TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

RESOLUTION #R-10-17

**RESOLUTION OF THE BOARD OF ALDERMEN
ADOPTING A CODE OF ETHICS
AND RULES OF PROCEDURE
FOR THE GOVERNING BODY OF THE TOWN OF BLACK MOUNTAIN**

WHEREAS, the Constitution of North Carolina, Article I, Section 35, instructs that a "frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty"; and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina's state motto, "*Esse quam videri*", *(To be rather than to seem)*; and

WHEREAS, as public officials elected to the Black Mountain Board of Aldermen, members are charged with upholding the trust of the citizens of Black Mountain, and obeying the law; and

WHEREAS, the North Carolina General Assembly ratified House Bill 1452 on the 28th day of July, 2009, requiring all members of governing boards covered by this act to receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office, and again, within 12 months after each subsequent election or appointment to the office, and requiring local governing boards to adopt a code of ethics no later than January 1, 2011; and

WHEREAS, the Board of Aldermen considers it to be in the best interest of the Town to adopt such a code;

NOW THEREFORE, BE IT RESOLVED by the Town of Black Mountain Board of Aldermen, in recognition of our blessings and obligations as citizens of the State of North Carolina, as public officials representing the citizens and residents of the Town of Black Mountain, and acting pursuant to the requirements of Sections §160A-86 and §160A-87 of the North Carolina General Statutes, that the following General Principles, Code of Ethics, and Rules of Procedure are hereby adopted, to guide members of the Board of Aldermen, town employees and members of all Town advisory boards, commissions and committees in the lawful performance of their duties and the lawful exercise of decision-making authority:

CODE OF ETHICS & RULES OF PROCEDURE FOR THE MAYOR AND BOARD OF ALDERMEN BLACK MOUNTAIN, NORTH CAROLINA

PREAMBLE

The purpose of this Code is to establish ethical guidelines and appropriate standards of conduct for the Mayor and Board of Aldermen of the Town of Black Mountain. It should not be considered a substitute for the law or for a board member's best judgment. All references herein to Members, Board, Aldermen or Board of Aldermen shall be understood to include the Mayor.

The Board of Aldermen hereby directs members of all advisory boards, commissions, committees and task groups, which currently serve, or which will serve, the Black Mountain Board of Aldermen, to respect and to abide by these same General Principles and Code of Ethics in the performance of their lawful duties, insomuch as they may apply to the performance thereof.

GENERAL PRINCIPLES

- The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.

- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.

- Board members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.

- Board members serve in different capacities and roles, all with intrinsic and legitimate importance to the proper functioning of representative government:
  - As advocates, who strive to advance the legitimate needs of their citizens
  - As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions
  - As decision-makers, charged with arriving at fair and impartial determinations of an administrative or adjudicatory nature.

- Board members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.

- Board members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each board member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

Section C-1. A Board Member Shall Obey the Law

A. Board members shall support the Constitution of the United States of America and the Constitution of the State of North Carolina, and shall obey all laws, codes, regulations and ordinances enacted by the Congress of the United States and the North Carolina General Assembly pursuant thereto. In addition, Board members shall support the Charter of the Town of Black Mountain, and obey the Code of Ordinances of the Town of Black Mountain, adhering to all provisions of the Code without favor or exception.

B. Board members shall be guided by the spirit as well as the letter of the law in whatever they do. At the same time, board members should feel free to assert policy positions and opinions without fear of reprisal from fellow board members or citizens. To assert that a board member is behaving unethically because one disagrees with that board member on a question of policy is itself unfair, dishonest, irresponsible, and unethical.

C. Board members shall endeavor to keep themselves fully informed and current, through the Town Attorney, Town Manager, and other widely recognized and reliable professional resources, of the most pertinent constitutional, statutory, and legal requirements with which they must be familiar in order to meet their legal responsibilities. A list of applicable laws and regulations, which may be regularly updated, accompanies this Code as Appendix "A".

Section C-2. A Board Member Shall Uphold the Integrity and Independence of His or Her Office

Board members shall demonstrate the highest standards of personal integrity, truthfulness, honesty, forthrightness and fortitude in all their public activities in order to inspire public confidence and trust in Town government. Board members shall participate in establishing, maintaining and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly and consistently to sound values
- Exhibiting trustworthiness
- Behaving at all times as if on duty as elected officials, in both public life and private life
- Using one's best independent judgment, while at the same time being able to consider the opinions and ideas of others
- Pursuing the common good rather than individual interests in all discussion and decision-making
- Presenting one's opinions in a reasonable, forthright, consistent manner regardless of the audience
- Remaining incorruptible and unaffected by improper influence

- Remaining unswayed by partisan interests, public clamor or fear of criticism
- Disclosing contacts and information about issues received outside of public meetings, and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other board members, employees and the public with patience, respect, courtesy and honesty, and honoring the opinions of others even when the board member disagrees with those opinions
- Being careful not to reach conclusions on issues until all sides have been heard
- Recognizing that individual board members may not speak or act on behalf of the Town board as a whole, unless the board takes official action as a body to so authorize it

Section C-3. A Board Member Shall Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities

A. It is essential that Town government attract those citizens best qualified and willing to serve in elective and appointed offices. Members shall avoid impropriety in the exercise of their official duties, and official actions of the Board must be beyond reproach. The Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all the relevant facts and circumstances surrounding a board member's action would conclude that the action was inappropriate.

B. Board members shall not allow family, social, civic, partisan or other relationships to unduly influence their conduct or judgment, and shall not lend the prestige of the office of Mayor or Alderman to advance the private interests of others; nor should members convey, or permit others to convey, the impression that they are in a special position of influence or benefit. Board members shall not grant, nor seek, any special consideration, treatment or advantage beyond that which is available to every other citizen.

C. If the mayor or board member has an interest in any official act or decision before the Board, he or she shall publicly disclose on the record of the Board the nature and extent of such interest and shall withdraw from consideration of the matter, if excused by the Board pursuant to N.C.G.S. §160A-75.

D. If a board member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the Town Attorney, and should consider publicly disclosing the facts of the situation and the steps taken to resolve any real or perceived impropriety or conflict of interest.

Section C-4. A Board Member Shall Perform the Duties of the Office Diligently

A. Board members should bear their fair share of board work, regularly attending and preparing for meetings, carefully analyzing all credible information properly submitted, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters, and demanding full accountability from those over whom the board has authority.

B. Board members should actively pursue policy goals in a manner consistent with orderly decision-making, rules of procedure, open government, respecting the rights of other members to voice goals and policies different from their own.

C. Board members should demand and contribute to the maintenance of order and decorum, among themselves and the public, in all official and informal proceedings, and dispose promptly of Town business for which the board is responsible.

D. Board members shall promote conservation and development of Town resources, employing equipment, property, funds and personnel only in legally permissible pursuits, and in a manner that maintains professional competence and exemplifies excellent stewardship.

E. Board members should act as especially responsible citizens whom others can trust and respect, keeping in mind that trust and respect must continually be earned. To the extent appropriate, board members should be willing to put the board's interests ahead of their own, acknowledging the authority of the Board's majority, and refraining from attempts to undermine board policy or decisions, once action has been taken.

F. Board members shall recognize and respect the council-manager form of government, assuming legislative, adjudicatory, and policy-setting responsibilities, while refraining from inappropriate interference in the impartial administration of Town affairs by town employees.

G. Except for employees reporting directly to the Board, members shall refrain from attempting to exercise control, supervision or direction over town employees, and shall refrain from granting or seeking special consideration, treatment, advantage, or favor among employees.

H. Board members shall expect employees to observe the same high standards of fidelity, diligence that apply to board members, in addition to standards of conduct that apply specifically to employees. Board members who become aware of improper conduct or substandard performance by a town employee shall promptly inform the Town Manager.

I. Board members shall encourage and support recognized best practices in municipal administration and refrain from implementing policies or actions that may result in waste, fraud, favoritism, discrimination, nepotism, inequitable compensation or other administrative or employment practice detrimental to Town interests.

Section C-5. A Board Member Should Conduct the Affairs of the Board in an Open and Public Manner in Order to Inspire and Maintain Public Confidence and Trust

A. Board members shall conduct the affairs of the board in an open and public manner, maintaining candor and transparency, and prompt response to public records requests, in

accordance with both the letter and spirit of the state's Open Meetings and Public Records Laws. Board members shall accord to every person who is legally interested in a proceeding his or her full right to be heard according to law.

B. Board members shall demand, and contribute to ensuring, that any closed sessions held by the board are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

C. Consistent with the goal of preserving the public trust, board members shall respect the need for discretion and shall preserve confidentiality in deliberations among members, to the extent allowed by law, when the lack of discretion would pose a threat to legitimate Town interests.

Section C-6. A Board Member Should Regulate His or Her Extragovernmental Activities to Minimize the Risk of Conflict with His or Her Official Duties

A. It is acknowledged that board members have legitimate economic, professional, vocational and personal interests of a private nature. Board members should not be denied, and should not deny to other board members, the opportunity to pursue private interests, except when one's private interests conflict with applicable laws or his/her official responsibility to the public. Information acquired by board members in their official capacity may not be used or disclosed in personal financial dealings or for any other purpose not related to his or her official public duties.

B. Board members shall inform themselves of all applicable campaign finance and conflict of interest laws, adhere scrupulously to the provisions therein, refrain from financial and business dealings that may reflect adversely on the board or Town government or interfere with proper performance of official duties, and manage their personal financial interests to minimize the number of instances in which they must abstain from voting on matters coming before the Board.

C. Board members shall, at the first regular meeting following municipal elections after having taken the oath and assumed office, and at least annually thereafter, file with the Town Clerk, a written, signed disclosure statement:

i. Describing any interest the member, or his/her spouse or domestic partner, has in real property situated in whole or in part in the Town of Black Mountain, and the general description and location of that property; ***AND***

ii. Describing any legal, equitable, beneficial or contractual interest the member, or his/her spouse or domestic partner has in any business, firm or corporation, which is currently conducting business within the Town of Black Mountain pursuant to contracts awarded by the Town of Black Mountain, or is attempting, or has attempted within the past calendar year, to secure the award of a bid from the Town of Black Mountain.

Section C-7. A Board Member Should Refrain from Political Activity Inappropriate to His or Her Office

A. Members of the Board of Aldermen have a civic responsibility to support good government by every available means, to inform and educate the citizenry about Town government, and to engage citizens so as to ascertain and respond to the needs of the community. To that end, board members may affiliate with civic organizations and political parties, attend political meetings, and advocate for principles, policies and legislation consistent with federal, state and local election laws.

B. Candidates for the office of Alderman, including incumbents:

i. Should inform themselves of all applicable election laws and disclosure requirements, adhere scrupulously to the provisions therein, maintain dignity appropriate to the office, and encourage family, friends and associates to adhere to the same ethics and standards of conduct that apply to board members;

ii. Should not make pledges or promises of conduct in office that they will not or cannot perform or that would be illegal if performed;

iii. Should not knowingly misrepresent their identity, qualifications, employment, policy positions, or other material fact, and should refrain from promising anything other than faithful and impartial performance of the duties of the office.

Section C-8. A Board Member Shall Participate in Ethics Education Training

A. Board members shall comply with N.C.G.S. §160A-87 by participating in a minimum of two clock hours of ethics education within 12 months of each appointment, election, re-appointment or re-election to office, using curriculum offered by a recognized qualified source, including the North Carolina League of Municipalities, the University of North Carolina School of Government, or other qualified source of the Board's choosing.

B. The Town Clerk shall maintain a record verifying completion of the ethics requirement by each member of the Board.

Section C-9. Disciplinary Action

A. A violation of any provision of this Code of Ethics may subject a mayor or board member to disciplinary action, in the form of a resolution of censure, by majority vote of the Board of Aldermen. No such resolution of censure may be adopted until the member alleged to have committed the violation has been given notice of the alleged violation and been provided the opportunity to appear before the Board and be heard regarding the

allegation. Procedures for adopting a resolution of censure are included in the Board's rules of procedure.

B. Censure is a serious disciplinary measure, not to be undertaken lightly. Although a resolution of censure has no legal effect on the censured board member, such action may adversely impact board and public trust in a way that is detrimental to Town interests. Depending on the severity of violation, board members may determine to take a less formal approach to board discipline by verbally articulating disapproval, either publicly or privately, directly to the accused member over the perceived violation.

C. Any board member who has a question as to the applicability of this code to a particular situation may apply, orally or in writing, to the Town Attorney for advisory guidance. In no event will the Town Attorney's advisory guidance excuse a mayor or board member from complying with the Code of Ethics or other applicable law.

RULES OF PROCEDURE

The following rules of procedure are intended to guide the deliberations and actions of the Black Mountain Board of Aldermen, in support of the General Principles and standards of conduct outlined in the Code of Ethics above. The rules incorporate general principles of parliamentary procedure, applicable North Carolina laws, provisions of the Town's Charter, and specific procedural and behavioral standards to which members of the Board of Aldermen agree to abide. The rules have been developed based on the following guiding principles:

1) The Board must act as a body.
2) The Board should proceed in the most efficient manner possible.
3) The Board must act by at least a majority.
4) Every member must have an equal opportunity to participate in decision making.
5) The Board's rules of procedure must be followed consistently.
6) Action taken by the Board should be the result of a decision on the merits and not a manipulation of procedural rules.

Until such time that the Board of Aldermen determines to adopt additional rules of procedure, members shall defer to the provisions contained in the following publication and its successive editions: *Suggested Rules of Procedure for Small Local Government Boards, 2nd Edition, by A. Fleming Bell, II (UNC School of Government, Chapel Hill, NC, 1998, 38pp),* according to the sub-headings below.

Section R-1: Meetings
Section R-2: Communications & Notices
Section R-3: Agendas & Order of Business
Section R-4: Public Address to the Board
Section R-5: Presiding Officer
Section R-6: Motions
Section R-7: Quorum and Vote
Section R-8: Closed Sessions
Section R-9: Boards & Commissions/Appointments

Section R-10: Censure Procedures

If, by a majority vote of the board, the board has reasonable cause to believe that one or more of its members has violated a provision of this Code of Ethics or Rules of Procedure, it may at a regular meeting of the Board of Aldermen direct the Town Attorney to open an investigation into the matter. All information compiled, including the grounds for finding of probable cause, shall be shared with the member when it is received. All information pertaining to the case shall be subject to public inspection, reproduction and dissemination, pursuant to the North Carolina public records statutes. If, upon investigation, the board concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the board determine to proceed further with censure proceedings, it shall, by a majority vote, call for a hearing to be held at a regular meeting or at a special called meeting convened for that purpose. Notice of the hearing stating its time, place and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Alternatively, the hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the member is available for public inspection and copying in the office of the Town Clerk.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the North Carolina open meetings statues.

The accused board member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of the bias of any other board member or the presiding officer. An audio or video and audio tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken and recorded in the board's minutes.

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall entertain a motion to adopt a nonbinding resolution censuring the member based on specified violations of the code of ethics. Any motion made must be an affirmative one in favor of adopting a nonbinding resolution of censure. If the motion or resolution does not state particular grounds for censure under the code of ethics, the presiding officer shall rule it out of order.

If a motion to adopt a nonbinding resolution of censure stating particular grounds under the code of ethics has been made, the board shall debate the motion. The accused member shall be allowed to participate in the debate [but shall not] [and shall also be allowed to] vote on the motion to adopt the resolution.

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a [majority][supermajority-four fifths] vote of those present and voting, a quorum being present, the motion passes and the nonbinding resolution of censure is adopted. The text of the nonbinding resolution of censure shall be made a part of the minutes of the board. Any recording of the board's proceedings shall be approved by the board as a permanent part of the minutes, and the proceedings shall then be considered concluded.

Section R-11: Amendment of Code of Ethics and Rules

This code of ethics and rules of procedure may be amended at any regular meeting or at any properly called special meeting convened for that purpose. Adoption of an amendment shall require an affirmative vote equal to a quorum.

READ, APPROVED AND ADOPTED this 20th day of December, 2010.

ATTEST:

Carl R. Bartlett, Mayor

Darlene Whisenant, Town Clerk

Joan Brown, Mayor pro tem

Marcia D. Onieal, Town Manager

Ruth Brandon, Alderman

Tim Rayburn, Alderman

Carlos Showers, Alderman

Michael Sobol, Alderman

ATTACHMENT "A"
APPLICABLE LAWS AND REGULATIONS

1. Avoid deriving a direct benefit from contracts in which you are involved in making or administering on behalf of the public agency. *NCGS §14-234(a)(1) criminal penalty*

2. Avoid attempting to influence others involved in making or administering a contract on behalf of the public agency, even if you aren't involved, if you will derive a direct benefit from the contract. *NCGS §14-234(a)(2) criminal penalty*

3. Avoid soliciting or receiving any gift or reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency you serve. *NCGS §14-234(a)(3) criminal penalty*

4. Consider the ethical and practical consequences of deriving a direct benefit from a contract authorized under any exception to the statute and weigh these considerations against the potential advantage to the public agency and to yourself. Follow reporting requirements to ensure transparency. *NCGS §14-234(b);(d1)*

5. Avoid participating in deliberations about or voting on a contract in which you have a direct benefit, when the contract is undertaken as allowed under any exception to the statute. *NCGS §14-234(b1) criminal penalty*

6. Avoid using your knowledge of contemplated action by you or your public agency, or information known to you in your official capacity and not made public, to acquire a financial interest in any property, transaction, or enterprise, or to gain a financial benefit that may be affected by the information or contemplated action. Avoid intentionally aiding another to do any of these things. *NCGS §14-234.1 criminal penalty*

7. Avoid receiving any gift or favor from a current, past, or potential contractor. *NCGS §133-32(a) criminal penalty*

8. Consider the ethical and practical consequences of accepting a gift or favor under any exception to the statutory prohibition, and follow reporting requirements to ensure transparency. *NCGS §133-32(d)*

9. Avoid voting on matters involving your own financial interest or official conduct. Identify and disclose these matters in advance so the board can determine whether you have a conflict allowing to be excused by the board from voting. When in doubt, obtain an opinion from the town attorney about whether you must vote or may be excused. *NCGS §160A-75*

10. Avoid voting on any zoning map or text amendment where the outcome of the vote is reasonably likely to have a direct, substantial, and readily identifiable financial impact on you. *NCGS §160A-381(d)*

11. Do not participate in or vote on any quasi-judicial matter, including matters that come before the board when the board is acting in a quasi-judicial capacity under *NCGS §160A-388*, if participation would violate affected persons' constitutional right to an impartial decision-maker. Impermissible conflicts under this statutory standard include "having a fixed opinion prior to hearing the matter that is not susceptible to change", "undisclosed ex parte communications" [communications between a board member and someone involved in the matter that occur outside the official quasi-judicial proceeding], "a close familial, business, or other associational relationship with an affected person", or "a financial interest in the outcome of the matter." *NCGS §160A-388(e1) violation invalidates entire vote.*

12. Fulfill your statutory obligation to vote on all matters that come before you even when there are appearances of conflict, and only refrain from voting when there is a legal basis for being, or requirement to be, excused from voting. *NCGS §160A-75*