

ORDINANCE 11-01
(FORMERLY ORDINANCE 05-01)

1. **Term and Applicability of Ordinance:**

- a. This ordinance shall control the approval of new water or sewer connections to the extent specified herein during the period beginning January 1, 2008 through December 31, 2013 or such other end date as the Town Council may by majority vote designate. To the extent its provisions create any conflict with the Town of Boone Water and Sewer Use Code this ordinance shall supercede and control. To the extent the provisions of this ordinance do not conflict with or otherwise supercede the Town of Boone Water and Sewer Use Code, that Code remains in full force and effect.

2. **Amount of Water which may be Allocated:**

- a. **Annual Amount Which May Be Allocated.** The amount of water available for allocation and attributable to any designated calendar year during the remaining term of this ordinance shall be 110,000 gallons per day, except 2011, in which it shall be 65,000 gallons per day (in addition to any amount reserved for the old Watauga High School property) collectively referred to as “the water census.” The Town shall always reserve at least 10,000 gallons per day from its available water supply for possible allocations to existing vacant lots within the corporate limits of the Town. In addition, in recognition of its value to the citizens of the Town and the taxpayers of Watauga County in terms of its size, key location, and financial importance; and as a result of the Town Council’s express interest in promoting the sale and beneficial development of the property currently owned by Watauga County upon which the old Watauga High School is situated (“the property”), and in recognition that the previous reserve amount of 70,000 gallons per day may not be sufficient for this property, there shall be a reserve of 150,000 gallons per day set aside until December 31, 2013 (“the high school reserve”), for allocation to the property, subject to the following conditions and provisions:

- i. For a site specific development plan (hereinafter, “the project”) to qualify for allocation of the high school reserve, both the preparation of the site for the project and the construction of the project must fully comply with all provisions of the Town’s Unified Development Ordinance, whether or not they would generally be applicable to Watauga County;
- ii. The applicant for the reserve must obtain approval for the allocation of the reserve from the Boone Town Council in conformity with this ordinance;
- iii. The application for the reserve may request an amount larger than the reserve, if needed for the project; and
- iv. If the reserve is not allocated before December 31, 2013, the water thus reserved shall again be made available to applicants in conformity with this ordinance or such other procedures which may then be in place.

- b. **Determination of the Amount of Water to be Allocated and Deducted if a Request is Granted.** The water usage predicted for each application and thus deducted from the available water from the year(s) to which it is attributed shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by .60, even in cases where an applicant asserts that actual use will be less than the predicted use.

- i. **Deductions for Subdivision Approvals.** When an application for water service to either a proposed minor or major residential subdivision is approved, the Director of Public Utilities (“the Director”) shall subtract an amount of water from the available water census which reflects the projected amount of water when all residences in the proposed subdivision are fully constructed and occupied.

- c. **Designation of Year from Which Allocation Is Made.**

- i. Depending upon which is given authority to approve an application, the Town Council or the Director shall designate the calendar year(s) from which an allocation shall be deducted.
 - ii. An approval of water service by the Director shall always be attributed to the calendar year in which it is approved.
 - iii. An approval of water service by the Town Council shall ordinarily be attributed to the calendar year in which it is approved; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from another year within the term of this resolution or may apportion the allocation over two or more years.
- d. **Water Remaining at End of Year.** Any unused allocation from a prior calendar year may be made available in any subsequent calendar year(s).
- e. **Water Shortage Declarations.** 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 for the duration of the water shortage, and it may direct the Public Utilities Department (hereafter, “the Department”) to suspend its consideration or approval of any new water applications until further action by the Town Council.
- f. **Adjustment of Water Census.** Each year while this ordinance is in effect the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years either because more water is being used than was predicted or less water is being used. At any time the Town Council may increase or decrease any yearly allocation amount based on actual usage information concerning remaining capacity.

3. **Who May Allocate Water:**

- a. **Allocations by Director.** Until the Town has allocated two-thirds or more of the full water allotment for the year during which the request is made, the Director may approve new applications for water serving property within the corporate limits of the Town (“the Town limits”) when the predicted water usage is five thousand (5,000) gallons per day or less. In addition, the Director may approve new applications for water service in the ETJ of the Town in which the predicted water usage is five hundred (500) gallon per day or less. Once more than two-thirds of the full water allotment for the year has been approved, the Director may only approve new applications for water serving property within the Town limits when the predicted water usage is no more than five hundred (500) gallons per day.
- b. **Allocations by Town Council.** Except those allocations which may be approved by the Director, every other request for a new allocation of water serving property within the Town limits or within the Town’s planning extra-territorial jurisdiction (“ETJ”) must be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Any request for a new water allocation serving property outside the Town 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.

4. **Requests for Service in the Town’s Secondary Pressure Zone.** Requests for extensions and connections into the Town’s secondary pressure zone may only be approved if the following additional criteria are satisfied. For purposes of this paragraph, an “extension” refers to the continuation of a water main beyond its currently existing limits while a “connection” is defined as the linking of pipes serving a single customer to an existing water main.

- a. **Requests for Extensions into the Secondary Pressure Zone.** No service extensions into the secondary pressure zone shall be considered for approval unless:
 - i. The property for which service is requested was located inside the Boone Town limits on or before March 8, 2007; and

- ii. The applicant agrees to adhere to Town of Boone secondary pressure zone specifications, and among other things, agrees at its expense to:
 - A. Use minimum eight-inch minimum pipe diameter;
 - B. Provides all needed booster pumping station(s) of EFI design with fire pumping capabilities;
 - C. Provides a minimum 100,000 gallon welded joint steel storage tank;
 - D. Installs pressure protection for each individual water service; and
 - E. Install Dataflow Systems radio telemetry compatible with existing Town of Boone system is provided; and
 - iii. All portions of a proposed extension are below 3,620 feet in elevation.
 - b. **Request for Connections into the Secondary Pressure Zone.** A connection to an existing water main in a secondary pressure zone may be approved by the Town Council in cases in which such connection:
 - i. Creates no negative impact on the Town's distribution system;
 - ii. Allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes;
 - iii. Results in no additional costs to the Town; and
 - iv. Otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system.
- 5. **What information Must be Provided by an Applicant for Water or Sewer Service.** At the time of application, an applicant for water service shall designate and describe the following and provide all required assurances. The refusal of an applicant to provide such information, or, for applicants for service outside the corporate boundaries of the Town, the stated unwillingness to petition for annexation or comply with the Town's Unified Development Ordinance shall be grounds for the Director to deny the application without further consideration. There shall be no appeal of the Director's denial of an application. An applicant must provide the following information and assurances, as applicable:
 - a. The name and address of the applicant;
 - b. The specific location of the property to be served so that it may be determined whether it is in the Town limits or ETJ, whether any portion of it is within the secondary pressure zone, and the relative location of available water and sewer connections;
 - c. The name and address of the owner of the property if the applicant is not the owner of the property;
 - d. If the applicant is not the owner of the property, a description of the legal rights of the applicant to apply for and obtain service and proof of those rights, as requested by the Director;
 - e. If water rights have previously been approved for a property and are currently vested, a written relinquishment of previously granted water rights signed by the owner or other person with legal authority to do so.
 - f. A site specific development plan for the property for which service is requested in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance; and
 - g. Any technical information needed by the Director to determine compliance with this ordinance or the Water and Sewer Use Code.

- h. If the application is for property located outside the corporate limits of the Town, a statement that if approved, the applicant will petition for voluntary annexation if requested to do so as a condition of approval, and in cases in which new construction or development is anticipated, the applicant will construct any such structures or develop the property in accordance with the requirements of the Town's Unified Development Ordinance if required to do so as a condition of approval.

6. Town Council Priorities in the Allocation of Water.

- a. **Requests Considered on a First-Come, First-Served Basis.** The Town shall ordinarily provide water service to future customers within the Town limits on a "first-come, first-served," basis. Hearings on requests shall be conducted by the Town Council in the order in which completed applications have been received by the Department, unless a case has been tabled to a later date for consideration either at the request of the applicant or by action of the Town Council.
- b. **Requests for Service in Town Preferred over Other Requests.** Requests for water service serving properties within the Town limits shall be preferred over other requests. Ordinarily, only requests for service connections to property which is in the Town limits will be granted.
- c. **Smaller Requests are Preferred over Larger Requests.** Ordinarily, the Town Council shall prefer small requests over large requests for water, and a request may be denied based on the determination by the Town Council that a particular request, if approved, would too greatly reduce the remaining water to be allocated.
- d. **Compliance by Applicant with Other Conditions Required by this Ordinance and the Water and Sewer Use Code.** The Town Council may also deny a request because an applicant has not complied with any other requirement of this ordinance or the Water and Sewer Use Code.

7. Additional Factors Which the Town Council May Consider When Deciding Whether to Grant a Request for Water. In addition to the priorities and considerations described in paragraph 7, the Town Council can consider the following in deciding whether to grant or deny a request for water or sewer service:

- 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 and the amount still left to be allocated for the year;
- c. 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
- d. Such other factors as may be identified by the Town Council in its deliberations, which either suggest that a particular application promotes or undermines the public health or safety, or the general welfare of the Town.

8. Conditions. The Town Council may place conditions upon a successful application for water or sewer service. Without limitation and by way of example only, the Town Council may require:

- a. That an applicant whose property is partly or wholly outside the Town limits petition the Town for annexation in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances before service is provided.
- b. That an applicant whose property is partly or wholly outside the Town limits comply with designated development policies of the Town in order to receive and continue to receive service.
- c. That an applicant granted the right to connect to the sanitary sewer system agree to connect into the Town's water system should the Town later request that such a connection be made, and that the applicant sign a statement of commitment to that

effect which will remain on file with the Town's Public Utilities Department.

9. Vesting of Water Rights.

- a. Rights Vest to Property, Not Applicant.** 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 or retention of required fees.
- b. Rights not Transferrable.** 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.
- c. Vesting Does Not Occur until Required Fees Are Paid.** No vesting of water or sewer rights occurs until the fees required by this ordinance are paid.
- d. Initial Payment of Fees.** 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.
 - i. Fees are Non-Transferrable to Another Property.** A fee paid pursuant to this paragraph may not be transferred from one property to another property.
 - ii. Fees May not be Transferred to Another Project on the Same Property.** A fee paid pursuant to this paragraph may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the plan which has been approved.
- e. Initial Vesting Period.** If an applicant pays ten percent (10%) of the availability fee for the approved site specific development plan, 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, dated from the date of approval by the Town Council or Director of the application.
- f. Lapse of Vesting after Initial Period of Vesting.** Unless extended by the payment of full availability fees, any applicant granted the right to connect to the Town's water distribution system must obtain all needed development permits within the initial vesting period or said approval will expire and the allocated water usage shall return into the water census for redistribution. For purposes of this section the term "development permits" shall mean the following:
 - i.** 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;
 - ii.** In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - iii.** In the case of a commercial development project, 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: a special use permit, a zoning permit and a building permit.
- g. Extension of Period of Vesting upon Payment of Full Availability Fees.** Upon 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.

- i. Availability Fee Payment Non-Refundable.** The funds paid pursuant to this section are 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.
- ii. Availability Fee Payment Non-Transferrable.** The funds paid pursuant to this section are non-transferrable, as described. Such funds may not be transferred as a credit from one property to another property, and they may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the approved plan.
- iii. Adjustment in Availability Fee at Time of Connection.** 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 availability fee must be paid before a connection will be allowed; if the required current 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.
- h. Expiration of Vesting.** Without regard to the payment of fees and term of vesting, 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. Changes in Development Plan after Approval.

- a. Substantial Changes Prohibited.** When an application has been approved for water or sewer service and fees paid to vest the approval, a substantial change may not be made in the site specific development plan designated in the application without a new application and appropriate payment of fees if approved. Except for a mixed use development proposed in accordance with Section 179 if the Town’s Unified Development Ordinance (a “mixed use project”), 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 2(b), 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 or modifications agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a “substantial change” for purposes of this ordinance.
- b.** A substantial change in a mixed use project shall occur when there is a change in the multi-family portion of the project which, if viewed as an independent project, would be considered a substantial change pursuant to subparagraph 11(a), or for which there is more than a 10% change, plus or minus, in the square footage of the completed commercial space from the commercial space described by the applicant at the time the application is approved, provided that a reduction in predicted square footage 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 or modifications agreed upon by the Town Council in a conditional district zoning proceeding, shall not be considered a “substantial change” for purposes of this ordinance.

11. Monthly Water Reports. The Director 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.

12. This policy as amended shall become effective upon adoption.

Amended and effective this the 15th day of March, 2011.

Amended and effective this the 26th day of April, 2011.

Amended and effective this the 17th day of May, 2011.

Amended and effective this the 20th day of September, 2011.

Amended and effective this the 13th day of December, 2011.