



## **PUBLIC NOTICE**

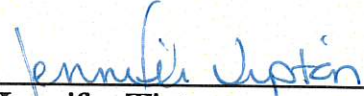
### **BLACK MOUNTAIN PLANNING BOARD**

### **SPECIAL CALL MEETING**

**Friday, September 21, 2018 at 5:30 p.m.**

The Black Mountain Planning Board will hold a special call meeting on **Friday, September 21, 2018 at 5:30 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to have a training session with Town Attorney Ron Sneed.

The meeting is open to the public.

  
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**Jennifer Tipton**  
**Zoning Administrator**

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, Jennifer Tipton at (828) 669-2030 or by email at [Jennifer.tipton@townofblackmountain.org](mailto:Jennifer.tipton@townofblackmountain.org)

*Posted to the Town Bulletin Board 09/06/18*

[www.townofblackmountain.org](http://www.townofblackmountain.org)

- §160a-349.9. Power to Acquire Land;Adjacent Property;Disposal of Money from Lot Sales;Investments;Income from Investment
- §160a-349.10. Power to Condemn Land; Procedure for Condemnation; Board Incorporated
- §160a-349.11. Price of Lands Included in Budget
- §160a-349.12. Power to Accept Gifts;Exclusive Use of Gifts
- §160a-349.13. Sale of Unnecessary Property
- §160a-349.14. Exercise of Powers Subject to Approval
- §160a-349.15. Termination

#### Article 18. Parks and Recreation

- §160a-350. Short Title
- §160a-351. Declaration of State Policy
- §160a-352. Recreation Defined
- §160a-353. Powers
- §160a-354. Administration of Parks and Recreation Programs
- §160a-355. Joint Parks and Recreation Systems
- §160a-356. Financing Parks and Recreation
- §160a-357. Repealed by Laws 1975, C. 664, §13
- §160a-358. Reserved
- §160a-359. Reserved

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160a NC ST Art. 19, Refs & Annos

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- §160a-360.1. Permit Choice
- §160a-361. Planning Boards
- §160a-362. Extraterritorial Representation
- §160a-363. Supplemental Powers
- §160a-364. Procedure for Adopting, Amending, or Repealing Ordinances Under Article
- §160a-364.1. Statute of Limitations
- §160a-365. Enforcement of Ordinances
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- §160a-371. Subdivision Regulation
- §160a-372. Contents and Requirements of Ordinance
- §160a-373. Ordinance to Contain Procedure for Plat Approval; Approval Prerequisite to Plat Recordation;Statement by Owner
- §160a-374. Effect of Plat Approval on Dedications
- §160a-375. Penalties for Transferring Lots in Unapproved Subdivisions
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- §160a-381. Grant of Power
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  - §160a-383.1. Zoning Regulations for Manufactured Homes
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- §160a-384. Method of Procedure
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  - §160a-385.1. Vested Rights
- §160a-386. Repealed by S.L. 2015-160, §2, eff. Aug. 1, 2015
- §160a-387. Planning Board; Zoning Plan; Certification to City Council
- §160a-388. Board of Adjustment
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- §160a-390. Conflict with Other Laws
- §160a-391. Other Statutes Not Repealed
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#### Part 3b. Historic Properties Commissions

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- §160a-400.2. Exercise of Powers by Counties as Well as Cities
- §160a-400.3. Character of Historic District Defined
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§ 160A-361 Planning boards.

§ 160A-361. Planning boards.

(a) Any city may by ordinance create or designate one or more boards or commissions to perform the following duties:

- (1) Make studies of the area within its jurisdiction and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the council concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
- (7) Perform any other related duties that the council may direct.

(b) A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:

- (1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
- (2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27; 2004-199, s. 41(a).)

§ 160A-363 Supplemental powers.

§ 160A-363. Supplemental powers.

(a) A city or its designated planning board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance.

(e) If the city is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit not specifically authorized by law, the city shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1983, c. 377, s. 9; 2004-199, s. 41(b); 2005-418, s. 1(a); 2007-371, s. 2.)

§ 160A-364 Procedure for adopting, amending, or repealing ordinances under Article.

§ 160A-364. Procedure for adopting, amending, or repealing ordinances under Article.

(a) Before adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in any of the changes listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the board [governing body of the local government] regarding the compatibility of the proposed changes with military operations at the base. If the board [governing body of the local government] does not receive a response within 30 days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:

- (1) Changes to the zoning map.
- (2) Changes that affect the permitted uses of land.
- (3) Changes relating to telecommunications towers or windmills.
- (4) Changes to proposed new major subdivision preliminary plats.
- (5) An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58; 1977, c. 912, s. 5; 1979, 2nd Sess., c. 1247, s. 36; 1981, c. 891, s. 1; 2004-75, s. 2; 2005-426, s. 1(a); 2013-59, s. 2.)

§ 160A-373 Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final decisions on preliminary plats and final plats are to be made by:

- (1) The city council,
- (2) The city council on recommendation of a designated body, or
- (3) A designated planning board, technical review committee, or other designated body or staff person.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1997-309, s. 8; 2005-418, s. 3(a).)

§ 160A-384 Method of procedure.

§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2; 1987, c. 807, s. 1; 1989 (Reg. Sess., 1990), c. 980, s. 1; 1993, c. 469, s. 1; 1995, c. 546, s. 1; 2005-418, s. 4(a); 2009-178, s. 2.)

§ 160A-385 Changes.

§ 160A-385. Changes.

(a) Citizen Comments. -

(1) Zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

(2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and applicable to zoning ordinance changes initiated on or after that date.

(b) Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1.

(c) Amendments in zoning ordinances, subdivision ordinances, and unified development ordinances shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development as defined in G.S. 160A-385.1(b)(7). A multi-phased development shall be vested for the entire development with the zoning ordinances, subdivision ordinances, and unified development ordinances then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. (1923, c. 250, s. 5; C.S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1; 1977, c. 912, s. 7; 1985, c. 540, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 1; 1991, c. 512, s. 4; 2005-418, s. 5; 2015-160, s. 1; 2016-111, s. 1.)

§ 160A-387 Planning board; zoning plan; certification to city council.

**§ 160A-387. Planning board; zoning plan; certification to city council.**

In order to initially exercise the powers conferred by this Part, a city council shall create or designate a planning board under the provisions of this Article or of a special act of the General Assembly. The planning board shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning board shall make a written recommendation regarding adoption of the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a recommendation regarding ordinance from the planning board. Following its required public hearing, the city council may refer the ordinance back to the planning board for any further recommendations that the board may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board. (1923, c. 250, s. 6; C.S., s. 2776(w); 1967, c. 1208, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 8; 2005-418, s. 7(a).)

Part 3 - Zoning

160A-381 → 160A-394

(Part 2 - Subdivisions - not included as required matter for planning board)

DIVISION 4. - PLANNING BOARD<sup>[4]</sup>

## Sec. 2-117. - Governing terms.

The planning board shall be governed by the terms of G.S. 160A-360—160A-387 and by the terms of the town zoning provisions enacted December 1982 (chapter 107) and the subdivision regulations enacted September 1985 (chapter 105), and any subsequent amendments thereto. All board members shall thoroughly familiarize themselves with the provisions of these statutes and ordinances.

(Code 1993, § 31.20; Ord. No. 0-88-2, 1-18-1988)

## Sec. 2-118. - Membership; vacancies.

- (a) Beginning with the fiscal year beginning on July 1, 2005, the planning board shall consist of seven residents within the corporate limits of the town or within areas subject to an annexation ordinance adopted by the board of aldermen, and members shall be appointed by the board. Beginning with the first fiscal year in which at least one member of the planning board shall end his appointed term and not be eligible for reappointment, the planning board shall be reduced to and consist, from that date forward, of five residents. Members from the areas of annexation shall serve until the expiration of their terms, or until the annexation procedure is voided or otherwise terminated. Terms of service on the planning board shall be for three years, with terms staggered so that for two out of each three-year period, two members' terms shall end, and the term of a fifth member shall end in the other year in the three-year period. The board of aldermen shall make such adjustments as necessary to existing or future terms to establish this pattern of alternating terms.
- (b) Vacancies occurring for reasons other than expiration of terms may be filled as they occur for the period of the unexpired term.
- (c) Appointments shall be limited to two consecutive three-year terms, and any member who has served two consecutive three-year terms may not be reappointed until he has been off the planning board for at least one full year.
- (d)

If a member of the planning board has served more than two-thirds of a full term after being appointed to complete the term of a previous board member, his service during the completion of that term shall be considered a full term for purposes of determining his eligibility to serve successive subsequent terms.

- (e) Faithful attendance at the meetings of the planning board is considered a prerequisite for the maintenance of membership on the planning board, and the board of aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause, such as temporary severe illness of a member or any member of such member's family, or overriding but temporary business concerns.
- (f) Such dismissal may be considered upon report or complaint by the planning board chairperson, a member of the planning board, or on the board of aldermen's own motion.

(Code 1993, § 31.21; Ord. No. 0-88-2, 1-18-1988; Ord. No. 0-90-4, 5-14-1990; Ord. No. 0-00-11, 8-14-2000; Ord. No. 0-03-02, 6-9-2003; Ord. No. 0-05-09, 7-11-2005; Ord. No. 0-07-05, 5-14-2007)

#### Sec. 2-119. - Organization; meetings; records.

Within 30 days after appointment, the planning board shall meet and elect a chairperson and create and fill the offices as it may determine. The term of the chairperson and other officers shall be one year, with eligibility for reelection. The planning board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, and such record shall be a public record. The planning board shall hold at least one meeting monthly, and all of its meetings shall be open to the public. There shall be a quorum of a majority of the appointed members for the purpose of taking any official action.

(Code 1993, § 31.22; Ord. No. 0-88-2, 1-18-1988)

#### Sec. 2-120. - Secretary of board.

The secretary of the planning board may be an appointed member elected by the planning board, or may be a nonvoting member contracted by the planning board for services rendered, using funds as appropriated by the board of aldermen. The secretary shall keep the minutes of the planning board, shall endeavor to send out mail notice of all meetings of the planning board

to planning board members, and shall endeavor to give eight-hour phone notice of any special meetings to said members. Other duties shall include carrying on routine correspondence and maintaining the files of the board.

(Code 1993, § 31.23; Ord. No. 0-88-2, 1-18-1988)

Sec. 2-121. -

Meetings.

- (a) Special meetings of the planning board may be called at any time by the chairperson, provided that the minimum requirements for notice of public meetings as specified by state law are observed.
- (b) Faithful attendance at the meetings of the board is considered a prerequisite for the maintenance of membership on the board. Failure to attend three consecutive meetings of the board may result in dismissal from the planning board.

(Code 1993, § 31.24; Ord. No. 0-88-2, 1-18-1988)

Sec. 2-122. - Function and duties.

**It shall be the function and duty of the planning board to perform the following:**

- (1) Make studies of the area within its jurisdiction and surrounding areas.**
- (2) Determine objectives to be sought in the development of the study area.**
- (3) Prepare and adopt plans for achieving these objectives.**
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.**
- (5) Advise the board of aldermen concerning the use and amendment of means for carrying out plans.**
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the aldermen may direct.**
- (7) Perform any other related duties that the aldermen may direct.**

(Code 1993, § 31.25; Ord. No. 0-88-2, 1-18-1988)

Sec. 2-123. - Promotion of recommendations.

The planning board shall have power to promote public interest in and understanding of its recommendations, and, to that end, it may publish and distribute copies of its recommendations and employ such other means of publicity and education as it may determine suitable.

(Code 1993, § 31.26; Ord. No. 0-88-2, 1-18-1988)

**Sec. 2-124. - Attendance at planning conferences or meetings.**

Members or employees of the planning board, when duly authorized by the planning board, may attend planning conferences or meetings of planning institutes or hearings upon pending planning legislation, and the planning board may, by formal and affirmative vote, pay, within its budget, the reasonable traveling expenses incidental to such attendance.

(Code 1993, § 31.27; Ord. No. 0-88-2, 1-18-1988)

**Sec. 2-125. - Annual report of activities; analysis of expenditures and budget requests.**

The planning board shall annually submit to the board of aldermen a written report of its activities, an analysis of the expenditures to date for the current fiscal year, and its requested budget of funds needed for operation during the ensuing fiscal year.

(Code 1993, § 31.28; Ord. No. 0-88-2, 1-18-1988)

**Secs. 2-126—2-148. - Reserved.**



**RULES OF PROCEDURE OF THE  
PLANNING BOARD OF THE  
TOWN OF BLACK MOUNTAIN**  
Amended July 30, 2007

**I. AUTHORIZATION AND PURPOSE**

Pursuant to Section 31.22 of the Code of Ordinances of the Town of Black Mountain and North Carolina General Statutes 160A:360-387, the Rules of Transaction are enacted by the Town's Planning Board in order to clarify procedures and governing terms for how the Planning Board membership conducts its meetings. These Rules for Transaction are not intended to add, modify, or delete provisions from the Town of Black Mountain Code of Ordinances.

**II. MEMBERSHIP, OFFICERS, AND STAFFING**

1. The Planning Board ("The Board") consists of seven residents within the corporate limits of the Town who are appointed by the Board of Aldermen as described in the Town Ordinance. Additional representatives from extra-territorial jurisdiction shall be appointed by the County Commissioners if appropriate and in accordance with State Statutes.
2. The Board members shall meet and elect a chair, vice chair and secretary by a majority vote of the membership on an annual basis.
3. The Board may appoint representatives to attend other Town boards and Commissions meetings or liaisons to other community committees as determined by the Board membership. The Board may also nominate representatives to other Town boards and Commissions for Board of Aldermen consideration.
4. At meetings, the Chairman shall serve as the presiding officer, managing the agenda, facilitating discussion and debate, calling and accounting for votes, and keeping public comment periods orderly and effective.
5. In absence of the Chair, the Vice-Chair shall serve as the presiding officer. In absence of the Chair and Vice-Chair, the Secretary shall serve as the presiding officer.
6. The Town Planning Director or other designated staff and an assigned clerk shall assist the Board in conducting their business. Town staff shall work with the Board Chair to develop a draft agenda for each meeting and to ensure that all proper meeting

## **RULES OF PROCEDURE FOR THE PLANNING BOARD OF THE TOWN OF BLACK MOUNTAIN**

notifications and minutes, informational materials, reports, and drafts are prepared in a timely manner and meet the requirements of the Town Ordinance.

### **III. THE PRESIDING OFFICER**

1. The Presiding Officer shall have the following powers:

- a. To ask for motions for consideration or actions;
- b. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- c. To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
- d. To entertain and answer questions of procedure;
- e. To call a brief recess at any time; and
- f. To adjourn in an emergency.

2. A decision by the Presiding Officer or by a quorum under any of the first three powers listed may be appealed to the Board upon a motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the Presiding Officer, and the motion, if timely made, may not be ruled out of order.

### **IV. MEETINGS AND ATTENDANCE**

1. The Board shall meet each month on the last Monday of the month at 7:00 p.m. All meetings of the Planning Board shall be governed by the State's Open Meetings Law and shall be advertised, posted, and open to the public.

2. Special meetings of the Board may be called at any time by the Chair or by a quorum of the board members at an official meeting provided that the minimum requirements for notice of the public meeting are observed.

3. Faithful attendance is considered a prerequisite for the maintenance of membership in the Board. Members should notify the Board Chair or appropriate Town staff if unable to attend a regularly scheduled meeting.

4. Failure to attend three consecutive, regularly scheduled meetings without being excused by the Board will result in a notification to the absentee board member and the Board of Aldermen with a possible recommendation for dismissal.

RULES OF PROCEDURE FOR THE PLANNING BOARD  
OF THE TOWN OF BLACK MOUNTAIN

**V. QUORUM**

1. A majority of the appointed members of the board shall constitute a quorum, the number of membership needed to conduct business. A majority is more than half.
2. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

**VI. PROCEDURE**

1. Meetings will follow the Order of Business specified in the Manual for Appointed Boards and Commissions for the Town of Black Mountain:

- Call meeting to order
- Ascertain quorum present
- Discussion and revision of proposed agenda; adoption of agenda
- Approval of minutes
- Old business
- New business
- Informal discussion
- Adjourn

2. As its first order of business at each meeting, the Board shall discuss and may revise the proposed agenda before proceeding. Amendments, additions or subtractions to the agenda, the order of business, including the order for taking of public comment, shall be voted on by the membership when they adopt the agenda.

**3. The Board shall follow the adopted agenda. New items introduced in the course of a meeting shall be considered at a later time as determined by the membership.**

4. Information or presentation of materials on an item shall occur before a motion is made.
5. The Board may discuss an issue informally, asking questions of the applicant or presenter, and attempting to reach group consensus, before a formal motion is proposed.
6. A member may make only one motion at a time. Only one motion at a time may be considered by the Board. A motion may be amended after discussion.
7. The Presiding Officer shall state the motion and then open the floor to discussion, according to the following general principles:
  - a. The maker of the motion is entitled to speak first;

**RULES OF PROCEDURE FOR THE PLANNING BOARD  
OF THE TOWN OF BLACK MOUNTAIN**

- b. A member who has not spoken on the issue shall be recognized before someone who has already spoken; and
- c. To the extent possible, debate shall alternate between proponents and opponents of the measure.

**VII. VOTING**

- 1. Voting shall proceed by motion of a member. A second is not required.
- 2. A motion shall be adopted by majority of the votes cast.
- 3. No member shall be excused from voting except in cases of conflicts of interest.

**VIII. CONFLICTS OF INTEREST**

- 1. A Board member who has a potential conflict of interest on any agenda item should disclose such to the Board membership before that agenda item is discussed.
- 2. If an objection is raised as to a member's participation either because a member does not ask to be recused, or if a member asks to be recused without a viable conflict of interest, the remaining members are to rule, by majority vote, on the objection.
- 3. A conflict of interest shall be defined as a Board member having:
  - a. A direct family or business tie to the applicant,
  - b. A bias that s/he has already stated, or
  - c. A direct financial benefit from the item in question.
- 4. A request to be recused from voting for conflict of interest shall be made before discussion of the item in question and must be approved by the Presiding Officer.
- 5. Anyone who is recused from voting shall not participate in the discussion related to the item.

**IX. AMENDMENTS**

These rules may be added to or amended by a majority vote at any meeting of the Board.

**\*\*These Rules of Transaction were developed by the sitting members of the Town of Black Mountain Planning Board, 2005-2006, and amended in 2007 to account for a change from 5 to 7 members.**

**§ 160A-383. Purposes in view.**

- (a) Zoning regulations shall be made in accordance with a comprehensive plan.
- (b) Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:
  - (1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
  - (2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
  - (3) A statement approving the zoning amendment and containing at least all of the following:
    - a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.
    - b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
    - c. Why the action was reasonable and in the public interest.
- (c) Prior to consideration by the governing board of the proposed zoning amendment, the planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.
- (d) Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.
- (e) As used in this section, "comprehensive plan" includes a unified development ordinance and any other officially adopted plan that is applicable. (1923, c. 250, s. 3; C.S., s. 2776(t); 1971, c. 698, s. 1; 2005-426, s. 7(a); 2006-259, s. 28; 2017-10, s. 2.4(c).)

TOWN OF BLACK MOUNTAIN  
PLANNING BOARD

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date:

Subject:

Description:

Address:

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

\_\_\_\_\_ **The zoning amendment is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest because:**

How consistent with plan: \_\_\_\_\_

Why is reasonable and in the public interest: \_\_\_\_\_

\_\_\_\_\_ **The zoning amendment is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest because:**

How inconsistent with plan: \_\_\_\_\_

Why is not reasonable and in the public interest: \_\_\_\_\_

\_\_\_\_\_ **In addition to approving this zoning amendment, this approval is also deemed an amendment to the Town's comprehensive plan. The change in conditions taken into account in amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**§ 160A-299. Procedure for permanently closing streets and alleys.**

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

The provisions of this subsection regarding division of right-of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.

(d) This section shall apply to any street or public alley within a city or its extraterritorial jurisdiction that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown on plats but that have not been accepted or maintained by the city, provided that this section shall not abrogate the rights of a dedicator, or those claiming under a dedicator, pursuant to G.S. 136-96.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) A city may reserve a right, title, and interest in any improvements or easements within a street closed pursuant to this section. An easement under this subsection shall include utility, drainage, pedestrian, landscaping, conservation, or other easements considered by the city to be in the

public interest. The reservation of an easement under this subsection shall be stated in the order of closing. The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

(g) The city may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the city council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the city declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34, 1981, c. 401; c. 402, ss. 1, 2; 1989, c. 254; 1993, c. 149, s. 1; 2015-103, s. 1.)

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

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen.
- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:
  1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties do not sign the petition, notice to abutting property owners shall be given as required by NCGS. If the request is generated from town staff or a board or commission, the fee shall not apply.
  2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way if any (utilities, etc.) and information on possible future uses from any of the town's adopted plans, and place the issue on the next planning board agenda, if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.
  3. The planning board will review the request and make a recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way into town control or maintenance, to close any additional area of right-of-way in addition to the petition, or to not accept the petition and leave the right-of-way as an offering.
  4. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
    - a. Right-of-way identified is not a part of adopted town plans.
    - b. Right-of-way is not necessary for current or future utilities.
    - c. Right-of-way in its current condition poses a hazard to public health,

safety or welfare.

- d. Right-of-way is along a drainage that is part of a stormwater management plan.
  - e. Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.
  - f. Abutting property owners have signed the petition in favor of the closure.
5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact additional abutting property owners to get their input before making a determination.
6. Planning board recommendation is forwarded to the board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.
7. Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.
8. Board of aldermen holds a public hearing and accepts or rejects the petition for closure.