

## PROPOSED AGENDA

### Meeting of the Town of Biltmore Forest Board of Commissioners

To be held Tuesday, October 11, 2022 at 4:30 p.m.

A. Pledge of Allegiance

B. Roll Call

Mayor George F. Goosmann, III  
Commissioner Fran G. Cogburn  
Commissioner E. Glenn Kelly  
Commissioner Doris P. Loomis

C. The minutes of the September 13, 2022 meeting will be presented for approval.

D. Reports of Officers

1. Chief of Skyland Fire and Rescue
2. Chief of Police Chris Beddingfield
3. Public Works Director Harry Buckner
4. Town Manager Jonathan Kanipe

E. New Business

1. Consideration of Amendments to Town Code of Ordinances for Compliance with S.L. 2021-138  
*(Second Review for Consideration)*
2. Consideration of Easement to Duke Energy for Portion of Rosebank Park
3. Project Update – Cedar Hill Road Stabilization Project
4. Consideration of Resolution 2022-04  
*Resolution Supporting Option of Local Governments to Hold Public Meetings via Remote Electronic Methods or Hybrid Public Meetings During Non-Emergency Times*
5. Consideration of Chair Appointment – Friends of Biltmore Forest

For those interested in viewing the Board meeting remotely, please utilize the following information:

<https://us02web.zoom.us/j/82228455470?pwd=SG9WU0FwUjFSdGZveS95b3pLTUIHdz09>

Meeting ID: 822 2845 5470

Passcode: 966757

MINUTES OF THE MEETING OF THE MAYOR AND THE TOWN COMMISSIONERS OF  
BILTMORE FOREST HELD SEPTEMBER 13, 2022

Be it remembered by those that follow these proceedings that the Governing Board of the Town of Biltmore Forest met and conducted the following business:

Roll call taken by the Clerk:

Mayor George F. Goosmann, III, present  
Commissioner Doris P. Loomis, present  
Commissioner E. Glenn Kelly, present  
Commissioner Fran Cogburn, present via Zoom

Mr. Jonathan Kanipe, the Town Manager, and Mr. William Clarke, the Town Attorney, were also present.

The Pledge of Allegiance was conducted.

Mayor Goosmann called the meeting to order at 4:30 pm.

Commissioner Loomis made a motion to approve the minutes from August 9, 2022. The motion was seconded by Commissioner Kelly and unanimously approved.

Chief Trevor Lance from Skyland Fire Department gave the monthly report. Chief Lance discussed the app for Skyland Fire Department that users can now download on their phone for free. The month of August had a total of 19 calls. It was a very good month. Commissioner Kelly asked if the fire department transfers people to the hospital. Chief Lance said the main station is not transporting anymore but the Buncombe County EMS unit has been moved in its place. Station Four is who serves Biltmore Forest and they will continue to do so. Mayor Goosmann thanked Chief Lance for all of Skyland's hard work.

Chief Chris Beddingfield gave the report for the Police Department. There were 612 calls for service. The “Meet the Police” event was a huge success and are getting requests to do another one in the future. There was a lot of positive feedback. Chief Beddingfield also discussed the new police department app. Many people have downloaded it so far and has received much positive feedback as well. Many people have downloaded the app so far.

The UTV is now striped and marked. It will also have emergency lighting put on it shortly.

Ms. Aslyne Tate was sent to a National Telecommunicators conference along with Ms. Shannon Kimbrough. Ms. Tate spoke about the conference. Ms. Tate said it was held in Anaheim, California this year. They attended the APCO (Association of Public-Safety Communications Officials) conference. They received dispatch training, health tips, important networking with dispatchers throughout the Country. Ms. Tate told the Board about the Plush family whose son passed away due to an emergency which was not dispatched properly to officers. They created a foundation in honor of their son and spoke to dispatchers across the country. Ms. Tate said dispatchers do not have a lot of opportunity for training and thanked the Board for letting she and Ms. Kimbrough attend. Chief Beddingfield thanked Ms. Tate and stated how important dispatchers are as they are usually the first contact involved in a serious situation.

Mr. Harry Buckner gave the report for the Public Works Department. Mr. Buckner said they are still actively pursuing for a Public Works candidate. There is a great potential candidate they have in mind and have extended an offer to this candidate. They are waiting for a response.

Mr. Buckner said he spoke to the striping contractor for the all-way stop. He is waiting for some of the deliveries of supplies. There is potential for a delay.

The annual solid waste report was turned in to the State for approval. The collections were down 5 percent for the year. This comes out to approximately 20 tons which is about 2 weeks of trash.

The Town has made tremendous progress on storm drain repair at the end of Vanderbilt as well as street light work.

Mr. Buckner thanked the Board for letting him attend the National Public Works Association conference in Charlotte. Mayor Goosmann thanked Public Works for all their hard work.

Mr. Kanipe gave the report for the Town. The Town hopes work will be finished very soon at Greenwood Park. The change order necessary to complete the workaround along Greenwood Road has been agreed upon and all parties have signed off. The state must approve this change order and the Town and engineer are pushing them to have this occur as soon as possible. The project's hardscape was finalized except for the storm drain repair along Greenwood Road. This was unable to proceed due to the presence of Duke Energy's large, three-phase duct bank underground at this location. With the design revised and the change order signed, work should begin no later very soon with the final phase, including planting, still scheduled to conclude by the end of October.

Regarding the all-way stop update, the Board authorized the Town to begin an all-way stop implementation at the July 2022 Board meeting. Mr. Buckner presented a timeline and schedule for this work to commence. Residents have been notified via the Town's newsletter. Heavy notifications will take place prior to full implementation, including CodeRED alerts, the BFPD mobile app, Nixle alerts, and on-site signage. We will also have a heavy police presence during the implementation timeline to assist with compliance.

Next, Mr. Kanipe discussed the trash can implementation project. Public Works employees have distributed the 95-gallon trash cans. They will start taking away old cans as well. The 65-gallon containers should arrive in mid-October and those will be distributed.

The Cedar Hill Road stabilization project is going well and has received the necessary permits from the United States Army Corps of Engineers and the North Carolina Division of Water Quality. The consultant is finalizing the bid package for this project and Mr. Kanipe hopes to

release that for interested contractors within the next several weeks. A scheduled completion date is April 30, 2023.

Mr. Kanipe updated the Board that staff is currently working on updating the Town's website and making improvements. We are focusing on providing more timely information and increased updates for Town projects. There will be an informational bulletin in this upcoming newsletter asking people to visit the Town website and provide feedback regarding contact information and receiving updates and notifications.

Ms. Susan Bean and Mr. Wes Wright presented information regarding the Buncombe County Bond Referendum on the "Vote Yes" Campaign. They discussed information related to Buncombe County's bond referendum on the upcoming November ballot. Ms. Bean presented information related to the referendum. A copy of the presentation was provided to the Board and on the Town's website.

Mr. Kanipe discussed the Amendments to Town Code of Ordinances for Compliance with S.L. 2021-138. State law changes regarding criminal enforcement of municipal ordinances require the Town amend its ordinances and affirmatively state violations that carry criminal penalties. The new state law dictates an ordinance violation leads to a civil penalty *unless* the municipality specifically states that criminal penalties apply. S.L. 2021-138 also specifies the maximum criminal penalty that may be enforceable for any municipal ordinance violation. Mr. Kanipe attached documents which include existing Town Ordinances that requires amendments in order to comply with S.L. 2021-138 and asked the Board if they wish to change the wording of any ordinance during this process. In October, these ordinances would be eligible for consideration of approval.

Mr. Billy Clarke said the language Mr. Kanipe included is good but if a violation is going to be criminal, this needs to be specified. Mr. Clarke suggested to have the Board look at these and let him and Mr. Kanipe know if there are any changes.

Commissioner Loomis asked that it be made clear to those reading the proposed changes that state law makes driving infractions criminal. Mayor Goosmann said the Board will act on this next month.

The Duke Energy Targeted Underground/Streetlight Coordination Project was discussed. Mr. Kanipe said the basic purpose this is to bring a new method to bring power to these lights. They have worked very well with us to have something result in not having anything above ground. Mr. Kanipe showed a visual (underground box) of what this will look like. The underground box is buried up to the edge and flush with the ground. Duke Energy Progress lines will go into a connector and the power light will go out. This will be flush with the ground and not above ground. Mr. Buckner said the current lamps have too much power. Instead of 150 watts, they will go to 50-60 watts, but they will be LED. This will affect all the streetlights. This will achieve the aesthetic results. The LED's have a substantially longer bulb life. There was a consensus to move forward with this project.

The Board then moved to the consideration of a Master Services Agreement with Paymentus. They are a leading company for collecting fees via online or non-traditional methods. There is no charge to the Town; any fees collected are paid by the user. Paymentus is widely used in the government sector and has a great reputation for their quality and payment options. The change will likely occur in the next 90-120 days. Commissioner Loomis made a motion to accept the Master Services Agreement with Paymentus. Commissioner Kelly seconded the motion. The motion was unanimously approved.

The last topic of discussion is remote meeting allowance during non-emergency times. All local governments were allowed to utilize remote or other electronic means to conduct meetings during the Covid-19 pandemic. This allowance was included as part of Governor Cooper's State of Emergency declaration. This declaration expired on Monday, August 15, 2022, thereby eliminating the ability of elected local boards to conduct remote meetings. There are still allowances, via existing state law, for non-elected boards to meet remotely.

The Town of Weaverville has adopted a resolution encouraging the North Carolina General Assembly to pass legislation that would allow elected boards to hold remote meetings via electronic means in non-emergency times. Their resolution includes stipulations regarding this use

that are tied back to existing remote meeting law requirements found in NCGS 166A-19.24. This law governs remote meetings held during declared states of emergency. This discussion is solely to determine whether the Board would like to join the Town of Weaverville in their request for the N.C. General Assembly to consider amending this law. The Board made a decision to consider a Resolution for the next meeting on October 11, 2022.

Public Comment

Mr. Drew Stephens supports upgrading the streetlights

Ms. Sidney Thornton has questions about Paymentus and how the online payment process will work.

Mayor Goosmann adjourned the meeting at 5:41 p.m. The next meeting is scheduled for Tuesday, October 11, 2022 at 4:30 pm.

ATTEST:

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Laura Jacobs  
Town Clerk

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George F. Goosmann, III  
Mayor





Biltmore Forest Police  
355 Vanderbilt Road  
Biltmore Forest, NC 28803  
828-274-0822  
Chief M. Chris  
Beddingfield



George F. Goosmann, III, Mayor  
Doris P Loomis, Mayor-Pro Tem  
E. Glenn Kelly, Commissioner  
Fran Cogburn, Commissioner  
Jonathan Kanipe, Town Manager

## **Biltmore Forest Police Department October- 11<sup>th</sup>, 2022 Commission Report**

### **September 2022 Data**

#### **Total Calls For Service:**

579 (612 last month)

#### **Arrests:**

1-Felony Arrest- Possession of Methamphetamine-Out of a traffic stop.

4-Misdemeanor Arrests-One for Marijuana and drug paraphernalia out of a suspicious vehicle call, One for resisting officer out of a suspicious person call, One for multiple traffic violations including Impaired Driving, 105 MPH in a 45 zone and alcohol violations from a traffic stop, One for an outstanding warrant for failure to return rental property out of a traffic stop.

#### **Citations:**

16-Citations for various traffic violations (16 last month)

#### **Time Consumption Summary:**

*Approximations:*

Business Checks- 4 hours

House Checks- 4 hours

Radar Operation- 1 hour

Vehicle Crash Investigation- 4 hours

#### **Notable Calls and Projects:**

UTV is complete-Lights, siren and radio installed

New hire-Officer Adam Cabe has started. Adam brings a wealth of knowledge and experience to the department.

Held a celebration of Mark Allen's 23 years of service

App downloads continue to grow, Outgoing information increasing as well

**Biltmore Forest Police Department**  
**355 Vanderbilt Rd**  
**Biltmore Forest, NC 28803**

September Calls for Service  
09/01/2022 – 09/30/2022

<b>BILTMORE FOREST POLICE DEPARTMENT</b>	<b>Count</b>	<b>Percent</b>
ALARM	18	3.11%
ANIMAL CONTROL	11	1.90%
ASSIST MOTORIST	6	1.04%
ASSIST NON-RESIDENT	1	0.17%
ASSIST OTHER AGENCY	10	1.73%
ASSIST RESIDENT	15	2.59%
BICYCLIST VIOLATION	1	0.17%
BUSINESS CHECK	238	41.11%
CRIME PREVENTION	17	2.94%
DEPARTMENT OTHER	2	0.35%
DOMESTIC	1	0.17%
ESCORT	1	0.17%
FOLLOW-UP INVESTIGATION	3	0.52%
HIT AND RUN	1	0.17%
HOUSE CHECK	101	17.44%
IMPROPER PARKING	1	0.17%
JUVENILE ISSUE	1	0.17%
MEDICAL EMERGENCY	6	1.04%
MENTAL PATIENT	1	0.17%
ORDINANCE VIOLATION	4	0.69%
PROPERTY DAMAGE	2	0.35%
ROAD BLOCKED	2	0.35%
SPECIAL CHECK	8	1.38%
SUSPICIOUS ACTIVITY	1	0.17%
SUSPICIOUS PERSON	14	2.42%
SUSPICIOUS VEHICLE	36	6.22%
TALK WITH OFFICER	6	1.04%
TRAFFIC STOP	56	9.67%
TREE DOWN	6	1.04%
VEHICLE ACCIDENT	8	1.38%
WELFARE CHECK	1	0.17%
<b>Total Records For BILTMORE FOREST POLICE DEPARTMENT</b>	<b>579</b>	<b>Dept Calls/Total Calls 100.00%</b>

355 Vanderbilt Rd | Biltmore Forest, NC  
Po Box 5352 | Biltmore Forest, NC 28803  
P (828) 274-0824 | F (828) 274-8131  
www.biltmoreforest.org



George F. Goosmann, III, Mayor  
Doris P. Loomis, Mayor-Pro Tem  
E. Glenn Kelly, Commissioner  
Fran G. Cogburn, Commissioner

Jonathan B. Kanipe,  
Town Manager

## MEMORANDUM

To: Jonathan Kanipe, Town Manager

Mayor and Board of Commissioners

From: Harry B. Buckner, PE, Director of Public Works

A handwritten signature in black ink, appearing to read "HBB", positioned to the right of the "From:" line.

Re: Public Works Department September 2022 Monthly Report

Date: October 6, 2022

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### **Recurring Activities:**

The Public Works Department has completed the following activities during the month of September:

- Collected 32.36 tons of garbage.
- Diverted 14.03 tons of recycled goods from garbage.
- Picked up 14 loads of brush (approximately 420 cubic yards) over 8 days.
- Responded to 104 total utility locate requests, comprised of 34 new requests and 70 updates. This total includes 1 emergency request and 3 rush requests.
- Visited 10 residences for Tree Assessments, approving the removal of 24 trees, and requiring the installation of 16 trees.
- Completed daily chlorine residual tests across town and passed the required two bacteriological tests and the four quarterly disinfection byproduct tests. Results are reported via the State's on-line reporting system.
- Used the Beacon/Badger Meter automated meter reading system to monitor for water leaks daily and informed residents of suspected leaks.
- We continue to perform litter pick-ups as needed, focusing on the entrances.
- Normal brush collection continued with the North Route on September 15<sup>h</sup>, and the South Route on October 3<sup>rd</sup>. Note that the final brush collections for the year will be October 17<sup>th</sup> for the North Route and October 31<sup>st</sup> for the South Route before switching in November to leaf only collection.

## **Miscellaneous Activities in August**

- We continue to advertise for two (2) open Public Services Worker Positions. Should anyone know of a candidate they would be willing to refer, please reach out to either me or Mike.
- Our offer of employment that was extended last month was turned down as his current employer counteroffered for him to stay.
- All signage necessary to complete the conversion of the Busbee Road and Vanderbilt Road intersection to an all-way stop are in-hand. The Contractor is scheduled to complete the work during the week of October 17<sup>th</sup>, weather pending.
- On September 6, our team repaired a damaged section of storm drain pipe in the sharp bend of Vanderbilt Road near house 423. The existing clay pipe was apparently damaged some time ago during the installation of a natural gas line, and that damage finally showed up as a sizeable sinkhole near the edge of pavement. About four feet of pipe had collapsed, but staff was able to safely excavate the area around the gas pipe and replace the damaged section of storm drain.
- I met with our video surveillance provider on September 1, 2022, to discuss adding a dedicated camera to the dumpster area at the Town Hall Complex. We continue to have issues with abuse of the dumpsters, specifically the dumping of materials that cannot be accepted, not placing all garbage inside the dumpsters, and not collapsing cardboard boxes, which causes them to be over capacity quickly. The problems are compounded when there is any unscheduled interruption of service, which did happen recently. I received and signed off on that proposal to add the single camera to the existing system September 27<sup>th</sup>.
- I solicited a quote from a competing dumpster service company for comparison and will be reviewing that proposal with Manager Kanipe.
- We completed more dead and damaged tree removals on Town-owned property and rights-of-way utilizing an outside tree company on September 14<sup>th</sup>. Work continued along Vanderbilt Road south of the I-40 bridge.
- I met with the team from Duke Energy to discuss the streetlight reconnections on September 7. The results of that meeting were that we will be engaging with an outside contractor to perform modifications to the streetlights to allow connectivity to the new underground power system, and they will be installing un-metered underground power adjacent to each streetlight. Demand at each location is capped at 100 watts maximum, thus requiring the rewiring of all streetlights to LED. I have reached out to a potential contractor to complete this work.
- I submitted the necessary applications for power service (6 new locations in addition to the 15 previous applications) to Duke Energy on September 29<sup>th</sup> and received notification that the applications were accepted.
- I solicited and reviewed proposals from a window cleaning service to come in and clean the interior and exterior of the windows in all of the buildings (Town Hall, Police, and Public Works) at the Town Hall Complex.

- I also met with a seamless gutter company about replacing and upsizing the existing gutters on the Town Hall building. I have forwarded the proposal to Manager Kanipe for consideration.
- I am continuing to reach out to potential painting contractors to get proposals to repaint the exterior of Town Hall. We have also identified a few small areas of damage to building trim that will need to be repaired prior to painting.
- Public Works Supervisor Mike Dale attended the 13th Annual Great NC Tree Conference in Greensboro on September 15<sup>th</sup>, 2022. This conference focused on tree management within NC cities, including best practices for ordinances and management of Town public spaces.
- Staff responded to two (2) water service line breaks by Duke Energy this month. A service was broken between the main and the meter at 15 Ridgefield Road on September 13<sup>th</sup>, and another broken service between the meter and the home at 12/14 Hilltop Road on September 22<sup>nd</sup>.
- I met with a resident on Chauncey Circle about several dead trees located on Biltmore Farms Property, and Manager Kanipe notified them of our concerns on September 13<sup>th</sup>.
- We installed a new irrigation meter at 32 Hilltop Road on September 27<sup>th</sup>.
- We repaired an existing sinkhole and storm drain box between 32 Hilltop Road and 4 Greenwood Road.
- We completed right-of-way clean-up along Cedar Hill Road, and near the Forest Road / East Forest Road intersection.
- Repairs to the heating and cooling system of the dump truck were completed.
- We continue to collect unwanted garbage cans and are recycling them at the Curbside Management facility in Woodfin.

## **Larger/Capital Projects Updates**

### *Greenwood Park Stream Restoration*

- Baker Grading re-mobilized to the site on October 3<sup>rd</sup>, 2022, to finish the storm drain replacement along Greenwood Road, and to complete the landscaping.
- The Contractor's contractual substantial completion date is October 31, 2022, including the landscape plantings. They do appear to be on-schedule.
- Manager Kanipe has a separate agenda item in his Manager's report with more project details.

### *Cedar Hill Road Stream Stabilization Project*

- Manager Kanipe has a separate agenda item in his Manager's report with more project details.
- We have reviewed the proposed contract documents and made suggested revisions to the Consultant.

### Master Plan Project Area 1 & Area 9 – Vanderbilt/Stuyvesant/Lone Pine Stormwater Project

- We held a kick-off meeting with the consultant on this project on September 7<sup>th</sup>. They are advancing the plans from the current 30% level to a final bid set based on our detailed field review.
- We have reviewed an initial list of potential easements, commented on those, and are awaiting a revised list. I am working with the Metropolitan Sewerage District to see if there is any need to coordinate work together in this area.
- The tentative schedule is to complete the contract documents this year and bid the project in the late winter for construction next year.

### Garbage Can and Cart Tipper Project

- CES Environmental has indicated the anticipated delivery of the 65-gallon cans will be in October. I have requested an updated delivery estimate from the vendor.
- We have completed the majority of old can pick-ups but continue to have requests come in daily. We will continue to collect cans until this task is complete. They are being recycled at the Curbside Management recycling facility in Woodfin.

### **Upcoming in October**

- We are continuing to focus on filling the open Public Services Worker position.
- Scheduled brush collection will continue in October, beginning Monday, October 17<sup>th</sup> for the North Route, and Monday, October 31<sup>st</sup> on the South Route. Upon completion of the South Route, leaf pick-up will begin immediately and continue until January 15<sup>th</sup>.
- We will be assisting Ms. Jaconbs with completing the regularly scheduled bi-monthly water billing cycle.
- We will be performing quarterly disinfection byproduct testing as required by the NC Public Water Supply Section.
- We are continuing to perform maintenance on our leaf collections equipment to be prepared for the fall season.
- Manager Kanipe has asked that we increase activity on our hazardous tree removal program. This will involve the removal of hazardous trees along the road rights-of-way as well as notifications being issued to residents with hazardous trees threatening the public spaces.
- Supervisor Dale and I will be attending a one-day conference on November 2<sup>nd</sup> in Mars Hill for our water distribution system continuing education requirements. After reviewing staff needs, all other license holders have already completed their requirements for the year.
- Mowing activities will wind down with the onset of cooler weather. We will be aerating, overseeding, and fertilizing the Town Hall Complex, Town Hall Median, and the Hemlock Pond area in early October.

- We have purchased the necessary hardware to install the new building signage and it will be installed in October.
- We have tentatively scheduled more days of dead or damaged tree removals from Town property in mid-October, with larger work requiring a crane in early November.
- We will continue work on the streetlight meter and security project. We are awaiting Duke Energy to install the new hand holes and securing an outside contractor to retrofit our streetlights.
- We will continue to solicit contractors to re-paint Town Hall.
- Old trash can collections will continue into October.
- The Vanderbilt/Busbee four-way stop conversion is scheduled for the week of October 17 weather pending.
- We have a significant project scheduled for repairs to the road shoulder on Westwood Road east of Hilltop Road. This project is scheduled for the week of October 10<sup>th</sup> and involves the removal of several tons of river stone and corresponding drainage improvements and stabilization efforts
- We will finalize the proposed plan for the improved park amenities on the north side of Greenwood Park.

As always, please do not hesitate to contact me with any questions or feedback.

# BOARD OF COMMISSIONERS MEETING STAFF MEMORANDUM

October 11, 2022



## Agenda Item D-4

### Town Manager's Monthly Report

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#### Greenwood Park Stream Restoration Project

The Greenwood Park Stream Restoration project resumed Monday, October 3. Baker Grading and Landscaping will complete the storm drain improvement adjacent to Greenwood Road and then begin the planting portion of the project. The project is scheduled to be completed by the end of October.

#### Duke Energy Streetlight Project Update

Town staff provided direction to Duke Energy last month after the Board of Commissioners reviewed and approved the plan for streetlight connectivity to Duke's new underground power infrastructure. Public Works Director Harry Buckner has worked with a dedicated Duke Energy engineer to move this project forward and has contacted a local electrical contractor to begin the process of converting the Town's streetlights as part of this project. Posts and above-ground mounted infrastructure has been removed from areas where the underground power was not already present.

#### All-Way Stop Update

The Town is awaiting delivery of the thermoplastic materials that will be placed on the ground as part of the all-way stop implementation. We are hopeful these materials arrive within the next several days and allow our contracted vendor to begin work installing the road markings necessary to change this traffic pattern. Town staff has procured all necessary temporary and permanent signage for this project as shown during the Board meeting in August 2022. We will alert all citizens via CodeRed, the Town website, and the BFPD mobile app prior to the new traffic pattern being implemented.

#### Paymentus Online Payment Implementation

The Board of Commissioners approved a master services agreement with Paymentus last month. This agreement allows the Town to transition to the Paymentus online payment system for our citizens. This system will be available for all payments accepted by the Town. The implementation team from Paymentus is working with Town staff to move this project forward and we hope to have this fully operational by the end of this year or first of next year.

#### Changed Date for Next Board of Commissioners Meeting

Due to the general election taking place on Tuesday, November 8<sup>th</sup>, the Board of Commissioners regular meeting will be moved to the third Tuesday in November. The meeting will be held at 4:30 p.m. in the Board Room on November 15, 2022.



REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
<b>3010 Ad Valorem Tax</b>						
<b>Revenue</b>						
<b>3010 Ad Valorem Tax</b>						
10-3010-0000 AD VALOREM TAXES (PROPERTY)	2,920,559.00	357,941.09	357,941.09	0.00	2,562,617.91	12
10-3010-0100 AD VALOREM TAXES (DMV)	109,396.00	0.00	0.00	0.00	109,396.00	0
10-3010-0200 TAX INTEREST & PENALTIES	5,000.00	62.63	62.63	0.00	4,937.37	1
<b>3010 Ad Valorem Tax Subtotal</b>	<b>\$3,034,955.00</b>	<b>\$358,003.72</b>	<b>\$358,003.72</b>	<b>\$0.00</b>	<b>\$2,676,951.28</b>	<b>12</b>
<b>Revenue Subtotal</b>	<b>\$3,034,955.00</b>	<b>\$358,003.72</b>	<b>\$358,003.72</b>	<b>\$0.00</b>	<b>\$2,676,951.28</b>	<b>12</b>
After Transfers	<b>Excess Of Revenue Subtotal</b>	<b>\$3,034,955.00</b>	<b>\$358,003.72</b>	<b>\$358,003.72</b>	<b>\$0.00</b>	<b>12</b>
<b>3020 Unrestricted Intergovernm</b>						
<b>Revenue</b>						
<b>3020 Unrestricted Intergovernm</b>						
10-3020-0000 FRANCHISE & UTILITIES TAX DIST.	211,384.00	0.00	0.00	0.00	211,384.00	0
10-3020-0100 ALCOHOL BEVERAGE TAX	6,450.00	0.00	0.00	0.00	6,450.00	0
10-3020-0200 BUNCOMBE COUNTY 1% TAX	793,429.00	0.00	0.00	0.00	793,429.00	0
10-3020-0300 1/2 CENT SALES TAX A.40	330,137.00	0.00	0.00	0.00	330,137.00	0
10-3020-0400 1/2 CENT SALES TAX A.42	419,847.00	0.00	0.00	0.00	419,847.00	0
10-3020-0600 SALES TAX REFUND	15,000.00	0.00	0.00	0.00	15,000.00	0
10-3020-0700 GASOLINE TAX REFUND	3,500.00	0.00	0.00	0.00	3,500.00	0
<b>3020 Unrestricted Intergovernm Subtotal</b>	<b>\$1,779,747.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,779,747.00</b>	<b>0</b>
<b>Revenue Subtotal</b>	<b>\$1,779,747.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,779,747.00</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>\$1,779,747.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>3030 Restricted Intergovernmen</b>						
<b>Revenue</b>						
<b>3030 Restricted Intergovernmen</b>						
10-3030-0000 SOLID WASTE DISPOSAL TAX	975.00	0.00	0.00	0.00	975.00	0
10-3030-0100 POWELL BILL	66,849.00	0.00	0.00	0.00	66,849.00	0
<b>3030 Restricted Intergovernmen Subtotal</b>	<b>\$67,824.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$67,824.00</b>	<b>0</b>
<b>Revenue Subtotal</b>	<b>\$67,824.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$67,824.00</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>\$67,824.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>3040 Permits &amp; Fees</b>						
<b>Revenue</b>						
<b>3040 Permits &amp; Fees</b>						
10-3040-0000 ZONING PERMITS	45,000.00	10,378.00	10,378.00	0.00	34,622.00	23
10-3040-0100 DOG LICENSE FEE	1,300.00	15.00	15.00	0.00	1,285.00	1
<b>3040 Permits &amp; Fees Subtotal</b>	<b>\$46,300.00</b>	<b>\$10,393.00</b>	<b>\$10,393.00</b>	<b>\$0.00</b>	<b>\$35,907.00</b>	<b>22</b>
<b>Revenue Subtotal</b>	<b>\$46,300.00</b>	<b>\$10,393.00</b>	<b>\$10,393.00</b>	<b>\$0.00</b>	<b>\$35,907.00</b>	<b>22</b>
After Transfers	<b>Excess Of Revenue Subtotal</b>	<b>\$46,300.00</b>	<b>\$10,393.00</b>	<b>\$10,393.00</b>	<b>\$0.00</b>	<b>22</b>
<b>3050 Investment Earnings</b>						
<b>Revenue</b>						
<b>3050 Investment Earnings</b>						
10-3050-0000 INTEREST EARNED	2,000.00	0.00	0.00	0.00	2,000.00	0
<b>3050 Investment Earnings Subtotal</b>	<b>\$2,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,000.00</b>	<b>0</b>

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
<b>Revenue Subtotal</b>	<b>\$2,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,000.00</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>\$2,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>3060 Miscellaneous</b>						
<b>Revenue</b>						
<b>3060 Miscellaneous</b>						
10-3060-0100 AMERICAN TOWER AGREEMENT	45,600.00	1,200.00	1,200.00	0.00	44,400.00	3
10-3060-0200 MISCELLANEOUS	20,000.00	215,286.45	215,286.45	0.00	-195,286.45	1,076
<b>3060 Miscellaneous Subtotal</b>	<b>\$65,600.00</b>	<b>\$216,486.45</b>	<b>\$216,486.45</b>	<b>\$0.00</b>	<b>-\$150,886.45</b>	<b>330</b>
<b>Revenue Subtotal</b>	<b>\$65,600.00</b>	<b>\$216,486.45</b>	<b>\$216,486.45</b>	<b>\$0.00</b>	<b>-\$150,886.45</b>	<b>330</b>
After Transfers	<b>Excess Of Revenue Subtotal</b>	<b>\$65,600.00</b>	<b>\$216,486.45</b>	<b>\$216,486.45</b>	<b>\$0.00</b>	<b>330</b>
<b>3290</b>						
<b>Revenue</b>						
<b>3290</b>						
30-3290-0000 INTEREST EARNED	50.00	0.00	0.00	0.00	50.00	0
<b>3290 Subtotal</b>	<b>\$50.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$50.00</b>	<b>0</b>
<b>Revenue Subtotal</b>	<b>\$50.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$50.00</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>\$50.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>3350 Commissions, Sw Chg Coll</b>						
<b>Revenue</b>						
<b>3350 Commissions, Sw Chg Coll</b>						
30-3350-0000 COMMISSIONS, SEWER CHARGE COLL	8,000.00	1,768.80	1,768.80	0.00	6,231.20	22
<b>3350 Commissions, Sw Chg Coll Subtotal</b>	<b>\$8,000.00</b>	<b>\$1,768.80</b>	<b>\$1,768.80</b>	<b>\$0.00</b>	<b>\$6,231.20</b>	<b>22</b>
<b>Revenue Subtotal</b>	<b>\$8,000.00</b>	<b>\$1,768.80</b>	<b>\$1,768.80</b>	<b>\$0.00</b>	<b>\$6,231.20</b>	<b>22</b>
After Transfers	<b>Excess Of Revenue Subtotal</b>	<b>\$8,000.00</b>	<b>\$1,768.80</b>	<b>\$1,768.80</b>	<b>\$0.00</b>	<b>22</b>
<b>3500 Other Financing</b>						
<b>Other Financing Source</b>						
<b>3500 Other Financing</b>						
10-3500-0000 SALE OF PERSONAL PROPERTY	10,000.00	0.00	0.00	0.00	10,000.00	0
10-3500-0700 INTERGOVERNMENTAL LOAN (RESTRIC	292,000.00	0.00	0.00	0.00	292,000.00	0
<b>3500 Other Financing Subtotal</b>	<b>\$302,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$302,000.00</b>	<b>0</b>
<b>Other Financing Source Subtotal</b>	<b>\$302,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$302,000.00</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>\$302,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>3710 Water Sales</b>						
<b>Revenue</b>						
<b>3710 Water Sales</b>						
30-3710-0000 WATER CHARGES	369,000.00	90,484.27	90,484.27	0.00	278,515.73	25
30-3710-0100 MSD CHARGES	248,284.00	75,006.36	75,006.36	0.00	173,277.64	30
30-3710-0200 AMI TRANSMITTER CHARGES	7,700.00	1,374.16	1,374.16	0.00	6,325.84	18
<b>3710 Water Sales Subtotal</b>	<b>\$624,984.00</b>	<b>\$166,864.79</b>	<b>\$166,864.79</b>	<b>\$0.00</b>	<b>\$458,119.21</b>	<b>27</b>
<b>Revenue Subtotal</b>	<b>\$624,984.00</b>	<b>\$166,864.79</b>	<b>\$166,864.79</b>	<b>\$0.00</b>	<b>\$458,119.21</b>	<b>27</b>
After Transfers	<b>Excess Of Revenue Subtotal</b>	<b>\$624,984.00</b>	<b>\$166,864.79</b>	<b>\$166,864.79</b>	<b>\$0.00</b>	<b>27</b>
<b>3730 Water Tap &amp; Connect Fees</b>						
<b>Revenue</b>						

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
<b>3730 Water Tap &amp; Connect Fees</b>						
30-3730-0000 WATER TAP AND CONNECTION FEES	6,000.00	6,240.00	6,240.00	0.00	-240.00	104
<b>3730 Water Tap &amp; Connect Fees Subtotal</b>	<b>\$6,000.00</b>	<b>\$6,240.00</b>	<b>\$6,240.00</b>	<b>\$0.00</b>	<b>-\$240.00</b>	<b>104</b>
<b>Revenue Subtotal</b>	<b>\$6,000.00</b>	<b>\$6,240.00</b>	<b>\$6,240.00</b>	<b>\$0.00</b>	<b>-\$240.00</b>	<b>104</b>
After Transfers	<b>Excess Of Revenue Subtotal</b>	<b>\$6,000.00</b>	<b>\$6,240.00</b>	<b>\$6,240.00</b>	<b>\$0.00</b>	<b>104</b>
<b>4000</b>						
<b>Revenue</b>						
<b>4000</b>						
40-4000-1100 ARP DISTRIBUTION	451,275.58	0.00	0.00	0.00	451,275.58	0
<b>4000 Subtotal</b>	<b>\$451,275.58</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$451,275.58</b>	<b>0</b>
<b>Revenue Subtotal</b>	<b>\$451,275.58</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$451,275.58</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>\$451,275.58</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>4200 Administration</b>						
<b>Expenditure</b>						
<b>4200 Administration</b>						
10-4200-0200 SALARIES	226,063.00	64,851.26	64,851.26	0.00	161,211.74	29
10-4200-0300 OVERTIME	3,000.00	0.00	0.00	0.00	3,000.00	0
10-4200-0500 FICA	17,293.00	4,198.88	4,198.88	0.00	13,094.12	24
10-4200-0600 HEALTH INSURANCE (MEDICAL)	24,158.00	3,864.80	3,864.80	0.00	20,293.20	16
10-4200-0650 DENTAL, VISION, LIFE INSURANCE	4,935.00	778.44	778.44	0.00	4,156.56	16
10-4200-0675 HEALTH REIMBURSEMENT ACC	3,750.00	625.00	625.00	0.00	3,125.00	17
10-4200-0700 LGERS RETIREMENT	41,231.00	10,695.22	10,695.22	0.00	30,535.78	26
10-4200-0800 401K SUPP RETIREMENT	11,453.00	3,171.05	3,171.05	0.00	8,281.95	28
10-4200-1000 ACCOUNTING & TAXES	51,400.00	2,319.75	2,319.75	0.00	49,080.25	5
10-4200-1200 POSTAGE, PRINTING, STATIONARY	10,140.00	1,816.34	3,282.55	1,466.21	6,857.45	32
10-4200-1400 MILEAGE & BOARD SALARY	21,600.00	6,318.68	6,318.68	0.00	15,281.32	29
10-4200-1500 BLDG & GRNDS MAINTENANCE	20,000.00	3,549.10	6,373.23	2,824.13	13,626.77	32
10-4200-3300 SUPPLIES AND EQUIPMENT	7,722.00	1,766.61	2,419.30	652.69	5,302.70	31
10-4200-5300 DUES & FEES	5,070.00	2,732.00	2,732.00	0.00	2,338.00	54
10-4200-5700 MISCELLANEOUS	1,000.00	590.19	590.19	0.00	409.81	59
10-4200-6500 STAFF DEVELOPMENT	16,000.00	3,747.64	5,005.31	1,257.67	10,994.69	31
<b>4200 Administration Subtotal</b>	<b>\$464,815.00</b>	<b>\$111,024.96</b>	<b>\$117,225.66</b>	<b>\$6,200.70</b>	<b>\$347,589.34</b>	<b>25</b>
<b>Expenditure Subtotal</b>	<b>\$464,815.00</b>	<b>\$111,024.96</b>	<b>\$117,225.66</b>	<b>\$6,200.70</b>	<b>\$347,589.34</b>	<b>25</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$464,815.00</b>	<b>-\$111,024.96</b>	<b>-\$111,024.96</b>	<b>-\$6,200.70</b>	<b>24</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$464,815.00</b>	<b>-\$111,024.96</b>	<b>-\$111,024.96</b>	<b>-\$6,200.70</b>	<b>24</b>
<b>5100 Police Department</b>						
<b>Expenditure</b>						
<b>5100 Police Department</b>						
10-5100-0200 SALARIES	951,387.00	276,547.51	276,547.51	0.00	674,839.49	29
10-5100-0300 OVERTIME	26,000.00	0.00	0.00	0.00	26,000.00	0
10-5100-0400 SEPARATION ALLOWANCE	38,117.00	15,743.13	15,743.13	0.00	22,373.87	41
10-5100-0500 FICA	72,781.00	18,874.58	18,874.58	0.00	53,906.42	26
10-5100-0600 HEALTH INSURANCE (MEDICAL)	164,272.00	24,668.08	24,668.08	0.00	139,603.92	15

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
10-5100-0650 DENTAL, VISION, LIFE INSURANCE	35,558.00	3,128.08	3,128.08	0.00	32,429.92	9
10-5100-0675 HRA HEALTH REIMB ACCT	25,500.00	4,250.00	4,250.00	0.00	21,250.00	17
10-5100-0700 LGERS RETIREMENT	185,598.00	44,948.20	44,948.20	0.00	140,649.80	24
10-5100-0800 401K SUPP RETIREMENT	48,996.00	13,644.47	13,644.47	0.00	35,351.53	28
10-5100-1500 MAINT/REPAIR - BLDG/GROUNDS	20,000.00	175.00	175.00	0.00	19,825.00	1
10-5100-1600 MAINT/REPAIR - EQUIPMENT	1,000.00	900.00	900.00	0.00	100.00	90
10-5100-1700 MAINT/REPAIR - VEHICLES	10,000.00	3,116.84	5,508.00	2,391.16	4,492.00	55
10-5100-3100 MOTOR FUELS	24,600.00	5,370.91	5,370.91	0.00	19,229.09	22
10-5100-3300 SUPPLIES	20,080.00	1,818.66	8,175.64	6,356.98	11,904.36	41
10-5100-3600 UNIFORMS	15,000.00	1,912.37	12,455.58	10,543.21	2,544.42	83
10-5100-3700 SOFTWARE	18,725.00	11,531.00	15,414.84	3,883.84	3,310.16	82
10-5100-3800 TECHNOLOGY	58,740.00	7,106.34	8,037.92	931.58	50,702.08	14
10-5100-5700 MISCELLANEOUS	8,265.00	1,228.79	2,471.49	1,242.70	5,793.51	30
10-5100-5800 PHYSICAL EXAMS	2,000.00	700.00	700.00	0.00	1,300.00	35
10-5100-6500 STAFF DEVELOPMENT	15,000.00	5,826.47	5,826.47	0.00	9,173.53	39
10-5100-7400 CAPITAL EQUIPMENT PURCHASES	102,500.00	24,037.49	120,685.48	96,647.99	-18,185.48	118
<b>5100 Police Department Subtotal</b>	<b>\$1,844,119.00</b>	<b>\$465,527.92</b>	<b>\$587,525.38</b>	<b>\$121,997.46</b>	<b>\$1,256,593.62</b>	<b>32</b>
<b>Expenditure Subtotal</b>	<b>\$1,844,119.00</b>	<b>\$465,527.92</b>	<b>\$587,525.38</b>	<b>\$121,997.46</b>	<b>\$1,256,593.62</b>	<b>32</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$1,844,119.00</b>	<b>-\$465,527.92</b>	<b>-\$465,527.92</b>	<b>-\$121,997.46</b>	<b>25</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$1,844,119.00</b>	<b>-\$465,527.92</b>	<b>-\$465,527.92</b>	<b>-\$121,997.46</b>	<b>25</b>
<b>5200 Fire Services</b>						
<b>Expenditure</b>						
<b>5200 Fire Services</b>						
10-5200-0000 FIRE CONTRACT	425,000.00	0.00	0.00	0.00	425,000.00	0
<b>5200 Fire Services Subtotal</b>	<b>\$425,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$425,000.00</b>	<b>0</b>
<b>Expenditure Subtotal</b>	<b>\$425,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$425,000.00</b>	<b>0</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$425,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$425,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0</b>
<b>5600 Public Works</b>						
<b>Expenditure</b>						
<b>5600 Public Works</b>						
10-5600-0200 SALARIES	244,822.00	71,406.69	71,406.69	0.00	173,415.31	29
10-5600-0300 OVERTIME	5,000.00	0.00	0.00	0.00	5,000.00	0
10-5600-0500 FICA	19,111.00	4,522.75	4,522.75	0.00	14,588.25	24
10-5600-0550 UNEMPLOYMENT INSURANCE	500.00	0.00	0.00	0.00	500.00	0
10-5600-0600 HOSPITAL INSURANCE (MEDICAL)	43,484.00	5,301.62	5,301.62	0.00	38,182.38	12
10-5600-0650 DENTAL, VISION, LIFE INSURANCE	8,883.00	637.72	637.72	0.00	8,245.28	7
10-5600-0675 HRA HEALTH REIMB ACCT	6,750.00	1,000.00	1,000.00	0.00	5,750.00	15
10-5600-0700 LGERS RETIREMENT	44,968.00	11,226.14	11,226.14	0.00	33,741.86	25
10-5600-0800 401K SUPP RETIREMENT	12,491.00	3,092.62	3,092.62	0.00	9,398.38	25
10-5600-1000 OUTSIDE SERVICES	10,000.00	275.00	275.00	0.00	9,725.00	3
10-5600-1300 STREETLIGHTS ELECTRIC	7,000.00	0.00	0.00	0.00	7,000.00	0
10-5600-1500 MAINT/REPAIR - BLDG/GROUNDS	9,600.00	685.83	685.83	0.00	8,914.17	7

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
10-5600-1600 MAINT/REPAIR- STREETLIGHTS	35,000.00	0.00	0.00	0.00	35,000.00	0
10-5600-1700 MAINT/REPAIR - VEHICLES	10,000.00	2,195.82	2,195.82	0.00	7,804.18	22
10-5600-3100 MOTOR FUELS	20,000.00	4,136.08	4,136.08	0.00	15,863.92	21
10-5600-3300 SUPPLIES	10,000.00	2,303.62	2,303.62	0.00	7,696.38	23
10-5600-3400 STREET SIGNS & NUMBERS	1,000.00	0.00	0.00	0.00	1,000.00	0
10-5600-3600 UNIFORMS	8,650.00	1,240.91	3,298.21	2,057.30	5,351.79	38
10-5600-3800 TECHNOLOGY	9,500.00	7,905.96	7,905.96	0.00	1,594.04	83
10-5600-5200 PARKS	60,000.00	270.93	2,221.40	1,950.47	57,778.60	4
10-5600-5202 GREENWOOD PARK STREAM RESTORA	292,000.00	117,734.44	117,734.44	0.00	174,265.56	40
10-5600-5800 PHYSICAL EXAMS	500.00	0.00	0.00	0.00	500.00	0
10-5600-5900 MISCELLANEOUS	1,000.00	204.30	204.30	0.00	795.70	20
10-5600-6500 STAFF DEVELOPMENT	8,000.00	2,015.04	2,288.04	273.00	5,711.96	29
40-5600-7401 ARP CAPITAL PROJECTS	451,275.58	0.00	0.00	0.00	451,275.58	0
<b>5600 Public Works Subtotal</b>	<b>\$1,319,534.58</b>	<b>\$236,155.47</b>	<b>\$240,436.24</b>	<b>\$4,280.77</b>	<b>\$1,079,098.34</b>	<b>18</b>
<b>Expenditure Subtotal</b>	<b>\$1,319,534.58</b>	<b>\$236,155.47</b>	<b>\$240,436.24</b>	<b>\$4,280.77</b>	<b>\$1,079,098.34</b>	<b>18</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$1,319,534.58</b>	<b>-\$236,155.47</b>	<b>-\$236,155.47</b>	<b>-\$4,280.77</b>	<b>18</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$1,319,534.58</b>	<b>-\$236,155.47</b>	<b>-\$236,155.47</b>	<b>-\$4,280.77</b>	<b>18</b>
<b>5700 Streets &amp; Transportation</b>						
<b>Expenditure</b>						
<b>5700 Streets &amp; Transportation</b>						
10-5700-1700 VEHICLE REPAIRS - STREET DEPT.	10,000.00	470.88	470.88	0.00	9,529.12	5
10-5700-2200 CONTRACTS- PAVING & STRIPING	210,000.00	13,969.00	13,969.00	0.00	196,031.00	7
10-5700-2300 SUPPLIES	10,000.00	5,622.72	10,574.99	4,952.27	-574.99	106
10-5700-2400 TRAFFIC SIGNS	500.00	633.04	633.04	0.00	-133.04	127
10-5700-2500 STORM WATER DRAINAGE	275,000.00	0.00	0.00	0.00	275,000.00	0
10-5700-3800 TECHNOLOGY	5,000.00	0.00	0.00	0.00	5,000.00	0
10-5700-6500 STAFF DEVELOPMENT	1,000.00	0.00	0.00	0.00	1,000.00	0
10-5700-7400 CAPITAL EQUIPMENT PURCHASES	5,000.00	0.00	0.00	0.00	5,000.00	0
10-5700-7500 ENGINEERING	100,000.00	10,675.50	10,675.50	0.00	89,324.50	11
<b>5700 Streets &amp; Transportation Subtotal</b>	<b>\$616,500.00</b>	<b>\$31,371.14</b>	<b>\$36,323.41</b>	<b>\$4,952.27</b>	<b>\$580,176.59</b>	<b>6</b>
<b>Expenditure Subtotal</b>	<b>\$616,500.00</b>	<b>\$31,371.14</b>	<b>\$36,323.41</b>	<b>\$4,952.27</b>	<b>\$580,176.59</b>	<b>6</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$616,500.00</b>	<b>-\$31,371.14</b>	<b>-\$31,371.14</b>	<b>-\$4,952.27</b>	<b>5</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$616,500.00</b>	<b>-\$31,371.14</b>	<b>-\$31,371.14</b>	<b>-\$4,952.27</b>	<b>5</b>
<b>5800 Sanitation &amp; Recycling</b>						
<b>Expenditure</b>						
<b>5800 Sanitation &amp; Recycling</b>						
10-5800-0200 SALARIES	125,190.00	36,401.51	36,401.51	0.00	88,788.49	29
10-5800-0300 OVERTIME	5,000.00	0.00	0.00	0.00	5,000.00	0
10-5800-0500 FICA	9,960.00	2,415.00	2,415.00	0.00	7,545.00	24
10-5800-0600 HEALTH INSURANCE (MEDICAL)	28,989.00	3,431.76	3,431.76	0.00	25,557.24	12
10-5800-0650 DENTAL,VISION, LIFE INSURANCE	5,922.00	329.44	329.44	0.00	5,592.56	6
10-5800-0675 HRA HEALTH REIMB ACCT	4,500.00	750.00	750.00	0.00	3,750.00	17
10-5800-0700 LGERS RETIREMENT	23,435.00	5,994.55	5,994.55	0.00	17,440.45	26

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
10-5800-0800 401K SUPP RETIREMENT	6,510.00	1,820.01	1,820.01	0.00	4,689.99	28
10-5800-1700 MAINT/REPAIRS - VEHICLES	25,000.00	9,663.41	16,616.53	6,953.12	8,383.47	66
10-5800-3100 MOTOR FUELS	30,000.00	5,603.61	5,603.61	0.00	24,396.39	19
10-5800-3300 SUPPLIES	1,000.00	219.11	219.11	0.00	780.89	22
10-5800-3600 UNIFORMS	1,000.00	0.00	0.00	0.00	1,000.00	0
10-5800-3800 TECHNOLOGY	600.00	138.45	1,412.23	1,273.78	-812.23	235
10-5800-5800 PHYSICAL EXAMS	500.00	0.00	0.00	0.00	500.00	0
10-5800-5900 MISCELLANEOUS	1,000.00	0.00	0.00	0.00	1,000.00	0
10-5800-6000 CAPITAL OUTLAY	55,000.00	36,794.95	36,794.95	0.00	18,205.05	67
10-5800-8000 TIPPING FEES & BRUSH REMOVAL	30,000.00	11,394.43	11,394.43	0.00	18,605.57	38
10-5800-8100 RECYCLING	6,000.00	576.58	576.58	0.00	5,423.42	10
10-5800-8200 BRUSH & LEAF DISPOSAL FEES	31,200.00	420.00	420.00	0.00	30,780.00	1
<b>5800 Sanitation &amp; Recycling Subtotal</b>	<b>\$390,806.00</b>	<b>\$115,952.81</b>	<b>\$124,179.71</b>	<b>\$8,226.90</b>	<b>\$266,626.29</b>	<b>32</b>
<b>Expenditure Subtotal</b>	<b>\$390,806.00</b>	<b>\$115,952.81</b>	<b>\$124,179.71</b>	<b>\$8,226.90</b>	<b>\$266,626.29</b>	<b>32</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$390,806.00</b>	<b>-\$115,952.81</b>	<b>-\$115,952.81</b>	<b>-\$8,226.90</b>	<b>30</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$390,806.00</b>	<b>-\$115,952.81</b>	<b>-\$115,952.81</b>	<b>-\$8,226.90</b>	<b>30</b>
<b>6600 General Government</b>						
<b>Expenditure</b>						
<b>6600 General Government</b>						
10-6600-0401 LEGAL SERVICES	35,000.00	4,040.73	4,040.73	0.00	30,959.27	12
10-6600-1100 TECHNOLOGY	92,120.00	21,769.57	23,605.76	1,836.19	68,514.24	26
10-6600-1300 MUNICIPAL UTILITIES	25,000.00	4,931.78	4,931.78	0.00	20,068.22	20
10-6600-1500 GE. REPS. AND MAINT.	28,200.00	13,334.42	13,334.42	0.00	14,865.58	47
10-6600-2800 ELECTIONS	6,000.00	0.00	0.00	0.00	6,000.00	0
10-6600-5400 INSURANCE	105,000.00	0.00	0.00	0.00	105,000.00	0
10-6600-6000 CONTINGENCY	181,444.00	0.00	0.00	0.00	181,444.00	0
10-6600-6100 MISCELLANEOUS	10,000.00	1,561.73	1,561.73	0.00	8,438.27	16
10-6600-6201 COVID EXPENDITURES	2,000.00	0.00	0.00	0.00	2,000.00	0
10-6600-6300 COMMUNITY EVENTS	50,000.00	3,061.10	3,061.10	0.00	46,938.90	6
10-6600-6301 4TH OF JULY	10,000.00	4,340.73	4,340.73	0.00	5,659.27	43
10-6600-6302 NATIONAL NIGHT OUT	7,000.00	0.00	0.00	0.00	7,000.00	0
10-6600-6303 HOLIDAY LIGHTING	21,500.00	0.00	0.00	0.00	21,500.00	0
10-6600-6304 ARBOR DAY EVENT	2,000.00	0.00	0.00	0.00	2,000.00	0
10-6600-6400 WILDLIFE MANAGEMENT	5,000.00	0.00	0.00	0.00	5,000.00	0
10-6600-6500 FOREST MANAGEMENT	60,000.00	15,300.00	15,300.00	0.00	44,700.00	26
<b>6600 General Government Subtotal</b>	<b>\$640,264.00</b>	<b>\$68,340.06</b>	<b>\$70,176.25</b>	<b>\$1,836.19</b>	<b>\$570,087.75</b>	<b>11</b>
<b>Expenditure Subtotal</b>	<b>\$640,264.00</b>	<b>\$68,340.06</b>	<b>\$70,176.25</b>	<b>\$1,836.19</b>	<b>\$570,087.75</b>	<b>11</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$640,264.00</b>	<b>-\$68,340.06</b>	<b>-\$68,340.06</b>	<b>-\$1,836.19</b>	<b>11</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$640,264.00</b>	<b>-\$68,340.06</b>	<b>-\$68,340.06</b>	<b>-\$1,836.19</b>	<b>11</b>
<b>6700 Debt Service</b>						
<b>Expenditure</b>						
<b>6700 Debt Service</b>						
10-6700-0100 Police Dept Renovations-Principal	23,334.00	5,833.33	5,833.33	0.00	17,500.67	25

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

07/01/2022 To 09/30/2022

FY 2022-2023

Account	Budget (\$)	Current Period (\$)	YTD With Encumbrance (\$)	Encumbrance (\$)	Remaining Balance (\$)	% Used
10-6700-0200 Street Improvements-Principal	6,667.00	1,666.67	1,666.67	0.00	5,000.33	25
10-6700-0500 Public Works Building-Principal	84,211.00	0.00	0.00	0.00	84,211.00	0
10-6700-0600 2020 POLICE CARS-PRINCIPAL	29,106.00	0.00	0.00	0.00	29,106.00	0
10-6700-1100 Police Dept Renovations-Interest	1,445.00	444.50	444.50	0.00	1,000.50	31
10-6700-1200 Street Improvements-Interest	413.00	127.00	127.00	0.00	286.00	31
10-6700-1500 Public Works Building-Interest	17,685.00	0.00	0.00	0.00	17,685.00	0
10-6700-1600 2020 POLICE CARS-INTEREST	801.00	0.00	0.00	0.00	801.00	0
<b>6700 Debt Service Subtotal</b>	<b>\$163,662.00</b>	<b>\$8,071.50</b>	<b>\$8,071.50</b>	<b>\$0.00</b>	<b>\$155,590.50</b>	<b>5</b>
<b>Expenditure Subtotal</b>	<b>\$163,662.00</b>	<b>\$8,071.50</b>	<b>\$8,071.50</b>	<b>\$0.00</b>	<b>\$155,590.50</b>	<b>5</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$163,662.00</b>	<b>-\$8,071.50</b>	<b>-\$8,071.50</b>	<b>\$0.00</b>	<b>5</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$163,662.00</b>	<b>-\$8,071.50</b>	<b>-\$8,071.50</b>	<b>\$0.00</b>	<b>5</b>
<b>8100 Water Dept.</b>						
<b>Expenditure</b>						
<b>8100 Water Dept.</b>						
30-8100-0200 SALARIES	144,572.00	31,494.51	31,494.51	0.00	113,077.49	22
30-8100-0400 PROFESSIONAL SERVICES	5,000.00	1,543.76	3,655.04	2,111.28	1,344.96	73
30-8100-0500 FICA	11,060.00	2,050.64	2,050.64	0.00	9,009.36	19
30-8100-0600 HEALTH INSURANCE (MEDICAL)	19,326.00	2,750.34	2,750.34	0.00	16,575.66	14
30-8100-0650 DENTAL, VISION, LIFE INSURANCE	3,948.00	429.04	429.04	0.00	3,518.96	11
30-8100-0675 HRA HEALTH REIMBURSEMENT ACCT	3,000.00	500.00	500.00	0.00	2,500.00	17
30-8100-0700 LGERS RETIREMENT	26,023.00	5,196.43	5,196.43	0.00	20,826.57	20
30-8100-0800 401K SUPP RETIREMENT	7,229.00	2,019.67	2,019.67	0.00	5,209.33	28
30-8100-1200 POSTAGE, PRINTING, & STATIONARY	5,000.00	0.00	0.00	0.00	5,000.00	0
30-8100-1500 GENERAL REPAIRS	10,000.00	3,093.21	3,093.21	0.00	6,906.79	31
30-8100-3300 SUPPLIES & EQUIPMENT	15,000.00	1,809.56	4,983.56	3,174.00	10,016.44	33
30-8100-3800 TECHNOLOGY	5,000.00	0.00	0.00	0.00	5,000.00	0
30-8100-4800 WATER PURCHASES	179,580.00	51,779.43	51,779.43	0.00	127,800.57	29
30-8100-4900 SEWER PURCHASES	185,400.00	68,910.77	68,910.77	0.00	116,489.23	37
30-8100-5000 AMI TRANSMITTER FEES	7,700.00	725.13	725.13	0.00	6,974.87	9
30-8100-5700 MISCELLANEOUS	6,196.00	0.00	0.00	0.00	6,196.00	0
30-8100-6500 STAFF DEVELOPMENT	5,000.00	0.00	0.00	0.00	5,000.00	0
30-8100-7400 CAPITAL IMPROVEMENT	29,939.00	0.00	0.00	0.00	29,939.00	0
<b>8100 Water Dept. Subtotal</b>	<b>\$668,973.00</b>	<b>\$172,302.49</b>	<b>\$177,587.77</b>	<b>\$5,285.28</b>	<b>\$491,385.23</b>	<b>27</b>
<b>Expenditure Subtotal</b>	<b>\$668,973.00</b>	<b>\$172,302.49</b>	<b>\$177,587.77</b>	<b>\$5,285.28</b>	<b>\$491,385.23</b>	<b>27</b>
Before Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$668,973.00</b>	<b>-\$172,302.49</b>	<b>-\$172,302.49</b>	<b>-\$5,285.28</b>	<b>26</b>
After Transfers	<b>Deficiency Of Revenue Subtotal</b>	<b>-\$668,973.00</b>	<b>-\$172,302.49</b>	<b>-\$172,302.49</b>	<b>-\$5,285.28</b>	<b>26</b>

**BOARD OF COMMISSIONERS MEETING  
STAFF MEMORANDUM**

October 11, 2022



**Agenda Item E-1**

**Amendments to Town Code of Ordinances for Compliance  
with S.L. 2021-138 (*Second Reading*)**

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Background

Last month, the Board of Commissioners reviewed potential ordinance changes regarding criminal enforcement of municipal ordinances. The North Carolina legislature amended the state statutes related to municipal ordinance enforcement in 2021, thus requiring the Town to amend ordinances and affirmatively state violations that carry criminal penalties.

S.L. 2021-138 requires a minimum of two (2) public meetings be held for review of ordinances that may include criminal penalties and that an ordinance including a criminal penalty may not be approved during its first introduction. The ordinances attached for the Board's consideration were presented last month for initial review. The Town Attorney has reviewed these ordinances for compliance with state law.



## ORDINANCE 2022-04

### AN ORDINANCE TO AMEND PORTIONS OF THE TOWN CODE IN COMPLIANCE WITH S.L. 2021-138

#### § 10.99 GENERAL PENALTY.

Any person, firm, or corporation violating any of the provisions of any section or division of this code of ordinances for which no other penalty is provided, or failing or neglecting or refusing to comply with same, shall, upon conviction, be penalized in accordance with N.C.G.S. 160A-175.

~~be guilty of a Class 3 misdemeanor and subject to a fine not to exceed \$50 or imprisonment not to exceed 30 days, and each day that any of the provisions of this code of ordinances are violated shall constitute a separate offense.~~

(G.S. § 14-4(a))

#### § 34.99 PENALTY.

The violation of any provision of this chapter, or any provision of any restriction imposed by any proclamation authorized by this chapter, unless otherwise stated within the specific ordinance, shall ~~constitute a misdemeanor,~~ be punishable as provided by § 10.99.

#### § 50.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(B) (1) Any person violating any of the provisions of § 50.10, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500 or imprisoned not longer than two years or both fined and imprisoned in the discretion of the court.~~

~~—(2) Whoever is found in a civil action to have violated any provision hereof shall be liable to the water supplier in the triple amount of losses and damages sustained or \$500 whichever is greater.~~

#### § 51.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(A) Any willful and knowing refusal to pay fees assessed in this chapter shall subject the offender to a civil penalty in the amount of \$50 payable to the town as law provided.~~

~~—(B) Violation of this chapter shall constitute a misdemeanor for each day such violation occurs and subject the violator of this chapter to a fine of \$50 or 30 days imprisonment or both for each violation of this chapter.~~

#### § 90.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(C) The violation of any portion of §§ 90.35, 90.36, or 90.39 by any of those persons described in said sections shall constitute a misdemeanor and the violator shall be punished accordingly.~~

#### **§ 91.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.~~

~~—(B) Violation of § 91.02 shall constitute a misdemeanor, for each day such violation occurs and subject the violator of § 91.02 to a fine of \$50 or 30 days imprisonment or both for each violation of § 91.02.~~

#### **§ 93.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(B) (1) A violation of §§ 93.30 through 93.41 is a Class 3 misdemeanor under North Carolina law. The penalty for violating §§ 93.30 through 93.41 shall be \$250 per day. Each day of continued violation shall be a separate offense. The town shall also have the right to pursue civil remedies for a violation of the subchapter including injunctive relief, and a civil penalty of \$250 for each day's violation of the subchapter pursuant to G.S. § 160A-175.~~

~~—(2) Upon determining that a violation has occurred, the Town Manager shall record the nature of the violation, and send a notice of violation to the responsible person or entity by regular and certified mail. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30 days, the Town Manager may proceed with criminal charges pursuant to G.S. § 14-4, or may take such other enforcement action as may be necessary to carry out the purposes of §§ 93.30 through 93.41.~~

#### **§ 130.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—Any person violating the provisions of this chapter shall be guilty of misdemeanor subject to a fine not to exceed \$50 or imprisonment not to exceed 30 days as provided by G.S. § 14-4.~~

#### **§ 151.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(A) Violations of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$25,000 or imprisoned for not more than 120 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.~~

**§ 153.999 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

~~—(A) Any person, firm, or corporation who violates the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding \$50 and/or imprisoned for a period of time not exceeding 30 days. Each day of violation shall be considered a separate offense.~~

## CHAPTER 34: CIVIL EMERGENCIES

### Section

- 34.01 State of emergency defined
- 34.02 Declaration of state of emergency
- 34.03 Proclamation
- 34.04 Curfew authorized
- 34.05 Termination
- 34.06 Restrictions
- 34.07 Extension, alteration, or repeal
- 34.08 Violation of restrictions
  
- 34.99 Penalty

### Statutory reference:

Authority of town to enact ordinances dealing with states of emergency, see G.S. § 166A-19.31

Continuity of local government in emergency, see G.S. §§ 162B-1 et seq.

One political subdivision to assist officers of another, see G.S. § 160A-288

### § 34.01 STATE OF EMERGENCY DEFINED.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**STATE OF EMERGENCY.** Exists whenever, during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency, for any reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives or property.

(2013 Code, § 6-1)

### § 34.02 DECLARATION OF STATE OF EMERGENCY.

In the event of an existing or threatened state of emergency endangering the lives, safety, health, and welfare of the people within the town, or threatening damage to or destruction

of property, the Mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and in order more effectively to protect the lives and property of people within the town, to place into effect any or all of the restrictions hereinafter authorized.

(2013 Code, § 6-2)

#### § 34.03 PROCLAMATION.

In accordance with § 34.02, the following proclamation shall be issued.

#### PROCLAMATION

“WHEREAS, the Governing Body of the town has duly adopted an ordinance providing that when there exists within the town a state of emergency, extraordinary measures are authorized to cope with any widespread illegal activity endangering the lives, safety, and property of persons within the town; and

WHEREAS, by ordinance duly adopted by the Governing Body of the town, the Mayor is authorized to proclaim the existence of such a state of emergency to all citizens and to impose certain restrictions for the protection of the lives and property;

NOW, THEREFORE, I, \_\_\_\_\_ Mayor of the town, do hereby proclaim that:

I. A state of emergency exists within the town.

II. Except as provided in Section IV below, and until the state of emergency as hereby proclaimed is ended, it shall be unlawful for any person:

(a) To possess off his own premises, or to buy, sell, give away, or otherwise transfer or dispose of any explosives, firearms, ammunition, or dangerous weapons of any kind;

(b) To buy or sell beer, wine, or intoxicating beverages of any kind;

(c) To organize or participate in any demonstrations, parades, marches, or vigils on any public ways or public property within the town.

III. Until the state of emergency as hereby proclaimed is ended, all persons shall remain in their homes, offices or places of business, between \_\_\_ p.m. on each day and \_\_\_ a.m. on the next day, and during such hours it shall be unlawful for any person to:

(a) To be or travel upon any public street, alley or roadway or upon any public property, unless in search of medical assistance, food, or other commodity or service necessary to sustain the well being of himself or herself or his family or some member thereof;

(b) Participate in or carry on any business activity;

(c) Keep open any place of business, place of entertainment, or any other place of public assembly.

IV. (a) The following persons are exempt from the restrictions imposed by Section III (c) above:

(1) (List, such as law enforcement officers, and the like)

(2) And the like

(b) The following businesses are exempt from the restrictions imposed by Section III(c) above:

(1) (List, such as public utilities, news media, and the like)

(2) And the like

V. This proclamation shall become effective at \_\_\_this\_\_\_ day of \_\_\_\_\_, 2\_\_\_, and shall remain in force until dissolved by the Mayor or governing body of the town”.

(2013 Code, § 6-3)

#### § 34.04 CURFEW AUTHORIZED.

The Mayor is hereby authorized and empowered to limit by the proclamation set out in § 34.03 the application of all or any part of such restrictions to any area specifically designated or described within the corporate limits and to specific hours of the day or night and to exempt from all or any part of such restrictions law enforcement officers, firefighters, and other public employees, doctors, nurses, employees of hospitals, and other medical facilities, on-duty military personnel, whether state or federal; on duty employees of public utilities, radio broadcasting, and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of the people.

(2013 Code, § 6-4)

#### § 34.05 TERMINATION.

The Mayor shall proclaim the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant or when directed to do so by the governing body.

(2013 Code, § 6-5)

#### § 34.06 RESTRICTIONS.

During the existence of a proclaimed state of emergency, the Mayor may impose by proclamation any or all of the following restrictions:

- (A) Prohibit or regulate the possession of explosives, firearms, ammunition, or dangerous weapons of any kind, and prohibit the purchase, sale, transfer, or other disposition thereof;
- (B) Prohibit or regulate the buying or selling of beer, wine, or intoxicating beverages of any kind, and their possession or consumption off one's own premises;
- (C) Prohibit or regulate any demonstration, parade, march, vigil, or participation therein taking place on any of the public ways or upon any public property;
- (D) Prohibit or regulate the sale of gasoline, kerosene, naphtha, or any other explosive or inflammable fluids or substances;
- (E) Prohibit or regulate travel upon any public street, alley, or roadway, or upon any other public property, except by those in search of medical assistance, or other commodity or service necessary to sustain the well-being of themselves or their families; or
- (F) Prohibit or regulate the participation in, or carrying on of any business activity, and prohibit or regulate the keeping open of places of business, places of entertainment, and any other places of public assembly.

[\[G\] Pursuant to N.C.G.S 14-4, any person found guilty of violating the above restrictions during a declared State of Emergency shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

(2013 Code, § 6-6) ~~Penalty, see § 34.99~~

Cross-reference:

Alcoholic Beverages, see Ch. 110

Town Offenses, see Ch. 130

§ 34.07 EXTENSION, ALTERATION, OR REPEAL.

Any proclamation may be extended, altered, or repealed, in part or in whole, during the continued or threatened existence of a state of emergency by the issuance of a subsequent proclamation.

(2013 Code, § 6-7)

§ 34.08 VIOLATION OF RESTRICTIONS.

During the existence of a proclaimed state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any proclamation authorized by this chapter.

(2013 Code, § 6-8) Penalty, see § 34.99

§ 34.99 PENALTY.

The violation of any provision of this chapter, or any provision of any restriction imposed by any proclamation authorized by this chapter, shall constitute a misdemeanor, punishable as provided by § 10.99.

(2013 Code, § 6-8)



## CHAPTER 50: UTILITIES

### Section

#### General Provisions

- 50.01 Tampering with city property
- 50.02 Contamination of water supply
- 50.03 Water tap-on fees
- 50.04 Water rates
- 50.05 Applications and returned checks
- 50.06 Service fees
- 50.07 Discontinuing service
- 50.08 Restoration of services
- 50.09 Testing of meters
- 50.10 Metering tampering and/or unauthorized taps
- 50.11 Service interruption
- 50.12 Office and service hours
- 50.13 Title to water meters and connections
- 50.14 Reservation of rights to remove, test, and the like
- 50.15 Connections for sprinkler systems
- 50.16 Metering for sprinkler system

#### Cross-Connections, Backflow, and Back-Siphonage Control

- 50.30 Intent, purpose, and control
- 50.31 Responsibilities
- 50.32 Definitions
- 50.33 Regulations

#### Identity Theft Program

- 50.45 Purpose
- 50.46 Definitions
- 50.47 Identification of relevant red flags

50.48 Detection, prevention, and mitigation

50.49 Identify theft prevention

50.50 Additional legal requirements

50.51 Administration

50.99 Penalty

Cross-reference:

Building Regulations, see Ch. 150

Statutory reference:

Water and sewer authority, G.S. §§ 162A-1 through 162A-58

## GENERAL PROVISIONS

### § 50.01 TAMPERING WITH CITY PROPERTY.

It shall be unlawful for any person not authorized by the town to tamper with alter or injure any valve on street mains or curb cocks, or any cut-offs or fixtures or attachments used in connection with the waterworks system of the town. All cut-offs and cut-ons are to be performed by town employees.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 50.01 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

~~(2013 Code, § 18-1) Penalty, see § 50.99~~

### § 50.02 CONTAMINATION OF WATER SUPPLY.

No person shall contaminate or pollute in any way the water supply of the town, nor shall he or she throw any dirt or other foreign substance of any kind into any reservoir containing water for the supply of said town or in any other fountain or source of the town's water supply.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 50.02 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

~~(2013 Code, § 18-2) Penalty, see § 50.99~~

### § 50.03 WATER TAP-ON FEES.

(A) Each person hooking onto the town's water supply shall pay an initial tap-on fee. Water tap fees shall be set from time to time by the Board of Commissioners and such fees shall be posted in the office of the Town Clerk.

(B) In addition to the initial tap on fee, each person shall pay a bi-monthly meter charge as follows: as set by the Board of Commissioners from time to time and such charge shall be posted in the office of the Town Clerk.

(C) This charge shall be included on the bi-monthly bill for water. (2013 Code, § 18-3)

### § 50.04 WATER RATES.

(A) Generally. Water rates shall be set from time to time by the Board of Commissioners and such rates shall be posted in the office of the Town Clerk.

(2013 Code, § 18-4)

(B) Minimum bi-monthly charge or base rate. The minimum bi-monthly charge for water service is determined by the size of the meter and is outlined in the rate schedule. Customers shall be charged, as set by the Board of Commissioners from time to time, per month for each and every water meter on their property regardless of whether the service has been used.

(2013 Code, § 18-41)

(C) Seasonal customers.

(1) Seasonal and irrigation meter customers can make arrangements to have the water meter disconnected, by completing a "request to disconnect water service".

(2) To reconnect the water meter, customers should complete a "request to reconnect water service".

(2013 Code, § 18-42)

### § 50.05 APPLICATIONS AND RETURNED CHECKS.

(A) Scope. The intent of this policy is to provide uniform procedures, rates, and charges for providing water and sewer service to the town's customers that will treat all citizens in a fair and indiscriminate manner.

(2013 Code, § 18-50)

(B) Original application.

(1) Any person requesting services shall be required to complete an application for services as approved at that time. The requestor will be required to supply Social Security number or driver's license number, and sign the application in the presence of a Town Finance office employee or a notary public.

(2) Applications must be received by 12:00 p.m. to be turned on the next business day. Only the primary tenant(s) or residents) can apply for membership with the town. Other persons living in the household are not eligible. As previously stated, the utility requires proof that the applicant is the primary tenant. If service has been disconnected for nonpayment or meter tampering, the town may require the new applicant to sign an affidavit attesting to the fact that the previous primary tenant is no longer living in the residence.

(2013 Code, § 18-51)

(C) Returned checks.

(1) When a customer's check is returned from the bank for any reason, the customer is notified, by mail that the check was not honored and that the service will be disconnected unless arrangements are made with Town Hall to pay the bill within 72 hours from mailing of notification.

(2) The town reserves the right to require a customer to pay a utility bill in cash only when three or more bad checks have been received during a 12-month period.

(3) After the town has received more than one bad check, the town will charge, an amount as set by the Board of Commissioners, for each bad check.

(2013 Code, § 18-52)

#### § 50.06 SERVICE FEES.

(A) Service fees shall be charges to customers for the purpose of recovering costs associated with supplying service.

(B) Service fees shall be charged as

follows. Description

Fees

Description

Fees

Capital improvement charge (monthly charge)

3-inch meter

4-inch meter

6-inch meter

\$440

\$770

\$990

Complete a request for utility service

\$20

Cut-on service(s) at a fixed time or date, read and set up account

\$20

Development fee new

meter 3-inch meter

4-inch meter

6-inch meter

\$9,000

\$24,000

\$60,000

Drop-in meters - used when service lines, meter, and box are already installed and not for newly requested services

3-inch

meter 4-

inch meter

6-inch

meter

Labor and Materials

\$1,628

\$2,687

\$5,205

Service Charge

\$25

Development Fee

\$9,000

\$24,000

\$60,000

Installation of a second, 1-inch irrigation meter

\$1,770

Meter tamping charge

\$100 and/or legal action

Restore service following involuntary termination of delinquent account after full payment received

First occasion: \$100

Second and all subsequent occasions: \$200

Transfer from a previous customer to a new customer and leave on

\$20

Transfer from tenant to owner, read meter(s) and leave service on

\$20

Two free meter re-reads are allowed per year, thereafter

Letter to advise of disconnection for nonpayment: first occasion

Letter to advise of disconnection for nonpayment: second occasion

\$20 each reading

\$20

\$30

Unauthorized tap

\$100 and/or legal action

\*An additional \$75 on weekends, holidays, or nights in an emergency as determined by the Town Manager

Third and subsequent occasion of nonpayment by due date will result in automatic disconnect

Water service fees shall be billed on the same billing as solid waste fees, and water and sewer fees. Any payment made on said bill shall first be applied to the payment of solid waste collection fees, water service fees, sewer fees, and finally to water fees

(2013 Code, § 18-53)

#### § 50.07 DISCONTINUING SERVICE.

(A) Requested discontinuance of service. When a customer desires to discontinue service, 24-hours' advance notice must be given to the town. The customer will be responsible for all service usage within the 24 hours following the time of notice to the town.

(2013 Code, § 18-54)

(B) Involuntary discontinuance of service. The town may discontinue service for one or more of the following reasons:

(1) Failure of the customer to pay billings for utility services when due as required by the current cut-off policy; or

(2) Upon evidence of meter tampering meter by pass or any attempt to defraud the town of utility services.

(2013 Code, § 18-55)

(C) Customer's rights prior to discontinuance of service.

(1) It is the policy of the town to discontinue water service to customers for reason of nonpayment only after the customer has a reasonable opportunity to be heard when the

accuracy of the bill is questioned. Reasonable opportunity is defined as 30 days from the issuance of the bill.

(2) (a) If a customer disputes the accuracy of his or her bill, he or she has the right to a hearing at which he or she may be represented in person, or by another person of his or her choosing, and may present, orally or in writing his or her complaint and contentions.

(b) A hearing shall be required within 30 days of the date the bill is issued and must be heard by the Finance Officer at the Town Hall, 355 Vanderbilt Road, Biltmore Forest, North Carolina or telephone at (828) 274-0824.

(c) A hearing may be scheduled between 9:00 a.m. and 5:00 p.m., Monday through Friday.

(2013 Code, § 18-57)

#### § 50.08 RESTORATION OF SERVICES.

When it becomes necessary for the town to discontinue services for any of the reasons listed in § 50.07(B), service will be restored only after:

(A) Payment of all billings owed to the town, including penalties and service fees; and

(B) Payment of any reconnection fees and any material and labor costs incurred by the town.

(2013 Code, § 18.56)

#### § 50.09 TESTING OF METERS.

(A) (1) If the customer suspects a malfunction, he or she has the right to request the municipality to test his or her meter for accuracy.

(2) Such requests for accuracy tests may be made at intervals of no less than six months at a fee not to exceed the town's actual cost.

(B) (1) The results of all such tests will be made available to the customer.

(2) Should the owner's meter prove to be faulty (registering at 4% above correct 100%), the above charge shall be refunded and adjustment made to the customer.

(3) The adjustment shall be determined by the previous six months' use and not be adjusted for more than a total of six months.

#### § 50.10 METERING TAMPERING AND/OR UNAUTHORIZED TAPS.



Tampering with water meters is prohibited by G.S. § 14-159.1 as follows.

(A) It shall be unlawful for any unauthorized person to alter, tamper with, or bypass a meter which has been installed for the purpose of measuring water or knowingly to use water bypassing a meter provided by water supplier for the purpose of measuring and registering the quantity of water consumed.

(B) Any meter or service entrance facility found to have been altered, tampered with, or bypassed in a manner that would cause such meter to inaccurately measure and register the water to be diverted from the recording apparatus of the meter, shall be the prima facie evidence of intent to violate and of the violation of this section by the person in whose name such meter is installed or the person or persons so using or receiving the benefits of such unmeasured, unregistered, or diverted water and shall be assessed a meter tampering and/or unauthorized tap charge, in an amount as set by the Board of Commissioners from time to time, and/or legal action.

(C) Nothing in this act shall be construed to apply to licensed contractors while performing usual and ordinary services in accordance with recognized customs and standards.

(D) The person or persons making unauthorized taps or meter tampering or the person knowingly benefiting from such water or sewer service will be billed for unauthorized usage at current rates. The usage shall be estimated by the town and the minimum charge shall be \$25.

(E) Connection fees and unauthorized tap charges must also be paid. Service to the house, building, or other customer-owned facilities will not be restored until such payment has been received by the town.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 50.10 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

~~(2013 Code, § 18.59) Penalty, see § 50.99~~

#### § 50.11 SERVICE INTERRUPTION.

(A) The town does not guarantee continuous and uninterrupted water service and shall not be liable for loss or damage caused by any failure to supply water or by any interruption unless due to the negligence of the town.

(B) The customer shall notify the town promptly of any defect in service or of any trouble or irregularity in the water supply or quality. In no event shall the town be responsible for any damage resulting during the customer's delay in notifying the town of such trouble or irregularity.

(C) Whenever service is interrupted for work on the water lines or on related equipment such work shall be done, as far as practicable, at a time that will cause the least

inconvenience to the customer. The customer or customers to be effected by such interruptions shall, if practical, be notified in advance.

(2013 Code, § 18.60)

#### § 50.12 OFFICE AND SERVICE HOURS.

The Town Hall Office is open for business between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday. Routine and regular service work is performed during the hours of 8:00 a.m. and 4:30 p.m., except that no routine or regular service work shall be performed on Saturdays, Sundays, or holidays. Service personnel can be readied by calling the town's regular number as listed in the local telephone directory during regular office hours and by calling the Police Department during non-office hours.

(2013 Code, § 18.61)

#### § 50.13 TITLE TO WATER METERS AND CONNECTIONS.

The title and ownership of the water meters and connections are retained by the town.

(2013 Code, § 18.62)

#### § 50.14 RESERVATION OF RIGHTS TO REMOVE, TEST, AND THE LIKE.

The town reserves the right to remove, test, seal, and interfere with any meter for causes deemed justifiable by the Director of Public Works.

(2013 Code, § 18.63)

#### § 50.15 CONNECTIONS FOR SPRINKLER SYSTEMS.

(A) All irrigation systems shall have a separate tap from the water main and a separate meter. No irrigation system shall be connected in any manner to the house service. An RPZ device must be placed within 15 feet of the irrigation meter and before any branch lines. All RPZ devices shall be installed above ground with a minimum of 12 inches of unimpeded clearance from the bottom of the discharge port. All connections shall be made in accordance with specifications furnished by the Public Works Director.

(B) Any persons with irrigation connections who do not comply with the aforesaid requirements shall immediately bring the system into compliance.

(C) No water passing through connections made for irrigation purpose shall be used for any purposes other than to operate sprinkler system.

(D) In the event any person fails to comply with any of the provisions of this section, the town shall terminate water service to the irrigation connection until such time as the person is in compliance with this chapter.

(E) Any persons with an irrigation connection that does not comply with the aforesaid requirements in divisions (A) through (D) above, shall be given notice to conform thereto. A period of 14 days shall be allowed for the owner of the irrigation system to bring said system into compliance. After a period of 30 days of noncompliance, the water supply to the irrigation system shall be terminated until said system is brought into compliance.

#### § 50.16 METERING FOR SPRINKLER SYSTEM.

The metering for an irrigation system shall be installed and maintained by the town. The meter for an irrigation system shall be adjacent to the present meter for the customer or adjacent to the town right-of-way. The cost of the tap for the meter shall be in an amount as set by the Board of Commissioners from time to time. Larger taps can be achieved but at a significantly higher cost.

(2013 Code, § 18.66)

#### CROSS-CONNECTIONS, BACKFLOW, AND BACK-SIPHONAGE CONTROL

#### § 50.30 INTENT, PURPOSE, AND CONTROL.

(A) Intent.

(1) It is the intent of this subchapter to recognize that there are varying degrees of hazard to potable water within the water main and water supply systems.

(2) It is also the intent to apply the principle that the degree of protection should be commensurate with the degree of hazard.

(B) Purpose. The purpose of this subchapter is:

(1) To protect public potable water supply of the town against actual or potential cross-connections, backflow, and back-siphonage by isolating with the premises or private property contamination or pollution that has occurred or may occur because of some undiscovered or unauthorized cross-connection on the premises or private property;

(2) To eliminate cross-connections, backflow, and back-siphonage or any other source of water or process water used for any purpose whatsoever this may jeopardize the

(3) (a) To establish a cross-connection, backflow, and back-siphonage control program.

(b) Cross-connection, backflow, and back-siphonage control require cooperation between the town and the consumer. The responsibilities and duties of each shall be as set forth in the subchapter and other applicable regulations.

(2013 Code, § 18.65)

#### § 50.31 RESPONSIBILITIES.

(A) (1) The town is primarily responsible for the prevention of contamination and pollution of the public water system. Such responsibility begins at the point of origin of the public water supply and includes all of the public water distribution system, and ends at the service connection to the consumer's water system.

(2) In addition, the town shall exercise reasonable vigilance to ensure that the consumer has taken the proper steps to protect the public potable water system.

(3) When it is determined that a backflow prevention device is required for the protection of the public system of the town, the town shall require the consumer, at the consumer's expense, to install an approved backflow prevention device at each service connection.

(B) (1) The consumer has the prime responsibility of preventing contaminants and pollutants from entering his or her potable water system or the public water system at his or her service connection. The consumer, at his or her own expense, shall install, operate, and maintain an approved backflow prevention device and the service connection as directed by the town.

(2) Any testing, maintenance, and repairs of backflow prevention devices shall be made by a licensed plumber at the consumer's expense. Installations are to be made by a licensed plumber.

(C) Enforcement of this subchapter shall be administered by the Director of Public Works in cooperation with the County Health Department - Environmental Health Division.

#### § 50.32 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AIR GAP SEPARATION.** The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flow leveling of the receptacle. An

SEPARATION shall be at least double the diameter of the supply pipe measured vertically above the top rim of the vessel.

APPROVED. The term approved as herein used in reference to a water supply system or backflow prevention device (or method) shall mean one that has been approved by the Public Works Director.

BACK-PRESSURE BACKFLOW. Backflow caused by a pump elevated tank boiler or other means that could create pressure within the system greater than the supply pressure.

BACK-SIPHONAGE BACKFLOW. A reversal of the normal direction of flow in the pipeline due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure.

BACKFLOW PREVENTION DEVICE-TYPE - A. Any effective device, method, or construction used to prevent backflow into a potable water system. The type of device used shall be based on the degree of hazard either existing or potential.

CHECK VALVE-APPROVED. A check valve that is drip-tight in the normal direction of flow when the inlet pressure is one P.S.I, and the outlet pressure is zero. The check valve shall permit no leakage in a direction reverse to the normal flow. The closure element (e.g. clapper) shall be internally weighted or otherwise internally loaded to promote rapid and positive closure.

CONSUMER. Any person, firm, or corporation using or receiving water from the Town of Biltmore Forest water system.

CONTAMINATION. An impairment of the quality of the water by sewage or industrial fluids or waste to a degree, which creates an actual hazard to the public health through poisoning or through the spread of disease.

CROSS-CONNECTION. Any actual or potential connection of structural arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substance other than the intended potable water with which the system is supplied. Bypass arrangements jumper connections, removable sections, swivel or change-over devices, and other temporary/permanent devices through which or because of which backflow can or may occur are considered to be CROSS-CONNECTIONS.

DOUBLE CHECK ASSEMBLY. An assembly composed of two single independently acting approved check valves, including tightly closing shut-off valves located at each end of the assembly and suitable connections for testing the water-tightness of each check valve.

HAZARD - DEGREE OF. Plumbing type cross-connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation, or other device. Unprotected, plumbing type cross-connections are considered to be a health

cross-connections can be located in many type of structures, including homes, apartment houses, hotels, and commercial and industrial establishment.

**HAZARD POLLUTION.** An actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system but which would not constitute a health or system hazard as defined. The maximum degree of intensity of pollution to which the potable water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause minor damage to the system or its appurtenances.

**HAZARD-SYSTEM.** An actual or potential threat of severe danger to the physical properties of the public or the consumer's potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

**INDUSTRIAL FLUIDS.** Any fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration such as would constitute a health system, pollutional, or plumbing hazard if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated used water; all types of process water and "used waters" originating from the public potable water system which may deteriorate in sanitary quality; chemicals in fluid form; planting acids and alkalis; circulated cooling waters collected to an open cooling tower and/or cooling waters that are chemically or biologically treated or stabilized with toxic substances; contaminated natural water such as from wells, springs, streams, rivers, irrigation canals or systems, and the like; oils, gases, glycerin, paraffines, caustic and acid solutions; and other liquid and gaseous fluids used in industrial or other processes or for firefighting purposes.

**INDUSTRIAL PIPING SYSTEM-CONSUMER'S.** Any system used by the consumer for transmission of or to confine or store any fluid, solid, or gaseous substance other than an approved water supply. Such a system would include all pipes, conduits, tanks, receptacles, fixtures, equipment, and apparatus used to produce, convey, or store substances which are or may be polluted or contaminated.

**POLLUTION.** An impairment of the quality of the water to a degree which does not create an actual hazard to the public health, but which does adversely and unreasonably affect such waters for domestic use.

**REDUCED PRESSURE PRINCIPLE BACKFLOW PREVENTION DEVICE.** A device containing within its structure a minimum of two independently acting, approved check valves, together with an automatically operating pressure differential relief valve located between the two check valves. The first check valve reduces the supply pressure at predetermined amount so that during normal flow and at cessation of normal flow the pressure between the checks. It shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by its discharging to atmosphere, shall operate to maintain the pressure between the checks less than the supply pressure. The unit shall include tightly closing shut-off valves located at each end of the device and each device shall be fitted with

pumps, pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to, produce, convey, treat, or store a potable water for public consumption or use.

**SERVICE CONNECTION.** The terminal end of a service connection from the public potable water system (i.e., where the town loses jurisdiction and sanitary control over the water at its point of delivery to the consumer's water. If a meter is installed at the end of the service connection, then the SERVICE CONNECTION shall mean the downstream end of the meter. There should be no unprotected takeoffs from the service line ahead of any meter or backflow prevention device located at the point of delivery to the consumer's water system.

**WATER-POTABLE.** Water from any source which has been investigated by the health agency having jurisdiction and which has been approved for human consumption.

**WATER SUPPLY-AUXILIARY.** Any water supply on or available to the premises other than the Town of Biltmore Forest's approved public potable water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source such as a well, spring, river, stream, and the like, or used water, or industrial fluids. They may be polluted or contaminated or they may be objectionable and constitute an unacceptable water source over which the Town does not have sanitary control.

**WATER SYSTEM-CONSUMERS.** Includes any water system located on the consumer's premises whether supplied by a public potable water system or an auxiliary water supply. The system or systems may be either a potable water system or an industrial piping system.

**WATER SYSTEM-CONSUMER'S POTABLE.** The portion of the privately-owned potable water system tying between the service connection and the point of use. This system will include all pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, store, or use potable water.

**WATER SYSTEM-PUBLIC POTABLE.** Any publicly- or privately-owned water system operated as a public utility under a valid health permit to supply water for domestic purposes. This system will include all sources, facilities, and appurtenances.

**WATER USED.** Any water supplied by a water purveyor from a public potable water system to a consumer's water system after it has passed through the service connection and is no longer under the control of the water purveyor.

(2013 Code, § 18.65)

## § 50.33 REGULATIONS.

(A) No water service connections to any premises shall be installed or maintained unless the potable water and water supply are protected against actual or potential contamination or pollution in the manner required.

(B) In the event of contamination or pollution of a potable water system, the consumer shall notify immediately the town, in order that appropriate measures may be taken to overcome the contamination or pollution.

(C) The Director or his or her authorized representative shall have the right to enter any building, structure, or premises to perform any duty imposed upon by this subchapter where cross-connection, backflow, and back-siphonage is deemed possible.

(D) Nothing herein shall relieve the consumer of the responsibility for conducting or causing to be conducted, periodic surveys of water use practices on his or her premises to determine whether there are actual or potential cross-connection in the consumer's water system through which contaminants or pollutants could flow back into the public water system.

(E) On request, the consumer shall furnish to the Director any pertinent information regarding the water supply system on such property where cross-connection, backflow, and back-siphonage is deemed possible.

(F) Water service may be discontinued after reasonable notice to the consumer if a violation of this subchapter exists on the premises. Such other precautionary measures may be taken as are deemed necessary to eliminate any danger to the potable water system. Water service shall not be restored until the danger has been eliminated in compliance with the provisions of this subchapter. Installation of all cross-connections, backflow, and back-siphonage control devices will be made by a licensed plumber approved by the Director of Public Works. All installations shall be made under the supervision of the town's Cross-Connection Control Inspector.

(G) Installations of all reduced pressure principle backflow prevention devices on existing or proposed water meters shall be installed adjacent to the property line or within 15 feet of the meter.

(H) All cross-connections, backflow, and back-siphonage all control equipment shall meet the testing requirements of the Foundation for Cross-Connection Control and Hydraulic Research, the American Water Works Association, and the State Building Code, Volume II Plumbing, and the EPA.

(I) (1) All cross-connections, backflow, and back-siphonage control devices, both existing and new, and all parts thereof, shall be maintained in a safe condition and in good working order. The consumer shall be responsible for the maintenance of all backflow prevention devices downstream from the service connection on the private water system.

(2) (a) All backflow prevention devices located at the service connections shall be tested at least once a year, or more often in those instances where inspections indicate a need by the Department of Public Works. Test results shall be made available to the consumer.

(b) The consumer shall be notified by the Public Works Department prior to the



needed. Removal, rebuilding, and installation shall be made by a licensed plumber approved by the Director of Public Works.

(3) All maintenance and repairs of the backflow device shall be made at the expense of the consumer.

(J) Any RPZ devices that have been installed inside a building shall be required to be inspected at least annually by an independent inspector certified by the state to conduct such inspections. The test results shall be mailed to the Public Works Director within 14 days of inspection.

(K) All RPZ devices must remain free of obstructions (i.e., brush, shrubbery, fences, and the like) for testing or inspection purposes.

(L) The town assumes no responsibility for the RPZ device during an annual inspection.

(M) All fire protection water lines must have an RPZ device.

(N) All commercial buildings that use a boiler system must have an RPZ device and that device must be inspected annually by an independent inspector certified by the state to conduct such inspections. The test results shall be mailed to the Public Works Director within 14 days of inspection.

(O) All permanent installations designed to introduce water into a swimming pool from a potable water supply shall be done only through an air gap of at least two times the diameter of the introducing pipe. In those instances where a permanent water introduction system is not installed and water from a potable water supply is introduced into a swimming pool by means of a hose, the hose bib to which the hose is connected shall be equipped with an RPZ backflow preventer.

(P) No irrigation lines shall be placed within the town rights-of-way.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 50.33 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

~~(2013 Code, § 18.65) Penalty, see § 50.99~~

## IDENTIFY THEFT PROGRAM

### § 50.45 PURPOSE.

The purpose of this subchapter is for the creation and implementation of an identity theft prevention program for the town to identify, detect, mitigate, and update red flags that signal the possibility of identity theft in connection with the opening of a covered utility account or any existing covered utility account.

(2013 Code, § 18.67)

#### § 50.46 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**COVERED ACCOUNT.** An account that the Town of Biltmore Forest offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions and any other account that the Town of Biltmore Forest offers or maintains for which there is a reasonably foreseeable risk to customers or the safety and soundness of the Town of Biltmore Forest from identity theft, including financial, operational, compliance, reputation, or litigation risks.

**IDENTITY THEFT.** A fraud committed or attempted using the identifying information of another person without authority.

**RED FLAG.** A pattern, practice, or specific activity that indicates the possible existence of identity theft. Section 50.47 provides a specific description of which red flags are applicable to this policy.

(2013 Code, § 18-67.1)

#### § 50.47 IDENTIFICATION OF RELEVANT RED FLAGS.

(A) After careful examination of our accounts, including the methods by which we open access and past experience with identity theft, the following events/occurrences reasonably indicate the potential for identity theft and should be considered “red flags” for purposes of this policy.

(B) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detections services.

(C) The presentation of suspicious documents, such as:

- (1) Document provided for identification that appears to have been altered or forged;
- (2) The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification;
- (3) Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification;
- (4) Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature

(5) An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

(D) The presentation of suspicious personal identifying information, such as a suspicious address changes:

(1) Personal identifying information provided is inconsistent when compared against external information sources used by the town;

(2) Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the Social Security number range and date of birth; or

(3) Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the town, for example, the address on an application is the same as the address provided on a fraudulent application.

(E) The phone number on an application is the same as the number provided on a fraudulent application:

(1) Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor;

(2) For example:

(a) The address on an application is fictitious, a mail drop, or a prison; or the phone number is invalid, or is associated with a pager or answering service;

(b) The Social Security number provided is the same as that submitted by other persons opening an account or other customers;

(c) The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of other persons opening accounts or other customers;

(d) The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete; or

(e) Personal identifying information provided is not consistent with personal identifying information that is on file with the town.

(3) If the town uses challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report:

(b) Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the town; or

(c) The town is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

(2013 Code, § 18-67.2)

#### § 50.48 DETECTION, PREVENTION, AND MITIGATION.

##### (A) Detection.

(1) In an effort to ensure proper detection of any red flags, all customers (consumers) must provide at least the following information/documentation before any new covered account will be opened:

(a) Full name;

(b) Date of birth (individual);

(c) Address, (a residential or business street address for an individual; for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or for a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(d) Identification number, which shall be:

1. For a U.S. person, a taxpayer identification number; or

2. For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(2) For any account holder of a covered account for which the above information is not already on file at the town, the customer will be contacted within a reasonable period of time after discovering the missing information to obtain the necessary information; and

(3) (a) To assist with detection of red flags, the town will implement the appropriate computer programs tailored to the town business needs to help authenticate customers, monitor transactions, and change of address requests.

(b) The following programs are being used and the town continued use thereof is incorporated and made part of this policy: CSI Technology Outfitters 900 East Main Street, Suite T Easley, South Carolina 29640.

(B) Preventing and mitigating identity theft.

(1) (a) In the event a red flag is detected, the town committed to preventing the occurrence of identity theft and taking the appropriate steps to mitigate any harm caused thereby.

(b) In order to respond appropriately to the detection of a red flag, the town shall consider any aggravating circumstance(s) that may heighten the risk of identity theft.

(2) After assessing the degree of risk posed, the town will respond to the red flag in an appropriate manner, which may include:

(a) Monitoring a covered account for evidence of identity theft;

(b) Contacting the customer;

(c) Changing any passwords, security codes, or other security devices that permit access to a covered account;

(d) Reopening a covered account with a new account number;

(e) Not opening a new covered account;

(f) Closing an existing covered account;

(g) Notifying law enforcement; or

(h) Determining that no response is warranted under the particular circumstances.

(3) In an effort to mitigate the damage caused by identity theft, the following programs/software are being used, and the town's continued use thereof is incorporated and made part of this policy: CSI Technology Outfitters.

(4) (a) For the protection of our customers, all service providers hired by the town to perform any activity in connection with any covered account must also take appropriate steps to prevent identity theft.

(b) To this end, the town will only contract with service providers that have implemented and follow a similar identity theft prevention policy.

(2013 Code, § 18-67.3)

§ 50.49 IDENTIFY THEFT PREVENTION.

(A) The town is committed to maintaining an identity theft prevention policy that is current with the ever-changing crime of identity theft. To that end, the town will reassess this policy on a periodic (annual) basis to reflect changes in risks to customers or to the safety and soundness of the town from identity theft.

(B) The determination to make changes to this policy will be within the discretion of the responsible parties, identified in § 50.51, but after careful consideration of the following:

- (1) The town's past experience(s) with identity theft;
- (2) Changes in methods of identity theft;
- (3) Changes in methods to detect, prevent, and mitigate identity theft;
- (4) Changes in the types of accounts that the town offers or maintains; and
- (5) Changes in the business arrangements of the town, including service provider arrangements.

(2013 Code, § 18-67.4)

#### § 50.50 ADDITIONAL LEGAL REQUIREMENTS.

(A) (1) The town shall develop policies and procedures designed to enable the organization to form a reasonable belief that a credit report relates to the consumer for whom it was requested.

(2) In an effort to ensure that the town maintains accurate address information for its consumers and to ensure the town provides accurate address information of its consumers to reporting agencies if requested, at least one of the following steps must be taken prior to providing the consumer's address to the consumer reporting agency:

- (a) Verify the address on file with the consumer;
- (b) Confirm the address being sent to the consumer reporting agency matches the address the town has on file for that particular consumer;
- (c) Compare the address with information received from any third-party source; or
- (d) Verify by other means that are reasonably available at the time.

(B) If an accurate address is confirmed, the town shall furnish the consumer's address to the nationwide consumer reporting agency from which it received the notice of address discrepancy if:

- (1) The town establishes a continuing relationship with the customer; and
- (2) The town regularly and in the ordinary course of business, furnishes information to the consumer reporting agency.

(2013 Code, § 18-67.5)

#### § 50.51 ADMINISTRATION.

The Town Manager will be responsible for overseeing the implementation, management, and updating of this new policy and shall have the following responsibilities:

(A) Assign specific responsibility for the program's implementation, including appropriate training for staff;

(B) At least annually, the assigned person/staff must report to the Board of Commissioners and provide an update on the policy's effectiveness, any service provider arrangements, and significant incidents involving identity theft and the town's response, and recommendations for ways to improve the program;

(C) Review reports prepared by staff to ensure that the town remains compliant with its legal responsibility to maintain an identity theft prevention program; and

(D) Approve material changes to this program as necessary to address changing identity theft risks.

(2013 Code, § 18-67.6)

#### § 50.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) (1) Any person violating any of the provisions of § 50.10, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500 or imprisoned not longer than two years or both fined and imprisoned in the discretion of the court.

(2) Whoever is found in a civil action to have violated any provision hereof shall be liable to the water supplier in the triple amount of losses and damages sustained or \$500 whichever is greater.

(2013 Code, § 18.59)

## CHAPTER 51: SOLID WASTES

### Section

- 51.01 Definitions
  - 51.02 Littering
  - 51.03 Construction
  - 51.04 debris
  - 51.05 Materials resulting from clearing land
  - 51.06 Garbage collection
  - 51.07 Garbage receptacles
  - 51.08 Tree limbs, brush, leaves, and the like
  - 51.09 Placement of limbs, brush, leaves, and the like
  - 51.10 Grass clippings
  - 51.11 Fees
  - 51.12 Refuse not collected by the town
  - 51.13 Accumulation of garbage, refuse, rubbish, and waste prohibited
  - 51.14 Recycling and recyclable material
- 
- 51.99 Penalty

### Statutory reference:

Authority of town to regulate removal of garbage and trash, see G.S. § 160A-312

### § 51.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUILDING MATERIAL SCRAPS.** Scrap building material from the construction, reconstruction, remodeling, or repair of a building, walkway, driveway, signs, and or other structures, including, but not limited to, excavated earth, tree stumps, rocks, gravel, bricks, plaster, concrete, lumber, or any other similar material used in construction or containers or wrappings therefor.



**BULKY WASTE.** Large items of solid waste such as furniture, white goods, large auto parts, stumps, and other oversize wastes whose large size precludes or complicates its handling by normal solid waste collection, processing, or disposal methods.

**COLLECTION.** The act of removing solid waste or recyclable material to a transfer station, processing facility, or disposal facility. For the purposes of this chapter, any collection receptacles or containers located on town property are considered to be in the stream of COLLECTION.

**GARBAGE.** Animal and vegetable matter resulting from the handling, preparation, cooking, and consumption of food, in cans, glassware, or other containers, rags, waste paper, includes all putrescible wastes, but excludes sewage and human waste.

**HAZARDOUS WASTE.** A solid waste or combination of solid wastes, including liquid or gaseous wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

**MEDICAL WASTE.** Any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or the production of biologicals.

**MIXED PAPER.** Envelopes, catalogs, bulk mail, magazines, computer paper, copy paper, file folders, phone books, gray cartons, adding machine tapes, letters, scratch pads, soft-covered books, and other material as defined by the Director of Public Works.

**PATHOLOGICAL WASTE.** Human tissues, organs, and body parts, and the carcasses and body parts of any animals that were known to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologicals or in vivo testing of pharmaceuticals, or that humans died with a known or suspected disease transmissible to humans.

**PUTRESCIBLE.** Solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases; such as kitchen wastes, offal, and animal carcasses.

**RECYCLE, RECYCLABLES, or RECYCLABLE MATERIAL.** Those materials or that process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed or returned to use in the form of raw materials or products.

**REFUSE.** Solid waste that is non-putrescible waste collected from residences.

SOLID WASTE. Garbage refuse, including SOLID WASTE materials resulting from residential and business activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved materials in irrigation return flows, or other common water pollutants.

WHITE GOODS. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

YARD TRASH. Solid waste consisting solely of vegetative matter resulting from landscaping maintenance. Includes grass clippings, leaves, sod, tree limbs, and weeds.

(2013 Code, § 9-1)

#### § 51.02 LITTERING.

This chapter provides that it shall be unlawful for any person to throw or deposit upon any street or street right-of-way (except as set forth in § 51.07), or upon any private property, any rocks, bricks, lumber, sawdust, bottles, jars, broken glass, or any plastic or paper bags, cups, or paper of any kind, or any trash, leaves, dirt, rubbish, or any thing that may be unsightly or offensive or that may, in any way, be dangerous to traffic.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 51.02 shall be guilty of a Class 3 misdemeanor and fined \\$250.00.](#)

~~(2013 Code, § 9-2) Penalty, see § 51.99~~

#### § 51.03 CONSTRUCTION DEBRIS.

All refuse, lumber, and debris remaining as a result of the repair of a building or the erection and completion of a new building shall be removed by the property owner within ten days from the date of completion of said work.

(2013 Code, § 9-3)

#### § 51.04 MATERIALS RESULTING FROM CLEARING LAND.

No materials such as trees, shrubbery, or underbrush resulting from land being cleared shall be placed for collection by the town, but such materials shall be disposed of by the contractor or builder. In the event the contractor or builder fails to remove such material, the removal thereof shall be the responsibility of the owner of the property.

(2013 Code, § 9-4) Penalty, see § 51.99

§ 51.05 GARBAGE COLLECTION.

(A) Garbage shall be collected in the back yard of the resident. Collection of garbage shall be made by the town on a regular basis. A schedule of such times and routes of collection shall be posted in the Town Hall and may be changed from time to time as may be necessary in the discretion of the Director of Public Works and Town Manager.

(B) It shall be unlawful for any person to place or deposit at any location within the corporate limits of the town for collection by the town any solid waste of any type that was generated outside the corporate limits of the town.

(C) It shall be unlawful for any owner or occupant of any residence, dwelling unit, business, or commercial premises to allow any person to place or deposit for collection by the town any solid waste of any type which was generated outside the corporate limits of the town.

(2013 Code, § 9-5) Penalty, see § 51.99

§ 51.06 GARBAGE RECEPTACLES.

(A) Garbage receptacles shall be cans made substantially of metal, plastic, or plastic bags. Cans shall have tight-fitting covers and strong handles and the covers shall be kept on at all times, except when cans are being filled or emptied.

(B) Plastic bags shall be properly secured at the bag opening with a twist tie or other means to eliminate any spillage of contents.

(C) Containers shall not exceed 32 gallons or exceed 50 pounds in weight. Each household may have up to five garbage receptacles.

(D) Garbage cans shall not be located behind closed fences, inside closed buildings, or in any other inaccessible place. Garbage from dumpsters shall not be collected by the town.

§ 51.07 TREE LIMBS, BRUSH, LEAVES, AND THE LIKE.

(A) (1) All trees or portions thereof to be picked up shall be cut up and reduced in lengths so that no portion shall be more than six feet in length. Limbs shall be no greater than six inches in diameter (distance through the limb).

(2) All limbs shall be cut from the main body of any limb or trunk. All such materials shall be neatly piled with the length of such items substantially parallel to the street. One dump truck load of limbs and brush shall be allowed each resident per two months without additional charges. Should the volume exceed one dump truck load, a fee will be charged for each two cubic yards or any portion thereof.

(3) A fee, in an amount as set by the Board of Commissioners from time to time, per two cubic yards will be charged when limbs and brush have exceeded one dump truck load in a two-month period.

(B) Loose leaves shall be collected at roadside by town forces from November 1 through January 15. Leaves shall be free of sticks, rocks, and other debris, and not placed in plastic bags.

(C) Tree limbs and brush shall not be placed at roadside more than five days prior to the collection date.

(D) Limbs and brush shall not be placed at roadside from November 1 through January 15.

(E) Removal of limbs, brush, and debris of all types resulting from work of commercial tree services shall be the responsibility of the property owner, and not the town.

(2013 Code, § 9-7)

#### § 51.08 PLACEMENT OF LIMBS, BRUSH, LEAVES, AND THE LIKE.

Limbs, brush, and leaves shall be placed by occupant upon that portion of residents' property immediately adjacent to the street right-of-way normally used by vehicles, but at least three feet off of the pavement.

(2013 Code, § 9-8)

#### § 51.09 GRASS CLIPPINGS.

The town strongly discourages the deposit of grass clippings within the street rights-of-way adjacent to residences; however, should an occupant of a residence place grass clippings within the street rights- of-way, the town may remove said grass clippings and, if so removed, shall bill the owner of said residence a flat fee in an amount as set by the Board of Commissioners from time to time.

(2013 Code, § 9-9)

#### § 51.10 FEES.

(A) The following fees shall be charged and collected by the town:

(1) Collection of limbs and brush in excess of one dump truck per two months, \$50 fee per two cubic yards;

(2) One hundred dollar fee per dump truck load;

(3) Twenty-five dollar fee for limbs and brush placed at roadside seven days prior to scheduled pickup;

(4) One hundred fifty dollar flat fee for disposal of grass clippings;

(5) Twenty-five dollar for placement of limbs, brush, and leaves in a location other than the street right-of-way immediately adjacent to the front of the residents' property; and

(6) One hundred dollar fee for collection of construction debris or other items not collected by the town in addition to \$10 fee per each two cubic yards or any portion thereof collected.

(B) Solid waste collection fees shall be billed on the same billing as water and sewer fees. Any payment made on said bill shall first be applied to the payment of solid waste collection fees, water service fees, sewer fees, and finally to water fees.

(C) Where such an accumulation exists for any reason, the town may summarily remove, abate, or remedy such accumulation and the expense of the action shall be a lien upon the land or premises and shall be collected as unpaid taxes.

#### § 51.11 REFUSE NOT COLLECTED BY THE TOWN.

The following is a list of refuse not collection by the town (\*denotes refuse not accepted by the County Landfill. Asbestos not accepted unless prior arrangement with County Landfill personnel):

(A) Asbestos\*;

(B) Ashes;

(C) Batteries;

(D) Bedding;

(E) Building materials;

(F) Flammable materials;

(G) Gas tanks\*;

(H) Hazardous waste\*;

(I) Liquids\*;

(J) Materials resulting from clearing land;

(K) Medical waste;

(L) Paint;

(M) Pathological waste;

(N) Rocks;

(O) Sharps;

(P) Tires; and

(Q) White goods.

(2013 Code, § 9-11)

#### § 51.12 ACCUMULATION OF GARBAGE, REFUSE, RUBBISH, AND WASTE PROHIBITED.

(A) No property owner or tenant shall allow the accumulation of garbage, refuse, rubbish, or waste upon land or premises owned or occupied by them so that such accumulation is dangerous or prejudicial to the public health.

(B) Where such an accumulation exists for any reason, the town may summarily remove, abate, or remedy such accumulation and the expense of the action shall be a lien upon the land or premises and shall be collected as unpaid taxes.

(2013 Code, § 9-12) Penalty, see § 51.99

#### § 51.13 RECYCLING AND RECYCLABLE MATERIAL.

(A) Recycling encouraged. Each person who owns, leases, or manages a residence, residential unit, or place of business, industry, commerce, or other place providing goods or services, or institution, church, camp, or school is strongly encouraged to remove recyclable materials from solid waste generated and make them available for recycling.

(B) Containers. The town provides each residence with a 95-gallon container. These containers are to be used for recycling materials only, and will be picked up once every two weeks by town staff. The containers remain the property of the town and remain with the residence if ownership is transferred. Anyone found to remove the container from the residence in violation of this section shall be charged the prevailing cost of a replacement container.

(C) Recyclable materials. Recyclable material shall consist of the following items and shall be prepared for recycling, prior to deposit in the town's recycling containers, as directed:

(1) Jars and bottles. All brown, clear, and green container (bottles and jars) glass));

(2) Cans. Aluminum beverage and bimetal (tin or steel) food cans;

(3) Plastic containers. Plastic containers No. 1 PETE (soda containers) and No. 2 HDPE (milk and shampoo containers) and No. 3, 5, and 7 (mixed plastic);

- (4) Corrugated containers and cardboard. Must be flattened;
- (5) Newspapers. May be bundled with string or left loose. Inserts may remain; and
- (7) Mixed paper. See definition in § 51.01.

(D) Prohibitions.

(1) It shall be unlawful for any person to place or deposit at the town's recycling containers any recyclable material unless all such material can fit entirely within the appropriate container.

(2) It shall be unlawful for any person to place or deposit in the town's recycling containers any recyclable material of any type that was generated outside the corporate limits of the town.

(3) No person, other than persons authorized by the town, may remove recyclable material from a recycling container.

(2013 Code, § 9-13) Penalty, see § 51.99

§ 51.14 NOTICE OF NONCOMPLIANCE.

The town utilizes red tags to inform residents of receptacles that are not in compliance. A letter of warning shall be given on the first occasion of placement of tree limbs and brush more than five days prior to the date of collection.

(2013 Code, § 9-15)

§ 51.99 PENALTY.

(A) Any willful and knowing refusal to pay fees assessed in this chapter shall subject the offender to a civil penalty in the amount of \$50 payable to the town as law provided.

(B) Violation of this chapter shall constitute a misdemeanor for each day such violation occurs and subject the violator of this chapter to a fine of \$50 or 30 days imprisonment or both for each violation of this chapter.

(2013 Code, § 9-15)

## TITLE VII: TRAFFIC CODE

### Chapter

- 70. GENERAL PROVISIONS
- 71. TRAFFIC REGULATIONS
- 72. REGULATIONS
- 73. TRAFFIC SCHEDULES

## CHAPTER 70: GENERAL PROVISIONS

### Section

#### General Provisions

- 70.01 Leaving ignition keys in unattended vehicles
- 70.02 Driving unsafe vehicles
- 70.03 Improperly equipped vehicles
- 70.04 Weight limitation permit required

#### Traffic-Control Devices

- 70.15 Obedience to official traffic-control devices
- 70.16 Obedience to no-turn signs and turning markers
- 70.17 Obedience to no-parking zone and safety
- 70.18 markers Traffic-control signal legend
- 70.19 Flashing signals

- 70.99 Penalty

#### Cross-reference:

- Streets and Sidewalks, see Ch. 91
- Traffic Regulations, see Ch. 71

## GENERAL PROVISIONS

### § 70.01 LEAVING IGNITION KEYS IN UNATTENDED VEHICLES.



No person driving or in charge of a motor vehicle shall permit it to stand unattended in any public place or parking lot without first stopping the engine, locking the ignition, removing the ignition key from the vehicle, effectively setting the brakes and, when standing on any grade, turning the front wheels to the curb or side of the highway.

(2013 Code § 11-1) Penalty, see § 70.99

#### § 70.02 DRIVING UNSAFE VEHICLES.

It shall be unlawful for any person to drive on the streets of the town any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property.

(2013 Code § 11-2) Penalty, see § 70.99

#### § 70.03 IMPROPERLY EQUIPPED VEHICLES.

No automobile or motor vehicle shall be operated on the streets of the town, unless the same shall be equipped with all necessary equipment to make the vehicle safe. This shall include an adequate muffler, properly installed to prevent unnecessary noise.

(2013 Code § 11-3) Penalty, see § 70.99

#### § 70.04 WEIGHT LIMITATION PERMIT REQUIRED.

No person shall operate a motor vehicle upon the streets of the town when the gross weight of such vehicle exceeds 40,000 pounds, or which is of the tractor-trailer type, unless a permit is issued. If it is necessary for such a vehicle to enter the town for the purpose of loading or unloading, then the operator of such vehicle shall apply to the Chief of Police or other designated officer who, upon showing the necessity of such entry, shall issue a permit therefor.

(2013 Code § 11-4) Penalty, see § 70.99

### TRAFFIC-CONTROL DEVICES

#### § 70.15 OBEDIENCE TO OFFICIAL TRAFFIC-CONTROL DEVICES.

(A) The driver of every motor vehicle, and any other vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the traffic regulations in this traffic code, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(B) No provision of this traffic code for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective without signs being placed to give notice thereof.

(2013 Code, § 17-62) Penalty, see § 70.99

#### § 70.16 OBEDIENCE TO NO-TURN SIGNS AND TURNING MARKERS.

Whenever authorized signs are placed, erected, or installed indicating that no right or left or U-turn is permitted, it shall be unlawful for the driver of a vehicle to disobey the directions of any such sign, and when authorized markers, buttons, or other indications are placed within an intersection indicating the course to be traveled by vehicles traversing or turning thereat, it shall be unlawful for any driver of a vehicle to disobey the directions of such indications.

(2013 Code, § 17-63) Penalty, see § 70.99

#### § 70.17 OBEDIENCE TO NO-PARKING ZONE AND SAFETY MARKERS.

Whenever authorized signs or markings are placed, erected, or installed indicating no parking zones or safety zones, it shall be unlawful for the driver of any vehicle to disobey the regulations in connection therewith.

(2013 Code, § 17-64) Penalty, see § 70.99

#### § 70.18 TRAFFIC-CONTROL SIGNAL LEGEND.

Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop", or exhibiting different colored lights successively one at a time, the following colors only shall be used, and said terms and lights shall indicate as follows.

(A) Green alone or "Go".

(1) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

(2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(B) Yellow alone or "Caution" when shown following the green or "Go" signal.

(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection.

(2) Pedestrians facing such signal are thereby advised that there is insufficient time to cross a roadway and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(C) Red alone or "Stop".

(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at an intersection or at such other point as may be indicated by a clearly visible line, and shall remain standing until green or "Go" is shown alone.

(2) No pedestrian facing such signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic.

(D) Red with green arrow.

(1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow, but shall not interfere with other traffic.

(2) No pedestrian facing such signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic.

#### § 70.19 FLASHING SIGNALS.

Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows.

(A) Flashing red (stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(B) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2013 Code, § 17-67) Penalty, see § 70.99

#### § 70.99 PENALTY.

If any person shall violate an ordinance regulating the operation or parking of vehicles, he or she shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50.

(G.S. § 14-4(b))

## CHAPTER 71: TRAFFIC REGULATIONS

### Section

#### General Provisions

- 71.01 Definitions
- 71.02 Required obedience to traffic regulations
- 71.03 Obedience to police
- 71.04 Public employees to obey traffic regulations
- 71.05 Authority of police in special cases
- 71.06 Exemptions to authorized emergency vehicles
- 71.07 Zone of quiet
- 71.08 Play streets
- 71.09 School zone
- 71.10 Push carts, bicycles, or animals
- 71.11 Riding on handlebars prohibited
- 71.12 Riding on sidewalks or without hands on handlebars prohibited
- 71.13 Clinging to moving vehicles
- 71.14 Unlawful riding
- 71.15 Boarding or alighting from vehicles in motion
- 71.16 Persons riding must stay inside
- 71.17 Entering, jumping on, or riding vehicles without permission
- 71.18 Limitation of number in driver's seat
- 71.19 Moving of vehicles into restricted areas
- 71.20 Bicyclists to ride in single file

#### Operation of Vehicles

- 71.35 Vehicles prohibited on sidewalks
- 71.36 Emerging from private drives
- 71.37 Limitations on turning around

71.38 Driving through funeral processions

71.39 Limitations on backing

71.40 Speed regulations

71.41 Left turns

Cross-reference:

Police Department, see § 31.15

Streets and Sidewalks, see Ch. 91

Statutory reference:

Authority of cities relative to traffic, see G. S. § 20-169 and 160A-300

Operation of vehicles and rules of the road, see G.S. Ch. 20

## GENERAL PROVISIONS

### § 71.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AUTHORIZED EMERGENCY VEHICLE.** Vehicles of the Fire Department, police vehicles, and such ambulances designated or authorized by the Chief of Police.

**BLOCK.** A portion of any street located between two intersections next adjacent to each other.

**CROSSWALK.**

(1) The portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at, intersections; or

(2) Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

**DRIVER.** Every person who drives or is in actual physical control of a vehicle.

**INTERSECTION.** The area embraced within the prolongation of the lateral curb lines, or if none, then the lateral boundary lines of two or more highways which join one another at an angle whether or not one such highway crosses the other.

**MOTOR VEHICLE.** Every vehicle, which is self-propelled, and every vehicle, which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

**OFFICIAL TIME STANDARD.** Whenever certain hours are named herein, they shall mean standard time or daylight savings time as may be in current use.

**OFFICIAL TRAFFIC SIGNALS.** Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

**PARK.** The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading, or unloading.

**PEDESTRIAN.** Any person afoot.

**PRIVATE ROAD OR DRIVEWAY.** Every road or driveway not open to the use of the public for purposes of vehicular travel.

**RESIDENTIAL DISTRICT.** Any area not comprising a business district and which is mainly occupied by dwellings or by dwellings and buildings in use for business.

**RIGHT-OF-WAY.** The privilege of the immediate use of a roadway.

**ROADWAY.** The portion of a street improved, designed, or ordinarily used for vehicular travel.

**SAFETY ZONE.** The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety.

**SIDEWALK.** The portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

**STOP OR STOPPING WHEN PROHIBITED.** Any stopping of a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic-control sign or signal.

**STOP WHEN REQUIRED.** The complete cessation of movement.

**STANDING.** Any stopping of a vehicle, whether occupied or not.

**STREET or HIGHWAY.** The entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic.

**TRAFFIC.** Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any street for the purpose of travel.

**VEHICLE.** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used

exclusively upon stationary rails or tracts; provided, that for the purpose of this chapter, a bicycle or a ridden animal shall be deemed a vehicle.

(2013 Code, § 17-1)

Cross-reference:

General definitions and rules of construction, see § 10.99

#### § 71.02 REQUIRED OBEDIENCE TO TRAFFIC REGULATIONS.

It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter.

(2013 Code, § 17-2) Penalty, see § 70.99

#### § 71.03 OBEDIENCE TO POLICE.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.

(2013 Code, § 17-3) Penalty, see § 70.99

Cross-reference:

Police Department, see § 31.15

#### § 71.04 PUBLIC EMPLOYEES TO OBEY TRAFFIC REGULATIONS.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the U.S. government, this state, county, or town, and it shall be unlawful for any said driver to violate any of the provisions of this chapter, except as otherwise permitted in this chapter or by state statute.

(2013 Code, § 17-4) Penalty, see § 70.99

#### § 71.05 AUTHORITY OF POLICE IN SPECIAL CASES.

In the event of a fire or other emergency or when necessary to expedite traffic or safeguard pedestrians, police officers may direct traffic as conditions may require, notwithstanding the provisions of this chapter.

(2013 Code, § 17-5) Penalty, see § 70.99

Cross-reference:

Fire and Fire Protection, see §§ 92.20 through 92.22

Town Emergencies, see Ch. 34

#### § 71.06 EXEMPTIONS TO AUTHORIZED EMERGENCY VEHICLES.

(A) (1) The provisions of this chapter regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles as defined in § 71.01, except as follows:

(2) A driver when operating such vehicle in an emergency, except when otherwise directed by a police officer may:

(a) Park or stand, notwithstanding the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the prima facie speed limits so long as he or she does not endanger life or property; or

(d) Disregard regulations governing direction of movement or turning in specified directions so long as he or she does not endanger life or property.

(B) The foregoing exemptions shall not, however, protect the driver of any such vehicle from the consequences of his or her reckless disregard for the safety of others.

(2013 Code, § 17-6)

#### § 71.07 ZONE OF QUIET.

Whenever authorized signs are placed, erected, or installed indicating a zone of quiet, it shall be unlawful for any person operating a motor vehicle within any such zone to sound the horn or other warning device of said vehicle, except in an emergency.

(2013 Code, § 17-7) Penalty, see § 70.99

#### § 71.08 PLAY STREETS.

Whenever authorized signs are placed, erected, or installed indicating any street or part thereof as a play street, it shall be unlawful to drive a vehicle upon any such street or portion thereof, except drivers of vehicles having residences within such closed area, and then said drivers shall exercise the greatest care in driving upon any such street or portion thereof.

(2013 Code, § 17-8) Penalty, see § 70.99



#### § 71.09 SCHOOL ZONE.

Whenever authorized signs are placed, erected, or installed indicating any street or parts thereof as school zones, all drivers of motor vehicles and operators of other vehicles using said streets or parts thereof shall exercise the greatest care in driving upon said streets or parts thereof for the protection of children.

(2013 Code, § 17-9) Penalty, see § 70.99

#### § 71.10 PUSH CARTS, BICYCLES, OR ANIMALS.

Every person propelling a push cart or riding a bicycle or any animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions of this chapter which by their very nature can have no application.

(2013 Code, § 17-10) Penalty, see § 70.99

Statutory reference:

Application to persons riding animals or driving animal-drawn vehicles, see G. S. § 20-171

#### § 71.11 RIDING ON HANDLEBARS PROHIBITED.

The operator of a motorcycle or bicycle when upon a street shall not carry any person upon the handle bar, frame, or tank of any such vehicle, nor shall any person so ride upon any such vehicle.

(2013 Code, § 17-11) Penalty, see § 70.99

#### § 71.12 RIDING ON SIDEWALKS OR WITHOUT HANDS ON HANDLEBARS PROHIBITED.

(A) Riding on sidewalks or without hands on handlebars prohibited.

(B) It shall be unlawful to ride a bicycle or motorcycle on any street without having his or her hands upon the handlebars, or to ride a bicycle upon any sidewalk or walkway.

(2013 Code, § 17-12) Penalty, see § 70.99

#### § 71.13 CLINGING TO MOVING VEHICLES.

No person riding upon any bicycle, coaster, sled, rollerskates, skateboards, go-carts, or any toy vehicle shall attach himself or herself or his or her vehicle to any moving vehicle upon any roadway.

(2013 Code, § 17-13) Penalty, see § 70.99

#### § 71.14 UNLAWFUL RIDING.

It shall be unlawful for any person to ride on any public conveyance or vehicle or any portion thereof not designed or intended for the use of passengers. This provision shall not apply to employees engaged in the necessary discharge of a duty or to persons riding within truck bodies in spaces intended for merchandise.

(2013 Code, § 17-14) Penalty, see § 70.99

#### § 71.15 BOARDING OR ALIGHTING FROM VEHICLES IN MOTION.

It shall be unlawful for any person to board or alight from any public conveyance or other vehicle while such conveyance or vehicle is in motion.

(2013 Code, § 17-15) Penalty, see § 70.99

#### § 71.16 PERSONS RIDING MUST STAY INSIDE.

No person, when riding, shall allow any part of his or her body to protrude or extend beyond the limits of the vehicle in which he or she is riding, except to give such signals as by law are required, and it shall be unlawful for any person to hang onto any vehicle whatsoever.

(2013 Code, § 17-16) Penalty, see § 70.99

Cross-reference:

Clinging to motor vehicles, see § 71.13

#### § 71.17 ENTERING, JUMPING ON, OR RIDING VEHICLES WITHOUT PERMISSION.

It shall be unlawful for any person to jump on or ride any automobile or other vehicle without the consent of the owner or driver.

(2013 Code, § 17-17) Penalty, see § 70.99

#### § 71.18 LIMITATION OF NUMBER IN DRIVER'S SEAT.

It shall be unlawful for the driver or the person in charge of any motor vehicle to permit more than three persons, including the driver, to ride in the front or driver's seat of a motor vehicle.

(2013 Code, § 17-18) Penalty, see § 70.99

#### § 71.19 MOVING OF VEHICLES INTO RESTRICTED AREAS.

It shall be unlawful for any person to move a vehicle not owned by him or her into any prohibited area or away from a curb, such distance as is unlawful.

(2013 Code, § 17-19) Penalty, see § 70.99

#### § 71.20 BICYCLISTS TO RIDE IN SINGLE FILE.

(A) All persons operating a bicycle upon a road in the town shall ride in single file only, and as near to the cyclists right side of the road as is reasonably safe under the existing conditions, and exercising due care when passing a standing vehicle, or being passed by a moving vehicle, or one proceeding in the same direction.

(B) Every person operating a bicycle upon a highway or bikeway shall be subject to the provisions of G.S. Ch. 20, Art. 3, Motor Vehicle Act of 1937, except those provisions of such sections of the General Statutes which by their nature can have no application.

(C) All persons operating a bicycle upon a road in the town shall ride in single file only, and as near to the cyclists right side of the road as is reasonably safe under the existing conditions, and exercising due care when passing a standing vehicle, or being passed by a moving vehicle, or one proceeding in the same direction.

(2013 Code, § 17-20) Penalty, see § 70.99

### OPERATION OF VEHICLES

#### § 71.35 VEHICLES PROHIBITED ON SIDEWALKS.

It shall be unlawful for the driver of any vehicle to drive upon or within any sidewalk area, except as a permanent or temporary driveway.

(2013 Code § 17-30) Penalty, see § 70.99

#### § 71.36 EMERGING FROM PRIVATE DRIVES.

The driver of a vehicle emerging from a private driveway shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk areas extending across such drive, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(2013 Code § 17-31) Penalty, see § 70.99

#### § 71.37 LIMITATIONS ON TURNING AROUND.

No driver shall turn any vehicle so as to proceed in the opposite direction in any street or street intersection, unless the same is clearly marked for such U-turns.

(2013 Code § 17-32) Penalty, see § 70.99

Statutory reference:

Turning movements generally, see G.S. § 20-153

#### § 71.38 DRIVING THROUGH FUNERAL PROCESSIONS.

No vehicle shall be driven through a funeral procession, except Fire Department vehicles, police patrols, and ambulances, when the same are responding to calls.

(2013 Code § 17-33) Penalty, see § 70.99

Statutory reference:

Authority to regulate processions, see G.S. § 20-157.1

#### § 71.39 LIMITATIONS ON BACKING.

The driver of a vehicle shall not back the same into any intersection or over a crosswalk and shall not in any event or at any place back a vehicle unless such movement can be made in safety, and he or she shall have given ample warning to those who may be behind him or her by hand and horn or other signal.

(2013 Code § 17-34) Penalty, see § 70.99

#### § 71.40 SPEED REGULATIONS.

No person shall drive a vehicle on a street or highway in the town at a speed greater than is reasonable and prudent under the conditions then existing.

(2013 Code § 17-35) Penalty, see § 70.99

## § 71.41 LEFT TURNS.

In making left turns at street intersections, all traffic shall travel to the left of the center of said intersections as may be indicated by buttons, markers, or other directing signs.

(2013 Code § 17-36) Penalty, see § 70.99

## CHAPTER 72: PARKING REGULATIONS

### Section

72.01 Stopping, standing, or parking prohibited

72.02 Vehicles not to obstruct passage

72.03 Stop when traffic obstructed

72.04 Vehicles not to stop in streets; exceptions

72.05 Parking near fire hydrants or emergency apparatus

### Statutory reference:

Authority of town to designate stop intersections, see G.S. § 20-158

Authority to regulate and limit vehicular parking, see G.S. § 160A-301

## § 72.01 STOPPING, STANDING, OR PARKING PROHIBITED.

It shall be unlawful for any person to stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic, or in compliance with the directions of a police officer or traffic-control device in any of the following places:

- (A) On the sidewalk;
- (B) On a crosswalk;
- (C) Within an intersection;
- (D) Within 30 feet of any flashing beacon, stop sign, or traffic-control signal located at the side of a street or roadway;
- (E) No vehicle shall park on either side of any street approaching a railroad underpass;
- (F) No vehicle shall park on either side of any street approaching a grade crossing within 50 feet of the closest rail; provided, that where existing permanent structures are located along the street and closer than 50 feet, parking may be permitted in front of such structures, unless otherwise prohibited, if the said parking does not interfere with the view in either direction of an approaching locomotive or train;

(G) Alongside or opposite any street excavation or obstruction when such stopping or standing or parking would obstruct traffic;

(H) Upon any bridge or other elevated structure or within any underpass structure;

(I) Within 15 feet in either direction of the entrance to a hotel, theater, hospital, sanitarium, or any public building; or

(J) On the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street.

(2013 Code, § 17-47) Penalty, see § 70.99

#### § 72.02 VEHICLES NOT TO OBSTRUCT PASSAGE.

It shall be unlawful for any vehicle to stand on any street so as to interrupt or interfere with the passage of public conveyances or other vehicles.

(2013 Code, § 17-48) Penalty, see § 70.99

#### § 72.03 STOP WHEN TRAFFIC OBSTRUCTED.

No driver shall enter an intersection or a marked crosswalk unless there is a sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control sign to proceed.

(2013 Code, § 17-49) Penalty, see § 70.99

#### § 72.04 VEHICLES NOT TO STOP IN STREETS; EXCEPTIONS.

It shall be unlawful for any person to stop, a vehicle in any street, except for the purpose of parking as prescribed in this chapter in designated areas, unless such stop is made necessary by the approach of fire apparatus, by the approach of a funeral, or other procession which is given the right-of-way, by the giving of traffic signals, the passing of some other vehicle or a pedestrian, or by some emergency; and in any case covered by these exceptions, said vehicle shall not stop so as to obstruct any crossing or street intersection if the same can be avoided.

(2013 Code, § 17-50) Penalty, see § 70.99

Cross-reference:

Driving through funeral processions, see G.S. § 71-38

§ 72.05 PARKING NEAR FIRE HYDRANTS OR EMERGENCY APPARATUS.

It shall be unlawful for any person to stand, stop, or park a motor vehicle, vehicle, push cart, or other means of conveyance in any area where such stopping, or parking is prohibited, or within 15 feet of any fire hydrant or other emergency apparatus, or in any manner wherein such parking would cause a hazard to persons property. It shall be the duty of every police officer to take immediate steps by whatever means necessary and most expedient to remove any obstruction that might cause a hazard to persons or property within the corporate limits.

(2013 Code, § 17-51) Penalty, see § 70.99

CHAPTER 73: TRAFFIC SCHEDULES

Schedules

I. Speed limits

SCHEDULE I. SPEED LIMITS.

(A) No person shall operate a vehicle in excess of 35 mph on the following streets in the town: Vanderbilt Road, north from the Town Hall to the town limits with the City of Asheville.

(2013 Code, § 17-35.1)

(B) No person shall operate a vehicle in excess of 25 mph on the following streets in the town: Amherst Road; Arboretum Road; Brooklawn Chase; Brookside Road; Browntown Road; Buena Vista Road; Busbee Road; Cedar Chine Road; Cedarcliff Road; Cedar Hill Drive; Chauncey Circle; Deerfield Road; East Forest Road; Eastwood Road; Fairway Place; Fir Tree Lane; Forest Road; Frith Drive; Greenwood Place; Greenwood Road; Hemlock Road; Hilltop Road; Holly Hill Road; Lone Pine Road; Niagara Drive; Park Road; Parkway Road; Ridgefield Place; Southwood Road; Stuyvesant Crescent; Stuyvesant Road; Valley Springs Road; Vanderbilt Road South from the Town Hall; Westwood Road; and White Oak Road.

(2013 Code, § 17-35.2)

(C) No person shall operate a vehicle in excess of ten mph on Stuyvesant Road between Browntown and Southwood as posted.

Statutory reference:

Speed restrictions and authority of town relative thereto, see G.S. § 20-141

When speed limits not applicable, see G.S. § 20-145

## CHAPTER 90: ANIMALS

### Section

#### General Provisions

- 90.01 Cruelty to animals
- 90.02 Animals at large
- 90.03 Impoundment
- 90.04 Pens and enclosures
- 90.05 Limitation on household pets
- 90.06 Certain animals expressly
- 90.07 prohibited Killing dangerous
- 90.08 animals Dangerous animals
- 90.09 Effective date
- 90.10 Wild animals

#### Bird Sanctuary

- 90.20 Designated
- 90.21 Trapping, hunting, or shooting wild birds prohibited; exceptions
- 90.22 Erection of signs

#### Dogs

- 90.35 Identification of dogs and inoculation of dogs
- 90.36 Restraint of dogs
- 90.37 Impoundment of dogs
- 90.38 Reclaiming impounded dogs
- 90.39 Control of dangerous (very unruly) dogs

- 90.99 Penalty

#### Statutory reference:

Confinement or leashing of vicious dogs, see G.S. §§ 67-4.1 through 67-4.5

Dogs running at large, see G.S. § 67-12



License tax on privilege of keeping domestic animals, see G.S. § 160A-212

Regulation of domestic animals, see G.S. § 160A-186

## GENERAL PROVISIONS

### § 90.01 CRUELTY TO ANIMALS.

No person shall cruelly treat any animal in any way; any person who inhumanely beats, underfeeds, overloads, abandons, or mistreats any animal in any way shall be deemed guilty of a violation of this section punishable as provided ~~below. by § 10.99.~~

Pursuant to N.C.G.S 14-4, any person found guilty of violating § 90.01 shall be guilty of a Class 3 misdemeanor and fined \$500.00.

(2013 Code, § 4-1)

Statutory reference:

City may define and prohibit abuse of animals, see G.S. § 160A-182

Cruelty to animals, see G. S. § 14-360

### § 90.02 ANIMALS AT LARGE.

It shall be unlawful for any person to allow any cow, calf, horse, mule, sheep, or any other such animal to run at large in the town.

(2013 Code, § 4-2) Penalty, see § 90.99

### § 90.03 IMPOUNDMENT.

Any animal caught running at large may be picked up by the police, and, unless immediately claimed, such animals shall be disposed of as deemed best by the police or other designated official.

(2013 Code, § 4-3)

Statutory reference:

Impoundment of stock, see G.S. §§ 68-17 through 68-25

#### § 90.04 PENS AND ENCLOSURES.

(A) All pens where household pets of any kind are kept within the town limits shall be temporary, shall be kept in a clean and sanitary condition, and may only be located in the rear yard.

(B) If, in the opinion of the Chief of Police or Town Manager, or upon complaint of any person, any such pen is deemed to be unsanitary so as to create a health hazard or a nuisance from offensive odors, said official shall have the authority to close such pen and require removal of any animal kept therein.

(2013 Code, § 4-4) (Ord. passed 4-11-2017) Penalty, see § 90.99

Cross-reference:

Health and Safety, see §§ 92.01 through 92.05

#### § 90.05 LIMITATION ON HOUSEHOLD PETS.

(A) It shall be unlawful for any person to keep on any lot or premises more than six household pets, no more than three of which may be dogs. HOUSEHOLD PETS means dogs, cats and rabbits, but shall not include:

- (1) Small domesticated rodents such as gerbils, guinea pigs, hamsters, rats or mice;
- (2) Small birds such as canaries, parakeets, finches, parrots, or mynas; or
- (3) Any amphibian, fish or non-venomous reptiles. It shall be unlawful for any person to keep on any lot or premises any venomous reptile.

(B) Should a person have more than six household pets as a result of a litter or litters, the person shall notify the Town Manager within 30 days of the birth of the litter. The person shall have up to six months to reduce the number of household pets so that the number is in compliance with this section.

(C) Persons keeping household pets shall provide appropriate care and exercise appropriate control over the household pets and shall not allow or cause the condition or behavior of household pets to constitute a nuisance. Should the condition or behavior of household pets unreasonably interfere with the use and enjoyment of other residents of the town, the town may require the owner of the household pets to take action to abate the nuisance including the removal of some or all of the household pets.

(2013 Code, § 4-5) (Ord. passed 4-11-2017) Penalty, see § 90.99

#### § 90.06 CERTAIN ANIMALS EXPRESSLY PROHIBITED.

It shall be unlawful to keep within the corporate limits of the town any hog, pig, horse, pony, cattle, goat, sheep, chicken, duck, turkey, goose, swan or any other animals or fowl

commonly known as farm animals. Property owners keeping horses on their property, as of the effective date of this section, shall be allowed to continue keeping horses so long as they own the property. If the property is sold or transferred, this permission to keep horses shall terminate.

(2013 Code, § 4-6a) (Ord. passed 4-11-2017) Penalty, see § 90.99

#### § 90.07 KILLING DANGEROUS ANIMALS.

The members of the Police Department or any other designated persons are authorized to kill any dangerous animal of any kind when it may be necessary for the protection of any person or property in the town.

(2013 Code, § 4-7) Penalty, see § 90.99

#### § 90.08 DANGEROUS ANIMALS.

(A) An animal that:

- (1) Without provocation has killed or inflicted severe injury on a person;
- (2) Without provocation has killed or inflicted severe injury on another domestic animal;
- (3) Is determined by a police officer or an animal control officer to be a potentially dangerous animal; or
- (4) Is to be treated in accordance with § 90.39, “control of dangerous dogs”.

(B) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

(2013 Code, § 4-7)

#### § 90.09 EFFECTIVE DATE.

This chapter shall become effective November 15, 1982.

(2013 Code, § 4-40)

#### § 90.10 WILD ANIMALS.

(A) For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

WILD ANIMAL. Any animal normally found in wild state, particularly feral, dangerous, non-domesticated animals which generally do not live in or about human habitation. Wild animals include, but are not limited to: bears, non-human primates, all felines other than domesticated house cats, racoons, skunks, squirrels, venomous snakes, elephants, camels, coyotes, wolves and any hybrid or crossbreed of such animals having similar characteristics of the animals specified herein.

(B) No person shall keep a wild animal on any lot or premises within the town limits.

(Ord. passed 4-11-2017)

## BIRD SANCTUARY

### § 90.20 DESIGNATED.

The area within the corporate limits of the town and all lands owned or leased by the town outside the corporate limits is hereby designated as a bird sanctuary.

(2013 Code, § 4-19)

### § 90.21 TRAPPING, HUNTING, OR SHOOTING WILD BIRDS PROHIBITED; EXCEPTIONS.

It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established in § 90.20, any native wild bird; provided, however, that it shall be lawful to trap starlings or similar birds or fowl when such birds or fowl are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health and property.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 90.21 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

~~(2013 Code, § 4-20) Penalty, see § 90.99~~

### § 90.22 ERECTION OF SIGNS.

Artistic signs may be erected giving notice of the regulations herein provided. Such signs shall be of a design as may be approved by the Board and shall be erected at such places as may be designated by the Board.

(2013 Code, § 4-21)

## DOGS

§ 90.35 IDENTIFICATION OF DOGS AND INOCULATION OF DOGS.

(A) All persons owning, controlling, keeping, or maintaining any dog within the town shall provide and keep on such dog a collar or harness containing an identification tag on which is inscribed the owner's, keeper's, or controller's name, address, and telephone number.

(B) All persons owning, controlling, keeping, or maintaining any dog within said town shall also ensure that such dog has been currently inoculated against rabies and shall provide and keep on such dog's collar or harness a current rabies inoculation tag.

(2013 Code, § 4-32)

§ 90.36 RESTRAINT OF DOGS.

(A) Every person owning or having possession, charge, care, custody, or control of any dog shall keep such dog exclusively upon his or her premises; however, such dog may be off premises if it is under the physical control of a competent person and physically restrained by a chain, leash, or harness, not to exceed eight feet in length and held in the hand of said person.

(B) At all times dogs shall be under sufficient control so as not to disturb neighbors by barking excessively, and more particularly after dark.

(2013 Code, § 4-33) (Ord. passed 5-11-2005) Penalty, see § 90.99

§ 90.37 IMPOUNDMENT OF DOGS.

(A) Any dog seen violating or reported to have violated § 90.36 shall be picked up and impounded by the Police Department.

(B) The impounding officer shall make reasonable attempts to notify the owner or keeper of said dog of the dog's impoundment.

(C) As soon as possible after the expiration of 48 hours from the time the dog is impounded, such dog shall be turned over to the County Animal Shelter for disposition according to the rules regulations and policies of said County Animal shelter.

§ 90.38 RECLAIMING IMPOUNDED DOGS.

(A) The owner of any dog impounded pursuant to § 90.37 shall have the right to redeem said dog while said dog is in the custody of the Police Department by paying a fee to the town, in an amount as set by the Board of Commissioners from time to time.

(B) After any dog impounded pursuant to § 90.37 is turned over to the County Animal Shelter pursuant to § 90.37, the owner of such dog shall have only those rights to redeem said dog afforded such owner by the rules regulations and policies of the County Animal Shelter.

(2013 Code, § 4-35)

#### § 90.39 CONTROL OF DANGEROUS (VERY UNRULY) DOGS.

No person shall own control keep or maintain in the town a dangerous (very unruly) dog unless said dog is confined within a secure building or enclosure which building or enclosure shall be clearly marked with a warning sign.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 90.39 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

~~(2013 Code, § 4-36) Penalty, see § 90.99~~

#### § 90.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person violating the provisions of § 90.02 shall be subject to a penalty as provided in § 10.99.

(2013 Code, § 4-2)

(C) The violation of any portion of §§ 90.35, 90.36, or 90.39 by any of those persons described in said sections shall constitute a misdemeanor and the violator shall be punished accordingly.

(2013 Code, § 4-38)

### CHAPTER 91: STREETS AND SIDEWALKS

#### Section

91.01 Destruction of street signs

91.02 Construction of private drives; permit

91.03 Hauling building materials and construction debris

91.04 Permit required for cutting, excavating under, or boring within roadways of the town

91.99 Penalty

Cross-reference:

Authority to regulate travel on public streets during civil emergencies, see § 34.06(e)

General provisions of motor vehicles, see §§ 70.01 through 70.04

Littering, see § 51.02

Traffic, see Title VII

Statutory reference:

General authority relative to establishment and control of streets and sidewalks, see G.S. § 160A-296

#### § 91.01 DESTRUCTION OF STREET SIGNS.

It shall be unlawful for any person to remove or cause to be removed, or to mutilate, deface, destroy, or injure in any manner any road or street sign located in the town.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 91.01 shall be guilty of a Class 3 misdemeanor and fined \\$250.00.](#)

~~(2013 Code, § 15-3) Penalty, see § 91.99~~

#### § 91.02 CONSTRUCTION OF PRIVATE DRIVES; PERMIT.

(A) No private drive or entranceway shall be constructed upon any public street or road shoulder in the town without adequate provision through or under said way to preserve the pre-existing flow and drainage of surface water along the margin of the street or road affected.

(B) Before constructing or causing the construction of any drive or entranceway upon a public street or road shoulder, the owner of the lot or lots to be sewed thereby shall notify the Town Clerk in writing and the Clerk shall issue to the owner a permit for such construction when the same complies with the requirements of this section.

(C) (1) Private driveways and entranceways constructed within the town right-of-way shall be constructed of stone base or asphalt and any damages or disturbance of same resulting from maintenance or installation of underground facilities located in said right-of-way shall be repaired or replaced by the Town or other entity causing the damage.

(2) Such repair or replacement of existing driveways or entrances or curbing or obstructions constructed of concrete, brick pavers, or similar materials shall be the sole responsibility of the property owner. The construction of curbing or obstructions across the town right-of-way is prohibited.

(a) No person, firm, corporation, governmental body, or agency shall construct or cause to be constructed any drive or entranceway upon or connecting to any public street or road shoulder in the town which drive or entranceway shall serve or be designed to serve dwelling(s), residence(s), building(s), business(es) or separately platted lot(s), or any area, without first receiving written permission from the Town Board of Commissioners. This chapter shall not, however, apply to those applicants who receive driveway entrances by obtaining a certificate of zoning compliance for a new residence. The Board may grant or deny permission or may grant permission upon such terms as it, in its discretion, deems reasonably necessary to protect the best interest of the town.

(b) In determining whether or not to grant permission and if granted, under what conditions, the Board may consider and employ the provisions of G.S. §§ 160A-11, 160A-174, 160A-296, 160A-300, and 160A-307, and all other applicable statutes now or hereafter enacted by the State General Assembly.

(2013 Code, § 15-4) Penalty, see § 91.99

#### § 91.03 HAULING BUILDING MATERIALS AND CONSTRUCTION DEBRIS.

(A) It shall be the responsibility of the owner of any lot or lots where construction is taking place to have all construction debris removed from the site and to ensure that any building materials and construction debris which may be dropped on the streets or other public ways is cleaned up and taken away.

(B) In the event it becomes necessary for the town to remove such building materials or debris, the costs incident to such removal shall be assessed against the owner of the property where such construction is taking place.

(2013 Code, § 15-5) Penalty, see § 91.99

#### § 91.04 PERMIT REQUIRED FOR CUTTING, EXCAVATING UNDER, OR BORING WITHIN ROADWAYS OF THE TOWN.

(A) No person, firm, corporation, governmental unit, water or sewer authority, or public or private utility shall cut or excavate under, bore under, or in any way damage, any roadway owned or maintained by the town without first obtaining the written permission from the Town Chief Administrative Officer. Any applicant for such permission shall file a written application, stating the reason for the cut or excavation, and the proposed location of same, the length of time required to complete the project, and shall restore the roadway to its original condition. Wherever boring under the roadway surface can be done without



unreasonable expenses as determined by the town's Chief Administrative Officer, such boring, rather than roadway cut, shall be used.

(B) On receipt of an application, the town's Chief Administrative Officer shall consult with and obtain the advice of The Director of Public Works before granting written permission or imposition of any conditions or limitations on such permission. This chapter shall not apply to any act or project under the direction of the Director of Public works of the town. The violation of this chapter shall constitute a misdemeanor.

(2013 Code, § 15-6) Penalty, see § 91.99

#### § 91.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Violation of § 91.02 shall constitute a misdemeanor, for each day such violation occurs and subject the violator of § 91.02 to a fine of \$50 or 30 days imprisonment or both for each violation of § 91.02.

(2013 Code, § 15-4)

### CHAPTER 92: HEALTH AND SAFETY

#### Section

##### General Provisions

- 92.01 Abatement of nuisances
- 92.02 Stagnant water
- 92.03 Obstruction of natural drainage
- 92.04 Cleanliness of premises
- 92.05 Removal of dead animals

##### Fire and Fire Protection

- 92.20 Burning trash within the town prohibited
- 92.21 Lots to be kept free from fire hazards
- 92.22 False fire alarms

#### Statutory reference:

Fire protection generally, see G.S. § 58-82-1

## GENERAL PROVISIONS

### § 92.01 ABATEMENT OF NUISANCES.

(A) (1) Whenever a nuisance shall exist on any premises in the town, the Chief of Police or the County Health Officer shall give notice to the owner or occupant of the premises of the existence of the nuisance and shall direct that the nuisance be abated.

(2) It shall be unlawful for any person receiving a notice to abate a nuisance, given pursuant to this section, to fail to start abatement of the nuisance within 24 hours after such notice.

(B) In the event the owner or occupant of the premises shall fail to abate a nuisance on his or her premises after having been given notice pursuant to division (A) above, the town may abate the nuisance and the costs of abatement shall be certified to the tax collector and collected as taxes.

(2013 Code, § 10-1) Penalty, see § 10.99

Statutory reference:

Abatement of public health nuisances, see G.S. § 160A-193

### § 92.02 STAGNANT WATER.

It shall be unlawful for any person to allow stagnant water to accumulate or stand in ponds, holes, ditches, vats, or otherwise upon any lot or premises so as to be detrimental to health. Such stagnant water shall be subject to abatement as a nuisance as provided in § 92.01.

(2013 Code, § 10-2) Penalty, see § 10.99

### § 92.03 OBSTRUCTION OF NATURAL DRAINAGE.

No person shall erect any dam or obstruction of any kind which shall prevent the natural flow of water or which shall cause the same to be collected or dammed in a pool or pools upon any lot in the town, or upon any street, road, or alley; nor shall they do or cause to be done any work, the effect of which will cause the formation of such pool or pools; provided, however, that nothing in this section shall prevent the owner or owners of any lot or lots from filling up the same as may be found desirable if adequate drainage is provided through or across the same to care for the surface water that may be collected or diverted from its natural flow.

(2013 Code, § 10-3) Penalty, see § 10.99

#### § 92.04 CLEANLINESS OF PREMISES.

(A) Owners or occupants of premises shall be required to keep such premises free from noxious weeds, trash or any other form of refuse which may be dangerous or detrimental to the public health or which may be unsightly.

(B) Proper maintenance requires that grass and weeds are to be cut neatly as reasonably required.

(C) Areas, such as decks, porches, yards and play areas, and the like, that are in view of neighboring property or in view from the streets, shall be maintained and arranged in an orderly open, uncluttered manner, utilizing furniture and appointments appropriate to the area.

(D) Failure to comply with this provision shall constitute a misdemeanor and shall also be subject to abatement as a nuisance as provided in § 92.01.

(2013 Code, § 10-4) Penalty, see § 10.99

#### § 92.05 REMOVAL OF DEAD ANIMALS.

It shall be the duty of the owner to remove any dead animal from the town within eight hours.

(2013 Code, § 10-5)

Cross-reference:

Animals, see Ch. 90

Statutory reference:

Removal of dead animals and fowl, see G.S. § 106-403

#### FIRE AND FIRE PROTECTION

#### § 92.20 BURNING TRASH WITHIN THE TOWN PROHIBITED.

It shall be unlawful for any person to burn or cause to be burned any trash, refuse, shavings, paper, leaves, litter, or other material of any kind outside any house, or on any street, sidewalk, alley, lot, or yard, within the corporate limits.

(2013 Code, § 8-1) Penalty, see § 10.99

#### § 92.21 LOTS TO BE KEPT FREE FROM FIRE HAZARDS.

It shall be unlawful for any person to permit to remain or accumulate on any lot or premises any rubbish, refuse, or articles of combustible or inflammable nature.

(2013 Code, § 8-2) Penalty, see § 10.99

#### § 92.22 FALSE FIRE ALARMS.

It shall be unlawful for any person to give any false alarm of fire, by means of the fire alarms system or otherwise.

(2013 Code, § 8-3) Penalty, see § 10.99

Statutory reference:

Giving false fire alarms, see G.S. § 14-286

### CHAPTER 93: TOWN BEAUTIFICATION

#### Section

##### General Provisions

93.01 Protection of parkways

93.02 Policy regarding signs

93.03 Signs and posters

93.04 generally Definitions

93.05 Signs and posters; requirements

##### Parks and Recreation

93.15 Destruction, injury to park property

93.16 Riding motorized vehicles in park

##### areas Tree Protection

93.30 Purpose

93.31 Identification

93.32 Removal of protected trees

93.33 Applications for removal of protected trees in excess of ten

93.34 Removal of unprotected trees

93.35 Pre-construction conference and supervision

93.36 Enforcement

- 93.37 Drip line protection
- 93.38 Replacement of trees
- 93.39 Inspections
- 93.40 Appeals
- 93.41 Bond

93.99 Penalty

## GENERAL PROVISIONS

### § 93.01 PROTECTION OF PARKWAYS.

(A) It shall be unlawful for any person to willfully destroy, injure, mutilate, carry away, break, or in any manner deface any tree, shrub, plant, grass, or other property of any kind within or upon any of the roads, streets, public grounds, or parkways of the town, nor shall any person allow any animal or pet belonging to him or her or in his or her charge to injure any such property.

(B) It shall further be unlawful for any person to allow any animal or to drive any vehicle upon any of the grass or grass-plots along the roadways and streets.

(2013 Code, § 15-1) Penalty, see § 93.99

### § 93.02 POLICY REGARDING SIGNS.

This subchapter sets forth the Town of Biltmore Forest policies and regulations regarding the size, type and location of signs. The subchapter is intended to regulate size, type and location of signs to ensure that signs are not located in the public right of way, do not pose a threat to public safety, do not unreasonably interfere with aesthetic quality and are consistent with the nature of a primarily residential community. It is not the intent of this subchapter to regulate the content of signs or to limit the right of free speech.

(Ord. 2021-02, passed 2-9-2021)

### § 93.03 SIGNS AND POSTERS GENERALLY.

Except as set forth herein, no sign of any kind, including posters, advertisements, billboards, announcements and like, shall be erected by any person in any district zoned R-1, R-2, R-3, R-4 or R-5 unless the sign, type, size and intended location comply with this

subchapter or unless prior approval of the sign type, size, and intended location are first obtained from the Town Manager or Board of Commissioners. Any sign erected in violation of this subchapter shall be promptly removed.

(2013 Code, § 15-2) (Ord. 2021-02, passed 2-9-2021)

#### § 93.04 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CONSTRUCTION SIGNS.** Signs identifying a company or individual constructing or renovating a house or building on property in the town.

**IDEOLOGICAL SIGNS.** Signs advocating support for a particular system of ideas and ideals which may form the basis of an economic or political theory and policy.

**INVISIBLE FENCING SIGNS.** Signs advertising the location of underground (invisible) fencing on a property or the location of installed underground utilities.

**ON-PREMISES COMMERCIAL SIGNS.** Signs located on or attached to buildings in the zoning districts in the town where commercial businesses are allowed.

**POLITICAL SIGNS.** Signs advocating support for a particular candidate for political office or political party.

**REAL ESTATE SIGNS.** Signs advertising the sale or lease of residential or commercial real property.

**SECURITY COMPANY SIGNS.** Signs indicating that a security system has been installed on a property.

(Ord. 2021-02, passed 2-9-2021)

#### § 93.05 SIGNS AND POSTERS; REQUIREMENTS.

(A) Real estate signs. No person, either as owner or real estate agent, shall post any sign except as follows:

(1) One sign per lot, not to exceed six square feet in size, not to contain any electrical component and not to be lighted in any way;

(2) If the sign is posted by a real estate agency, the wording shall be limited appropriately to indicate that the property is for sale or rent, the name and telephone number of the agency, the listing firm website, and the multiple listing service number, texting code, or individual website assigned to the home for sale;

(3) If the sign is posted by an owner, the wording shall be limited to appropriately indicate that the property is for sale or rent, the name of seller, if so desired, a telephone number, and individual website assigned to the home for sale;

(4) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway;

(5) The sign shall be set back at least 20 feet from the nearest edge of the pavement of the public road on which the house fronts or faces and in no event shall the sign be located within any public road right-of-way;

(6) No portion of the sign shall extend more than four feet above the ground;

(7) The sign shall be removed no later than three days after the closing of the sale of the property;

(8) If a sign is for commercial use in the R-4 or R-5 Residential Zoning District and does not comply with the limitations herein, application must be made to the Board of Commissioners for approval; and

(9) The owner of a residential lot and the real estate agent placing a real estate sign on the residential lot shall each be responsible for any violation of this section.

(B) Construction signs. Signs advertising the name of an individual or company constructing or renovating a house or other building on a property are allowed as follows:

(1) On any residential lot on which construction or renovation has begun, neither the general contractor nor the owner of the residential lot shall post or permit to be posted more than one sign in addition to any sign required by law to be posted (e.g. building permits and the like);

(2) The general contractor may place one sign on the residential lot on which construction or renovation has begun, which sign shall not exceed six square feet in size and shall be limited in wording to the street number or address of the property and the name, address, and telephone number of the general contractor. The general contractor's sign shall also be subject to divisions (A)(1), (A)(4), (A)(5), and (A)(6) above. The general contractor's sign shall be removed from the property not later than three days from the completion of construction by the general contractor or occupancy by the owner of the property being constructed, whichever comes first; and

(3) The sign shall be set back at least 20 feet from the nearest edge of pavement of the public road on which the house fronts or faces. The sign shall not be posted in the public right-of-way.

(4) The owner of the residential lot and the general contractor shall be responsible for any violation of this section.

(C) Political and ideological signs. Political and ideological signs are allowed on private property provided the signs are erected as follows:

(1) Each sign shall not exceed four square feet in size and not contain any electrical component or lighted in any way;

(2) The sign shall not be located within the town owned public right-of-way or on town property and must be set back at least 20 feet from the nearest edge of the paved road on which the house fronts or faces and shall not encroach on the public right-of-way;

(3) No portion of the sign is to extend more than four feet above the ground;

(4) A sign located on private property requires the owner's approval;

(5) Up to four political signs may be placed on private property beginning 30 days before the beginning of early voting for a primary or general election. Political signs should be removed within five days after the primary, general or special election; and

(6) Political and ideological signs are not allowed on town property.

(D) Security company signs. Security company signs are allowed on private property as follows:

(1) On any residential or business property with a commercial security system, up to two signs bearing the name of the security company and appropriate contact information, may be posted;

(2) The signs shall not exceed one square foot in size, not contain electrical components and not be lighted in any way;

(3) The signs shall be set back at least ten feet from the nearest edge of the pavement on the public road or street.

(E) Invisible fencing signs. Signs indicating the presence and location of underground fencing are allowed as follows:

(1) On any property with an underground "invisible fence," up to two signs noting the presence of the invisible fence and the name of the company providing the fence may be posted on the property;

(2) The signs shall not exceed one square foot in size, not contain electrical components and not be lighted in any way;

(3) The signs shall be set back at least ten feet from the nearest edge of the pavement on the public road or street.

(4) For the purpose of this subchapter, temporary flags indicating the installation of underground (invisible) fencing shall be removed no later than 45 days after installation.

(F) Flags for underground utilities. Flags for underground utilities are allowed on a temporary basis to indicate the presence and location of underground utilities.

(G) Signs located in the R-4 and R-5 Zoning Districts.



(1) On any lot occupied by a business in the R-4 and R-5 Districts, on-premises signs are allowed provided the following definitions and permit requirements are met.

(2) For the purpose of this division (G), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ATTACHED SIGN.** Any sign attached to, applied on, or supported by the front wall or wall facing street of a building.

**CLEARANCE.** The vertical distance from the established finished grade to the lowest edge of the sign.

**DEVELOPMENT IDENTIFICATION SIGN.** A sign bearing only the name of the multiple tenant development.

**ERECT.** To construct, build, raise, assemble, install, place, replace, locate, affix, attach, display, alter, use, create, paint, draw, illuminate, or in any other way bring into being or establish.

**FREESTANDING POLE SIGN.** A sign which is permanently affixed to the ground by a pole or other structure and which is not part of the building.

**GRADE.** The lowest point at which a sign is attached to the ground.

**GROUND SIGN.** A freestanding sign flush to the ground and not elevated upon poles or stanchions and not attached to the building.

**HEIGHT.** The vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.

**INTERNALLY ILLUMINATED.** Any sign designed to provide artificial light either through exposed lighting on the sign face or through transparent or translucent material, from a light source within the sign.

**LOT.** A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use.

**MULTIPLE TENANT DEVELOPMENT.** A development in which there exists a number of individual or separate activities and in which there are appurtenant-shared facilities (such as parking areas).

**NONCONFORMING SIGN.** Any sign which was allowed when erected or displayed but which does not conform with the standards of this subchapter, and any sign which was not allowed but was nonetheless impermissibly created or displayed before the effective date of this subchapter and any amendments thereto.

**ON-PREMISES SIGN.** Any sign used for the purpose of displaying, advertising, identifying, or directing attention to a business, products, operations, or services sold or offered on the lots where the sign is located.

**SETBACK.** The horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is not a curb, the measurement shall be made from the edge of the pavement.

**SIGN.** Any words, lettering, numerals, parts of letters or numerals, figure, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric, or other material background structure designed to carry such devices, as are used to designate or attract attention.

**SIGN STRUCTURE.** Any structure which supports, has supported or is capable of supporting a sign.

**SINGLE TENANT.** A single business establishment, activity or use.

**WALL SIGN.** Any sign painted or attached flat against and parceled to the exterior wall or surface of a building or other structure and/or which projects from the wall or surface.

(3) On-premises single-tenant signs.

(a) Allowed within the R-4 and R-5 Zoning District may be either:

1. Freestanding. Pole or ground; or
2. Attached. Wall.

(b) Two business identification signs are allowed per lot, only one of which shall be a freestanding or ground sign. For freestanding or attached signs, the total allowable area per face of selected sign(s) shall not exceed 40 square feet per face, with two faces per freestanding or ground sign allowed. In the event the freestanding sign is less than the 40 square feet per face allowed, the size of the attached sign erected may be increased by that difference. Signs may be internally or externally illuminated.

(c) Additionally, the following requirements must be met based on the type of sign selected:

1. If freestanding pole or ground, then the sign shall be a maximum of eight feet in height with a minimum setback of ten feet; and
2. If wall, then the maximum projection from a wall shall be six inches.

(4) On-premises multiple-tenant development signs.

(a) On-premises multiple-tenant development signs allowed within the R-4 and R-5 Zoning District may be either:

1. Freestanding; pole or ground attached; or
2. Wall.

(b) For a multiple-tenant development, the development itself is allowed one identification sign. For a freestanding sign, the total allowable area per face of selected sign

shall not exceed 60 square feet with two faces per freestanding or ground sign allowed. If freestanding pole or ground, the sign shall be a maximum of 20 feet in height and minimum setback of 15 feet. Individual tenants within the development shall be allowed one attached wall sign not to exceed ten square feet, and at the due discretion of the Board of Commissioners, not more than two, not to exceed ten square feet. The maximum projection from a wall shall be six inches.

(H) The owner of the business establishment erecting a sign shall be responsible for any violation of this subchapter.

(I) Any sign removed by the town for violation of division (A) or (B) of this section shall be disposed of by the town within five days from the date the sign is removed from the residential lot unless the residential lot owner, real estate agent or general contractor, as the case may be, claims said sign within the five-day period.

(2013 Code, § 15-2) (Ord. passed 9-15-1987; Ord. passed 12-8-1990; Ord. passed 9- - 2002; Ord. 2021-02, passed 2-9-2021)

## PARKS AND RECREATION

### § 93.15 DESTRUCTION, INJURY TO PARK PROPERTY.

It shall be unlawful for any person to cut, break, trample, injure, or take any plants, flowers, shrubbery, trees, or vegetation within any municipal park or playground area, or to deface, injure, or remove any benches, seats, playground equipment, or any other appurtenances of such parks or playground areas.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating § 93.15 shall be guilty of a Class 3 misdemeanor and fined \\$250.00.](#)

~~(2013 Code, § 13-1) Penalty, see § 10.99~~

### § 93.16 RIDING MOTORIZED VEHICLES IN PARK AREAS.

It shall be unlawful for any person to ride any motorcycle, go cart or other type of motorized vehicle in any park or playground area, except on trails or in areas specifically designated therefor.

(2013 Code, § 13-2)

Cross-reference:

General provisions of motor vehicles, see §§ 70.01 through 70.04

## TREE PROTECTION

### § 93.30 PURPOSE.

(A) In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve the quality and flavor that form so much of the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Reference is hereby made to § 153.034 of the Town Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot.

(B) Preservation of trees is the intent of this subchapter. This subchapter shall apply to all properties within the Town of Biltmore Forest except properties owned, leased or controlled by the town. Trees provide shade, cooling, noise and wind reduction, prevent soil erosion, produce oxygen, filter dust and absorb carbon dioxide. Trees also provide natural habitat and aesthetic enhancement in the town. Trees provide buffer and a natural canopy, and are a hallmark of the town requiring protection. Damage to and removal of trees requires regulation and control.

(2013 Code, § 19-1) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

### § 93.31 IDENTIFICATION.

(A) For the purpose of this subchapter, a protected tree (“protected tree”) is any tree six inches or more in diameter at a height of four and a half feet from the ground (DBH-diameter at breast height), that is in sound, healthy condition. A tree that is dead, produces no foliage during normal growing season, or a tree that is diseased or storm damaged to the extent that it is structurally compromised and, thus, poses a safety hazard, or a tree that, for any other reason, poses a safety hazard, is an “unprotected tree.” This subchapter does not apply to trees that are less than six inches in diameter, regardless of the height of the tree.

(2013 Code, § 19-2) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

### § 93.32 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without first filing an application for removal, receiving approval from the Town Manager or Town Arborist for the removal, and paying any applicable fee. The Town Manager, in his or her discretion, may allow the removal of up to three protected trees on the perimeter of a property or lot within the front, side or rear yard setbacks, as such setbacks are defined in

the town's Zoning Ordinance. Within the remaining central portion of a property or lot, and the portion on which structures or improvements may be located, the Town Manager, in his or her discretion, may allow up to ten protected trees to be removed. Any protected trees removed shall be replaced as outlined in § 93.38 below.

(B) If the Town Manager concludes that the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this subchapter, he or she may refuse to approve such removal, or permit the removal of a lesser number of protected trees. Further, in his or her discretion, the Town Manager may require that the applicant provide a survey showing the location, size and type of protected trees on a property, including common scientific names. The survey shall clearly indicate which protected trees are indicated for removal and which will be left undisturbed. In the case of new construction, the site plan must show the location of building, driveways, terraces and other structures on the property. All protected trees must be clearly tagged as to retention or removal. The Town Manager may also require an applicant to provide documentary evidence, in the form of a survey or other documentation sufficient, in the opinion of the Town Manager, to confirm that the protected tree(s) are on the applicant's property. An applicant has the right to appeal a decision of the Town Manager to the Board of Adjustment within five days of the Town Manager's decision.

(2013 Code, § 19-3) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

#### § 93.33 APPLICATIONS FOR REMOVAL OF PROTECTED TREES IN EXCESS OF TEN.

(A) An application for a permit to remove more than ten protected trees on a property must be presented directly to the Board of Adjustment. A fee of \$50.00 shall accompany the application.

(B) An application for the removal of 30 or more protected trees on a property must be submitted to the Board of Commissioners for review and approval. A non-refundable fee of \$100.00 plus \$5.00 for each protected tree requested for removal shall accompany the application. Such applications will be considered on case-by-case basis. The cumulative removal of 30 or more protected trees from a single property in one year will result in a formal review and must be approved by the Board of Commissioners. As a part of its review, the Board of Commissioners shall have the authority to require replacement and replanting of trees as the Board determines is necessary, including the specific location of replacement trees. The decision of the Board of Commissioners shall be final.

(Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

#### § 93.34 REMOVAL OF UNPROTECTED TREES.

(A) An unprotected tree may be removed by the property owner after notifying the Town Manager of the plans to remove the tree(s) and receiving approval to do so from the Town Manager or Town Arborist.

(B) The Town Manager may require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report the findings, in writing, to the town before final approval is given. The town reserves the right to consult with its own tree specialist to confirm the health and condition of any tree(s) prior to removal.

(C) Any unprotected trees removed shall be replaced as defined in § 93.38 below. (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-

#### § 93.35 PRE-CONSTRUCTION CONFERENCE AND SUPERVISION.

(A) Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between a responsible representative of the town and the applicant to review procedures for protection and management of all protected trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the Town Manager that such activity is taking place.

(B) The Town Manager shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter.

(C) Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer/contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this subchapter. At the option of the town, a compliance bond may be required.

(2013 Code, § 19-4) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01,

#### § 93.36 ENFORCEMENT.

If any unauthorized removal, cutting or damage to trees takes place, the Town Manager may issue a stop-work order which shall remain in effect until all corrections are made to bring the property in compliance with this chapter.

(2013 Code, § 19-5) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.37 DRIP LINE PROTECTION.

The health of protected trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Landscape plans, to the extent feasible, shall protect this area around the tree.

(2013 Code, § 19-6) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.38 REPLACEMENT OF TREES.

(A) Any protected or unprotected tree removed shall be replaced in that general area of the property within 50 feet of the trunk of the former tree as follows:

Minimum size of existing tree	Replacement of protected tree	Replacement of unprotected tree
6-12" DBH	2 trees	1 tree
13-18" DBH	3 trees	1 tree
19-30" DBH	4 trees	2 trees
30" DBH or greater	5 trees	3 trees

(B) Any replacement tree shall be in the ground within six months of removal of the original tree. The Town Manager or Board of Adjustment may, for good cause shown, and in their sole discretion, extend this period for up to six months.

(C) Subject to the approval of the Town Manager or the Board of Adjustment, replacement tree(s) may be planted in advance of any tree removal.

(D) The minimum size for replacement is two inches diameter (measured from one foot above ground level) for a large-maturing deciduous tree, and one and one-half inch diameter for a small- maturing deciduous tree, or eight feet in height for evergreens. Additionally, the replanted trees shall meet the plant specifications of the Town Zoning Ordinance in § 153.070.

(E) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Manager or by the Board of Adjustment (in the case of an appeal from the town) or the Town Manager may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive.

(F) In the event any tree dies or falls due to any condition whatsoever, including acts

illustration and not limitation, this replacement is required as to each dead or fallen tree caused by one or more of the following conditions: disease, fire, drought, water, ice, sleet, snow, flood, hurricane, tornado, wind, storm of any type, lightning, earthquake or other earth movement. This division (F) shall apply only to properties within the town in excess of five acres.

(2013 Code, § 19-7) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

#### § 93.39 INSPECTIONS.

All protected trees designated to remain, pursuant to a tree survey, plus any replacement trees shall be inspected by the Town Manager or his or her designee six months following any construction and/or replacement trees, to ensure the trees are in a healthy condition. The Town Manager can require replacement or replanting of replacement trees.

(2013 Code, § 19-8) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

#### § 93.40 APPEALS.

Any person aggrieved by a decision made under this subchapter by the Town Manager or his or her designee may file, within five days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the Board of Adjustment shall be subject to review by the Board of Commissioners.

(2013 Code, § 19-9) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

#### § 93.41 BOND.

At the option of the town, a bond or other type of guarantee can be required of the property owner when initiating new construction, to ensure that all permits and agreements are met, to the satisfaction of the town.

(2013 Code, § 19-11) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

#### § 93.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.



(B) (1) A violation of §§ 93.30 through 93.41 is a Class 3 misdemeanor under North Carolina law. The penalty for violating §§ 93.30 through 93.41 shall be \$250 per day. Each day of continued violation shall be a separate offense. The town shall also have the right to pursue civil remedies for a violation of §§ 93.30 through 93.41 including injunctive relief, and a civil penalty of \$250 for each day's violation of the subchapter pursuant to G.S. 160A-175.

(2) Upon determining that a violation of §§ 93.30 through 93.41 has occurred, the Town Manager shall record the nature of the violation and send a notice of violation to the responsible person or entity by regular and certified mail or by hand delivery. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30 days, the Town Manager may proceed with criminal charges pursuant to G.S. 14-4, or may take such other enforcement action as may be necessary to carry out the purpose of §§ 93.30 through 93.41.

(2013 Code, § 19-10) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

## TITLE XIII: GENERAL OFFENSES

### Chapter

#### 130. TOWN OFFENSES

### CHAPTER 130: TOWN OFFENSES

#### Section

130.01 Firearms and other weapons

130.02 Sounds impacting residential life

130.03 Offenses against the public peace

130.04 Regulating solicitors, peddlers, hawkers, itinerant merchants, or transient vendors

130.0 No human burials permitted

5 Removal of fallen tree limbs

130.06 Permitting the posting of signs prohibiting the carrying of concealed weapons on certain municipal property

130.08 Regulating loitering and temporary structures

130.09 Prohibiting public urination and defecation

130.99 Penalty

#### § 130.01 FIREARMS AND OTHER WEAPONS.

(A) No person shall shoot, discharge or release within the corporate limits any firearms, spring-propelled devices, or guns, including a bow, which discharges sharp pointed arrows designed to penetrate. This section shall not apply to any law enforcement officer or representative of any governmental unit charged with the duties of protecting life or property or enforcing laws and regulations while engaged in the performance of official duties.

(B) It is further provided that this section shall not apply in defense of life; however, for promoting public health, safety, and welfare of the town, this section shall not preclude the officers or persons designated by the town for this purpose pursuant to any depredation permit issued by the State Wildlife Resources Commission or pursuant to the town's participation in the North Carolina Wildlife Resources Commission's Community Deer Management Assistance Program.

Pursuant to N.C.G.S 14-4, any person found guilty of violating § 130.01 shall be guilty of a Class 3 misdemeanor and fined \$500.00.

(2013 Code, § 12-1) (Ord. 2019-01, passed 8-13-2019) ~~Penalty, see § 130.99~~

#### § 130.02 SOUNDS IMPACTING RESIDENTIAL LIFE.

(A) (1) As a means of controlling and reducing noise levels in the town, all construction activities and property maintenance, including delivery of worker's material, machinery, or equipment to or from a work site, must be conducted from 7:30 a.m. until 6:00 p.m., on Monday thru Saturday.

(2) Such activities are prohibited on Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. These restrictions apply on all properties within the town, except for clubs.

(B) Should conditions on any property within the town occur that have the potential of injury or damage to persons or property during prohibited hours, persons in charge or involved in such matters shall contact the town's police officer in charge, present the problem, and seek permission to take appropriate action.

(C) Any sound from radio, music, or other noises are not permitted to the extent that they disrupt the quiet enjoyment of property.

(2013 Code, § 12-2) (Ord. passed 11-12-2006) Penalty, see § 130.99

#### § 130.03 OFFENSES AGAINST THE PUBLIC PEACE.

It is intended by this section to prohibit the commission of and to provide punishment pursuant to ~~§ 10.99 for the following acts:~~ N.C.G.S. 14-4 for the following acts:

- (A) Disturbing the peace;
- (B) Resisting arrest and resisting any officer of the town in the lawful performance of his or her duties;
- (C) Impersonating any officer of the town;
- (D) Assembling for the purposes of gambling;
- (E) Committing a breach of the peace;
- (F) Appearing in an intoxicated condition outside the offender's own home;
- (G) Making unusual or unnecessary noises calculated to disturb the peace and good order;

(H) Violent or boisterous conduct calculated to disturb the peace and quiet of other persons;

(I) Using profane or obscene language towards others in such manner as to be offensive;

(J) Committing riotous acts;

(K) Maliciously interfering with pedestrians or with traffic; or

(L) Indecent acts in the presence of others.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating §130.03 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

(2013 Code, § 12-3) ~~Penalty, see § 130.99~~

Statutory reference:

Authority to regulate loud noises, see G.S. § 160A-184

Disorderly conduct in public places, see G.S. § 14-132

§ 130.04 REGULATING SOLICITORS, PEDDLERS, HAWKERS, ITINERANT MERCHANTS, OR TRANSIENT VENDORS.

No uninvited door-to-door solicitations are allowed in the town.

(2013 Code, § 12-4) ~~Penalty, see § 130.99~~

Statutory reference:

Regulation of solicitation, see G.S. § 160A-178

§ 130.05 NO HUMAN BURIALS PERMITTED.

There being no existing church cemeteries or duly licensed cemeteries by the State Cemetery Commission, no human body shall be buried inside the corporate limits of the town.

[Pursuant to N.C.G.S 14-4, any person found guilty of violating §130.05 shall be guilty of a Class 3 misdemeanor and fined \\$500.00.](#)

(2013 Code, § 12-5) ~~Penalty, see § 130.99~~

#### § 130.06 REMOVAL OF FALLEN TREE LIMBS.

In the event a tree or limb located on private property falls out onto town property such as a road, road right-of-way, or public park, the town shall remove the same, haul it away, and dispose of the same. The property owner shall pay the disposal fee incurred by the town, but the town shall bear the costs of clean up and hauling to the disposal site. The property owner shall be solely responsible for cleaning up and disposing of all portions of fallen tree or limb not located on town property.

(2013 Code, § 12-6) Penalty, see § 130.99

#### § 130.07 PERMITTING THE POSTING OF SIGNS PROHIBITING THE CARRYING OF CONCEALED WEAPONS ON CERTAIN MUNICIPAL PROPERTY.

(A) Posting of signs required. The Board of Commissioners is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each park and each building or portion of a building owned, leased as lessee, operated, occupied, managed, or controlled by the town as well as the appurtenant premises to such the building, indicating that carrying a concealed handgun is prohibited therein.

(B) Location of signs. Signs on buildings shall be visibly posted on the exterior of each entrance by which the general public can access the building. The Board of Commissioners shall exercise discretion in determining the number and appropriate sign location of signs to be placed on or within appurtenant premises and parks.

(2013 Code, § 12-7)

#### § 130.08 REGULATING LOITERING AND TEMPORARY STRUCTURES.

(A) Definition. For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**PUBLIC PLACE.** Any place to which the general public has access and a right of resort for business, entertainment, or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, or other place of business and also public grounds, areas or parks.

(B) General provisions.

(1) It shall be unlawful for any person to stand alone or congregate with other persons on any street or sidewalk or public place within the town limits with the intent to, or who shall in fact:

(a) Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic, or pedestrians; or

(b) Obstruct the entrance to any business establishment without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.

(2) It shall be unlawful for any person, singly or in groups, to erect on any property, public or private, any temporary shack, shanty, tent or structure for place of temporary habitation or abode, for the purpose of living thereon and in such a manner as to create a place of camping, or temporary abode; provided, however, that this section shall have no application to any individuals or group of individuals who are living in temporary quarters on the premises of another with that landowner's permission or consent, or who is engaged in the lawful and proper activities of any Boy Scout or Girl Scout organization, or auxiliary, or any other civic enterprise or project.

(3) When any person causes or commits any of the conditions in this section, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

(C) Penalty. In accordance with G.S. § 14-4, any person who violates this section shall be guilty of a Class 3 misdemeanor and shall be fined more than \$50 but not more than \$500.

(Ord. 2022-01, passed 1-11-2022)

#### § 130.09 PROHIBITING PUBLIC URINATION AND DEFECATION.

(A) General provisions. Except in designated water closets or toilet facilities, it shall be unlawful for any person to urinate or defecate on any public place, sidewalk, street, alleyway or right-of-way, or in any public building, or on private property. Having the permission of the owner or person in lawful possession of the real property shall constitute an affirmative defense to the charge of urinating or defecating on private property.

(B) Penalty. In accordance with G.S. § 14-4, any person who violates this section shall be guilty of a Class 3 misdemeanor and shall be fined more than \$50 but not more than \$500.

(Ord. 2022-02, passed 1-11-2022)

[§ 130.99 PENALTY. Any person found guilty of violating the provisions of this chapter, unless otherwise specified within the specific ordinance, shall be penalized in accordance with N.C.G.S. 160A-175.](#)

~~§ 130.99 PENALTY.~~

~~—Any person violating the provisions of this chapter shall be guilty of misdemeanor subject to a fine not to exceed \$50 or imprisonment not to exceed 30 days as provided by C.S. 8-14.4~~

These sections as amended on October 11, 2022, shall become effective on October 12, 2022.

This 11th day of October, 2022.

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George F. Goosmann, III  
Mayor

Attest:

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Laura Jacobs  
Town Clerk

SEAL

**BOARD OF COMMISSIONERS MEETING  
STAFF MEMORANDUM**

October 11, 2022



**Agenda Item E-2**

**Consideration of Easement to Duke Energy for Targeted  
Underground Project**

*Rosebank Park*

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Background

As Duke Energy's targeted underground project continues moving north, there are several easement requests that will allow necessary underground infrastructure installation. Several 3-phase power lines enter the Town in this area of town, and these higher capacity lines require placement in several specific places. Several lines converge at, or near, Rosebank Park.

Town staff met with Duke representatives in mid-July to review potential requests for placement of electrical cabinets to facilitate this transition. Duke's design team has finalized required locations for installation and requested an easement from the Town for a work in a portion of Rosebank Park. Nearly all the components can be located on or near the exterior of the park and will not be substantially noticeable or impact any existing or future park improvements. The specific areas are identified on the attached map shown as part of their requested easement, attached to this memorandum.

There is substantial public benefit to these locations, as it is in these areas where switchgears will be installed. These switchgears enable power to be redirected in the event of an outage and ensure customers do not lose power if one line goes out. This redundancy allows future power outages to be substantially mitigated. The Town Attorney has reviewed this easement and can address any legal questions the Board may have. Since Rosebank Park is currently held in a 99-year lease to the Town from Biltmore Farms (the successor to the Biltmore Estate Company), Biltmore Farms must also sign and approve the easement. Please let me or Mr. Clarke know if you have any questions.



EASEMENT

NORTH CAROLINA  
BUNCOMBE COUNTY

Prepared By: Duke Energy  
Return To: Duke Energy Progress, LLC  
Attn: Debra Woody  
555-A Brevard Rd  
Asheville, NC 28806

THIS EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
("Effective Date"), from BILTMORE FARMS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, FKA  
BILTMORE ESTATE COMPANY, A NORTH CAROLINA CORPORATION, AND TOWN OF BILTMORE FOREST, A  
MUNICIPAL CORPORATION, ("GRANTOR," whether one or more), to Duke Energy Progress, LLC, a North Carolina  
limited liability company ("DEP"); its successors, licensees, and assigns.

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto DEP, its successors, licensees, and assigns, the perpetual right, privilege, and easement to go in and upon the land of GRANTOR situated in Biltmore Township, described as follows: Being known as the Rose Bank Park aka Rosebank Park, and being part of the land described in a deed from Edith S. Vanderbilt, et al to Biltmore Estate Company, dated October 1, 1920, and recorded in Deed Book 244, Page 56 and further described in an Indenture of Lease from Biltmore Estate Company to Town of Biltmore Forest, dated October 1, 1928, and recorded in Deed Book 405, Page 513, all Buncombe County Registry (the "Property"), LESS AND EXCEPT any prior out-conveyances, and to construct, reconstruct, operate, patrol, maintain, inspect, repair, replace, relocate, add to, modify and remove electric and/or communication facilities thereon including but not limited to, supporting structures such as poles, cables, wires, underground conduits, enclosures/transformers, vaults and manholes and other appurtenant apparatus and equipment (the "Facilities") within an easement area being twenty (20) feet wide, together with an area ten (10) feet wide on all sides of the foundation of any DEP enclosure/transformer, vault or manhole (the "Easement Area"), for the purpose of transmitting and distributing electrical energy and for communication purposes of DEP and Incumbent Local Exchange Carriers. The centerline of the Facilities shall be the center line of the Easement Area.

The right, privilege and easement shall include the following rights granted to DEP: (a) ingress and egress over the Easement Area and over adjoining portions of the Property (using lanes, driveways and paved areas where practical as determined by DEP); (b) to relocate the Facilities and Easement Area on the Property to conform to any future highway or street relocation, widening or improvement; (c) to trim and keep clear from the Easement Area, now or at any time in the future, trees, limbs, undergrowth, structures or other obstructions, and to trim or clear dead, diseased, weak or leaning trees or limbs outside of the Easement Area which, in the opinion of DEP, might interfere with or fall upon the Facilities; and (d) all other rights and privileges reasonably necessary or convenient for DEP's safe, reliable and efficient installation, operation, and maintenance of the Facilities and for the enjoyment and use of the Easement Area for the purposes described herein.

Notwithstanding anything to the contrary above, it is understood and agreed that: (1) the EASEMENT herein granted is for Facilities to be installed at any point where needed on the above-referenced land of GRANTOR and/or where needed to serve adjoining lands, portions of which facilities may be installed immediately, and other portions installed in the future as the need develops; and (2) said facilities shall be installed at locations mutually agreeable to the parties hereto.

The undersigned hereby affirm and certify that they were the sole shareholders of Grantor at the time it was administratively dissolved by the North Carolina Secretary of State.

It is understood and agreed that the general location of the Easement Area is shown on the sketch attached hereto as Exhibit A and recorded herewith. The final and definitive location of the Easement Area shall become established by and upon the final installation and erection of the facilities by DEC in substantial compliance with Exhibit A hereto.

TO HAVE AND TO HOLD said rights, privilege, and easement unto DEP, its successors, licensees, and assigns, forever, and GRANTOR, for itself, its heirs, executors, administrators, successors, and assigns, covenants to and with DEP that GRANTOR is the lawful owner of the Property and the Easement Area in fee and has the right to convey said rights and Easement.

IN WITNESS WHEREOF, this EASEMENT has been executed by GRANTOR and is effective as of the Effective Date herein.

BILTMORE FARMS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, FKA BILTMORE ESTATE COMPANY, A NORTH CAROLINA CORPORATION

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_, Managing Member

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_, Managing Member

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_, Managing Member

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_, Managing Member

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NORTH CAROLINA, \_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_, Managing Member(s) of BILTMORE FARMS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, FKA BILTMORE ESTATE COMPANY, A NORTH CAROLINA CORPORATION, personally appeared before me this day and acknowledged the due execution of the foregoing EASEMENT as Managing Member(s) on behalf of the limited liability company.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



(Notary Seal)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

It is understood and agreed that the general location of the Easement Area is shown on the sketch attached hereto as Exhibit A and recorded herewith. The final and definitive location of the Easement Area shall become established by and upon the final installation and erection of the facilities by DEC in substantial compliance with Exhibit A hereto.

TO HAVE AND TO HOLD said rights, privilege, and easement unto DEP, its successors, licensees, and assigns, forever, and GRANTOR, for itself, its heirs, executors, administrators, successors, and assigns, covenants to and with DEP that GRANTOR is the lawful owner of the Property and the Easement Area in fee and has the right to convey said rights and Easement.

IN WITNESS WHEREOF, this EASEMENT has been executed by GRANTOR and is effective as of the Effective Date herein.

TOWN OF BILTMORE FOREST, A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

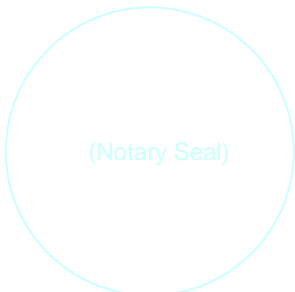
Title: \_\_\_\_\_

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NORTH CAROLINA, \_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_, of TOWN OF BILTMORE FOREST, A MUNICIPAL CORPORATION, and being authorized to do so, executed the foregoing EASEMENT on behalf of the corporation.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

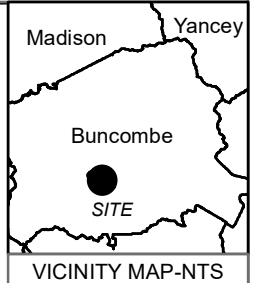
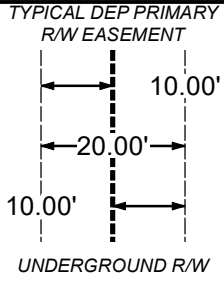


\_\_\_\_\_  
Notary Public

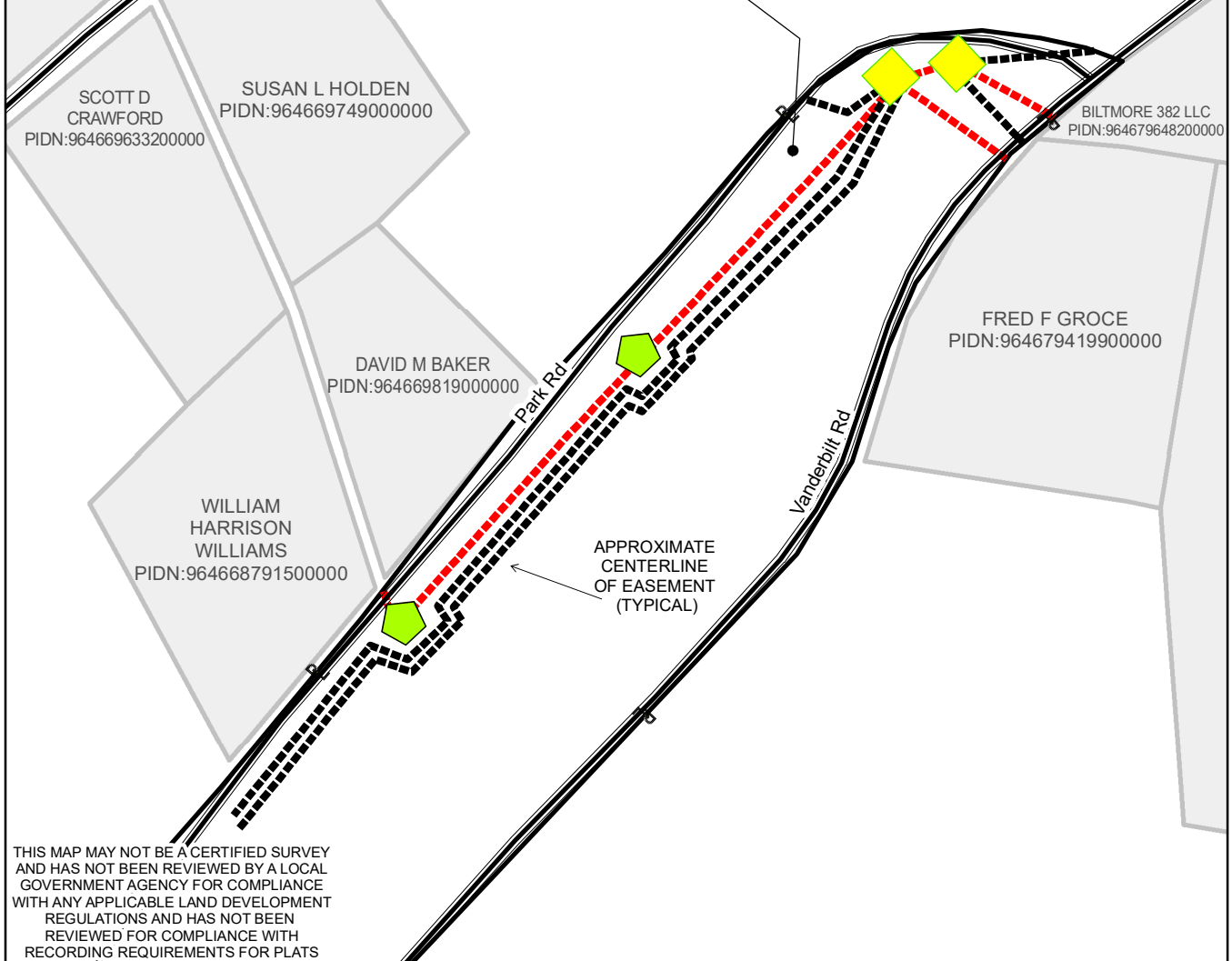
My commission expires: \_\_\_\_\_

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.

**EXHIBIT A**



**BILTMORE FARMS, LLC  
FKA BILTMORE ESTATE COMPANY  
& TOWN OF BILTMORE FOREST**  
PIDN: Rose Bank Park



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS

**Legend**

- 3PH CABINET
- PROPOSED SWITCHGEAR
- ROAD CENTERLINE
- PROPOSED 1PH UNDERGROUND PRIMARY
- PROPOSED 3PH UNDERGROUND PRIMARY
- PROPERTY BOUNDARY
- ADJACENT PROPERTY BOUNDARY



APPROXIMATE LOCATION OF DISTRIBUTION R/W ACROSS PROPERTY OF BILTMORE FARMS, LLC FKA BILTMORE ESTATE COMPANY AND TOWN OF BILTMORE FOREST

LOCATION: Rosebank Park, Biltmore Forest, NC 28803  
SCALE: 1 inch = 167 feet      DATE: 9/22/2022  
DRAWN: KB      CHECKED: CS  
DWG NO: 20003932      SHEET: 1 of 1

# BOARD OF COMMISSIONERS MEETING STAFF MEMORANDUM

October 11, 2022



## Agenda Item E-3

### Cedar Hill Road Stabilization Project aka "UT Four Mile Stream Restoration Project"

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#### Background

The Board of Commissioners approved engineering funds in the FY22 budget to consider a road stabilization and stream restoration project along Cedar Hill Road, near the intersection of Hemlock Road. The Town selected Jennings Environmental to perform this design work which was completed in spring 2022. Since that time, the Town has gone through necessary permitting review and approval from both the United States Army Corps of Engineers and the NC Division of Water Quality. Both approvals were received in late summer 2022.

#### Project Overview

This project serves two pressing needs for the Town: the protection of Cedar Hill Road and the restoration of this portion of an unnamed tributary to Four Mile Creek. The erosion of the stream bank has increased over the past several years with a significant portion of the erosion encroaching toward Cedar Hill Road. The necessity to protect the road from being further undermined, as well as protecting the stream from further degradation, led the Board to move forward with this project. Funds for the estimated construction cost were included within the approved FY23 budget.

The Town has obtained easements from two property owners abutting this project. Significant work will occur adjacent to and on a portion of the property at 2 Hemlock Road and staff has collaborated with these property owners throughout the design process. As you will see in the attached draft Request for Proposals (RFP), we are working into October to hold the pre-bid meeting and then issue the RFP. The final bid timeline will determine whether the Board can consider an award at the November or December meeting. Our goal is to have this project constructed by the end of April 2023.

#### Attachment

Town staff has provided two drawings for the Board to see an overview of the project. The first page shows the design plan and profile for the stream restoration. The second page shows the plan detail for the boulder toes, boulder riffles, and rock toe riffles. Public Works Director Harry Buckner will be available to elaborate on these plans at the meeting if necessary.

# **TOWN OF BILTMORE FOREST**

**Request for Proposal**

**UT Four Mile Branch Stream Restoration**

**Date of Issue: October xx, 2022**

**Proposal Submission Deadline: October xx,**

**2022 at 2:00 PM ET**

# **TABLE OF CONTENTS**

## **1.0 PURPOSE AND BACKGROUND**

## **2.0 GENERAL INFORMATION**

2.1 REQUEST FOR PROPOSAL DOCUMENT

2.2 NOTICE REGARDING RFP TERMS AND CONDITIONS

2.3 RFP SCHEDULE

2.4 MANDATORY PRE-PROPOSAL CONFERENCE

2.5 PROPOSAL QUESTIONS

2.6 PROPOSAL SUBMITTAL

2.7 PROPOSAL CONTENTS

## **3.0 METHOD OF AWARD AND EVALUATION**

3.1 METHOD OF AWARD

3.2 EVALUATION CRITERIA

## **4.0 REQUIREMENTS**

4.1 CONTRACT TERM

4.2 PRICING

4.3 VENDOR EXPERIENCE

4.4 VENDOR'S REPRESENTATIONS

## **5.0 SCOPE OF WORK**

## **6.0 GENERAL TERMS AND CONDITIONS**

**ATTACHMENT A – BLANK BID TAB**

**ATTACHMENT B – DESIGN PLANS FOR PROJECT**



## 1.0 PURPOSE AND BACKGROUND

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The Town of Biltmore Forest (Town) seeks proposals for a streambank restoration project on an unnamed tributary to Four Mile Branch on private property within the Town. Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

## 2.0 GENERAL INFORMATION

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### 2.1 REQUEST FOR PROPOSAL DOCUMENT

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

### 2.2 NOTICE REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions, the Town's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 2.5 PROPOSAL QUESTIONS. If the Town determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The Town may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the Town rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

### 2.3 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. The Town will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	Town	10/xx/2022
Mandatory Pre-Proposal Conference	Vendor	10//xx/2022 2:00 pm
Submit Written Questions	Vendor	10/xx/2022 5:00 pm
Provide Response to Questions	Town	10/xx/2022
Submit Proposals	Vendor	10/xx/2022 2:00pm
Contract Award	Town	TBD
Contract Effective Date	Town	TBD

### 2.4 PRE-PROPOSAL CONFERENCE

A mandatory pre-proposal conference will be held on October xx, 2022 at 2:00 p.m. The conference will begin in the parking lot of the Town Administration building at 355 Vanderbilt Road, Asheville, NC 28803 and then proceed to the job site location.

## 2.5 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be emailed to [hbuckner@biltmoreforest.org](mailto:hbuckner@biltmoreforest.org) by the date and time specified above. Vendors should enter "RFP UT FOURMILE BRANCH RESTORATION Questions" as the subject for the email. Questions submittals should include a reference to the applicable RFP section.

Questions received prior to the submission deadline date, the Town's response, and any additional terms deemed necessary by the Town will be posted in the form of an addendum. No information, instruction or advice provided orally or informally by any Town personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding.

## 2.6 PROPOSAL SUBMITTAL

Proposals will be received until 2:00pm, 10/XX/2022. All proposals may be submitted electronically via email and properly identified with the title RFP UT FOURMILE BRANCH RESTORATION PROPOSAL.

Proposals may be emailed to:  
Harry Buckner, Director of Public Works  
E-mail: [hbuckner@biltmoreforest.org](mailto:hbuckner@biltmoreforest.org)

Or hard copies delivered to:  
Harry Buckner, Director of Public Works  
355 Vanderbilt Road, Asheville, NC 28803

The Town's capacity for email attachments is 9mb. It is the bidder's responsibility to ensure the proposal is received prior to the proposal acceptance time. Late proposals will not be accepted. The Town reserves the right to accept or reject all or any part of any proposal, waive informalities and award the contract to best serve the interest of the Town. It is the responsibility of the applicant that their proposal is received. Receipt of proposals can be verified by calling 828-274-3919.

## 2.7 PROPOSAL CONTENTS

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Vendor RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Describe the background, experience, and capabilities of your firm as it relates to the Scope of Work outlined in the RFP.

Bidders must document and provide references for successful completion of at least three (3) natural stream restoration projects on streams with the following project components:

1. Accurate grading of stream channels and floodplains to provide sustainable functional natural stream features including thalweg, riffle, step, pool, run, glide, point bar, inner berm, bankfull bench, and meanders;
2. Accurate installation of in-channel boulder and log structures for streamflow direction, bank stabilization, and grade control, including vanes, j-hook vanes, step-pools, and constructed riffles.
3. Successful compliance with environmental permit requirements imposed by US Army Corps of Engineers,

NC Division of Water Resources, and NC Division of Energy, Mineral and Land Resources. Specific environmental requirements will include erosion and sedimentation control measures, stormwater management, water quality protection, waste management, and ground cover establishment.

- d) Identify all subcontractors you intend to use for the proposed scope of work. For each subcontractor listed, proposers shall indicate 1.) What products and/or services are to be supplied by that subcontractor and; 2.) What percentage of the overall scope of work that subcontractor will perform.
- e) List at least 3 client references public and private of similar size for whom you have provided services in the past three years. Provide telephone numbers and contact names for references.
- f) Provide specific costs for services using the bid tab form provided.
- g) Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

## **3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS**

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### **3.1 METHOD OF AWARD**

All qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the RFP requirements and best fits the needs of the Town.

The Town reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The Town reserves the right to finalize a contract with one or more firms based on all factors involved in the written qualification submittal without further discussion or interviews.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Vendor and its staff, and cost.

Vendors are cautioned that this is a request for proposals, not an offer or request to contract, and the Town reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the Town.

### **3.2 EVALUATION CRITERIA**

Following the deadline for submittals, a selection committee will review the submitted proposals. The selection committee will review and analyze all submittals based on their response to the information requested.

The contract will be awarded to the lowest cost responsible, responsive, and qualified bidder.

## **4.0 REQUIREMENTS**

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### **4.1 CONTRACT TERM**

The Contract term shall be until completion and acceptance of all requirements within the scope of work, beginning on the date of contract award (the "Effective Date").

### **4.2 PRICING**

Proposal price shall constitute the total cost to Buyer for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this RFP. When pricing submitters shall use the Blank Bid Tab included with this RFP.

### **4.3 VENDOR EXPERIENCE**

In its Proposal, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to The Town. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including citing experience with similar projects and the responsibilities to be assigned to each person.

### **4.4 VENDOR'S REPRESENTATIONS**

- a) Vendor warrants that qualified personnel shall provide Services under this Contract in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence

consistent with the prevailing business standards in the industry. Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the Town under this Contract. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the Town. Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- b) If any Services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
- c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

## 5.0 SCOPE OF WORK

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The scope of work is contained in Attachment B - Design Plans for Project.

## 6.0 GENERAL TERMS AND CONDITIONS

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1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely submission of proposals.
3. **ACCEPTANCE AND REJECTION:** The Town reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.
4. **INFORMATION AND DESCRIPTIVE LITERATURE:** If required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.
5. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all print responses submitted meet the following:
  - All copies of the proposal are printed double sided.
  - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
  - Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
  - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
6. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The Town is committed to retaining Vendors from

diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the Town encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on Town contracts.

7. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the Town by any company identified in a) or b) above shall be void *ab initio*.
8. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the Town will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the Town will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
9. **MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
10. **INFORMAL COMMENTS:** The Town shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the Town during the competitive process or after award. The Town is bound only by information provided in writing in this RFP and in formal Addenda issued
11. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; The Town will not reimburse any Vendor for any costs incurred or associated with the preparation of proposals.
12. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.
13. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
14. **PAYMENT TERMS:** If a payment schedule is not part of The Contract then payment terms will be Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.
15. **NON-DISCRIMINATION:** The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.
16. **ADVERTISING:** Vendor agrees not to use the existence of The Contract or the name of the Town as part of any commercial advertising or marketing of products or services. A Vendor may inquire whether the Town is willing to act as a reference by providing factual information directly to other prospective customers.
17. **INSURANCE:**

**COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

Commercial General Liability insurance in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability.

Business Automobile Liability insurance covering all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 each occurrence and shall include uninsured/underinsured motorist coverage per NC General Statute 20-279-21.

Workers Compensation coverage at the statutory limits in compliance with applicable State and Federal laws. Supplier shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability coverage with minimum limits of \$500,000 each accident and \$500,000 each employee disease.

Vendor shall agree these General Conditions constitute an insured contract and shall name the Town of Mills River as an additional insured under the Commercial General Liability policy. Before commencing work and for any subsequent renewals, Vendor shall furnish the Town with certificates of insurance evidencing the above coverages and amounts on an approved form. Vendor hereby grants the Town a waiver of any right of subrogation which any insurer of said Vendor may acquire against the Town by virtue of payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Town and delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the Town. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Supplier's liability and obligations. Nothing in this section is intended to affect or abrogate the Town's governmental immunity.

18. **GENERAL INDEMNITY:** The Vendor shall hold and save the Town of Mills River, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the Town has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the Town's agents who are involved in the delivery or processing of Vendor deliverables or services to the Town. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.
19. **CONFIDENTIALITY:** Any Town information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval by the Town.
20. **COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
21. **ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.  
  
All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
22. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the Town and the Vendor.

23. **NO WAIVER**: Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the Town under applicable law. The waiver by the Town of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
24. **FORCE MAJEURE**: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
25. **SOVEREIGN IMMUNITY**: Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or state or federal constitutional provision or principle that otherwise would be available to the Town under applicable law.
26. **E-Verify Requirements**: The Town is prohibited from contracting with contractors and subcontractors that are not compliant with the state's E-Verify hiring requirement (G.S. 143-133.3)











**BOARD OF COMMISSIONERS MEETING  
STAFF MEMORANDUM**

October 11, 2022



**Agenda Item E-4**

**Consideration of Resolution 2022-04**

*Resolution Supporting Option of Local Governments to Hold Public Meetings via Remote Electronic Methods or Hybrid Public Meetings During Non-Emergency Times*

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Background

The Board discussed a recently passed resolution from the Town of Weaverville during last month's meeting. The resolution specifically advocated for local governments to have the option to hold a remote public meeting during non-emergency times. The Board requested a draft resolution to consider at the October meeting. This draft resolution is attached for the Board's review and consideration.

Attachment

*Resolution 2022-04*

*Resolution Supporting Option of Local Governments to Hold Public Meetings via Remote Electronic Methods or Hybrid Public Meetings During Non-Emergency Times*



**BOARD OF COMMISSIONERS MEETING  
STAFF MEMORANDUM**

October 11, 2022



Agenda Item E-5

**Consideration of Chair Appointment**  
*Friends of Biltmore Forest*

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Background

Katie Valeika has served as the chair for the Friends of Biltmore Forest committee for the past two (2) years. Ms. Valeika has done a tremendous job moving the organization forward and spearheading the Town's centennial planning efforts. Ms. Valeika has asked to step down as committee chair and has nominated Ms. Lauren Karlsson as new chair.

Ms. Karlsson has served in numerous leadership capacities within the area and assisted frequently with the Friends of Biltmore Forest activities. If approved, Ms. Karlsson's term would begin effective January 1, 2023.