



# PUBLIC NOTICE

In order to maintain the safety of Town residents, staff, and the Board of Aldermen, the Board of Aldermen **Agenda Work Session scheduled for Thursday, July 9, 2020 at 5:00 p.m. has been CANCELED.**

The Board of Aldermen Regular Session scheduled for **Monday, July 13, 2020 at 6:00 p.m. will be conducted electronically using Zoom software.** In order to comply with the State, County, and Town State of Emergency Declarations and social distancing requirements the only individuals that will be located at Town Hall will be the Mayor, Board of Aldermen, Town Manager, Town Clerk and one videographer. Other staff may participate remotely.

The meeting will be televised as normal on Charter Cable's Buncombe County Channel 192 at 8:00 p.m. on Sundays and posted on the website: <https://www.townofblackmountain.org>. To comply with NC § 143-318.13. Electronic meetings; written ballots; acting by reference, the meeting will also allow live audio and video feed via Zoom.

**There are three ways the public can participate in the meeting:**

1. **Join the meeting through Zoom on your computer or smart device. \* Citizens will be able to comment at the appropriate time using the chat feature to enter their comments. \*Citizen video feeds will not be enabled. There is no password.**

<https://us02web.zoom.us/j/83504053751>

**Meeting ID: 835 0405 3751**

If you have not used Zoom before on a computer or smart device, you are encouraged to [download the application](#) from their website at [Zoom.us/download](https://zoom.us/download) and try it out prior to the meeting. There is no cost associated with the software or attending the meeting and there are toll free number options to dial in to listen live only.

2. **Join the meeting by telephone (listen only).**

Simply call **Toll-free 1-877 853 5247** or **Toll-free 1-888 788 0099**

**Meeting ID: 835 0405 3751** followed by the Pound sign (#).

3. **Email or call in your citizen comments or questions prior to the meeting.**

Call in comments prior to meeting: Town Clerk at 828-419-9310

Email comments to: [Comments@townofblackmountain.org](mailto:Comments@townofblackmountain.org).

The Town is making every effort to ensure that the public is able to not only listen to the meeting, but also to participate in the public comment portion of the Board meeting, while still maintaining all of the Town's statutory requirements and keeping the public safe. **During the meeting, if at any time inappropriate content is detected the electronic meeting will be ended by the host.**

**Angela L. Reece**  
Town Clerk

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Angela Reece, Town Clerk at 419-9310 or by email at [townclerk@townofblackmountain.org](mailto:townclerk@townofblackmountain.org).

Please visit [www.townofblackmountain.org](http://www.townofblackmountain.org) to obtain agenda packets and other meeting information.

*Posted to the Town Bulletin Board 07/06/20*



## TOWN OF BLACK MOUNTAIN

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

Date: July 13, 2020 Time: 6:00 p.m.

Regular Session Agenda

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The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at [www.townofblackmountain.org](http://www.townofblackmountain.org). Click on **Town Government** and select **Mayor and Board of Alderman** to download materials for all Town board meetings.

 **Conserve resources; print only when necessary.**

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door.

Should you need other assistance or accommodation for this meeting, please contact

Town Clerk at 419-9310, or by email at [townclerk@townofblackmountain.org](mailto:townclerk@townofblackmountain.org)

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

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### 1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Announcements – *Mayor Don Collins*

### 2. PROCLAMATIONS, AWARDS & RECOGNITION

- **Proclamation** – *Presented by Mayor Don Collins*

### 3. CITIZEN COMMENTS

Individuals wishing to address the Board are asked to sign in at the entrance to the board room, indicating the topic(s) or agenda item(s) you wish to discuss, so that the chair may group speakers according to topic. The chair will recognize individuals requesting to address the Board. **Comments by any one speaker shall be limited to three (3) minutes.**

To send comments **prior to the meeting**, please call Town Hall at 828-419-9310 or email comments to [Comments@townofblackmountain.org](mailto:Comments@townofblackmountain.org).

### 4. COMMUNICATIONS FROM STAFF, BOARDS, COMMISSIONS & AGENCIES -none

### 5. CONSENT AGENDA

All items on the consent agenda are considered routine, to be enacted by one motion without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the consent agenda and considered separately.

#### A. Call for Public Hearing for Text Amendments to Add Stream Buffer Ordinance #O-20-08

**Motion:** To call for the public hearing to be held at the meeting on Monday, August 10, 2020 or as soon thereafter as possible.

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

July 13, 2020

B. Budget Amendment for Golf Fund BA-FY20-18

**Motion:** *To approve Budget Amendment BA-FY20-18 as submitted.*

C. Budget Amendment for Water System Service Contract BA-FY21-01

**Motion:** *To approve Budget Amendment BA-FY21-01 as submitted, increasing expenditure account 30-91-8100-450 (Contract Services) by \$18,000 and account 30-91-3940-900 (Transfer from Water Capital) by \$100,000.*

D. Budget Amendment for Restoration on Riverwalk Greenway Easement BA-FY21-02

**Motion:** *To approve Budget Amendment BA-FY2021-02 as submitted, increasing expenditure account 10-10-5400-543 (Transfer to Gen Capital Project) by \$20,000 and 10-00-3905-900 (Fund Balance Appropriated) by \$20,000.*

E. Resolution Supporting I40/Blue Ridge Road Interchange I-4409

**#R-20-11**

**Motion:** *To approve and adopt #R-20-11 as submitted.*

**Consent Motion:** *To approve consent item A – E as presented.*

**6. CITIZEN COMMENTS**

*The chair will recognize individuals requesting to address the Board regarding the specific **New Business or Unfinished Business items below**. Comments by any one **speaker shall be limited to three (3) minutes**. If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

**To send comments prior to the meeting, please call Town Hall at 828-419-9310 or email comments to [Comments@townofblackmountain.org](mailto:Comments@townofblackmountain.org).**

**7. UNFINISHED BUSINESS**

A. Art in the Afternoon Lease Renewal

**Motion:** *To approve the Art in the Afternoon Lease renewal as presented [or as amended].*

**8. NEW BUSINESS**

A. Offer to Purchase Town Property on Flat Creek Rd. and East Street PIN Numbers 0710-41-9092-00000 and 0710-41-9003-00000, for \$20,000.00 **#R-20-12**

**Motion:** *To approve and adopt **Resolution #R-20-12** as submitted to accept the offer from the Alexanders, subject to the notice and upset bid requirements of NCGS Section 160A-369.*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA  
July 13, 2020

B. Amendment to Chapter 43: Parades, Festivals and Special Events Ordinance

#O-20-09

**Motion:** To approve and adopt *Ordinance #O-20-09* as presented [or as amended].

C. Resolution to Allow Virtual Quasi-Judicial Meetings

#R-20-10

**Motion:** To approve and adopt *Resolution #R-20-10* as submitted to allow virtual quasi-judicial meetings.

D. Appointment to fill vacancies on Town Boards and Commissions

*2 NEW applicants:*

*Jillian Ballard* (applying for Alternate term)

*Charles Fitzgerald* (applying for Alternate term)

**Motion:** To appoint \_\_\_\_\_ to the *2<sup>nd</sup> Alternate* seat by a vote of \_\_\_\_\_ for  
and \_\_\_\_\_ against.

**Motion:** To appoint \_\_\_\_\_ to the *2<sup>nd</sup> Alternate* seat by a vote of \_\_\_\_\_ for  
and \_\_\_\_\_ against.

**9. PUBLIC HEARING - NONE**

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

**10. COMMUNICATION FROM STAFF**

A. Town Attorney – Ron Sneed

B. Town Manager – Josh Harrold

**11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN**

**12. ADJOURNMENT**

**Josh Harrold, Town Manager**

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN**  
**REQUEST FOR BOARD ACTION**  
**Meeting Date: July 13, 2020**

**SUBJECT:** Call for Public Hearing for Text Amendments to Add Stream Buffer Ordinance O-20-08

**AGENDA INFORMATION**

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

**BRIEF SUMMARY:** The Stream Buffer Ordinance is largely derived from the Environmental Protection Agency's model and widely used with success across North Carolina. The purpose of the buffer area is to maintain vegetation along the banks. The roots from the plants help stabilize the bank, reducing erosion and sedimentation which protects water quality downstream and owner's property. This ordinance will support our overall stormwater effort, preventing development from occurring in close proximity to surface waters which are noted as being "blue line streams" by the Army Corps of Engineers. Generally, development will not be able to occur within 30' of top of bank though some accommodation may be made at the staff level, reducing the buffer to 15' if necessary. Recreational activities are allowed within the buffer area.

**MOTION FOR CONSIDERATION:** To call for the public hearing for text amendments to add stream buffer ordinance to be held on Monday, August 10, 2020, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

**FUNDING SOURCE:** N/A

**ATTACHMENTS:** Proposed *Ordinance #O-20-08*

**MANAGER'S COMMENTS AND RECOMMENDATIONS:** To call for the public hearing to be held at the meeting on Monday, August 10, 2020 or as soon thereafter as possible.

## **ORDINANCE #O-20-08**

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

BE IT HEREBY ORDAINED by the Board of Aldermen of the Town of Black Mountain that Chapter 20, Article IX – STREAM BUFFER PROTECTION STANDARDS, containing Sections 20-380 through 20-388, inclusive, are hereby amended as follows:

#### **ARTICLE IX: STREAM BUFFER PROTECTION STANDARDS**

Section 20-380. Stream buffer protection standards.

The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetative state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards contained in this section will further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs.

Section 20-381. Applicability and Jurisdiction.

Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven-and-one-half minute quadrangle topographic maps that cover the Town of Black Mountain. Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

Section 20-382. Stream buffer size.

Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

Section 20-383

To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein except as provided in Section 20-385. Furthermore, there shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped, and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in Section 20-385, below, may be permitted within the stream buffer so long as they meet the requirements of that Section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of

downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

Section 20-384. Stream buffer protection measures.

To prevent adverse impacts to required stream buffer areas and to assure the stream buffer remains undisturbed and protected during and after land disturbing activities and development, adequate protections shall be in place prior to and after land disturbing activities and development commences.

- (a) When land disturbing activity or development is to take place within 50 feet of the outside edge of the stream buffer, temporary stream buffer protective barriers shall be in place prior to the land disturbing activity or development work commencing.
- (b) Prior to commencing any land disturbing activity or development on a site, the Planning Director or his/her designee shall inspect and approve the installation of stream buffer protective barriers.
- (c) Stream buffer protective barriers shall consist of:
  - 1) A fence which is at least three feet high and constructed in a post and rail configuration, using two-by-four posts and one-by-four rails.
  - 2) A fence with two-by-four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or
  - 3) Certain erosion and sedimentation control devices such as silt fencing may also serve as the stream buffer protective barrier.
- (d) All contractors shall be made aware of the stream buffer designated for protection. Unless otherwise provided by ordinance, no disturbance shall occur within the stream buffer including the following:
  - 1) Clear-cutting of trees and other vegetation;
  - 2) Selective cutting of trees and/or the clearing of other vegetation;
  - 3) Removal or disturbance of existing vegetation;
  - 4) Grading;
  - 5) Filling;
  - 6) Storage, parking or operating motorized vehicles;
  - 7) Storage of debris or materials, including topsoil;
  - 8) Use, storage or application of herbicides and/or pesticides;
  - 9) Draining the stream buffer area by ditching, underdrains or other systems.
- (e) Stream buffer protective barriers shall be maintained throughout the developer's activities.
- (f) For planned developments and commercial uses, permanent boundary markers, in the form of signage approved by the Planning Department, shall be installed once the land

disturbing activity or development is complete. Clearly visible stream buffer boundary markers shall be placed along the outside edge of the stream buffer and spaced at a maximum of every 100 feet.

- (g) Prior to issuing a certificate of occupancy for Planned Developments, documentation shall be in place to inform property owners of the stream buffer presence and location along with management and maintenance requirements. Documentation shall be in a form that will run with the property such as inclusion in covenants, conditions and restriction documents or deed reference.

#### Section 20-385. Exceptions.

Subject to prior written authorization by the Planning Director or his/her designee, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the Land Use Code:

- (a) Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossing with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.
- (b) Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.
- (c) Clearing and revegetating the stream buffer pursuant to a plan approved by the Planning Director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.
- (d) Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:
  - 1) The property owner or applicant demonstrates to the satisfaction of the Planning Director or his/her designee that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.
  - 2) Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.
  - 3) A vegetated buffer of a width approved by the Planning Director or his/her designee shall be required around the stormwater control structure.



- 4) Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the Planning Director or his/her designee.
- (e) Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:
- 1) The property owner or applicant demonstrates in writing to the satisfaction of the Public Services Director that the sanitary sewer lines cannot be practicably located outside of the stream buffer.
  - 2) Design and construction specifications minimize damage to the stream and the possibility of line leakage.
  - 3) The sewer line is located at least 15 feet from the top of the stream bank; and
  - 4) The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the Public Works Director.
- (f) Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is not more than is necessary considering the design capacity for the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this Section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvement related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.
- (g) Selective removal of invasive exotic species in accordance with a plan approved by the Planning Director or his/her designee.
- (h) View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the Planning Director or his/her designee.

Site plan approval by the Planning Director or his/her designee shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the Land Use Code, the Director of Public Works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

Section 20-386. Minimum lot size requirements.

Land within the stream buffer can serve to minimum lot size and setback requirements if there is sufficient buildable area remaining on the lot.

Section 20-387. Diffuse flow requirement.

Diffuse flow of runoff shall be maintained in the stream buffer dispersing concentrated flow and reestablishing vegetation.

- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the 20-foot setback area defined in Section 20-383, above.
- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

Section 20-388. Special provisions pertaining to certain residential uses.

For certain residential uses as prescribed herein, the stream buffer shall be reduced to fifteen feet and the transitional area described in Section 20-383 shall be reduced to fifteen feet. To qualify for these special provisions, a proposed development must meet the following criteria:

- (a) Use of the lot must be limited to a one- or two-family residential dwelling.
- (b) The lot may not exceed one acre in area.
- (c) The amount of impervious surface allowed on the lot shall not exceed 25% of the lot or 3,000 square feet, whichever is greater.

READ, APPROVED AND ADOPTED, by a vote of \_\_\_\_\_ to \_\_\_\_\_, on this the 10<sup>th</sup> day of August, 2020.

\_\_\_\_\_  
Don Collins, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN**  
**REQUEST FOR BOARD ACTION**  
**Meeting Date: July 13, 2020**

**SUBJECT:** Budget Amendment - FY 2020 - #17

**AGENDA INFORMATION**

**Agenda Location:** Consent Agenda  
**Item Number:**  
**Department:** Finance  
**Contact:** Kirk Medlin, Finance Director  
**Presenter:** Josh Harrold, Town Manager

**SUMMARY:** The Town's Golf Fund continues to operate at a deficit. As of June 30, 2020, the cash position of the Fund is (\$86,000). Negative cash can never be recorded in the financial statements of local governments, so General Fund money is needed to transfer to the Golf Fund. This budget entry is effective back to FY 2020, as cash is not changed. This entry has no effect on overall Town cash.

**MOTION FOR CONSIDERATION:** To approve Budget Amendment FY 2020 - #17 as submitted, increasing expenditure accounts 10-00-5000-560 (Transfer to Golf Fund) by \$100,000 and 50-92-3905-900 (Fund Balance Appropriated) by \$100,000, increasing the revenue accounts 10-00-3905-900 (Fund Balance Appropriated) by \$100,000, and 50-92-3808-800 (Transfer from General Fund) by \$100,000.

**FUNDING SOURCE:** N/A

**ATTACHMENTS:** Budget Amendment - FY 2020 - #17

**MANAGER'S COMMENTS AND RECOMMENDATIONS:** Adopt as presented.

Budget Amendment # 2020-18  
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	10-00-5000-560	Transfer to Golf	100,000.00		This is a transfer from the General Fund to the Golf Fund to correct negative cash. The golf course did better than in prior years, but a transfer is still necessary.
	10-00-3905-900	Fund Balance Appropriation		100,000.00	
	50-92-3905-900	Fund Balance Appropriation	100,000.00		
	50-92-3808-800	Transfer from General Fund		100,000.00	

Totals:                      200,000                      200,000

BD # \_\_\_\_\_  
Journal # \_\_\_\_\_  
Fiscal Yr \_\_\_\_\_  
Date \_\_\_\_\_

Entered By: \_\_\_\_\_  
  
Approved By: \_\_\_\_\_  
Date \_\_\_\_\_

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION**

**Meeting Date:** July 13, 2020

**SUBJECT:** Budget Amendment for Water System Service Contract #*BA-FY21-01*

**AGENDA INFORMATION**

**Agenda Location:** CONSENT AGENDA  
**Item Number:** 5C  
**Department:** Finance  
**Contact:** Kirk Medlin, Finance Director  
**Presenter:** Josh Harrold, Town Manager

**BRIEF SUMMARY:** Our current contract rate is increasing due to requirements by the State for the Town to provide more oversight of our water system. The Asheville water line transfer places us in a new category that requires oversight and monitoring seven days a week instead of five days a week. The increase in cost is \$1,500 per month or \$18,000 per year.

**MOTION FOR CONSIDERATION:** To approve Budget Amendment *BA-FY21-01* as submitted, increasing expenditure account 30-91-8100-450 (Contract Services) by \$18,000 and account 30-91-3940-900 (Transfer from Water Capital) by \$100,000.

**FUNDING SOURCE:** N/A

**ATTACHMENTS:**

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

Budget Amendment # 2021-1  
Fiscal Year 2020-2021

Dept.	Account #	Account Name	Debit	Credit	Comments
	30-91-8100-450	Contract Services	18,000.00		This is an adjustment made necessary because the Asheville water line transfer places us in a new category which requires monitoring seven days a week instead of five.
	30-91-3940-900	Transfer from Water Capital		18,000.00	

Totals:                      18,000                      18,000

BD # \_\_\_\_\_  
Journal # \_\_\_\_\_  
Fiscal Yr \_\_\_\_\_  
Date \_\_\_\_\_

Entered By: \_\_\_\_\_  
Approved By: \_\_\_\_\_  
Date \_\_\_\_\_

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION**

**Meeting Date:** July 13, 2020

**SUBJECT:** Budget Amendment for Restoration on Riverwalk Greenway Easement

**#BA-FY-21-02**

**AGENDA INFORMATION**

**Agenda Location:** CONSENT AGENDA  
**Item Number:** 5D  
**Department:** Finance  
**Contact:** Kirk Medlin, Finance Director  
**Presenter:** Josh Harrold, Town Manager

**BRIEF SUMMARY:** This budget amendment is necessary for bank stabilization and restoration work on a Riverwalk Greenway easement. This area is quite active, and it needs to be stabilized in order to manage and secure the integrity of the easement for future greenway construction. This is a time-sensitive issue to the area; also, it is out of sequence by FWHA regulations, so no Federal funds can be utilized for this expense.

**MOTION FOR CONSIDERATION:** To approve Budget Amendment BA-FY2021-02 as submitted, increasing expenditure account 10-10-5400-543 (Transfer to Gen Capital Project) by \$20,000 and 10-00-3905-900 (Fund Balance Appropriated) by \$20,000.

**FUNDING SOURCE:** N/A

**ATTACHMENTS:** Budget Amendment – FY 2021 - #2

**MANAGER’S COMMENTS AND RECOMMENDATIONS:** Adopt as presented.

Budget Amendment # 2021-2  
Fiscal Year 2020-2021

Dept.	Account #	Account Name	Debit	Credit	Comments
	10-10-5400-543	Transfer to Gen Capital Project	20,000.00		This reflects time-sensitive work on bank stabilization and restoration work on a Riverwalk Greenway easement.
	10-00-3905-900	Fund Balance Appropriated		20,000.00	

Totals:                      20,000                      20,000

BD # \_\_\_\_\_  
Journal # \_\_\_\_\_  
Fiscal Yr \_\_\_\_\_  
Date \_\_\_\_\_

Entered By: \_\_\_\_\_  
Approved By: \_\_\_\_\_  
Date \_\_\_\_\_



**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION**

**Meeting Date:** July 13, 2020

**SUBJECT:** Resolution #R-20-08 Supporting Blue Ridge Road Interchange I-4409

**AGENDA INFORMATION**

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

**BRIEF SUMMARY:** The Blue Ridge Road Interchange Project I-4409 is a funded transportation project on the NC State Transportation Improvement Plan that will help to alleviate traffic congestion in downtown Black Mountain as well as provide better access for truck traffic to the western side of town. Right of way acquisition is scheduled to begin June 2021 and construction is scheduled to begin in June 2023.

**MOTION FOR CONSIDERATION:** To approve Resolution #R-20-08 Affirming Support of the Blue Ridge Road Interchange Project I-4409.

**FUNDING SOURCE:** NCDOT Funding

**ATTACHMENTS:** Draft Resolution R-20-08

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

**RESOLUTION NO. R-20-08**

**RESOLUTION SUPPORTING BLUE RIDGE ROAD INTERCHANGE, PROJECT I-4409**

**WHEREAS**, the access from Interstate Highway 40 to the Town of Black Mountain and its businesses is by way of a partial cloverleaf south of the center of town on N.C. Highway 9 at Exit 64 and an additional access east of town at Exit 66 in Ridgecrest; and

**WHEREAS**, the next exit west of the main exit on N.C. Highway 9 is five miles away in Swannanoa; and

**WHEREAS**, the numerous businesses in and around the downtown and the conference centers in Montreat, Christmount and Blue Ridge generate a heavy traffic flow downtown; and

**WHEREAS**, a large portion of such traffic must either travel through downtown Black Mountain on U.S. Highway 70 or enter Black Mountain by traveling north on N.C. Highway 9 into the center of town; and

**WHEREAS**, large trucks and tour buses traveling north on N.C. Highway 9 from Exit 64 are forced to make turns onto State Street (U.S. Highway 70) at an intersection that was not designed and built to accommodate turns by such large vehicles, which would be partially alleviated by an exit at Blue Ridge Road that would allow traffic that must reach downtown locations along U.S. Highway 70 to travel directly along that highway, reducing traffic congestion; and

**WHEREAS**, all the new I-40 interchange proposed to be constructed at Blue Ridge Road will provide access into and out of the south side of town for all traffic and a direct route along U.S. Highway 70 to downtown businesses without a need to turn in the center of town, reducing traffic congestion.

**IT IS NOW, THEREFORE, RESOLVED** by the Board of Aldermen of the Town of Black Mountain that it hereby affirms its support the completion of an I-40 interchange at Blue Ridge Road.

I move the adoption of the foregoing resolution.

\_\_\_\_\_  
Alderman

**READ, APPROVED AND ADOPTED**, by a vote of \_\_\_\_\_ to \_\_\_\_\_, this the 13<sup>th</sup> day of July, 2020.

\_\_\_\_\_  
Don Collins, Mayor

\_\_\_\_\_  
Josh Harrold, Town Manager

\_\_\_\_\_  
Town Clerk

## LEASE AGREEMENT

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

Prepared by & return to: **Ronald E. Sneed**  
**P.O. Box 995, Black Mountain, NC 28711**

THIS LEASE AGREEMENT (the "Lease") is made and entered into this \_\_\_\_\_ day of July, 2020, by and between **THE TOWN OF BLACK MOUNTAIN**, a North Carolina Municipal Corporation, the "Landlord" or "Town", and **STEPHANIE SULTZMAN**, (the "Tenant").

### WITNESSETH:

WHEREAS, Landlord desires to let and lease to Tenant, and Tenant desires to let and lease from Landlord, upon the terms and conditions hereinafter set forth, that certain real property being that portion of the Carver Center located at 101 Carver Avenue in Black Mountain, Buncombe County, North Carolina, commonly referred to as the "Annex".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by the Tenant, Landlord has leased and rented, and by these presents does lease and rent, unto the Tenant who hereby agrees to lease from the Landlord, upon the terms and conditions which are hereinafter contained, the Property:

1. Description. Landlord does hereby lease to Tenant the Property, together with any and all rights, easements and appurtenances pertaining thereto running in favor of Landlord with respect to the Property, and all improvements, including, without limitation, that portion of the building at 101 Carver Avenue commonly referred to as the Annex, being approximately 2,577 square feet.

2. Term. The initial term of this Lease shall commence September 1, 2020 (the "Commencement Date"), and shall expire, unless extended pursuant to the terms of Item 2 (B) below, on the August 31, 2021.

3. Rent. The Rent shall be \$1,000.00 per month, paid in advance at the beginning of each month beginning June 1, 2019.

4. Tenant's Insurance. Beginning on the Lease Commencement Date, Tenant, at her own expense, shall provide and maintain a general liability insurance poliicy naming the Landlord, its agents and its managers as additional insureds, in the amount of \$100,000.00 per occurrence and \$500,000.00 in aggregate.

5. Damage or Destruction. In the event the buildings or improvements located on the Property shall be damaged or destroyed by fire or other disaster, Landlord may in its sole discretion determine whether such damage shall be repaired. If the Landlord decides to repair, the Tenant's duty to pay rent shall abate until such time as the repairs are completed and Tenant can resume use of the premises.

In order to insure the Landlord's ability to repair or rebuild the damaged or destroyed buildings or improvements located on the Property, Landlord shall maintain fire and extended insurance coverage or so-called "all-risk" insurance for the full replacement value of the buildings and other improvements located on the Property.

Tenant understands and agrees that the insurance which is to be obtained and maintained by the Landlord will not cover any items of personal property owned by the Tenant and kept on the property, including merchandise, inventory, furniture, equipment or trade fixtures. If Tenant desires to have such property protected by insurance, he will be responsible for obtaining hazard insurance for that purpose.

6. Maintenance and Repairs. Landlord, at its sole cost and expense, shall maintain and repair the load bearing structural walls, roof structural, foundation, and plumbing and electrical up to the metering devices serving the Premises. Landlord shall also maintain and repair all interior items including but not limited to walls, plumbing, electrical, doors, windows and HVAC. Tenant shall maintain and repair all property and improvements it brings into the classroom, including cabinets, furniture, chalkboards, etc. All supplies needed by the Tenant will be provided by the Tenant, including bathroom supplies and cleaning materials. Tenant shall be responsible for all cleaning.

7. Right of Entry. Landlord reserves the right during the term of this Lease to enter and inspect the Property at reasonable hours and in such a manner as to not interfere with the business activity conducted thereon. No inspections shall be conducted unless an authorized representative of Tenant is present.

8. Assignment and Subletting. Tenant may not assign any interest in this Lease, or sublet any portion of the leased premises, without the written consent of the Landlord.

9. Remedies upon Default. If Tenant should fail to promptly pay the Rent herein stipulated or any other sum for which Tenant is liable under the terms of this Lease within fifteen (15) days after Tenant's receipt of notice from Landlord of such delinquency, Tenant shall owe a late payment penalty of five percent (5%) of the past due rental amount. If Tenant shall fail to pay the monthly amount due within thirty days of the due date, or should the Tenant breach any of its covenants under this Lease and not cure the same within thirty (30) days after the receipt of notice from Landlord designating such

breach, the Landlord may, at his option, terminate this Lease and take possession of the Property. The foregoing rights of the Landlord shall be in addition to any rights which the Landlord may have under law or in equity.

Notwithstanding any other provision of this Lease, where the curing of an alleged default requires more than the payment of money and the work of curing said default cannot be reasonably accomplished within the time otherwise permitted herein, and where Tenant has commenced upon curing said default and is diligently pursuing same, then Tenant shall be entitled to reasonable time extensions to permit the completion of curing said default as a condition precedent to any reentry by Landlord or termination of this Lease by Landlord, and any default that is cured shall not thereafter be grounds for reentry or termination.

10. Use of the Property. The Premises shall be continuously used, throughout the term of the Lease, solely for the purposes of providing an art program for school age children and an arts based summer camp program.

11. Removal of Equipment, Fixtures and Merchandise. Landlord acknowledges that Landlord has no interest in any personal property or equipment or furniture or any trade fixtures which may be installed by Tenant upon the Property, and Landlord agrees in the future to furnish Tenant, upon request, with such waiver or similar documents as may be reasonably required by any lender or equipment lessor in connection with Tenant's acquisition or financing respecting such personal property, equipment, furniture and fixtures. All personal property, furniture, equipment, and trade fixtures, including, but not limited to, specialty equipment, shelves, cabinets, counters and signs, which are installed or placed on the Property by or at the expense of Tenant shall remain the property of the Tenant, and Tenant shall have the right at all times to remove such personal property, furniture, equipment, and trade fixtures from the Property. Landlord shall not be responsible for the condition or safety of the furniture, fixtures, equipment, trade fixtures, inventory or other personal property used or stored on the Property, and Tenant shall indemnify and hold the Landlord harmless from any claims others might make on damage to any personal property used or stored on the Property.

12. Covenant of Quiet Enjoyment. Landlord covenants and warrants to Tenant that: (i) Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this Lease for the entire lease term including any extensions thereof, and has good and marketable title to the Property in fee simple, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, encumbrances or defects in title of any nature whatsoever, (ii) this Lease is not and shall not be subject or subordinate to any mortgage of Landlord; (iii) upon Tenant's compliance with the terms of this Lease, Tenant shall quietly and peaceably hold, possess and enjoy the Property for the full term of this Lease without any hindrance or molestation by any party, and Landlord will defend the title to the Property and the use and occupancy of the same by the Tenant against the claims of all persons, whomsoever, except those claiming by or through the Tenant.

13. Waiver of Breach. It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

14. Holding Over. In the event of Tenant's continued occupancy of the Property after the expiration of the term of this Lease or any renewal or extension thereof, or any earlier termination provided or permitted in this Lease, Tenant shall be deemed to be a tenant from month-to-month. All other covenants, provisions, obligations and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

15. Notices. All notices to be given to either party by the other shall be in writing, and shall be deemed to have been given when the same is either (i) personally delivered (including delivery by any "overnight mail service"), or (ii) deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested and properly addressed to the respective party; it being specifically agreed and understood that all cure or grace periods for compliance established under the terms and provisions of this Lease shall not be deemed to have commenced until such time as notice shall have been received by the party to whom it shall have been directed, or until such time as delivery of such notice shall have been refused. All notices to be given shall be sent as follows, unless the party to receive notice has notified the other in writing of a change:

To Landlord:  
Town of Black Mountain  
160 Midland Avenue  
Black Mountain, NC 28711

To Tenant:  
Stephanie Sultzman

16. Miscellaneous.

A. The captions in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

B. Time is of the essence of the Lease and of all provisions hereof.

C. This Lease shall be construed and enforced in accordance with the laws of the State of North Carolina.

D. This Lease may be executed in several counterparts, each of which shall be an original and all collectively shall constitute one lease.

17. Successors. All the terms, covenants and conditions hereof shall be binding upon and

inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, provided that nothing in this Item shall be deemed to permit any assignments, subletting, occupancy or use contrary to the provisions of any other Item of this Lease.

IN WITNESS WHEREOF, Landlord has executed this Lease and Tenant has caused this Lease to be executed on its behalf and through its duly authorized officers, all as of the day and year first above written.

TOWN OF BLACK MOUNTAIN, Landlord

By: \_\_\_\_\_  
Josh Harrold, Town Manager

\_\_\_\_\_  
Stephanie \_\_\_\_\_, Tenant

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN**  
**REQUEST FOR BOARD ACTION**  
**Meeting Date: July 13, 2020**

**SUBJECT:** Offer to Purchase Town Property R-20-11

**AGENDA INFORMATION**

**Agenda Location:** NEW BUSINESS  
**Item Number:** 8A  
**Department:** Town Attorney  
**Contact:** Ron Sneed, Town Attorney  
**Presenter:** Town Attorney

**BRIEF SUMMARY:** Fred and Linda Alexander have offered to purchase two lots on Flat Creek Road and East Street lying within the floodway and flood zone, PIN Numbers 0710-41-9092-00000 and 0710-41-9003-00000, for \$20,000.00

**MOTION FOR CONSIDERATION:** To approve and adopt *Resolution #R-20-11* as submitted to accept the offer from the Alexanders, subject to the notice and upset bid requirements of NCGS Section 160A-369.

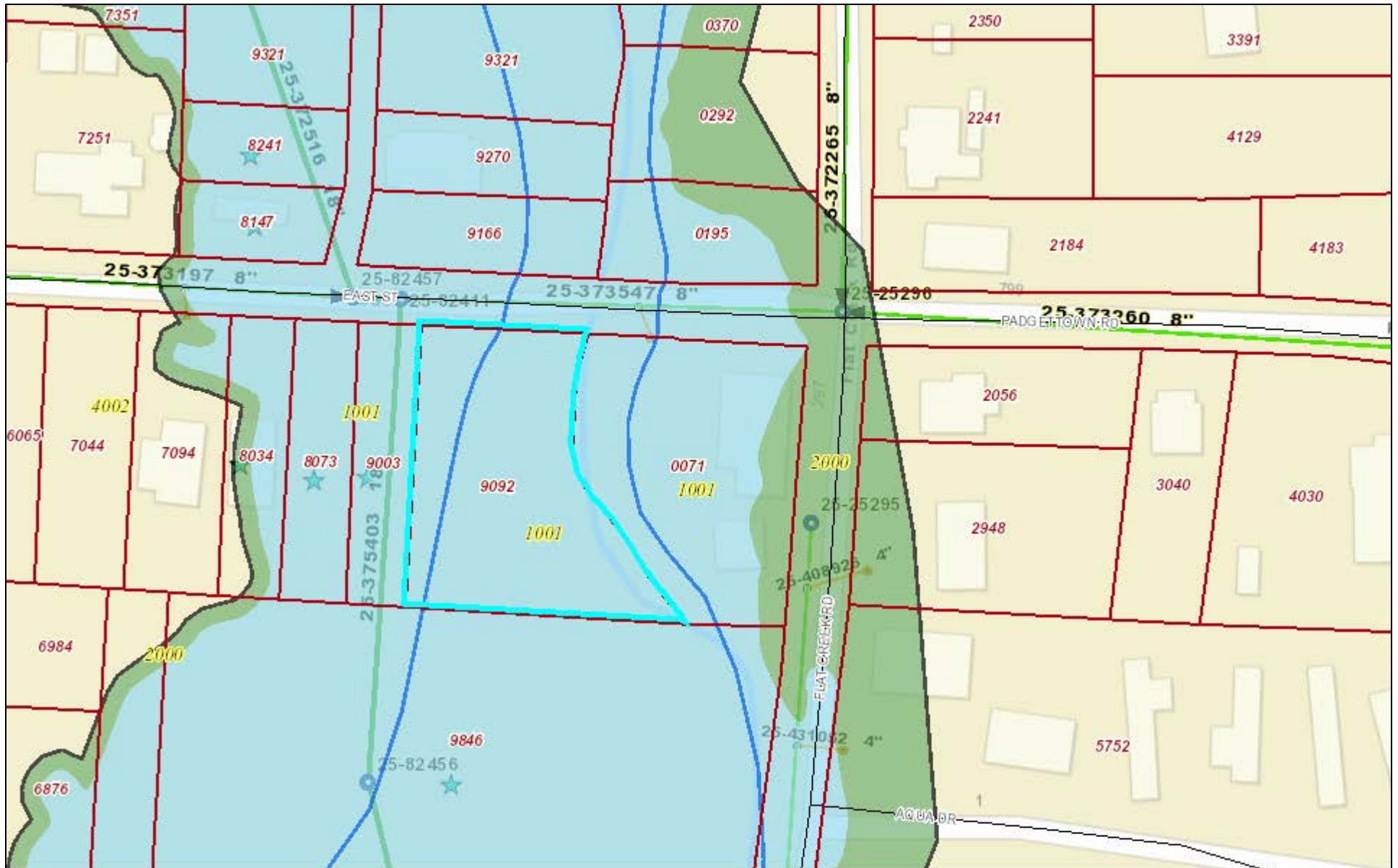
**FUNDING SOURCE:** N/A

**ATTACHMENTS:** *Resolution #R-20-11* to accept offer subject to upset bid requirements.

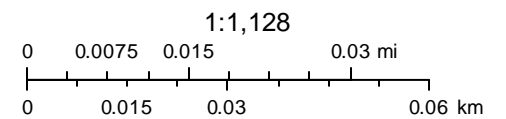
**MANAGER'S COMMENTS AND RECOMMENDATIONS:**



# Buncombe County



June 30, 2020



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

## **RESOLUTION # R-20-11**

### **A RESOLUTION TO DECLARE PROPERTY SURPLUS AND ACCEPT OFFER TO TO PURCHASE PIN Nos. 0710-41-9092-00000 and 0710-41-9003-00000 SUBJECT TO UPSET BIDS PURSUANT TO N.C.G.S. §160A-369**

WHEREAS, the Town of Black Mountain owns two parcels of property on East Street and Flat Creek Road which were given to the town by the heirs and trustees of John Currie when they determined that the property was of no value to them, but might be useful to the Town; and

WHEREAS, the Town has no use or need for the property unless there is a future need to construct a greenway along Flat Creek and through the property; and

WHEREAS, the Town has received an offer from Fred and Linda Alexander to purchase the property for \$20,000.00, which offer is reasonable since the parcel with PIN No. 0710-41-9003-00000 is subject to a 20 foot wide sewer easement that runs the entire length of the 35 foot wide lot, and the parcel with PIN No. 0710-41-9092-00000 has 75% or more of its land area lying within the floodway where no construction or improvement can occur, and Fred and Linda Alexander are willing to take title subject to the right of the Town to construct a greenway through property along Flat Creek and within the floodway.

NOW, THEREFORE, BE IT RESOLVED that the Board of Aldermen of the Town of Black Mountain hereby resolves that the properties identified on the Buncombe County Tax Maps as PIN numbers 0710-41-9092-00000 and 0710-41-9003-00000 and described in that deed to the Town of Black Mountain recorded in Book 5446 at Page 885. Buncombe County Registry, are declared to be surplus property, and that the Town shall sell such property to Fred Alexander and Linda Alexander for the sum of \$20,000.00, reserving the right to construct a greenway along Flat Creek within the floodway, upon the following terms and conditions, as provided in N.C.G.S. §160A-369.

1. The offer will be deemed accepted at the time a deposit equal to 5% of the price is delivered to the Town Clerk.
2. The terms of the offer shall be published one time in the Black Mountain News, which shall identify the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first \$1,000.00 of the offer and five percent (5%) of the remainder, and stating that if and when the bid is raised, the bidder shall deposit with the Town Clerk five percent (5%) of the increased bid.
3. If an upset bid as provided for above is received, this new offer will be advertised as above set out, and this process will be repeated until there is no higher upset bid received.
4. The Town board may at any time reject any and all offers.

I move the adoption of the foregoing resolution.

\_\_\_\_\_  
Alderman

Adopted by the Board of Aldermen of the Town of Black Mountain, North Carolina, on the 13<sup>th</sup> day of July by a vote of \_\_\_\_\_ to \_\_\_\_\_.

\_\_\_\_\_  
Don Collins, Mayor

\_\_\_\_\_  
Town Manager, Josh Harrold

ATTEST:

\_\_\_\_\_  
Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION  
Meeting Date: July 13, 2020**

**SUBJECT:** Amendment to Chapter 43: Parades, Festivals and Special Events Ordinance

**AGENDA INFORMATION**

**Agenda Location:** NEW BUSINESS  
**Item Number:** 8B  
**Department:** Town Attorney  
**Contact:** Ron Sneed, Town Attorney  
**Presenter:** Ron Sneed, Town Attorney

**BRIEF SUMMARY:** This proposed amendment to Chapter 43 is to update the ordinance to clarify provisions and to have the ordinance more readily address public demonstrations and protests

**MOTION FOR CONSIDERATION:** To approve and adopt *Ordinance #O-20-09* as presented [or as amended].

**FUNDING SOURCE:** N/A

**ATTACHMENTS:** *Ordinance #O-20-09*

**MANAGER'S COMMENTS AND RECOMMENDATIONS:** To adopt *Ordinance #O-20-09* as presented.

**ORDINANCE #O-20-09**

**AN ORDINANCE TO AMEND CHAPTER 43, ARTICLE IV, OF THE CODE OF THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES**

BE IT HEREBY ORDAINED by the Board of Aldermen of the Town of Black Mountain that Chapter 43, Article IV- PARADES, FESTIVALS AND SPECIAL EVENTS, containing Sections 43-71 through 43-80, inclusive, are hereby amended to read as follows:

**ARTICLE IV: PARADES, FESTIVALS AND SPECIAL EVENTS**

Sec. 43-71. - Purpose and applicability.

- (a) The town permits certain and specified uses in order to accommodate special events, parades, demonstrations, and other temporary uses of public property in order to ensure public health, safety and welfare by keeping local officials informed of activities that may impact the larger community or require assistance from any of the town's departments.
- (b) This article shall not apply to:
  - (1) Funeral processions;
  - (2) Any governmental agency acting within the scope of its functions;
  - (3) Special events on private property which will not require traffic control, fire inspections or other actions by Town staff or departments; or
  - (4) Students going to and from school classes or participating in educational activities, provided such activities are authorized by appropriate school authorities and are under the immediate direction and supervision of school authorities authorized to approve and supervise such special events activities.

Sec. 43-72. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Group demonstration* means any assembly, together or concert action, on public property or public rights-of-way for the purpose of protesting any matter, making known any position, for the promotion of the assembly or on behalf of any organization or person, or for the purpose of attracting attention to the assembly.

*Special event* means a planned, outdoor event which involves the gathering of a group of

persons for a common purpose, design or goal upon a public street, sidewalk, alley, park, building or other public place, including, but not limited to, outdoor activities conducted on public property or public rights-of-way, sporting events not associated with an educational facility or municipal government, public meetings or assemblies, outdoor organized entertainment or festivals, organized celebrations, or parades, and the playing of music by musicians (musical events, where tickets are sold).

Sec. 43-73. - Permit application—Required contents.

- (a) No person shall have, hold, sponsor, or cause to be had, held, or sponsored any special event without first applying to the town and receiving a permit for the event. All applications for permits must be made on forms provided by the town.
- (b) Planners of group demonstrations shall, when possible, provide a completed application for a permit, so as to allow the Town to make plans for traffic control and such other measures needed to protect the safety of demonstrators while insuring the safety of all citizens.
- (c) Applications for permits may be made to the office of the town manager or any other office as designated by the town manager.
- (d) The application must be completed in its entirety. No application shall be considered submitted until all information required by the application form has been provided. Applications shall include:
  - (1) The name, address, title and telephone number of the person responsible for the event. If the sponsor includes a sponsoring organization or corporation of any kind, the applicant shall provide the name and address of the person within the sponsoring organization or corporation who will be responsible for the event in addition to the organization or corporation's contact information;
  - (2) The nature of the proposed special event and the activities to be conducted;
  - (3) The date, hours, and location requested;
  - (4) The number of persons estimated to be in attendance, including organizers, participants, vendors and the estimated maximum number of people to be assembled at any one time;
  - (5) A description of the area to be utilized, including property owners, public rights-of-way and requested street changes, closures and parking areas, and indicated on a map. Map should indicate:
    - a. Any proposed road/lane closures;

- b. Proposed barricade, stage, vendor and other structure locations, including proposed signs;
- c. A proposed detour route; and
- d. Proposed traffic control, detour or directional signage and their

locations.

- (6) Information on emergency access to all locations within the restricted areas;
- (7) Information on proposed temporary signs and banners;
- (8) The type and location of all temporary structures, tents, air-supported structures, stages, trailers and vendors to be located at the special event, including documentation of the flammability rating of each;
- (9) Information on utility services, including electrical power, water, restroom facilities, and garbage collection and disposal;
- (10) The intention of the applicant or sponsoring organization to provide proof of adequate liability insurance coverage, the amount of which shall be determined by the Board of Aldermen, but in no event shall be less coverage than \$100,000.00;
- (11) An agreement to save and keep the town free and harmless from any and all loss or damages or claims for damages, including attorney's fees and litigation costs, arising from or out of the special event;
- (12) A schedule of times available prior to the special event to schedule inspections required by the state building and fire codes;
- (13) Agreement to comply with all municipal ordinances, rules, regulations, and other applicable laws;
- (14) Information on the location and direction of noise-emanating devices, along with proposed level, frequency, and duration;
- (15) Such other pertinent information as may be required by the town or added at the direction of the Town Manager; and
- (16) Any applicable permit or town fees as established by the Board of Aldermen. If such fee is established based on the anticipated cost to the town for traffic control, sanitation and other services, the organizers of the special event may be charged for the increase of such costs to the Town resulting from an increase in the number of participants and the enlargement of the time period of the activity. This applies to special events but not to group demonstrations when such demonstrations are an

exercise of the First Amendment rights of the participants .

Sec. 43-74. - Same—Submission and approval.

- (a) Applications for special events must be properly and fully completed prior to submission to the office of the town manager, or any other office as designated by the town manager, at least 45 days prior to the planned event.
- (b) Applications for planned group demonstrations must be properly and fully completed prior to submission to the office of the town manager at least 24 hours prior to the planned event. The application shall specify the time, date, and place for the commencement and the route and anticipated duration of any demonstration. This requirement applies to planned demonstrations and is necessary to allow the Town to have time to take such steps as are necessary to insure the ability of the participants to hold the demonstration while protecting the safety of the participants and others.

Sec. 43-75. - General standards for special events.

All special events shall meet the following standards for a permit:

- (a) Any activities related to the event, including setup and cleanup must occur between the hours of 8:00 a.m. and 11:00 p.m. Events extending over multiple days must discontinue activities at 11:00 p.m. and not reinitiate activities until 8:00 a.m.
- (b) Permitted hours of operation for specific special events may be extended, at the discretion of the issuing official, if:
  - a. Extension of hours will not result in the disturbance of properties within residential districts;
  - b. Extension of hours is necessary to minimize traffic impacts or public inconvenience;
  - c. The board is assured that any public safety or traffic concerns resulting from an extension of hours is adequately addressed by the event planners.
- (c) Events will not be held at the same time and place as any other event for which a special event permit has previously been issued.
- (d) A plan for alternate traffic and parking patterns shall be established with approval of the town police chief or his designee.
- (e) The special event will not require the diversion of so great a number of police officers, ambulances, or firemen of the town that adequate public safety cannot be



provided to the remainder of the town, nor shall the special event interfere with adequate fire and police protection of or ambulance service to areas contiguous to the assembly or location areas.

- (f) The special event will not be conducted such that there is a reasonable likelihood of violence to persons or property causing serious harm to the public.
- (g) Temporary banners or signs associated with the event and described in the permit shall be allowed with the approval of the zoning administrator. Such banners or signage shall be placed no sooner than ten days prior to the event and shall remain in place no later than five days after the event. Signage remaining after ten days shall be removed by the town.

Sec. 43-76. - Standards applicable to group demonstrations.

- (a) Group demonstrations for the purpose of exercise of First Amendment rights shall meet the following standards to keep relevant town personnel informed and to ensure public safety:
  - (1) Permit applications shall specify whether or not minors below the age of 18 years will be permitted to participate.
  - (2) Permit applications shall specify the person or persons in charge of the activity or a contact person for the Town who will at all times be present at the demonstration, and that person or contact person shall carry the permit at all times during the event.
  - (3) Picketers shall observe the right of nonpicketers to utilize public rights-of-way for passage on foot or automobile and shall at all times keep public rights-of-way free and clear for utilization. Whenever free passage of any open street, sidewalk or other public area shall be obstructed by a crowd, persons shall disperse, move along, or clear a passage when directed to do so by a police officer of the town. Nothing in this section shall prohibit any person from reconvening after dispersing so long as free passage of any street or other public area is not obstructed.
- (b) No person shall hamper, obstruct, impede, or interfere with any parade, or group demonstration being conducted under authority of a permit duly issued by the town.

Sec. 43-77. - Parking within special event areas or parade or demonstration routes.

- (a) The chief of police shall have the authority to prohibit or restrict the parking of

vehicles along a street or highway or part thereof or to close a town street to automobile traffic whenever such right-of-way constitutes an area needed for the special event or route of a parade or demonstration.

- (b) The chief of police shall see that signs are posted to such effect at least 12 hours prior to the event, and it shall be unlawful for any person to park, remain parked or leave any vehicle unattended in violation thereof.

Sec. 43-78. - Revocation of permit.

- (a) The town manager or his designee, the fire marshal, or the chief of police may revoke a special event or group demonstration permit if the holder of such permit fails to comply with the provisions of this article or any terms and conditions of such permit.
- (b) A permit revocation may be appealed to the town manager by giving written notice of such appeal within ten days of the date such revocation is effective. Any appeal shall be heard by the town manager within five working days of his receipt of such written appeal.

Sec. 43-79. - Appeals.

Any applicant wishing to appeal the decision of the town manager or his designee to deny the issuance of a permit under the guidelines of this article shall do so, in writing, to the town board of aldermen within ten days of notification that said application had been denied.

Sec. 43-80. - Violation and penalties.

- (a) It shall be unlawful for any person to:
  - (1) Carry on a special event without a required permit;
  - (2) Fail to terminate an event upon revocation of a permit or by order in the absence of a permit;
  - (3) Conduct a special event in violation of the terms and conditions of a permit issued for such event;
  - (4) Conduct an unpermitted event or activity that appears to be associated with a permitted event.
- (b) The town may enforce this article by using any one or more combinations of the foregoing remedies.
  - (1) Any violation of the provisions of this article shall result in the town immediately shutting down the event and shall subject the offender to a

civil penalty of \$500.00.

- (2) Each day's continuing violation shall be a separate and distinct offense.
- (3) Any appropriate equitable remedy issued from a court of competent jurisdiction also may be enforced.

READ, APPROVED AND ADOPTED, by a vote of \_\_\_\_\_ to \_\_\_\_\_, on this 13<sup>th</sup> day of July, 2020.

\_\_\_\_\_  
Don Collins, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN**  
**REQUEST FOR BOARD ACTION**  
**Meeting Date: July 13, 2020**

**SUBJECT:** Resolution to Allow Virtual Quasi-Judicial Meetings

**AGENDA INFORMATION**

**Agenda Location:** NEW BUSINESS  
**Item Number:** 8C  
**Department:** Town Attorney  
**Contact:** Ron Sneed, Town Attorney  
**Presenter:** Town Attorney

**BRIEF SUMMARY:** With the continuing health crisis of COVID-19, most meetings are now being held virtually. Quasi-judicial meetings are now being held virtually with the applicant and parties signing consent forms acknowledging various concerns and issues that have been brought up regarding virtual quasi-judicial meetings. In order to maintain the safety of all staff, board members and citizens, the resolution seeks to allow virtual quasi-judicial meetings.

**MOTION FOR CONSIDERATION:** To approve and adopt *Resolution #R-20-10* as submitted to allow virtual quasi-judicial meetings.

**FUNDING SOURCE:** N/A

**ATTACHMENTS:** *Resolution #R-20-10*, Consent Forms

**MANAGER'S COMMENTS AND RECOMMENDATIONS:**

**RESOLUTION #R-20-10**

**A RESOLUTION OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN,  
AMENDING THE TOWN OF BLACK MOUNTAIN REMOTE MEETING  
PARTICIPATION POLICY TO ADDRESS QUASI-JUDICIAL MATTERS  
CONDUCTED VIA ELECTRONIC PARTICIPATION DUE TO A DECLARED STATE  
OF EMERGENCY**

**WHEREAS**, the Town of Black Mountain Board of Aldermen are authorized by Section 2-42 of the Charter of the Town of Black Mountain to determine the organization, rules and order of business for advisory boards and commissions; and

**WHEREAS**, the Board of Aldermen adopted the Remote Meeting Participation Policy;  
and

**WHEREAS**, the Remote Meeting Participation Policy sets forth rules and procedures regarding remote participation in meetings; and

**WHEREAS**, the Remote Meeting Participation Policy may be amended as necessary by resolution; and

**WHEREAS**, the Town of Black Mountain Board of Aldermen desires to amend the Remote Meeting Participation Policy to allow for consideration of quasi-judicial meetings during a declared emergency and to provide certain rules and procedures therefore; and

**WHEREAS**, the Town of Black Mountain Board of Aldermen has determined that it is in the best interest of the public health, safety and welfare of the residents, employees, and officials of the Town of Black Mountain to adopt this amendment to the Remote Meeting Participation Policy.

**NOW, THEREFORE, BE IT RESOLVED** that the Aldermen of the Town of Black Mountain hereby amends the Remote Meeting Participation Policy as follows:

**REMOTE MEETING PARTICIPATON POLICY**

The Town of Black Mountain Board of Aldermen authorizes remote participation in briefings and official meetings of the Board of Aldermen in Town emergencies, as declared by the Mayor. For all open meetings, the town will take reasonable steps to allow the public to view and/or hear the proceedings, and will take reasonable steps to allow citizen comments in the regular monthly meetings of the Board of Aldermen, and to enable participation in public hearings of the Board of Aldermen and other town boards and commissions. The mechanism for allowing such public participation will be set out in the meeting agenda which will be posted on the Town's website.

Remote participation is subject to the following rules and procedures:

1. Remote participation may be used in limited circumstances. A Board Member desiring to participate in a meeting remotely must assert one or more of the following reasons for being physically unable to attend the meeting:
  - a. Personal illness or disability;
  - b. Employment purposes;
  - c. Family or other emergency;
  - d. To participate in other scheduled Town-related meetings which make it logistically impossible to attend the Board meeting; or
  - e. In times of a national emergency as declared by the President of the United States or a statewide emergency as declared by the Governor of North Carolina.
2. Remote participation may be allowed only during open sessions.
3. Remote participation shall not be allowed during the following:
  - a. ~~Quasi-judicial hearings; and~~
  - b. Closed sessions.
4. In emergency situations, remote participation will be allowed to establish a quorum pursuant to General Statute 143-318.10 (d).
5. A Board Member desiring to participate in a meeting remotely must notify the Town Clerk of the need for remote participation at least 24 hours prior to the start of the meeting, unless advance notice is impractical.
6. At the start of the official meeting and prior to participating in deliberations, the Mayor shall announce that a Board Member has requested to participate remotely, and the Board may take action to approve.
  - a. A Board Member participating remotely shall participate via teleconference communication and must be fully heard by other members of the Board and any other individuals in attendance at the meeting.
    - i. Use of telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another is necessary. If clear audio is not available, the Board may elect to disallow or discontinue the remote participation.
  - b. Such Board Member shall identify himself or herself and state the reason that he/she is participating remotely.
7. A Board member participating remotely shall be allowed to participate in all open session Board briefing discussions and open session official Board meeting discussions.
8. A Board member participating remotely shall be able to vote on matters allowed under the policy. One or more Board Members may cast the deciding vote(s) on a matter. In this event, the vote(s) shall be ratified by the remotely attending Board Member(s) at the next Town Board meeting at which the member(s) are physically present.

- a. A Board Member participating remotely shall provide a voice vote which can be heard and recorded if participating by telephone and shall provide a voice and hand vote if participating by video.
- 9. Where practical, a Board Member participating remotely shall be provided with all documents to be considered during the meeting.
- 10. This policy shall also be applicable to all Town of Black Mountain boards, commissions and committees appointed by the Board of Aldermen ~~with the exception of quasi-judicial hearings of the Board of Adjustment and the Historic Preservation Commission.~~
- 11. Applicants and witnesses for quasi-judicial hearings of the Board of Adjustment and the Historic Preservation Commission will have to sign consent forms for holding remote quasi-judicial hearings, and parties asserting standing must provide to the Clerk to the pertinent board a statement of their basis for claiming standing and sign consent forms for holding quasi-judicial hearings.**

\_\_\_\_\_  
Don Collins, Mayor

\_\_\_\_\_  
Josh Harrold, Town Manager

ATTEST:

\_\_\_\_\_  
Angela Reece, Town Clerk

**ADOPTED BY** the Aldermen of the Town of Black Mountain, North Carolina the \_\_\_\_ day of \_\_\_\_\_, 2020 and signed in authentication thereof the \_\_\_\_ day of \_\_\_\_\_, 2020.

Applicant Consent and Acknowledgment for Holding a Virtual Quasi-Judicial  
Hearing RE: \_\_\_\_\_.

I, \_\_\_\_\_, applicant for the requested (insert process), acknowledge and consent to a virtual format, via Zoom, for the project's required quasi-judicial hearing before the Town of Black Mountain Zoning Board of Adjustment. I understand that I have the burden of proof, and that remote meetings can be disadvantageous.

I acknowledge that intangible factors like veracity and rapport are difficult to establish or show via videoconference, and that it can be different to explain a map or other exhibit on video. I further acknowledge that technical glitches may occur, which may interfere with the presentation of my evidence.

Furthermore, I understand that holding quasi-judicial meetings remotely is legally questionable. Court challenges, if any, to the remote nature of this hearing could take months or even years to resolve.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date



Party with Standing Consent and Acknowledgment for Holding a Virtual  
Quasi-Judicial Hearing RE: \_\_\_\_\_.

I, \_\_\_\_\_, a party **with standing**, for the requested (insert process), acknowledge and consent to a virtual format, via Zoom, for the project's required quasi-judicial hearing before the Town of Black Mountain Zoning Board of Adjustment. I understand that I have the burden of proof, and that remote meetings can be disadvantageous.

I acknowledge that intangible factors like veracity and rapport are difficult to establish or show via videoconference, and that it can be different to explain a map or other exhibit on video. I further acknowledge that technical glitches may occur, which may interfere with the presentation of my evidence.

Furthermore, I understand that holding quasi-judicial meetings remotely is legally questionable. Court challenges, if any, to the remote nature of this hearing could take months or even years to resolve.

I have provided a separate statement of the facts I have to present to show that I have standing, and a statement of how I plan to prove those facts.

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Signed

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Date