



TOWN OF BLACK MOUNTAIN

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

Date: November 8, 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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Should you need other assistance or accommodation for this meeting, please contact

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 – Pastor David Taylor, Christ Community Church
- Pledge of Allegiance
- Announcements

2. PROCLAMATIONS, AWARDS & RECOGNITION

- A. Arbor Day Proclamation
- B. Veterans Day Proclamation

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 October 11, 2021 Regular Session Meeting, the October 7, 2021 Agenda Meeting, and the October 11, 2021 Closed Session Meeting.*

B. Golf Equipment Lease Resolution

Motion: *To approve Resolution R-21-23 as presented.*

C. Revision to the Uniform Guidance Policy

Motion: *To approve the revision to the Uniform Guidance Policy as presented.*

D. Call for Public Hearing for Text Amendments to Add Definitions for Murals, Premises, and Temporary Signs and Amend the Definition of Signs #O-21-16

Motion: *To call for a public hearing for text amendments to add definitions for murals, premises, and temporary signs and to amend the definition of signs to be held on Monday, December 13, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

E. Call for Public Hearing to Repeal the Existing Sign Ordinance and Replace with the New Sign Ordinance #O-21-17

Motion: *To call for a public hearing repeal and replace the sign ordinance to be held on Monday, December 13, 2021, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

Consent Motion: *To approve consent items A-E 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

8. NEW BUSINESS

A. Board Appointments

Greenways Commission – (1) 3-year terms ending June 30, 2024

Motion: To appoint _____ to fill a 3-year term ending June 30, 2024 by a vote of _____ for and _____ against.

The Commission voted unanimously to recommend Mr. Sobel to fill the current vacancy. The day after the Commission's meeting an application from Leanne Cunningham was received by the Town Clerk. The Chair of the Commission was provided a copy of the application and a policy for appointing new members. The Chair decided not to review the application either by special meeting or by holding their recommendation until the next regular meeting.

Recreation Commission – (1) vacancies/ 3-yr terms ending June 30, 2024

Motion: To appoint _____ to fill a 3-year term ending June 30, 2024 by a vote of _____ for and _____ against.

Two applications were received for Recreation Commission from Nathan West and Donald Obenrader. The Recreation Commission recommended both candidates to Town Council for their consideration.

B. Resolution and Budget Amendment for Police Department Community Outreach Special Revenue Fund **#R-21-24**

Motion: *To approve the Resolution #R-21-24 and budget amendment as presented.*

C. Approval of ABC Board stipend increase

Motion: *To approve a stipend increase of \$100 per month for the ABC Board.*

D. Discussion of the Town Manager's 2021-2022 work plan

E. Oath of Office for Police Chief Steve Parker

9. PUBLIC HEARING

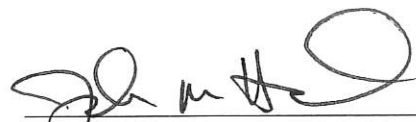
The chair will recognize individuals requesting to address the Council regarding the specific topic of the public hearing. Public hearing comments by any on speaker shall be limited to ten (10) minutes. The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of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

10. COMMUNICATION FROM STAFF

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

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

12. ADJOURNMENT



Josh Harrold
Town Manager



Proclamation

**November 10, 2021
Arbor Day
In the Town of Black Mountain**

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce live-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in the Town of Black Mountain increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, BE IT RESOLVED, that I, Mayor Larry B. Harris, and the Town Council of the Town of Black Mountain hereby proclaim November 10, 2021 as

“Arbor Day” in the Town of Black Mountain

IN WITNESS WHEREOF, on this the 8th day of November, 2021.

Larry B. Harris, Mayor

Attest:

Savannah Parrish, Town Clerk



Proclamation

**November 8, 2021
In Recognition of Veterans Day**

WHEREAS, Veterans Day was once known as Armistice Day, proclaimed by President Woodrow Wilson in 1919, to remind Americans of the tragedies of war; and

WHEREAS, This commemoration includes the approximately 19 million U.S. veterans living today who served in the U.S. Armed Forces. Through their commitment for freedom, America's Veterans have lifted millions of lives and made our country and the work more secure; and

WHEREAS, Throughout November, we show our appreciation to the spouses, partners, children, caregivers, and survivors of our service members and veterans for their selfless sacrifice on behalf of the Nation. We honor them and their invaluable contributions; we share their pride in our Armed Forces; and we will never forget what they and their loved ones do for us;

NOW THEREFORE I, Larry B. Harris, Mayor of the Town of Black Mountain do here by proclaim November 11, 2021 as

VETERANS DAY

In the Town of Black Mountain and urge all citizens to remember the service and sacrifice of our veterans who defend our freedom.

IN WITNESS WHEREOF, on this the 8th day of November, 2021.

Larry B. Harris, Mayor

Attest:

Savannah Parrish, Town Clerk



TOWN OF BLACK MOUNTAIN

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

Date: **October 11, 2021**

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

Regular Session Minutes

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

1. 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 Bill Christy
Council Member Doug Hay
Council Member Pam King

The following staff members were present:

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

Mayor Harris welcomed everyone and led the Pledge of Allegiance. Cheryl Wilson of Swannanoa Valley Christian Ministry led an invocation.

Mayor Harris offered condolences to Council Member Archie Pertiller who recently lost his father-in-law.

Mayor Harris also congratulated Manager Josh Harrold the International City/County Management Association Credentialed Manager certification.

2. PROCLAMATIONS, AWARDS & RECOGNITION

3. CITIZEN COMMENTS

Larry Pearlman – 203 North Park Lane concerning the 210 South Park Lane property.

Lee Reading – 211 North Park Lane petitioning council to take action to protect Town parks.

John Barry – 209 North Park Lane concerning the 210 South Park Lane property.

Shawn Slome - 15 3rd Street asked the Town Council to consider placing deed restrictions on Town parks in order to protect them. Mr. Slome also asked the Council to consider a new master plan for Veterans Park.

4. COMMUNICATIONS FROM STAFF, BOARDS, COMMISSIONS & AGENCIES

Planning Director Jamey Matthews presented the Town Council with the 2020 Streets and Parks Report. The report is included and made part of these minutes.

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.

Manager Harrold presented the consent agenda to the Town Council.

A. Adoption of Minutes

Motion: *To adopt the minutes of the August 20, 2021 Special Call Meeting, the September 9, 2021 Agenda Meeting, and the September 13, 2021 Regular Session Meeting.*

B. Budget Amendment for Fire Department Grant

Motion: *To approve the Assistance to Firefighters Grant and the Budget Amendment.*

C. Contract with Kendig Keast Collaborative for Unified Development Ordinance

Motion: *To approve the contract as presented.*

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

6. CITIZEN COMMENTS - NONE

7. UNFINISHED BUSINESS - NONE

8. NEW BUSINESS

A. Intersection Traffic Studies Presentation

In August 2021 the Town Council agreed to perform studies on 3 intersections in town. The traffic engineer, Colin K, completed the studies presented the findings to the Town Council.

B. NC 9 Sidewalk Phase III

Manager Harrold presented the information to the Town Council. In order to begin construction on phase III of the NC 9 sidewalk, in exchange for an easement, the property owner is asking the Town to construct a wall and install a fence at a cost of \$68,500 along 450 linear feet of his property. There was some discussion among the Town Council.

Vice Mayor Ryan Stone moved to deny construction of the wall/fence. The motion was approved by a vote of 5-0

C. Golf Equipment Lease

The golf course equipment is nearing the end of a 5-year lease agreement with Smith Turf & Irrigation. We were able to receive 2 quotes from companies that specialize in leasing golf course equipment. Staff recommends entering a new 5-year lease with Smith Turf & Irrigation. The cost per year is \$87,585.36.

Council Member Archie Pertiller moved to approve lease agreement. The motion was approved by a vote of 5-0

D. Investment Policy

Finance Director Tammy Holland presented the investment policy to the Town Council. The purpose of the policy is to ensure funds are managed to provide for secure, efficient, and professional investments in order to achieve primary objectives while in conformance with federal, state, and other legal requirements, including North Carolina General Statute ("NCGS") 159-30.

Mayor Harris recommended to Council wait to allow more time to review the policy. No action was taken on the Investment Policy.

E. Amended Contract for EB-5547B "The Oaks Connector"

Planning Director Jessica Trotman and Manager Josh Harrold presented the information to the Town Council. This is a revised contract with Michael Baker International for engineering services for The Oaks Connector. This section is unchanged in service but separated because it is nearing 60% completion. Approximately \$90,000 from the previous contract is represented in the work to date for this section. A balance of \$255,875.29 is required to complete this section.

Council Member Bill Christy moved to approve the contract as presented. The motion was approved by a vote of 5-0.

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 to Close Portion of Unopened, Platted Portion of Alexander Street

Council Member Archie Pertiller moved to open the public hearing for Resolution #R-21-22 to Close Unopened, Platted Portion of Right-of-Way of Alexander Street (north end). The motion was approved by a vote of 5-0.

Planning Director Jessica Trotman presented the information to the Town Council. Two property owners have submitted a petition to close an unopened, platted portion of Alexander Street (north end). The requested closure is approximately 150 feet in the length and 40 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 and to reserve a 20-foot-wide easement down the center for future pedestrian and vehicular traffic with a vote of 3-2, with Rick Earley and Pam Norton voting against the motion, at the July 26, 2021 meeting. There was no public comment.

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

Council Member Pam King moved to approve Resolution #R-21-22 for the right-of-way closure as presented. The motion was approved by a vote of 5-0.

10. COMMUNICATION FROM STAFF

Town Attorney Ron Sneed addressed the Town Council to provide a legislative update from North Carolina State Legislature.

Town Manager Josh Harrold updated the Town Council concerning the sidewalk at CVS Pharmacy. The survey has been completed.

The Manager continues to work with FEMA concerning Tropical Storm Fred.

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

At the request of the citizens, Mayor Harris inquired to other municipalities how they were handling Town office being closed to the public during the ongoing COVID-19 pandemic. He found that Woodfin and Black Mountain are the only closed, and the others are encouraging appointments.

Council Member Doug Hay asked the council to consider asking staff to identify projects with the greatest need, high impact projects, potential funding opportunities, and impacts to the budget. Mayor Harris directed staff to hold a workshop to explore options concerning the topics Council Member Hay mentioned.

Council Member Pam King recognized Indigenous Peoples' Day.

12. CLOSED SESSION

Vice Mayor Ryan Stone moved to enter closed session to discuss personnel matters as permitted by North Carolina General Statute 143-318.11(6). The motion was approved by a vote of 5-0.

13. ADJOURNMENT

There being no further business Mayor Larry B. Harris adjourned the meeting at 7:41 p.m.

ATTEST:

Savannah M. Parrish Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager



**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
AGENDA WORKSHOP AND SPECIAL MEETING MINUTES
October 7, 2021**

THE BLACK MOUNTAIN TOWN COUNCIL held an agenda workshop Thursday, October 7, 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, October 11, 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 Archie Pertiller
Council Member Pam King
Council Member Doug Hay
Council Member Bill Christy

The following staff members were present:

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

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

No action was taken.

There being no further discussion Mayor Larry B. Harris adjourned the meeting at 5:12 p.m.

ATTEST:

Savannah Parrish, Assistant to Manger/Town Clerk

Larry B. Harris, Mayor

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 8, 2021

SUBJECT: Golf Equipment Lease Resolution

AGENDA INFORMATION

Agenda Location: CONSENT AGENDA
Item Number: 5B
Department: Administration
Contact: Josh Harrold, Town Manager
Presenter: Josh Harrold, Town Manager

SUMMARY: At October's Council meeting the Council selected Smith Turf & Irrigation for an equipment lease. Council needs to approve the attached resolution for lease financing.

MOTION FOR CONSIDERATION: To approve resolution

FUNDING SOURCE: N/A

ATTACHMENTS: resolution

MANAGER'S COMMENTS AND RECOMMENDATIONS: N/A

RESOLUTION
LEASE NO. 008-0852620-100
DATED AS OF OCTOBER 19, 2021

A resolution authorizing the negotiation, execution, and delivery of Lease No. **008-0852620-100** dated **October 19, 2021** (the "Lease"), between **Town of Black Mountain, 160 Midland Ave., Black Mountain, NC 28711** and **The Huntington National Bank, 1405 Xenium Lane North (PCC180), Plymouth, MN 55441**; and prescribing other details in connection therewith.

WHEREAS, Town of Black Mountain, (the "Lessee") is a political subdivision duly organized and existing pursuant to the Constitution and laws of the State of North Carolina; and

WHEREAS, Lessee is duly authorized by applicable law to acquire such items of personal property as are needed to carry out its governmental functions and to acquire such personal property by entering into lease-purchase agreements; and

WHEREAS, Lessee hereby finds and determines that the execution of a Lease for the purpose of leasing with the option to purchase the property designated and set forth in the Lease is appropriate and necessary to the function and operations of the Lessee; and

WHEREAS, The Huntington National Bank, (the "Lessor") shall act as Lessor under said Lease; and

WHEREAS, the Lease shall not constitute a general obligation indebtedness of the Lessee within the meaning of the Constitution and laws of the State;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF Town of Black Mountain:

Section 1. The Lease, in substantially the form as presently before the governing body of the Lessee, is hereby approved, and the _____ of the Lessee, is hereby authorized to negotiate, enter into, execute, and deliver the Lease and related documents in substantially the form as presently before the governing body of the Lessee, with such changes therein as shall be approved by such officer, and which Lease will be available for public inspection at the offices of Lessee.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Lease.

Section 3. The Lessee's obligations under the Lease shall be expressly subject to annual appropriation by Lessee; and such obligations under the Lease shall not constitute a general obligation of Lessee or indebtedness of Lessee within the meaning of the Constitution and laws of the State of North Carolina.

Section 4. All other related contracts and agreements necessary and incidental to the Lease are hereby authorized, ratified and approved.

Section 5. This resolution shall take effect immediately upon its adoption and approval.

CERTIFIED AS TRUE AND CORRECT this _____ day of _____, 20____.

Signature of Clerk, Secretary or Assistant Secretary

Printed Name of Clerk, Secretary or Assistant Secretary



TOWN OF BLACK MOUNTAIN

Agenda Item Summary

Meeting Date: November 8th , 2021

SUBJECT: Revision to the Uniform Guidance Police

AGENDA INFORMATION

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

BRIEF SUMMARY:

The Federal Office of Management and Budget (OMB) have updated items within the uniform guidance requirements for federal grant purchases. To stay in compliance with the federal requirements the Town's Uniform Guidance section of the Purchasing Policy the following changes are proposed:

- ***Micro-purchase threshold increases from \$10,000 for all goods and services to \$30,000*** for the purchase of "apparatus, supplies, materials or equipment" and purchase of "construction or repair work"
- ***Federal Contract Required Provisions:***
 - Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324
- ***FEMA Additional Required Provisions***

MOTION FOR CONSIDERATION: To approve or deny changes to the Uniform Guidance Policy

ATTACHMENTS: Revised Uniform Guidance

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



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 \$30,000** 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 \$30,000 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 \$30,000** 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.
- G. Construction and repair contracts costing \$30,000 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.
- H. 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.

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
 - a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
 - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags:
“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: November 8, 2021

SUBJECT: Call for Public Hearing for Text Amendments to Add Definitions for Murals, Premises, and Temporary Signs and Amend the Definition of Signs **#O-21-16**

AGENDA INFORMATION

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

BRIEF SUMMARY: To comply with the ruling of Reed v. Gilbert, the Town of Black Mountain is amending the sign ordinance and found that definitions are needed for murals, premises and temporary signs. The amendment also amends the current definition that is in place for signs. These definitions are in line with the rulings that came out of Reed v. Gilbert and will make it easier to interpret the ordinance. The Planning Board voted 7-0 at their October 25, 2021 meeting to recommend the definitions.

MOTION FOR CONSIDERATION: To call for a public hearing for text amendments to add definitions for murals, premises, and temporary signs and to amend the definition of signs to be held on Monday, December 13, 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-21-16*

MANAGER'S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the next regularly scheduled meeting on Monday, December 13, 2021, or as soon thereafter as possible.



LEGAL NOTICE

BLACK MOUNTAIN TOWN COUNCIL

PUBLIC HEARING

Monday, December 13, 2021, at 6:00 p.m.

The Black Mountain Town Council will meet on **Monday, December 13 2021, at 6:00 p.m.** in the Council 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 definitions of mural, premises, and temporary signs and to amend the definition of sign.

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 11/10/2021
Published in the Black Mountain News 11/18/2021 and 11/25/2021*

www.townofblackmountain.org

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: November 8, 2021

SUBJECT: Call for Public Hearing to Repeal the Existing Sign Ordinance and Replace with the
New Sign Ordinance **#O-21-17**

AGENDA INFORMATION

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

BRIEF SUMMARY: The Town has recently drafted a new sign ordinance to comply with the rulings of the Reed v. Gilbert court case. The new sign ordinance enforces time, place and size rather than the content of the signs. The existing sign ordinance needs to be repealed and replaced with the new sign ordinance. The Planning Board voted 7-0 at their October 25, 2021 meeting to recommend the sign ordinance as written.

MOTION FOR CONSIDERATION: To call for a public hearing repeal and replace the sign ordinance to be held on Monday, December 13, 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-21-17*

MANAGER'S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the next regularly scheduled meeting on Monday, December 13, 2021, or as soon thereafter as possible.



LEGAL NOTICE

BLACK MOUNTAIN TOWN COUNCIL

PUBLIC HEARING

Monday, December 13, 2021, at 6:00 p.m.

The Black Mountain Town Council will meet on **Monday, December 13 2021, at 6:00 p.m.** in the Council Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing to repeal and replace the sign ordinance.

The meeting is open to the public.

Savannah Parrish
Town Clerk

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Posted to the Town Bulletin Board 11/10/2021
Published in the Black Mountain News 11/18/2021 and 11/25/2021

www.townofblackmountain.org

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 8, 2021

SUBJECT: Board Appointments

AGENDA INFORMATION

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

BRIEF SUMMARY: At their regular October meeting the Greenway Commission reviewed the application from Mike Sobol. Mr. Sobol attended the meeting. The Commission voted unanimously to recommend Mr. Sobol to fill the current vacancy. The day after the Commission's meeting an application from Leanne Cunningham was received by the Town Clerk. The Chair of the Commission was provided a copy of the application and a policy for appointing new members. The Chair decided not to review the application either by special meeting or by holding their recommendation until the next regular meeting.

At their regular October meeting the Recreation Commission reviewed applications from Nathan West and Donald Obenrader. The Commission felt both applicants would make valuable contributions to the Commission, and they recommended both for the Town Council's consideration.

MOTION FOR CONSIDERATION: *Motion: To appoint _____ to fill a 3-year term ending June 30, 2024 by a vote of _____ for and _____ against.*

FUNDING SOURCE: N/A

ATTACHMENTS:

Applications from Mike Sobol and Leanne Cunningham for Greenway Commission.

Applications from Nathan West and Donald Obenrader for Recreation Commission.

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 Town Council 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.

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: Charles Michael Sobol DATE: 9-17-2021

PREFERRED NAME: Michael

HOME ADDRESS: 48 Blue Ridge Assembly Dr

MAILING ADDRESS (if different): _____

CITY, STATE and Zip: Black Mountain, 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): fivesobol@bellsouth.net

PHONE NUMBER(S): MAIN 828-669-2017 (H) EMERGENCY Cell 828-777-0881

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: Greenway Are you seeking re-appointment? Yes ☐ No ☒

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

If additional space is needed please attach a separate sheet.

It's time we get this project completed. We need new
focus and new energy to get the greenway, that I helped
start in 1994, finished

EDUCATION & CERTIFICATIONS

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

UNC - Chapel Hill '71 chemistry degree

Charles D Owen High '67

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.

No present commissions - My past experience of starting the greenway project, helping to get the greenway commission, being an Alderman for 10 years & Mayor for 4 years, plus my time on the MSO Board as vice chairman gives me the experience and contacts that we need!

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.

C Michael Sobel
Applicant's Signature

9/17/2021
Date

Thank you for your interest in appointment to the Town of Black Mountain's Boards and Commissions. Individuals selected for appointment by the Town Council will assume their position on the date of Town Council 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



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APPLICANT INFORMATION

NAME: Leanne Cunningham DATE: 10/22/2024

PREFERRED NAME: Leanne

HOME ADDRESS: 250 Vance Avenue

MAILING ADDRESS (if different): N.A.

CITY, STATE and Zip: Black Mountain, 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): leanne.cunningham@gmail.com

PHONE NUMBER(S): MAIN 828-231-6908 EMERGENCY 828-231-6910

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: Greenway Are you seeking re-appointment? Yes ☐ No ☒

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

If additional space is needed please attach a separate sheet.

I enjoy the greenway near my home and am interested in the development of future greenways. I enjoy the outdoors and teaching my grandchildren about plants and creatures. This is the best commission for me to serve the community. One of my strengths is working with people of different backgrounds to solve problems that benefit everyone.

EDUCATION & CERTIFICATIONS

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

M.A.Ed. Western Carolina University
B.S.Ed. Western Carolina University
National Board Professional Teaching Standards Adolescent-Adult Career Development
NC Teaching License class M - Family + Consumer Science
Class A - Career Development, middle grades Occupational Explorations, Vocational/disadvantaged/handicapped.

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.

English Tutor for Buncombe County Literacy Together.
Organized Candidate Forums for Congressional and Aldermen candidates.
Participated and encouraged get out to vote efforts in several election cycles.

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.

Leanne Cunningham
Applicant's Signature

Oct. 22, 2021
Date

Thank you for your interest in appointment to the Town of Black Mountain's Boards and Commissions. Individuals selected for appointment by the Town Council will assume their position on the date of Town Council 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.

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APPLICANT INFORMATION

NAME: DAVID NATHAN WEST DATE: 10/13/21

PREFERRED NAME: NATHAN WEST

HOME ADDRESS: 537 BRANDON RD BLACK MOUNTAIN, NC 28711

MAILING ADDRESS (if different): PO BOX 696 BLACK MOUNTAIN, NC 28711

CITY, STATE and Zip: BLACK MOUNTAIN, 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): NWESTAVL@GMAIL.COM

PHONE NUMBER(S): MAIN 828-808-0873 EMERGENCY (828) 606-3676

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: PARKS & REC Are you seeking re-appointment? Yes ☐ No ☒

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

If additional space is needed please attach a separate sheet.

I WISH TO SERVE WITHIN THE PARKS & REC DEPARTMENT FOR MANY REASONS. THE FIRST IS TO WORK TO PROVIDE OPPORTUNITIES FOR OUR CHILDREN THAT ARE CURRENTLY LACKING. SECONDLY, I WANT TO BE INVOLVED IN THE FUTURE OF A HEALTHIER COMMUNITY WITH BOUNDLESS OPPORTUNITIES FOR OUTDOOR RECREATION AND FACILITIES OUR TOWN CAN BE PROUD OF.

EDUCATION & CERTIFICATIONS

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

ASSOC SCIENCE AB-TECH

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.

- I HAVE VOLUNTEED AS A SOCCER COACH WITH BMPP FOR 5 years.
- I AM CURRENTLY ON THE RACE ORGANIZATION COMMITTEE FOR THE GREENWAY CHALLENGE
- FORMER EXECUTIVE DIRECTOR FOR CHANGING HEARTS MINISTRY

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

10/13/2021

Date

Thank you for your interest in appointment to the Town of Black Mountain's Boards and Commissions. Individuals selected for appointment by the Town Council will assume their position on the date of Town Council 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.

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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 has 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.

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

Personal Information

NAME: Donald Obenrader DATE: 9-15-21

PREFERRED NAME: Don

HOME ADDRESS: 14 Caton Pl

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: dgocreston@gmail.com

PHONE NUMBER(S): MAIN _____ CELL 281-638-1965

Board or 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**. You will only be considered for one board or commission seat).

Board or Commission Preference: Recreation Commission

Are you currently serving on a board or commission of the Town of Black Mountain? Yes _____ No X

If so, what is the name of the board? _____

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

To be an advocate for sports especially senior sports in Black Mountain.

Education and Certifications

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

BFA from Wittenburg University

Employment

Please list the name and address of your current employer, the title of your current position and a brief description of your job duties.

Name of Employer Retired

Address _____ City _____ State _____ Zip _____

Description of job duties:

Civic Involvement

Please list the names of all civic organizations in which you currently hold membership.

Black Mtn Pickleball group; Community garden;
Swannanda Valley Museum

CERTIFICATE OF APPLICANT

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

Donald Clemon

Applicant's Signature

9-15-21

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.



**TOWN OF BLACK MOUNTAIN
TOWN COUNCIL
REQUEST FOR BOARD ACTION
Meeting Date: November 8th, 2021**

SUBJECT: Resolution and Budget Amendment PD Community Outreach Special Revenue Fund

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8B
Department: Finance
Contact: Tammy Holland, Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY:

Resolution creating a PD Community Outreach Special Revenue Fund to track and manage revenue and expenses related to special programs and assistance provided to the citizens and families of Black Mountain.

At this time this program is funded from donations and fundraising events by the Town of Black Mountain Police Department. Community Outreach programs are used to build, strengthen, and maintain relationships of trust between the community and the police department. Establishing this fund ensures that money donated to the police department is only spent on activities for the specific purpose of this program.

Budget Impact:

Increase General Fund Expenses	Expenses	\$12,713.00
Decrease General Fund Balance (appropriated)	Revenues	\$12,713.00
Increase Community Outreach Expenses	Expenses	\$12,713.00
Increase Community Outreach Revenue	Revenues	\$12,713.00

MOTION FOR CONSIDERATION: To approve or deny the budget amendments

ATTACHMENTS: Budget Amendment

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



Resolution # R-21-24

**RESOLUTION
FOR CREATION OF THE PD COMMUNITY OUTREACH SPECIAL REVENUE FUND**

WHEREAS, The Town of Black Mountain Police Department receives donations and various revenues from the citizens and community to provide special programs and assistance to the citizens and families of Black Mountain during various times throughout the year; and

WHEREAS, Donations collected by the Police Department staff shall be restricted to only be used for expenses incurred for community outreach activities and needs; and

WHEREAS, A Special Revenue fund will be established to provide more accountability, transparency, and a more efficient means to track and manage the expenses and revenues related to Community Outreach activities; and

WHEREAS, all transactions related to Police Community Outreach will be kept in a special revenue fund that is not co-mingled with other funds to prevent the accidental inclusion of non-community outreach transactions; and

NOW, THEREFORE, BE IT RESOLVED BY THE BLACK MOUNTAIN TOWN COUNCIL:

- Establishment of Special Revenue Fund. There is hereby established the Police Community Special Revenue.
- The Finance Director is hereby directed to maintain within the Special Revenue project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable

Duly adopted by the Town Council of Black Mountain on this the 8th day of November, 2021.

Larry B. Harris
Mayor

ATTEST:

Savannah Parrish
Town Clerk



BUDGET AMENDMENT REQUEST FORM

DATE:

10/28/21

BUDGET NUMBER

Fund-Function-Dept-Account Number	Account Desc	DEBIT	CREDIT
10-00-3905-900	Appropriated Fund Balance		\$12,713.00
10-00-5900-955	Transfer Out	\$12,713.00	
41-00-0000-902	Transfer In		\$12,713.00
41-00-5100-500	Community Outreach Expense	\$12,713.00	
Total:		\$25,426.00	\$25,426.00

REASON FOR BUDGET AMENDMENT

Establish Police Department Community Outreach Budget previously donated funds were placed in general fund. Budget Amendment to move funds restricted for community outreach activities to new fund created to track and manage expenses and revenues

Entered by:

Department Head signature:

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