

## ORDINANCE 05-01

WHEREAS, the Town of Boone has adopted a water system hydraulic analysis and master plan completed by W.K. Dickson; and

WHEREAS, the water system hydraulic analysis and master plan has revealed that the Town of Boone has a very limited remaining capacity in its water distribution system; and

WHEREAS, the Town of Boone has begun planning for alternative raw water sources and possible water treatment plant expansion, but at this time does not know whether, to what extent, and within what time frame the Town may be able to add to its raw water sources; and

WHEREAS, The Town of Boone Water and Sewer Use Ordinance provides for the provision by the Town of water and sewer services both within the corporate limits and outside the corporate limits, including with the extra-territorial jurisdiction (ETJ) of the Town and beyond the boundaries of the Town and its ETJ; and

WHEREAS, during its planning process and until new sources for raw water are developed, the Town must closely monitor and prioritize the distribution of water to new applicants for water service; and

WHEREAS, the Town of Boone's water system was designed to provide water service only in the primary pressure zone, but through *ad hoc* decisions made with respect to individual requests, water service has at times been extended into the secondary pressure zone without the Town having studied the overall effects and costs of the general extension of water services into the secondary pressure zone, and those extensions have caused unexpected construction, engineering and fire protection problems; and

WHEREAS, during the administration of this Ordinance since it was first adopted in 2005, a number of issues have arisen relating to the applicants reserving water for extended periods without following through on proposed projects; and

WHEREAS, the Boone Town Council desires to amend the existing policies in the Town of Boone Water and Sewer Use Ordinance so as to establish priorities for the availability of water to new customers and to afford itself the necessary time within which to determine the future ability of the Town to serve the needs of its citizens and to assess the desirability of permanently amending the Water and Sewer Code to prioritize the future distribution of services; and

NOW, BE IT THEREFORE RESOLVED that pursuant to its police powers created under N.C. Gen. Stat. § 160A-174, in order to provide for the health and welfare of the citizens of Boone, and pursuant to N.C. Gen. Stat. § 160A-312, which confers upon the Town the authority to protect and regulate its water distribution system through the adoption of reasonable rules, the Boone Town Council hereby amends the following policy concerning the provision of water service to new customers. For its stated duration, unless extended, to the extent the following creates any conflict with the Town of Boone Water and Sewer Ordinance, the following

provisions supercede and control the provision of water by the Town of Boone:

1. To the extent feasible and during the term of this Resolution, the Town shall allocate its remaining water usage gallons, evenly in yearly increments of 50,000 gallons for a four year period beginning January 1, 2008, along with any unused allocation from a prior calendar year made available in the following calendar year. In addition, through and including December 31, 2011, the Town shall reserve an allocation of 10,000 gallons per day from its available water supply for possible allocation to existing vacant lots within the corporate limits of the Town. However, when either a Stage II or Stage III water shortage is declared pursuant to Article VII of the Town of Boone Water and Sewer Code, or imposed on the Town by the State of North Carolina, the Town Council may suspend its consideration and approval of any new water applications. Likewise, the Town Council may direct the Public Utilities Department to suspend its consideration of any new water allocations until further action by the Council. Any approval of water service in a particular calendar year shall ordinarily be attributed to the available allocation for that same calendar year; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from any year within the term of this resolution, but the periods of time established in paragraph 5 herein for the expiration of rights shall be measured from the date of the Town Council's approval.
2. Beginning November 2008, and no less than annually thereafter, the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years. The Council may adjust any yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity.
3. An applicant for water service shall designate the location of the property to be served, the owner of the property, and if the applicant is not the owner of the property, the legal right of the applicant to apply for and obtain service. In addition, each applicant must describe a site specific development plan for the property in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance. Any vesting of water rights which is obtained through a successful application during the term of this ordinance vests to the property itself for the specific project rather than to the applicant personally. Therefore, any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the water rights, the time periods described herein, or the payment of required fees; water rights may not be transferred from the property designated in the application to a different piece of property, even for the same or a similar site specific development plan; and substantial changes may not be made in the site specific development plan on the property designated in the application without a new application and appropriate payment of fees. A "substantial change" is one for which a different type of principal zoning use is proposed, e.g. multi-family to commercial, or there is more than a ten percent (10%) change, plus or minus, in the predicted water use for the site specific development plan, as determined by the

calculations prescribed in paragraph 5, provided that a reduction in predicted use which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a “substantial change” for purposes of this ordinance. No new application may be approved for a property on which water rights are currently vested without the written relinquishment of previously granted water rights by the owner or other person with legal authority to do so.

4. Within thirty days of the time an application is approved and at the applicant’s option, the applicant must pay either ten percent (10%) or twenty percent (20%) of the availability fee for the approved site specific development plan. Such fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town’s system if the site specific plan is constructed as proposed. Such fee may not be transferred from one property to another property, and it may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan is substantially changed, as defined in paragraph 3, above, from the plan which has been approved. If an applicant pays ten percent (10%), the applicant shall be entitled to a one year initial vesting period; if an applicant pays twenty percent (20%), the applicant shall be entitled to a two year initial vesting period.
  
5. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. The water usage predicted as to each application shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by .60. Except for requests for service outside the corporate limits and extra-territorial jurisdiction of the of the Town (“ETJ”), any request for water service which involves predicted usage, as thus calculated, of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Likewise, in each calendar year in which the Town has allocated two-thirds (2/3) of the water allotted for that year, all subsequent requests for water connection for which there is a predicted usage of more than five hundred (500) gallons per day must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request. Any request for service outside the corporate limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote. In determining the desirability of approving a connection for water service, the Council shall consider the following:
  - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
  - b. The amount of water usage in gallons per day previously approved during the calendar year;
  - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;

- d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
  - e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.
6. During the term of this Resolution, ordinarily only requests for service connections to property which is in the corporate limits will be granted. Any request for service outside the corporate limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances, water services may be extended to such property, in accordance with the provisions of this Resolution.
  7. During the term of this Resolution, no service extensions into the secondary pressure zone shall be considered for approval unless the requesting property was located inside the Boone corporate limits on or before March 8, 2007, and applicant is willing to adhere to Town of Boone secondary pressure zone specifications, including, but are not limited to: eight-inch minimum pipe diameter; booster pumping stations of EFI design with fire pumping capabilities; minimum 100,000 gallon welded joint steel storage tank; pressure protection provided for each individual water service; and Dataflow Systems radio telemetry compatible with existing Town of Boone system. In addition, no portion of a proposed extension may exceed 3,620 feet in elevation. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits.
  8. During the term of this Resolution, a connection to an existing water main in a secondary pressure zone may be approved by the Town Council where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single customer to an existing water main.
  9. Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is attributed, must obtain all needed development permits within the initial vesting period, dated from the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. Upon subsequent action by the Boone Town Council payment made prior to the expiration of the initial vesting period of the full

remainder of the availability fee predicted for the site specific development plan for which approval has been granted, the approval of a water application will be extended for an additional period matching the vesting period of approved development permits for the site specific development plan, but not less than one additional year from the expiration of the initial vesting period, and any additional vesting of development permits which is obtained during the additional vesting period shall automatically extend the water rights to match that vesting period. The payment of the full remainder of the availability fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed. Such fee may not be transferred from one property to another property, and it may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan is substantially changed, as defined in paragraph 3, above, from the approved plan. If the required availability fee at the time of the connection to the Town's system is more than the amount which has been previously paid, the remainder of the then current fee must be paid before a connection will be allowed; if the required availability fee at the time of the connection to the Town's system is less than the amount which has been previously paid, no refund shall be due. Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.

10. For purposes of this Ordinance, the term "development permits," as referred to in paragraph 9 above, shall mean the following:
  - a. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
  - b. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
  - c. In the case of commercial development projects, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: special use permits, zoning permits and building permits.
11. Whenever the Town Council approves an application for water service to either a proposed minor or major residential subdivision, the Director of Public Utilities shall subtract an amount of water from the available water calculations which reflects the projected amount of water which will be consumed when all residences in the proposed subdivision are fully constructed.

12. During the term of this Resolution, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the connection into the Town's sanitary sewer system of the discharge from private water systems, other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this Resolution. However, in order to be granted the right to connect to the sanitary sewer system, along with such other conditions as may be placed upon the applicant in accordance with the Town of Boone Water and Sewer Code, the applicant must agree to connect into the Town's water system, should the Town later request that such a connection be made, and the applicant must sign a statement of commitment to that effect, which will remain on file with the Town's Public Utilities Department.
13. Any request for water services from the Town must comply with all requirements of the Town of Boone Water and Sewer Code which are not superceded by this Resolution .
14. The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
15. This resolution shall expire December 31, 2011, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
16. This policy shall become effective upon the adoption of this Resolution.

Amended and effective this the 27th day of June, 2005.

Amended and effective this the 21<sup>st</sup> day of July, 2005.

Amended and effective this the 15<sup>th</sup> day of December, 2005.

Amended and effective this the 16<sup>th</sup> day of February, 2006.

Amended and effective this the 20<sup>th</sup> day of December, 2007.

Amended and effective this the 21<sup>st</sup> day of February, 2008.

Amended and effective this the 18<sup>th</sup> day of September, 2008.

Amended and effective this the 18<sup>th</sup> day of December, 2008.

Amended and effective this the 15th day of April, 2010.