



TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

DRAFT **ORDINANCE O-10-XX**

AN ORDINANCE IMPOSING A TEMPORARY, LIMITED MORATORIUM ON BUILDING PERMITS ON ANY LOT WITHIN THE DEVELOPMENT PLAN OF THE SUBDIVISION KNOWN AS THE SETTINGS OF BLACK MOUNTAIN, PURSUANT TO NORTH CAROLINA GENERAL STATUTE §160A-381

WHEREAS, The Settings Development Companies, LLC did seek, and was approved for, voluntary annexation from the Town of Black Mountain based on an approved subdivision plan that was in compliance with Town Ordinances at the time of annexation;

WHEREAS, the Town has made a good faith effort to enforce and conduct business pursuant to the letter and spirit of Town Ordinances and North Carolina regulations;

WHEREAS, the Town of Black Mountain is responsible for the issuance of Building Permits on lots within its jurisdiction to ensure the health safety and welfare of its citizens;

WHEREAS, The Town has issued 12 Certificates of Occupancy and 4 building permits for new residential construction as well as the Certificate of Occupancy for the Clubhouse within The Settings and has an obligation to those citizens to provide emergency services and protection of life and property to the greatest extent possible;

WHEREAS, after due advertisement as by law required, this Board of Aldermen conducted a public hearing on December 13, 2010 and heard from interested parties and residents for the purpose of gathering information and taking appropriate action within the confines of applicable law regarding imposition of a temporary, limited moratorium of *60 days* on the acceptance of applications for and/or issuance of permits for new construction within the Settings of Black Mountain Subdivision.

WHEREAS, the Board of Aldermen find that it is consistent with the Town's Adopted Comprehensive Plan and in the best interests of the citizens and residents of the Town of Black Mountain to adopt a temporary, limited moratorium ordinance pursuant to the authority conferred in §160A-381 as follows:

NOW, THEREFORE, BE IT RESOLVED, by the Board of Aldermen for the Town of Black Mountain that:

1. Financial problems with the Settings Development Companies, LLC have created problems that necessitate the moratorium and the Town has considered alternative courses of action to such moratorium which were not deemed adequate, including:
 - A. Current conditions wherein:
 1. Platted roadways and proposed utilities are incomplete;
 2. Roads that have been graded or paved are in need of maintenance, repair, and/or final paving;

3. The water system has not been completed, tested or approved to be part of the Town water system;
 4. There is evidence of failure of erosion controls and roads due to lack of maintenance creating potentially hazardous situations; and
 5. The construction bond payments are not up to date;
 - B. The Settings Development Companies, LLC continues to retain control over Homeowner Association funds and will not release control of those funds to the existing homeowners to address critical maintenance issues;
 - C. The Town in coordination with Buncombe County is studying the feasibility of utilizing construction bond money to complete the necessary infrastructure as shown on the approved plan and expects that legal process to extend several months if not years and that the valuation of the bond is not adequate to complete the work;
 - D. Hazardous Road conditions will be made worse during the winter months that are now upon us;
2. While other courses of action were considered by the Town, the Moratorium is the most adequate action to take at this time because:
 - A. The Settings Development Companies, LLC continues to retain control over Homeowner Association funds and will not release control of those funds to the existing homeowners to address critical maintenance issues, even though the Homeowners Association membership has requested that responsibility;
 - B. The Town in coordination with Buncombe County is studying the feasibility of utilizing construction bond money to complete the necessary infrastructure as shown on the approved plan but expects that legal process to extend several months if not years and that the valuation of the bond is not adequate to complete the work;
 - C. Hazardous Road conditions will be made worse during the winter months that are now upon us;
3. The moratorium shall last for a period not to exceed 60 days, beginning on the first day after the evening of adoption, or the 14th Day of December, 2010, and ending on the 12th Day of February, 2011, and shall be limited to new residential construction projects within The Settings of Black Mountain Development which is reasonably necessary to avoid the initiation of construction projects during winter conditions, so that:
 - A. The Town may avoid further damage by construction trucks to the roadways that do exist;
 - B. Limit traffic on inadequate roadways which will be unsafe in snowy, icy or wet conditions; and
 - C. Avoid new construction occurring where road and utility infrastructure is not complete;

4. The Town shall undertake the following actions during the duration of the moratorium to address the problems and conditions that have led to said action, including:
 - A. The moratorium shall become effective on Tuesday, December 14th, 2010, at 12:01 a.m.;
 - B. The moratorium shall terminate on Saturday, February 12, 2011, at 11:59 p.m.;
 - C. The Town Planning and Development Services Department shall not issue building permits for new construction within The Settings during this period, but may permit other types of work to proceed such as road and utility installation, maintenance or repair on existing facilities, residences or infrastructure and the replacement or repair of any mechanical, electrical or plumbing equipment within existing structures;
 - D. The Town Attorney shall be directed to continue his communications with the bonding company and Buncombe County to undertake the procedure for the construction bond to be turned over to the Town and for the Town to receive payment for construction services not performed by The Settings Development Company, LLC.
 - E. The Town shall send a letter to The Settings Development Company, LLC and its Lenders requesting that the funds held by the Homeowners Association for maintenance be turned over to the Homeowners Association for use toward the maintenance and completion of required infrastructure.
5. The Town shall recognize that this temporary, limited moratorium shall not apply to:
 - A. Any project for which a valid building permit has been issued prior to 5:00 p.m. on December 13, 2010;
 - B. Building Permits for the repair, replacement or maintenance of any electrical, mechanical or plumbing equipment or system within existing structures;
 - C. Permits for stormwater management, soil and erosion controls;
 - D. Road or utility installation or repair;
6. Severability: If any portion of this ordinance is deemed unconstitutional or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.
7. Enforcement: Any person, firm, company, corporation, limited liability company, partnership, association, organization and any other group or individual entity acting as a unit, as well as any individual, (hereinafter collectively referred to as "person") in violation of the terms and conditions of this ordinance shall be punishable in accordance with the General Penalty provisions of the Town of Black Mountain Land use Code. In case any building is erected,

constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this article, the planning director, her designee or any other appropriate county authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation. This ordinance may be enforced by any legal and equitable remedies including, but not limited to, injunctive relief.

8. This ordinance will prohibit the acceptance of applications for and/or issuance of any and all building permits and be effective on lots within the incorporated areas of Black Mountain that are included in the Settings of Black Mountain Subdivision Plan as filed with the Planning and Development Services Department.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____, this the _____ day of _____, 2010.

Carl R. Bartlett, Mayor

ATTEST:

Darlene Whisenant, Town Clerk

Marcia D. Onieal, Town Manager