



MINUTES

**Town of Weaverville
State of North Carolina**

**Town Council Regular Meeting
Monday, July 25, 2022**

The Town Council for the Town of Weaverville met for its regularly monthly meeting on Monday, July 25, 2022, at 6:00 p.m. in Council Chambers within Town Hall at 30 South Main Street, Weaverville, NC with remote access via zoom.

Councilmembers present were: Mayor Patrick Fitzsimmons, Vice Mayor Jeff McKenna, and Councilmembers Doug Jackson, Andrew Nagle, John Chase, Catherine Cordell, and Michele Wood.

Staff members present were: Town Manager Selena Coffey, Town Attorney Jennifer Jackson, Clerk/Planning Director James Eller, Finance Officer Tonya Dozier, Police Chief and Interim Fire Chief Ron Davis, Assistant Police Chief Somer Oberlin, and Public Works Director Dale Pennell.

1. Call to Order

Mayor Patrick Fitzsimmons called the meeting to order at 6:00 p.m.

2. Public Hearing: Code Amendment – Outdoor Lighting Regulations

Mr. Eller presented information related to the proposed outdoor lighting regulations and noted that the public hearing had been duly advertised and that the proposed regulations had received a unanimous favorable recommendation from the Planning Board.

Mr. Eller noted that no advanced public comment had been received and that no member of the public attending in person or remotely via zoom had identified themselves as wishing to make a public comment.

Mayor Fitzsimmons closed the public hearing at 6:05.

3. Approval/Adjustments to the Agenda

Councilmember Chase moved for the approval of the agenda. Councilmember Wood seconded the motion. All voted in favor of the motion to approve the agenda. Motion passed 7-0.

4. Consent Agenda

Councilmember Chase moved for the approval of the Consent Agenda. Councilmember Jackson seconded the motion. All voted in favor of the motion to approve all action requested in the Consent Agenda listed below. Motion passed 7-0.

- A. Town Council Minutes** – *approved June 20, 2022 special called meeting minutes of Council*
- B. Town Council Minutes** – *approved June 21, 2022 regular workshop minutes of Council*
- C. Town Council Minutes** – *approved June 27, 2022 regular meeting minutes of Council*

- D. Monthly Tax Report** – *Information only; submitted by Buncombe County Tax Department*
- E. Budget Amendment – Community Center** – *Approved budget amendment for donations made to the Community Center*
- F. Budget Amendment – Reappropriations** – *Carried forward certain items budgeted for FY 2021-2022 to FY 2022-2023*
- G. Amendments to Water Capital Reserve Fund and Related Capital Project Ordinance** – *Updated resolution reflective of actual funds accumulated and current appropriations*
- H. ADA Transition Plan Update** – *report on progress toward better ADA accessibility*

5. Town Manager’s Report

Ms. Coffey presented her Manager’s report to Council which included information related to the summer music series, position vacancies, Reems Creek Greenway project, grant application for County recovery funds, and traffic calming at Lake Louise.

6. General Public Comment

General public comments may be submitted either during the meeting or in writing in advance of the meeting. Normal rules of decorum apply to all comments. The general public comments section of the meeting will be limited to 20 minutes and priority will be given to those commenters in attendance. Individuals presenting comments during the meeting are generally limited to 3 minutes. Written comments that are timely received will be provided to Town Council, included as part of the minutes of the meeting, and read into the record during the 20-minute general public comment period as time allows. Written comments are limited to no more than 450 words and can be submitted as follows: (1) by emailing to public-comment@weaverville.org at least 6 hours prior to the meeting, (2) by putting your written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least 6 hours prior to the meeting, (3) by mailing your written comment (must be received not later than Monday’s mail delivery) to: Town of Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments. For more information please call (828)645-7116.

Mayor Fitzsimmons read a statement regarding general public comment during Town Council meetings. Mr. Eller also noted that written comments had been received and distributed to Town Council in advance of the meeting.

Lou Accornero spoke regarding a post made by a Councilmember on Facebook.

Doug Theroux spoke regarding a post made by a Councilmember on Facebook.

Mr. Eller noted that no member of the public attending remotely via zoom had identified themselves as wishing to make a public comment.

Mayor Fitzsimmons closed the public comment period.

7. Discussion and Action Items

A. Update from the Economic Development Advisory Committee

Phil Barnett provided Council with an update of the efforts of the Economic Development Advisory Committee including a recommendation on an amendment to the table of uses for retail establishments of a certain size within the C-1 zoning district.

B. Update from Town’s MSD Representative

Doug Dearth provided Council with an overview of the role of the MSD Board and described projects within the MSD system that are within current municipal limits.

C. Code Amendments – Outdoor Lighting Regulations

Mr. Eller noted that having held the public hearing on the matter earlier in the meeting, action was now eligible by Council.

Councilmember Jackson motioned to approve the proposed outdoor lighting regulations. Councilmember Chase seconded the motion. All voted in favor of the motion. Motion passed 7-0.

D. Code Amendments – Noise Regulations

Ms. Jackson provided Council with an overview of the proposed noise regulation amendments including a definition of amplified sound, and additional regulations related to owner and occupant responsibility and penalties and enforcement.

Vice Mayor McKenna motioned to approve the proposed noise regulations. Councilmember Chase seconded the motion. All voted in favor of the motion. Motion passed 7-0.

E. Personnel Policy Amendments

Ms. Coffey presented information related to amendments to the personnel policy which included revisions to pay for overtime work, the inclusion of a name clearing hearing and a proposed addition to the holiday schedule. Consensus was achieved to follow the holiday schedule as adopted by the state.

Councilmember Chase motioned to adopt the Resolution Amending the Town's Personnel Policy as amended to reflect that the Town will follow the holiday schedule for State employees. Councilmember Cordell seconded the motion. All voted in favor of the motion. Motion passed 7-0.

F. Remote and Hybrid Public Meetings and Repeal of Emergency Declaration

Ms. Jackson reviewed the resolution authorizing remote and hybrid public meetings adopted in February of 2022 and noted that the authority for these types of meetings by the elected body is tied to the state emergency declaration which the Governor is expected to allow to lapse in August, 2022. This leaves a legal uncertainty over the legislative authority for governing boards to continue to meet remotely outside the parameters of the emergency declaration.

Ms. Coffey spoke regarding other jurisdictions return to in person meetings as a result of these circumstances.

Consensus was achieved to continue to allow the general public to have access to Town public meetings via remote electronic access, and to allow councilmembers to attend meetings remotely as long as they do not count towards the meeting quorum or vote. Consensus was also achieved to have Council consider a resolution encouraging the North Carolina Legislature to consider a statute providing local governments the authority to meet remotely or in a hybrid nature during nonemergency times.

G. Quarterly Report – Finance Department

Ms. Dozier presented Town Council with the quarterly report for the Finance Department.

H. Quarterly Report – Planning Department

Mr. Eller presented Town Council with the quarterly report for the Planning Department.

8. Closed Session

Councilmember Cordell motioned to enter closed session to consult with the Town Attorney in order to preserve the attorney-client privilege, and to consider and give instructions to an attorney concerning the settlement of a claim. Vice Mayor McKenna seconded the motion. The motion was passed in a 6-1 vote with Councilmember Nagle cast a dissenting vote. Motion passed 6-1.

Councilmember Nagle left the meeting prior to the start of closed session.

[CLOSED SESSION]

Councilmember Cordell motioned to reenter public session. Councilmember Jackson seconded the motion and all voted in favor of the motion. Motion passed 6-0

9. Adjournment.

Councilmember Jackson motioned to adjourn the meeting. Councilmember Chase seconded the motion all voted in favor of the motion. Motion passed 6-0. Meeting adjourned at approximately 8:00.



James Eller, Town Clerk

**AMENDED AND RESTATED RESOLUTION
TO ESTABLISH A CAPITAL RESERVE FUND RELATED TO ANTICIPATED FUTURE
WATER FUND EXPENDITURES FOR CAPITAL PROJECTS AND EQUIPMENT**

WHEREAS, the Town of Weaverville has certain capital projects and equipment that involve anticipated water fund future expenditures that would benefit from water funds being set aside and accumulated for those purposes; and

WHEREAS, there is a need in the Town of Weaverville to make debt service payments on existing debt related to past capital projects for its water system and to save monies for the anticipated water treatment plant expansion project; and

WHEREAS, as allowed by Article 8 of NCGS Chapter 162A, the Town has adopted system development fees effective July 1, 2018, based on a supporting analysis performed by qualified engineers using the buy-in method; and

WHEREAS, NCGS Chapter 162A, Article 8, requires that all system development fee proceeds be accounted for in a capital reserve fund, NCGS §159-18 authorizes the creation of a capital reserve fund and NCGS §159-19 authorizes amendments to capital reserve funds previously established;

WHEREAS, by adoption of a resolution on June 18, 2018, the Town of Weaverville created a capital reserve fund related to its water system development fees and water system capital projects, and by action on June 17, 2019, and August 23, 2021, the resolution was amended and restated, and Town Council now wishes to further amend and restate such resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF WEAVERVILLE, NORTH CAROLINA, ACTING THROUGH ITS COUNCIL MEMBERS, AS FOLLOWS:

SECTION 1. Town Council hereby creates a Capital Reserve Fund ("CRF") related to the Town's Water Fund (hereafter to be known as the "Capital Reserve Fund – Water Fund") that shall be in place for 5 years or until such time as it shall be amended or terminated. This CRF may be amended by Town Council as needed to add additional appropriations, modify or eliminate existing capital projects, and/or add new capital projects, or to modify or extend the term of this CRF.

SECTION 2. The Town assesses and derives revenue from water system development fees adopted pursuant to NCGS Article 8 of Chapter 162. As allowed by NCGS § 162-211(e) water system development fees are hereby pledged to the debt service and revenue bond payments associated with the water system and shall be deposited into such accounts without having to run through this CRF. It is anticipated that the water system development fee revenues will not be sufficient to cover all of the debt service, but if such revenues do exceed the debt service payments that are scheduled in any fiscal year, then such excess water system development revenue then this resolution shall be amended to apply such excess to the capital projects set out in Section 3 below.

SECTION 3. The following is/are declared as capital projects and equipment that are subject to this CRF:

(a) **Water Fund Debt Service** – The Town of Weaverville wishes to provide funds for anticipated expenditures related to debt service on the water fund related loans:

	ACTUAL REVENUE	ESTIMATED REVENUE	EXPENSE	FUNDING SOURCE
FY19	\$204,269		(\$204,269)	FY19 Water System Dev. Fee
FY20	\$203,973		(\$203,973)	FY20 Water System Dev. Fee
FY21	\$203,616		(\$203,616)	FY21 Water System Dev. Fee
FY22	\$272,238		(\$300,471)	FY22 Water System Dev. Fee
FY22	\$28,233			FY22 Water Fund Revenue
TOTAL	\$912,329		(\$912,329)	
CURRENT BALANCE	-	-	-	
FY23		\$199,037	(\$299,037)	FY21 Water System Dev. Fee
FY23		\$100,000		FY23 Transfer from Water Fund
FY24		\$198,540	(\$298,540)	FY21 Water System Dev. Fee
FY24		\$100,000		FY24 Transfer from Water Fund
TOTAL		\$597,577	(\$597,577)	

(b) **Expansion of the Water Treatment Plant** – The Town wishes to provide funds for current and anticipated future expenditures related to the expansion of the Town’s water treatment plant. The following appropriations & expenditures are hereby made:

	ACTUAL REVENUE	ESTIMATED REVENUE	EXPENSE	FUNDING SOURCE
FY19	\$170,600			FY19 Transfer from Water Fund
FY19	\$16,351			FY19 Excess Water Sys. Dev. Fees
FY20	\$149,323			FY20 Transfer from Water Fund
FY20	\$102,495			FY20 Excess Water Sys. Dev. Fees
FY21	\$284,994			FY21 Transfer from Water Fund
FY21	\$95,472			FY21 Excess Water Sys. Dev. Fees
FY22	\$119,117			FY22 Transfer from Water Fund
FY22			(\$339,880)	Transfer to WTP Capital Project Ord. – Engineering Fees Ph 1&2
TOTAL	\$938,352		(\$339,880)	
			\$598,472	CURRENT BALANCE
FY23		TBD	TBD	Financing, Water Fund Revenue, Water Fund Balance
FY24		TBD	TBD	Financing, Water Fund Revenue, Water Fund Balance
TOTAL		TBD	TBD	

SECTION 4. This Amended and Restated Resolution shall be effective as of June 30, 2022.

ADOPTED on the 18th day of June, 2018, and subsequently amended and restated on the 17th day of June, 2019 and the 23rd day of August, 2021. **FURTHER AMENDED AND RESTATED** this the 25th day of July, 2022, by a vote of 7 in favor and 0 against .



PATRICK FITZSIMMONS, Mayor

ATTEST:



JAMES ELLER, Town Clerk



**TOWN OF WEAVERVILLE
 AMENDED AND RESTATED CAPITAL PROJECT ORDINANCE
 FOR THE WATER TREATMENT PLANT EXPANSION PROJECT**

WHEREAS, the Town is engaged in a construction project that involves the expansion of its current water treatment plant and the financing of such project and wishes to adopt a capital project ordinance for said project;

NOW, THEREFORE, BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is to be known as the “WTP Expansion Project” and involves the expansion of the current water treatment plant located at 50 Sams Road, Weaverville, NC, to a 3.0 MGD capacity.

Section 2. The Town Manager, Finance Officer/Director, Public Works Director and other officers and employees are hereby directed to proceed with the capital project within the terms and provisions of Chapter 159 of the North Carolina General Statutes, any USDA loan agreements that have been or may be approved, and the budget contained herein.

Section 3. The following revenues and resources are anticipated to be available to complete the project activities:

	<i>Original Budget</i>	<i>Amended Budget</i>
Appropriation from Water Capital Reserve Fund	\$338,500	\$339,880
Appropriation from Water Fund	TBD	
Interim Financing/USDA Loan	TBD	
Total Project Revenues		\$339,880

Section 4. The following expenditures are hereby appropriated for the project activities:

	<i>Original Budget</i>	<i>Amended Budget</i>
Engineering Fees (Phases 1-2)	\$338,500	\$339,880
Engineering Fees (Phases 3-6)	\$TBD	
Construction	\$TBD	
Legal Services (Bond Counsel)	\$TBD	
Legal Services (Local Attorney)	\$TBD	
Administrative Costs	\$TBD	
Contingencies	\$TBD	
Interest – Interim Financing	\$TBD	
Total Project Revenues		\$339,880

Section 5. The Town of Weaverville Finance Office is hereby directed to maintain within the Capital Project Fund established with this ordinance, sufficient detailed accounting records to provide accounting information as required by Chapter 159 of the North Carolina General Statutes and to comply with USDA funding requirements.

Section 6. The Budget Officer and/or Finance Officer is directed to include a detailed analysis of past and future costs and revenues of this capital project in every budget submission made to Town Council.

Section 7. The Finance Officer is directed to report at least quarterly on the financial status of each project element in Section 4 and the revenues received or expected on the project.

Section 8. The Town Manager is hereby authorized and empowered to execute any and all documents necessary to commence, carry out, and complete the capital project set forth herein without any further direction, authorization, or consent, including without limitation any and all contract documents, change orders, or any other such documents as may be necessary to give direction to engineers, contractors, and others in completing this capital project, subject to compliance with law.

Section 9. The Town Manager is authorized to transfer appropriations within the various line items of this capital project ordinance as she, in her discretion, deems necessary and if allowable by law.

Section 10. The Town Manager shall from time-to-time report to Town Council as they shall direct as to the status of completion of the capital project and/or the status of the budget for the capital project.

Section 11. Copies of this capital project ordinance shall be furnished to the Town Clerk, the Budget Officer, and the Finance Officer for direction in carrying out this project.

Section 12. This ordinance shall be effective as of June 30, 2022.

ADOPTED the 28th day of June, 2021. **AMENDED AND RESTATED** this the 25th day of July, 2022, in a vote of 7 in favor and 0 against.



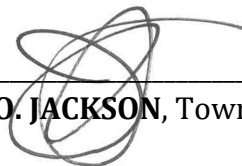
PATRICK FITZSIMMONS, Mayor

ATTESTED BY:



JAMES ELLER, Town Clerk

APPROVED AS TO FORM:



JENNIFER O. JACKSON, Town Attorney



**TOWN OF WEAVERVILLE
RESOLUTION AMENDING THE TOWN'S PERSONNEL POLICY**

WHEREAS, Part 4 of Article 7 of Chapter 160A of the North Carolina General Statutes sets forth certain requirements and provides certain authority to Town Council regarding its employees and the establishment of policies regarding its employees; and

WHEREAS, pursuant to Article I, Section 6 of the Personnel Policy, the Town Manager provided Town Council with copies of the adopted policies and her recommendations on certain amendments and additions to the Town's policies; and

WHEREAS, Weaverville has previously adopted a Personnel Policy and related policies, routinely reviews those policies, and now wishes to adopt new and revised policies regarding personnel and related matters to set forth general guidelines for its employees' conduct and benefits; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF WEAVERVILLE, NORTH CAROLINA, ACTING THROUGH ITS COUNCIL MEMBERS, AS FOLLOWS:

1. Town Council hereby amends the **PERSONNEL POLICY** as noted below, with additions shown as underlined and deletions shown with strikethroughs, with an immediate effective date, and directs that the Policy and Procedures Manual be updated with the amended policy:
 - a. Article V, Section 10, entitled "**Pay for Overtime Work**", is amended to provide employees that qualify for an FLSA 7(k) exemption with overtime calculated on a 14-day basis. To that end, the first paragraph of subparagraph (a) of Section 10 is amended to read as follows:
 - (a) **Nonexempt Employees.** Non-exempt employees will be paid at a straight time rate for hours up to the FLSA established limit for their positions (usually 40 hours in a 7-day period; ~~85~~ 171 hours for police personnel in a ~~14-day~~ 28-day cycle and ~~106~~ 212 hours for fire personnel in a ~~14-day~~ 28-day cycle, as allowed by the FLSA 7(k) exemption). Hours worked beyond the FLSA established limit will be compensated in either time or pay at the appropriate overtime rate. In determining eligibility for overtime in a work period, only hours actually worked shall be considered; in no event will ~~vacation~~ annual leave, sick leave, or holidays be included in the computation of hours worked for FLSA purposes.
 - b. The following provision is added to Article XIV as a new Section 6 to provide certain disciplined employees with an opportunity to hold a name clearing hearing:

Section 6. Name Clearing Hearing

Following the Town's decision to dismiss or demote an employee, including a probationary employee, the employee shall be afforded an opportunity for a name-clearing hearing if the decision contains negative or stigmatizing

information that could affect the employee's ability to obtain employment in the future.

The employee must request the hearing within 14 days of the date of the written disciplinary decision or the written decision in an adverse employment action appeal, whichever is later.

If requested by the employee, a time and date for the hearing will be established such that the hearing takes place prior to the release of any negative or stigmatizing information about the employee that could inhibit future employment. The employee may invite anyone the employee wishes to invite (including the media) to the hearing.

At this name-clearing hearing, the employee may present any response to information that the employee believes to be false and/or stigmatizing to the employee's reputation with respect to his or her work performance or the reasons for the dismissal or demotion. Any written comments submitted by the demoted or dismissed employee will be placed in the employee's personnel file, and a copy will be provided to anyone who requests the termination letter on that employee. In lieu of actually attending the hearing, the employee may submit written comments and they will be placed in the file just as if the employee had presented them at the scheduled hearing. If the employee speaks at the hearing but does not provide written comments, the person conducting the hearing shall take notes and place a copy of the notes in the employee's personnel file, and a copy will be provided to anyone who requests the termination letter on that employee.

There is no requirement for the Town or the hearing officer to respond in any way to the comments of the demoted or dismissed employee at the hearing. The name clearing hearing is not a substitute for, or a second opportunity for, a pre-disciplinary hearing at which the employee may contest the proposed disciplinary action. Information presented at the name clearing hearing will not be used by the Town to reconsider the disciplinary action.

- c. Article XIV, Section 3 entitled "**Disciplinary Conference for Demotion or Dismissal**" is amended to require that an employee that is demoted or dismissed be advised of their right to a name clearing hearing. To that end, subparagraph (f) of Section 3 is amended to read as follows:

- (f) **Step 6 – Employee Notification of Decision** – If the Town Manager's decision is to demote or dismiss the employee, a written letter of demotion or dismissal containing the effective date of the demotion or dismissal and the employee's appeal rights shall be issued to the employee in person or by mail to the last known address of the employee.

The effective date of a demotion or dismissal shall be determined by the Town Manager but should not be earlier than the date of the letter nor more than 14 calendar days after the notice of demotion or dismissal.

The employee shall be informed in the final decision letter that the final decision letter is a public record and that the agency is required by law to release it pursuant to a public records request. The final

decision letter shall also advise the employee of their right to a name clearing hearing to be conducted in accordance with Section 6 herein.

d. Article VII, Section 2, subparagraph (a) is amended to provide that the Town will follow the state holiday schedule:

(a) **Holiday Schedule** - The Town provides paid holidays each calendar year for eligible employees consistent with the State's holiday schedule, and includes any personal observance leave or floating holiday provided to State employees, and recognizes the following holidays:

- ~~—————~~ New Year's Day — 1 day
- ~~—————~~ Martin Luther King Birthday — 1 day
- ~~—————~~ Good Friday — 1 day
- ~~—————~~ Memorial Day — 1 day
- ~~—————~~ Independence Day — 1 day
- ~~—————~~ Labor Day — 1 day
- ~~—————~~ Veteran's Day — 1 day
- ~~—————~~ Thanksgiving — 2 days
- ~~—————~~ Christmas — 3 days

The Town Manager shall adopt and publish a schedule of holidays each year consistent with this policy ~~but taking into consideration the days of the week on which the above holidays fall.~~

2. The Town Manager is hereby directed to continue to maintain a Policy and Procedures Manual which is to include, but is not limited to, all personnel and related policies adopted by Town Council and the Town Manager, and, in accordance with Section 6 of Article I of the Personnel Policy, is directed to continue to develop, maintain and administer such guidelines, policies, and procedures indicated in the Personnel Policy, and to provide copies of those adopted policies to Town Council on an annual basis or upon request.
3. Section 1a of this resolution shall become effective beginning on July 9, 2022, in order to align with the first full pay period in FY2023. All other sections shall become effective immediately.

ADOPTED this 25th day of July, 2022.


PATRICK FITZSIMMONS, Mayor

ATTEST:


JAMES ELLER, Town Clerk



**ORDINANCE AMENDING WEAVERVILLE TOWN CODE
CHAPTER 9 CONCERNING NOISE REGULATIONS**

WHEREAS, on February 28, 2022, Town Council enacted certain noise regulations pursuant to N.C. Gen. Stat. §§ 160A-174 and 160A-193 in order declare certain conditions, situations and activities as nuisances and prohibit, regulate, and provide for the removal, abatement, or remedy of the same; and

WHEREAS, Town Council, under that same authority, now wishes to amend its noise regulations in order to strengthen and clarify its provisions;

NOW, THEREFORE, BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, as follows:

1. Article IV of Chapter 9 is hereby amended as follows with added language being shown as underlined and deleted language shown with strike-throughs:

**Chapter 9 – Nuisances
Article IV. Noise**

Sec. 9-400. Authority and jurisdiction.

The Town of Weaverville hereby finds that it is necessary to define, prohibit, regulate and summarily abate acts, omissions, or conditions that are dangerous or prejudicial to the public health or public safety within the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-193 and § 160A-174.

(Ord. of 1-28-2018(1) , § 1)

Sec. 9-401. 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:

Amplified sound: Sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Methods of amplifying sound includes, but are not limited to, sound systems, speakers, and bullhorns. Shouting and group chanting are not amplified sound and are not subject to the special rules on amplified sound but are subject to general rules on noise and disruption.

Daytime hours: The hours between 6:00 a.m. and 10:00 p.m.

Nighttime hours: The hours between 10:00 p.m. and 6:00 a.m.

(Ord. of 2-28-2022 (1) , § 1)

Sec. 9-402. Unlawful noise.

Except as otherwise provided in this article, it shall be unlawful to emit, or to cause or permit to be made, any unreasonably loud, annoying, frightening, loud and disturbing, or unnecessary noise. Specifically, it shall be unlawful to emit noise of such character, intensity, or duration as to be detrimental to the life or health of

reasonable persons of ordinary sensibilities. Factors to consider in determining whether a violation exists include, but are not limited to:

- (a) The volume of the noise;
- (b) The intensity of the noise;
- (c) Whether the nature of the noise is usual or unusual;
- (d) Whether the origin of the noise is natural or unnatural;
- (e) The volume and intensity of the background noise, if any;
- (f) The proximity of the noise to residential sleeping facilities;
- (g) The nature and zoning of the area within which the noise emanates;
- (h) The density of the inhabitation of the area within which the noise emanates;
- (i) The time of the day or night the noise occurs;
- (j) The duration of the noise; and
- (k) Whether the noise is recurrent, intermittent, or constant.

(Ord. of 1-28-2018(1) , § 1; Ord. of 2-28-2022 (1) , § 1)

Editor's note(s)—Formerly, § 9-401

Sec. 9-403. Commercial activity.

The Town of Weaverville recognizes its vibrant commercial districts and the positive economic impacts that they have on the Town. With commercially zoned areas abutting residentially zoned areas within some areas of the Town of Weaverville, a balance between the commercial owners' needs and the desire of the residential owners for quiet enjoyment of their property must be attempted.

Residents should understand and accept that some commercial activities involve noise that may emanate beyond property boundaries.

Noise regulation violations involving commercial activities in a commercially zoned area during daytime hours will only be found for noises that exceed what is reasonably found within a commercial zoning district. Commercial activities occurring during nighttime hours, however, will be subject to noise regulation violations if such noise is detrimental to the life or health of reasonable persons of ordinary sensibilities.

(Ord. of 2-28-2022 (1) , § 1)

Sec. 9-404. Amplified sound.

Amplified sound that emanates beyond property boundaries during nighttime hours is specifically found to be detrimental to public health.

Unless otherwise exempt from these regulations pursuant to Sec. 9-405, amplified sound occurring during nighttime hours is prohibited if it is found by an investigating officer to be emanating beyond the boundary of the property from which the amplified sound is occurring, and applies if the sound can be heard or felt.

Amplified sound is expressly prohibited during nighttime hours unless otherwise exempt from these regulations.

(Ord. of 2-28-2022 (1) , § 1)

Sec. 9-405. Exemptions.

The following are specific exemptions to the regulations contained in this article:

- (a) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency and any other noises associated with emergency response of any kind;
- (b) Noises of safety signals, warning devices, and emergency pressure relief valves;
- (c) Noises associated with weather-related activities including street and sidewalk clearing, and utility restoration;
- (d) Noises resulting from garbage and recycling collection and delivery truck operations as long as the vehicles and equipment are operated in accordance with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in properly operating condition;
- (e) Noises associated with lawnmowers and agricultural equipment operated during daylight hours when all the manufacturers' standard mufflers and noise-reducing equipment is in use and in proper operating condition;
- (f) Noises associated with construction operations for which building permits have been issued or are not required, as long as all equipment is operated in accordance with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in properly operating condition; provided, however, construction activity conducted outside of a fully enclosed building or structure during nighttime hours is prohibited;
- (g) Noises associated with the normal operations of a commercial drive-thru within a commercial district, including operations that utilize amplified sound;
- (h) Noises related to school operations including announcements and traffic control, which may be delivered through the use of amplified sound;
- (i) Nonamplified crowd noises resulting from the activities such as those planned by student, governmental, or community groups, or civic events or celebrations;
- (j) Noises resulting from activities of a temporary duration permitted by law and for which a license, permit, or facility rental has been granted by the town. Regulation of noises emanating from such operations shall be according to the conditions and limits stated on the license, permit or facility rental agreement.

(Ord. of 2-28-2022 (1) , § 1)

Sec. 9-406. Presumption in prosecution for noise violation.

The complaints of two or more persons, at least one of whom resides in a different home from the other complaining person or persons, shall be prima facie evidence that such sound is a loud and annoying, frightening, loud and disturbing, unreasonably loud or unnecessary noise and as such may be prosecuted privately, or by the town if an investigating officer determines that such sound is a violation of these regulations.

(Ord. of 2-28-2022 (1) , § 1)

Sec. 9-407. Private prosecution and private nuisance actions.

Nothing herein is intended to prevent or impede the private prosecution of a noise ordinance violation or the bringing of a private nuisance action.

(Ord. of 1-28-2018(1) , § 1; Ord. of 2-28-2022 (1) , § 1)

Editor's note(s)—Formerly, § 9-402.

Sec. 9-408. Complaints.

Individuals are encouraged to contact the town's police department during a noise event if it is alleged to be a violation of these noise regulations. This is not meant to discourage respectful and civil communications between neighbors in order to attempt a resolution of a noise complaint.

(Ord. of 2-28-2022 (1) , § 1)

Sec. 9-409. Violations; owner and occupant responsibility.

- (a) Violations of this article shall subject the offender to penalties as set forth in Code Sec. 9-410, subject to the provisions set forth below.
- (b) Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing the noise disturbance.
- (c) An owner of any premises subject to this article, as well as any person responsible for the premises, shall be responsible for any actions by tenants, guests, or other licensees that constitute violations of this article. This section shall in no way relieve any other person from responsibility for violations of this article.

Sec. 9-410. Penalties and Enforcement.

- (a) Violations of the provisions of this article by the same person for the same activity occurring within two years of the first violation shall be subject to civil penalties as follows:
 - First violation (per Town Code Sec. 1-6) \$100.00
 - Second violation\$200.00
 - Third violation \$500.00
 - Fourth and subsequent violation \$1,000.00 per offense
- (b) In addition to the civil penalties provided for above, the Town may enforce the provisions of this article by appropriate equitable remedies as set forth in Code Sec. 1-6 and as allowed by law.

2. It is the intention of Town Council that the sections and paragraphs of this Ordinance are severable and if any section or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs or sections of this Ordinance, since they would have been enacted by Town Council without the incorporation in this Ordinance of any such unconstitutional or invalid section or paragraph.
3. These amendments shall be effective immediately upon adoption and immediately codified.

ADOPTED THIS the 25th day of July, 2022, by a vote of 7 in favor and 0 against.



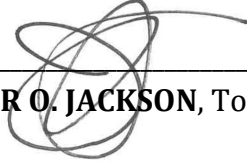
PATRICK FITZSIMMONS, Mayor

ATTESTED BY:



JAMES ELLER, Town Clerk

APPROVED AS TO FORM:



JENNIFER O. JACKSON, Town Attorney



**ORDINANCE AMENDING WEAVERVILLE TOWN CODE CHAPTER 20
CONCERNING OUTDOOR LIGHTING REGULATIONS**

WHEREAS, the Planning Board met May 3, 2022, and June 7, 2022, in order to discuss certain Code amendments that would better regulation outdoor lighting;

WHEREAS, the Planning Board found that the proposed code amendments concerning outdoor lighting are consistent with the Town’s comprehensive land use plan and are reasonable and in the best interest of the public in that such amendments provide for more orderly development by clarifying and simplifying regulations concerning outdoor lighting;

WHEREAS, after proper notice the Town Council held a public hearing on July25, 2022, in order to receive input from the public on the amendments related to outdoor lighting;

NOW, THEREFORE, BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, as follows:

1. The findings and recommendations of the Planning Board are hereby incorporated by reference and adopted by Town Council, including specifically a finding that the amendments approved herein are consistent with the Town’s adopted comprehensive land use plan.
2. Article VI of Part III of Chapter 20 is hereby repealed and replaced with the following:

ARTICLE VI – OUTDOOR LIGHTING

Sec. 20-3601. - Applicability.

The provisions of this Section shall apply to the installation of all outdoor lighting within the jurisdiction of this Ordinance except that the following shall be exempt from this Section:

- (1) Outdoor lighting installed for governmental purposes by local, state or federal governmental units and their agents.
- (2) Outdoor lighting required to be installed by laws or regulations of a local, state or federal governmental units.
- (3) All fixtures installed by public agencies, their agents, or contractors for the purpose of illuminating streets.

Sec. 20-3602. - Prohibited Outdoor Lighting.

The following types of outdoor lighting are prohibited unless exempt by Section 20-3601 above:

- (1) Light fixtures that imitate an official highway or traffic control light or sign.
- (2) Light fixtures in the direct line of vision with any traffic control light or sign.
- (3) Light fixtures that have a flashing or intermittent pattern of illumination.
- (4) Privately-owned light fixtures located in the public right-of-way.
- (5) Light fixtures that are a source of glare by their design, orientation or intensity.

- (6) Searchlights, unless used for emergency purposes.
- (7) Unshielded open vertical light fixtures.
- (8) Light fixtures that violate any law of the State of North Carolina relative to outdoor lighting.

Sec. 20-3603 - Plan Approval Required.

Outdoor lighting for non-residential development and multifamily development is subject to approval by the Administrator. The lighting plan shall show sufficient information to determine compliance with the standards of this Section and may require a photometric plan or other information which can demonstrate compliance with this article.

Sec. 20-3604 - Outdoor Lighting Requirements.

- (1) Outdoor lighting fixtures shall be installed in a manner to protect the street and neighboring properties from direct glare or hazardous interference of any kind. Glare or hazardous interference are situations where the sensation produced by luminance within the visual field is sufficiently greater than the luminance to which the eyes are adapted, such as to cause annoyance, discomfort, or loss in visual performance and visibility.
- (2) Outdoor lighting shall be constructed and operated to minimize the spillover of obtrusive light onto property outside the boundaries of the property on which the lighting is sited which could result in annoyance, discomfort or distraction to persons on the other property.
- (3) Gas station canopy lights should be recessed into the canopy to minimize light spillover.
- (4) All outdoor lighting fixtures, subject to this Section, except for temporary and emergency lighting, that would otherwise cause glare or obtrusive spillover shall be shielded, recessed or otherwise oriented or treated in such a way to prevent glare or obtrusive spill over.
- (5) As a general principle, all outdoor lighting shall be directed downward and away from adjoining property and streets.
- (6) All floodlights shall be installed such that the fixture shall be aimed down at least 45 degrees from vertical, or the front of the fixture is shielded such that no portion of the light bulb extends below the bottom edge of an external shield. Floodlights and display lights shall be positioned such that any such fixture located within 50 feet of a public street right-of-way is mounted and aimed perpendicular to and away from the right-of-way, with a side-to-side horizontal aiming tolerance not to exceed 15 degrees from perpendicular to the right-of-way.
- (7) The mounting height of all outdoor lighting shall not exceed 40 feet above finished grade, except that the mounting height of outdoor sports field and outdoor performance area lighting fixtures shall not exceed 80 feet from finished grade.
- (8) All light fixtures shall meet the IESNA definition of cutoff fixtures. Forward throw fixtures (Type IV light distribution, as defined by the IESNA) are required within 25 feet of any public street right-of-way. Alternatively, directional fixtures (such as floodlights) may be used provided they shall be aimed and shielded in accordance with this Section.
- (9) Sign lighting shall be regulated in accordance with Section 20-4108.

3. It is the intention of Town Council that the sections and paragraphs of this Ordinance are severable and if any section or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of

competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs or sections of this Ordinance, since they would have been enacted by Town Council without the incorporation in this Ordinance of any such unconstitutional or invalid section or paragraph.

- 4. These amendments shall be effective immediately upon adoption and immediately codified.

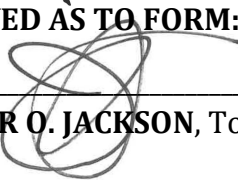
ADOPTED THIS the 25th day of July, 2022, by a vote of 7 in favor and 0 against.



PATRICK FITZSIMMONS, Mayor

ATTESTED BY:


JAMES ELLER, Town Clerk

APPROVED AS TO FORM:


JENNIFER O. JACKSON, Town Attorney

