount equal to 1.25 times the entire cost, as estimated by an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. ~~The duration of the bond (s) shall be until such time as the improvements are approved by the planning and development services department. The department shall not give said approval until all required improvements have been installed.~~ **The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension shall only be for the duration necessary to complete the required improvements.**

2. Cash or equivalent security. The subdivider shall deposit cash or other instrument readily convertible into cash at face value, **either with** the town or in escrow with a financial institution designated as an official depository of the town. The amount of the deposit **shall be** equal to 1.25 times the cost, as estimated by, an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The subdivider shall file with the town an ~~ag~~**agreement** between the financial institution and himself guaranteeing that:

...

Section 35. Section 3.6 of Chapter 3 of the Land Use Code, is hereby amended as follows:

SECTION 3.6 - DEDICATION AND CLOSURES OF RIGHTS-OF-WAY OR EASEMENTS TO THE TOWN

3.6.1 - Rights-of-way and easements.

...

C. Rights-of-way which are intended to remain private or which are not accepted by the town at the time of approval of the final plat, must be ~~accompanied by a dedication~~**subject** to a ~~neighborhood association and include a road~~ maintenance agreement. ~~for the right-of-way.~~

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

~~3.6.2.1 Closures of rights-of-way.~~~~A. Reserved.~~~~B.~~**A.** Property owners.....Rights-of-way closures shall follow these procedures:

...

3.6.2.2 3.6.3 - Dedication of Streets, Rights-of-Way or Land to the Town.

...

B. The ~~board of aldermen~~**town council** shall not accept as a public street, any street extension, new street or part thereof until preliminary plans have been approved by the planning ~~and development department~~**director**, public works director, and fire ~~inspector~~**marshal**, and unless the street or part thereof has met the following requirements:

1. A street dedication petition **signed by all owners of property over which the street or right-of-way passes** is filed with the Planning Department ~~and must be signed by all property owners.~~
2. The road ~~must meet~~**meets** all requirements as indicated in the Town of Black Mountain Standards and Details Manual.

...

Section 36. Chapter 4 of the Land Use Code is retitled as “Zoning Regulations” and amended to add of a new section numbered 4.1, entitled “Purpose” which shall read as follows:

CHAPTER 4. - ZONING ~~DISTRICT REQUIREMENTS~~**REGULATIONS**SECTION 4.1 – **PURPOSE.****4.1.1 – Purpose and authority.**

These zoning regulations are adopted to provide guidelines for the development of land in Black Mountain, pursuant to the authority granted in N.C.G.S. § 160D-702, consistent with the General Statutes of the State of North Carolina, the Town of Black Mountain Code of Ordinances, and the Comprehensive Plan to address the following public purposes:

1. **To provide adequate light and air;**
2. **To prevent the overcrowding of land;**
3. **To avoid undue concentration of population;**
4. **To lessen congestion in the streets;**
5. **To secure safety from fire, panic, and dangers;**
6. **To facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and**
7. **To promote the health, safety, morals, or the general welfare of the community.**

Section 37. Section 4.1 of Chapter 4 of the Land Use Code is renumbered as section 4.2 and revised to read as follows:

SECTION ~~4.1~~ **4.2** - ZONING MAP~~4.1.1~~ **4.2.1** - Designation of zoning map.

The map entitled Town of Black Mountain Zoning Map as adopted by the Town of Black Mountain ~~Board of Aldermen~~**town council** and certified by the town clerk establishes the official zoning and overlay districts. This map will be maintained and posted at the Town of Black Mountain Planning and Development Department. Digital and **paper** copy versions of this map shall also be made available through the planning and development department for

reference.

~~4.1.2~~ **4.2.2** - Interpretation of the zoning map.

- A. Unless otherwise specified, zoning district boundaries ~~are platted lot~~ **run with property** lines or the centerline of streets, alleys or other rights-of-way, ~~or such lines extended.~~ Boundaries indicated as following railroad lines ~~shall be interpreted as to be~~ **run along a line** midway between the tracks.
- C. Boundaries indicated as approximately following the centerline of streams, rivers, channels or lakes ~~shall be interpreted as following~~ **follow** the ~~exact~~ centerline: **of the waterway.**
- D. Where a zoning district boundary divides a land parcel under a single ownership into two districts, ~~then the requirements of the less restrictive zone shall be applied to~~ the entire parcel ~~shall be zoned for the less restrictive use by the adjustment of the boundaries and the zoning district boundary adjusted accordingly,~~ provided that the **zoning district** boundary adjustment is a distance of less than 100 feet., **otherwise, an application for rezoning must be filed pursuant to the process set forth in Chapter 1 of this Land Use Code.**

...

~~4.1.3~~ **4.2.3** - Changes to official zoning district map.

Changes made ~~in zone to zoning~~ district boundaries or other matters portrayed on the official zoning district map shall be made in accordance with the provisions ~~of this code and NC General Statutes, and according to~~ Section 1.5 of this ~~ordinance~~ **code**. Changes shall be entered on the official zoning district map promptly after the amendment has been approved by the ~~board of aldermen~~ **town council**.

~~4.1.4~~ **4.2.4** - Town of Black Mountain Zoning Map.

This map and its boundaries shall be incorporated and made part of ~~this ordinance~~ **these regulations**.

Section 38. Section 4.2 of Chapter 4 of the Land Use Code is renumbered as section 4.3 and revised to read as follows:

SECTION ~~4.2~~ **4.3** - GENERAL ZONING PROCEDURES

~~4.2.1~~ **4.3.1** - Conformance required.

A. No building or land shall be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the town zoning regulations.

B. No building or zoning permit shall be issued on new lots ~~which were~~ created by the subdivision of land unless:

1. the subdivision **is exempt from the subdivision regulations;**
2. **the subdivision is a major subdivision and a preliminary plat** has been approved ~~and is; or~~
3. **the final plat for the subdivision has been** recorded with the register of deeds for Buncombe County.;

C. ~~Uses not designated as permitted by right or subject to additional~~ conditions, shall be prohibited.

D. C. ~~Conditional uses or~~ Special uses are permitted upon compliance with the additional ~~regulations~~ **conditions** imposed and as specified by the **zoning** board of adjustment.

E. ~~Any building, structure, or use of land existing at the time of the enactment of this chapter, or any amendment thereto, that does not conform to the~~

~~requirements of the district in which it is located may be continued or maintained subject to the provisions of the section on nonconformities.~~

~~F. Any introduction or initiation of a nonconforming use or structure after the adoption of these regulations shall be treated as a zoning violation.~~

G. **D.** Unless otherwise specified ~~within~~ **by the** regulations governing the district within which a project (new development or redevelopment) is located, all development must adhere to ~~other~~ **all development** regulations ~~enumerated by town ordinances~~, including but not limited to flood hazard prevention (see ~~land use code~~ **LUC** chapter 2), stormwater (see LUC ~~); Chapter 8~~ **Chapter 8**), lighting (see Town of Black Mountain Ordinances ~~title IX: Section 103~~ **Chapter 20, Article VII**), signage (see LUC chapter 9), parking (see LUC chapter 10), pedestrian planning and other requirements (see LUC chapter 4).

~~H. E. Adult businesses, amusements, massage therapists and massage therapy~~ **Amusements**, solicitors, peddlers and itinerant merchants shall be allowed as provided ~~under~~ **in Chapter 9 of** the Town of Black Mountain Code of Ordinances ~~chapter 9, or as identified as health care services within the land use code definitions~~. Nothing in this chapter shall be construed or interpreted to preempt or supersede the town's adopted business regulations.

~~4.2.2~~ **4.3.2** - Minimum regulations.

...

~~4.2.3~~ **4.3.3** – Zoning permits.

A. *Zoning administrator.* It is the intention of this chapter that all questions arising in connection with compliance ~~to~~ **with**, and enforcement of ~~Zoning, zoning regulations~~ shall be the responsibility ~~if~~ **of** the zoning administrator and that such questions shall be presented to the board of adjustment only on appeal from the decision of the zoning administrator.

B. *Zoning permit required.* No building, sign or other structure (except as otherwise provided ~~for in this ordinance~~ **these regulations**) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within the ~~building~~ **structure** change, nor shall any excavation or filling of any lot for the construction of any ~~building~~ **structure** be commenced, nor substantial clearing, grading, or excavation be commenced, nor shall any change in the use of a property be commenced until a zoning permit is issued or the zoning administrator reviews and ~~signs the building permit, business privilege license, stormwater, sedimentation and erosion control, or other such permits approved for such work. Fees for permits are established by the fee town's schedule, except such permits as are issued by other agencies~~ **approves the issuance of permits required for such work. No zoning, building or grading permit shall be issued without first obtaining the approval of the zoning administrator who shall certify that the development described on the application complies with all existing zoning regulations.**

C. *Zoning permit not required.* A zoning permit is not required, ~~not~~ **withstanding notwithstanding** any other provisions of this ordinance, for the following:

...

4. Mailboxes, birdhouses, flag poles, pump covers, ~~fences~~ and doghouses;

...

D. *Expiration of permits.* Any zoning permit issued in accordance with this ~~ordinance~~ **chapter** shall expire ~~within~~ six months after the date of issuance if the work authorized by the permit has not been commenced.

... If the permit recipient has proceeded with due diligence and in good faith and conditions have not changed substantially so as to warrant a new application, the ~~planning director or~~ zoning administrator may grant extensions for periods up to six months. All such extensions may be

granted without resort to the formal processes and fees required for a new permit.

Section 39. Sections 4.2.4 and 4.2.5 of Chapter 4 of the Land Use Code are deleted.

Section 40. Section 4.3 of Chapter 4 of the Land Use Code is renumbered as section 4.4 and revised to read as follows:

SECTION ~~4.3~~ **4.4** - PROVISIONS GOVERNING ALL LOTS

~~4.3.1~~ **4.4.1** - Lot size and lot reductions.

A. All subdivision of property created after the effective date of this chapter must conform to the lot requirements of the district in which it is located. ~~No yard or lot existing at the time of the passage of this chapter shall be altered except in compliance with the minimum requirements.~~

...

C. Subdivisions for the purpose of land conservation or for the dedication of open space which are exempt from the subdivision regulations in Chapter 3 of this LUC are exempt from the requirements of this chapter.

~~4.3.2~~ **4.4.2** - Lot access.

A. No building, structure or use of land for other than conservation purposes shall be established on a lot which does not have access to a **public** street directly or by means of an easement. . . .

B. Up to three lots may share access **by means of one a shared** right-of-way so long as each lot has off-street parking for two cars ~~available in addition to and from,~~ **which parking shall not be located within** the right-of-way **of the private drive**. In cases where four or more lots share access through a common right-of-way, the right-of-way shall be considered and designed as a named roadway and meet the requirements of ~~the~~ Town of Black Mountain Standards and Details Manual.

1. In a conservation subdivision, rights-of-way that cannot meet the road standards for a subdivision without compromising performance goals of the conservation subdivision requirements (see 7.5.4) and which access more than three lots must meet the approval of the public works director and fire inspector for the purpose of waste collection, snow removal and maintenance, ~~as well as~~ **and** emergency vehicle access.

2. **In a development undertaken pursuant to** a special use permit, the design of any shared parking and loading areas ~~which are~~ **that** also serving ~~to~~ access more than three residential units must ~~meet the requirements of the Town of Black Mountain Standards and Details Manual and~~ be approved by the fire **marshal** ~~inspector~~.

~~C. —If the street or road serving the proposed development does not meet the town street standards, the developer shall make the necessary improvements to bring the street or road up to the requirements as indicated in the Town of Black Mountain Standards and Details Manual or provide other improvements as determined by the board of aldermen as a result of a traffic impact analysis, or shall make a payment to the town to cover the cost of such improvements. The town board of aldermen may waive this requirement for street or road improvements if the town determines that the improvement will cause more community disruption than justified by the increased traffic from the proposed~~

development.

~~D. —Subdivisions for the purpose of land conservation or for the dedication of openspace may be exempt from requirements of this section pursuant to subdivision regulations of the town.~~

~~E. C. Encroachment allowance for access within 30-foot buffer requirements (see also 8.2.10)~~ Lots which include or are adjacent to perennial or intermittent surface waters as indicated on the most recent version of the 1:24,000 scale quadrangle topographic maps prepared by the USGS are subject to a 30-foot setback from the top of the bank of that surface water in accordance with phase II stormwater regulations. **(see section 8.2.10)** ~~Pre-existing lots and those areas identified in adopted master plans are allowed a minimum encroachment into the 30-foot buffer for the purpose of transportation and access if the following criteria are met:~~

- ~~1. It is for the purpose of vehicle or non-motorized transportation and access only, such as trails, greenways, walkways, driveways, alleyways or access roads. Residential, accessory or commercial structures are not included in this encroachment allowance.~~
- ~~2. Utility structures that follow the right-of-way for the access are only allowed within the disturbance area of the roadway, an existing utility easement or bridge structural footprint.~~
- ~~3. It is the minimum encroachment necessary for access of the property, or is part of a trail, sidewalk or street alignment included on the town's pedestrian master plan, greenway plan or transportation plan or other approved master plan.~~
- ~~4. The encroachment area does not exceed more than ten percent of the total land area within the required buffer area, and shall never exceed more than 100 feet of linear disturbance for 1,000 feet of linear stream.~~
- ~~5. Provides the minimum area of disturbance needed for access and includes mitigation of stream and stream bank disturbance as part of the design.~~
- ~~6. Encroachments which include stream crossings should be designed so that crossing is perpendicular to the stream centerline to the maximum extent practicable.~~
- ~~7. Encroachments which are parallel to the watercourse should be designed to incorporate the maximum buffer practicable and still allow the necessary encroachment. Additional stormwater management techniques to slow and filtrate run-off shall be included between the disturbed area and the waterway. Such parallel encroachments may be subject to additional review by the state division of water quality.~~

~~Any encroachment into the required surface water buffer setback which exceeds this allowance shall require a variance from the zoning board of adjustment.~~

~~4.3.3~~ **4.4.3** - Setbacks, corner lots and double frontage lots.

A. ~~The~~ Yard and setback requirements ~~for the district in which the development is proposed~~ shall be met unless variance is granted by the ~~zoning~~ board of adjustment.

F. However, in no case shall setbacks be less than 15 feet, except in the ~~C-1~~**CB**, central business district, where the minimum setback is 12 feet.

G. No building or structure shall be placed within a roadway or highway right-of-way, except as otherwise provided in ~~this ordinance.~~ **these regulations.**

...

J. ~~Reserved.~~ **K.** Allowable encroachments into required setbacks. . . .

4. **Fences and walls.** ~~Fences and walls may be located within the required minimum front, side, or rear setback as long as it doesn't cross property line boundaries.~~

5. If a handicapped accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, ~~then~~ the setback requirement ~~for these structures can~~ **shall** be ~~adjusted~~ **waived** to the extent necessary ~~by~~ **to** **accommodate** the ~~planning director.~~ **accessibility or life safety feature.**

~~4.3.4~~ **4.4.4** - Steep hillside setback allowance for residential lots.

A. On **residential** lots where the first 45 feet from the edge of the pavement exceeds 30 percent slope, front yard setbacks ~~may be~~ **are** adjusted as follows:

...

~~4.3.5~~ **4.4.5** - Location of buildings on irregularly shaped lots.

Locations of front, side and rear setback lines on irregularly shaped lots shall be determined by the zoning administrator **in writing**. Such determinations shall be based on the spirit and intent of the district regulations to achieve appropriate spacing and location of building(s) on individual lots. **Appeals of such determinations shall be made to the board of adjustment following the procedures set out in Section 1.7.2.**

~~4.3.6~~ **4.4.6** – Visibility at Intersections

...

Section 41. Section 4.4 of Chapter 4 of the Land Use Code is renumbered as section 4.5 and revised to read as follows:

SECTION ~~4.4~~ **4.5** - PROVISIONS GOVERNING ALL BUILDINGS

~~4.4.1~~ **4.5.1** - Location of building lines.

...

~~4.4.2~~ **4.5.2** - Height regulations.

A. **No structure** ~~Structures shall not~~ be erected or altered so as to exceed the height regulations of the district in which it is located.

...

F. Free-standing communications towers ~~are permitted as~~ **constructed pursuant to** ~~a conditional~~ **special** use ~~and permit~~ are exempt from building height requirements of this section.

...

~~4.4.3~~ **4.5.3** - Principal buildings and structures per lot.

A. Every ~~building~~**structure** erected, moved or structurally altered shall be located on a single lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot unless:

1. As part of an approved industrial operation within either of the industrial districts (LI-8 or HI-0); or
2. As part of an approved ~~conditional~~**or** special use permit; or
3. As part of a pre-existing nonconforming use;**; or**
4. **As a secondary dwelling.**

B. Duplexes within a single lot will be treated as a single primary structure for the purposes of compliance with zoning district lot size and setback unless regulated by the minimum lot size and density table for steep slope lots. For separate units within a zero-lot line structure such as those for some types of ~~town homes~~**townhomes** or attached houses, the individual units will be considered the primary structure for each lot.

~~C. Please see chapter 5 for guidelines on accessory buildings.~~

4.5.4 - Accessory structures.

A. **In no case shall an accessory structure be located closer than five feet to the nearest property line.**

B. **For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.**

C. **In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.**

D. **In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.**

E. **In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:**

1. **Accessory structures shall not be more than two stories.**
2. **For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.**

3. **For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.**

4. **Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.**

~~4.4.4 - Storm and sanitary sewerage.~~

~~Storm and sanitary sewerage shall be provided as required in the phase-II stormwater ordinance or other town or state regulations and the town water regulations (title V, chapter 52) [chapter 48, article III of the Code of Ordinances]. In addition, those projects that do not fall within the stormwater~~

~~ordinance shall also make provisions to minimize the impact of stormwater runoff on adjoining properties and shall comply with sedimentation and erosion control requirements (see).~~

~~4.4.5 - Conversion from residential to non-residential use.~~

~~All residences, which are converted to any type of non-residential use, are required by North Carolina State Law to have a building inspection done. Any converted building shall be required to comply with required site plan submittal and to obtain a commercial certificate of occupancy.~~

~~4.4.6~~ 4.5.5 - Use and location of dumpsters.

Dumpsters are allowed in all districts in accordance ~~to~~ with the following standards:

...

~~E. Dumpsters in common use as part of a special or conditional use permit must meet and maintain screening and location requirements as approved in a CUP or SUP plan.~~

...

~~G. — Requests for variances within the historic district must be reviewed by the historic preservation commission prior to the ZBA hearing.~~

~~4.4.7~~ 4.5.6 - General screening and buffering requirements.

A. Where a lot upon which a commercial or industrial use is occurring abuts a lot upon which a residential or mixed-use ~~district, or where a pre-existing nonconforming use is within a residential district,~~ is occurring there shall be an opaque wall or fence of at least four feet in height along the property line. A vegetative buffer of at least ten feet in width and six feet in height and of sufficient density may be permitted in lieu of a structural screen upon approval of the zoning administrator.

Section 42. Section 4.5 of Chapter 4 of the Land Use Code is renumbered as section 4.6 and revised to read as follows:

SECTION ~~4.5~~ 4.6 - DISTRICTS ESTABLISHED

~~4.5.1~~ 4.6.1 - Base zoning districts established.

A. Base zoning districts are created to provide comprehensive land use regulations throughout Black Mountain. There are 12 base zoning districts that provide for a variety of uses ~~that are~~ appropriate to the character of the areas in which they are located. ~~For the purpose of this ordinance,~~ **The Town of** Black Mountain is hereby divided into the ~~following~~ base zoning districts. ~~These districts shall comply with all of the general and specific requirements of this ordinance. In order to carry out and implement the purpose and intent of the land use code, the following~~ **as reflected on the** zoning districts ~~are established;~~ **map adopted pursuant to section 4.2.1 of this chapter.**

B. **The following zoning districts are established:**

- 1.** Conservation residential district (CR-1)
- 2.** Suburban residential district (SR-2)
- 3.** Town residential district (TR-4)

4. Urban residential district (UR-8)
5. Office and institutional district (OI-6)
6. Neighborhood mixed use district (UR-8)
7. Central business district (CB)
8. Highway business district (HB-8)
9. Light industrial district (LI-8)
10. Heavy industrial district (HI-0)
11. Traditional neighborhood development (TND)
12. Institutional campus district (ICD)

~~4.5.2~~ **4.6.2.** - Overlay districts established.

A. Additionally, overlay districts are created to further regulate land use, dimensional requirements, and site design in significant or sensitive areas of town. ~~The requirements for the overlay districts are set forth in-~~

1. Wellhead protection overlay
2. Flood damage prevention overlay
3. Historic overlays (historic district and historic conservation district)
4. Fire district overlay
5. Pedestrian master plan overlay
6. U.S. 70 corridor overlay

~~4.5.3~~ **4.6.3** - Other requirements.

A. In addition to zoning district regulations see the following sections for other requirements:

1. ~~A.~~ See chapter 3 for subdivision requirements.
2. ~~B.~~ See chapter 5 for additional ~~requirements~~ use standards for certain uses.
3. ~~C.~~ See chapter ~~6~~ 7 for ~~conditional uses~~ See for special uses.
4. ~~D.~~ See chapter 8 for land development and environmental regulations.
5. ~~E.~~ See chapter 9 for sign regulations.
6. ~~F.~~ See chapter 10 for parking requirements.
7. ~~G.~~ See chapter 11 for infrastructure resources, contacts and requirements. ~~I. ——— See for inclusionary housing requirements.~~

Section 43. Section 4.6 of Chapter 4 of the Land Use Code is renumbered as section 4.7 and revised to read as follows:

SECTION ~~4.6~~ **4.7** - ZONING REGULATIONS BY DISTRICT

~~{TABLE}~~

See Section 4.7.15 for the permitted use table.

See Section 4.7.16 for the district dimensions standards table.

~~4.6.1~~ **4.7.1** - Conservation residential district (CR-1).

~~4.6.1.1~~ **4.7.1.1** *Purpose- and intent.*

...

~~4.6.1.2 Uses.~~~~The chart below indicates the uses generally permitted in the CR zoning district.[TABLE]~~~~Exclusions: Correctional institutions, Manufactured Home Parks, all uses not specifically enumerated.~~~~4.6.1.3 Dimensional requirements (CR-1).~~~~[TABLE]~~~~4.6.2~~ **4.7.2** - Suburban residential district (SR-2).~~4.6.1.1~~ **4.7.2.1** ~~Intent~~ Purpose and intent.

The suburban residential district ~~is established to protect~~**protects** areas in which the principal use of the land is ~~single-family~~ residential and where less dense development is preferred for the protection of slopes or environmentally sensitive areas, ~~traditional single-family~~ neighborhoods and the preservation of open space.

~~4.6.2.2 Uses.~~~~The chart below indicates the uses generally permitted in the SR zoning district.[TABLE]~~~~**Exclusions:** Correctional institutions, Manufactured Home Parks, all uses not specifically enumerated~~~~4.6.2.3~~ ~~Dimensional requirements (SR-2).~~~~[TABLE]~~~~4.6.3~~ **4.7.3**- Town residential district

(TR-4).

~~4.6.4~~ ~~4.6.3.1 Intent.~~ **4.7.3.1** Purpose
and intent.

...

~~4.6.3.2 Uses.~~~~The chart below indicates the uses generally permitted in the TR-4 zoning district.[TABLE]~~~~Exclusions: Correctional institutions, all uses not specifically enumerated~~~~4.6.3.3 Dimensional requirements (TR-4).~~

[TABLE]

~~*A density bonus may be available for developments that include affordable housing units in accordance with~~

~~4.6.5~~ **4.7.4** - Urban residential district (UR-8).

~~4.6.5.1 Intent.~~

4.7.4.1 Purpose and intent.

...

~~4.6.4.2 Uses.~~

[TABLE]

~~The chart below indicates the uses generally permitted in the UR-8 zoning district. Exclusions: Correctional institutions, all uses not specifically enumerated~~

~~4.6.4.3 Dimensional requirements (UR-8).~~

[TABLE]

~~* A density bonus may be available for developments that include affordable housing units in accordance with~~

~~4.6.6~~ **4.7.5** - Office and institutional district (OI-6).

~~4.6.6.1 Intent.~~

4.7.5.1 Purpose and intent.

...

~~4.6.5.2 Uses.~~

~~The chart below indicates the uses generally permitted in the OI-6 zoning district.~~

[TABLE]

~~**Exclusions:** Amusements, automotive sales and service, drive-through or drive-up uses, mini-storage, commercial warehousing, correctional institutions, outdoor kennels, communications towers (except those attached to roofs or buildings), manufactured home parks, any commercial use that creates exterior noise, fumes, odors, dust, vibrations, and all uses not specifically enumerated~~

~~4.6.5.3 Dimensional requirements (OI-6).~~

[TABLE]

~~*A density bonus may be available for developments that include affordable housing units in accordance with Chapter 12~~

~~4.6.7~~ **4.7.6** - Neighborhood mixed use district (NMU-8).~~4.6.7.1 Intent.~~**4.7.6.1 Purpose and intent.**

The neighborhood mixed use district is established to serve the needs of the surrounding residential neighborhoods by providing compatible goods and services without negatively impacting the residential nature of the adjacent neighborhoods. It is also intended to establish areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods ~~and to minimize conflicts with surrounding residential uses in terms of architecture, noise, smell, or traffic. The neighborhood mixed use district shall retain the residential character of buildings in both appearance and scale and should provide for the daily convenience and personal service of the surrounding neighborhood.~~

~~4.6.6.2 Uses.~~

~~The chart below indicates the uses generally permitted in the NMU-8 zoning district. [TABLE]~~

~~**Exclusions:** Amusements, automotive sales and service, drive-through uses, mini-storage, commercial warehousing, correctional institutions, outdoor kennels, communications towers (except those attached to roofs or buildings), manufactured home parks, any commercial use that creates exterior noise, fumes, odors, dust, vibrations, and all uses not specifically enumerated.~~

~~4.6.6.3 Dimensional requirements (NMU-8).~~

~~[TABLE]~~

~~*A density bonus may be available for developments that include affordable housing units in accordance with.~~

~~4.6.6.4~~ **4.6.6.2** Supplementary district requirements (NMU-8).

~~A.~~ New construction within this district shall retain the characteristics of a residential neighborhood. ~~New construction within this district~~ **and** shall not include metal buildings or cinder block buildings as the primary structure on a lot, ~~and.~~ **Newly constructed structures,** unless part of a special use permit or an accessory structure, shall have a pitched roof and other characteristics of single-family homes within the adjacent residential neighborhoods.

~~4.6.8~~ **4.7.7** - Central business district

(CB).

~~4.6.9~~ ~~4.6.7.1~~ Intent.**4.7.7.1 Purpose and intent.**

...

4.6.7.2 Uses.

The chart below indicates the uses generally permitted in the CB zoning district. [TABLE]

Exclusions: Automotive sales, mini-storage, drive-thru restaurants, commercial warehousing not associated with a retail operation, correctional institutions, outdoor kennels, communications towers (except those attached to roofs or buildings), manufactured home parks and all uses not specifically enumerated.

4.6.7.3 Dimensional requirements

(CB): [TABLE]

*Inclusion of affordable housing units in accordance with are encouraged.

4.6.7.4 4.7.7.2 Supplementary district requirements (CB).

...

~~B.~~ Existing Sidewalks may be used for outdoor seating. **Sidewalks may also be used for displays or temporary signs as permitted under the sign ordinance by Chapter 9 of this LUC** as long as four feet (4' or 48"), as measured from the back of the curb toward the building, is maintained as free and clear passage for pedestrians and wheelchairs.

...

~~D.~~ In order to preserve the historic character and walkability of the central business district and to maintain an accessible and attractive downtown, the placement of newsracks or newspaper boxes is governed by guidelines in chapter 5.

4.6.10 4.7.8 - Highway business

district (HB-8). **4.6.8.1 Intent.**

4.6.10.1 4.7.8.1 Purpose and intent.

The highway business district ~~is established to provide goods and services which complement primary retail trade operations in the town. Because of the objectives and characteristics of this district, it should be located contiguous to major streets or within proximity to primary commercial districts. The intent of the district is to provide~~ **provides** orderly growth along the town's major thoroughfares; promotes access management and traffic safety for all modes of transportation, encourages the redevelopment of existing commercial sites; creates economic opportunities ~~for general retail, restaurants, professional services, banks, automotive sales and service, and other uses which expand the town's economic base; promote;~~ **promotes** a safe, convenient and attractive environment for pedestrians to access ~~stores; create~~ **good and services; creates** gateways and entrances into the town along central corridors; and encourages residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. **Because of the objectives and characteristics of this district, it is located contiguous to major streets or within proximity to primary commercial districts.**

4.6.10.2 Uses.

The chart below indicates the uses generally permitted in the HB-8 zoning district. [TABLE]

Exclusions: Correctional institutions and all uses not specifically enumerated.

4.6.10.3 Dimensional requirements (HB-8).

[TABLE]

*A density bonus may be available for developments that include affordable housing units in accordance with.

4.6.10.4 4.7.8.2 Supplementary district requirements (HB-8).

...

C. For areas along U.S. 70, additional development requirements may apply. **See Section 4.7.7.**

4.6.9. 4.7.9 - Light industrial district (LI-8).**4.6.9.1 Intent.****4.7.9.1 Purpose and intent.**

The light industrial district ~~is intended to provide~~ **includes** areas in which the principal use of the land is for light manufacturing, materials processing, warehousing, and retail operations incidental thereto; ~~promote.~~ **The district promotes** moderate-sized, clean industries which provide jobs and career opportunities within the community; permits uses that are conducted so that noise, odor, dust and glare of each operation is completely confined within an enclosed building, insofar as is practical; encourages entrepreneurship and small business development; allows limited residential uses which do not conflict with the ability of industrial enterprises to conduct their businesses within the district area; ~~allow~~ **and allows** community facilities and convenience trade establishments which provide needed services to industrial development.

4.6.9.2 Uses.

The chart below indicates the uses generally permitted in the light industrial zoning district. [TABLE]

Exclusions: All uses not specifically enumerated

4.6.9.3 Dimensional requirements (LI-8).

[TABLE]

4.6.9.4 4.7.9.3 Supplementary district requirements (LI-8).

A. Documentation of permits required. **Applications for a zoning permit for** industrial, fabrication or manufacturing uses must ~~provide~~ **include** documentation of applicable state and federal permits ~~to the town~~, including documentation of regulatory compliance for handling and

storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time.

~~B. —Industries must comply with town regulations regarding stormwater or provided documentation of any NPDES permits already provided through the state.~~

~~C. B. Town shall be provided~~ **Applications for zoning permits must include** copies of NCDOT driveway permit applications for concurrence review. . . .

~~D. C.~~ Operations on site,

~~4.6.10~~ **4.7.10**- Heavy industrial district (HI-0).

~~4.6.10.1 Intent.~~

4.7.10.1 Purpose and intent.

. . .

~~4.6.10.2~~ **Uses.**

~~The chart below indicates the uses generally permitted in the HI-0 zoning district. [TABLE]~~

~~**Exclusions:** New residential development, all uses not specifically enumerated~~

~~4.6.10.3~~ **Dimensional requirements (HI-0).**
[TABLE]

~~4.6.10.4~~ **4.7.10.2 Supplementary district requirements (HI-0).**

. . .

~~B. Industries must comply with town regulations regarding stormwater or provided documentation of any NPDES permits already provided through the state.~~

~~C. B.~~ **Applications for zoning permits must include** ~~Town shall be provided~~ copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible. A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads.

~~4.6.11~~ **4.7.11** - TND traditional neighborhood development (master planned). ~~4.6.11.1 Intent~~

4.7.11.1 Purpose and Intent.

. . .

~~4.6.11.2~~ **4.7.11.2** *Master plan required.*

...

E. Approval process:

...

5. Before approving a master plan and subsequent rezoning, the ~~aldermen~~**town council** shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date ~~fixed~~**scheduled** for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

...

~~4.6.11.3~~ **4.7.11.3** Development Parameters

~~4.6.11.4~~ **4.7.11.4** *Uses*

...

B. ~~Conditional~~**Special** uses:

~~4.6.11.5~~ **4.7.11.5** *Design standards.*

D. streets, alleys and pathways.

1. **Public streets shall provide access to all lots.** ...

~~2. Public or private streets shall provide access to all tracts and lots and shall be in compliance with the requirements as indicated in the Town of Black Mountain standards and details Manual current North Carolina Fire Code including appendix D.~~

3. **2.** Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de-sac and dead-end streets are discouraged and should only occur where absolutely necessary due to natural conditions. ~~and shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

...

~~4.6.12~~ **4.7.12** - ICD institutional campus development (master planned).~~4.6.12.1~~ **Intent**

4.7.12.1 Purpose and Intent.

...

~~4.6.12.2~~ **4.7.12.2** *Uses.*

...

B. ~~Conditional~~ Special uses.

...

~~4.6.12.3~~ **4.7.12.3** *General requirements.*

...

H. Existing structures. When a property is rezoned to institutional campus development (ICD), existing structures on the property shall not be subject to the buffering or sign requirements of this ~~ordinance~~ **Chapter**. Expansion of or changes to existing structures shall conform to all provisions of the ICD, except where impractical due to safety considerations or the Americans with Disabilities Act. When an existing structure is located within a buffer area, any changes to the structure shall be made so as to minimize the impact on the side(s) of the structure nearest to the property line.

...

K. Street design standard. All campuses or institutions shall have two points of connection to a town maintained street. If the street accessing the campus or institution shall be private, the street shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. However, such streets may, at the discretion of the planning staff in consultation with public works staff ~~and the fire inspector~~, be allowed to remain unpaved with use of an approved surface treatment (gravel or other).

L. Requirements concerning sidewalks and greenways.

1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town ~~planning board~~ **council**.

~~4.6.12.4~~ **4.7.12.4** *Plan review procedure and required steps.*

A. Meeting with ~~building~~-planning, and ~~zoning~~ **development** staff. Developer shall be required to meet with ~~building~~-planning, and ~~zoning~~ **development** staff for technical review prior to submitting a concept plan of the proposed development. The purpose of this meeting will be to acquaint the developer with the entire planning and developmental process for an ICD development.

...

F. Before approving a master plan and subsequent rezoning, the ~~aldermen~~ **town council** shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar

weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date ~~fixed~~**scheduled** for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

...

G. Changes to the master plan. If the project represents a substantial change from the approved master plan, a new master plan must be submitted for planning board and the ~~board of aldermen~~**town council** approval. A "substantial change" means a change that, in the opinion of the ~~building~~-planning, and ~~zoning~~**development** staff, . . . :

...

~~4.6.12.5~~ **4.7.12.5** *Supplementary district regulations.*

A. All permitted uses ~~and conditional~~ and special uses in this district are subject to approval of installation and materials by the public works director as designated, of curbs, gutters, storm drainage structures, sidewalks, entrances and exits, street paving, water and sewer facilities, and garbage collection procedures.

...

4.7.13 – Uses.

4.7.13.1 – Generally.

A. Uses, for purposes of this chapter, are divided into three types: principal uses, accessory uses, and temporary uses.

B. Uses, whether principal or accessory, are permitted by right, permitted with additional requirements, permitted upon issuance of a special use permit, or prohibited in each zoning district as listed in the permitted use table found in Section 4.6.15. Uses in the table are grouped into categories based on common function, product or physical characteristics. Use categories provide a systematic basis for assigning principal uses to appropriate zoning districts.

C. Special use permits are required for certain uses to ensure the goals of the comprehensive plan or other adopted plans are considered and to minimize negative impacts on neighboring properties. Special use permits are issued by the board of adjustment which shall hear and consider requests in accordance with guidelines set forth in Chapter 7 of this code.

4.7.13.2 – Uses not specifically listed.

A use that is defined in Chapter 1 of this Land Use Code, but not listed in the permitted uses table, is prohibited. A proposed use that is not defined in Chapter 1 and not listed in the permitted uses table shall be allowed or prohibited in the same manner as that use appearing in the permitted uses table which is most similar to the proposed use based upon the type and amount of activity, the likely impact on surrounding property, and the

conditions of the site upon which the use will take place, as determined by the zoning administrator. The zoning permit issued for the proposed use shall state the proposed use, the next most similar use as determined by the zoning administrator, and the reasons for so categorizing the proposed use.

4.7.13.3 – Temporary uses.

A. Purpose. This section is intended to permit certain temporary uses of property while ensuring public safety, health and welfare.

A.B. Requirements. for storage units or “PODS”.

1. This section applies to temporary, self-contained storage units, not including trailers for office use or temporary shelter, which are intended to be picked up and moved to various locations on demand.
2. The maximum time a temporary storage unit shall be placed on a parcel is 120 days.
3. PODS shall be placed so as not to interfere with traffic or as to create a traffic hazard.

C. Requirements for outdoor religious meetings.

1. Religious meetings in a tent or other temporary structure shall not exceed a period of 60 days, unless approved by the zoning administrator related to on-going construction.

D. Requirements for open lot sales.

1. Temporary open lot retail sales shall be permitted in all industrial or commercial districts only.
2. Such use shall not exceed a 60-day period.

~~4.6.13 – Dimensional Table Requirements.~~

~~Table of Uses for Zoning~~

~~Districts [TABLE]~~

~~4.6.14 4.7.14 Table of uses by zoning~~

~~district. Dimensional Requirements by~~

~~Zoning District [TABLE]~~

Table of Uses for Zoning Districts

Category	Uses	CR -1	SR -2	TR -4	UR -8	NM U-8	OI -6	CB D	HB -8	LI 8	HI -0
Special Uses	Conservation Subdivision	S	S	S	S	S	S	S			
Special Uses	Cottage Housing Development (CHD)	S	S	S	S	S	S	S	S		
Special Uses	Industrial Park Development								S	S	S
Special Uses	Planned Unit Development (PUD) - Commercial					S	S	S	S	S	S

other	Accessory Structures	P	P	P	P	P	P	P	P	P	P
Other	Agriculture	A	A	A	A	A	A		A		
Other	Automobile parking (principal use)										P
Other	Campgrounds						A		A	A	A
Other	Camps, summer	P	P	P	P		P				
Other	Communications towers								S	S	S
Other	Laboratories and research facilities								-	P	P
Other	Outdoor Theater								-	P	P
Other	RV, camper hook-up						A				
Industrial	Breweries/Distilleries/Wineries/Cideries						P	P	P	P	P
Industrial	Chemical treatment									P	P
Industrial	Crematories									-	P
Industrial	Distribution									P	P
Industrial	Freight handling facilities								P	P	P
Industrial	Junkyards and salvage yards										S
Industrial	Manufacturing										P
Industrial	Manufacturing, light (indoor)								P	P	P
Industrial	Recycling sorting, processing, or storage									P	P
Industrial	Warehousing								P	P	P
Industrial	Wood and Yard Waste Facility									-	P
Commercial	Adult Establishments								S		
Commercial	Agriculture	A	A	A	A	A	A		A		
Commercial	Amusements and entertainment uses								P	P	P
Commercial	Animal services							P	P	P	P

[illegible]

Commercial	Manufactured home sales and service								P	-	-
Commercial	Medical offices and clinics					P	P	P	P	P	P
Commercial	Micro-breweries / distilleries / wineries / cideries						-	P	P	P	P
Commercial	Mini-storage									P	P
Commercial	Mini-storage or self-storage								P	P	P
Commercial	Mixed use buildings							P	P	P	P
Commercial	Neighborhood Fueling Facility					A	A				
Commercial	Professional offices and services					P	P	P	P	P	P
Commercial	Restaurant (sit down)					P			P	P	P
Commercial	Restaurant brew pub/tavern						P	P	P	P	P
Commercial	Restaurants and taverns (walk-up, drive-thru, sit down)						P	P	P	P	P
Commercial	Retail							P	P	P	P
Commercial	Retail (Up to 2,500 sf)					-	P		P	P	P
Commercial	Taxi and Transportation Services					P	P	P	P	P	P
Commercial	Warehousing (accessory to retail)							P	P	P	P
Commercial	Wholesale								P	P	P
Commercial	Wholesale and retail bakery							P	P	P	P
		P = Permitted by Right						S = Special Use			
** See Land Use Code Section 1.2.3 for definitions of uses		A = Additional Standards									

4.7.15 Dimensional requirements by zoning district.

Dimensional Requirements by Zoning District

|

Zoning District*	Use	Density and Lot Size			Minimum Yard Requirements			Max. Height
		Min. Lot Size/	Min. Width (ft.)	Min. Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)
		Max. Density						
CR-1	All Uses	1 acre, 1 DUA	80, 15 at street	100	30, 25 steep hillside	10	30**	35
SR-2	All Uses	½ acre, 2 DUA	60, 15 at street	100	30, 25 steep hillside	10	30	35
TR-4	All Uses	¼ acre, 4 DUA	40, 15 at street	80	20, 15 steep hillside	10	15	35
UR-8	Major Subdivision	1/8 acre, 8 DUA	15	None	20, 15 steep hillside	10	15	35
	Other Residential	5,000 sq. ft.	15	None	20, 15 steep hillside	10	15	35
	Non-Residential	1/8 acre	40, 15 at street	None	20, 15 steep hillside	10	15	35
OI-6	Residential	1/6 acre, 6 DUA	60	100	30	10	20	35
	Non-Residential	1/6 acre	100	100	40	30	30, 40 abutting residential district	35
NMU-8	Residential	1/8 acre, 8 DUA	50	100	25	10	10	35
	Non-Residential	1/6 acre	75	100	25	20	10, 20 abutting residential district	35

CBD	All Uses	None	None	None	12 from curb	none, comply with fire	none, comply with fire	40
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Ordinance No. _____								
						and building code	and building code	
HB-8	Residential	1/8 acre, 8 DUA	50 ft.	None	15	10	30	40
	Non-Residential	None	50	None	15	10, 20 abutting residential district	20, 30 abutting residential district	40
LI-8	Residential	1/8 acre, 8 DUA	50 ft.	None	15	10	30	55
	Non-Residential	None	None	None	0 on private street, 30 on public street, 50 across from residential district	10, 20 abutting residential district	20, 30 abutting residential district	55
HI-0	All Uses	None	None	None	15	10, 20 abutting residential district	20, 30 abutting residential district	48
*See Land Use Code Section 5 for requirements related to secondary dwellings								

Section 44. Section 4.7 of Chapter 4 of the Land Use Code is renumbered assection

4.8. The following subsections are deleted:

4.7.1.4 “Establishment and delineation of wellhead protection district,”

4.7.1.5 “District boundary disputes,”

4.7.3.2 “Historic District and landmark establishment,”

4.7.3.4 “Designation of conservation district,”

4.7.3.5 “Designation of Landmarks,”

4.7.3.6 Jurisdiction of the historic preservation commission,”

4.7.3.7 “Rules of procedure, design guidelines and meetings,”

4.7.3.8 “Powers and duties,”

4.7.3.10 “Application for certificate of appropriateness,”

4.7.3.11 “Criteria to determine appropriateness,”

4.7.3.10 “Demolition,”

4.7.3.14 “Hearing procedures,”

- 4.7.3.15 "Major and minor works,"
- 4.7.3.16 "Certificate issuance; expiration; enforcement,"
- 4.7.3.17 "Conditions for certain approvals,"
- 4.7.3.18 "Historic district review required,"
- 4.7.5.6 "Legal Description,"
- 4.7.5.7 "Repeal of previous fire district regulations,"
- 4.7.6.5 "Appeals and variances,"

And the remaining portions of Section 4.7, now Section 4.8 are revised to read as follows:

SECTION ~~4.7~~ **4.8** - OVERLAY DISTRICTS

~~4.7.1~~ **4.8.1** - Wellhead protection overlay.

~~4.7.1.1~~ **4.8.1.1 Purpose and intent.**

~~The purpose of the~~ **The** wellhead protection overlay district ~~is to:~~
~~To promote~~ **promotes** the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Black Mountain; **preserves and protects the public, municipal water supply for the Town of Black Mountain; conserves the natural resources of the town; and prevents temporary and permanent contamination of the environment.**

~~To preserve and protect the public, municipal water supply for the Town of Black Mountain; To conserve the natural resources of the town; and~~
~~To prevent temporary and permanent contamination of the environment.~~

~~4.7.1.2~~ **4.8.1.2. Location.**

The wellhead protection overlay district consists of aquifers or recharge areas which are delineated on a map entitled "Wellhead Protection Districts, Town of Black Mountain," dated 8-9-99, as the same may be amended from time to time. This map is hereby made a part of the town zoning regulations and is on file in the office of the zoning administrator.

~~4.7.1.3~~ **4.8.1.3 District boundary disputes.**

A. If the location of the district boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Board of adjustment. Any application for a special permit for this purpose shall be accompanied by adequate documentation.

B. The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the town may engage a professional engineer (civil or sanitary), hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner for all or part of the cost of the investigation.

~~4.7.1.6~~ **4.8.1.6 Use regulations.**

A. Permitted uses. The permitted uses, bulk and yard requirements within the wellhead protection overlay shall be those of the underlying zoning district. ~~Site plans submitted for permitted and~~

~~conditional uses shall include additional details as outlined in 4.7.1.7 of this section,~~ **except as modified in subsection (B).**

B. Prohibited uses. Special Use Permit Required. The following uses and structures which pose known groundwater contamination threats are ~~specifically prohibited, except in accordance with 4,~~ **permitted only upon issuance of a special use permit pursuant to the requirements of Section 7.12:**

1. Use or production of hazardous substances in industrial, processing, manufacturing or commercial operations;

2. Any waste treatment or disposal activity requiring a permit under any of the following state regulations:

- ~~• 15A NCAC 13B, Solid Waste Management Permits, primarily landfills;~~
- ~~• 15A NCAC 13A, Hazardous Waste Management Permits;~~
- ~~• 15A NCAC 1E, Construction and Operation of an Oil Refining Facility;~~
- ~~• 15A NCAC 5B, Mining Permit;~~
- ~~• 15A NCAC 5D, Permit to Drill Exploratory Oil or Gas Well;~~
- ~~• 15A NCAC 2H, Pretreatment Permit; and~~
- ~~• 15A NCAC 2H.0202, Waste Not Discharged to Surface Waters, including waste lagoons, spray and infiltration systems, and the land application and subsurface disposal of wastes, but excluding sewer system extension lines.~~

a. **15A NCAC 1E, Oil Refining Facility Permits;**

b. **15A NCAC 2H.0100, Point Source Discharges to Surface Waters;**

c. **15A NCAC 2H.0202, Waste Not Discharged to Surface Waters, including waste lagoons, spray and infiltration systems, and the land application and subsurface disposal of wastes, but excluding sewer system extension lines.**

d. **15A NCAC 5B, Mining: Mineral Resources;**

e. **15A NCAC 5D, Oil and Gas Conservation;**

f. **15A NCAC 13A, Hazardous Waste Management Permits;**

g. **15A NCAC 13B, Solid Waste Management Permits, primarily landfills;**

...

C. Use list not exhaustive. The uses prohibited ~~by this district~~ **pursuant to subsection (B)** represent ~~the state~~ **commonly occurring uses that pose known risks** of ~~present knowledge and most common description~~ **contamination to groundwater. If a proposed use is known to pose similar risks** of ~~said uses. As other polluting uses are discovered, or other terms of description become necessary, these shall be added to the list of uses prohibited by this district.~~ **groundwater contamination**

...

E. Limited exemptions. The following activities or uses are exempt from the provisions of this ~~ordinance:~~**section:**

...

~~F. Requirements for existing prohibited uses. All uses and structures specifically prohibited in subsection 4.1.7.6(B) may continue beyond the effective date of this ordinance only if, within 90 days after the effective date of this ordinance, the mayor and board of aldermen approve an operating and monitoring plan for each prohibited use or structure.~~

~~4.7.1.7~~ **4.8.1.7** *Plan submission and approval.*

...

4. Reporting schedule.

b. No annual report is required for septic tanks or impervious surfaces located within wellhead protection overlay districts. These uses will be allowed to continue indefinitely, although no future expansion will be allowed, provided that the other requirements of this section are met.

...

6. Other requirements...... ~~No annual report is required for septic tanks or impervious surfaces located within wellhead protection overlay districts.~~

...

~~4.7.2~~ **4.8.2** - Flood damage prevention overlay (flood insurance rate maps).

This overlay district is established to prevent hazards within the floodplain as designated on the flood insurance rate maps (FIRM~~-~~) **as the same may be amended from time to time, which are hereby adopted by reference and incorporated herein. Regulations for this district are found in chapter 2.3 of this LUC.**

~~Regulations for this district are found in as part of the town's building regulations.~~

~~4.7.3~~ **4.8.3**- Historic district and historic district overlay.

~~4.7.3.1~~ **Intent**

4.8.3.1 Purpose and Intent.

...

~~4.7.3.3~~ **4.8.3.2 Designation of historic districts.**

All locally designated Historic Districts and Historic Landmarks shall be a part of the Historic Overlay District. The ~~board of aldermen~~ **town council** may adopt, amend, reject or repeal ordinances designating historic districts when adoption or amendment is pursuant to the following procedure:

...

D. The ~~board of aldermen~~ **town council** shall designate the boundaries of an historic district in accordance with the procedures set forth in the town code of ordinances, amendments of the Black Mountain Zoning Ordinance and ~~G.S. 160A-384~~ N.C.G.S. **§§ 160D-601 and 160D-944.**

...

~~F. With respect to any changes in the boundaries of such district subsequent to its initial establishment or the creation of additional districts within the town, the investigative studies and reports shall be prepared by the historic preservation commission and shall be referred to the planning board for its review and comment. Changes in the boundaries of an initial district or proposals for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions as stated above.~~

~~4.7.3.9~~ **4.8.3.4 Certificates of appropriateness required.**

~~A. From and after the designation of a landmark or an historic district, no~~ No exterior portion of any building or ~~other~~ structure **in the historic district** (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished ~~on a landmark, or within the historic district,~~ until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission. Such a certificate is required to be issued by the commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the ~~purposes of~~ **purpose and intent for which** this ~~ordinance~~ **district is established.** A certificate of appropriateness shall be required whether or not a building or other permit is required. ~~Any such zoning permits or such other permits not issued in conformity with this section shall be invalid.~~

B. Application for and consideration of certificates of appropriateness shall be made pursuant to the requirements of Section 1.8 of this Land Use Code.

~~B. C.~~ For purposes of ~~this ordinance~~ **the application for and issuance of a certificate of appropriateness,** "exterior features" shall include

D. Jurisdiction of the commission over interior spaces is limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner.

~~C. E.~~ The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Black Mountain and all public utility companies shall be required to obtain a certificate of appropriateness ~~for landmarks and in the historic district~~ prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the State of North Carolina, the Town of Black Mountain or public utility companies or for construction, alteration, moving or demolition within the historic district ~~or of designated landmarks~~; **provided, however, that no certificate of appropriateness shall be required for ordinary maintenance or repair, including the following:**

~~D. Examples of specific items which fall under ordinary maintenance or repair that will not require a certificate of appropriateness are:~~

...

5. Addition or deletion of fire hydrants;

...

9. Replacement of existing overhead lines, poles or ground-mounted installation.

...

~~4.7.3.13~~ **4.8.2.5** Land use, interior arrangement, maintenance, emergency repairs not considered.

A. Regulations governing the historic district overlay ~~Nothing herein~~ shall **not** be construed to prevent a property owner from making any **lawful** use of his or her property ~~not prohibited by other statutes, ordinances or regulations.~~

~~B. The commission may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof.~~

~~C. Except as provided in paragraph D, below, the commission shall have no jurisdiction over interior arrangement and shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs, or other significant features which would be incongruous with the special character of a landmark or of the district.~~

~~D. Notwithstanding paragraph C, above, the jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owner-designated landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds and indexed accordingly to the name of the owner of the property in the grantee and grantor indexes. The landmark~~

~~designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.~~

E. B. The ordinary maintenance or repair of any exterior architectural feature of a landmark, or in the historic district (HD) which does not involve a change in design, material, or outer appearance thereof, shall not be prevented by the requirements pertaining to the designated landmark or historic district.

F. C. Nothing in this article

G. D. The construction,

~~4.7.5~~ **4.8.5** - Fire district overlay.

~~4.7.5.1~~ **4.8.5.1** *Statutory authorization and enactment.*

~~Pursuant to~~ In accordance with the ~~authority conferred by requirements of~~ N.C.G.S. 160A-435, § 160D-1128(B), the ~~board~~ Town of ~~aldermen~~ do Black Mountain hereby ~~ordain and enact in to law this chapter establishing~~ establishes a primary fire district.

A. Primary fire district defined. The primary fire district shall be as defined within the legal description set forth herein below. In addition, a map of the affected property, based upon the aforementioned legal description, is available for inspection in the office of the town clerk in the Black Mountain Town Hall and in the Black Mountain Planning and Development Department.

B. For the purposes of this section, the primary fire district shall be described as follows. Primary fire district. Beginning at the intersection of the centerlines of East State Street and Richardson Boulevard; thence running southeasterly along the centerline of Richardson Boulevard to a point where it intersects with the centerline of Sutton Avenue; thence west along the centerline of Sutton Avenue to the intersection of the centerlines of Sutton Avenue and N.C. Highway 9; continuing west along the centerline of Sutton Avenue which becomes the centerline of South Dougherty Street; thence northwest along the centerline of South Dougherty Street to the intersection of the centerline of West State Street; thence northeast along the centerline of West State Street to the intersection of the centerline of Church Street; thence north along the centerline of Church Street to a point in the centerline of Church Street which is an extension of the southern boundary of the property identified as Parcel ID# 0619.10-26-8198.000 described in Deed Book 1744 at Page 0699 in the Office of the Register of Deeds for Buncombe County, thence east to the southwest corner of said property; thence east with the southern boundary of said property to the southeast corner of said property; thence north with the eastern boundary of said property to the southeast corner of the property identified as Parcel ID# 0619.10-26-8273 described in Deed Book 1384 at Page 0331 in the Office of the Register of Deeds for Buncombe County, thence north with the eastern boundary of said property to the southeast corner of the property identified as Parcel ID# 0619.10-26-8219.000 described in Deed Book 1798 at Page 0360 in the Office of the Register of Deeds for Buncombe County, thence north with the eastern boundary of said property to the southwestern corner of the property identified as Parcel ID# 0619.10-26-9410.000 described in Deed Book 1788 at Page 0714 in the Office of the Register of Deeds for Buncombe County, thence east with the southern boundary of said property to the southeastern corner of said property;

thence east to a point which is the intersection of the extension of the southern boundary of said property with the centerline of Montreat Road; thence south along the centerline of Montreat Road to a point where it intersects with the centerline of East State Street; thence east along the centerline of East State Street to its intersection with the centerline of Richardson Boulevard which is the point and place of beginning.

~~4.7.5.2 Intent~~ **4.8.5.2 Purpose and intent.**

This **primary fire district** overlay ~~establishes~~ **is established to provide** standards for the construction,

...

~~4.7.5.4~~ **4.8.5.4 Application Permit required.**

~~Application for any~~ **No** activity regulated by the provisions of this section shall ~~be made to the office of~~ **commence until such time as a permit is issued by** the building inspector ~~for the Town of Black Mountain prior to the commencement of any work associated with the proposed project.~~

~~4.7.5.5~~ **4.8.5.5 Primary fire district regulations.**

~~In accordance with the requirements of G.S. 160A-435, the Town of Black Mountain hereby establishes a primary fire district.~~

~~A. Primary fire district defined. The primary fire district shall be as defined within the legal description set forth herein below. In addition, a map of the affected property, based upon the aforementioned legal description, is available for inspection in the office of the town clerk in the Black Mountain Town Hall and in the Black Mountain Planning and Zoning Department.~~

~~B. A.~~ Enforcement of building and fire codes. All buildings and structures erected, repaired, altered, or moved within or into the primary fire district shall comply with the provisions of the North Carolina edition of the ~~2000~~ **most current** International Building and Fire Code, as currently enforced within the State of North Carolina and duly adopted and enforced within the Town of Black Mountain.

~~C. B.~~ Wood or frame structures allowed. In accordance with G.S. ~~160-436~~, **160D-1128(C)**, no wood or frame building or structure may be erected, repaired or altered, or moved into or within the limits of the primary fire district except in accordance with the procedure set forth below.

...

3. Following receipt of written comments from the fire inspector, the building inspector shall ~~review the application and then~~ approve or deny said application. If the application is approved, it ~~is~~ **shall be** transmitted to the ~~board of aldermen~~ **town council** for review. If the building inspector denies the issuance of a permit ~~requested in accordance with these guidelines, he shall set forth~~, the reasons for **such** denial ~~of said permit shall be set forth~~ in writing, a copy of which shall be transmitted to the applicant ~~so that the applicant may appeal the decision of the building inspector in accordance with the guidelines set forth below.~~

~~Once approved by the building inspector, the application is transferred to the Black Mountain Board of Aldermen for review and consideration of approval or denial.~~

4. If the ~~board of aldermen~~ **town council** approves the application, it ~~is~~ **shall be** then forwarded to the office of the insurance commissioner for the State of North Carolina for review. If the ~~board of aldermen~~ **town council** denies the issuance of a permit ~~requested in accordance with these guidelines, they,~~ **the council** shall instruct the town clerk to prepare, for the signature of the mayor, an order specifying the reasons for their denial ~~of the request~~. A copy of the order of denial shall be forwarded to the applicant. Upon notification of denial, the applicant may appeal the decision of the ~~board of aldermen~~ **town council** in accordance with the ~~guidelines~~ **regulations** set forth below.

5. Once both the building inspector and the ~~board of aldermen~~ **town council** have approved the application locally, said application is forwarded to the North Carolina Commissioner of Insurance (or designee) for review. ~~The appeal from an adverse decision of the office of the commissioner of insurance may be taken to the appropriate court of jurisdiction.~~

~~D.C.~~ Appeals procedure. Appeals from any adverse decision made on the part of either the building inspector or the ~~board of aldermen~~ **town council** with regard to the enforcement of the primary fire district regulations may be taken to the commissioner of insurance (or designee). Said appeal may be made by filing a written notice concurrently with the office of the commissioner of insurance for the State of North Carolina and with the Town of Black Mountain Building Inspector within a period of ten days following the issuance of any order, decision, or determination. ~~Further appeals may be taken to the building code council or to the appropriate court of jurisdiction, as provided by law.~~

~~4.7.6~~ **4.8.6** - Pedestrian master plan

overlay. ~~4.7.6.1~~ ~~Intent.~~

4.8.6.1 Purpose and intent.

~~The intent of~~ The pedestrian master plan overlay **district** is **established** to : fulfill the comprehensive plan goal of making Black Mountain "one of the most walkable communities in the region;" implement the adopted pedestrian master plan; provide safe and convenient pedestrian and wheelchair access throughout town and in particular to connect residential areas with commercial and employment areas; **promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.**

- ~~• Promote inter-modal transportation and support transit; and~~
- ~~• Maintain the small-town feel and traditional character of the town.~~

...

~~4.7.6.3~~ **4.8.6.3** Regulations.

A. Sidewalks are required for all **development projects which fall in the following categories:**

1. Construction of new ~~construction and renovations, additions and/or expansions to existing commercial,~~ **office, institutional, and mixed-use** structures ~~which~~ **that** abut **existing or** proposed public roadways,;

~~1. Any project adjacent to sidewalk alignments as adopted in the pedestrian master plan.~~

2. Renovation or ~~which fall into one of the following categories:~~ **expansion of any existing commercial, office, or institutional structure that abuts a public roadway where**

the renovation or expansion results in an increase of more than 50 percent of the value of the structure;

~~3.~~ All new ~~single-family~~ residential ~~development which is a~~ major subdivisions of ten or more single-family homes;

~~4.~~ All new multi-family residential ~~development or residential special use developments,~~ **subdivisions** of ten units or more ~~or as required by the ;~~

~~4. All new office, institutional, and commercial or mixed-use developments abutting a state or town road or as required as part of a special use permit;~~

~~5.~~ **All new development pursuant to a** special use permit;

~~5. All existing office, institutional, and commercial development additions or expansions to structures where the expansion results in an increase of more than 50 percent value of the structure;~~

~~6.~~ All new streets, improved streets or extension ~~to~~ **of** streets ~~as~~ required by the town subdivision ordinances, or ~~the~~ special use permit.

~~7.~~ As a requirement of the district in which the project is located.

...

C. Notwithstanding the conditions of a special ~~use or conditional~~ use permit, a developer may choose to request a waiver for construction of sidewalk and pay a fee in lieu of actual construction as long as the following conditions are met:

1. The applicable project area, including the street frontage, is not identified as a needed pedestrian linkage within the pedestrian plan or other adopted transportation or corridor plan, including but not limited to the transportation improvement program (TIP), or greenway master plan, or are granted approval for a waiver by the ~~planning board~~ **town council**.

2. To grant a waiver for sidewalk construction, the ~~planning board~~ **town council** must find that:

...

~~4.7.6.4~~ **4.8.6.4** *Use of fees collected in lieu of construction.*

All fees collected by the town pursuant to these provisions shall be accounted for separately from other monies, and shall be expended only for the construction or rehabilitation of sidewalks or other pedestrian improvements in the same general area as the development is located as determined by the town ~~planning board~~ **council** at the time of the request.

~~4.7.7~~ **4.8.7** - US70 corridor overlay.

4.7.7.1 *Intent*

4.8.7.1 Purpose and intent.

~~The intent of the US70 corridor overlay is to:~~

~~*Beautify the US70 corridor~~ **US Highway 70 serves** as ~~at~~the primary entrance, or "gateway," and thoroughfare through town. ~~in accordance with the 2004 comprehensive plan;~~ **The US70 corridor overlay preserves and encourages the beautification of this corridor to** promote economic development and investment along the US70 corridor; promote automobile, bicycle and pedestrian safety along the US70 corridor; implement selected recommendations from the US70 corridor study; promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.

4.7.7.2 **4.8.7.2** *Establishment of the overlay.*

This overlay district is established over properties and uses immediately adjacent to the US70 corridor through the jurisdiction of Black Mountain, with the exception of the central business district and the industrial districts (HI-0 and LI-8). Unless explicitly stated otherwise within the ~~guidelines~~**regulations** of the overlay, all other regulations of the underlying zoning district shall apply.

4.7.7.3 **4.7.8.3** *Regulations.*

A. Building orientation, form and setback in relation to US70.

1. Buildings adjoining the US70 right-of-way shall be no more than 50 feet from the curb and gutter of US70 as a maximum setback unless part of a ~~conditional or~~ special use permit.

...

6. Unless as part of a ~~conditional or~~ special use permit, parking areas shall be in the side or rear of the primary structure on the lot to the greatest extent practicable. The exemption to this requirement is handicapped parking spaces or parking areas providing less than 20 spaces which may be located in the front buildings.

7. All site plans shall design landscaping along the front of the building or parking lot adjacent to the right-of-way and in accordance with the town's landscaping ~~ordinance.~~**regulations.**

...

Section 45. Chapter 5 of the Land Use Code is retitled "Additional Use Standards for Specified Uses," and is revised by deleting the following subsections:

5.2 "Accessory Structures,"

5.3 "Adult Establishments,"

5.5 "Bed and breakfast homes and inns,"

5.7 "Campgrounds,"

5.8 "Camps, Summer"

5.9 "Conference Centers"

5.13 "Junkyards"

5.16 “Multi-Family Residential”

5.20 “Temporary Uses”

Section 46. Section 5.1 is revised as follows:

SECTION 5.1 – PURPOSE

5.1.1 - Purpose.

The Town of Black Mountain finds that there are certain uses that ~~exist which may be constructed, continued, and/or expanded provided they meet certain mitigating requirements~~ **require** specific ~~to their design and/or operation.~~ Such additional ~~requirements~~ **standards to** ensure compatibility with other uses and conformance to the town's comprehensive plan or other adopted plans. This chapter specifies ~~those~~ requirements that must be met by ~~all the uses~~ **each use** listed ~~in the uses as a~~ **“use** permitted with additional requirements ~~section for each district”~~ in chapter 4. **of this Land Use Code.**

~~Each use shall be permitted in compliance with all additional requirements listed for the use in this chapter. Certain uses are also classified as conditional uses or special uses and require board of adjustment approval per chapters 6 and 7.~~

Section 47. Section 5.4 of Chapter 5 of the Land Use Code, “Agriculture and animals” is renumbered as Section 5.2 and revised as follows:

E. Structures for storage of farm or maintenance equipment and supplies, and similar items associated with agricultural uses are permitted subject to the ~~issuance of a zoning permit~~ **accessory** ~~buildings or structures as long as they are incidental to the agricultural use.~~ ~~Accessory structures related to agricultural uses shall meet the~~ **structure** setbacks for their respective zoning districts and ~~they~~ shall not cover more than 30 percent of the total lot area.

Section 48. Section 5.6 “Boarding and Rooming Houses” is renumbered as Section 5.3 and revised as follows:

SECTION 5.3 - BOARDING AND ROOMING HOUSES

5.3.1 - Boarding and rooming houses.

~~A. The owner or manager shall be a full time resident of said establishment.~~
~~B. A boarding or rooming house provides lodging for compensation to three or more unrelated tenants for a minimum of one week and is enclosed within one structure.~~

~~C.~~ **A.** There shall be only one kitchen, a common dining room or study area, and no dining facilities or kitchens in the lodger's rooms where meals may be prepared and served.

~~D.~~ **B.** Boarding or rooming houses exclude hotels, motels, group homes, bed and breakfast homes and bed and breakfast inns.

Section 49. Section 5.10 “Day Care Centers,” is renumbered as Section 5.4 and revised to read as follows:

SECTION 5.4 – DAY CARE CENTERS

5.4.1 – Day care centers.

These requirements apply only to child and adult day care services providing care for more than six clients at a time. ~~(For regulationson day care centers serving less than six clients at a time, seehome occupations 5.11).~~

A. Each applicant for a day care must submit documentation that they are a shall be licensed child care provider or that they will meet the requirements of the or certified by the State of North Carolina Department of Health and Human Services for day care facilities. (<http://www.daycare.com/northcarolina/>).
as **required by State law.**

B. Child day care centers shall provide a fenced outdoor play area. The fence shall not be less than fourfeet in height.

C. Day care centers shall provide locations for pick-up/drop off areas which do not impede trafficon town or state roads.

~~**D. Day care centers shall require a certificate of occupancy and shall be inspected annuallyfor fire safety.**~~

Section 50. Section 5.11 “Family Care Homes,” is renumbered as Section 5.5 and revised to read as follows:

SECTION 5.5 - FAMILY CARE HOMES

5.5.1 - Family care homes.

In accordance with G.S. chs. 122C, 131D, and 160D, ~~these uses~~ **family care homes** are deemed residential uses ~~and are permitted in all residential districts~~ **for zoning purposes subject to thefollowing additional requirements:**

~~**A. ———No more than six residents other than the homeowner and the homeowner'simmediate family are permitted to live in a family care home.**~~

A. Each family care home shall be licensed by the North Carolina Department of Health and HumanServices as required by State law.

~~**B.**~~ **B.** No family care home may be located within a one-half-mile radius of any other residential carehome.

~~**C.**~~ **C.** No exterior signage is permitted.

~~**E. No lockdown, violent, or dangerous residents.**~~

~~**F. Only incidental and occasional medical care may be provided.**~~

~~**G. Family care homes shall require a certificate of occupancy and shall be inspected annuallyfor fire safety.**~~

Section 51. Section 5.12 “Home Occupations,” is renumbered as Section 5.6.

Section 52. Section 5.14 “Manufactured Homes on Individual Lots” is renumberedas Section 5.7 and revised as follows:

SECTION 5.7 - MANUFACTURED HOMES ON INDIVIDUAL LOTS

...

5.7.2 - General provisions.

A. ~~A manufactured home (formerly known as a mobile home) must be built to or exceed. Manufactured Home Construction and Safety Standards (HUD-Code, June 15, 1976) and must display a red certification label on the exterior each transportable section in order to be placed within the Town of Black Mountain jurisdiction.~~

B. ~~Manufactured housing built before June 15, 1976, will be considered as legal nonconforming structures within the town and may be repaired or maintained according to: Nonconformities. Once removed or condemned however, these homes must be replaced with stick-built, modular or manufactured housing built to or exceeding the 1976 HUD Code Standard.~~

A. The zoning administrator shall permit the temporary use of ~~Manufactured~~ **manufactured** homes, park model homes or recreational vehicles on individual lots ~~may be allowed temporarily~~ under the following circumstances ~~and by approval of the zoning administrator::~~

...

3. During the active period of construction/installation of a manufactured home, as a temporary residence on the same lot for a period not to exceed six months or the active construction period, whichever is less.

4. During the active promotion of any residential subdivision or ~~unified housing~~ **planned unit development**, ...

5. As part of a manufactured housing or "park home" sales or manufacturing business.

~~D. Manufactured homes or park model homes may be permitted when used as a caretaker residence in conjunction with a rest home or convalescent home, provided that the rest or convalescent home existed prior to the adoption of this regulation, and provided that said rest or convalescent home is required by state law to have a caretaker residence adjacent to the home. The home shall be placed in the rear yard unless specific circumstances indicate otherwise in the judgment of the zoning administrator.~~

~~E.~~ **B.** Manufactured homes used as residences on individual lots shall be considered principal uses for the purposes of the land use **code and** shall conform to the requirements of the district in which it is located.

~~F.~~ **C.** Singlewide manufactured homes are permitted only if ~~they are~~ **located** within a manufactured home park as part of an approved special use permit or pre-existing park, or as a primary residence on a single-family lot ~~if they can meet~~, **provided that** the ~~architectural~~ guidelines provided in ~~subparagraph G. or the guidelines for nonconformities in chapter 1.~~ **of this section are met.**

~~G.~~ **D.** Manufactured homes shall adhere to the following ~~design~~ guidelines:

1. Replacement units of existing manufactured housing must be of a newer model than the manufactured home it is replacing and must comply with the HUD Home Construction and Safety Standards. ~~In no case shall a manufactured home dated before July 15, 1976, be used as a replacement home.~~

2. The home must be a doublewide manufactured home or, if a singlewide, must **be at least 16 feet in width and** not exceed a length to width ratio of three to one (3:1).

...

~~11. The unit must comply with all flood hazard prevention requirements when applicable.~~

5.14.3 Permit required.

~~C. To locate or replace any manufactured home, whether for use as a temporary or permanent structure, requires a **manufactured housing permit** which is administered through the office of the building inspector and requires a fee which is established by the board of aldermen. Applicants must submit an application form with the following attachments:~~

~~1. A site plan showing the location of the structure in relation to the required zoning setbacks, septic tank field, water tap, sewer line, driveways, and other natural features such as streams, landscaping, etc.~~

~~2. A septic permit from the Buncombe County Health Department or a sewer permit from the Metropolitan Sewage District.~~

~~3. Certification and documentation of the date the home was manufactured and compliance with HUD guidelines.~~

~~D. Once the manufactured housing permit is obtained, and the home is placed, the applicant shall meet the following requirements in order to receive the certificate of occupancy:~~

~~1. Provide a boundary line survey from a licensed surveyor indicating the location of the structure as set on the site and in relation to the elements identified in the site plan.~~

~~2. Provide an elevation certificate from a licensed surveyor if required in accordance with the flood hazard prevention regulations of this code.~~

~~3. Provide documentation of water and sewer service or septic connections.~~

~~4. Complete underpinning or foundation work as required in the permit.~~

~~5. Complete installation of the stoop or deck as required in the permit.~~

~~6. Complete all other requirements of the permit as determined by the building inspector and zoning administrator; and~~

~~7. Clear all construction and transportation materials from the site.~~

Section 53. Section 5.15 “Produce Stands, Tailgate Sales or ‘Garden Markets’” is renumbered as Section 5.8, retitled as “Farm Stands, Tailgate Sales or ‘Garden Markets’” and revised as follows:

SECTION 5.8 – ~~PRODUCE~~ **FARM** STANDS, TAILGATE SALES OR "GARDEN MARKETS"

5.8.1 – ~~Produce~~ **Farm** stands, tailgate sales or "garden markets."

A. ~~Produce~~ **Farm** stands associated with garden markets shall be allowed as an accessory use in all districts.

...

D. All ~~produce~~ **farm** stands shall not be located closer than ten feet to any side lot line unless a greater setback is required for the zoning district in which it is located or as directed by the zoning administrator for the purpose of traffic safety.

E. Signs for a farm stand or tailgate sales shall not be illuminated, nor have flashing lights, nor shall they exceed four square feet in area. **Off-premises signs are not permitted.**

~~F. A produce stand in operation for longer than four continuous months, where produce is sold that is not from the lot on which the stand is located may require a business privilege license (see chapter 114 [9] of the Town Code of Ordinances) and must be in compliance with the zoning district regulations in which it is located.~~

Section 54.

- a. Section 5.17 “Neighborhood Fueling Stations” is renumbered as Section 5.9
- b. Section 5.18 “Newspaper and Periodical Distribution Boxes” is renumbered as Section 5.10
- c. Section 5.19 “Secondary Dwellings” is renumbered as Section 5.11.
- d. Section 5.21 “Wireless Communications” is renumbered as Section 5.12 and revised as follows:

SECTION 5.12 - WIRELESS COMMUNICATIONS

5.12.1 - Wireless facilities not associated with a communications tower.

...

D. Wireless facilities associated with a tower ~~must adhere to the regulations set forth for communications towers and is a conditional use only within designated districts~~ **are considered communications towers for purposes of these regulations and are allowed in certain zoning districts only upon issuance of a special use permit.**

Section 55. Section 5.22 “Tattoo Parlor/Body Piercing Studio” is renumbered as Section 5.13 and revised as follows:

SECTION 5.13 - TATTOO PARLOR/BODY PIERCING STUDIO

5.13.1 - Tattoo parlor/body piercing studio.

A. **No tattoo parlor or body piercing studio** ~~such business of either classification shall be located within 500 feet of any other such business or either classification~~, as measured in a straight line from property line to property line, **of:**

- 1. any other tattoo parlor or body piercing studio,**
- 2. a church,**
- 3. a public or private elementary or secondary school, child day care or nursery school,**
- 4. a public park,**
- 5. residentially zoned or residentially used property, or**
- 6. any establishment with an on-premises ABC license.**

~~B. No such business of either classification shall be located within 500 feet of a church, public or private elementary or secondary school, child day care or nursery school, public park, residentially zoned or residentially used property, or any establishment with an on premise ABC license, as measured in a straight line from property line to property line.~~

C. Ear piercing, as a principal or accessory use, shall not be considered a body piercing studio for purposes of this section.

D. ~~C.~~ Tattoo and/or body piercing operations shall not be considered home occupations.

~~E. Any person engaging in tattooing or body piercing shall have completed an OSHA approved blood borne pathogen course and each tattoo/body piercing studio shall have an exposure control plan that is updated annually.~~

~~F. Any person engaging in tattooing shall register with the Buncombe County Health Department and receive a valid tattooing permit. Permits must be~~

~~renewed on an annual basis.~~

G. ~~All tattooing locations shall have a required inspection completed by the Buncombe County Health Department to ensure compliance. Inspections are conducted on an annual basis.~~

Section 56. Section 5.23 “Recreation Services” is renumbered as Section 5.14 and revised as follows:

SECTION 5.14 - RECREATION SERVICES

5.14.1 - Recreation services (outdoor).

...

~~D. Hours of operation shall be no earlier than 7:00 a.m. and no later than 11:00 p.m.~~

Section 57. Chapter 6 “Conditional Use Permits” is deleted in its entirety.

Section 58. Sections 7.1, 7.2, 7.3, and 7.4 are deleted in their entirety and replaced with the following:

SECTION 7.1 – PURPOSE

7.1.1 – Purpose.

This Land Use Code provides for certain uses to be located by right in districts where the uses are compatible with the purpose of the district and with other uses located in the district. This Land Use Code also provides for certain uses to be located in districts only by complying with additional development standards to insure that same compatibility. This section provides additional requirements for certain uses that are in keeping with the intent and purposes of the district, but which may have substantial impacts on the surrounding area and should therefore only be allowed after a review of the specific proposal.

To ensure that these uses are compatible with surrounding development and in keeping with the purposes of the district in which they are proposed to be placed, they may be established only after issuance of a special use permit as required by this section.

SECTION 7.2 – PROCEDURES

7.2.1 – Pre-Application Technical Review.

The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth in section 1.4.6.

7.2.2 – Application requirements.

A. All applications for a special use permit must be accompanied by a site plan (drawn to scale) that includes all of the following information as applicable:

1. A boundary survey showing the total acreage, zoning classification(s), date, and

north arrow (with the north arrow oriented up, i.e., to the top of the map);

2. All existing easements, reservations and rights-of-way and all setbacks required for the zoning district;

3. Proposed location of all structures, their approximate square area and general exterior dimensions;

4. Proposed use of all land and structures;

5. Traffic, parking, and circulation plan, showing proposed location and arrangement of parking spaces and ingress and egress to adjacent streets;

6. Proposed screening, including walls, fences, or planting areas, as well as treatment of any existing natural features;

7. The name of the development, if applicable, and the name, address, and phone number of the owner;

8. Approximate total acreage of the proposed development;

9. Tentative street and lot arrangement, including designations of driveways, parking lots, open space, greenways, and stormwater management areas;

10. Topography at five-foot intervals and the location of existing drainages or swales;

11. A vicinity map showing the location of the development in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses;

12. Location of flood hazard areas from FIRM map;

13. Location of existing or proposed utilities;

14. Proposed signs and their locations;

15. Proposed phasing, if any, and approximate completion time of the project.

B. Whenever an application for a special use permit involves the subdivision of land, the following agencies or individuals shall be given an opportunity to make recommendations concerning the proposed development plan before consideration by the board of adjustment:

1. the district highway engineer as to the any proposed state streets, state highways, and related drainage systems;

2. the county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;

3. the fire marshal; and

4. the stormwater and floodplain administrator(s)

7.2.3 – Hearing Required.

The board of adjustment shall hold a quasi-judicial hearing to consider the special use permit application and shall, by majority vote, either approve, approve with modifications, or deny the permit application.

7.2.4 – Notice of Hearing.

Notice of the hearing before the board of adjustment shall be provided as follows:

A. Staff shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way within the same period specified for mailed notices of the hearing. When multiple parcels are included, a posting on each individual parcel is not required but notices shall be placed in strategically visible locations so as to provide reasonable notice to interested persons.

B. Staff shall place notification of the evidentiary hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

C. Staff shall mail notice of the hearing to the applicant; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearing; and to any other persons entitled to receive notice as provided by the development regulations. In the absence of evidence to the contrary, notice will be mailed to the owner reflected in the county tax listing at the address where county tax notices are sent. The notice must be deposited in the mail at least ten days but not more than 25 days prior to the date scheduled for the hearing.

D. staff shall place a notice of the hearing on the town's website.

7.2.5 – Materials provided.

Staff shall transmit to the board, in written or electronic form, all applications, reports, and written materials relevant to the application. Such materials may be distributed prior to the hearing if, at the same time they are distributed to the board, a copy is also provided to the applicant and to the landowner if that person is not the applicant. The administrative materials shall become a part of the hearing record.

Objection to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

7.2.6 – Hearing procedure.

A. The applicant has the burden of producing competent material and substantial evidence tending to establish the existence of the facts and conditions which this ordinance requires for the issuance of the special use permit.

B. The applicant, the Town of Black Mountain, and any person who would have standing to appeal the issuance or denial of the special use permit shall have the right to participate as a party at the hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections shall be ruled upon by the board chair and the chair's ruling may be appealed to the full board.

C. In considering an application for a special use permit, the board of adjustment will consider and may attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use or uses, structures and other improvements, and the relation of such uses, structures, or improvements to surrounding property. Any such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, and other matters the board of adjustment may find appropriate or that the applicant may propose.

7.2.7 – Standards.

A. No special use permit shall be issued or amended unless the board of adjustment shall

find that:

1. The special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity.
3. The special use will not substantially diminish or impair property values within the immediate vicinity.
4. The special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
5. The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and character of the neighborhood or district in which the use will be located.
6. Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
7. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
8. If the special use involves the subdivision of land, it conforms to all applicable regulations of Chapter 3 of this Land Use Code.
9. The special use, in all other respects, conforms to the applicable regulations of the district in which it is located, except as such regulations have, in each instance been modified by the board of adjustment in approving the issuance of the special use permit.

7.2.8 – Effect of approval.

A special use permit, once approved, attaches to and runs with the land and no subsequent development or use of the property may be undertaken except in conformity with the permit and all plans, specifications, and conditions.

7.2.9 – Reapplication for a special use permit.

If an application for a special use permit is denied by the board of adjustment, a reapplication for that special use on that property may not be filed, unless, upon request of the property owner, the board of adjustment determines that there have been sufficient changes in conditions or circumstances bearing on the proposed project to warrant a reapplication.

7.2.10 – Modification of an approved special use permit.

A. The owner of property that is subject to an approved special use permit may apply for a modification of the special use permit by following the same procedure as if applying for a new special use permit. Applications for a modification must include a new site plan that identifies the proposed changes. Evidence presented at the hearing on the proposed modification will be limited to the effect of the proposal on the original special use permit, any plans or conditions that were a part of the original special use permit, and the standards and requirements of the ordinance under which the original special use permit approved.

B. Changes to the plans and conditions of development that were the basis of the approval of the special use permit require board of adjustment approval; provided, however, that certain minor changes may be approved by the zoning administrator without board of adjustment approval, if:

1. Building floor areas are not changed by more than 20 percent;

2. Building or structure heights are not increased by more than 20 percent;
3. Density is not increased;
4. Relocated buildings, roads or uses maintain the same general relationships, landscaping, road, and utility standards; and
5. The amendment preserves compliance with any specific requirement of this chapter and the zoning district requirements at the time of the amendment request.

If the zoning administrator determines that a proposal is not a minor change, the application for change shall be forwarded to the board of adjustment for consideration.

7.2.11 – Revocation or termination.

A special use permit may be revoked as provided in Section 1.10.8. After revocation, the special use must cease, and use or development of the property must comply with the standards of the district where the property is located.

SECTION 7.3 – SPECIAL USE: ADULT ESTABLISHMENTS

7.3.1 – Purpose.

Adult establishments, because of their nature, are recognized as having characteristics which may be out of character with and detrimental to the general health, welfare, and safety of nearby residential districts and certain other uses. The Town Council determines that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting or downgrading of nearby residential districts and to protect the integrity of those districts.

7.3.2 – Requirements.

- A. No printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the establishment.
- B. No live or recorded voices, music, or sounds shall be heard from outside the establishment.
- C. There shall not be more than one adult business use (either the same use or another use) located on the same property, building, or structure.
- D. No adult establishment may have sleeping quarters.

SECTION 7.4 – SPECIAL USE: JUNKYARDS

A. In addition to general SUP application requirements, a site plan must show the distance from the nearest edge of the right-of-way of any interstate or primary highway, or a North Carolina route.

B. Requirements:

1. The proposed site shall be not less than one nor more than five acres;
2. The proposed site shall not be located nearer than 30 feet to any residence nor within one-half mile of another junkyard, measured from the boundary of the junkyard as shown in the approved site plan to the nearest residential structure.
3. Screening of a minimum eight-foot-high fence and evergreen barrier shall be required along any boundary abutting a residential lot or residentially zoned lot or public right-of-way.

Section 59. Section 7.6 is revised to read as follows:

SECTION 7.6 - SPECIAL USE: COTTAGE HOUSING DEVELOPMENT (CHDS)

7.6.1 - Purpose.

The purposes of this type of development and these accompanying guidelines are to:

1. Provide a housing type that responds to changing household sizes and ages (e.g., retirees, small families, single person households);
2. Provide opportunities for ownership of small, detached dwelling units ~~within all districts;~~;
3. Encourage creation of more usable open space . . . ;
4. Preserve a housing type . . . ; and
5. To accommodate and encourage . . .

7.6.2 - Applicability.

A cottage is a small, detached dwelling unit, not greater than 1,100 square feet in total floor area that maybe developed at a density greater than the underlying zone. More than two cottages may occupy a single lot and may be owned separately ~~as long as there are existing agreements for the maintenance and use of common areas.~~ A cottage development may be developed in any zoning district except for HI-0.

7.6.3 - Density.

Cottage housing developments shall contain a minimum of two free-standing structures located in a cluster to encourage a sense of community among the residents. ~~A development site may contain more than one cottage housing development, but in no case shall a single cottage housing development exceed eight units per acre unless meeting specifications for the inclusionary housing bonus, in which up to ten units per acre are allowed.~~

7.6.4 - General design requirements.

In addition to the general **SUP application** requirements ~~of this chapter~~, the following guidelines shall be met:

. . .

J. Driveways ~~and~~, parking areas, and any common open space, parks, or stormwater management facilities, shall be considered common areas and must be maintained by ~~an established neighborhood~~ **a homeowners'** association.

L. Common area . . . :

2. Private open space shall be a minimum of 300 square feet ~~or~~ **of** private, contiguous, usable space . . .

Section 60. Section 7.7 is revised to read as follows:

SECTION 7.7 - SPECIAL USE: MANUFACTURED HOME PARKS (MHP)

7.7.1 - Special use: Manufactured home parks (MHP).

~~Manufactured homes less than 16 feet in width and park model homes or other variations of manufactured housing that are smaller than 1,000 square feet are allowed as part of a manufactured home parks, cottage developments or other special use permits only. Manufactured home parks are a special use and must be approved by the zoning board of adjustment.~~

A. Manufactured home parks may include singlewide and doublewide manufactured housing and

other types of residential structures ~~as long as they meet the requirements and conditions of the special use permit and the town building regulations, including: park model homes, modular homes and stick-built homes or cottages.~~

B. The location of . . .

C. Manufactured home parks must meet the following requirements:

1. ~~Minimum lot area.~~ Must have a minimum lot area of one acre.
2. ~~Lot yard requirements.~~ Must have a minimum front, side and rear yard, or perimeter setback, of 30 feet between the property boundary and the nearest structure.
3. ~~Lot screening requirements.~~ Must have an evergreen or fenced screen along the property boundary separating the park and adjacent uses except where the property abuts a public park or right-of-way, such as a road, greenway, or other designated public space, or where it abuts a stream or other surface water.
4. ~~Must meet all applicable requirements, including flood prevention and stormwater regulations.~~
5. ~~4.~~ Must provide a minimum of 20 feet between structures. Driveways ~~and~~, parking areas, and open decks and patios may be provided within this space.
6. ~~5.~~ All structures attached to a manufactured home or other residential structure, including storage buildings, carports, and covered decks or porches, shall be considered part of a ~~mobile~~ **manufactured** home for purposes of determining separation requirements.
7. ~~6.~~ Must provide vehicle access that will accommodate emergency vehicles to all units within the park. Internal road system must be paved according to the ~~requirements as indicated in the Town of Black Mountain~~ standards and details manual.
8. ~~7.~~ Parking . . .
9. ~~8.~~ Five percent . . .
10. ~~9.~~ Detached accessory structures must be at least five feet from any manufactured home, ~~both the primary structure and any nearby manufactured homes or structures in the park~~, and must be less than 150 square feet in dimension.
11. ~~10.~~ Facilities for waste collection . . .
12. ~~11. Supportive facilities such as laundry, recreational or other structures must meet all other requirements of the town building regulations.~~ Covered space. . .
13. ~~12. Water supply system.~~ Water mains properly connected with the municipal water supply system or with an alternate supply ~~as~~ **approved by** the Department of Environmental Health Services . . .
14. ~~13.~~ Sanitary sewer:
15. — ~~a.~~ When the manufactured home park is located within the service area of a public sewerage system, sanitary sewer shall be installed in such a manner as to ~~serve~~ adequately **serve** all lots with connection to the public system.
16. — ~~b.~~ Where lots cannot be economically connected with a sewerage system, they must contain adequate area for the installation of approved septic tank and disposal fields and must be approved in writing by the **Buncombe County** Department of Environmental Health.
17. — ~~c.~~ Whenever an extension of a water and sewer line is necessary, . . . The town will not accept or maintain any water system which does not contain a pressure of 30 P.S.I. based upon the existing main tank level. ~~All water taps shall be made by the town.~~ . . .
18. ~~14.~~ Skirting and underpinning . . .

~~19 Must meet the general provisions and special use provisions of the land use code for lighting, landscaping, signage and other general provisions or in terms of special use requirements.~~

Section 61. Section 7.8 is revised to read as follows:

SECTION 7.8 - SPECIAL USE: PLANNED UNIT DEVELOPMENTS (PUD)

7.8.1 - Purpose.

Planned unit developments (PUDs) are planned residential, commercial, or mixed-use communities ~~to that~~ encourage high-quality design, innovative arrangements of buildings and open space throughout the project site by allowing for flexibility in **lot configuration and design**. Units within a PUD may be leased or sold separately. A residential PUD may be an apartment complex, a condominium complex, or a town-home development.

The ~~intent~~**requirements** of ~~planned unit developments is~~**this section are intended** to:

- 1.** Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings;
- 2.** Retain natural features and encourage developments that will be compatible with environmentally sensitive areas;
- 3.** Encourage pedestrian circulation within and adjacent to the PUD;
- 4.** Encourage mixed-use development;
- 5.** Encourage quality design and management of open space.
- 6.** Establish criteria and guidelines for housing developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots, but in which dwelling units, are owned **or leased** individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis or by an established ~~home-owners'~~**homeowners'** association;
 - ~~• Provide guidelines for condominium, town home, or multi-family development that consists of more than three units located in one or more individual structures;~~
 - ~~• Provide for a cohesive approach to multi-family development that is sensitive to the surrounding properties and which protects the health, safety and welfare of its residents and neighbors.~~
- 7.** ~~To~~ Establish additional criteria . . .
- 8.** **Provide for a cohesive approach to multi-family development that is sensitive to the surrounding properties and which protects the health, safety and welfare of its residents and neighbors.**

7.8.2 - Density.

PUDs with residential units shall contain a minimum of four ~~and a maximum of eight~~ dwelling units per acre ~~located in a way so as to share~~**and no PUD shall have greater than eight units per acre. The site shall be configured to allow for shared** common areas, buildings, or parking. ~~PUDs that include units at affordable price points, based on affordable housing thresholds established by Buncombe County, are eligible for a density bonus if it meets the specifications for the inclusionary housing regulations and as allowable within the zoning district in which it is located.~~

7.8.3 - Uses.

~~A. The Proposed uses to be included within the PUD shall be indicated in the application and on the master plan for the special use permit and~~ shall be generally compatible with the uses allowed in the underlying zoning district.

~~B. Documentation of conformance with any applicable state and federal regulations regarding a particular use to be located within the PUD shall be provided.~~

7.8.4 - Dimensional requirements.

A. Lot size, buffer, and yard regulations for the zoning district in which **the** proposed PUD is to be located must be met on the perimeter of the project.

B. The maximum building height of any structure in the PUD shall not exceed the building height requirement of the district in which it is located.

7.8.5 - PUD design.

7.8.5.1 Architectural features.

A. The architectural style, surface treatment and placement on the lot of the proposed structures shall be ~~done in a way that is~~ in harmony and in character with the surrounding properties and the neighborhood as a whole. ~~The town shall determine if this standard is met based on materials required in the general plan and other information that the town may obtain.~~
Generally:

B. Proposed structures shall, at a minimum, comport with the following requirements:

1. Buildings shall front the street or a parking lot, which shall have access to existing or planned pedestrian facilities or greenways as reflected in the Pedestrian Transportation Plan or Greenway Master Plan;

~~1.~~ **2. Buildings shall be designed to the topography and contours of the property; to minimize impact for the site;**

~~2.~~ **3. Fenestration, porches, stoops, . . .**

~~3.~~ **4. Roof design, including pitch and/or parapet shall be compatible with the surrounding neighborhood.**

~~B. Location and footprint of buildings and roads shall be designed so as to minimize impact for the particular site and to blend in with the character of the surrounding neighborhood.~~

5. Building facades that front a street must extend parallel to that street. Other architectural features shall be in character with the surrounding neighborhood or with existing architecture of the town's historic district or existing residential neighborhoods adjacent to downtown.

~~D. Building fronts shall address the street or parking lot and include pedestrian access to road frontages identified on the town pedestrian or greenway master plan and to parking areas.~~

~~E. All buildings shall be designed so as to conform to the standards of the town's fire insurance safety requirements as identified by the town's public safety director or his/her designee.~~

7.8.5.2 Access and streets.

A. Points of ~~access~~ **ingress** and egress shall be located to maximize safety and minimize traffic hazards, inconvenience and congestion and may require additional traffic control devices if recommended in a traffic impact analysis.

~~B. The minimum amount of right-of-way necessary in order for the Town of Black Mountain to consider the dedication of streets within a PUD must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. Streets and parking areas to remain private must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

B. Streets and parking areas must be designed to the requirements in the standards and details manual.

...

D. Designs shall permit comfortable use of the street by motorists, pedestrians, and bicyclists. Pavement widths, design speeds and the number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the relationship of the street to the overall project and town street network ~~and meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

E. If the street or road serving the proposed development does not meet the ~~requirements as indicated in the Town of Black Mountain Standards and Details Manual~~ **town street standards** or the recommendations of the traffic impact analysis, the developer shall make the necessary improvements to the street or road, or shall make a payment to the town to cover the cost of such improvements. The town may waive this requirement for street or road improvements if the town determines that the improvement will cause more community disruption than justified by the increased traffic from the proposed development.

F. Traffic and truck egress/ingress must be designed ~~per the requirements so as indicated in the Town of Black Mountain Standards and details manual and~~ to minimize traffic hazards . . .

7.8.5.5 Utilities and services.

A. Stormwater management **facilities** shall be provided, as approved by the town and in accordance with the town stormwater regulations. ~~Stormwater facilities shall be provided which will control any increase in the rate of stormwater runoff as a result of development.~~

...

Section 62. Section 7.9 is revised to read as follows:

SECTION 7.9 - SPECIAL USE: INDUSTRIAL PARK DEVELOPMENT (IPD)

...

7.9.3 - Requirements.

In addition to the general **SUP application** requirements ~~of this chapter~~, the following guidelines shall be met unless the industrial park involves the redevelopment of an existing commercial, industrial, or manufacturing site or "Brownfield" where pre-existing conditions may require a variance from these requirements:

...

G. Out-buildings or future expansion areas shall be designated on the plan with building envelopes. ~~Eventual construction on these sites need only be approved by the building inspector as long as~~ **Provided that** construction takes place within the approved building envelope~~.,~~ **construction may proceed upon issuance of a building permit.** **Otherwise,** expansion or amendments to the original plan shall ~~otherwise go through~~ **require**

approval of the ~~zoning~~ board of adjustment as an amendment to the SUP.

H. A building permit and certificate of occupancy is required whenever a unit of the park changes ownership, tenant~~cy~~, or use, to ensure that all building and fire safety codes are met.

...

Section 63. Section 7.10 is revised to read as follows:

SECTION 7.10 - SPECIAL USE: DOWNTOWN DEVELOPMENT (DD)

...

7.10.4 - Requirements.

In addition to the general **SUP application** requirements ~~of the land use code~~, the following shall berequired:

A. Buildings shall address thoroughfares with doorways and windows that front the sidewalk.

B. New construction shall conform to the historic district guidelines in their design and ~~achieve~~ a certificate of appropriateness from the historic preservation commission ~~before being forwarded~~ **shall be issued prior to the zoning board of adjustment application for a special use permit.**

...

F. Minimum setbacks shall be ten feet in width from the back of curb to the edge of building or the averagesetback of existing built upon lots on the same street frontage of the block, **whichever is greater.** Maximum setbacks shall not be more than ten additional feet from the determined minimum setback unlessapproved by the ~~zoning~~ board of adjustment.

Section 64. Chapter 7 of the Land Use Code is amended by adding a new Section numbered 7.11 entitled “Special Use: Multi-Family Residential” which reads as follows:

SECTION 7.11 – SPECIAL USE: MULTI-FAMILY RESIDENTIAL

A. Where two or more multi-family residential buildings are constructed under single ownership, whether simultaneously or at different times, the entire parcel of land occupied by such multi-family residential buildings shall be considered one lot and parking spaces and usable open space will continueto be available in the same proportions to all occupants of the buildings on the lot.

B. Minimum horizontal distance between any buildings or between any building and any lot line(other than a street right-of-way), shall be 25 feet.

C. Solid waste storage facilities shall be provided either in the form of a screened and accessible bulk container or individual containers for each dwelling unit. When used, individual containers shall be screened, uniform in appearance, marked with the number of the dwelling unit they serve, and providedwith locking lids.

D. Structure(s) must meet all general requirements for the district except that the board of adjustment may require a lesser or greater front setback to harmonize with surrounding structures.

E. Landscaping consisting of grass, trees and ornamental shrubs shall occupy no less than five percent of the total lot area. The landscaping shall be done in addition to any required screening or buffer.The location and type of landscaping shall be shown on the

site plan.

F. The architectural style, surface treatment and placement on the lot of the proposed structure shall be done in a way that is in harmony and in character with the surrounding properties and the neighborhood as a whole.

G. The plan shall provide for internal pedestrian circulation and connections to public rights-of-way, existing sidewalks, transit stops or greenways consistent with town construction specifications.

H. A clearly defined entrance to the parking area shall be provided of no more than 24 feet in width. Direct access to individual parking spaces from public rights-of-way shall not be allowed.

Parking shall be provided at a minimum rate of two spaces per dwelling unit. No grade within the parking area or access lanes shall exceed 14 percent.

Section 65. Chapter 7 of the Land Use Code is amended by adding a new Section numbered 7.12 entitled "Special Use: Wireless Communication Towers" which reads as follows:

SECTION 7.11 – SPECIAL USE: WIRELESS COMMUNICATION TOWERS

A. All new wireless communication facilities shall be engineered, designed, and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities.

B. These regulations do not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations.

C. In addition to the general SUP application requirements, the following shall apply:

1. No person, firm or corporation shall install or construct any wireless communication facility unless and until a tower antenna use application (TAA) has been issued pursuant to the communication tower requirements of these regulations.

2. A permit shall not be issued until the applicant proposing a new wireless communications facility shall demonstrate that it has made reasonable good faith attempt to locate its wireless communication facility onto an existing structure. Competitive conflict and financial burden alone are not deemed to be adequate reasons against collocation.

3. All applicants for wireless communications facilities are required to submit a statement with the application agreeing to allow and reasonably market collocation opportunities to other wireless communications facility users and to design facilities to allow for additional attachments. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The collocation agreement shall be considered a condition of issuance.

4. Construction of all wireless communication facilities shall comply with the requirements of the N.C. Building Codes and permitting process in addition to the requirements of these regulations.

5. Attached wireless communication facilities shall not add more than 20 feet to the height of the existing building or structure to which it is attached. Antenna attachments to existing communication towers shall not increase the height of the tower above the maximum permitted height of that tower. In no instance shall a new tower exceeding 20 feet in height be allowed on a building.

6. Height for wireless communication facilities with support structures shall be reviewed on a case-by-case basis as part of the special use permit process. The height of

the proposed facility should consider ground elevations, topographical and other site development criteria within these regulations.

7. Attached wireless communications facilities shall meet the setback provisions of the underlying zoning district in which they are located. An attached wireless communication facility antenna array may extend up to 30 inches horizontally beyond the edge of the attachment structure so long as the antenna array does not encroach upon an adjoining parcel. Wireless communications facilities and towers with support structures shall fall within the setback requirements in their entirety.

8. Wireless communications facilities with support structures shall be enclosed by an opaque fence (excluding slatted chain link) not less than six feet in height. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of state or federal agencies.

9. Existing mature tree growth and natural land formed on the site shall be preserved to the extent feasible; however, that vegetation that cause interference with the antennas or inhibits access to the equipment facility may be trimmed or removed.

10. Grading for the new wireless communication facility shall be minimized and limited only to the area necessary for the new facility.

11. Wireless communications facilities shall be designed to be compatible with the existing structures and surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the wireless communications facility and the use of compatible or neutral colors, or camouflage technology.

12. Wireless communications facilities shall not be artificially illuminated, directly or indirectly, except for:

a. Security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site;

b. Such illumination of the wireless communications facility as may be required by the FAA or other applicable authority installed in a manner to minimize impacts on adjacent residents; and

c. Unless otherwise required by the FAA or other applicable authority, the required light shall be red and type of lens used to reduce ground lighting when the site is within 100 feet of a residential dwelling.

13. Wireless communications facilities shall not display any signage, logos, decals, symbols, or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state, or federal regulations governing wireless communications facilities.

14. Wireless communications facilities must provide documentation that the proposed facility will meet all current applicable FCC and Electronics Industries Association and Telecommunications Industries Association (EIA/TIA) standards.

15. Sound prohibited. No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted.

16. All utility lines for wireless communications facilities shall be installed underground to the wireless communications facility.

17. Access to the tower site must be graded and stoned in a manner that will allow access by police and fire/rescue units.

Section 66. Chapter 7 of the Land Use Code is amended by adding a new Section numbered 7.13 entitled "Special Use: Campgrounds" which reads as follows:

SECTION 7.13 – SPECIAL USE: CAMPGROUNDS

7.13.1 - Application and purpose.

A. All campgrounds, regardless of whether the campsites are offered for sale, developed as rental sites, or let on assignment, are subject to the additional requirements contained herein.

B. The purpose of these regulations is to ensure that campgrounds and campground related facilities are developed in a safe and orderly fashion which supports the goals of the comprehensive plan and minimizes the impact on surrounding properties.

7.13.2 - Definitions.

Independent recreational vehicle (RV). A recreational vehicle which can operate independently of connections to sewer, water and electric systems. It may contain water flushed toilet, lavatory, shower and kitchen sink, all of which are connected to water storage, greywater storage, and sewage holding tanks located within the RV.

Dependent recreational vehicle (RV). A recreational vehicle which is dependent upon a service building for toilet and lavatory facilities.

Tent campground. A campground designed for use of tents by persons in vehicles. This shall not include the camping of persons in vehicles not designed for camping purposes. Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

Walk-in campground. A camping area designed exclusively for those persons which walk, bicycle, or use some other non-motorized means of access. Such areas shall contain only service roads for maintenance of campground facilities and shall not be used for parking associated with camping. (This shall be a tent use area only.) Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

7.13.3 - Campground standards for all campgrounds.

The following standards shall apply to all campgrounds containing two or more campsites or lots, including sites for tents, accommodations for backpackers and recreational vehicles (RVs).

A. All plans shall be submitted to the planning board for review. The planning board may review all developments in two phases. A preliminary development plan shall be required and shall be received at least 14 days before the next planning board meeting. When this preliminary development plan is approved or approved with conditions, construction of the campground may begin. When the construction is complete, the planning board may request a review approval of final or as-built plan of the campsite. This review shall be mandatory if the preliminary development plan was approved with conditions, or if the final or as-built plan has had significant changes since the submittal of the preliminary development plan. After all approvals have been completed, a certificate of compliance shall be issued.

B. All proposed campgrounds shall be a minimum of three acres in size.

C. Certificate of compliance required. Any proposed campground shall not be allowed to open until such campground has met all planning and building requirements of this ordinance for the Town of Black Mountain and the State of North Carolina.

D. Water-sewer line extensions. All proposed and required water sources and sanitary facilities serving campgrounds shall conform to the requirements of the Town of Black

Mountain and/or the Metropolitan Sewer District. Any applicant shall further be responsible for development and submittal of all water and sewer plans necessary for submittal to above-mentioned agencies for approval as extensions to systems operated by these agencies.

E. Other permanent structures. Permanent structures other than camp platforms and recreational support and sanitary facilities shall be prohibited unless the developer or owner can prove to the planning board the necessity or desirability for such a structure. Structures commonly considered to fall under the three above categories could include a gatehouse, office, laundry area, video/amusement area, common area shelters, or picnic table shelters for campsites. Camping cabins shall be allowed in an established campground at the discretion of the planning board and by approval of the building inspector.

F. Building types. Conventional, industrialized (modular) and manufactured houses are prohibited on all campsites. Such structures shall only be allowed for the purpose of housing the owner or caretaker of the campground or as used for camping cabins in the campground.

G. Storage of RVs. Storage of all types of recreational vehicles within campgrounds shall be limited to no more than one stored RV per ten RV sites. Such storage area shall be buffered and screened, preferably by vegetation, from the campground or outside areas.

H. Number of days permitted to camp. Continuous camping shall be restricted to a period of no more than 180 consecutive days within a one-year period. Tent camping shall be limited to a period of 30 consecutive days within 60-day period.

I. Access to water for all campsites/RV utility islands. Each campground shall have access to a source of potable water approved by the applicable health authority and building codes. It is preferable to provide one water outlet per non-RV camping unit; however a minimum of one outlet for every two non-RV units shall be provided with two hose bibs equipped with vacuum breakers. As an alternative to on-site water outlets for non-RV camping sites, a centralized location of potable water not more than 200 feet from any non-RV site could also be used as an alternative. Each site intended for use as a RV camping site shall have access to water within the RV's utility island. All water outlets, sanitary sewer line taps, and electrical outlets for RVs shall be located on an approved RV utility island. All water taps or outlets serving all campsites shall be of a type compatible with garden hose connections. All water facilities serving campsites of any type shall be required to have backflow prevention devices as required by the Black Mountain Department of Public Works.

J. Campfires shall be contained and controlled. Stoves or grills are recommended for all campsites. Fire rings shall be required at those locations where fires are permitted. Facilities provided for above activities shall either be provided at campsites or restricted to designated locations. No fire shall be allowed within ten feet of a bottled gas container or other combustible source of fuel, and no open fire shall be left unattended. No fires outside of structures intended for the containment and control of fires shall be permitted.

K. Refuse disposal. All campgrounds shall provide fly-proof, watertight, containers for the disposal of refuse. These containers shall also be constructed and located such that they are not subject to rodent infestation or dog and bear invasion. Containers shall be provided in sufficient number and capacity to properly store all refuse. Refuse for camping areas shall be collected at least once a day.

L. Overflow parking area. All campsites shall be limited to a total of one non-RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites. Such parking area can be surfaced with gravel. At no time shall parking be permitted on access roads to the campground.

M. Insect control. Owners of such parks shall be responsible for adequate insect control in

the camping area such as the periodic spraying for mosquitoes.

N. Cut-off, overnight lighting for all bathhouses and centralized water sources shall be required. Reflectors denoting paths to above mentioned structures are recommended. Other minimal lighting should be installed as needed for the safety and comfort of campground residents.

7.13.4 - Campsites for accommodation of independent RVs.

A. RVs shall not be permitted to hook up to electricity or water for occupation on individual lots unless as part of an approved campground or ICD, or O-I master plan.

B. Density of sites. To prevent intensive site use, and to maintain an aesthetic camping atmosphere, density shall not exceed 15 sites per acre.

C. RV parking sites material/slope. Each recreational vehicle site with individual parking shall contain at least five inches of crushed gravel leveled to not more than three percent slope.

D. RV utility islands. Each RV site shall contain, within the utility island, hookups to water, sewer, and electrical service. Utility islands shall be located to the left center of the RV and at the discretion of the campground owner/developer based on the topography of the land.

E. RV utility islands water/sewer plumbing requirements. Campgrounds with access to a sewage system shall provide that each campsite contain a sewer connection with suitable fittings to permit a watertight junction with the RV outlet. Each sewer connection shall be constructed so that it can be closed, and when not in use shall be capped to prevent escape of odors. All water taps or outlets serving RV campsites shall be of a type compatible with garden hose connections. Sewer and water piping and installation shall be constructed as specified in the North Carolina Building Code.

F. Electrical outlets. Each RV site shall have access to electrical power. Configuration of power supply needed shall be the decision of the campground owner. However, a recommended one in ten RV sites should have access to 50 amp service. All electrical outlets shall be located in a properly constructed utility island.

G. Parking dimensions RV sites. Parking dimensions may vary from single auto trailer attached vehicle back-in of 10 × 60 feet to side-by-side arrangements of trailer and auto of 29 feet long and 30 feet wide. Various combinations may be used to accommodate the recreational vehicle and one additional parking place, but dimensions to accommodate trailer width with extended outside awning shall be at least 14 feet. Parking spurs shall be located so that trailer doors face away from interior roads and into the site. Parking for all recreational vehicles and any additional vehicle shall be of a minimum five-inch gravel base.

H. RV campsite spacing. RV parking sites shall be at least 20 feet apart (this 20-foot area will include any yard, cooking areas, dining areas, and utility island for next RV site), edge-to-edge, and the center of all camping units should be at least ten feet from the edge of the campground road.

I. Other RV site requirements. Each RV site should have a picnic table or grill within the campsite area. There shall be a total area for both uses, including general yard area, of not less than 400 square feet with a width of not less than 20 feet.

J. RV dump station. A sanitary dump station built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.

7.13.5 - Sanitary facilities for accommodation of dependent RVs and tent campsites.

- A. All campgrounds for the accommodation of dependent RVs and tents shall provide sanitary facilities connected to a sewerage system. Whenever possible, these facilities shall be connected to a public sewerage system.
- B. Toilets, lavatories, and bathing facilities shall be provided as required by the North Carolina State Building Code.
- C. Toilet facilities shall be plainly marked, separate for each sex, lighted at night, and shall be located no farther than 200 feet from any camp pad.
- D. Toilet facilities may be located in a central building or in two or more buildings according to the size of the campground and location of the campsites in relation to the facilities.
- E. Adequate provisions shall be made for the disposal of dishwater according to the size of the campground. A suggested ratio is one disposal unit per ten campsites.

7.13.6 - Campsites for tents.

Construction of tent pads is not required for pup tents or other small shelters used by backpackers. Provisions for walk-in campgrounds are contained below.

- A. Each tent site should contain a minimum space of 30 × 30 feet. Density shall not exceed ten sites per acre. Tent sites with individual parking arrangements shall contain one automobile parking space at least 20 feet × 10 feet.
- B. Each site should contain a reinforced, fairly level tent pad. The pads shall be approximately 16 × 16 feet to provide maximum flexibility of use, but shall not contain less than an area of 12 × 12 feet. The tent pad shall be a minimum of six inches high and constructed of gravel, crushed aggregate, or equivalent material that will allow run-off from precipitation to flow through the pad. Pads constructed of tamped earth, asphalt or other impervious materials are prohibited. Tent pads in excess of ten percent slope should be leveled. A three-percent slope is preferable.
- C. Provisions for sanitary facilities are the same as for dependent RVs set out hereinabove.

7.13.7 - Walk-in campgrounds.

- A. Camping is prohibited in areas where a source of potable water and access to sanitary facilities is not provided.
- B. Walk-in campgrounds shall have access to potable water within 75 feet of all sleeping areas. In locations where a water supply system is not possible, potable water may be supplied by an approved well with a hand pump or by water from pickup stations.
- C. All walk-in campgrounds shall have access to the use of a toilet facility to be located within 300 feet of each camping space.

7.13.8 - Campsites for mixed uses.

Campgrounds may be developed to provide more than one type of camping site in the same area. When uses are mixed, the highest or most strict standards shall apply to development of the entire campground with the exception of walk-in camping areas in a campground designed for mixed uses. In such a development, walk-in camping shall be

separated from other types of campsites so that campfire smoke or noise will not constitute a nuisance to other campers.

7.13.9 - Campground design.

The ideal design for campgrounds is one which will be compatible with the natural features and topography of the tract undergoing development; and one which provides safe, healthful and convenient camping facilities for campground users with minimum land disturbance.

A. A complete master plan of any new, expanded or altered park shall be submitted to the Town of Black Mountain for approval before construction.

B. Density shall not exceed 15 sites per acre.

C. Campgrounds shall be developed to minimize noise, campfire smoke, or trespassing so as not to create a nuisance to abutting properties.

D. Sanitary and bathing facilities shall be provided per the state building code. Sanitary dump stations built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.

E. All campsites shall be limited to a total of one non-RV parking space per site or RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites in a common location or spread throughout the campground.

Section 67. Section 8.1.1 of Chapter 8 of the Land Use Code is amended to read as follows:

8.1.1 - Purpose.

The purpose of this ~~ordinance~~ chapter is to protect. . .

Section 68. Section 8.1.2 of Chapter 8 of the Land Use Code is amended as follows:

~~Beginning with and subsequent to its effective date, this ordinance shall be~~ A. This chapter is applicable to all development and redevelopment, ~~including, but not limited to, site plan applications, subdivision applications, and grading projects~~ within the Town of Black Mountain's jurisdiction.

Section 69. Subsection 8.1.4(B)(3) of Chapter 8 of the Land Use Code is amended as follows:

3. Land disturbing activity shall not result in a violation of any local ~~ordinance~~ regulations including but not limited to zoning district requirements and floodplain regulations.

Section 70. Subsections 8.1.5(D)(11)-(14) of Chapter 8 of the Land Use Code are amended as follows:

11. Streets, rights-of-way, pedestrian facilities and setbacks shall be designed to minimize impact on steep slope areas of the particular site without compromising the town's ability to provide

connectivity, street maintenance, waste management, or fire protection, and must be designed ~~per~~to the ~~requirements as indicated in approval of the Town of Black Mountain Standards~~town's fire marshal and Details Manual~~public works director~~. . . .

12. ~~All Whenever a~~ major ~~subdivisions meeting steep slope and hillside criteria and subdivision~~ of ten acres or more must ~~adhere to~~comply with steep slope and hillside regulations, the ~~conservation subdivision plan guidelines~~subdivider must apply for a Conservation Subdivision special use permit as provided in . Chapter 7.

13. Reserved.

14. ~~Issuance of land disturbing permit.~~ No land disturbing permit shall be issued for a site plan ~~review~~ or a subdivision ~~review~~ which meets the standards set forth in the definition of hillside area until the site plan review and subdivision plat review have been completed.

Section 71. Section 8.3 of Chapter 8 of the Land Use Code is amended as follows:

8.3.1 - Purpose and applicability.

A...... This chapter is also ~~provided in order~~intended to:

1. Provide visual buffering and ~~to~~ enhance the beautification of the town;
2. Safeguard and enhance property values and ~~to~~ protect public and private investment;

. . .

5. Aid in stabilizing the environment by contributing to the process of air purification, ~~groundwater~~groundwater recharge, . . .

B. All new developments (except for infill single-family detached residential uses and duplexes) shall be designed in accordance with the requirements of this chapter. A change of use or expansion of an existing building or parking area also requires compliance with the requirements of this chapter. Where necessary to accommodate creativity in site design, or where conformance with the strict requirements of this chapter are not feasible, the ~~town zoning~~ board of adjustment may modify these requirements ~~through~~by granting a variance ~~procedure~~ or as part of a ~~conditional use or~~ special use permit ~~request~~, provided that the type and amount of landscaping or other features are equivalent in effectiveness.

. . .

8.3.2 - General provisions.

A. *Landscaping in the central business district.* The zoning administrator shall review the landscaping requirements of this article with each development proponent or applicant for a building permit in the ~~CB~~central business district. Where meeting the requirements of this subchapter is clearly impractical, the ~~board of aldermen~~town council may authorize the use of portions of the public rights-of-way for permanent or container plantings. The zoning administrator is authorized to waive specific landscape requirements, or portions thereof, if meeting the requirements will cause insurmountable difficulties for a development proposal in the ~~CB~~central business district.

B. *Landscape plan contents.* The landscape plan shall contain the following elements, per zoning district or ~~GUP or~~ SUP requirements:

. . .

8.3.4 - Wall, fence, and berm standards.

D.(1)(d). Historic district. Fences or walls in historic districts shall meet the ~~guidelines~~standards for the particular historic district in which it is located.

Section 72. Subsection 10.1.1(C) of Chapter 10 of the Land Use Code is amended as follows:

C. Parking lots abutting residential zoning districts must be screened by an opaque fence or vegetative buffer of at least ten feet in width and a minimum of six feet in height of sufficient density to act as a screen ~~as determined by the zoning administrator.~~

Section 73. Section 10.3.1 of Chapter 10 of the Land Use Code is amended as follows:

10.3.1 - Parking surfaces.

...

~~B. The durable, dustless surface may be temporarily omitted upon approval of the planning board wherever it can be demonstrated by the property owner or developer that the permanent size, shape, or location of the parking area cannot be determined until the permanent development of the property is accomplished. In those instances where a non-durable, non-dustless surface is approved, the surface shall at all times be maintained in good condition and free from ruts, potholes and vegetation. Failure to properly maintain the area may be cause for the board of aldermen to require the owner to construct a durable, dustless surface. Board of aldermen approval of such a temporary lot will be subject to annual review and only in cases of hardship will the lot be allowed to remain for more than one year.~~

B. Any person may petition the town for a variance from parking surfaces in accordance with the procedures outlined in Section 1.7.3.

C. ~~The zoning administrator will consider the terrain, the~~Terrain, configuration of the lot, and the anticipated amount of vehicle activity shall be considered in making this permitting decision.

D. Use of permeable pavements or other surface technologies are welcome as long as they are maintained in good condition and function, and documentation is provided as to the maintenance program for the parking lot. Use of permeable surfaces may result in a reduction of stormwater ~~BMPs as required by the land use code and at the discretion of the planning director or stormwater administrator.~~SCMs in accordance with Section 8.2.11.

Section 74. Subsection 10.4.1(B) of Chapter 10 of the Land Use Code is amended as follows:

2. Any sharing of required parking spaces ~~uses~~ located on different parcels shall be ~~guaranteed~~documented by ~~a~~ written agreement between the owner of the parking area and the ~~owner of any~~party seeking to use ~~located on a different parcel and served by the~~ shared parking area, and such agreement shall be recorded in the Office of the Register of Deeds for Buncombe County.

3. The owner of said lot ~~relinquished~~will relinquish his development rights . . .
4. Should the uses change such that the new uses overlap in hours of operation or ~~in~~increase demand for the shared spaces. . .

Section 75. Subsection 10.6.1(B) of Chapter 10 of the Land Use Code is amended as follows:

B. ~~Ingress-egress~~ Points of ingress and egress shall be via openings in concrete, asphalt, rock or other curbing provisions, commonly referred to as curb cuts, ~~as well as other vehicular means of access to and from private property, shall apply in all zoning districts established by this chapter~~ in accordance with the town driveway requirements and the approval of the N.C. Department of Transportation when involving a state road.

Section 76. Section 10.7.1 of Chapter 10 of the Land Use Code is amended as follows:

10.7.1 - Off-street parking space requirements.

Off-street parking spaces shall be provided for uses listed below as specified. Any use not specifically listed below shall be ~~categorized into~~ required to meet the off-street parking space requirements of that use which most appropriate area closely resembles the proposed use in character and intensity, as determined by the ~~determination of the~~ zoning administrator ~~and those regulations shall apply.~~ All parking requirements set forth by this subchapter include provisions for parking for handicapped individuals as stated by any state or federal regulations.

Section 78. Section 10.8.1 of Chapter 10 of the Land Use Code is amended as follows:

10.8.1 - Reductions in parking requirements.

Parking requirements may be decreased according to one or more of the following criteria:

- A. These protected areas for larger trees can count toward the landscaping and parking lot island requirement of this ~~ordinance.~~ chapter.

...

~~D. A project developer may elect to request the town staff to consider a plan for fewer parking spaces than the minimum set forth based on facts, projections, and circumstances submitted as part of technical review for the project. Any such recommendation for a reduction in the parking requirements shall remain subject to review and approval by the zoning board of adjustment.~~

Section 79. Subsection 10.10.1(C)(1) of Chapter 10 of the Land Use Code is amended as follows:

1. On-street parking shall not be used to accommodate required parking unless specifically allowed by a ~~conditional or~~ special use permit or unless within the central business district.

Section 80. Section 11.1.1 of Chapter 11 of the Land Use Code is amended as follows:

11.1.1 - Streets, driveways and alleys.

...

- B. Streets and driveways connecting to town roads ~~must complete a driveway permit and~~

~~meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual for approval. All streets must be designed and constructed in conformance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual unless otherwise approved as part of a special use permit or conservation subdivision and with approval by the public works director and fire inspector.~~ **must be designed and constructed in conformance with the Town of Black Mountain Standards and Details Manual.**

C. ~~Streets and driveways connecting~~ **No private drive, street, or driveway shall be constructed to connect to an NCDOT maintained road until NCDOT has issued a driveway permit and get NCDOT approval prior to construction.**

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Division 13, Operations,

Division of Highways 11

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D. ~~Roads shall be designed in accordance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

E. ~~D.~~ Arrangement of driveways should be related to adjacent driveways and street intersections. Driveways close to street intersections shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.

F. ~~E.~~ . . Only three homes or less may also use an alleyway as a shared driveway ~~and must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

G. ~~F.~~ See chapter 3.6 for . . .

Section 81. Section 11.2.1 of Chapter 11 of the Land Use Code is amended as follows:

11.2.1 - Sidewalks.

A. Sidewalks are required to be built in conjunction with certain development or redevelopment of properties as set out in section 4.8.7.6 of the Land Use Code.

~~A.~~ **B.** Sidewalks shall . . .

~~B.~~ ~~Sidewalks are required in accordance with chapter 4 and must be approved by the public works director or his/her designee.~~

~~C.~~ ~~Sidewalks~~ **No sidewalk may be constructed** within the NCDOT right-of-way ~~must get approval from the NCDOT district engineer prior to construction through~~ **until** an encroachment agreement. **has been approved by the NCDOT district engineer.**

~~D.~~ An eight-foot-wide greenway trail may be placed instead of sidewalk if consistent with the comprehensive pedestrian master plan ~~and with the approval of the greenways commission.~~

~~E.~~ Sidewalks and greenways must be planned in compliance with the town's comprehensive pedestrian master plan, and should be designed to promote traffic safety.

Section 82. Section 11.3 of Chapter 11 of the Land Use Code is deleted in its entirety.

Section 83. Chapter 12 of the Land Use Code is deleted in its entirety.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 14th day of June, 2021.

Larry Harris, Mayor

ATTEST:

Savannah Parrish, Town Clerk