



TOWN OF BLACK MOUNTAIN

TOWN COUNCIL

May 13, 2024

REGULAR SESSION AGENDA

Time: 6:00 p.m.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

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REVISED 5-9-2024

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Moment of Silence*
- Announcements – *Mayor Sobol*
- Ethics Statement: *In accordance with the Code of Ethics adopted by the Council, all Council Members have a duty to conduct the affairs of the governing board in an open and public manner free of conflicts of interest. Is there any item on the agenda the outcome of which will have a direct, substantial, and readily identifiable financial impact for any Council Member, his or her family or close business associates? Does any Council Member have a financial interest in any public contract coming before this Council today? There being none, all Council Members have a duty and obligation to vote.*

2. PROCLAMATIONS, AWARDS, RECOGNITIONS, SPECIAL RESOLUTIONS

- A. Proclamation- Mayors Monarch Pledge

3. CITIZEN COMMENTS

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

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

A. Black Mountain Beautification Committee Annual Report

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 Meeting Minutes – Wesley Barker, Town Clerk

- March 28, 2024 Budget Work Session
- April 4, 2024 Agenda Meeting
- April 8, 2024 Regular Meeting
- April 11, 2024 Budget Work Session
- April 18, 2024 Budget Work Session
- April 25, 2024 Budget Work Session

Motion: To approve the meeting minutes as presented.

B. Monthly Property Tax Collector Report - Tammy Holland, Finance Director

Motion: To approve the monthly tax collection report as presented.

C. Consideration of Budget Amendments - Tammy Holland, Finance Director

- 1) Carver Floor Repair
- 2) Increase in Property Tax Late List Penalties
- 3) Fire Department Recognize Funds Received from Buncombe County Dispatch

Motion: To approve the budget amendments as presented.

D. Consideration of Riverwalk Greenway Capital Project Amended Ordinance –

Tammy Holland, Finance Director

Motion: I move that Town Council approve the Riverwalk Greenway Capital Project Amended Ordinance as presented.

Motion for all Consent items: To approve all consent agenda items as presented (or as amended).

6. 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 one speaker shall be limited to ten (10) minutes.** The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each public hearing.*

A. Public Hearing for Text Amendment to Chapter 20, Article V, Nuisances- Jessica

Trotman, Planning Director

Motion: I move we approve the text amendments for Chapter 20, Article V, Nuisances as presented.

B. Public Hearing for Text Amendments to Chapter 43, Article VI to add a Social District- Jessica Trotman, Planning Director

Motion: I move we approve the text amendments for Chapter 43, Article VI, Downtown Social District, as presented.

C. Public Hearing for Conditional Zoning Request for Montreat College- #O-23-22- Jessica Trotman, Planning Director

Motion: I move that we approve the amendment to add Montreat College Black Mountain campus as an institutional campus district conditional zone and that the amendment is consistent with the comprehensive plan and is reasonable and in the public interest in that it promotes development of underutilized property with existing infrastructure and allows design and connection to balance the needs of pedestrians, drivers, cyclists, and transit users.

D. Public Hearing for Map Amendment for Montreat College- #Z-O-23-23- Jessica Trotman, Planning Director

*Motion: I move that we approve zoning map amendment **#Z-O-23-23** to conditionally zone the Montreat College Black Mountain campus as institutional campus district conditional zone and that the zoning map amendment is reasonable and in the public interest in that the overall size of the tract is reasonable compared to the size of the zoning district in which the property is located, it is consistent with the comprehensive plan, the impact to adjacent property owners is reasonable and the benefits of the rezoning outweigh any potential inconvenience or harm to the community and allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.*

7. 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.

8. UNFINISHED BUSINESS - none

9. NEW BUSINESS

A. Consideration of Street Dedication for Rantis Lane and Fay Jones Lane, located off Jane Jacobs Road – Jamey Matthews, Public Works Director

Motion: I move that the Town Council accepts both Rantis Lane and Fay Jones Lane as a public Town street which will include all maintenance of both streets to include paving, snow removal, and any general maintenance of both streets within the twenty (20) foot right-of-way.

B. Approval of Resolution Authorizing the Town Manager to Execute Agreement for Design/Build Services for the Cragmont Park Renovation Project – Angela Reece, Project & Facilities Manager

*Motion: I move that Town Council of the Town of Black Mountain adopt the resolution selecting **Harper General Contractors, Inc.** (firm) as most responsible, responsive, and qualified firm and to authorizing the Town Manager to negotiate and execute a final contract for design-build services for the Cragmont Park Renovation Project pursuant to § 143-128.1A.*

C. Discussion of Designated Parking Request at Lakeview Senior Center

10. COMMUNICATION

- A.** Town Attorney – Craig Justus
- B.** Town Manager – Josh Harrold

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

12. CLOSED SESSION

13. ADJOURNMENT



Proclamation

Mayors' Monarch Pledge

WHEREAS, the monarch butterfly is an iconic North American species whose multigenerational migration and metamorphosis from caterpillar to butterfly has captured the imagination of millions of Americans; and

WHEREAS, both the western and eastern monarch populations have seen significant declines with less than one percent of the western monarch population remaining, while the eastern population has fallen by as much as ninety percent; and

WHEREAS, the Town of Black Mountain is one of thirteen North Carolina cities that has signed the National Wildlife Federation's Mayors' Monarch Pledge for 2024, and has officially committed, and continues, to taking meaningful action to protect the monarch butterfly; and

WHEREAS, the Town of Black Mountain is committed to restoring and preserving habitats that supports the monarch's migration each year by engaging with town departments, garden groups and citizens encouraging monarch-friendly plantings and gardens, maintaining monarch waystations, and displaying educational signage about our efforts; and

WHEREAS, citizens can make a difference for the monarch by planting native milkweed and nectar plants to provide habitat for the monarch and pollinators in locations where they live, work, learn, play and worship; and

NOW, THEREFORE, I, C. Michael Sobol, Mayor of the Town of Black Mountain, and on behalf of the Black Mountain Town Council, do hereby proclaim May 13, 2024 to be "Monarch Day" in the Town of Black Mountain and encourages all citizens to support monarch conservation.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Wesley Barker, *Town Clerk* **MEETING DATE:** May 13, 2024
AGENDA SECTION: CONSENT - 5A **DEPARTMENT:** Administration
TITLE OF ITEM: Approval of Meeting Minutes

SUGGESTED MOTION(S):

I move that Council approve the meeting minutes as presented.

SUMMARY:

Minutes from the following Town Council Meetings:

- 1) *March 28, 2024 Budget Work Session*
- 2) *April 4, 2024 Agenda Meeting*
- 3) *April 8, 2024 Regular Meeting*
- 4) *April 11, 2024 Budget Work Session*
- 5) *April 18, 2024 Budget Work Session*
- 6) *April 25, 2024 Budget Work Session*

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- I. Copy of Draft Minutes



BLACK MOUNTAIN TOWN COUNCIL MINUTES

March 28, 2024 | Special Called Meeting | Time: 8:30 A.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held a meeting on Thursday, March 28, 2024, at 8:30 a.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. The purpose of this meeting was to hold a FY 2024-25 Budget Work Session.

Mayor C. Michael Sobol called the meeting to order at 8:30 a.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Assistant Town Manager & Planning Director; Wesley Barker, Town Clerk; Tammy Holland, Finance Director; Josh Henderson, Recreation & Parks Director; John Coffey, Fire Chief; Jamey Matthews, Public Works Director; Steve Parker, Police Chief. Several other staff members were also present.

FY 2024-25 Budget Work Session.

This budget work session is a continuation of presentations from all town departments with their budget requests. This includes a proposed 5% cost of living increase for town employee salaries across all departments. The budget requests of the following departments were reviewed during this work session:

• Public Works: General	• Public Works: Building & Grounds	• Public Works: Sanitation
• Public Works: Streets & Highways	• Powell Bill	• Fire Department
• Parks & Recreation: General	• Parks & Recreation: Lakeview	• Parks & Recreation: Pool

Noteworthy items discussed during these presentations are included per each fund listed below:

Public Works: General

- A request to add an Assistant Public Works Director position due to workload and needs.

Public Works: Building & Grounds

- Lower amount in contract services due to not using a leaf pickup service next year. The current \$2.00 fee will be discussed when the revenue budget is reviewed.

Public Works: Sanitation

- Training needs for staff was discussed.
- An increase in vehicle maintenance expense to account for maintenance costs on aging vehicles.
- A decrease in fuel expense over what was budgeted for FY 24.

Public Works: Streets & Highways

- Request to unfreeze two positions for FY 25 that were frozen during the FY 24 budget.
- Request to create and add two new positions for employees eligible for a Tech III position with garnering specific skillsets. Some discussion ensued around current employees interested in learning specific skills/certifications, and the benefits of having employees with these skillsets instead of hiring outside for a service (e.g. welding) which in turn would save the town money.
- Other requests included equipment needs, motorized and non-motorized (e.g. salt spreaders and plows).

Powell Bill

- An estimated \$280,000 should be received from the Powell Bill this year. These state funds are used for Town street paving projects. It was stated that the calculations of State Powell Bill allocations were changing this year.

Parks & Recreation: General

- Request for new cameras at Grey Eagle and turf replacement at Grey Eagle that is currently eighteen years old.
- An increase in part-time salaries due to more indoor and outdoor program offerings and the need to staff these (e.g. referees for sports, summer camp counselors)
- A brief discussion ensued of lighting costs to light the tunnel under I-40 at Veterans Park that would meet DOT regulations.

Parks & Recreation: Lakeview Center

- Summer camps would be moving out of there and going to Grey Eagle, which would free up space for more rentals, activities/programs.

Parks & Recreation: Pool

- Requests include replacement of new pool equipment (e.g. pool chairs) and replacement of pool equalizers which must be replaced every five years per the permit with Buncombe County, who issues the Town's pool operating permit.
- Discussion ensued about beginning to charge each town department for water costs beginning in FY 25, which had not been accounted for previously. The pool would have the largest water expense at an estimated \$18,000.

Fire Department

- Requests include four new positions for the department which would bring staffing numbers from 24 to 28. One of these new positions would be a Community Education and Engagement Coordinator who would also assist with in-house staff training. The remaining three positions would be entry-level firefighter positions. With the new positions, there

- would be 8 firefighters on staff each shift, compared to the current 6 on staff each shift.
- There are currently no volunteer firefighters associated with the department that are physically able to fight fires.
 - A request for new uniforms was discussed. The longevity of uniforms is approximately one year. This request would provide three shirts and three pairs of pants to firefighters.
 - A replacement for Engine 41 (mini-pumper truck) was discussed. This is a specialty vehicle with a specific purpose. The cost of this vehicle would be approximately \$450,000. The Town Manager suggested using capital reserve funds if this vehicle purchase was approved.
 - Goals for future years include purchase of a new ladder truck. Some discussion ensued on this item.

Council Member Pam King left the meeting at 9:50 a.m.

Town Manager Josh Harrold stated the review of the capital budget would take place at a future budget meeting.

The next FY 2024-25 budget workshop will be held on Thursday, April 11, 2024 at 8:30 a.m. at Town Hall with the following remaining departments presenting their budget requests: Planning & Development, Stormwater, Golf Course, Water.

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 10:01 a.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

April 4, 2024 | Agenda Workshop Meeting | Time: 5:00 P.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held their agenda workshop meeting on Thursday, April 4, 2024, at 5:00 p.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

Mayor C. Michael Sobol called the meeting to order at 5:00 p.m. with the following members in attendance: Mayor C. Michael Sobol, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone. Absent: Vice Mayor Archie Pertiller.

The following staff members were present: Jessica Trotman, Assistant Town Manager & Planning Director; Wesley Barker, Town Clerk; Josh Henderson, Recreation & Parks Director; Jamey Matthews, Public Works Director; Chris Kuhn, Assistant Police Chief.

Assistant Town Manager & Planning Director Jessica Trotman presented the proposed agenda for the April 8, 2024 Town Council meeting in the absence of Town Manager Josh Harrold.

Council Member Alice Berry proposed the addition of two resolutions to the agenda which were 1) Resolution to move Black Mountain away from single use plastics, and 2) Resolution recognizing climate action efforts within the Town of Black Mountain. These resolutions would be placed under agenda item #2 which will include “special resolutions” that bring awareness to a subject, topic or occasion.

Further, Jessica Trotman stated the agenda item entitled “Call for Public Hearing to Rezone 65 Fortune Street from UR-8 to OI-6” would need to be removed from the agenda because the applicant has pulled their application and would not be requesting a rezoning any longer.

Additionally, Jessica Trotman stated the “Conditional Zoning Request for Montreat College” and “Map Amendment for Montreat College Z-O-23-23” items listed under Unfinished Business would not be considered on this agenda. Instead, these items will need to be a “call for public hearing” for each because when the public hearing for these items was held on November 13, 2023, the public hearings were closed and not continued. Due to this, these items must go through another public hearing process before they can be considered for adoption, which would now be at the May 13, 2024 Town Council meeting.

With no further discussion, Council Member Doug Hay made a motion to adopt the agenda with the requested addition of the resolutions, and the amendments as presented. The motion was approved by a vote of 4-0. Vice Mayor Archie Pertiller absent. There being no further business, Mayor C. Michael Sobol adjourned the meeting at 5:20 p.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

April 8, 2024 | Regular Meeting | Time: 6:00 P.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held their regular meeting on Monday, April 8, 2024, at 6:00 p.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

1. CALL TO ORDER

Mayor C. Michael Sobol called the meeting to order at 6:00 p.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Wesley Barker, Town Clerk; Jessica Trotman, Assistant Town Manager/Planning Director; Angela Reece, Project & Facilities Manager; Josh Henderson, Recreation & Parks Director; John Coffey, Fire Chief; Steve Parker, Police Chief; Jamey Matthews, Public Works Director. Town Attorney Craig Justus was also present.

Mayor Sobol led those in attendance in the pledge of allegiance and a moment of silence, then read the ethics statement.

2. PROCLAMATIONS, AWARDS, RECOGNITIONS, SPECIAL RESOLUTIONS

Mayor C. Michael Sobol read a proclamation recognizing Earth Day on April 22nd, 2024.

Mayor C. Michael Sobol then read two proposed resolutions entitled “Resolution to Move Black Mountain Away from Single Use Plastics” and “Resolution Recognizing Climate Action Efforts within the Town of Black Mountain.”

3. CITIZEN COMMENTS

Pat Thompson, a Black Mountain resident, spoke on the need for a Town climate action plan and sustainability goals on ways to reduce waste. She expressed her concern for climate change requesting the Town take immediate action.

David Billstrom, 825 N. Oconeechee Ave., addressed the Council on recent water problems along his street which resulted in being without water for several days. He praised the Town’s Public Works staff, stating he was well informed during the whole process.

Phil Bisesi, 15 Hi View Dr., spoke on town recycling, stating he felt it should be a weekly event. He also spoke on Broadway St. parking, and about pedestrians crossing all along the street, creating a hazard to drivers. Mr. Bisesi proposes a crosswalk mid-block on Broadway St.

Linda Tatsapaugh, 48 Beech Glen Dr., spoke on the proposed resolution to reduce single use plastics in town, and encouraged reduction of plastic use by citizens.

At this time, the Town Council discussed the proposed special resolutions.

A motion was made by Council Member Alice Berry to approve the following resolution. A vote of 5-0 in favor.

A Resolution to Move Black Mountain Away From Single Use Plastics

Resolution #: R-24-16

WHEREAS, plastic pollution starts with fossil fuel extraction and harms individuals, communities, and ecosystems all along the supply chain; and

WHEREAS, studies have shown the presence of microplastics in terrestrial and marine systems throughout the entire planet, including human food systems and human bodies, and have been detected in troubling concentrations in the French Broad River into which the Swannanoa River flows; and

WHEREAS, oil refineries, plastic manufacturers, and incinerators are disproportionately located in low-wealth and low-income communities, which bear the brunt of the associated health impacts; and

WHEREAS, recycling alone is insufficient to meet these threats as plastic production accounts for 20% of global fossil fuel consumption, and the majority of plastics created cannot be recycled in standard curbside recycling programs; and

WHEREAS, plastic bags cause operational problems at recycling processing facilities, landfills, and transfer stations, and contribute to litter throughout the Western North Carolina region; and

WHEREAS, single-use plastic bags degrade the environment, pollute our rivers and streams, block storm drains, become entangled in treetops, and foul public areas; and

WHEREAS, styrene, the main ingredient in polystyrene, has been declared as a probable carcinogen by the NIH, National Research Council, the World Health Organization, and others; and

WHEREAS, curbing the supply of single-use plastic will expand the lifespan of local landfills; and

WHEREAS, it is the duty of the Black Mountain government to protect the natural environment, the economy, and the health of its residents and visitors; and

WHEREAS, Article XIV, Sec. 5 of the North Carolina Constitution guarantees the people of the State the right to enjoy a clean and healthy environment by stating “It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.”

NOW, THEREFORE, BE IT RESOLVED by the Black Mountain Town Council that the Town Council is dedicated to reducing its carbon footprint, extending the life of the County landfill, and improving the quality of its waters.

BE IT FURTHER RESOLVED, coinciding with Earth Day 2024, the Town Council urges all government entities, private businesses, and residents to forgo or limit their use of plastic bags, other single-use plastics, and Styrofoam wherever and whenever possible.

BE IT FURTHER RESOLVED, The Town Council hereby encourages all town departments to begin phasing-out the use of plastic bags, single use plastics, and Styrofoam by incrementally substituting such products with viable alternatives where possible, or recycling plastics when feasible alternatives are unavailable.

Approved and Adopted by the Town Council of the Town of Black Mountain by a vote of _5_ to _0_ on this 8th day of April 2024.

A motion was made by Council Member Alice Berry to approve the following resolution. A vote of 5-0 in favor.

RESOLUTION RECOGNIZING CLIMATE ACTION EFFORTS WITHIN THE TOWN OF BLACK MOUNTAIN

Resolution #R-24-17

WHEREAS, the Town of Black Mountain has a history of climate consciousness and dedication to efforts for sustainability; and

WHEREAS, the “Elevate Black Mountain” Comprehensive Plan, which was adopted by Town Council in June 2021, featured a section entitled “Green and Resilient” which provides sustainable development approaches that includes five (5) goals that will enhance quality of life, reduce long term energy costs, increase energy efficiency, and lower greenhouse gas emissions and pollution within the Town; and

WHEREAS, there has been ongoing sustainability practices and new initiatives put into place by Town departments following the adoption of the Comprehensive Plan which includes, but not limited to, the following: 1) Energy Conservation Measures, 2) Waste Reduction and Recycling

Initiatives, 3) Water Conservation Strategies, 4) Stormwater/Water Quality Management Practices, and 5) Use of Environmentally Friendly Products; and

WHEREAS, examples of energy conservation measures include solar panels installed on the Carver Center, motion-sensor activated lights in town offices, and LED converted light fixtures are present in town buildings and facilities; and

WHEREAS, examples of waste reduction and recycling initiatives includes providing recycling pickup services to Town residents that includes new recycling carts, recycling containers being placed in all town parks, facilities and offices, and hiring a full-time Waste Reduction Specialist to assist in waste reduction engagement and education; and

WHEREAS, an example of water conservation strategies includes planned irrigation around rainfall events at the Black Mountain Golf Course to reduce amount of water and power needed to irrigate, rainwater catch basins at the Community Garden; and

WHEREAS, examples of stormwater/water quality management practices includes hiring a full-time Stormwater Specialist, an updated Stormwater Master Plan, completion of the stormwater utility, installation of new and improving current stormwater infrastructure such as rain gardens and bioswales, integrations of stormwater/stormwater related development regulations into the Unified Development Ordinance (UDO), water quality projects on the Swannanoa River, creation of buffer/no-mow zones to slow stormwater runoff; and

WHEREAS, examples of usage of environmentally friendly products includes usage of battery powered weed eaters and battery powered blowers at the Black Mountain Golf Course, the use of biodegradable and eco-friendly cleaning chemicals at town facilities, and organic growing practices at the Community Garden; and

WHEREAS, The Town Council has expressed its support calling for a reduction of plastic use by its citizens and businesses to mitigate plastic-use.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Black Mountain that the ongoing climate action efforts as stated above are recognized and the Town is dedicated to continuing efforts for sustainability and will continue to work toward achieving the goals set forth in the “Elevate Black Mountain” Comprehensive Plan.

Approved and Adopted by the Town Council of the Town of Black Mountain by a vote of _5_ to _0_ on this 8th day of April 2024.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

- A. Police Department 2023 Annual Report.** Police Chief Steve Parker presented the Police Department’s 2023 Annual Report to the Council. During this presentation, Chief Parker reviewed the Police Department's annual crime stats, call volumes, various crime and ticketing numbers, and flock camera hits on wanted people and stolen cars. Chief Parker then reviewed employment numbers for the department, budget percentages, the NC Law

Enforcement Accreditation process, and finally, technology and spacing needs for the department.

- B. Sustainability Practices Presentation.** Planning Director Jessica Trotman gave a presentation to the Council on environmental sustainability practices that the Town of Black Mountain is currently working on or will soon be pursuing. Jessica's presentation focused on sustainability versus resiliency, and she mentioned five areas of focus with the environmental sustainability plan that included: 1) water resources, 2) transportation and mobility, 3) built environment and energy, 4) green space and land use, and 5) solid waste. Jessica highlighted current efforts within each area of focus.

5. CONSENT AGENDA

Town Manager Josh Harrold reviewed the consent agenda items with the Town Council.

- A. Adoption of Meeting Minutes:** March 7, 2024 Agenda Workshop Meeting, March 11, 2024 Regular Meeting, and March 21, 2024 Special Called Meeting.

Council Member Doug Hay made a motion to approve all minutes as presented. A vote of 5-0 in favor.

B. Monthly Property Tax Collector Report.

Council Member Doug Hay made a motion to approve the report. A vote of 5-0 in favor.

C. Consideration of Budget Amendments.

- 1) *Correction of Recycling Carts Budget Amendment (BA131)*
- 2) *Reallocation of Administration, HR and Finance Budget Adjustment*
- 3) *Reallocation of Parks & Recreation and Pool Budget Adjustment*
- 4) *Police Department Sponsorship and Golf Tournament*
- 5) *Valetine 5K Donation Expense*

Adjustment Number	Description	Summary	Account Number	Sum of Amount
BA0000139	Appropriated Fund Balance for Recycle carts	To correct Original BA 131 budget amendment should have hit Appropriated fund balance instead of Transfer in.	100-0000-48900	\$126,680.00
BA0000142	BADJ- Admin, HR, Finance - Expense Line Allocation	Reallocation of budgeted Expenses between Administration, HR, and Finance	100-7000-48590	\$126,680.00
			100-4010-51511	\$2,000.00
			100-4020-51510	\$2,000.00
			100-4020-52024	\$2,000.00
			100-4020-52217	\$3,000.00
			100-4020-53000	\$2,000.00
			100-4025-50105	\$5.00
			100-4025-50232	\$1,400.00
			100-4025-52025	\$2,000.00
			100-4025-52419	\$1,005.00
			100-4025-55015	\$1,400.00
			100-4030-50105	\$25.00
			100-4030-51510	\$475.00
			100-4030-52112	\$1,000.00
			100-4030-52410	\$1,500.00
BA0000151	BADJ - Parks and Rec Expense Line Adj	Reallocation of budgeted Expenses between Parks and Rec and Pool	100-4700-50100	\$10,000.00
			100-4700-50101	\$16,100.00
			100-4700-52100	\$221.00
			100-4700-52112	\$1,300.00
			100-4700-52214	\$100.00
			100-4700-52310	\$2,200.00
			100-4700-53000	\$13,095.00
			100-4710-52020	\$115.00
			100-4710-52213	\$925.00
			100-4710-52214	\$5,500.00
			100-4710-57510	\$1,134.00
BA0000175	BAMD PD Community Outreach - Family Sponsorship	Appropriate Fund Balance for Sponsorship of Playset for Community Child with Cancer. Additional funds also needed for the golf tournament.	235-0000-48900	\$10,000.00
			235-4510-52100	\$150.00
BA0000177	BAMEND-Parks and Rec Valentine 5K Donation	Recognize Valentine 5k Revenue and Donation Expense	235-4510-55023	\$9,850.00
			100-4700-45690	\$2,505.00
			100-4700-56110	\$2,505.00

Council Member Doug Hay made a motion to approve the budget amendments as presented. A vote of 5-0 in favor.

D. Call for Public Hearing for Text Amendment to Chapter 20, Article V, Nuisances.

The purpose of this item is to call for a public hearing for proposed text amendments to Chapter 20, Article V, Nuisances, within the Code of Ordinances to be held on Monday, May 13, 2024, at 6:00 p.m., or as soon thereafter as possible, in the Council Chambers of Town Hall, 160 Midland Avenue.

Council Member Doug Hay made a motion to approve the call for the public hearing as presented. A vote of 5-0 in favor.

E. Call for Public Hearing for Text Amendment to Chapter 43, Article VI to add a Downtown Social District.

The purpose of this item is to call for a public hearing for proposed text amendments to Chapter 43, Article VI, within the Code of Ordinances to add a Downtown Social District to be held on Monday, May 13, 2024, at 6:00 p.m., or as soon thereafter as possible, in the Council Chambers of Town Hall, 160 Midland Avenue.

Council Member Doug Hay made a motion to approve the call for the public hearing as presented. A vote of 5-0 in favor.

F. Resolution to Apply through the Great Trails State Program Grant for Professional Engineering Funding for the Ridgecrest Connector Trail.

The purpose of this agenda item is to approve a resolution to apply through the Great Trails State Program Grant for professional engineering funding for the Ridgecrest Connector Trail.

Council Member Doug Hay made a motion to approve this resolution as presented. A vote of 5-0 in favor.

RESOLUTION TO PURSUE A GRANT THROUGH NC DIVISION OF PARKS AND RECREATION GREAT TRAILS STATE PROGRAM (GTSP) FOR PE FUNDING FOR THE RIDGECREST CONNECTOR TRAIL

Resolution # R-24-18

WHEREAS, the Great Trails State Program (GTSP) provides funding for new trail development and extensions of existing trails; and

WHEREAS, the grant will be distributing \$25 million dollars in non-recurring funding; and

WHEREAS, the grant allows for any municipality, county, regional council of government, public authority, or non-profit in North Carolina to apply for funding; and

WHEREAS, eligible projects include paved trails or greenways, natural surface trails, bike trails, equestrian trails, and any other type of trail recognized by the Department of Natural and Cultural Resources; and

WHEREAS, the grant requires a fifty (50) percent match.

NOW THEREFORE, BE IT RESOLVED that the Black Mountain Town Council bless Town staff to apply for funding through the NC Division of Parks and Recreation Great Trails State Program (GTSP) for Professional Engineering (PE) funding for the Ridgecrest Connector Trail.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 on this 8th day of April 2024.

G. Consideration of Resolution to Apply for the Water Infrastructure Grant through the NC Department of Environmental Quality (DEQ) Water Infrastructure Grant for Lead Line Inventory and Replacement.

The purpose of this agenda item is to approve a resolution to apply through the NC Department of Environmental Quality (DEQ) Water Infrastructure Grant for Lead Line Inventory and Replacement Program.

Council Member Doug Hay made a motion to approve this resolution as presented. A vote of 5-0 in favor.

**RESOLUTION TO PURSUE A WATER INFRASTRUCTURE GRANT THROUGH THE
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR LEAD
SERVICE LINE IDENTIFICATION AND REPLACEMENT**

Resolution #R-24-19

WHEREAS, the Town of Black Mountain has need for and intends to construct, plan for, or conduct a study in a project described as lead service line inventory and replacement; and

WHEREAS, the Town of Black Mountain intends to request State loan and/or grant assistance for the project.

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

That the Town of Black Mountain, the Applicant, will arrange financing for all remaining costs of the project, if approved for a state loan and/or grant award.

That the Applicant will provide for efficient operation and maintenance of the project on completion of construction thereof.

That the Applicant will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the Applicant agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the Town of Black Mountain to make a scheduled repayment of the loan, to withhold from the Town of Black Mountain any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

If applying for a regional project, that the Applicant will partner and work with other units of local government or utilities in conducting the project including Buncombe County and the Town of Montreat.

That Josh Harrold, Town Manager, and Jessica Trotman, Assistant Town Manager, the Authorized Representative and successor so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a loan and/or grant to aid in the study of or construction of the project described above.

That the Authorized Representative, and successors so titled, is thereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such

application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, ordinances, and funding conditions applicable to the project and to Federal and State grants and loans pertaining thereto.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 on this 8th day of April 2024.

H. Call for Public Hearing for Conditional Zoning for Montreat College- #O-23-22.

The purpose of this agenda item is to call for the public hearing to amend text for the conditional zoning request for Montreat College to be held on Monday, May 13, 2024, at 6:00 p.m., or as soon thereafter as possible, in the Council Chambers of Town Hall, 160 Midland Avenue.

Council Member Doug Hay made a motion to approve the call for public hearing as presented. A vote of 5-0 in favor.

I. Call for Public Hearing for Map Amendment for Montreat College.

The purpose of this agenda item is to call for a public hearing to amend the zoning map for Montreat College to be held on Monday, May 13, 2024 at 6:00 p.m., or as soon thereafter as possible, in the Council Chambers of Town Hall, 160 Midland Ave.

Council Member Doug Hay made a motion to approve the call for public hearing as presented. A vote of 5-0 in favor.

6) PUBLIC HEARING

A. Voluntary Annexation of Property Owned by Givens Highland Farms.

Planning Director Jessica Trotman stated this property is a 5.36-acre parcel off Frances Avenue (identified as Buncombe County PIN #0609-56-5118.00000 and referred to as 99999 Frances Avenue) that has been purchased by Givens Highland Farms. Givens Highland Farms is seeking voluntary annexation of this parcel to be able to combine the parcel with their existing 75+ acre campus, all of which is inside Town limits. The Planning Board heard this request at their February 26, 2024, meeting and found no reasons the property should not be annexed into the Town limits. The purpose of this agenda item is to hold a public hearing on the voluntary annexation request before Council action is taken. *Alice Berry made a motion to open the public hearing. A vote of 5-0 in favor. The time was 7:00 p.m. With no public comment, Vice Mayor Archie Pertiller made a motion to close the public hearing. A vote of 5-0 in favor. The time was 7:01 p.m.*

Some discussion ensued among Council members and staff. It was stated that this property would not be on Town water as they are on City of Asheville water. Further, with the annexation it was stated that the property would be eligible for Town services including police and fire protection.

With no further discussion Vice Mayor Archie Pertiller made a motion to approve the following ordinance of annexation. A vote of 5-0 in favor.

AN ORDINANCE ANNEXING THAT PROPERTY OF GIVENS HIGHLAND FARMS, LLC, ON THAT PLAT RECORDED IN PLAT BOOK 0236 AT PAGE 0100 INTO THE TOWN OF BLACK MOUNTAIN

ORDINANCE #O-24-01

WHEREAS, Givens Highland Farms, LLC has requested that the Town of Black Mountain annex that property owned by Givens Highland Farms, LLC and described as that 5.36-acre tract of land shown on that plat recorded in Plat Book 0236 at Page 0100, Buncombe County Registry; and

WHEREAS, Givens Highland Farms, LLC owns all of the property proposed to be annexed and submitted an application in their name and signed by them, so that such application and petition is signed by or on behalf of all the property owners as required by N.C.G.S. 160A-31 et seq.; and

WHEREAS, The Town Clerk has investigated the annexation petition and has certified that he found as a fact that the petition was signed by all owners of the property lying within the area to be annexed; and

WHEREAS, Givens Highland Farms has asserted that there are no vested rights that they wish to retain after annexation; and

WHEREAS, a public hearing was held by the Town Council of the Town of Black Mountain after proper notice was given to the public and the parties; and

WHEREAS, the Town of Black Mountain will benefit from annexation of the proposed area to be annexed in that its annexation will allow the Town to regulate development and ensure a use of such property that is beneficial to the area where it is located and not detrimental to the properties surrounding it.

NOW, THEREFORE, BE IT ORDAINED by the Town Council for the Town of Black Mountain, North Carolina, that the property described in *Exhibit A* as being all of that 5.36 acre parcel of land shown on that plat record in Plat Book 0236 at Page 100, Buncombe County Registry, is hereby annexed and made a part of the corporate limits of the Town of Black Mountain, North Carolina.

This ordinance shall become effective on the 8th day of April 2024, if confirmed by the Town Council at its regular meeting on the 8th day of April 2024. In the absence of a majority vote of the Council to confirm this ordinance at that meeting, it shall become void and have no force or effect.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 on this the 8th day of April, 2024.

EXHIBIT A
LEGAL DESCRIPTION OF AREA TO BE ANNEXED

Beginning at a #5 re bar in the NE corner of the Givens Highland Farms LLC property as shown in Plat Book 165 Page 9; thence South so• 25' 49" West 380.78 feet to a 24" Double Black Gum Tree; thence North 85° 26' 07" West 390.61 feet to a capped iron pipe; thence North 08° 40' 58" East 329.10 feet to an axle; thence South 89° 04' 38" East 426.26 feet to a ¾ inch iron pipe; thence South 89° 12' 25" East 224.98 feet to a capped iron pipe; thence South 12° 44' 20" East 290 feet to a #5 re bar at the point of beginning, being all of that real property shown as Tract 1 in Plat Book 236 Page 100 and containing 5.361 acres more or less.

B. Consideration of Rezoning Property Owned by Givens Highland Farms, known as 99999 Frances Avenue, PIN #0609-56-5118.00000, from R-1 to OI-6.

Planning Director Jessica Trotman stated this parcel is currently zoned R-1 by Buncombe County. Upon voluntary annexation approval of this property, the property owner would like to have the property rezoned to OI-6 (Office and Institutional District), which is the zoning designation for the existing 75+ acre campus. The Planning Board heard the request at their February 26, 2024 meeting and recommends the property be rezoned to OI-6 upon annexation into the Town limits. The motion passed with a vote of 6-0 by the Planning Board.

Vice Mayor Archie Pertiller made a motion to open the public hearing. A vote of 5-0 in favor. The time was 7:06 p.m. With no public comments, Council Member Ryan Stone made a motion to close the public hearing. A vote of 5-0 in favor. The time was 7:07 p.m.

Town Attorney Craig Justus stated if the Council approves this rezoning, they should also approve a statement of consistency and reasonableness to reflect consistency with the Town's Land Use Plan and per 160D Legislation.

A motion was made by Vice Mayor Archie Pertiller to approve the following ordinance amending the Town of Black Mountain Zoning Map, and to adopt a statement of consistency and reasonableness as it relates to the Town's Comprehensive Plan for reasons indicated within the ordinance text below. A vote of 5-0 in favor.

**AN ORDINANCE AMENDING THE ZONING MAP FOR A PORTION OF PROPERTY
LOCATED AT 99999 FRANCES AVENUE**

Zoning Ordinance No. #Z-O-24-02

WHEREAS, the Town of Black Mountain has the authority pursuant to Article 6 of Chapter 160D of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety, and welfare; and

WHEREAS, a comprehensive amendment to the Town's zoning regulations was adopted on January 11, 2010, (Ordinance No. #O-10-01) and is codified in Appendix A of the Town of Black Mountain Code of Ordinances (herein "Zoning Ordinance"), and maps dividing and classifying the property within the Town's zoning jurisdiction were adopted on January 11, 2010, Ordinance No. #O-10-01) and are on file and maintained in the Offices of the Town of Black Mountain Planning and Development Department (herein "Official Zoning Map"); and

WHEREAS, this proposed amendment is consistent with the Town of Black Mountain Comprehensive Plan and other official plans of the Town and is determined to be reasonable and in the public interest for the following reasons:

- a. The overall size of the tract of land proposed for the rezoning is reasonable compared to the size of the zoning district in which the subject property is located.
- b. The proposed rezoning is consistent with the comprehensive plan or elements thereof.
- c. The impact to the adjacent property owners and surrounding community is reasonable and the benefits of the zoning shall outweigh any potential inconveniences or harm to the community.
- d. The allowed uses within the proposed zoning district are similar or comparable to the permitted uses as currently zoned.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN
TOWN COUNCIL THAT:**

The Official Zoning Map be, and the same is hereby, amended as follows:

The zoning classification of that certain portion of real property described in ***Exhibit A*** and identified on the Buncombe County tax maps as PIN 0609-56-5118, recorded in Deed Book 6347, Page 207 and currently owned by Givens Highland Farms LLC, from R-1 to Office and Institutional (OI-6). A copy of the official zoning map showing said lot is attached hereto as ***Exhibit "A"*** and made a part thereof.

This ordinance shall be in full force and effective on the date of adoption.

READ, APPROVED AND ADOPTED, this the 8th day of April 2024.

EXHIBIT A

Legal description of property to be conveyed by Michael Bartlett, an unmarried man to
Givens Highland Farms, Inc., a North Carolina Corporation.

Being all of Lot 1, consisting of 5.361 acres, more or less, as described on a survey drawn by John M. Stollery dated July 28, 2023, entitled "Subdivision for: Michael A. Bartlett and Kristina H. Bartlett" recorded in Plat Book 236, Page 100 of the Buncombe County Registry, reference to which is hereby made for a more particular description.

TOGETHER WITH a non-exclusive easement for ingress, egress and regress over Frances Avenue as it crosses over the retained property of Grantor described in Deed Book 2354 at Page 139, Buncombe County Registry, said easement being twenty (20) feet in width, as laid down and shown on the aforesaid plat.

Grantor RESERVES an easement for the benefit of Lot 2 described in Plat Book 236, Page 100 of the Buncombe County Registry ("Lot 2") for access to and maintenance, repair, and replacement of that well, piping, pump, and other associated improvements located upon the property hereinabove described, said easement being six (6) feet in width and centered along the existing pipe, and in an area having a radius often (10) feet having as its center point the center of the existing well, together with the right to take water from the well. Grantor shall be solely responsible for maintenance of said well and piping system, unless and until such time as Grantee shall connect a residence or business to the said well, in which event the cost of ongoing maintenance and operation of the well shall be shared equally by those owners making use of the said well. This easement shall automatically terminate in the event Grantor is either (1) given use for a public water line, along with any necessary conveyance of any appropriate easements, for the service of water to Lot 2 or (2) Seller installs a new well on Lot 2 with servicing piping, pump and other necessary improvements to serve said lot that replaces the well that is the subject of the easement.

PIN: 0609-56-6108-00000

Address: 55 Frances Avenue, Black Mountain, NC 28711

The property hereinabove described was acquired by Grantor by instrument recorded in Book 2354, at Page 139, Buncombe County Registry.

7) CITIZEN COMMENTS- *none.*

8) UNFINISHED BUSINESS

A. Carver Center Flooring Replacement.

Recreation and Parks Director Josh Henderson gave an overview of this item stating in April of 2023, the Carver Center had a leak in the roof which resulted in a classroom being flooded. As a result, the laminate flooring in the affected classroom needs to be replaced. Estimates have been obtained from local flooring contractors including Black Mountain Handyman, Rodriguez Flooring, Carpet City and Arbor Zen Hardwood Floors. Discussion ensued on quotes received and using a flooring company to complete the work. ***Council Member Doug Hay made a motion to direct staff to move forward with the Arbor Zen estimate. A vote of 5-0 in favor.***

B. Public Safety Interoperability Program (PSIP) Agreements.

Town Attorney Craig Justus explained this item to Council stating he had worked with the County Attorney on amending these agreements, which was first discussed, and tabled, at the January 8, 2024 Town Council meeting. The PSIP agreement with Buncombe County is being updated to reflect new software required as the current software is at its end of life. Attorney Justus stated there were three separate agreements for Council to consider which includes: 1) Intergovernmental Agreement between Buncombe County and the Town of Black Mountain for the Public Safety Interoperability Program (PSIP); 2) Service Level Agreement (SLA) between Buncombe County and the Town of Black Mountain for providing technology services related to PSIP applications; and 3) Service and Cost Share Agreement between Buncombe County and the Town of Black Mountain related to PSIP applications.

Council Member Pam King made a motion to approve the Intergovernmental Agreement between Buncombe County and the Town of Black Mountain for the PSIP as presented. A vote of 5-0 in favor.

Council Member Ryan Stone made a motion to approve the Service Level Agreement (SLA) between Buncombe County and the Town of Black Mountain as presented. A vote of 5-0 in favor.

Vice Mayor Archie Pertiller made a motion to approve the Service and Cost Share Agreement between Buncombe County and the Town of Black Mountain as presented. A vote of 5-0 in favor.

9) NEW BUSINESS

A. Consideration of Charles D. Owen Babe Ruth MOU.

Recreation and Parks Director Josh Henderson stated Charles D. Owen Babe Ruth has requested revisions to their current MOU with the Town to add temporary batting cages and a storage building at Veteran's Park.

Vice Mayor Archie Pertiller made a motion to approve the revision to the MOU as presented. A vote of 5-0 in favor.

B. Consideration of 2024 Black Mountain Golf Course Rates effective May 1, 2024.

Golf Course Manager Brent Miller gave an overview of the proposed increase to the golf course rates by citing comparisons to neighboring courses of similar size and the need to remain competitive and keeping up with rising maintenance costs for the golf course.

A motion was made by Council Member Pam King to approve the following resolution. A vote of 5-0 in favor.

**RESOLUTION TO APPROVE BLACK MOUNTAIN GOLF COURSE RATES
EFFECTIVE MAY 1, 2024**

Resolution #R-24-20

WHEREAS, there is a need to amend the Black Mountain Golf Course before incorporating them into a new budget cycle for approval; and

WHEREAS, town staff has researched and compared rates of competitor golf courses in the area, in order to propose the amended rates for Black Mountain Golf Course to remain competitive with neighboring courses of similar size and to keep up with the costs of maintaining the golf course.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Black Mountain that the following rates are for the Black Mountain Golf Course are approved and will become effective May 1, 2024 and valid through April 30, 2025:

2024 Annual Pass Rates

Family	\$2300 (\$2200)
Individual	\$1550 (\$1500)

2024 Cart Fees

Ride 18	\$22.43 (\$24 with tax)
Ride 9	\$12.15 (\$13 with tax)

*Riding (Cart Fee) is required on weekends (Friday-Sunday) before 12pm by all non pass holder players 5/1 through 9/30. Walking will be allowed anytime 10/1 to 4/31. Pass holder players can walk anytime.

2024 Greens Fees

<u>Weekday (Monday – Thurs)</u>		<u>Weekend (Friday, Saturday and Sunday)</u>	
Ride 18	\$52 (\$50)	Ride 18	\$62 (\$60)

Ride 9	\$30 (After 11am)	Ride 9	\$35 (After 11am)
Walk 18	\$28	Walk 18	\$38
Walk 9	\$17	Walk 9	\$22

Senior Riding 18 Only (Mon-Thursday Only; 60 and older) \$45 (\$42)

<u>Weekday Twilight After 1pm</u>		<u>Weekend Twilight After 1pm</u>	
Ride 18	\$38 (\$35)	Ride 18	\$45 (\$42)
Ride 9	\$23	Ride 9	\$25
Walk 18	\$25	Walk 18	\$30
Walk 9	\$13	Walk 9	\$15

BE IT FURTHER RESOLVED that the following “Player’s Pass Program” is approved:

Player’s Pass Program

The Player’s Pass will be \$200 for the year and good until December 31st, 2024. A round is included the day of the purchase and then allows the golfer \$10 off the rack rate (highest rate of the day) every time they play until December 31st, 2023. If the rack rate is \$52 during the week, the Player’s Pass holder will play for \$42. Weekends would be \$62 so the pass holder will play for \$52. The discount is not eligible for any other rate (senior, 9-hole, twilight, walking) we offer other than the rack rate.

APPROVED AND ADOPTED by the Town Council of the Town of Black Mountain by a vote of 5 to 0 on this 8th day of April 2024.

C. Consideration of Adoption of Electronic Records and Imaging Policy.

Town Clerk Wesley Barker explained to the Council that the purpose of this Electronic Records and Imaging Policy is to follow guidelines established by the NC Department of Natural and Cultural Resources (NC DNCR) which requires a local government entity to have an approved policy in place if they wish to store electronic records in lieu of retaining duplicate paper copies. Further, having this policy in place increases the reliability and accuracy of records stored in information technology systems and ensures they will be accessible over time. This policy will follow the NC DNCR Municipal Records Retention and Disposition Schedule that was adopted by the Town Council in 2021. By adopting and following this policy, as well as the Record Retention Disposition Schedule, the Town will continue to stay in compliance with NC Public Record Law.

A motion was made by Council Member Doug Hay to approve the following resolution. A vote of 5-0 in favor.

RESOLUTION TO ADOPT THE ELECTRONIC RECORDS AND IMAGING POLICY & PROCEDURES

Resolution #R-24-21

WHEREAS, the North Carolina Department of Natural and Cultural Resources (N.C. DNCR) is the state agency which provides direction to record retentions of local/state government agencies; and

WHEREAS, the purpose of the Electronic Records and Imaging Policy and Procedures, hereafter referred to as “Policy,” are guidelines established by the N.C. DNCR to be used when an agency wishes to store electronic records that are public records as defined by N.C. G.S. § 132-1; and

WHEREAS, this policy serves as basic documentation of the procedures followed by the department in imaging, indexing, auditing, backing up, and purging electronic records in accordance with the records and retention disposition schedule, and in handling the original paper records, if applicable; and

WHEREAS, this policy also serves to protect those records digitized by the agency’s in-house scanning and server stored imaging system, which reduces required storage space for original documents as the agency transitions to a “more paperless” digital system and provides instant and simultaneous access to documents as needed; and

WHEREAS, this policy has been reviewed by officials at N.C. DNCR and reviewed by the Town’s current IT contractor, Advanced Data and Network Solutions, who have found the policy satisfactory for adoption.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Black Mountain that the “Electronic Records and Imaging Policy & Procedures” document be adopted in its entirety and that a copy of the document shall be included with this resolution as “Attachment A.”

APPROVED AND ADOPTED by the Town Council of the Town of Black Mountain by a vote of 5 to 0 on this 8th day of April 2024.

10) COMMUNICATION- *none.*

11) COMMUNICATION FROM MAYOR AND TOWN COUNCIL- *none.*

12) CLOSED SESSION.

- A. § 143-318.11 (a)(3)-** To consult with an attorney employed or retained by the public body in order to preserve the attorney client privilege between the attorney and the public body, which privilege is hereby acknowledged.
- B. § 143-318.11 (a)(5)-** To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

Vice Mayor Archie Pertiller made a motion to go into closed session as allowed by G.S. § 143-318 (a)(3) and G.S. § 143-318 (a)(5) . A vote of 5-0 in favor. The time was 7:56 p.m.

The Town Council returned from Closed Session and went back into Open Session at 8:22 p.m.

13) ADJOURNMENT- *With no further business to be discussed, Mayor C. Michael Sobol adjourned the meeting at 8:22 p.m.*

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

April 11, 2024 | Special Called Meeting | Time: 8:30 A.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held a meeting on Thursday, April 11, 2024, at 8:30 a.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. The purpose of this meeting was to hold a FY 2024-25 Budget Work Session.

Mayor C. Michael Sobol called the meeting to order at 8:32 a.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Wesley Barker, Town Clerk; Tammy Holland, Finance Director; Josh Henderson, Recreation & Parks Director; John Coffey, Fire Chief; Jamey Matthews, Public Works Director; Steve Parker, Police Chief. Several other staff members were also present.

1. Consideration of Budget Amendments- Recycle Carts Grant

Finance Director Tammy Holland presented this item to the Council. The purpose of this budget amendment was to appropriate additional funding (\$48,880) required for expenditures with the recycling carts grant program. This includes costs for shipping, delivery, assembly, and purchase of 200 remaining carts. Discussion ensued among Council members.

Adjustment Number	Summary	Description	Account Number	Account Name	Account Type	Total Amount
BA0000189	Appropriated Fund Balance for remainder of Recycle Containers and Receiving, Assembly, and Delivery of Residential Recycle Containers	BADJ - Residential Recycle Carts	100-0000-48900	Appropriated Fund Balance	Revenue	-\$48,800.00
			100-7000-59510	Transfer Out	Expense	\$48,800.00
			260-8804-52020	Contract Services	Expense	\$31,650.00
			260-8804-52420	Speciality Operating Supplies	Expense	\$13,250.00
			260-8804-55023	Community Outreach/Public Relations Expense	Expense	\$3,900.00
		BADJ- Waste Reduction Recycle Cart Grant Match	260-8804-48590	Transfers In	Revenue	-\$48,800.00

Vice Mayor Archie Pertiller made a motion to approve the budget amendments as presented. A vote of 5-0 in favor.

2. Consideration of Voting Delegate to Cast Vote for NC League of Municipalities (NCLM) Board of Directors

The purpose of this item is for Town Council to delegate a voting delegate on behalf of the Town Council for the 2024-25 NCLM Board of Directors ballot. Town Clerk Wesley Barker explained that because the Town is a NCLM member, the Town can have one vote for the nominated board of directors slate. Typically, the Town Clerk is the designated voting delegate and coordinates with the Council to obtain the consensus before casting the Town's ballot. The voting submittal deadline is April 19, 2024. ***Council Member Ryan Stone made a motion to designate the Town***

Clerk to be the voting delegate on behalf of the Town Council for the 2024-25 NCLM Board of Directors and to coordinate with the Council on the vote to be cast. A vote of 5-0 in favor.

3. FY 2024-25 Budget Work Session.

This budget work session is a continuation of presentations from town departments with their budget requests. This includes a proposed 5% cost of living increase for town employee salaries across all departments. The budget requests of the following departments were reviewed during this work session:

• Planning & Development Services	• Stormwater
• Golf Operations	• Golf Pro Shop
• Water Finance	• Water Operations

Noteworthy items discussed during these presentations are included below:

Planning & Development Services

- The proposed hiring of a new Planning Director after this position is split out from the Assistant Town Manager position will have a lower salary line item.
- A significant decrease in the professional and technical services line item is because in this budget year, a one-time master plan for feasibility of donated properties was budgeted.

Water Operations

- The Town currently purchases thirty percent (30%) of its water from the City of Asheville, and it was stated that the City of Asheville will be increasing the wholesale purchase of water thirty percent (30%) for the next three years, including this year. Discussion ensued about Town water needs and drilling new wells compared to purchasing water from the City of Asheville.

Water Finance

- A proposed increase in salaries as there is a proposed new accounting manager position.
- A proposed decrease in printing and binding services.
- A proposed decrease in technology and software licenses as last budget year encompassed the new financial software launch.

Stormwater

- A portion of the proposed salary for the Assistant Town Manager is added into the salaries line item in this department because they will be supervising the stormwater employee.
- Community outreach expenses include hosting special workshops and distribution of communication materials which are required as part of the Town's stormwater permit.

Golf Operations

- Proposed funds are included in the capital outlay line item for a bridge replacement on the golf course.

Mayor Sobol discussed proposals for needed renovations at the Cherry Street public restrooms

facility, stating proposals were approximately \$24,000 which would include new lights, floors, and decorative murals. Town Manager Josh Harrold stated there were no funds currently budgeted for these renovations, but the figures could be added into the FY 24-25 budget, or the Council could go ahead and approve a budget amendment in this year's budget to proceed with the restroom renovations. Some discussion ensued.

Town Manager Josh Harrold stated the next budget meeting would focus on revenues for departments and capital project discussions could begin. The next FY 2024-25 budget workshop will be held on Thursday, April 18, 2024 at 8:30 a.m. at Town Hall.

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 9:39 a.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

April 18, 2024 | Special Called Meeting | Time: 8:30 A.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held a meeting on Thursday, April 18, 2024, at 8:30 a.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. The purpose of this meeting was to hold a FY 2024-25 Budget Work Session.

Mayor C. Michael Sobol called the meeting to order at 8:30 a.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Planning Director/Assistant Town Manager; Wesley Barker, Town Clerk; Tammy Holland, Finance Director; John Coffey, Fire Chief; Steve Parker, Police Chief; Jamey Matthews, Public Works Director; Josh Henderson, Recreation & Parks Director. Several other staff members were also present.

FY 2024-25 Budget Work Session

This budget work session focused on proposed revenues funds across all Town departments. Town Manager Josh Harrold presented each revenue fund to the Council. Noteworthy items discussed during these presentations are included below per fund:

General Fund

- Town Manager Josh Harrold stated the current tax rate is proposed to remain at \$0.321 cents, with no tax rate increase proposed at this time for FY 2024-25.
- Some discussion took place on motor vehicle fees and expenses with transit.
- Local sales and use taxes are estimated to increase around three percent (3%) per State estimates.
- Interest income on accounts will be an increase of approximately \$43,000 due to the current higher interest rates.
- It was noted that the appropriated fund balance will be added in.
- Debt proceeds will be used to offset the cost of new police vehicles.
- Within the solid waste reduction fees, a proposed increase to garbage fees is requested from the current \$2.00 per month, to \$10.00 per month. The reason behind this requested increase is to accommodate staffing needs in Public Works for the Sanitation Supervisor position and the need to purchase a new sanitation truck in FY 26.
- Facility rentals, summer camps and youth sports revenue were reviewed.
- Projected revenues within the General Fund are an estimated total of \$10,521,860. This is with no Fund Balance used to balance the budget that is sometimes done.

Planning and Development

- A new line item would be created entitled "Permits and Fees" which would combine the

Inspection Fees and Building Permit Fees.

Technology Fund

- This fund is restricted to the Planning & Development Department as a portion of these fees is to offset credit card fees and technology/software expenses.

Powell Bill

- Powell Bill funds are received from the State and must be used for maintenance of Town streets and sidewalks. Projected revenue from Powell Bill for FY 24-25 is approximately \$280,000, with an estimated interest income of \$3,500. There will be more Powell Bill funds coming to the Town this year from the State due to reorganization of Powell Bill distributions.
- Further, these Powell Bill funds received must be spent each Fiscal Year, or the State will take the allotted monies back, and may not allocate as much to the Town in future years if not spent.

Fire Department

- Ad Valorem Taxes for the East Buncombe Fire District was discussed with projected revenues of \$1,120,000. These revenues are distributed to the Town by Buncombe County and a small portion of McDowell County as the Town's Fire Department overlaps into these fire districts.
- Fire district state insurance distribution was discussed.
- The Transfers In line item of \$400,000 would cover 95% of the mini pumper truck, which would come from capital reserve funds.

Some discussion then ensued about non-profit organizations within the city limits, who are not subject to paying taxes, to see if they would be voluntarily interested in providing a donation to the Town which would help with revenues to cover costs of providing public safety services to these facilities. Staff will check with the Town Attorney on this.

Golf

- There is no proposed transfer of funds from fund balance planned for this Fiscal Year to balance the budget, because it has become a self-sustaining budget.
- There would be an increase in revenue from golf course green fees, membership fees, and golf cart fees due to recently approved golf course fee increases.
- An increase in Pro Shop sales revenue as an increase in merchandise opportunities is proposed.

Mayor C. Michael Sobol left the meeting at 9:36 a.m. Vice Mayor Archie Pertiller assumed the Mayoral role for the remainder of the meeting.

Water

- Town Manager Harrold stated there is a proposed increase in water sales revenue because Town water rates would need to be increased to accommodate the cost of City of Asheville water rates increasing an approximate thirty-one (31%) percent for wholesale. The Town currently purchases about thirty (30%) percent of its water from the City of Asheville, so this

wholesale cost increase impacts the Town's budget. The increase in town water customer rates would need to be approximately six (6%) percent to keep this budget balanced. The Manager's budget message will explain any increases to water billing rates.

Stormwater

- Stormwater fee revenue would be close to FY 2023-24 figures at an estimated \$355,000.
- Currently, there is a \$6.00 fee for stormwater per water customer.
- No proposed fund balance transfers in, as this would be a balanced budget.

Penalty Fines and Forfeitures

- This item is enforceable by law and is required to be remitted to the local school district. Further, this is a required budgetary item for Late List penalties that the town collects for taxes and must be in a separate fund.

Police Department Forfeiture and Community Outreach

- This includes items such as drug seizures and the contributions/donations for the Christmas gift drive for local children and other outreach the department hosts.

Town Manager Josh Harrold stated for the next budget work session, he would put together a list of all capital requests and requested positions which would show amounts of each, and the Council could begin making cuts as needed to bring the expense budget amounts down or looking at other options to acquire the revenue. As it stands currently, there is an estimated \$2.5 million overage with requested budgets.

The Council was presented with garbage and waste cost comparisons of neighboring municipalities compared with their annual revenue fees and staff numbers. The Council asked to check to see which of the neighboring municipalities also have recycling services.

By law, the Manager's recommended budget must be presented to the Town Council by June 1st of each year and must be approved by June 30th of each year.

Finally, Town Manager Harrold discussed new water regulations with PFAS (Per- and Polyfluorinated Substances) that would be forthcoming and would be required for all United States water systems. This would have an impact on the Town's water system for compliance and would have an expense tied to it, but more information has not yet been released.

The next FY 2024-25 budget workshop will be held on Thursday, April 25, 2024 at 8:30 a.m. at Town Hall.

There being no further business, Vice Mayor Archie Pertiller adjourned the meeting at 10:02 a.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

April 25, 2024 | Special Called Meeting | Time: 8:30 A.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held a meeting on Thursday, April 25, 2024, at 8:30 a.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. The purpose of this meeting was to hold a FY 2024-25 Budget Work Session.

Mayor C. Michael Sobol called the meeting to order at 8:30 a.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Planning Director/Assistant Town Manager; Wesley Barker, Town Clerk; John Coffey, Fire Chief; Chris Kuhn, Assistant Police Chief; Josh Henderson, Recreation & Parks Director. Several other staff members were also present.

FY 2024-25 Budget Work Session

Town Manager Josh Harrold presented the Town Council with information on the unassigned fund balance the Town has had between the years 2018-2023, with the current year's fund balance as 59%.

Year	Amount	Percentage
2018	\$2,812,979.00	30.5%
2019	\$2,778,006.00	32.1%
2020	\$3,379,370.00	38.7%
2021	\$3,550,454.00	37.0%
2022	\$4,014,358.00	56.0%
2023	\$5,029,538.00	59.0%

Town Manager Harrold stated the NC Local Government Commission recommends that local governments maintain an unassigned fund balance in the General Fund equal to at least eight (8%) percent of the adopted General Fund budget.

Next, the Town Council was presented with Town Debt Balances between 2018 and 2023. Current Town debt includes water lines, Town Square, Black Mountain Ave., Golf Carts, and Sanitation Trucks.

Year	Amount	Percentage Increased/Decreased Over Prior Years
2018	\$4,022,276.00	32.55%
2019	\$4,099,047.00	1.91%

2020	\$3,632,064.00	-11.39%
2021	\$3,304,764.69	-9.01%
2022	\$3,029,836.83	-8.34%
2023	\$3,093,898.50	2.11%

Town Manager Harrold stated there has been a 23.07% decrease in debt since 2018.

The Town Council was presented with a comparison chart of local municipalities sanitation budgets to show population, sanitation budget total, number of employees, monthly fees charged to residents, annual revenue (fees), household area median income (AMI) and Town tax rates. It was noted that all municipalities, except for Marion, provide recycling services.

Local Comparisons Sanitation							
Location	Pop	Budget	employees	Fee/Mnth	Annual Revenue (fees)	Household AMI	Tax Rate
Weaverville	4,678	\$1,056,340	5	\$3.63	no data	\$76,310	0.3500
Brevard	7,818	\$1,112,900	11	\$20.00	\$1,085,000	\$42,843	0.4500
Waynesville	10,620	no data	no data	\$9.00	\$575,000	\$44,920	0.4392
Marion	7,492	\$1,378,127	10	\$10.00	\$716,000	\$48,520	0.5500
Woodfin	8,072	\$918,963	7	\$0.00	\$0	\$59,144	0.3300
Black Mtn.	8,502	\$1,046,800	7	\$2.00	\$96,000	\$75,310	0.3210
Asheville	93,776	\$7,168,000	43	\$17.00	\$7,022,000	\$63,810	0.4030

Town Council was presented with a listing of all capital requests, requested new positions, and capital water fund equipment requests. Currently, with all requests included, the proposed General Fund budget would be over budget by \$2,429,238. The Town Council is being asked to review the requests and make some decisions on requests made that could be cut from this proposed budget to bring the overage down, or the Council could consider other revenue sources to cover these overages, which could include increases to fees or taxes. Further, Town Manager Harrold informed the Council that the sanitation fees would generate roughly \$360,000 in revenue. He also shared the example of if taxes were raised by one cent (\$0.01), it would increase revenues by approximately \$153,000. Additionally, the Town Manager explained that the proposed budget had the five percent (5%) cost-of-living adjustment (COLA) factored in, which was an approximate \$450,000 increase to the proposed budget. If the COLA was reduced by one percent (1%) it is taking off around \$90,000 in expense, thus reducing the proposed General Fund overage.

Some Council discussion ensued about several capital and personnel requests:

- Veterans Park Lighting- This is the ball field lighting and the proposed expense of \$24,000 is a result of a recent inspection and maintenance request by the manufacturer to replace these lights. The Council was in consensus to research Parks and Recreation Trust Fund (PARTF) grants which would help with the cost of replacing the lights with new LED lights and control functions that are much more safer than the current light control functions.
- Parking concerns at Grey Eagle, Gerron Street and Lake Tomahawk overflow parking.
- Tabling the budget request for cameras at Grey Eagle.
- Discussion on police radio installation for the Police SWAT truck.
- Discussion ensued on the request to separate the roles of Planning Director and Assistant

Town Manager, and hire a new Planning Director.

- Newly created positions that are requested includes Fire Training Officer, Sanitation Supervisor, Assistant Public Works Director, and Public Information Officer.
- Discussion on the requested three (3) Firefighter II positions took place with Fire Chief Coffey citing needs of the department and ensuring each shift was fully staffed.
- Discussion of the Fire Training Officer position which is currently a dual role with the Deputy Fire Chief. This person would be responsible for mandated training of fire staff and community education/outreach. When asked by Council, Chief Coffey stated adding any new Firefighter II position(s) would be more of an urgent need than the Fire Training Officer position.

Town Manager Harrold stated \$1.7 million was pulled from Fund Balance for this Fiscal Year to balance the budget, with some being Capital Reserve. The Town borrowed \$400,000 to continue the fire truck purchase.

On the topic of fleet management, Mayor Sobol suggested creation of a town staff fleet committee, or similar, which could create a policy on how to recycle vehicles to other departments and to assess needs for new vehicles.

Council Member Stone suggested that Council Members take a few days to digest this information presented and the Town Manager would set up meetings with each Council Member to answer any questions they may have, and come back at a special meeting, or the next agenda meeting, to discuss the requests again before the Manager's recommended budget is presented to the Council in May.

Town Manager Harrold stated this proposed budget was an overall seven percent (7%) increase than the current Fiscal Year's budget. He gave an update on the recently distributed recycling carts stating that approximately 1.8% of the carts were returned to the Town, with approximately 4,000 carts being delivered.

Council Member Alice Berry made a motion to call for a special meeting on Thursday, May 9th, 2024 at 5:00 p.m. for a Council Budget Work Session coinciding with the agenda review meeting. A vote of 5-0 in favor.

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 9:28 a.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Cortney Kidd, *Senior Accountant* **MEETING DATE:** May 13, 2024

AGENDA SECTION: **Consent Agenda- 5B** **DEPARTMENT:** Finance

TITLE OF ITEM: Monthly Property Tax Collector Report

SUGGESTED MOTION(S):

Approval of the Monthly Tax Collector Report

SUMMARY:

Monthly Property Tax Collector Report

Pursuant to N.C.G.S. § 105-350(7), it is the duty of the tax collector to submit to the governing body at each of its regular meetings a report of the amount collected on each year's taxes with which is charged, the amount remaining uncollected, and the steps taken to encourage or enforce payment of uncollected taxes.

Per NCGS 105-381(b) the governing body must approve or deny requests for refunds or releases.

Below is the month end report for collections, refunds, and releases (current and prior years), provided by the Buncombe County Tax Collector. The tax department is using all collection remedies as provided by general statute to collect delinquent taxes.

ATTACHMENTS:

- i. Monthly Tax Collector Report



TOWN OF BLACK MOUNTAIN TAX COLLECTOR'S REPORT

TO: Black Mountain Board of Commissioners
FROM: Cortney Kidd, Municipal Tax Collector
DATE: Monday, May 13, 2024
SUBJECT: March 2024 Tax Collector Report

According to GS 105-350(7) it is the duty of the tax collector to submit to the governing body at each of its regular meetings a report of the amount collected on each year's taxes with which is charged, the amount remaining uncollected, and the steps taken to encourage or enforce payment of uncollected taxes.

Below is the month end report for collections (current and prior years), provided by the Buncombe County Tax Collector. The tax department is using all collection remedies as provided by general statute to collect delinquent taxes including but not limited to garnishments, attachments, and NC Debt Setoff.

CURRENT YEAR TAX -ALL TAXES, LIENS, LATE LIST PENALTIES, INTEREST AND FEES

Billed	\$ 5,207,493.16
Collected	\$ 5,142,381.24
Adjustments and Releases	\$ (12,268.12)
Outstanding real and personal property taxes	\$ 52,843.80

TAX COLLECTION PERCENTAGE FOR CURRENT TAX YEAR

98.98%

PRIOR YEAR TAXE(S) COLLECTED WITHIN THE MONTH

Collected	\$ 286.64
Adjustments and Releases	

Per NCGS 105-381(b) the Tax Collector is reporting tax releases/refunds within the current period:

Ad Valorem	\$ 1.04
Motor Vehicle	\$ 44.07



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Tammy Holland, *Finance Director* **MEETING DATE:** May 13, 2024

AGENDA SECTION: Consent- 5C **DEPARTMENT:** Finance

TITLE OF ITEM: Budget Amendment – *Tammy Holland, Finance Director*

SUGGESTED MOTION(S): I move to approve budget amendments as presented.

SUMMARY:

The Town of Black Mountain Council adopts the following FY23-24 Budget Ordinance Amendments for the purpose of appropriating additional funding required for expenditures. Budget amendments BA194-BA197 for the following

- **BA194 Carver Floor Repair** **\$3,600**
 - *Appropriated Fund Balance for Carver Floor Repair as directed by Board in April Board Meeting.*
- **BA196 Increase in Property Tax Late List Funding** **\$1,000**
 - *Budget amendment to increase property tax penalties and fines revenue and increase Public Schools mandated payment of Late List Penalties.*
- **BA151 Fire Department Recognize funds received** **\$34,036**
 - *Budget Amendment to recognize funds received from Buncombe County Dispatch for reimbursement of*

ATTACHMENTS:

- i. Budget Amendments Detailed Report

Adjustment Number	Description	Summary	Account Number	Account Name	Sum of Amount
BA0000194	BAMEND - Carver Floor	Additional funds needed to complete carver floor repair. Quote accepted by the Board on 04/16/24	100-0000-48900	Appropriated Fund Balance	-\$3,600.00
			100-4615-52310	R & M - Building	\$3,600.00
BA0000196	Incease in Property Tax Late List Penalties	Increase in the amount of Late List penalties collected for property tax and an increase in Buncombe County Schools distribution expense of late list penalties	240-0000-47050	Penalties and Fines - Property Tax	-\$1,000.00
			240-0000-55050	Public School State Mandated Payment	\$1,000.00
BA0000197	BAMEND - Fire Dept Buncombe County Reimbursement	Reimbursement for employees wages from Buncombe County Dispatch	200-0000-47016	Reimbursements	-\$34,036.00
			200-4520-50100	Salaries - Regular	\$29,736.00
			200-4520-50102	Salaries - Overtime	\$500.00
			200-4520-50199	Salaries - Off Duty	\$2,800.00
			200-4520-52316	R & M - Vehicle	\$1,000.00



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Tammy Holland, *Finance Director* **MEETING DATE:** May 13, 2024

AGENDA SECTION: CONSENT AGENDA- 5D **DEPARTMENT:** Finance

TITLE OF ITEM: Riverwalk Greenway Capital Project Amended Ordinance

SUGGESTED MOTION(S):

Staff move that Council approve the Riverwalk Greenway Capital Project Amended Ordinance as presented.

SUMMARY: The capital project ordinance needs to be amended to reflect the split in the original project to sections A & B and to recognize the changed alignment from the original alignment. Below are the details of the two sections:

EB-5547A Allocation

Phase EB-5547A Begins at the intersection of NC9 and Sutton Ave and ends at Black Mountain Ave. Estimated completion date 12/31/2026 is expected.

Phase EB-5547A has been awarded funds from The Department of Transportation Federal Aid STPDA-1302(62); CFDA# 20.205. The DOT agrees to reimburse the Town using Surface Transportation Program Block Grant (BGANY) funds.

The total funds allocated to Phase EB-5547A are \$2,940,000. Of this allocated amount \$2,352,000 will be reimbursed Federal Grant Funds, Town match requirement is \$588,000 and all costs that exceed the total estimated cost of \$2,940,000.

EB-5547B Allocation

Phase EB-5547B Begins at Black Mountain Ave and ends at In the Oaks Trail. Estimated completion date 12/31/2026.

Phase EB-5547B has been awarded funds from The Department of Transportation Federal Aid 1302108; CFDA# 20.205. These federal funds are available through the Fixing America's Surface Transportation (FAST) Act and allows for the allocation of federal funds for certain specified transportation activities. The DOT will administer the disbursement of funds on behalf of the Federal Highway Administration (FHWA) and Surface Transportation Program Block Grant (BGANY) funds.

The total funds allocated to Phase EB-5547B are \$1,970,000. Of this allocated amount \$1,576,000 will be reimbursed Federal Grant Funds, Town match requirement is \$394,000 and all costs that exceed the total estimated cost of \$1,970,000.

EB-5547 Totals

The Riverwalk Greenway currently has total funding of \$4,910,000. Federal Reimbursement awarded in the amount of \$3,928,000. The Town match on this project is \$982,000. Buncombe County has provided funding of \$400,000 toward the town match portion and the town previously budgeted \$298,750 town match. The Remaining budget requirement for the Town match is \$283,250.

BUDGET IMPACT: Increase in budgeted funds and Expenditures of \$2,484,250 of which \$2,201,000 is federal grant funds and \$283,250 is town match.

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded. Appropriated Fund Balance and Grant Funds

ATTACHMENTS:

- i. Amended Ordinance
- ii. Updated Contract for sections A and B



Town of Black Mountain Riverwalk Greenway Capital Project Fund Ordinance Amendment

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that, pursuant to the Local Government Budget and Fiscal Control, a local government may, in its discretion, authorize and budget for a capital project or a grant project in a project ordinance adopted pursuant to G.S. 159-13.2. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year; and the following Capital Project Fund Ordinance is hereby amended as follows:

Section 1: The project authorized is for the purpose of bike and pedestrian improvements. This project will include multi-use path, sharrows, and sidewalk improvement from the existing Flat Creek Greenway trailhead to the existing Riverside Greenway near Riverside Park and an extension west near NC9 and existing culvert.

Section 2: The Town and NCDOT amended the original project to include ROW and construction as eligible phases of work, added funding and extended the completion date of the project. Total of Riverwalk Greenway Capital Project will be \$4,910,000.

Section 3: The original Riverwalk Greenway NCDOT state project EB-5547 has now been split into Phases EB-5547A and EB-5547B. Each phase will have its own funding.

Section 4: The original Riverwalk Greenway Project contains previously funding and expenses of \$705,541. These items will remain separate from the amended work and funding contained within the split of the amended contract EB-5547.

Section 5: Phase EB-5547A begins at the intersection of NC9 and Sutton Ave and ends at Black Mountain Avenue. Total Contract \$2,940,000 consisting of Federal Grant Funds in the amount of \$2,352,000 and Match Funding of \$588,000. \$1,171,000 of previously awarded funds and expenses totaling \$705,541 prior to the split, are included within Phase A of this project.

Section 6: Phase EB-5547B begins at Black Mountain Ave and ends at the existing trailhead of In the Oaks Trail. Total Contract \$1,970,000 consisting of Federal Grant Funds in the amount of \$1,576,000 and match funding of \$394,00. Phase B contains \$987,750 of previously awarded funding prior to the project split.

Section 7: The Town of Black Mountain defines a "Capital project" as a project financed in whole or in part by the proceeds of bonds, notes or debt instruments or a project involving the construction or acquisition of a capital asset with expenditures that span across multiple fiscal



years.

Section 8: The officers of this unit are hereby directed to proceed with the capital project within the terms of the grant documents, and the budget contained herein.

Section 9. The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	<u>Prior Authorized</u>	<u>Change</u>	<u>Amended Funding</u>
Grant - NCDOT	1,727,000.00	2,201,000.00	3,928,000.00
Match Funding - Buncombe County	400,000.00	0.00	400,000.00
Match Funding -Town Transfer In	298,750.00	283,250.00	582,000.00
Total Funds	\$2,425,750.00	\$2,484,250.00	\$4,910,000.00

Section 10. The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenses</u>	<u>Prior Anticipated</u>	<u>Change</u>	<u>Amended Expense</u>
Professional Services - Design, CEI	\$1,217,000.00	\$523,000.00	\$1,740,000.00
Easements/Row Acquisition	\$0.00	\$60,000.00	\$60,000.00
Construction	\$1,208,750.00	\$1,901,250.00	\$3,110,000.00
Total Expenses	\$2,425,750.00	\$2,484,250.00	\$4,910,000.00

Section 11. The Riverwalk Greenway Capital Project Fund shall increase by \$2,751,250.

Section 12. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 13. The Town Manager and/or the Finance Director has the authority to transfer funds; both expenditures and revenues, between the accounts contained within the capital project as may be necessary, provided however that the total expenditures equal the total revenues and that expenditures may not exceed the project total without an amended ordinance from council.

Section 14. Copies of this Capital Project Ordinance shall be furnished to the Town Clerk, the Town Manager and the Finance Director for the direction in carrying out this project.

Section 15. Authorized project expenditures represent appropriations necessary for the completion of projects and therefore do not require re-appropriation in any subsequent fiscal year. However, per G.S. 159-13.2 information on project ordinances will be included in the annual budget. Each year the finance officer shall include within the budget information in

Ordinance: O-24-XX
Council Meeting: May 13, 2024



such detail as he or the governing board may require concerning each grant project or capital project. This information will be detailed for any new project funds expected to be authorized by project ordinance during the budget year and include information on projects authorized by previously adopted project ordinances which have remaining appropriations available for expenditure during the budget year.

Duly adopted this 13th day of May 2024.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

NORTH CAROLINA
BUNCOMBE COUNTY

2nd SUPPLEMENTAL AGREEMENT

DATE: 01/12/2023

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: EB-5547A

AND

WBS ELEMENTS: PE 51045.1.2

ROW 51045.2.2

TOWN OF BLACK MOUNTAIN

CON 51045.3.2

FEDERAL-AID #: STPDA-1302(62)

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$1,415,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", and the Town of Black Mountain, hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, the Department and the Municipality on 11/9/2015, entered into a certain Project Agreement for the original scope: constructing a new multi-use path from existing Flat Creek Greenway trailhead to existing Riverside Greenway near Riverside Park and an extension west near NC 9 and existing culvert., programmed under Project EB-5547; and,

WHEREAS, on 4/12/2017, the Department and the municipality entered into and supplemental agreement to add ROW and Construction as eligible phases of work, added funding and extend the completion date of the Project; and,

WHEREAS, the municipality and the French Broad River MPO have agreed to split the project into EB-5547A and EB-5547B; and,

WHEREAS, the municipality and the French Broad River MPO have agreed to add funding to the project; and,

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

SCOPE

The Project consists of the construction of a new multi-use path from existing Flat Creek Greenway trailhead to existing Riverside Greenway near Riverside Park and an extension west near NC 9 and existing culvert.

Project EB-5547 is being split into Phases EB-5547A and EB-5547B. Each Phase will have its own funding.

Phase A – (EB-5547A) - Begins at the intersection NC9 and Sutton Ave and ends at Black Mountain Ave.

Phase B– (EB-5547B) - Begins at Black Mountain Ave and ends at In The Oaks Trail. Phase B will be under a separate agreement.

FUNDING

The Department agrees to reimburse the Municipality an additional \$1,415,000 of Surface Transportation Program Block Grant (BGANY) funds. The Municipality shall provide the non-federal match, as detailed in the REVISED FUNDING TABLE below, and all costs that exceed the total estimated cost.

REVISED FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
BGANY	\$1,415,000	80 %	\$354,000	20 %
Total Estimated Cost		\$1,769,000		

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: Town of Black Mountain

County: Buncombe

TIP: EB-5547B

Project: Riverwalk Phase II Greenway

Scope: the construction of bike and pedestrian improvements from Black Mountain Avenue to existing trailhead of In The Oaks Trail. It will include multi-use path, sharrows, and sidewalk improvements.

Eligible Activities:

PE	51045.1.3	Design
		Environmental
ROW	51045.2.3	ROW Acquisition
		Utility Relocation
CON	51045.3.3	Construction
FEDERAL-AID	1302108	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
BGANY	\$1,576,000	80 %	\$394,000	20 %
Total Estimated Cost		\$1,970,000		

Responsibility: The Town of Black Mountain shall be responsible for all aspects of the project.



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** May 13, 2024
AGENDA SECTION: PUBLIC HEARING- 6A **DEPARTMENT:** Planning
TITLE OF ITEM: Public Hearing for Text Amendment to Chapter 20, Article V, Nuisances

SUGGESTED MOTION(S):

I move we approve the text amendments for Chapter 20, Article V, Nuisances as presented.

SUMMARY:

With the adoption of 160D and in trying to streamline the enforcement process, staff is proposing text amendments to the nuisance chapter of the Code of Ordinances to clarify how notices are sent and to make a cleaner and clearer process for abatement.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

Ordinance – Chapter 20, Article V, Nuisances

ORDINANCE #

**AN ORDINANCE TO AMEND CHAPTER 20, ARTICLE V, NUISANCES, OF THE
TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES**

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Town Council on the 13th day of December, 1993, and the Black Mountain Land Use Code was adopted by the Town Council on the 11th day of January, 2010; and

NOW, THEREFORE, BE IT RESOLVED that Chapter 20, Article V, Nuisances, of the Town of Black Mountain Code of Ordinances, be amended to the following:

ARTICLE V. NUISANCES

Sec. 20-202. Lots to be kept clean; accumulation of rubbish prohibited.

- (a) It shall be a violation of this article for any person to:
1. Scatter refuse or litter on any public or private street, area or place.
 2. Cast, throw, place, sweep or deposit anywhere within the town limits any refuse or trash in such a manner that it may be carried or deposited by the elements upon or in any street, sidewalk, alley, storm drain or other public place or into any occupied or unoccupied premises within the town.
 3. Throw or deposit any refuse, trash or debris in any stream or body of water.
- (b) It shall be a violation of this article for any vehicle transporting loose materials within the town limits to transport the same without suitable cover.

Sec. 20-203. Accumulations prohibited.

- (a) It shall be unlawful for any owner, tenant, agent or person in control of any vacant lot or premises within the town to permit to remain thereon any high grass or weeds exceeding 12 inches in height (excluding properties used for grain and/or hay crops and properties fenced for the housing of horses or cattle), empty bottles, empty cans, abandoned automobiles, automobile bodies or parts, trash, filth, debris, garbage, or rubbish or any kind whatsoever, and it shall be the duty of any owner, tenant, agent or person in control of any vacant lot or premises within the town limits to keep the same in a clean, healthy, wholesome, and sanitary condition at all times.
- (b) It shall be unlawful for any construction contractor, demolition contractor, and/or property owner to fail to provide on-site container for loose debris, paper building material waste, scrap building material, and other trash produced by those working on the site. All such material shall be kept in a reasonably clean and litter-free condition. Construction sites shall be kept clean and orderly at all times.

~~(c) If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15~~

~~days from receipt of the order, the town manager or his designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or his designee.~~

Sec. 20-204. Notice of violation or nonconformity.

Any notice of violation of this article or nonconformity with this article shall be in writing. Written notice of the violation shall be delivered to the **property owner violator by first class mail.** ~~or, in lieu of had delivery, shall be sent to the violator via certified mail.~~ Copies of all notices of violation shall be kept and maintained by the zoning administrator or by the building inspection department, and said records shall be made available to the ~~board of aldermen~~ **town council.**

Sec. 20-205. Action by town after due notice; assessment of costs; lien.

If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 20 days from the date the notice of violation was mailed and not returned undeliverable, the town manager or the town manager's designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall be cut to a height satisfactory to the town manager or the town manager's designee.

If the owner of the property, ~~after due notice,~~ has failed or refused to remove the trash, garbage, or refuse, or to cut the grass or weeds, **within 20 days from the date the notice of violation was mailed and not returned undeliverable,** and the town **subsequently** has **removed debris or cut the grass or weeds** ~~been authorized by the board of aldermen to remove debris or cut the grass or weeds and has so acted,~~ in addition to all other remedies, the town may assess costs incurred by the **action** ~~it,~~ and this shall be a charge against the person responsible and shall be a lien against the property from which the trash, garbage, or refuse has been removed or the grass or weeds have been cut.

If the nuisance is a condition that is dangerous or prejudicial to the public health or public safety, the town has authority to summarily remove, abate, or remedy everything that is danger or prejudicial to the public health or public safety. Pursuant to this section, the town council may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, the expense is a lien on the land or premises where the nuisance occurred. Such lien shall have the same priority and be collected as unpaid ad valorem taxes.

Sec. 20-206. Responsibility for enforcement.

The enforcement of the provisions of this article shall be the duty and responsibility of the zoning administrator or other persons authorized by the town council ~~board of aldermen~~.

Sec. 20-207. Penalty

Any person continuing to violation any provision or requirements of this article after notice of violation has been issued to him or any person willfully failing, refusing, or neglecting to comply with any such provision or requirement shall, in addition to any other remedy, be issued a notice and citation for which a civil penalty of \$50.00 shall be assessed for each offense, with each and every day of violation being a distinct and separate offense. This civil penalty shall be enforced by an action brought in the general courts of justice of the state by the zoning administrator or other town official charged with the duty of enforcing this article, and such enforcement shall be by civil action in the nature of a debt.

Sec. 20-207. Injunction and order of abatement.

The town may apply to the Court for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings.

In addition to an injunction, the Court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other moveable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the Court, the defendant may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

READ, APPROVED, AND ADOPTED by a vote of _____ to _____ this the 13th day of May 2024.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** May 13, 2024
AGENDA SECTION: PUBLIC HEARING- 6B **DEPARTMENT:** Planning
TITLE OF ITEM: Public Hearing for Text Amendment to Chapter 43, Article VI to add a Social District

SUGGESTED MOTION(S):

I move we approve the text amendments for Chapter 43, Article VI, Downtown Social District, as presented.

SUMMARY:

Introduction:

Zach Hinkle of Whitehorse and Judi Melton are requesting the Town adopt an ordinance to establish a social district. The applicants will provide a presentation during the Council meeting. This coversheet includes a basic summary of social district regulations and considerations.

In accordance with North Carolina Session Law 2022-49, which permits municipalities to establish social districts, this report outlines the potential implementation of such districts within the Town of Black Mountain. Social districts aim to enhance public spaces, promote economic development, and foster community engagement by allowing patrons to consume alcoholic beverages in designated outdoor areas.

If the Town adopts a social district, a form is completed and filed with the North Carolina ABC office. This is not an approval, only notification of the establishment of a social district.

Staff is prepared to swiftly respond to the requirements of creating a district if Council adopts the ordinance, including: Publishing a website with regulations, high-resolution logos for businesses to use, management plan, list of participating and non-participating businesses, and a map of the social district.

Background:

North Carolina Session Law 2022-49, enacted on June 30, 2022, authorizes municipalities to designate social districts where alcoholic beverages may be consumed publicly within specific boundaries and under certain regulations. The law provides an opportunity for municipalities to boost local businesses, encourage tourism, and create vibrant public spaces.

A permittee located and selling alcoholic beverages within the social district must meet the following requirements under North Carolina law:

- Only sell and serve alcoholic beverages for consumption on its licensed premises.
- Only sell alcoholic beverages for consumption in a container that meets all of the following requirements:
 - The container clearly identifies the permittee from which the alcoholic beverage was purchased.
 - The container clearly displays a logo or some other kind of mark that is unique to the social district in which it will be consumed.
 - The container is not comprised of glass.
 - The container displays, in no less than 12-point font, the statement “Drink Responsibly – Be 21”.
 - The container shall not hold more than 16 fluid ounces.

Patron Requirements

The possession and consumption of an alcoholic beverage in a social district is subject to all of the following requirements of North Carolina law:

- Only alcoholic beverages purchased from a permittee located in the social district may be possessed and consumed.
- Alcoholic beverages must:
 - Only be in designated social district containers.
 - Only be possessed and consumed during the days and hours set by the Town.
- A single patron cannot be sold or delivered alcoholic beverages in excess of:
 - Not more than two alcoholic beverage drinks at one time of any of the following:
 - A malt beverage, unfortified wine, fortified wine
 - Not more than one alcoholic beverage at one time if an alcoholic beverage drink is a mixed beverage or contains spiritous liquor.
- A person must dispose of any alcoholic beverage before exiting the social district unless entering a business within the social district that allows alcoholic beverages to be brought inside the business.

Objectives:

1. **Economic Development:** Social districts can attract residents and visitors to downtown areas, leading to increased foot traffic and revenue for local businesses, including restaurants, cafes, and retail establishments.

2. **Community Engagement:** By providing designated spaces for socializing and leisure activities, social districts facilitate community interaction and promote a sense of belonging among residents.
3. **Enhanced Public Spaces:** Well-designed social districts can transform underutilized areas into vibrant, pedestrian-friendly environments, contributing to the overall attractiveness and livability of the town.

Proposed Approach:

1. **Stakeholder Engagement:** Collaboration with local businesses, residents, law enforcement agencies, and other stakeholders is essential to garner support, address concerns, and ensure the successful implementation of social districts.
2. **Public Outreach:** The Town Council should conduct outreach efforts to inform the community about the proposed social district, solicit feedback, and educate residents and visitors about the regulations governing alcohol consumption in public spaces.
3. **Identification of District Boundaries:** The establishment of social districts requires careful consideration of appropriate boundaries to ensure compatibility with existing land uses, public safety, and community preferences. Potential areas for designation include downtown commercial corridors and parks.
4. **Regulatory Framework:** The Town Council will need to develop regulations governing the operation of social districts, including permissible hours of operation, types of alcoholic beverages allowed, designated consumption areas, signage requirements, and enforcement mechanisms.

Note: Social districts are not under the purview of the Planning Board.

Considerations:

1. **Public Safety:** Measures must be implemented to mitigate potential risks associated with alcohol consumption, including the provision of adequate lighting, security patrols, and responsible beverage service practices.
2. **Accessibility:** Social districts should be designed to accommodate individuals of all ages and abilities, ensuring equitable access to public spaces and amenities.
3. **Environmental Impact:** Strategies to minimize the environmental footprint of social districts, such as waste management and recycling initiatives, should be integrated into the planning and implementation process.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS: [**Ordinance – Chapter 43, Article VI, Downtown Social District**](#)

Memo: Staff Report

Subject: Implementation of Social Districts in Black Mountain

Date: March 19, 2024

Prepared by: Jessica Trotman, Assistant Town Manager/Planning Director

Introduction:

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Proposed Approach:

1. **Stakeholder Engagement:** Collaboration with local businesses, residents, law enforcement agencies, and other stakeholders is essential to garner support, address concerns, and ensure the successful implementation of social districts.
2. **Public Outreach:** The town council should conduct outreach efforts to inform the community about the proposed social districts, solicit feedback, and educate residents and visitors about the regulations governing alcohol consumption in public spaces.
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Note: Social districts are not under the purview of the Planning Board.

Considerations:

1. **Public Safety:** Measures must be implemented to mitigate potential risks associated with alcohol consumption, including the provision of adequate lighting, security patrols, and responsible beverage service practices.
2. **Accessibility:** Social districts should be designed to accommodate individuals of all ages and abilities, ensuring equitable access to public spaces and amenities.
3. **Environmental Impact:** Strategies to minimize the environmental footprint of social districts, such as waste management and recycling initiatives, should be integrated into the planning and implementation process.

Conclusion:

The establishment of social districts presents an exciting opportunity for Black Mountain to enhance its downtown vitality, foster community connections, and support local businesses. By proceeding thoughtfully and engaging stakeholders in the decision-making process, the town council can create vibrant and inclusive public spaces that enrich the quality of life for residents and visitors alike.

ORDINANCE #

AN ORDINANCE TO AMEND CHAPTER 43, TO ADD ARTICLE VI, DOWNTOWN SOCIAL DISTRICT, OF THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Town Council on the 13th day of December, 1993, and the Black Mountain Land Use Code was adopted by the Town Council on the 11th day of January, 2010; and

WHEREAS, N.C.G.S. §160A-205.4 authorizes local governments to create and designate one or more “social districts” under N.C.G.S. §18B-300.1 within their jurisdiction; and

WHEREAS, a “social district” under N.C.G.S. §18B-300.1 is “A defined outdoor area in which a person may consume alcoholic beverages sold by businesses holding one or more permits issued by the Alcoholic Beverage Commission”; and

WHEREAS, local business owners within Downtown Black Mountain have expressed interest in creating a social district within the same general footprint of the Town’s Downtown area; and

WHEREAS, the Town desires to limit its “social district” to a walkable geographic area in the downtown where local bars and restaurants can sell alcoholic beverages to be consumed throughout the district, subject to certain rules and limitations; and

WHEREAS, the Black Mountain Town Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED that Chapter 20, Article V, Nuisances, of the Town of Black Mountain Code of Ordinances, be amended to the following:

ARTICLE VI. DOWNTOWN SOCIAL DISTRICT

Sec. 43.92. Establishment of the Downtown Black Mountain Social District

The Town hereby creates and designates the area located generally south of Montreat Road, east of Richardson Boulevard, north of Black Mountain Avenue, and west of South Dougherty Street, and more specifically depicted on the map titled “Downtown Black Mountain Social District Boundaries”, which is incorporated here by reference and is filed with the Town Clerk as the Downtown Black Mountain Social District, as authorized under N.C.G.S. §160A-205.4.

Sec. 43.93. Definitions

ABC Commission: The North Carolina Alcoholic Beverage Control Commission established under N.C.G.S. §18B-200.

ABC permit or permits: Any written or printed authorization issued by the ABC Commission pursuant to the provisions of N.C.G.S. Ch. 18B, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, “ABC permit” or “permit” means a presently valid permit.

Alcoholic beverage: Any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spiritous liquor, mixed beverages, and any alcohol consumable.

Alcohol, consumable: Any manufactured and packaged ice cream ice-pop, gum-based or gelatin-based food product containing at least one-half of one percent (0.5%) alcohol by volume.

Customer: A person who purchases an alcoholic beverage from a permittee that is in a social district.

Fortified wine: Any wine or alcohol consumable containing more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice or honey; or by the addition of pure cane, beet or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

Malt beverage: Beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage or alcohol consumable, except fortified or unfortified wine as defined by N.C.G.S. Ch. 18B, containing at least one-half of one percent (0.5%) and not more than fifteen percent (15%) alcohol by volume.

Mixed beverage: Either of the following:

- a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
- b. A premixed cocktail served from a closed package containing only one serving.

Non-permittee business. A business that is located in a social district and does not hold any ABC permit.

Open container: A container whose seal has been broken or a container other than the manufacturer’s unopened original container.

Permittee: An establishment holding any of the following permits issued by the ABC Commission:

- a. An on-premises malt beverage permit issued pursuant to N.C.G.S. §18B-1001(1).
- b. An on-premises unfortified wine permit issued pursuant to N.C.G.S. §18B-1001(3).
- c. An on-premises fortified wine permit issued pursuant to N.C.G.S. §18B-1001(5).
- d. A mixed beverages permit issued pursuant to N.C.G.S. §18B-1001(10).
- e. A wine shop permit issued pursuant to N.C.G.S. §18B-1001(16).
- f. A distillery permit issued pursuant to N.C.G.S. §18B-1100(5).

Person: An individual, firm, partnership, association, corporation, limited liability company, other organization or group or other combination of persons acting as a unit.

Police department: The Town of Black Mountain Police Department.

Premises: A fixed permanent establishment, including all areas inside or outside the licensed establishment, where the permittee has control through a lease, deed or other legal process.

Social district: A defined area in which a person may consume alcoholic beverages sold by a permittee. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the town by ordinance pursuant to N.C.G.S. §18B-300.1(d). A social district may include privately owned property, including permittees and non-permittee businesses, multi-tenant establishments, as defined in N.C.G.S. §18B-1001.5, and public streets, crosswalks or parking areas, whether or not the streets or parking areas are closed to vehicle traffic.

Spirituous liquor or liquor. Distilled spirits or ethyl alcohol, and any alcohol consumable containing distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur and premixed cocktails, in closed-containers regardless of their dilution.

Town: The Town of Black Mountain.

Unfortified wine: Any wine or alcohol consumable containing sixteen percent (16%) or less alcohol by volume that is made by fermentation from grapes, fruits, berries, rice or honey; or by the addition of pure cane, beet or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

Sec. 43-94. General Requirements.

- A. Designated map. The town shall have on file a map of tis social district. This map will include the restaurants, businesses, streets, sidewalks, dining areas, alleyways and other areas that are part of the defined social district.
- B. Hours of operation: The hours of the social district shall be seven (7) days per week from 11:00 a.m. to 10:00 p.m. These hours are clearly marked and posted at conspicuous locations in and around the district boundaries.
- C. Social district maintenance and management. The Town Manager or their designee is hereby authorized to create maintenance and management plans for the Downtown Black Mountain Social District consistent with the requirements of this article and other applicable law. The maintenance and management plan may include coordination with the Police Department, Public Works Department and downtown business owners. Property signage in the social district and information will be placed on the town website and social media. Maintenance and management plans shall be readily available for the public inspection at all times.
- D. Sale of alcoholic beverages.
1. A permittee shall only sell alcoholic beverages for consumption within the social district in which it is located or contiguous.
 2. The permittee shall only sell and serve alcoholic beverages for consumption within the social district on its licensed premises.
 3. The permittee shall only sell alcoholic beverages for consumption in the social district in a container that meets all of the requirements of the management and maintenance plan.
 4. The permittee may allow a customer to possess and consume on the business's premises alcoholic beverages purchased from any ABC permittee located in or contiguous to the social district.
- E. Possession and consumption of alcoholic beverages.
1. Alcoholic beverages purchased from a permittee located within or contiguous to the social district may be possessed and consumed within the designated social district.
 2. Alcoholic beverages may only be consumed within the designated social district.
 3. Alcoholic beverages shall only be in containers meeting the requirements set forth in subsection (e)(7) (a-e) of this section.
 4. Alcoholic beverages shall only be possessed and consumed during the days and hours set by the Town Council in accordance with subsection (c) of this section.

5. Nothing in this subsection shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in N.C.G.S. §18B-1010.
 6. A person shall dispose of any alcoholic beverage in the person's possession prior to exiting the social district unless the person is reentering the licensed premises where the alcoholic beverage was purchased.
 7. Alcoholic beverages shall be in containers that meet the following requirements:
 - a. The container clearly identifies the permittee from which the alcoholic beverage was purchased.
 - b. The container clearly displays a logo or some other mark that is unique to the social district in which it will be consumed.
 - c. The container is not made of glass.
 - d. The container displays, in no less than twelve (12)-point font, the statement, "Drink Responsibly – Be 21".
 - e. The container shall not hold more than sixteen (16) fluid ounces.
- F. Enforcement. A violation of this section is a misdemeanor or infraction as provided by N.C.G.S. §14-4 and §160A-175. As an alternative or additional measure of enforcement, any law enforcement officer or authorized town employee may issue a citation for a civil penalty for violation of this section in accordance with the requirements of Chapter 1, General Provisions, of the Code of Ordinances. This authority shall be in addition to any other authority and shall not preclude in any way any law enforcement officer from exercising any authority or carrying out the duties of a law enforcement officer, nor preclude the town from any other available legal enforcement procedure. Enforcement of an unpaid citation may be by issuance of a criminal summons, by the filing of a complaint to collect the unpaid debt owed to the town or by other means authorized by state law or outlined in Chapter 1, General Provisions, of the Code of Ordinances.

READ, APPROVED, AND ADOPTED by a vote of _____ to _____ this the 13th day of May 2024.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** May 13, 2024

AGENDA SECTION: PUBLIC HEARING- 6C **DEPARTMENT:** Planning

TITLE OF ITEM: Public Hearing for Conditional Zoning Request for Montreat College

SUGGESTED MOTION(S):

I move that we approve the amendment to add Montreat College Black Mountain campus as an institutional campus district conditional zone and that the amendment is consistent with the comprehensive plan and is reasonable and in the public interest in that it promotes development of underutilized property with existing infrastructure and allows design and connection to balance the needs of pedestrians, drivers, cyclists, and transit users.

SUMMARY:

Montreat College is requesting a conditional zoning to expand their Black Mountain Campus. The zoning district is currently institutional campus district (ICD) and they are asking to be rezoned to institutional campus conditional zoning district (ICD-CZ). Conditional zoning marries the development to a site specific plan. Montreat College is not looking to do any uses that are not already allowed in the current institutional campus district. The Planning Board heard the request at their regular meeting on September 25, 2023, and voted unanimously to recommend the request.

Montreat College is not requesting any uses that are not already allowed in the current institutional campus district.

The conditional zoning application does vary from the base zoning district by allowing building height maximums of 75 feet compared to the base zoning district of 35 feet. The height is deemed a reasonable request due to the topography of the parcel, with the building locations generally below grade of the adjacent roads and vegetative buffering.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- **Ordinance**
- **Ordinance #O-23-22**
- **Conditions**
- **Master Plan**

MEMORANDUM

RE: MONTREAT COLLEGE CONDITIONAL ZONING CONDITIONS
(DRAFT) FOR PROPERTY LOCATED AT 191 VANCE AVE. (APPROX.
89 ACRES); PIN No. 060993948000000 (“Property”)
DATE: 3/__/24

CAMPUS MASTER PLAN NOTES AND CONDITIONS

Plan Notes

- A. To assist Montreat College’s (“College”) nationally recognized cybersecurity training program, the North Carolina General Assembly appropriated \$30 million for the design and construction of a Cybersecurity Facility on the College’s campus. As a consequence of the General Assembly’s appropriation, the College engaged in an extensive master planning process to provide guidance as to where on its Black Mountain Campus (“Campus”) the Cybersecurity Facility would be best located, along with guidance to establish and maintain overall design integrity on the Campus while maximizing positive impacts on neighboring areas and minimizing possible adverse impacts.
- B. In Section 1.2.3 of the Land Use Code of the Town of Black Mountain (“Town”), the Town defines a master plan as “a comprehensive, long-range plan guiding the development of a tract of land or subdivision.” The hereinafter defined Master Plan satisfies the Town’s definition of master plan as a long-range plan guiding development of the Campus. The Master Plan depicts uses and improvements envisioned by the College at the Campus arising from the College’s master planning process which included an extensive review of its Montreat Campus and the Campus, both the advantages and opportunities of each campus as well as their specific constraints. The Town participated in the College’s master planning process.
- C. The guiding principles of the College’s Master Plan are to **(1)** reinforce revenue sustainability, **(2)** protect and maintain facilities, **(3)** strengthen academic offerings, **(4)** enhance a vibrant student culture and **(5)** connection of the two campuses. It is foreseeable during the development of the Campus that many changes in higher education, technology, transportation, and skills needed for the 21st century will occur.
- D. These Plan Notes provide background and context relevant to understanding the Master Plan design. The Plan Notes are not rezoning conditions. The rezoning conditions for the Campus are stated below.

Rezoning Conditions

1. The Master Plan dated ___ and entitled “MONTREAT COLLEGE: BLACK MOUNTAIN CAMPUS, Montreat, NC” (“Master Plan”) shows the Property on which the Campus will be developed and the Campus shall be developed and used in accordance with the Master Plan, including the conditions identified as Rezoning Conditions (“Rezoning Conditions”) as part of the Conditional Rezoning Ordinance No. O-23-22 (text) and Z-O-23-23 (map). As required by Section 1.5.5B.3, the Master Plan provides a full list of the proposed uses consistent in character with the Institutional Campus District in effect on August 28, 2023 (the “ICD”). All uses described on the Master Plan shall be generally permitted and allowed on the Campus as a matter of right in the locations shown on the Master Plan. The Campus will be developed in phases and completion of one phase is not necessary for the beginning of any development and construction of another phase except the Cybersecurity Facility (identified as one of the “Academic Buildings, number 1, on the Master Plan) shall be the building first constructed of the new buildings shown on the Master Plan. Phases and phase lines may be adjusted by the College as needed. Development of the Campus will be approved through Town land development approvals of subdivision plats or zoning site plans. The Campus may be subdivided, or lots recombined in compliance with the Town’s Land Use Code in effect on August 28, 2023, but lots on the Campus shall be exempt from any internal separation or other dimensional standards when adjacent to existing lot lines within the Campus.
2. Except as shown on the Master Plan or identified in the Rezoning Conditions, the standards of ICD shall remain in effect unless one or more different standards are consented to by the College in writing signed by the College. Should any unambiguous and irreconcilable conflict between the Master Plan and ICD arise, the Master Plan shall control. Should any unambiguous and irreconcilable conflict between the Master Plan and the Rezoning Conditions arise, the Rezoning Conditions shall control.
3. Any proposed change to the Master Plan shall be governed by Section 4.7.12.4G of the ICD in effect on August 28, 2023, which is entitled, “Changes to the master plan”. Section 4.7.12.4G shall be interpreted to mean that any change which (1) substantially affects existing traffic circulation, drainage, relationship of buildings to each other, landscaping, buffering or outdoor lighting or (2) significantly impacts existing infrastructure or town services (i.e., street capacity, water and sewer capacity, police and fire protection, or other service related town functions) or any change that may result in an adverse impact on neighboring properties and residents (collectively (1) and (2) above are “Substantial Change”) requires the College to submit a new master plan to the Town for approval. However, notwithstanding Section 4.7.12.4G items 1-5, the following will not be considered a Substantial Change triggering an amendment to the Master Plan and conditional zoning: (A) any

change of location of the buildings or relocation of a building, all of which are the buildings shown on the Master Plan of no more than 200 feet as depicted on the Master Plan; or **(B)** addition or relocation of accessory structures, parking lots or areas, addition or relocation of parking or outdoor storage for service vehicles or equipment, relocation of any major recreation development (i.e., ball fields, tennis courts,), relocation of a private street connecting with the public street system are minor modifications that may be approved by Town staff administratively. Notwithstanding the above and subject to existing conditions and structures, the layout of internal streets shown on the Master plan, and bicycle and pedestrian access, stormwater management and signage approved by the Town, no relocation shall violate or negatively impact the 100' Institutional Zoning Buffer or other buffer requirements identified in paragraph 16 below or the access standards in paragraph 4 below.

4. The College shall develop and maintain a principal and secondary access to and from the Campus as depicted on the Master Plan. As shown on the Master Plan, the primary access to the Campus will be from Blue Ridge Road. The Blue Ridge Road entrance will be traffic-ready and opened to College traffic prior to the issuance of a building permit for vertical construction of the Cybersecurity Facility, which building shall be the first one constructed of the new buildings shown on the Master Plan. For all construction-related work on the Campus, vehicles will always use Blue Ridge Road for construction traffic or construction vehicles and equipment. The College will provide in its construction contracts that contractors will only use the primary access private street from Blue Ridge Road for access to the Campus. Upon completion of the primary access road as noted above, the secondary access points from Vance Avenue and Terry Estates Drive (both being public streets) shown on the Master Plan will be limited to secondary access for official College vehicles (maintenance vehicles and student shuttles of no more than fifteen (15) passenger seats) driven by licensed and approved drivers for College purposes only, and emergency fire and police. All secondary access points will either be gated or have knockdown barricades that are installed within the buffer identified in Rezoning Condition sixteen (16) near the property line of the Campus prior to issuance of the building permit for vertical construction of the Cybersecurity Facility. Additionally, the College will install and maintain restrictive signage within the buffer identified in Rezoning Condition sixteen (16) near the property line of the Campus denoting the limits of vehicular use on Vance Avenue and Terry Estates Drive. Bicycle and pedestrian facilities shall be included at the time the residence halls are constructed and the facilities shall not be required to follow the path of new private streets.
5. In order to achieve the benefit of locating the primary access to the Campus as being from Blue Ridge Road, the Master Plan shows the primary private access street along the narrow western neck of the Campus where there is minimal

separation between the existing active railroad corridor and the Swannanoa River. If necessary, the private access street may be located within the Town regulated stream buffer or stormwater management area. Generally, Campus private streets will be paved at a minimum width of twenty (20) feet. On-street parking is not contemplated within the Master Plan but if it is added, it will meet all Town requirements in effect on August 28, 2023. Notwithstanding, all streets, parking lots or other access ways on the Campus shall meet Fire Code requirements of State law in effect on August 28, 2023, and the Town Code of Ordinances in effect on August 28, 2023, unless agreed to in writing signed by the College. Access Point 9 from U.S. Highway 70 as shown on the Master Plan may be developed by the College in its sole discretion.

6. The location, size, and type of stormwater management systems depicted on the Master Plan are subject to review and approval as part of review of applications for permits as provided by Section 2.1.4 of the Town's Land Use Code in effect on August 28, 2023. Adjustments may be necessary to accommodate actual stormwater treatment requirements, natural site discharge points and private streets of the Campus; provided, however, the College shall comply with the Town's post-construction stormwater ordinance in effect on August 28, 2023.
7. Streams, wetlands, open spaces and trails and regional greenways are provided on the Master Plan based on preliminary information available to the College when it submitted the Master Plan to the Town. The actual location of streams, wetlands, the Tomahawk Branch Loop Trail, the existing pedestrian and non-motorized bicycle greenway and other open spaces will be shown on applications prepared by the College for permits issued pursuant to Section 2.1.4. of the Town's Land Use Code in effect on August 28, 2023. The greenways depicted on the Master Plan shall be open to the public from the daylight hours of dawn to dusk once completed with appropriate security, such as gates and protective features, to protect the Campus during the hours after dusk and before dawn.
8. The intention is to preserve and renovate the Manor House, subject to renovation, maintenance, and operating costs, the availability of financial resources, and future ownership. The Manor House, originally known as "intheoaks" and also known as "In the Oaks," is a 24,400 square foot, 67 room English Tudor styled mansion built in the 1920s containing a large formal hall, large kitchen, gymnasium, guest bedrooms, meeting areas and a classroom. In addition to established prior uses, the Manor House may be used for all uses set forth in Section 4.7.12.2A. and all of the special uses set forth in Section 4.7.12.2B of the Town's Land Use Code in effect on August 28, 2023, as a matter of right except as parking decks, stadium or coliseum, which shall be special uses. Nothing herein shall waive or modify the College's right to any lawfully existing uses or nonconforming uses of the Manor House.

9. Open space may include passive and active features such as parks, pedestrian and bike trails, regional trails, amenitized stormwater facilities (internal or external to the facility), existing streams and buffer yards, landscape areas, greens, plazas, sidewalk areas where seating is available, greenhouses, orchards, community gardens, tree save areas, and similar areas, including without limitation the existing pedestrian and non-motorized bicycle greenway along the southern border of the Campus and the new Tomahawk Branch Loop Trail. Open space for the overall Campus is cumulative and will be calculated by the College and provided to the Town for each permit application submitted to the Town for review and approval under Section 2.1.4 of the Town's Land Use Code in effect on August 28, 2023.
10. Principal buildings should be placed to present a front or side facade to all public and private streets when feasible. All buildings adjacent to public or private streets shall face upon the street with an entrance and have architectural features such as, but not limited to, windows, banding, medallions, or design features or materials that will be provided to avoid a sterile, unarticulated blank treatment of such walls. Solid waste containers (at the cost of the College) shall be located to the rear or side of such buildings and appropriately screened from streets.
11. Building and other site elements will be located and arranged to promote pedestrian scale, enhance the streetscape realm, and provide walkability within the Campus for students, faculty, and staff. To this end, resident halls (maximum of 4) on the Campus shall not exceed four (4) stories at a maximum height of seventy-five (75) feet, and the gymnasium building and the two academic buildings, one of which is the Cybersecurity Facility shall not exceed fifty-five (55) feet maximum height. All other buildings depicted on the Master Plan shall not exceed the height regulations of the ICD. Height measurements are to be performed in accordance with Section 4.5.2 the Town's Land Use Code in effect on August 28, 2023, with any rooftop mechanical equipment to be screened from ground level view.
12. Signage, as allowed by the Town's Land Use Code in effect on August 28, 2023, may be provided.
13. All exterior wall and pole lighting in vehicular and loading areas will be semi cut-off or full cut-off type lighting fixtures pedestrian-scale, lower, decorative lighting and should be installed along sidewalks and at building entryways.
14. The primary vehicular access from Blue Ridge Road should be enhanced with elements such as ornamental landscaping, low-level decorative walls, monument-type signs, and decorative paving to emphasize site access locations.
15. The 2-acre parcel at the northwestern corner of the Campus adjacent to Blue Ridge Road and existing Light Industrial uses may be developed and used for any use which is accessory (customary, incidental and subordinate) to the

College, or the any of the uses permitted in the ICD in effect on August 28, 2023, District. By way of illustration (and not limitation) this parcel may be developed and be used as a welcome center or other facility for the benefit of the College and convenient for students, parents of students, faculty, and other College employees. The use will be customary, accessory and subordinate to the College or the Campus when it furthers the College's mission or enhances the live, work, learn, play function of the Campus. The use shall not be required to exclude members of the general public.

16. Subject to existing conditions and structures and the layout of internal private streets as shown on the Master Plan, where the Campus adjoins existing residential development, the buffer shown on the Master plan shall be maintained of a minimum of 100 feet and include screening by existing or enhanced landscaping, natural vegetation, landscaped berm, topography, fence or wall. Bicycle and pedestrian access, stormwater management, and signage, all as approved by the Town, may be located within the buffer.
17. Except as provided on the Master plan or these Rezoning Conditions, the College shall comply with all other applicable ordinances or regulations within the Town's Code of Ordinances, including Appendix A Land Use Code, that are in effect as of August 28, 2023, unless otherwise agreed to by the Town and College or as otherwise provided in N.C.G.S. § 160D-108(c) or (d). This includes, but is not limited to, the Town's storm water ordinance regulations, the Town's Flood Damage Prevention Ordinance and the Town's Fire Code.
18. Recognizing the Master Plan is a long-range plan guiding and controlling development of the Campus, the Town and College may in the future negotiate and agree on a development agreement in accordance with the requirements of the North Carolina General Statutes. In the event the Town approves a development agreement with the College, the College will have a vested right to complete the Campus for the period specified in the development agreement. Should the parties not enter into a development agreement, the Master Plan including the Rezoning Conditions is a site-specific vesting plan and multi-phase development of at least 25 acres under Section 1.9.1 of the Town's Land Use Code in effect on August 28, 2023. Pursuant to Section 1.9.1F, the Master Plan vests a right to complete the Campus pursuant to the Town's ordinances in effect on August 28, 2023 for no less than five (5) years from approval of the Master Plan by the Town or no less than seven (7) years from the date the site plan for the initial phase of the development is approved by the planning board, whichever is longer (the "Vesting Period") and the College, if necessary, may seek extension of development permits or approvals as provided under Section 1.9.1H. Provided, however, nothing herein shall restrict or limit vesting protections afforded incomplete developments or nonconforming uses in N.C.G.S. §160D-108 or under common law. The vesting rights provided by the Town's Land Use Code in effect on August 28, 2023, are in addition to common law vesting, statutory vesting and permit choice statutes adopted by the North Carolina General Assembly, including without limitation Article 10 of Chapter 160D of the North Carolina General Statutes authorizing formation of

development agreements. To the extent vesting rights provided by the Town's Land Use Code, in effect on August 28, 2023, are different than vesting and permit choice rights under North Carolina law, the law that provides the longer vesting right shall apply.

ORDINANCE #0-23-22

**AN ORDINANCE TO ADD SECTION 4.7.16 TO APPENDIX A, LAND USE CODE,
CHAPTER 4, SECTION 4.7, TO ADD INSTITUTIONAL CAMPUS DISTRICT
CONDITIONAL ZONING FOR MONTREAT COLLEGE PROPERTY LOCATED AT
191 VANCE AVENUE, PIN #0609-93-9480.00000**

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

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

WHEREAS, upon recommendation of the Planning Board, the following text amendment is consistent with the comprehensive plan and reasonable in the public interest because it supports design principle one for development of underutilized land and served by infrastructure and design principle four for connection and design to balance the needs of pedestrians, drivers, cyclists, and transit users.

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

WHEREAS, the Town Council finds that the land use code text amendment is consistent with the comprehensive plan and is reasonable and in the public interest because of the following findings:

Allows development of underutilized land that is served by infrastructure and is connected and designed to balance the needs of pedestrians, drivers, cyclists, and tourist users.

WHEREAS, after notice duly given, a public hearing was held on November 13, 2023, as part of the regularly scheduled Town Council meeting at 6:00 p.m. in the Council Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, BE IT RESOLVED that Chapter 4, Section 4.7 of the Town of Black Mountain Land Use Code, be amended with the following (additions are underlined in bold and deletions are shown as red struck text):

Agreed upon conditions between Montreat College and the Town are attached.

This ordinance shall not be effective until the stipulated list of conditions is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 13^h day of May 2024.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of the conditions stated.

Applicant: Montreat College

Signature: _____

Printed Name: _____

Date: _____

Property Owner: Montreat College

Signature: _____

Printed Name: _____

Date: _____

LEGEND

- EXISTING BUILDING
- NEW BUILDING/ BUILDING ADDITION
- PRIMARY VEHICULAR STREET
- PRIMARY PEDESTRIAN WALKWAY
- TRAIL/ GREENWAY
- MONTREAT COLLEGE PROPERTY LINE
- EXISTING TREES
- PROPOSED TREES

- 1. ACADEMIC BUILDING
- 2. RESIDENCE HALL (4 STORIES, 160 BEDS EACH BUILDING)
- 3. FIELD HOUSE/ WELLNESS CENTER
- 4. FOOD SERVICE/ DINING HALL
- 5. EXISTING ABBOTT HALL
- 6. EXISTING MANOR HOUSE
- 7. NEW BASEBALL FIELD
- 8. PRIMARY CAMPUS ENTRANCE/ EXIST
- 9. EXISTING SECONDARY ENTRANCE/ EXIT
- 10. TENNIS COURTS
- 11. EXISTING ADMINISTRATION BUILDING
- 12. HALF SIZE PRACTICE SPORTS FIELD
- 13. PARKING: 1,080 TOTAL SPACES
- 14. EXISTING HIGH ROPES COURSE & RELOCATION OF CLIMBING WALL
- 15. EXISTING PULLIAM STADIUM WITH NEW BLEACHERS
- 16. NEW SOFTBALL FIELD
- 17. SWANNANOA RIVER
- 18. STORMWATER MANAGEMENT
- 19. CULVERT OVER TOMAHAWK BRANCH CREEK
- 20. FUTURE NCDOT INTERSTATE INTERCHANGE
- 21. TOMAHAWK BRANCH LOOP TRAIL
- 22. EXISTING TOWN OF BLACK MOUNTAIN MUNICIPAL WELL (EASEMENT)
- 23. EXISTING PEDESTRIAN WALKWAY & NON-MOTORIZED BICYCLE PATHWAY (EASEMENT)
- 24. RESTORED MANOR HOUSE GARDEN
- 25. 2-ACRE PARCEL FOR FUTURE DEVELOPMENT
- 26. TOWN OF BLACK MOUNTAIN VETERAN'S PARK
- 27. 100' INSTITUTIONAL ZONING BUFFER



MONTREAT COLLEGE: BLACK MOUNTAIN CAMPUS

MONTREAT, NC



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** May 13, 2024
AGENDA SECTION: PUBLIC HEARING- 6D **DEPARTMENT:** Planning
TITLE OF ITEM: Public Hearing for Map Amendment for Montreat College
#Z-O-23-23

SUGGESTED MOTION(S):

I move that we approve zoning map amendment #Z-O-23-23 to conditionally zone the Montreat College Black Mountain campus as institutional campus district conditional zone and that the zoning map amendment is reasonable and in the public interest in that the overall size of the tract is reasonable compared to the size of the zoning district in which the property is located, it is consistent with the comprehensive plan, the impact to adjacent property owners is reasonable and the benefits of the rezoning outweigh any potential inconvenience or harm to the community and allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.

SUMMARY:

Montreat College is requesting a conditional zoning to expand their Black Mountain Campus. The zoning district is currently institutional campus district (ICD) and they are asking to be rezoned to institutional campus conditional zoning district (ICD-CZ). Conditional zoning marries the development to a site-specific plan. The Planning Board heard the request at their regular meeting on September 25, 2023, and recommended the conditional rezoning request unanimously.

Montreat College is not requesting any uses that are not already allowed in the current institutional campus district.

The conditional zoning application does vary from the base zoning district by allowing building height maximums of 75 feet compared to the base zoning district of 35 feet. The height is deemed a reasonable request due to the topography of the parcel, with the building locations generally below grade of the adjacent roads and vegetative buffering.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- *Ordinance #Z-O-23-23*
- *Map*

ORDINANCE NO. #Z-O-23-23

AN ORDINANCE AMENDING THE ZONING MAP TO ADD MONTREAT COLLEGE PROPERTY LOCATED AT 191 VANCE AVENUE, PIN #0609-93-9480, AS AN INSTITUTIONAL CAMPUS DISTRICT CONDITIONAL ZONE

WHEREAS, the Town of Black Mountain has the authority pursuant to Article 6 of Chapter 160D of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the Town's zoning regulations was adopted on January 11, 2010, (Ordinance No. #O-10-01) and is codified in Appendix A of the Town of Black Mountain Code of Ordinances (herein "Zoning Ordinance"), and maps dividing and classifying the property within the Town's zoning jurisdiction were adopted on January 11, 2010, Ordinance No. #O-10-01) and are on file and maintained in the Offices of the Town of Black Mountain Planning and Development Department (herein "Official Zoning Map"); and

WHEREAS, this proposed amendment is consistent with the Town of Black Mountain Comprehensive Plan and other official plans of the Town and is determined to be reasonable and in the public interest for the following reasons:

1. The overall size of the tract of land proposed for rezoning is reasonable compared to the size of the zoning district in which the subject property is located.
2. The proposed rezoning is consistent with the comprehensive plan.
3. The impact to the adjacent property owners and the surrounding community is reasonable and the benefits of the rezoning shall outweigh any potential inconveniences or harm to the community.
4. The allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN TOWN COUNCIL THAT:

The Official Zoning Map be, and the same is hereby, amended as follows:

That parcel described and identified on the Buncombe County tax maps as PIN 0609-93-9480.00000, recorded in Deed Book 2429, Page 0668 and currently owned by Montreat College, be rezoned to institutional campus district conditional zone (ICD-CZ). A copy of the official zoning map showing said lot is attached hereto as Exhibit "A" and made a part thereof.

This ordinance shall be in full force and effective on the date of adoption.

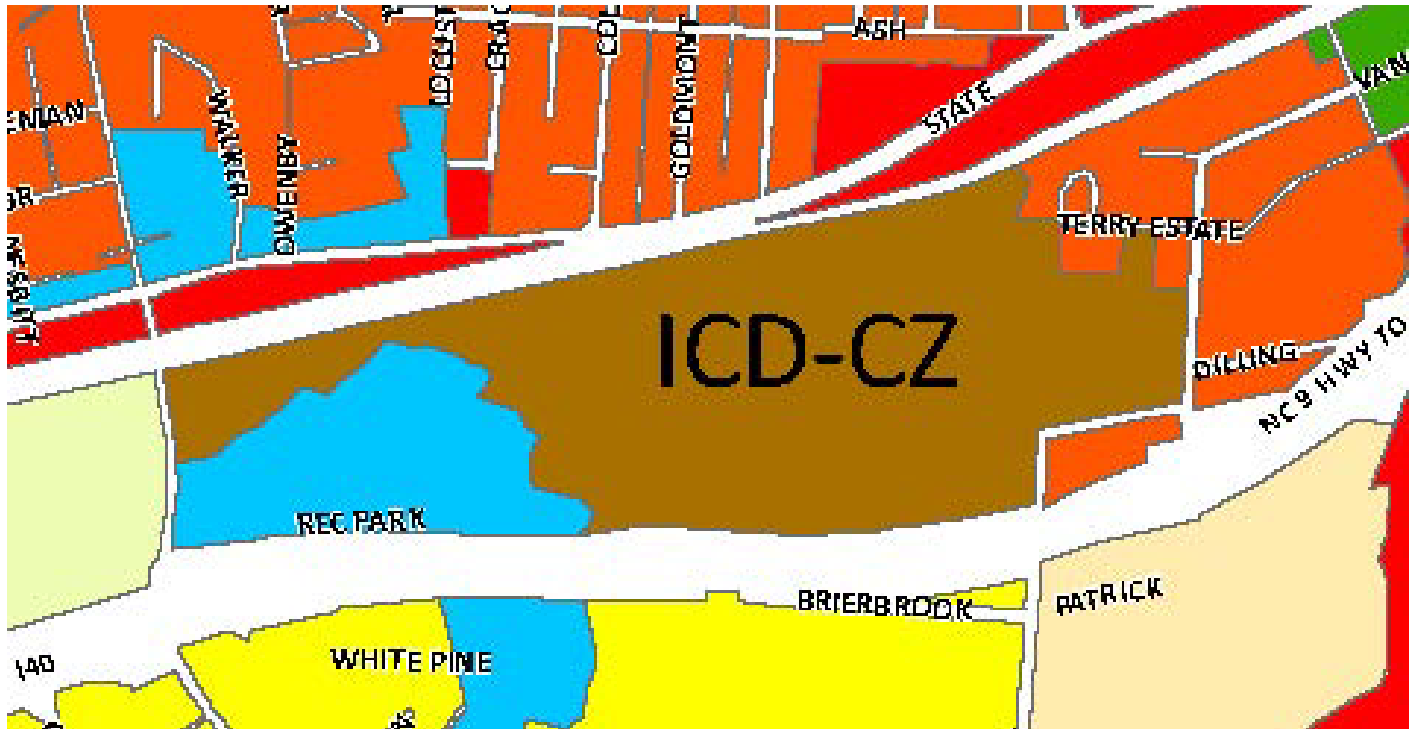
READ, APPROVED AND ADOPTED, this the 13th day of May 2024.

Wesley M. Barker, Town Clerk

C. Michael Sobol, Mayor

Approved as to form

**Town of Black Mountain
Exhibit A – Proposed Zoning
Conditional Zoning Request
Montreat College Black Mountain Campus**



Project Name: Montreat College Black Mountain Campus
Project Number: Z-O-23-23
Project Description: Conditional Zoning Request
Applicant: Montreat College
Parcel ID Number: 0609-93-9480.00000

Location/Address: 191 Vance Avenue

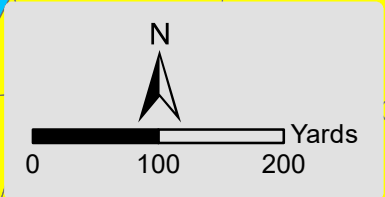
Town of Black Mountain, NC

Conditional Zoning

Zoning Code

 OI-6	 TR-4
 HB-8	 UR-8
 SR-2	 LI-8
 ICD-CZ	

PIN #0609-93-9480
(447 W State Street)





TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jamey Matthews, Public Works Director **MEETING DATE:** May 13th, 2024

AGENDA SECTION: NEW BUSINESS- 9A **DEPARTMENT:** Public Works

TITLE OF ITEM: Street Dedication for Rantis Lane and Fay Jones Lane into the Town's Street System

SUGGESTED MOTION(S): I move that the Town Council dedicate and accept Rantis Lane and Fay Jones Lane into the Town's street system, which includes assuming the maintenance of both streets to include paving, snow removal, and any other general maintenance of streets within the twenty-foot (20 ft.) right-of-way.

SUMMARY: The Town Council has been petitioned to dedicate and accept Rantis Lane and Fay Jones Lane, off Jane Jacobs Road, as Town public streets. This will include accepting all maintenance of both streets to include paving, snow removal, and any general maintenance of said streets within the 20 foot right-of-way.

BUDGET IMPACT: \$25,000 to \$30,000 to repave the streets currently but does not include snow removal or general maintenance.

ATTACHMENTS:

- Plat Showing Petitioned Streets
- Resolution of Dedication & Acceptance

A motion was made by Council Member _____ to approve the following resolution. A vote of _____ in favor.

**RESOLUTION TO ACCEPT AND DEDICATE RANTIS LANE AND FAY JONES LANE
TO THE TOWN'S STREET SYSTEM**

Resolution #R-24-__

WHEREAS, North Carolina General Statute 160A-296 grants municipalities general authority and control over all public streets within its corporate limits; and

WHEREAS, including a street on a town map does not provide any evidence of intent to accept the street for public use; and

WHEREAS, the Town Council has been petitioned to accept the following streets for Town maintenance, and as recorded on the Plat entitled "Phase Three- Jacobs Cottages, A Cottage Court Pocket Village" with the Buncombe County Register of Deeds office in Book 217, Page 28, dated April 15, 2021.

Street	Pavement Width	Right-of-Way Width
Rantis Lane	18'	20'
Fay Jones Lane	18'	20'

WHEREAS, a copy of the aforementioned Plat accompanies this resolution as "Attachment A"; and

WHEREAS, if accepted and dedicated as Town streets, the Town will be responsible for road maintenance within the designated road right-of-way to include paving and snow removal; and

WHEREAS, in accordance with the Street Dedication Policy, the Public Works Director has reviewed and recommends the dedication; and

NOW, THEREFORE, BE IT RESOLVED that the Black Mountain Town Council hereby accepts Rantis Lane and Fay Jones Lane and dedicates both to the Town's Street System.

APPROVED AND ADOPTED by the Black Mountain Town Council this the 13th day of May 2024.

ATTEST:

C. Michael Sobol, Mayor

Wesley M. Barker, Town Clerk





TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Angela Reece, MPA, MMC, NCCMC, **MEETING DATE:** May 13, 2024
Project & Facilities Manager

AGENDA SECTION: NEW BUSINESS- 9B

DEPARTMENT: ADMINISTRATION

TITLE OF ITEM: Approval of a Resolution Selecting Firm and Authorizing the Town Manager to Execute Agreement for Design/Build Services for the Cragmont Park Renovation Project

SUGGESTED MOTION(S): *I move that Town Council of the Town of Black Mountain adopt the resolution selecting **Harper General Contractors Inc.** (firm) as most responsible, responsive, and qualified firm and to authorize the Town Manager to negotiate and execute a final contract for design-build services for the Cragmont Park Renovation Project pursuant to § 143-128.1A.*

SUMMARY:

Based on the Town's written criteria for use of the design-build delivery method, staff the conducted a qualifications-based selection process to solicit proposals using the design-build method for the Cragmont Park Renovation Project pursuant to N.C. Gen. Stat. § 143-128.1A, to construct, repair, rehabilitate, or replace existing park infrastructure along two (2) adjoining parcels of land totaling 5.14 acres along Swannanoa Avenue. Based on the evaluations, **Harper General Contractors Inc.** (selected firm) is determined to be a responsive, responsible, and most qualified submitter.

Background regarding Design Build Contracting in NC

The design-build method is an integrated approach to a construction project that delivers both design (architectural and engineering) and construction services under one contract with a single point of responsibility. Under this project delivery method, the Town is provided the benefit of the design team and contractor working together to achieve the town's objectives under a single contract in an expedited manner.

ATTACHMENTS:

- i. Proposed Resolution
- ii. DRAFT Contract

**RESOLUTION BY THE TOWN OF BLACK MOUNTAIN TOWN COUNCIL
APPROVING DESIGN-BUILD FIRM SELECTION AND AUTHORIZING THE TOWN MANAGER TO
EXECUTE AGREEMENT FOR DESIGN- BUILD DELIVERY SERVICES
FOR THE CRAGMONT PARK RENOVATION PROJECT**

WHEREAS, The State of North Carolina passed Session Law 2013-401 authorizing local governmental entities in North Carolina to utilize the design- build method for construction contracting pursuant N.C. Gen. Stat. § 143-128.1A; and

WHEREAS, on January 8, 2024, the Town Council of the Town of Black Mountain passed Resolution R-24-03 to establish criteria to be utilized by the Town when considering the design-build delivery method for Town projects (“Town of Black Mountain Design-Build Criteria”); and

WHEREAS, on March 11, 2024, the Town Council of the Town of Black Mountain passed Resolution R-24-10 approving the use of the design-build delivery method for the Cragmont Park Renovation Project; and

WHEREAS, based upon the Town of Black Mountain Design-Build Criteria, the Town of Black Mountain conducted a qualifications-based selection process to solicit proposals using the design-build method for the Cragmont Park Renovation Project pursuant to N.C. Gen. Stat. § 143-128.1A, to construct, repair, rehabilitate, or replace existing park infrastructure along two (2) adjoining parcels of land totaling 5.14 acres along Swannanoa Avenue; and

WHEREAS, the Town received qualifications in accordance with said statute for the Cragmont Park Renovation Project; and

WHEREAS, based on the evaluations, **Harper General Contractors Inc.** (selected firm) is determined to be a responsive, responsible, and most qualified submitter; and

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

1. The Town of Black Mountain accepts the proposal from **Harper General Contractors Inc.** for professional design-build services for the Cragmont Park Renovation Project in an amount not to exceed \$492,000 and finds **Harper General Contractors Inc.** to be responsive, responsible, and the most qualified firm.
2. The Town Manager is authorized to negotiate and execute a final contract with **Harper General Contractors Inc.** (selected firm) to serve as design-builder for the Cragmont Park Renovation Project, in an amount not to exceed **\$492,000.00.**

READ APPROVED AND ADOPTED by the Town Council of the Town of Black Mountain, North Carolina, upon a motion by Council Member _____ on the 13th day of May 2024.

ATTEST:

Wesley M. Barker, Town Clerk

C. Michael Sobol, Mayor

Josh Harrold, Town Manager

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO
THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE SECTION 15-48-10, ET SEQ.

Article 1. Scope of Work - The Contractor shall furnish all labor, materials, equipment, sales tax and licenses required to perform the Work described in the Contract. The real property and improvements thereon of the Owner, upon which the Work is performed, are referred to herein as the "Project."

Article 2. Contract Terms - In the event of any conflict between the terms of the Agreement for Construction Services executed by Contractor and Owner (the "Agreement"), the terms of these Harper Standard Terms and Conditions ("Harper Standard Terms"), and the terms or requirements of the Contract Documents identified in the Agreement, such conflict shall be resolved by giving precedence to the terms or requirements of the documents in the following order (listed in order of highest priority to lowest priority): (1) the Agreement, (2) the Harper Standard Terms, and (3) the Contract Documents.

Article 3. Contract Sum and Payment Terms - As compensation for the performance of the Work, Owner shall pay Contractor the compensation identified in the Agreement (the "Contract Sum"), as adjusted by Change Orders in accordance with the terms set forth in these Harper Standard Terms. The Contract Sum shall be paid to Contractor in accordance with the terms of the Agreement and the following terms:

(a) Contractor shall submit a written invoice to Owner once per month for that portion of the Contract Sum that is due and payable to Contractor for the Work performed.

(b) Owner shall pay Contractor the portion of the Contract Sum requested in the invoice within thirty (30) days of Owner's receipt of the invoice. In the event the Owner has any questions or concerns regarding the amount requested in an invoice, the Owner shall submit its questions and concerns to Contractor in writing within ten (10) days of Owner's receipt of the invoice, and Contractor and Owner shall promptly confer in good faith to attempt to address the Owner's questions and concerns and, if necessary, Contractor may issue a revised invoice as agreed between Owner and Contractor, which shall be paid within ten (10) days of Owner's receipt. Otherwise, Owner shall pay the original invoiced amount within the original 30-day period.

(c) An appropriate portion of a payment which is otherwise due to Contractor may be withheld by Owner to the extent necessary to protect Owner from exposure to loss due to (a) defective Work not remedied, (b) liens filed by Contractor's subcontractors, suppliers or material men on account of Work for which Owner has paid Contractor, unless such liens are promptly removed, satisfied or discharged, and (c) the Contractor's failure to make proper payments to subcontractors or for materials or labor in accordance with Contractor's agreements with such parties. In such event, Owner shall pay Contractor the amount withheld from payment immediately upon the satisfaction, correction, or other cure of the grounds for withholding.

(d) The Owner shall pay interest on all past due amounts at the rate of 1.5% per month.

(e) The Contract Sum includes all state and local sales tax. Neither party is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors.

Article 4. Completion & Final Payment

4.1 Substantial Completion and Punch List. Upon Contractor's substantial completion of the Work, Contractor will notify Owner in writing (which may include email) that the Work is substantially complete. Within five (5) business days of the date Contractor notifies Owner that the Work is substantially complete, the Owner shall request and participate in a walk through with Contractor to observe and inspect the completed Work and submit to Contractor a written list of items of the Work (if any) to be completed or corrected prior to final completion of the Work (the "Punch List"). Contractor shall complete or correct the items identified in the Punch List within a reasonable time (not to exceed 30 days from the date of Contractor's written notice of substantial completion unless the parties mutually agree otherwise). In the event the Owner does not submit a Punch List to Contractor within five (5) business days of the date Contractor notifies Owner that the Work is substantially complete, the date of Contractor's notice of substantial completion of the Work shall also constitute the date of final completion of the Work. In the event the Owner submits a Punch List to Contractor within such 5-business day period, the date of final completion of the Work shall be the date Contractor completes or corrects all items identified in the Punch List and notifies Owner in writing (which may include email) of the completion of the Punch List items. For purposes of this Contract, "substantial completion" shall mean and constitute the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. If a Certificate of Occupancy or Temporary Certificate of Occupancy is required to be issued by the authorities having jurisdiction over the Project prior to Owner occupying or utilizing the Work, the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy shall constitute substantial completion of the Work.

4.2 Final Completion and Final Payment. Final payment shall be due thirty (30) days after final completion of the Work. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens, Contractor's indemnification obligations under Article 12, or latent defects in the Work which are first observed and reported to Contractor after the compilation of the Punch List or final completion, whichever first occurs.

Article 5. Price Escalation & Delay Clause - If, during the performance of this Contract, the price of materials significantly increases, through no fault of Contractor, the Contract Sum shall be equitably adjusted by an amount reasonably necessary to cover any such significant price increases. Such price increases shall be documented through quotes, invoices, or receipts. If Contractor is delayed at any time in the commencement or progress of the Work due to a delay in delivery or unavailability of materials, equipment, or labor, or due to a delay that is beyond the reasonable control of or without fault of the Contractor and its subcontractors or suppliers, the Contractor shall not be liable for any additional costs or damages associated with such delay(s) and the anticipated time for performance of the Work shall be equitably adjusted accordingly.

Article 6. General Conditions

6.1 Materials and Labor - Subject to the terms of the Contract governing the Owner's payment of the Contract Sum to the Contractor, the Contractor shall provide and pay for all materials, equipment, labor, subcontracts, taxes, tools, and other items necessary to perform the Work.

6.2 All temporary electricity and potable water required for the performance of the Work shall be made available to the Contractor by the Owner by permitting the Contractor to connect to those currently existing in or about the premises. Owner shall pay for the costs of all taps, meters, usage fees, and impact fees unless otherwise specified in the Agreement.

- 6.3 Unless otherwise specified in the Contract Documents, all materials shall be new, and both workmanship and materials shall be of good quality.
- 6.4 Permits, Licenses, and Regulations - Permits and licenses (other than Contractor's business and general contractor licenses) of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Owner. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner. Owner shall defend, indemnify and hold harmless Contractor from and against any and all claims, costs, expenses, fines, penalties or other economic loss resulting from or arising out of Owner's failure to obtain and maintain any permits, licenses, authorizations or easements necessary for the prosecution of the Work. The Contractor shall comply with all applicable laws and regulations.
- 6.5 Protection of Work, Property, and Persons - The Contractor shall provide reasonable protection of the Work, adjacent property, and the public and shall be responsible for any damage or injury to persons or property proximately caused by its negligent acts or omissions in the performance of the Work.
- 6.6 Inspection of Work - The Contractor shall make the Work available for inspection by the Owner and its agents and public authorities upon reasonable request. The Owner shall at all times strictly comply with the Contractor's safety program, procedures, rules and regulations as well as applicable laws and regulations.
- 6.7 Changes in the Work - Owner may, at any time, make reasonable changes in the Work as described in a written Change Order executed by the Owner and Contractor ("Change Order"). If any changes in the Work cause an increase or decrease in the cost of, or the time required for the performance of, the Work, the Change Order shall include an equitable adjustment of the Contract Sum or the anticipated time for performance of the Work, or both. Any claim by Contractor for an adjustment of the Contract Sum or the anticipated time for performance of the Work shall be submitted to Owner within thirty (30) days of the cause or event giving rise to such request and, if the Owner then authorizes the change in the Work and/or the adjustment of the Contract Sum or the anticipated time for performance of the Work, Owner and Contractor shall execute a Change Order approving the change in the Work and adjustment of the Contract Sum or the anticipated time for performance of the Work prior to Contractor proceeding with the change in the Work. Except in the case of an emergency involving threat of injury or damage to persons or property, the Contractor shall not be authorized or required to perform a change in the Work without an executed Change Order. In the case of an emergency involving imminent threat of injury or damage to persons or property, the Contractor is authorized to take reasonable steps necessary to avoid or mitigate such threat of injury or damage and the Owner and Contractor will execute a Change Order thereafter to equitably adjust the Contract Sum or anticipated time for performance of the Work as appropriate.
- 6.8 Correction of Work; Correction Warranty Period - The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents and is identified during the progress of the Work. In addition, the Contractor shall remedy, at its own cost, any defects in the Work due to faulty materials or workmanship which are reported by Owner to Contractor within one (1) year from the date of Contractor's written notice of substantial completion of the Work delivered to Owner pursuant to Section 4.1 above. The one-year warranty period for correction of defects in the Work commences upon the date of substantial completion of the Work and expires on the one-year anniversary of the date of substantial completion of the Work. Contractor's obligations to correct nonconforming or defective Work apply to Work performed or furnished by Contractor's direct employees and Contractor's subcontractors. Notwithstanding the foregoing, in the event the Work includes the delivery or installation of certain equipment, for which the Owner has beneficial use of such equipment prior to substantial completion of the entire Work, Contractor may notify the Owner in writing (which may include email) of the date on which the Owner has beneficial use of such equipment and the commencement of the one-year correction warranty period for such equipment, in which case the one-year correction warranty period shall commence on the date of Contractor's written notice of beneficial use of the equipment. Contractor shall assign to the Owner all manufacturer warranties for equipment furnished in the Work, and shall cooperate with the Owner to facilitate the manufacturer's performance of its warranty obligations pursuant to the manufacturers' warranties. Except to the extent a defect or nonconformity in equipment is caused by the active negligence of the Contractor or its subcontractors, the Contractor's warranty obligations with respect to equipment furnished in the Work shall be limited to such assignment of manufacturer warranties and reasonable cooperation with Owner to facilitate the manufacturers' warranty performance.
- 6.9 Concealed or Unknown Conditions - The Contractor shall promptly notify the Owner upon the discovery of concealed or previously unknown conditions that affect the performance of the Work and reasonably require or constitute a change in the Work involving an increase in the cost or time for performance of the Work. In such event, the Contractor shall not disturb the concealed or previously unknown condition until it receives written direction from the Owner, and the Owner and Contractor shall execute a Change Order identifying any agreed upon change in the Work and the corresponding adjustment of the Contract Sum and/or the anticipated time for performance of the Work before Contractor proceeds with the Work affected by the concealed or unknown condition.

Article 7. Termination of Contract.

7.1 Contractor's Right to Terminate Contract - If (a) the Work is stopped by any public authority for a period of thirty (30) days or more, through no fault of the Contractor, (b) the Work is stopped through or as a result of the acts or omissions of the Owner for a period of seven (7) days or more, or (c) the Owner fails to make any payment to the Contractor within seven (7) days after it is due, then the Contractor, upon seven (7) days written notice to the Owner, may suspend the performance of the Work and/or may terminate the Contract and receive or recover from the Owner payment of the proportionate share of the Contract Sum (including overhead and profit thereon) for all Work executed prior to termination and any loss sustained by Contractor. In the event of such a suspension of the Work by Contractor, upon Contractor's resumption of the performance of the Work the Owner and Contractor shall equitably adjust the Contract Sum and/or anticipated time for performance of the Work to account for the additional cost and/or time resulting from shutdown, delay and remobilization.

7.2 Termination for Convenience - Owner or Contractor may terminate the Contract for its own convenience, and without cause, upon providing the other party written notice of such termination for convenience not less than seven (7) days prior to the effective date of the termination, which shall be identified in the written notice. In the event the Owner terminates the Contract for its convenience, the Owner shall be obligated to pay Contractor the proportionate share of the Contract Sum (including overhead and profit thereon) for all Work executed prior to the effective date of termination and any loss sustained by Contractor. In the event the Contractor terminates the Contract for its convenience, the Owner shall be obligated to pay Contractor the proportionate share of the Contract Sum (including overhead and profit thereon) for all Work executed prior to the effective date of termination.

Article 8. Contractor's Liability Insurance - The Contractor shall maintain (1) commercial general liability insurance covering property damage and bodily injury and written on an occurrence basis including ongoing operations, contractual liability, and products/completed operations with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate; (2) Workers Compensation providing statutory benefits for the Contractor's employees and Employers' Liability Insurance with minimum limits of \$1,000,000 for each accident/disease-policy limit/disease-each employee; and (3) business automobile insurance including coverage for all owned, non-owned, and hired automobiles with combined single limits of \$1,000,000 per occurrence. Certificates of such insurance shall be provided to the Owner upon request. The Owner shall be included as an additional insured for the Contractor's commercial general liability insurance.

Article 9. Builder's Risk - Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof. This insurance shall include the Contractor as named insureds, cover Contractor's interests in the Work, and be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against, at a minimum, the following perils or causes of loss: fire; lightning; windstorm; weather; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown; boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood).

Article 10. Allocation of Risk of Loss of Property - During the progress of the Work, the Owner assumes all risk of loss from damage caused by fire, theft, vandalism, windstorm, weather, and other such events to all pre-existing structures and other tangible property of the Owner located on or adjacent to the Owner's property, and shall maintain property insurance against all such losses. Contractor assumes all risk of loss caused by fire, theft, vandalism, windstorm, weather, and other such events to (a) all materials and supplies in, on, or adjacent to such pre-existing structures and intended for use in the performance of the Work, and (b) any temporary structures erected by or for the Contractor or any of Contractor's subcontractors for the performance of the Work. The Owner and Contractor, for themselves and their respective insurers, waive all rights and claims (including rights and claims that may arise in favor of their insurers by way of subrogation) against each other and their respective contractors and subcontractors for all damage or loss that is covered by property insurance maintained by either party to the extent that the claims for covered damage or loss are actually paid by the insurer(s) on such property insurance policies, except such rights as they have to the proceeds of such insurance. The parties' policies of insurance shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, and even though that person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the damaged property.

Article 11. Subcontracts - The Contractor may retain subcontractors for performance of portions of the Work. All subcontractors and workmen shall be skilled in their respective trades and shall be supervised and coordinated by Contractor.

Article 12. Indemnity of Owner - To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article 12.'

Article 13. Consequential Damages - The Contractor and Owner waive claims against each other for consequential, incidental, and indirect damages arising out of or relating to this Contract and the performance of the Work. This mutual waiver includes, without limitation, (a) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (b) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Contract in accordance with Article 7.

Article 14. Force Majeure - Contractor shall not be responsible for any delay, damage, or failure caused by or occasioned by a Force Majeure Event; provided, however, that Contractor shall give the Owner written notice of the occurrence of a Force Majeure Event affecting the performance of the Work within ten (10) business days after the Contractor becomes aware of the effect of such Force Majeure Event on the performance of the Work. "Force Majeure Event" shall mean and include any act of God, act of nature or the elements (including adverse weather conditions), terrorism, insurrection, revolution or civil strife, piracy, war or hostile action, labor strikes, unusual labor shortages, unavailability of materials or equipment, supply chain interruptions or disruptions, epidemic or pandemic, acts of public enemies, federal or state laws, rules and regulations of any governmental authorities having jurisdiction over the premises, or any other causes beyond the reasonable control of Contractor. Delays due to any of the above causes shall not be deemed to be a breach of, or failure to perform under, this Contract. Any delay in performance by the Contractor pursuant to this Article shall continue only for so long as the Force Majeure Event continues, and only to the extent that Contractor is so prevented or delayed.

Article 15. Dispute Resolution - All claims, disputes, and other matters in question between Contractor and Owner arising out of or related to this Contract, or the performance or breach thereof, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining at the sole option of Contractor. Contractor may, at its option, join or consolidate arbitration with the Owner, its Architect/Engineer or other design professional, Construction Manager, and subcontractors, suppliers, or any other party having an interest in the proceeding relating to disputes arising out of the Contract or the Work. Notwithstanding any other choice of law provisions, if any, the parties acknowledge that the Project affects interstate commerce and that this agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. Owner and Contractor agree that, in the event that any claim or dispute between them arising out of or relating to the Contract or the Work is submitted to arbitration or litigation for binding resolution, the prevailing party in any such arbitration or litigation proceeding shall be entitled to recover from the other party the arbitration or litigation expenses, including reasonable attorney's fees, incurred by that party in connection with the arbitration or litigation.

Article 16. Change in Law Clause - Notwithstanding any other provisions of the Contract, if, after the Execution Date of the Agreement, there is a change in applicable federal, state, or local laws, rules, regulations, codes, guidelines, or other legal requirements, whether through legislation, judicial or administrative decisions or decrees, or any other governmental determinations (hereinafter "Change in Law"), that materially affects a party's performance of this Contract, including but not limited to delays and extra costs, the parties agree to engage in good faith negotiations to equitably amend or modify this Contract and any performance requirements as the parties shall determine to be reasonably necessary to account for the impact of such Change in Law. A party seeking relief under this provision shall (1) promptly notify the other party of the Change in Law and provide in such notice reasonable detail supporting its assertion that its performance has been materially affected by the Change in Law; and (2) take commercially reasonable steps to mitigate the adverse impact of such Change in Law upon that party's performance.

Article 17. Governing Law, Venue, Jurisdiction and Waiver of Jury Trial - Subject to the application of the Federal Arbitration Act to the parties' arbitration agreement set forth in Article 15, the Contract shall be construed and interpreted in accordance with the laws of the State in which the Project is located, and each party's rights and obligations under or in connection with the Contract and the Work shall be governed by the laws of that State. In the event of a claim, dispute or controversy between the parties arising out of or relating to the Contract or the Work, if the Contractor elects not to require arbitration of such claim, dispute or controversy in accordance with the arbitration agreement set forth in Article 15 and the claim, dispute or controversy is, therefore, pursued by a party or the parties in litigation, the parties hereby agree and stipulate that the State courts or federal district court located in Greenville, South Carolina shall have sole and exclusive jurisdiction and venue over such claim, dispute or controversy and the parties. To the fullest extent allowed by applicable law, each of the parties hereby intentionally and voluntarily waives its right to a trial by jury for any such claim, dispute or controversy that is litigated in the courts.

Article 18. Entire Agreement - The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. No additional or different terms or alteration of the terms set forth in the Contract shall be effective and binding upon the Owner and Contractor unless expressly stated in a written amendment or addendum to the Contract signed by Owner and Contractor. The Contract may be amended or modified only by a written amendment or addendum (which may include a Change Order) signed by Owner and Contractor.

Article 19. Execution of Agreement - The Agreement may be executed in any number of counterparts, transmitted, and stored electronically. The sum of the executed counterparts transmitted electronically between and among Contractor and the Owner shall be deemed the original Agreement.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE SECTION 15-48-10, ET SEQ.

AGREEMENT FOR CONSTRUCTION SERVICES

CLIENT ("Owner"):

CLIENT ADDRESS:

CLIENT CONTACT:

PROJECT NAME:

PROJECT ADDRESS:

PROJECT NUMBER:

**HARPER PROJECT
MANAGER:**

Basis of Compensation to Contractor:

As compensation for the performance of the Work (defined below), Owner shall pay Contractor the **Lump Sum Amount** of \$ _____ in accordance with the terms of Section D below and the Harper Standard Terms and Conditions (Exhibit A).

The above-named Owner has requested that Harper ("Contractor") perform and furnish the construction services, labor, materials, and equipment described below in the Scope of Work. Upon execution of this Agreement for Construction Services ("Agreement") by Owner and Contractor, this Agreement shall be binding upon Owner and Contractor in accordance with the terms stated herein and in the Harper Standard Terms and Conditions attached hereto. The parties' Contract shall consist of this Agreement, the Harper Standard Terms and Conditions, and the Contract Documents identified below in the Scope of Work, if any (collectively, the "Contract"). In the event the Owner and Contractor have previously executed a Master Services Agreement, the Owner and Contractor hereby agree and acknowledge that this Agreement (and the Contract) is not a "Work Order" within the meaning of the terms of such Master Services Agreement and this Agreement (and the Contract) shall not be subject to or governed by the terms of the Master Services Agreement.

A. Scope of Work:

- Contractor shall perform and furnish the construction services, labor, materials, and equipment (the “Work”) for the Project in accordance with the following Contract Documents furnished by Owner (“Contract Documents”):
 - i. Drawings / Specifications / Sketches (reference/date/title):
 - 001:
 - 002:
 - ii. Exhibits (reference/date/title):
 - 001:
 - 002:
 - iii. Attachments (reference/date/title):
 - 001:
 - 002:
- The Work shall include the following:
 - i. XYZ
 - ii. XYZ
 - iii. XYZ
 - iv. All management, supervision, and general conditions as required to perform the Work.
 - v. All construction equipment as required to perform scope of Work
 - vi. All safety equipment as required to perform scope of Work.
- The scope of Work is further clarified by and subject to the following clarifications.
 - i. The Contract includes the one-year warranty for correction of defects in the Work due to faulty materials or workmanship as set forth in the Harper Standard Terms and Conditions.
- The scope of Work is further clarified by and subject to the following exclusions.
 - i. Rock excavation/removal/blasting, or other services relating to or arising from subsurface, concealed, or other unknown conditions not expressly identified in the Contract Documents and included within the scope of the Work.
 - ii. Treatment process performance guarantees
 - iii. Existing structure condition guarantees
 - iv. Electrical, controls and/or integration work
 - v. Permitting (including obtaining or paying for building permit) and/or NCDEQ compliance
 - vi. Material and/or geotechnical testing
 - vii. Performance and Payment Bond
 - viii. Any work not explicitly described above as being included in the scope of Work

B. Furnished by Owner:

C. Schedule:

- Contractor shall complete the Work within a reasonable time under the circumstances. Liquidated damages, or other penalties associated with delivery times are not applicable to this agreement.

D. Compensation to Contractor for Performance of the Work – Lump Sum Basis

- Pricing provided in this proposal is valid for a period of 10-business days from the date distributed.
- The agreed upon Lump Sum Amount (\$) includes the following **Allowances**:

ITEM	DESCRIPTION	VALUE
1.		\$
2.		\$

- The agreed upon Lump Sum Amount does not include the following **Alternates** which, if selected by Owner, shall be added to the scope of the Work and the Lump Sum Amount by a written Change Order executed by Owner and Contractor. Please indicate selection by initialing beside corresponding option

Alternate #1

ITEM	VALUE	ACCEPTED (Y/N)	INITIALS

Alternate #2

ITEM	VALUE	ACCEPTED (Y/N)	INITIALS

E. Harper General Contractors: Licensed, Bonded, & Insured

- Licensed in:
 - SC: Unlimited Building (BD5), Water/Waste Plant (WP5) & Water/Sewer Lines (WL5)
 - NC: Unlimited Building (BD), Water/Waste Plant & Lines (PU)
 - GA: Unlimited Building (GC), Utility Contractor (UC)
- Bonded: 45+ year with Chubb Surety, A++ rating
- Insured: Workman's Comp, General Liability, Auto, Umbrella, Pollution Liability

F. Execution

CONTRACTOR:

Signature

Print

Date

OWNER:

Signature

Print

Date

DRAFT



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Town Council

MEETING DATE: May 13th, 2024

AGENDA SECTION: NEW BUSINESS- 9C

DEPARTMENT: Admin/Rec & Parks

TITLE OF ITEM: Discussion of designated parking request at Lakeview Senior Center

SUGGESTED ACTION: Town Council will discuss this item and provide guidance to staff as needed.

SUMMARY: At the December 11, 2023 Town Council meeting, a couple of citizens spoke at public comment about parking at the Lakeview Senior Center requesting that approximately 22 parking spaces be reserved from 9am-1pm Monday-Friday for Senior Center use. At the May 9, 2024 agenda review meeting, Council Member Alice Berry suggested that this item be brought back to the Council to discuss further at the May 13, 2024 Town Council meeting.

BUDGET IMPACT: n/a – discussion only at this time.

ATTACHMENTS: n/a- discussion only