

**ORDINANCE AMENDING ARTICLE XIII OF CHAPTER 36 (Zoning)
OF THE CODE OF ORDINANCE OF THE TOWN OF WEAVERVILLE**

WHEREAS, the Code of Ordinances of the Town of Weaverville includes provisions for amendments to the zoning regulations, but does not specify the procedure for individuals to follow; and

WHEREAS, this amendment is consistent with the Town's Comprehensive Land Use Plan, is reasonable and in the public interest because it sets forth a procedure for individuals to request an amendment to the zoning ordinance text or the zoning maps;

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

SECTION ONE. Article XIII Amendments, including Sections 36-355 through 36-359, be and is hereby repealed in its entirety and the following substituted in lieu thereof:

ARTICLE XIII TEXT AMENDMENTS AND MAP AMENDMENTS

Sec. 36-355. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

Sec. 36-356 Initiation of amendments

Proposed changes or amendments to the text of this chapter may be initiated by the Town Council, the Planning Board, the Board of Adjustment, any owner of a legal or equitable interest in land located in the Town or its extraterritorial jurisdiction, or any resident of the Town or its extraterritorial jurisdiction. Except for petitions for a conditional zoning district, which must follow the procedure set forth in Section 36-84, proposed zoning map amendments may be initiated by the Town Council, the Planning Board, the Board of Adjustment, or any owner of a legal or equitable interest in the property for which the map amendment is requested.

Sec. 36-357. Petition requirements.

(a) *Pre-filing meeting.* Before filing a petition for an amendment to the text or map, an applicant shall meet with the zoning administrator to discuss the proposed amendment or request and to become more familiar with the applicable requirements and approval procedures of the Town.

(b) *Filing.*

(1) A petition requesting an amendment shall be filed with the zoning administrator on a form provided by the Town.

(2) Petitions must be submitted no later than ten (10) business days before a regularly scheduled Town Council meeting in order to be considered at the next regularly scheduled Town Council meeting.

(c) *Content of petition applications.*

(1) Each application shall contain or be accompanied by all information required on the application form provided by the Town.

(2) Every amendment proposing to change the district boundary lines shall be accompanied by a metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the zoning administrator to plot or otherwise identify the amendment on the official zoning maps of the Town.

(3) Any person designated by the owner(s) of the property included in the petition to serve as agent for the owner shall submit such authorization in writing with the application.

(d) *Petition Fees.* Fees shall be paid to the Town for each application for an amendment to the text or map according to the schedule of fees and charges adopted by the Town.

Sec. 36-358. Initial Review by the Town Council

(a) *Review-general.* Upon receipt of a completed and timely application, the Town Council shall consider the request at its next regularly scheduled meeting.

(b) *Action.* After its initial consideration of the application, the Town Council may refer the request to the Planning Board for the full review process, or may decide that the

request shall not be considered. If the Town Council decides that the request shall not be considered, the request shall be terminated.

Sec. 36-359. Review by the Planning Board,

(a) *Review—general.* The Planning Board shall consider a proposed amendment to the text or map. The Planning Board will make recommendations to the Town Council regarding whether to approve or deny each proposed amendment.

(b) *Affirmative recommendation by the Planning Board.* Following an affirmative recommendation by the Planning Board on the proposed amendment, the action shall be reported to the Town Council for a public hearing and final action.

(c) *Negative recommendation by the Planning Board.* If the Planning Board has made a negative recommendation on an amendment, the petitioner may, within 30 days after written notification from the Town Clerk of such negative recommendation, request that a public hearing be held by the Town Council. This request shall be in writing and submitted, within the 30-day period, to the Town Clerk. If the petitioner fails to request a public hearing before the Town Council within the allotted 30-day time frame, then the denial shall be considered affirmed by the Town Council and the normal administrative remedies provided by this chapter satisfied. Furthermore, the waiting period for subsequent applications as set forth in Section 36-365 shall apply to all property included in a petition denied in this manner.

Amendments initiated by the Town Council which receive a negative recommendation from the Planning Board shall not be required to follow the appeals process set forth above. The recommendation of the Planning Board on an amendment initiated by the Town Council shall be forwarded to the Town Council for review and action.

(d) *No action by the Planning Board.* If the Planning Board has made neither a positive nor a negative recommendation on a proposed amendment within 90 days of first considering it, the proposed amendment shall be forwarded to the Town Council for consideration. The proposed amendment shall be accompanied by a record of the Planning Board's comments regarding the amendment and the reasons, if any, for their lack of action.

(e) *Content of recommendations.* Any recommendation made by the Planning Board to the Town Council pursuant to this section shall be in writing and shall include a statement describing whether the proposed amendment is consistent with the comprehensive land use plan and any other applicable plan, and shall address any other matter deemed appropriate by the Planning Board.

Sec. 36-360. Action by the Town Council.

(a) *Review—general.* Following receipt of a recommendation on a proposed amendment or, in the case of a negative recommendation, the receipt of the petitioner's request for a public hearing or in the case of no action by the Town Planning Board as described in Section 36-359 above, the Town Council shall hold a public hearing on the proposed amendment. Notice of the hearing shall be provided in accordance with the provisions of the North Carolina General Statutes. In addition, when a zoning map amendment is proposed, the Town shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within

a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons.

(b) *Action.*

(1) Before acting on any proposed amendment, the Town Council shall consider any recommendation made by the Planning Board, the comments made at the public hearing, and any other relevant additional information.

(2) When considering a proposed amendment, the Town Council will not evaluate the petition based on any specific proposal for the use or development of the property. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those which would apply to all uses permitted by the requested classification.

(3) Upon reviewing all pertinent information, the Town Council may:

- a. Adopt the proposed amendment;
- b. Reject the proposed amendment;
- c. Refer the proposed amendment back to the Planning Board for further consideration or hearing; or
- d. Modify the proposed amendment.

(4) *Considerations during decisions.* Prior to adopting or rejecting any amendment, the Town Council shall adopt a statement describing whether its action is consistent with the comprehensive land use plan and any other applicable plan, and shall state why the action taken is considered to be reasonable and in the public interest.

Sec. 36-361. Protests,

(a) *Protest petitions.* In case of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the Town Council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

(b) *Qualifications.*

(1) *Signatories required.* To qualify as a protest, under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (**5%**) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the Buncombe County tax listing to determine the 'owners' of potentially qualifying areas.

(2) *Qualified signatures.* Where the owner of property submitting a protest petition is something other than an individual, married couple holding the property as an entirety, or fewer than five joint owners (tenancy in common, joint tenants, eta), the petition shall be accompanied by copies of appropriate documentation that the petition has been signed by all of the record owners of the protesting property, and in the case of an owner that is not a real person, documentation showing that the petition has been executed in the proper form for that entity. Where the property is titled in the name of someone who is deceased, divorced, or otherwise no longer an owner of the property, the petition shall so state. An opinion from a licensed North Carolina attorney as to the legal sufficiency of the form of execution of a protest petition will suffice for this requirement

(c) *Exceptions* The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to a conditional zoning district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional zoning district.

(d) *Form and time for filing.* No protest against any change in or amendment to the zoning map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Town Clerk in sufficient time to allow the Town at least two normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The Town Council requires that all protest petitions be on a form prescribed and furnished by the Town, and such form may prescribe any reasonable information deemed necessary to permit the Town to determine the sufficiency and accuracy of the petition. The Town provides protest petition forms at the office of the Town Clerk. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in N.C. Gen. Stat. sec. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement,

Sec. 36-362. Applicability.

Amendments to zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to N.C. Gen. Stat., sec. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to N.C. Gen. Stat. sec. 160A-418 and unrevoked pursuant to N.C. Gen. Stat., sec. 160A-422 or (ii) a vested right has been established pursuant to N.C. Gen. Stat. sec. 160A-385.1 and such vested right remains valid and unexpired pursuant to N.C. Gen. Stat. sec. 160A-385.1.

Sec. 36-363. Conflict of interest.

A Town Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and

readily identifiable financial impact on the member. Members of appointed boards providing advice to the Town Council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Sec. 36-364. Waiting period for subsequent applications.

(a) *Waiting period - general* When an application for a zoning amendment has been approved or denied by the Town Council, no rezoning application covering the same property shall be accepted or considered within 12 months after the date of the approval or denial. This restriction shall apply regardless of whether or not the new application is for a zoning classification different from the original application.

(b) *Waiting period - waiver.* The waiting period required by this section may be waived by a three-fourths vote of Town Council if it determines that there have been substantial changes in conditions or circumstances which may relate to the request.

SECTION TWO. Severability.

It is the intention of the Town Council that the sections, paragraphs, sentences clauses and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph or section 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 phrases, clauses, sentences, paragraphs and sections of this ordinance, since they would have been enacted by the Town Council without the incorporation in this ordinance of any such unconstitutional or invalid phrase clause sentence paragraph or section.

SECTION THREE. Effective Date.

This ordinance shall be effective upon adoption.

Read, approved and adopted this the 24th day January, 2011.

Al Root, Mayor

Shelby Shields, Town Clerk