

Regular Meeting Minutes of the Town of Highlands Board of Commissioners Meeting of September 15, 2022, at the Highlands Community Building, 71 Poplar Street, Highlands, North Carolina

Town Board Present: Mayor Pro Tempore John Dotson, Commissioner Amy Patterson, Commissioner Eric Pierson, Commissioner Brian Stiehler, Commissioner Marc Hehn and Mayor Pat Taylor

Also Present: Town Manager Josh Ward, Town Attorney Jay Coward, Finance Director Rebecca Shuler, Public Works Director Lamar Nix, MIS/GIS Director Matt Shuler, Police Officer Leah McCall, Parks & Recreation Director Lester Norris, Planning & Development Director Assistant Michael Mathis and Town Clerk Gibby Shaheen

1. Meeting Called to Order

Mayor Taylor called the meeting to order at 7:00pm.

2. Moment of Silence & Pledge of Allegiance

Mayor Taylor held a moment of silence then led the Pledge of Allegiance.

3. Statement of Conflict of Interest:

Members of the board are reminded of their duty to avoid conflicts of interest during transaction of town business and are asked to disclose any known conflict of interest or potential conflict with respect to matters to come before the town board. If any member knows of a conflict of interest or potential conflict, please state so at this time.

Commissioner Hehn disclosed a business relationship with Kimley Horn.

4. Public Comment Period

There were no comments.

5. Review and Approve the Agenda

COMMISSIONER STIEHLER MADE A MOTION TO APPROVE THE AGENDA AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER PATTERSON AND THE VOTE WAS UNANIMOUS.

6. Approval of the August 18th, 2022, Regular Meeting Minutes

COMMISSIONER PATTERSON MADE A MOTION TO APPROVE THE AUGUST 18TH, 2022, REGULAR MEETING MINUTES AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

Approval of the August 25th, 2022, Special Meeting Minutes

COMMISSIONER PIERSON MADE A MOTION TO APPROVE THE AUGUST 25TH, 2022, SPECIAL MEETING MINUTES AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

7. Reports

A. Mayor

Mayor Taylor announced that his Community Coffee at the Library on Friday, September 30, 2022, at 11:00am he had invited representative Karl Gillespie and Senator Kevin Corbin; anticipating the Fire Department to be complete in three to four weeks and was hoping for the Board to take a tour and have an open house for the public; moderate number of signs for the elections and asked for the Land Use Committee to meet to address the ordinances regarding signage; and a joint meeting with the Chamber Board will be on September 20, 2022, at 11:00am at the Recreation Park.

B. Commissioners and Committee Reports

Commissioner Hehn announced they have flu shots at Highlands Pharmacy.

C. Town Manager

Town Manager Ward announced it would be four to six weeks before the completion and move in to the Fire Department, they are installing the elevator, flooring, cabinets and finishing electrical. Fire Chief Gearhart will be getting quotes for furniture, appliances and bedding; there had been some complaints of noise at a restaurant after 11:00pm in the corridor, and the possibility of reducing the decibels in the residential areas, which is one of many things the Land Use Committee will be reviewing; and there is a joint meeting on September 22, 2022, at 6:00pm at Franklin Town Hall with the Board, Macon County Commissioners and the Town of Franklin Council.

8. Consent Agenda

- Public Works Department
- Police Department
- Parks & Recreation Department
- Planning & Development Department
- Treasurer’s Report
- Highlands Food & Wine
- Chamber Request for Earlier Street Closure October 29th
- Planning & Zoning Board Appointments

Requests for 2nd & Spring St Festival Tent

- Complete street closure of 2nd St., between Helen’s Barn Ave. and Spring St., during the following event times for crowd safety:
 - Thursday, November 10th, 6pm-11pm
 - Friday, November 11th, 7pm-11pm
 - Sunday, November 13th, 11am-4pm
- No public parking on 2nd St., between Helen’s Barn Ave. and Spring St. / Festival crew parking only:
 - Wednesday, November 9th-Monday, November 14th

Request for Kelsey-Hutchinson Park for Truckin’ 2022

- HFW would like to host the Truckin’ event in KHF Park on Friday, November 11th.
- Requesting closure of Pine St. Thursday, Nov.10 at 6am-Friday, Nov.11th at 11:59pm.
- Truckin’ event site will be fully barricaded as drawn on November 11th but will begin setup on November 10th and will be removed following the end of the event on the 11th.
- We also wish to reserve the parking spaces along 5th St. (on the park side) during this time as well.

The Main Event Main Street, Highlands NC

- As in 2021, we are requesting street closure of Main St., between 4th St. & 5th St. from:
- 11:00pm, Friday, November 11th
 - 6:00pm, Saturday, November 12th
 - We also wish to reserve the parking spaces along 5th St. (on the park side) during this time as well.

Hi Josh,

We request the park be closed at 2:00pm on Saturday, October 29. The Highlands Heritage Jamboree will start at 3:00pm and end at 7:30pm.

Highlands Police Chief Holland said she does not have a problem with the early start time.

Event summary:

A first-time event, Highlands Heritage Jamboree will celebrate and honor our history with traditional music, dancing and food on Oct. 29. We will have bagpipes from 3:00-3:30, a clogging performance from the Baily Mountain Cloggers from 3:30-4:30, and bluegrass from Laney and Friends 5:00-7:30.

Please let me know if you need anything else. Thank you!

Marci Sherwood

Events and Programs Manager

Highlands Chamber of Commerce and

Visit Highlands, NC

events@highlandschamber.org

828-526-5841



Agenda Item

Date: September 15, 2022

To: Mayor Patrick Taylor and Town Board of Commissioners

Prepared By: Michael Mathis

Subject: **Planning Board Appointments**

Members Brad Armstrong and Rick Trevathan resigned, leaving two vacancies on the Town of Highlands Planning Board. The Land Use Committee met on Tuesday, September 6, 2022, and have recommended KC Cunningham and Robert McEver to fill the openings.



Agenda Item

Date: September 15, 2022

To: Mayor Patrick Taylor and Town Board of Commissioners

Prepared By: Michael Mathis

Subject: **Zoning Board Appointments**

The Town of Highlands currently has a vacancy for an alternate on the Zoning Board. The Land Use Committee met on Tuesday, September 6, 2022, and have recommended Robert Wood to fill the opening.

COMMISSIONER PATTERSON MADE A MOTION TO ACCEPT THE CONSENT AGENDA AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

9. Big Bear Pen Tower Report

MIS/GIS Director Matt Shuler said he had the studies done on our Tower regarding periodic maintenance and structural analysis and if there was a possibility of other tenants and the study is complete. Shuler introduced Avery from Kimley Horne and he presented the Big Bear Pen Tower Study Report they had performed. Avery confirmed the Tower was good structurally and discussed some maintenance to be performed, he also said they didn't advise for a lightning rod. The question to Avery was if there were any interference on this site because of close proximity and he said it doesn't appear to be a concern. Shuler requested for Kimley Horne to act as general contractor to resolve the few items of maintenance and removal of unused equipment and will present that information at next month's meeting.

10. Woolf Rezoning Request – 574 Franklin Rd

Assistant Planning & Development Director Michael Mathis stated on June 17, 2022, Jason Woolf submitted a Petition for Rezoning to the Town of Highlands Planning and Development office. The subject property is located at 574 Franklin Road (PIN 7540029884), is zoned R-1 Residential, and is located within the Watershed 3 – Balance of the Watershed. On Mr. Woolf's petition, he is requesting a change from R-1 to B-4 Commercial. According to the Future Land Use Map (Within the Community Plan), the subject lot and surrounding area are intended to remain low-density residential. Therefore, the proposed rezoning is inconsistent with the Town of Highlands Community Plan. The Planning Board reviewed this application on Tuesday, September 6, 2022. They recommend that the application be denied.

COMMISSIONER STIEHLER MADE A MOTION TO DENY THE REQUEST FOR REZONING, WHICH WAS SECONDED BY COMMISSIONER PATTERSON AND THE VOTE WAS UNANIMOUS.

11. Code of Ordinances Amendments

- **Overnight Parking Revision**



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the 15th day of September, 2022, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Code of Highlands ~ Chapter 7 Motor Vehicles and Traffic, Article IV. Stopping, Standing and Parking, Sec. 7-101 – All Night Parking Prohibited

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS IN RED.)

Chapter 7 – MOTOR VEHICLES AND TRAFFIC

Article IV. Stopping, Standing and Parking

Sec. 7-101. All night parking prohibited.

No person shall park a vehicle between the hours of 2:30 a.m. and 6:00 a.m., ~~on any day, on the streets~~ **or on any public property owned by the Town.** ~~specified in the traffic schedule maintained in the office of the clerk.~~

Exemptions: Hotels, motels, residents, or renters in the B-1 district.

(Code 1982, § 7.144)

COMMISSIONER STIEHLER MADE A MOTION TO APPROVE THE ORDINANCE AMENDMENT FOR OVERNIGHT PARKING REVISIONS AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER PIERSON AND THE VOTE WAS UNANIMOUS.

- Prohibition of Camping on Town Property



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of ____ yeas and ____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the 15th day of September, 2022, and an affirmative vote of ____ yeas to ____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Code of Highlands ~ Chapter 9 Offenses, **Article III. Camping on Town Property**
(EXISTING CODE LANGUAGE IN BLACK & **PROPOSED AMENDMENTS IN RED.**)

Chapter 9 – OFFENSES

Article III. Camping on Town Property

Sec. 9-56. Purpose: This article aims to prohibit camping and/or sleeping on any public property owned by the town. This article aims to protect the aesthetics of Town property and promote health, safety, and general well-being for the residents and visitors of the Town of Highlands, therefore camping, temporary shelters and sleeping are Prohibited on Town owned public property.

Sec. 9-57. Definitions. As used in this article, the terms listed below shall have the following definitions in addition to their ordinary dictionary definitions, unless a different meaning is required by context:

Town shall mean the Town of Highlands, North Carolina, a political subdivision of the State of North Carolina.

Public property owned by the Town shall include any real property owned or controlled by the Town, including but not limited to, parks, recreation facilities, streets, sidewalks, building curtilage and public-right of ways.

Camp or Camping shall mean the use of public property owned by the Town for the purposes of sleeping, making preparation to sleep (including the laying down of bedding for the purpose of sleeping), and associated activities, including the storing of personal belongings, making any fire, remaining at or near any tent or other shelter, doing any digging or earth breaking or carrying on of cooking or other activities supportive of camping or living accommodation purposes.

Temporary Shelter shall mean tents, tarps, or any type of structure or cover that provides partial shelter from the elements.

Tent shall mean a structure, enclosure or shelter, with or without sidewalls or drops, constructed of fabric or pliable material supported by any manner except by air or the contents that it protects.

Sec. 9-58. Violations. - It shall be unlawful for anyone to camp or erect temporary shelter on any public property owned by the Town including public-right of ways.

Sec. 9-59. Enforcement and Penalties.

(a) The first violation of any provision of this article, in any twelve-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of one hundred dollars (\$100.00).

(b) The second violation of any provision of this article, in any twelve-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of two hundred dollars (\$200.00).

(c) The third violation of any provision of this article, in any twelve-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of five hundred dollars (\$500.00), and a criminal citation and prosecution under G.S. § 14-4. The maximum fine under that statute will be five hundred dollars (\$500.00).

(d) The town police department shall issue notices of violation and criminal citations for violations of this article. The notice of violation shall set forth the violated provision(s) of this article, and shall be issued to the owner, or lessee, or other person in charge of the property where the noise disturbance originates, or the person responsible for creating the noise disturbance.

(e) All civil penalties must be paid within thirty (30) days after the receipt of the notice of violation. If the violator does not pay the penalty within thirty (30) days, the town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the town.

COMMISSIONER STIEHLER MADE A MOTION TO APPROVE THE ORDINANCE AMENDMENT FOR PROHIBITION OF CAMPING ON TOWN PROPERTY AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER PIERSON AND THE VOTE WAS UNANIMOUS.

12. Financial Matters:

- Budget Amendment: Arnold Road PS Increase

TOWN OF HIGHLANDS BUDGET AMENDMENT
AMENDMENT # _____

September 12, 2022



THE TOWN OF
HIGHLANDS

FROM: Capital Projects

DEPARTMENT: Capital Projects
EXPLANATION: Arnold Rd Change Order

	Account	Description	Increase/Decrease	Debit	Credit
1.	31-3800-0910	Fund Balance Appropriated	Increase		\$136,000.00
	31-8200-9615	Transfer Capital Project	Increase	\$136,000.00	
	32-3800-0935	Transfer From Sewer Fund	Increase		\$136,000.00
	32-8455-7100	Contract – Arnold Rd. Swr Pump Rpl	Increase	\$136,000.00	
Totals				\$272,000.00	\$272,000.00

Approved by Town Manager _____

Action by Town Board _____

Approved and Entered on Minutes Dated _____

Finance Director _____

COMMISSIONER HEHN MADE A MOTION TO APPROVE THE BUDGET AMENDMENT AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

- Transfer Fire Dept. Benevolent & Relief Funds To NC Capital Management Trust Fund

Finance Director Rebecca Shuler stated the town banking accounts are currently with First Bank and the North Carolina Capital Management Trust (NCCMT). Staff would like to move the Highlands Fire and Rescue Benevolent Fund Account currently at First Bank to the North Carolina Capital Management Trust in order to gain more interest on the account. This will still allow the Town to have access to the funds as needed. Staff would recommend the Board approve moving this account from First Bank to NCCMT.

COMMISSIONER PATTERSON MADE A MOTION TO APPROVE THE TRANSFER OF THE FIRE DEPT. BENEVOLENT & RELIEF FUNDS FROM FIRST BANK TO NC CAPITAL MANAGEMENT TRUST AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER PIERSON AND THE VOTE WAS UNANIMOUS.

13. Sidewalk Engineering Proposal – Hwy 106

Mayor Taylor said he asked Public Works Director and Town Engineer Lamar Nix to review what would be involved in a sidewalk from Highlands Country Club to Main Street and Nix said it would be a big project and there would be a need for a drainage system because of environmental issues below the plaza, so he suggested possibly going down on the right side of the road out of town. Discussion was held and the Board agreed that they would like to go down the left side of the road towards Dillard, Georgia.



PO Box 838
Sylva, NC 28779
828.586.6066

September 15, 2022

Mr. Lamar Nix, PE
Public Works Director
Town of Highlands
PO Box 460
Highlands, NC 28741

RE: Proposed Sidewalk
Dillard Road – NC HWY 106

SUBJECT: DESIGN AND CONSTRUCTION COST ESTIMATE

Lamar:

As requested, this correspondence summarizes estimated costs for the design and estimated construction costs of a roadside sidewalk along the Southbound side of NC HWY 106 from the Southwest intersection of Spring Street to the Northeast intersection with Happoldt Drive.

The sidewalk will be required to meet North Carolina Department of Transportation (NCDOT) standards and be reviewed and approved by NCDOT. At a minimum, the sidewalk will be required to be constructed a width of five (5) feet and four (4) inches thickness of NCDOT approved mix concrete. Secondary road crossings will also be required to meet NCDOT standards including road crossing striping, curb ramps (if curb and gutter is required), and detectable warning domes.

Due to the topography of the project limits, it is anticipated that retaining walls will be required to contain construction within NCDOT right of way and that substantial clearing, and excavation, possibly including rock excavation by non-explosive means, will be required. Additionally, modifications to existing highway drainage conveyance measures including cross / side piping will be required.

As part of this estimate, an optional initial conceptual design phase is included which is highly recommended. With regards to design phase costing, the extent of additional engineering sub-consultants that will be required for design services that are outside the field of expertise of Stillwell Engineering including geotechnical, structural retaining wall and other engineering discipline design will be more defined. Furthermore, a more detailed construction cost estimate will be generated for an initial scope of funding that will be required to complete the project.

September 15, 2022

The following is an estimated cost breakdown of the services to be provided:

1. Conceptual Design Phase (Optional firm price): \$15,000.00
 - a. Conceptual design based upon online GIS sources including North Carolina OneMap and North Carolina Spatial Data topographical Q1/Q2 LIDAR. Also, field observation of existing drainage conveyance measures and structures and other facets that are not available via on-line sources.
 - b. Construction project cost estimate based upon conceptual design for all related construction administration, material, and installation costs to the extent possible.
2. Project Design:
 - a. Topographical Surveying: \$35,000.00
Topographical survey of the project area including location of HWY 106 edge of pavement, right of way, drainage structures, elevation data from Northbound edge of pavement to ten (10) feet beyond Southbound right of way, property lines, driveways, side roads, etc.
 - b. Base Engineering Design: \$55,000.00
Sidewalk, cross walk, curb and guttering (if required), finished grading, existing utility modifications/relocation, location and extent of retaining wall structures, and modification of existing drainage facilities/measures. Administration of all permit acquisitions and NCDOT encroachment agreements from all required local and state agencies.
 - c. Geotechnical Services for Design Testing: \$15,000.00
Testing of existing surface and subsurface soil conditions for structural stability of sidewalk and related construction.
 - d. Retaining Wall Design: \$55,000.00
Design of retaining walls in accordance with NCDOT requirements to contain the project within NCDOT right of way.

If you have any questions, please contact me at your earliest convenience.

Sincerely,



W. Alec Stillwell, P.E.

Page 2 of 2

COMMISSIONER HEHN MADE A MOTION TO MOVE FORWARD WITH A CONCEPTUAL DESIGN ON THE LEFT SIDE OF THE ROAD, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

14. EV Charging Station Policy

Mayor Taylor suggested it go to the Public Works Committee to address questions identified and a policy with the possibility of adding EV Charging Stations.

COMMISSIONER HEHN MADE A MOTION FOR THE PUBLIC WORKS COMMITTEE TO REVIEW AND DISCUSS EV CHARGING STATIONS AND POLICIES, WHICH WAS SECONDED BY MAYOR PRO TEMPORE DOTSON AND THE VOTE WAS UNANIMOUS.

15. Short Term Rental Amendments

Mayor Taylor introduced Attorney Chad Essick to present the Amendments.

Attorney Chad Essick said there were two versions of the Amendments, one sent out in the Agenda Packet and the other option for the Board to consider makes rentals non-conforming in R1 and R2, and removes the amortization provision for now, and that option can be revisited and reviewed at a later time.

Discussion was held, questions were asked.

Town of Highlands, North Carolina
UDO Text Changes
(Revised September 14, 2022)

A TEXT AMENDMENT TO THE HIGHLANDS UNIFIED DEVELOPMENT ORDINANCE: (i) DEFINING CERTAIN LODGING USES, INCLUDING SHORT TERM RENTALS; (ii) MODIFYING CERTAIN DEFINITIONS IN THE UDO; (iii) LIMITING THE LOCATION AND OPERATION OF SHORT TERM RENTALS TO CERTAIN SPECIFIED ZONING DISTRICTS; (iv) ESTABLISHING CERTAIN STANDARDS GOVERNING SHORT TERM RENTALS WHERE THEY ARE PERMITTED; AND (v) MAKING OTHER CLARIFYING AMENDMENTS TO VARIOUS PORTIONS OF THE UDO

Preamble

WHEREAS, the Vision Statement of the Town of Highlands provides: “Highlands is a vibrant and scenic mountain community founded on the beauty of the plateau’s natural environment, the uniqueness of its village character, and the richness of the area’s culture and history;” and

WHEREAS, in its Comprehensive Plan, adopted in June 2022, the Town of Highlands has established Guiding Principles to expand upon the Vision Statement and further clarify the goals of the community around specific topics critical to preserving and enhancing the high quality of life in Highlands; and

WHEREAS, these Principles embody the Town’s core philosophy of embracing and celebrating Highland’s history; and

WHEREAS, Goal No. 1 in the Comprehensive Plan provides that Highlands shall “Maintain and enhance the town center’s village character that is surrounded by mostly low-density housing that blends with the natural environment; and

WHEREAS, Goal No. 2 in the Comprehensive Plan provides that the Town shall “Preserve and enhance the natural environment and the scenic beauty of Highlands”; and

WHEREAS, Section 160A-174 of the North Carolina General Statutes empowers local government to, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to health, safety or welfare of its citizens and the peace and dignity of community, and may define and abate nuisances; and

WHEREAS, Section 160D-701 of the North Carolina General Statutes provides: “Zoning regulation shall be made [by local governments] in accordance with a comprehensive plan and 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; to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and to promote the health, safety, morals, or general welfare of the community. 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 local government’s planning and development regulation jurisdiction;” and

WHEREAS, Pursuant to the foregoing, Highlands has enacted a Unified Development Ordinance (“UDO”), one of the goals of which is to “Preserve and enhance Highlands residential neighborhoods while addressing the housing needs of current and future residents;” and

WHEREAS, a “short term rental” (“STR”) is the practice whereby a residential dwelling unit is rented for a period of less than thirty (30) days. The term “Short term rental” is not now defined in the UDO, and “short term rental” does not now appear as a permitted use under the Use Table set forth in Section 6.2.2 of the UDO. Short term rentals were generally operated on a seasonal basis by a relatively small number of property owners in Highlands. Historically such activity remained modest and stable and did not have a material adverse effect on the health, safety, atmosphere, character or culture of the single-family neighborhoods in which they were located; and

WHEREAS, the aforementioned modest and stable short term rental activity in Highlands and around the country has, in the last several years, transformed into a large-scale commercial industry; and

WHEREAS, growing, significant numbers of residential dwellings have commenced rental operation in single family residential zoning districts – primarily the R-1 and R-2 zoning districts- which districts were planned, approved and constructed for single-family occupancy by permanent residents, or as second homes; and

WHEREAS, these rental properties are often altered or constructed to increase tenant capacity, parking and impervious surfaces, recreational activities, etc., in ways that are inconsistent with the notion of single-family occupancy, and that more closely resemble commercial lodging businesses such as hotels, motels and resort properties; and

WHEREAS, the commercial short term rental industry engages in internet-based marketing of these properties to the general public on a large scale, national basis, using short term rental hosting platforms intensifying the demand for them; and

WHEREAS, as a result of the foregoing, the majority of these short-term rental properties are occupied by non-resident visitors to Highlands in a series of daily or weekly stays, over the majority of the year. Contrary to the past practice in Highlands, such properties are not occupied by tenants on a seasonal basis or by their owners as permanent or part-time residents; and

WHEREAS, the foregoing has significantly increased the number and concentration of short-term rental properties in Highlands over the last several years; and

WHEREAS, the above-described evolution of the commercial short-term rental industry has occurred without any oversight regarding: (i) the health, safety and welfare of the residents of Highlands; (ii) the character and culture of neighborhoods that were planned, approved, and constructed for single family residential uses occupied by permanent residents; or (iii) the tenants of short-term rental properties; and

WHEREAS, concurrent with the unregulated growth of the commercial short term rental industry, Highlands has experienced measurable and material increases in incidents of tenant misconduct, conditions of poorly maintained real property, and deterioration in the character, culture, and quality of life in single family residential districts such as the R-1 and R-2 zoning districts; and

WHEREAS, based on data accumulated by the short-term rental industry and reviewed by Commissioners, the growth of commercial short term rental properties in Highlands is estimated to continue unabated; and

WHEREAS, the Board of Commissioners has taken note of the regulations governing short term rental properties adopted by other communities such as Southern Pines, Blowing Rock, Asheville, Chapel Hill, and others; and

WHEREAS, in April of 2022 in the case of *Schroeder v. Wilmington*, 2022 NCCOA 210, the North Carolina Court of Appeals issued a ruling on some regulations commonly-enacted by communities in North Carolina; and

WHEREAS, the Wilmington Court ruled that the City of Wilmington's registration requirements for STRs, and those provisions of its ordinance inseparable from those registration requirements are prohibited by Section 160D-1207(d) of the North Carolina General Statutes; and

WHEREAS, at the same time, the Wilmington Court upheld some of Wilmington's program of short-term rental regulation that the Court found severable from the invalid registration process; and

WHEREAS, in its analysis of the Wilmington decision, the UNC School of Government ("UNCSOG") concluded that, pursuant to Wilmington, a lawful program of short-term rental regulation could be enacted by a local government; and

WHEREAS, the UNCSOG recommended that local governments define short term rentals as a land use and apply operational standards for STRs. The Wilmington court, and the UNCSOG found that these operating standards may include occupancy limits, safety requirements, operating standards, the restriction of STRs to certain zoning districts, parking requirements, prohibition of variances, requiring insurance, posting of emergency information, and creation of an amortization (grace) period for STRs which become non-conforming uses by virtue of a zoning-district prohibition; and

WHEREAS, the Town of Highlands has a legitimate governmental interest in: (i) safeguarding the life, health, safety, welfare, and property of Short-Term Rental occupants, neighborhoods, and the general public; (ii) minimizing the present and future adverse impacts resulting from the increase in transient rental uses in neighborhoods planned, approved, and constructed for Single Family Dwelling Units occupied by permanent residents; and (iii) encouraging policies that promote affordable housing within the Town; and

WHEREAS, the Town of Highlands may, in the future, consider amortization of nonconforming STRs within the Town's residential districts in order to accomplish the aforementioned legitimate governmental interests; and

NOW THEREFORE, be it ordained by the Town of Highlands that the following Sections of the UDO be amended by the enactment of the following as set forth below.

(EXISTING CODE LANGUAGE IN BLACK, DELETIONS BY STRIKETHROUGH, & ADDITIONS UNDERLINED AND IN RED.)

Unified Development Ordinance of Highlands, NC (UDO)
Article 2 – Definitions, Section 2.3 Definitions

1. Particular terms, as hereinafter set forth, within Section 2.3 Definitions are hereby amended or added to the list of defined terms to read as follows:

ARTICLE 2 – DEFINITIONS

Sec 2.3 Definitions

Building, Multi-Family: Any building, other than a motel, hotel, ~~or~~ tourist home or short-term rental as defined in this Ordinance, ~~intended, designed, or used as a dwelling unit by two (2) or more families or households living independently of each other and including permanent provisions for separate living, sleeping, eating, cooking and sanitation facilities~~ containing more than one (1) dwelling unit. This term includes single-family attached dwellings, duplexes, and apartments.

Duplex: A building containing two (2) dwelling units located on the same lot or parcel.

Dwelling, Multi-Family: A building ~~constructed in compliance with the North Carolina Uniform Building Code containing two (2) or more dwelling units on a single lot, including but not limited to, apartment buildings and condominiums.~~ A dwelling unit designed, intended and used by more than one (1) family.

Lodging: The use of a building, or any portion thereof, for someone to live or stay temporarily, often for periods of less than thirty (30) consecutive days in return for the payment of compensation. Lodging includes a hotel, motel, tourist home and short-term rental.

Multi-Family Residential Use: The use of a lot or parcel for human habitation by more than one (1) family within a multi-family building or a multi-family dwelling unit. This term does not include lodging uses such as hotel, motel, tourist home or short-term rental.

Single-Family Residential Use: The use of a single-family dwelling by a single family for human habitation. This term does not include lodging uses such as hotel, motel, tourist home, or short-term rental.

Short-term rental: The rental of a residential dwelling unit, for compensation, for a period of less than thirty (30) consecutive days. This term does not include hotels, motels, or tourist homes.

Tourist home: A building or part thereof, ~~other than~~ not including a motel, ~~or~~ hotel, or short-term rental, where sleeping accommodations or lodging of not more than four (4) bedrooms are provided ~~for occasional transient paying to guests with daily charge~~ paying compensation, where the owner, operator or manager also stays on the same parcel during any period of guest occupancy. This term

includes ; tourist homes shall include bed and breakfast homes, ~~or~~ inns, or rooming or boarding houses.

Unified Development Ordinance of Highlands, NC (UDO)
Article 6 – Use Regulations

2. The “Overnight Accommodations” and “Household Living” Use Categories contained in Section 6.2 Use Table are hereby amended as follows:

ARTICLE 6 – USE REGULATIONS

Section 6.2.2 Use Table

KEY: "P" = PERMITTED "S" = SPECIAL "L" = LIMITED X = NOT ALLOWED		RESIDENTIAL			NONRESIDENTIAL					
USE CATEGORY	SPECIFIC USE	R-1	R-2	R-3	B-1	B-2	B-3	B-4	GI	NOTES:
OVERNIGHT ACCOMMODATIONS	Hotels and motels	X	X	X	X	S	S	X	X	Sec. 6.5.9
	Tourist homes (bed and breakfast)	X	S	X	X	S	S	S	X	Sec. 6.5.10
	Short-term rentals	X	X	L	L	L	L	L	X	Sec. 6.5.18

KEY: "P" = PERMITTED "S" = SPECIAL "L" = LIMITED X = NOT ALLOWED		RESIDENTIAL			NONRESIDENTIAL					
USE CATEGORY	SPECIFIC USE	R- 1	R- 2	R- 3	B- 1	B- 2	B- 3	B- 4	GI	NOTES:
RESIDENTIAL USES										
HOUSEHOLD LIVING	Single-family dwellings detached	P	P	P	P	P	P	P	X	Sec. 6.3.1.A
	Single-Family Residential Use	P	P	P	P	P	P	P	X	
	Modular homes	P	P	P	P	P	P	P	X	Sec. 6.3.1.B
	Manufactured homes	X	L	L	X	X	X	X	X	Sec. 6.3.1.C
	Multi-family building, including duplexes, apartments and single-family attached dwelling	X	X	S	X	X	X	X	X	
	Multi-family dwellings	X	X	S	X	X	X	X	X	Sec. 6.3.2
	Multi-Family Residential Use	X	X	S	X	X	X	X	X	

3. Section 6.3.2 Multi-family Dwelling is hereby amended to rename the heading to “Multi-family building or dwelling”
4. Section 6.3.3 Residential Accessory Uses and Structures is hereby amended to amend Subsection A as follows:
- A. Customary Accessory Outbuildings. Appurtenant to single-family dwellings such as private garages, noncommercial buildings such as greenhouses and workshops. No residential or lodging use of any kind is allowed.

5. Section 6.5 Commercial Uses is hereby amended to add a new subsection 6.5.18 for Short-Term Rental use to read as follows:

Section 6.5 Commercial Uses

Section 6.5.18 Short-term rentals

Short-term rentals are hereby recognized as an independent use category within the planning jurisdiction of the Town of Highlands.

- A. Short-term rentals are permitted in the Zoning Districts identified in Sec. 6.2.2, Use Table, subject to the following standards:
 1. Short-term rental overnight occupancy shall not exceed two persons per bedroom plus two additional persons. Provided, however, the number of bedrooms permitted for a short-term rental shall not exceed the number of bedrooms approved for the dwelling in an improvement permit issued for the property or, if no improvement permit is available, not exceed the number of bedrooms listed on the property tax record card for the property. For properties served by a public wastewater system, overnight occupancy shall not exceed the lesser (i) two persons per bedroom plus two additional persons; or (ii) twelve persons.
 2. Short-term rentals shall not be used for special events or gatherings in excess of the overnight occupancy limit.
 3. Occupants or guests of short-term rentals shall not park vehicles on the property other than within designated parking area(s) and all parking shall be in compliance with Chapter 7, Article IV of the General Code of Ordinances and Article 9 of this Unified Development Ordinance. Vehicles parked in public right-of-way so as to violate the Town's street or parking ordinances are subject to towing at the vehicle owner's expense.
 4. Household trash shall be bagged and disposed of in Town-approved trash receptacles and short-term rentals shall otherwise comply with Chapter 12 of the General Code of Ordinances, Solid Waste Management.
 5. Occupants of short-term rentals shall at all times comply with the Town's Nuisance Ordinance, Chapter 8; and Noise Ordinance, Chapter 8, Article II of the General Code of Ordinances.
 6. The owner or operator, or an agent of the owner or operator, shall be fully responsive at any time that the property is used as a short-term rental to take and resolve complaints regarding operation of the short-term rental and its occupants and guests. The name and phone number of the owner, operator or an agent of the owner operator shall be conspicuously displayed inside near the main entrance of the short-term rental.
 7. There shall be no more than one (1) short-term rental contract governing a short-term rental during the same period of time the short-term rental is rented. Every contract for a short-term rental shall contain an addendum, in a form provided by the Town, setting forth the requirements of this Section and other applicable provisions of law. The operator shall obtain a signed acknowledgment from the renter(s) that they have received such addendum prior to delivering possession of the dwelling unit.
 8. Exterior signage is allowed in accordance with Sec. 13.4.1.C, Temporary Signs Allowed without a Permit.
- B. Notwithstanding anything in this UDO, short-term rentals in operation as of September 15, 2022 are nonconforming uses in the R-1 and R-2 zoning districts.
- C. Failure to comply with the standards and regulations as found in this Section may be enforced by the remedies and penalties in Article 15 of this ordinance.

Unified Development Ordinance of Highlands, NC (UDO)
Article 7 – Nonconformities

6. Portions of Article 7 are hereby amended as follows:

ARTICLE 7 – NONCONFORMITIES

Section 7.1.1 Purpose

Zoning regulations established by the adoption of this Ordinance or amendments to this Ordinance may cause properties and uses which were lawful prior to the adoption of certain regulations to not meet requirements after adoption of the regulations. The purpose of this section is to establish procedures and regulations for the use of those properties or structures which are in conflict with the requirements of this Ordinance. It is not the intent of this section to encourage the continuance of nonconformities that are out of character with the standards of the zoning district. It is the intent of this section, however, to allow certain nonconforming situations to continue as legal exceptions to this Ordinance. The provisions of this Section are intended and designed to limit substantial investment in nonconformities, to prohibit the intensification of nonconformities and to bring about eventual elimination or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located.

Section 7.2.1 Limitations on Nonconforming Uses

The lawful use of any building or premises at the time of the enactment of this Ordinance, or immediately preceding any applicable amendment thereto, may be continued even though the use does not conform with the provisions of this Ordinance, under, and subject to, the following conditions:

- A. A nonconforming use may not have its use changed to another nonconforming use;
- B. A nonconforming use may not be re-established after its discontinuance for a period of twelve (12) consecutive months. Continuous uninterrupted utility services without documented occupation or intermittent operation shall not constitute active operations. If the discontinuance of the use is seasonal it may be reopened provided it is done so within 12 continuance months or if caused by damage from an unintentional fire or other natural disaster, then the building in which the use is located may be repaired and/or reconstructed and the use may thereby be re-established provided repair or reconstruction has begun within twelve (12) months and completed with a Certificate of Compliance within two (2) years of such damage.

- C. A nonconforming use may not be changed, enlarged, expanded, or intensified, including expanding the use into any part of a building or property not previously occupied or in use as of the date when the legal nonconformity was established. A nonconforming use of property that is an accessory use as a result of its frequency or duration of proven historical use cannot be changed, enlarged, expanded, or intensified to become a principal use.

7. **Land Use Plan References.** All reference with the Town of Highlands Unified Development Ordinance to the term “Land Use Plan” shall be deleted and replaced with “Comprehensive Plan.”

8. **Severability.** Should any section or provision of this ordinance be declared invalid by any court of competent jurisdiction, such declaration shall affect the validity of any ordinance as a whole or any part thereof which is not specifically declared to be invalid. If any court of competent jurisdiction invalidates the application of any provision of this ordinance, then such judgement shall not affect the application of that provision to any other building, structure or use not specifically included in that judgment.

9. **Effective Date.** This Ordinance shall take effect and be in force from the date of its adoption by the Town Board of Commissioners.

READ, APPROVED AND ADOPTED this the ____ day of September, 2022.

TOWN CLERK

MAYOR



**STATEMENT OF CONSISTENCY
WITH THE TOWN OF HIGHLANDS COMPREHENSIVE PLAN FOR THE
AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE (“UDO”)
OF THE TOWN OF HIGHLANDS PER NCGS 160D-605**

Amendments to the Unified Development Ordinance (UDO) to address new or clarifying definitions and regulations for the renting of a dwelling or other structure for periods less than 30 days, including Short-Term Rentals (STRs) and other lodging uses

BE IT HEREBY RESOLVED by the Town Board of Commission of the Town of Highlands, North Carolina, that in accordance with provisions of North Carolina General Statute 160D-605, the Town Board hereby finds and determines that the amendments to the Unified Development Ordinance of the Town of Highlands, are consistent with the goals, objectives and policies of the Town’s adopted Comprehensive Plan. Specifically, the regulation of STRs within the Town of Highlands is found to be reasonable and, in the public’s best interest and will help protect and preserve the Town by promoting a small-town neighborhood atmosphere and by prohibiting or limiting lodging uses within the Town’s residential zoning districts. LU 5.5 states, “Consider updating land use regulations to define short-term rentals as a use and establish geographic restrictions, approval requirements and/or performance-based standards for the use.”

COMMISSIONER PATTERSON MADE A MOTION TO APPROVE THE DRAFT OF THE SHORT TERM REGULATIONS AS PRESENTED CONSISTENT WITH OUR COMPREHENSIVE PLAN, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS 4 TO 1 WITH COMMISSIONER HEHN OPPOSING.

16. Adjournment

AS THERE WERE NO FURTHER MATTERS TO COME BEFORE THE BOARD OF COMMISSIONERS, COMMISSIONER HEHN MOVED TO ADJOURN WHICH WAS SECONDED BY MAYOR PRO TEMPORE DOTSON AND UPON A UNANIMOUS VOTE, THE TOWN BOARD ADJOURNED AT 8:28PM.

Patrick Taylor
Mayor

Gilberta B. Shaheen
Town Clerk