

Regular Meeting Minutes of the Town of Highlands Board of Commissioners Meeting of March 22, 2018, at the Highlands Community Building, 71 Poplar Street, Highlands, North Carolina

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

Town Board Absent: Commissioner Donnie Calloway

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 Chief Bill Harrell, Parks & Recreation Director Lester Norris, Planning & Development Director Andrew Bowen, Computer Support Specialist Mark Hall and Town Clerk Gibby Shaheen

1. Meeting Called to Order

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

2. Public Comment Period

Glenda Bell stated she was concerned about paving Sunset it would increase the traffic and would be dangerous with people walking. Bell also stated the pavement would have to be maintained and repaired and her opinion was it don't need to be paved.

Annie Nelson commended the Mayor on his column on infrastructure and quoted portions of the column. Nelson reminded that not only buildings, sidewalks and walls are part of the infrastructure, but trees are a major part of the infrastructure and cannot be replaced as buildings can. Nelson stated she was there to convince and encourage the Board to save the tree on the property next to the Performing Arts Center. Secondly, 6 months ago during Hurricane Irma 2 trees or pieces of trees fell in the buffer between Sunset Road and Horse Cove Road and they are crushing the Rhododendron and leaning on lines and it needs to be removed. Lastly Nelson stated she felt that the Public Comment should be at the end of the meeting so comments could be made about the issues on the Agenda and it would also encourage people to stay until the end of the meeting.

Mayor Taylor stated he had spoken to Hank Ross of the PAC landscape committee and they are working on keeping that tree.

3. Adjust and Approve the Agenda

Commissioner Patterson asked to pull out the Rules for the Skateboard Park from the Parks & Recreation Department report within the Consent Agenda for discussion.

Town Attorney Jay Coward asked that number 15 be moved to number 16 Closed Session under NCGS §318.11(a)(3) for Attorney Client Privilege.

Commissioner Patterson made a motion to approve the agenda as amended, which was seconded by Mayor Pro Tempore Pierson and the vote was unanimous.

4. Approval of the September 21, 2017, Regular Meeting Minutes

Commissioner Patterson made a motion to approve the September 21, 2017, regular meeting minutes as presented, which was seconded by Commissioner Dotson and the vote was unanimous.

Approval of the February 15, 2017, Regular Meeting Minutes

Commissioner Patterson made a motion to approve the September 21, 2017, regular meeting minutes as presented, which was seconded by Commissioner Stiehler and the vote was unanimous.

5. Reports

A. Mayor

Mayor Taylor stated his FCC Application to serve on the Broadband Committee in Washington had been filed.

Mayor Taylor stated in lieu of the hospital announcement to begin discussions with Hospital Corporation of America, and as the leader of the community as mayor, he tries to be supportive of the hospital, but wants to issue the call to the community to assert themselves to be included in the decisions of the hospital in which the community has donated so much to make successful.

Mayor Taylor stated that Plateau pickup was set for Saturday, April 21st, the eve of Earth Day, and will include all roads into Town not just the gorge road. Mayor Taylor stated that the Highlands Police Department and Macon County Sheriff's office would be involved to help slow down traffic and encouraged all to attend. Mayor Taylor also stated that the Town's white goods pickup would be April 16th through April 20th.

Mayor Taylor added that he and Town Manager Josh Ward was still exploring options to present to the Board to increase the return on the Scholarship Fund account.

B. Commissioners and Committee Reports

There were no commissioner or committee reports.

C. Town Manager

Town Manager Josh Ward reminded everyone of the first Budget meeting scheduled for April 12th at 3:00pm. Town Manager Josh Ward stated that there was a Planning Board Vacancy and there were applications at the Town Hall.

6. Consent Agenda

Public Works Department
Police Department
Parks & Recreation Department
Planning & Development Department
Treasurer's Report
July 4th Fireworks Resolution Approval
2017-2018 Audit Contract Approval



A Resolution Permitting the Use of Pyrotechnics in Connection With the Public Exhibition for the 4th of July Resolution No. 2018-02-Res

WHEREAS, NCGS §14-413 permits the Governing Board of city authorization to issue permits for the use of pyrotechnics in connection with concerts and public exhibitions; and

WHEREAS, the Macon County Board of Commissioners passed a resolution at a regular meeting on the 8th day of May, 2012 authorizing the Board of Commissioners for the Town of Highlands to issue permits for the use of pyrotechnics in connection with concerts and public exhibitions §NCGS 14-413(a1); and

NOW, THEREFORE, BE IT RESOLVED, the Town of Highlands Board of Commissioners grants the Highlands Chamber of Commerce permission to use

pyrotechnics in connection with the public exhibit for Wednesday, July 4, 2018 with alternative inclement weather date of Saturday, September 1, 2018.

Upon motion duly made and seconded, the above resolution was unanimously adopted by the Board of Commissioners at a regularly scheduled meeting held on the 22nd day of March, 2018, in the Highlands Community Building, 71 Poplar Street, Highlands, NC.

This the 22nd day of March, 2018.

Patrick L. Taylor, Mayor

ATTEST:

Gilberta B. Shaheen, Town Clerk

Commissioner Patterson made a motion to accept the consent agenda as amended, which was seconded by Commissioner Stiehler and the vote was unanimous.

Commissioner Patterson stated that the rules for the Skate Board Park needed to be amended and approved and asked Parks & Recreation Director Lester Norris why it had to be done so quickly, and Parks & Recreation Director Lester Norris stated that the skate park should be ready in the next week and a half.

Parks & Recreation Director Lester Norris stated that in Specific Rules & Guidelines bullet 7 states "No spectators are allowed in the skate area." and it should be revised to read "No spectators are allowed in the skate or surface area."

The Highlands Skate Park is a concrete 5,000 square foot surface. The park does not contain lights or restrooms. This is an unsupervised skate park. Any use of this facility is at your own risk. Use of this facility may result in serious injury. It is free of charge.

Please note: Bikes are not allowed at the Highlands Skate Park

In case of serious injury do not move the injured person. All skating shall cease immediately. Dial 911 - you are located at 600 North Fourth Street in Highlands.

Contact & Address

- Phone: 828.526.3556
- Fax: 828.526.5065
- Email: lester.norris@highlandsonc.org
- Address: 600 North Fourth Street

Operating Hours

- Dawn to Dusk

Specific Rules & Guidelines for the Highlands Skate Park

- Avoid skating when skate park surfaces are wet or icy.
- No motorized equipment is allowed in the skate park.

- Every person riding a skate board or skating in the facility must wear a helmet, elbow pads and knee pads. Any person failing to do so is subject to citation.
- Drugs, alcohol, glass containers, tobacco products, profanity, fighting, horseplay and destroying or defacing public property are prohibited. Vandalism, including graffiti, stickers and tagging are illegal. If this occurs, it may require the park to be closed temporarily. Violators will be prosecuted.
- Food and beverages are not allowed on the skate area.
- No one under the age of 12 is allowed without adult supervision.
- No spectators are allowed in the skate or surface area.
- The Town of Highlands reserves the right to revoke the use of the skate park by individuals who violate the rules and regulations of the skate park.
- Events, lessons and other organized activities require written permission from the Town of Highlands.
- No other items, such as benches, tables, portable ramps or equipment may be used in the skate park.
- Under North Carolina law, no governmental entity or public employee who has complied with G.S. 99E-23 shall be liable to any person who voluntarily participates in hazardous recreation activities for any damage or injury to property or persons that arise out of a person's participation in the activity and that takes place in an area designated for the activity.
- Make no modifications to the skating surface.

Rules & Guidelines for all Parks

- The Town of Highlands is not responsible for lost or stolen articles.
- Park users must be aware that participation in any physical activity or program could have inherent and unforeseen risks that may cause injury, harm or death.
- Anyone taking part in a program or activity sponsored by the Highlands Parks and Recreation Department must assume the risks associated with such participation and be responsible for taking proper precautions.
- Highlands Parks and Recreation Department is a smoke free property. NO alcoholic beverages, drugs, fire arms or other weapons, or gambling are allowed on Highlands Parks and Recreation Department property.
- Vandalism, defacing of property, loitering or use of profanity will not be tolerated. Restitution will be required for any misuse.
- Any expression of physical or verbal abuse, or acts of intimidation, harassment, or other threatening behavior directed towards any staff member or park user will result in suspension and/or legal action.
- Using the Highlands Parks and Recreation Department property for personal gain or profit is prohibited unless given permission by the Department.

Commissioner Patterson made a motion to accept the Skate Park Rules as amended, which was seconded by Commissioner Dotson and the vote was unanimous.

7. Newspapers in Education

Mayor Taylor recognized winner AnnaBell Ramos for her Newspapers in Education Ad for the Town, and commended the beautiful Christmas tree and big lettering. Mayor Taylor presented AnnaBell with a Certificate, gift and a copy of the newspaper with her printed ad.

8. Public Hearing: Rezoning of Town Owned Properties – Satulah

Planning & Development Director Andrew Bowen presented the 2 zoning changes the first parcel from R1 to GI to locate the new water tank, and the second parcel from GI to R1 to go back to residential property.

A. Open Public Hearing

Commissioner Patterson made a motion to open the public hearing on the Rezoning of Town Owned Properties at 7:21pm, which was seconded by Commissioner Dotson and the vote was unanimous.

B. Staff Comments/Recommendation

There were no comments.

C. Public Comments

Cathy Henson stated she was a property owner adjacent to the proposed rezoning properties and she fully supported the rezoning and thanked the Board for making it happen.

D. Close Public Hearing

Commissioner Dotson made a motion to close the public hearing for the Rezoning of Town Owned Properties - Satulah at 7:22pm, which was seconded by Commissioner Patterson and the vote was unanimous.

E. Council Action

Commissioner Patterson moved to approve the Rezoning of Parcel No. 7449378579 from R1 to GI, and is consistent with the Land Use Regulations. The motion was seconded by Mayor Pro Tempore Pierson and the vote was unanimous.

Commissioner Patterson moved to approve the Rezoning of Parcel No. 7449377657 from GI to R1, and is consistent with the Land Use Regulations. The motion was seconded by Mayor Pro Tempore Pierson and the vote was unanimous.

9. Zoning Map Color Change Proposal

Planning & Development Director Andrew Bowen stated that there was nothing to vote on he just wanted to present the new map with the approved rezoning and color changes for signing and sealing.

10. Amendments to the Highlands Code of Ordinances: Chap. 3: Animals, Section 3-3 – Responsibility to Control Dogs

Planning & Development Director Andrew Bowen stated that the proposed Leash Law and map had been worked on by the Rec. Committee and was presented at the Retreat. Planning & Development Director Andrew Bowen stated it was detailed as opposed to being an umbrella and regulating the contiguous Residential area to Commercial and GI property will be the required leash law zone.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of 4 yeas and 0 nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the 22nd day of March, 2018, 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 3 Animals

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

Chapter 3 – ANIMALS

Sec. 3-1. - Nuisance dogs.

Definition. The keeping or maintenance of any dog which by prolonged and habitual barking, howling, or whining causes serious annoyance to neighboring residents and interferes with the reasonable use and enjoyment of the premises occupied by such residents, or with the reasonable use and enjoyment of the public streets, sidewalks, or other public areas, is hereby declared to be a public nuisance, and shall be abated as provided in this section. Nuisance dogs, as defined herein, are declared to be nuisances under chapter 8 ("Nuisances") of this Code of Ordinances.

(Ord. No. 2011-01-Ord, 3-2-11)

Cross reference— Nuisances, Ch. 8.

State Law reference— City's authority to regulate noise, G.S. § 160A-184.

Sec. 3-2. - Immediate destruction.

Nothing in this chapter shall be construed to prevent the immediate destruction by a police officer of any vicious dog or other animal when less drastic methods, such as tranquilizing, are not available or effective and when neither a member of the police department, nor the animal's owner is able to restrain or control the animal so that it might be impounded.

(Ord. No. 2011-01-Ord, 3-2-11)

Sec. 3-3. - Responsibility to control dogs.

~~(a) The owner or keeper of any dog shall be responsible, if said animal shall defecate upon the public streets, sidewalks, or other public area, for collecting and properly disposing of said fecal matter. Any person, being the owner or keeper of any such dog, and who does not immediately so collect and properly dispose of said fecal matter, shall be guilty of a misdemeanor, punishable in accordance with the provisions of section 1-5.~~

(a) No keeper of any dog shall cause or allow such dog to soil, defile or defecate on any public property, or upon any street, sidewalk, public way, or play area; unless such keeper immediately removes and disposes of all fecal matter deposited by such

*dog by collecting the feces and placing it in a paper or plastic bag or other container, and thereafter removing such bag or container and disposing of the same in a manner as otherwise permitted by law. **Violations of this subsection shall be punishable by a civil penalty of two-hundred and fifty dollars (\$250).***

~~(b) It shall be unlawful for any person to willfully allow a dog to enter upon or remain within the Highlands Ball Park, on Hickory Street, at any time, for any purpose, whether leashed or unleashed. "Highlands Ball Park", as used in this section, shall mean the area enclosed with fencing and owned by the town at 444 Hickory Street in Highlands. Violation of this section shall be a misdemeanor, punishable in accordance with the provisions of Highlands Code section 1-5. Allowing a dog to run loose such that it habitually enters upon the Highlands Ball Park shall be included within the list of "nuisance" activities under other provisions of this chapter.~~

(b) No keeper of any dog shall allow such dog to enter upon and remain within the Highlands Ball Park, at any time, for any purpose, whether leashed or unleashed. "Highlands Ball Park," as used in this section, shall mean the area enclosed by fencing, and owned by the Town of Highlands, located at 444 Hickory Street in Highlands, and designated as the "Highlands Ball Park." Violations of this subsection shall be punishable by a civil penalty of two-hundred and fifty dollars (\$250). Allowing a dog to run loose such that it habitually enters upon the above described Highlands Ball Park shall be included within the list of "nuisance" activities under other provisions of this chapter.

(c) Every person owning, or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon the keeper's real property, or upon the real property of any other owner or lawful occupant, with permission within any contiguously nonresidential zoned parcel to Main Street and within the Highlands Municipal Cemetery (see adopted "Leash Law Zone" map). These provisions shall also include the enforcement of all pet specific Highlands Plateau Greenway regulations located within the Recreation Park/ Mill Creek Greenway Area. However, such dog may be off the keeper's real property if it is within a vehicle, or is under the immediate physical control of a competent person, and is physically restrained and sufficiently controlled by leash, chain, or harness, held in the hand of such person. This provision shall not apply to the Highlands Dog Park, which as used in this section shall mean the area enclosed by fencing and owned by the Town, which is located within the Highlands Recreation Park on Foreman Road in Highlands, North Carolina, and which is designated as "The Highlands Dog Park." Violations of this subsection shall be punishable by a civil penalty of two-hundred and fifty dollars (\$250). Exceptions to this subsection:

(1) Service animals trained to provide assistance to persons impaired by sight, hearing, mobility, or other impairment, do not have to be under physical restraint while off the keeper's premises if the dog is under the direct control of the impaired person, and is obedient to that person's commands. Any enforcing officer may request proof of service animal status and registration to satisfy this exception.

(Ord. No. 2011-01-Ord, 3-2-11)

Commissioner Patterson made a motion to accept the Ordinance Amendment for Chapter 3 – Animals as presented, which was seconded by Commissioner Stiehler and the vote was unanimous.

11. Amendments to the Highlands Code of Ordinances:

Chapter 6: Article VI. Regulating the Attachment of Cables, Wires and Apparatus to the Poles of the Town

Chapter 15: Article V. Pole Attachment Regulation

MIS/GIS Director Matt Shuler stated that the Pole Attachment Amendments were on the Agenda a few months back and Commissioner Patterson felt we should make the

Ordinance more understandable and those amendments are incorporated into these Amendments.

MIS/GIS Director Matt Shuler stated Chapter 6 was to be completely stricken because it duplicated Chapter 15 and Chapter 15 had been revised when Chapter 6 had not.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of 4 yeas and 0 nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the 22nd day of March, 2018, 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 6 Licenses and Business Regulations: Article VI, Regulating The Attachment Of Cables, Wires, and Apparatus to the Poles of the Town*
(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS IN RED.)

~~ARTICLE VI. REGULATING THE ATTACHMENT OF CABLES, WIRES, AND APPARATUS TO THE POLES OF THE TOWN~~

~~Sec. 6-181. Purpose.~~

~~The Town of Highlands finds that it would be in its best interest to regulate the use of its utility poles by entities providing cable television, telephone, or similar services within the town. The purpose of this article is to provide for the safe and orderly use of its poles.~~

~~(Ord. of 2-6-08, § 1)~~

~~Sec. 6-182. Title.~~

~~This article shall be known and may be cited as "The Pole Attachment Ordinance of the Town of Highlands, State of North Carolina".~~

~~(Ord. of 2-6-08, § 2)~~

~~Sec. 6-183. Definitions.~~

~~*Change in character of a circuit* shall mean any reconfiguration of the pole or pole-mounted appurtenances in order to accommodate joint use of the pole, e.g. an increase in vertical clearance.~~

~~*Facilities* shall mean the cables, apparatus, equipment, material, instruments, and devices appurtenant to or associated with a licensee's business and being an "attachment".~~

~~*Licensee* shall mean any person who is required by the terms of this article to have a permit as required by this article.~~

~~*Person* shall mean any natural person, partnership, corporation, association, joint venture, or organization of any kind that uses the town's poles. This term shall include all successors, transferees, and assignees of such entities.~~

~~*Pole* shall mean any utility pole within the corporate limits of the Town of Highlands and owned by the Town of Highlands.~~

~~*Pole attachment* or *attachment* shall mean a physical connection, by any means, of a cable, wire, or other medium or facility by which communications signals of any kind are transmitted by a licensee in the normal course of its operations.~~

~~*Rearranging* shall mean the moving of attachments from one (1) position on a pole to another position on the same pole.~~

~~*Rules* shall mean:~~

- ~~(1) The National Electrical Safety Code (NESC);~~
- ~~(2) The Occupational Safety and Health Act (OSHA);~~
- ~~(3) The Rural Utility Service (RUS)/Rural Electrification Administration (REA);~~
- ~~(4) County ordinances;~~
- ~~(5) State statutes, codes and regulations;~~
- ~~(6) Good utility practice;~~
- ~~(7) This article; and~~
- ~~(8) All other applicable town ordinances.~~

~~*Town* shall mean the Town of Highlands, North Carolina.~~

~~*Transferring* shall mean the removing of any attachment from one pole and placing it upon another pole.~~

~~(Ord. of 2-6-08, § 3)~~

~~Sec. 6-184. Permit required.~~

~~No person shall make or maintain any attachment to a pole owned by the town, nor modify or change any existing attachment, change any pole loading, or over lash any existing attachments on any pole, without first requesting and obtaining from the town a written permit authorizing such work, pursuant to this article, including the payment of all amounts due hereunder.~~

~~(Ord. of 2-6-08, § 4)~~

~~Sec. 6-185. Authorization required.~~

~~No permit shall be issued except to applicants who are duly authorized to erect and maintain facilities within public streets, highways and other thoroughfares of the town, who have secured or shall secure, prior to submitting any application for pole attachments hereunder, all necessary consents, franchises or other authorizations from federal, state, or municipal authorities and from the owners of property on which the town's poles are located, to construct and maintain facilities at the poles that are the subject of the application. If a licensee has no such authority or fails to provide same to the town upon request, then no permit will be granted and any such permit that may have been granted shall be revoked at the town's option. Should a licensee lose such authority after issuance of a permit, the permit shall be revoked.~~

~~(Ord. of 2-6-08, § 5)~~

~~Sec. 6 186. Effect of permit.~~

~~The holding of a permit by a licensee shall constitute for all purposes the licensee's agreement to abide by each and every provision of this article.~~

~~(Ord. of 2-6-08, § 6)~~

~~Sec. 6 187. Permit fee.~~

~~The amount of the fee to be paid for an initial permit shall be based upon the total number of poles to which the licensee will be attached.~~

~~(Ord. of 2-6-08, § 7; Ord. No. 2011-08 Ord. 8-16-11)~~

~~Sec. 6 188. Pole attachment fees.~~

~~Licensees shall pay to the town a pole attachment fee as set forth in the Town of Highlands Fee Schedule maintained in the town office by the town clerk. On or about December 1 of each year, the town and the licensees shall tabulate the total number of attachments as of that day. This tabulation shall determine the number of attachments on which advance pole attachment fees are to be paid for the year commencing January 1. The first year of payment for a licensee shall not be pro-rated and shall be paid with licensee's application for a permit, but such payment shall relate back to January 1 of the year of application.~~

~~(Ord. of 2-6-08, § 8)~~

~~Sec. 6 189. No warranty of easements by town.~~

~~The town does not and shall not warrant or assure to any licensee any right-of-way privilege or easements on or across property not owned by the town. Licensees shall at all times be responsible for obtaining such easements and rights-of-way. If a licensee shall at any time be prevented from placing or maintaining its facilities on the town's poles, no liability shall attach to the town.~~

~~(Ord. of 2-6-08, § 9)~~

~~Sec. 6 190. Procedure for obtaining permit.~~

~~The following procedure shall be followed in the obtaining of permits for pole attachments:~~

- ~~(1) The applicant shall submit an application to the town administrator on the town's form for this purpose and shall submit the appropriate fee.~~
- ~~(2) The fee for the application shall be based upon the number of poles the applicant proposes to use. The amount for each pole shall be set forth on the town's current schedule of fees.~~
- ~~(3) Included with the application shall be the following:
 - ~~a. A cover letter, addressed to the town's administrator at the address shown on the town's web site. The cover letter shall include a brief description of the project and the planned start and completion dates.~~
 - ~~b. A marked up route map/strand map, which shall be entitled, "Location of the Licensee Service Area," stating the corporate name of licensee, and showing, outlined in red, the proposed service area of the licensee. This map shall be no larger than thirty (30) inches x thirty (30) inches, shall be properly folded to the size of eight and one-half (8½) inches x eleven (11) inches for inclusion with the application and stapled to the application in the upper left corner. The licensee shall submit the location of the attachments based upon the town's pole numbering system. The map will include:~~~~

- ~~1. The proposed route including tap lines to which the attachments are to be made. Points of measurement shall be indicated by means of a leader (arrow).~~
 - ~~2. Pole height and class (based upon its birth mark or other available information) for each pole.~~
 - ~~3. Ambient temperature at time of measurements.~~
 - ~~4. Attachment height of equipment or devices on the pole from the pole ground line.~~
 - ~~5. Height to the neutral wire or lowest CATV or telephone cable on the pole.~~
 - ~~6. Proposed attachment height.~~
 - ~~7. Neutral wire and cable or telephone height at mid-span, with verification of compliance with requirements for cable separation at mid-span, driveway crossings, road crossings, and any other crossings.~~
 - ~~c. Manufacturer's specifications for messenger wire or strand.~~
 - ~~d. Manufacturer's specifications for coaxial cable.~~
 - ~~e. Manufacturer's specifications for fiber optic cable.~~
 - ~~f. Manufacturer's specifications for bolted attachments and other hardware.~~
 - ~~g. Construction drawings.~~
 - ~~h. Guy and anchor assembly types, ratings, drawings and installation specifications.~~
 - ~~i. The name, title, mailing address, e-mail address, office phone, cell phone, and fax number of licensee's project manager. This information shall be updated at least annually.~~
 - ~~j. The name, title, mailing address, e-mail address, office phone, cell phone, and fax number of licensee's billing department and pertinent project descriptions or account identification numbers necessary for licensee's internal recognition of the town's invoices. This information shall be updated at least annually.~~
 - ~~k. Check for permit fee.~~
 - ~~l. Proposed pole attachment data sheet.~~
 - ~~m. Proposed pole attachment design criteria.~~
 - ~~n. A completed notification of removal form (as supplied by the town) in such cases as it is appropriate.~~
 - ~~o. A certificate of insurance showing that the licensee has insurance coverage as required by this article.~~
- ~~(4) The town will evaluate the marked up map and data sheets and subsequently meet with licensee's representative for a field review to identify such "make ready" improvements (required by the town, the department of transportation, or any other controlling authority) as may be identified without a "make ready" survey.~~
 - ~~(5) At the discretion of the town, a "make ready" survey may be required by the town to determine whether the existing poles are adequate to receive licensee's proposed attachments and facilities and what rearranging or other action may be necessary to make the poles ready. The town reserves the right to make such survey with its own staff, to enter into contracts with other entities to make such survey, or to require the licensee to make such survey. In any case, a written report, including an estimate of construction costs, shall be produced, and licensee shall pay all costs related to the survey and the report. If, after receiving the written report and estimate, a licensee does not want to proceed with its application, the licensee will immediately reimburse the town for the costs of the preliminary surveying engineering and other expenses incurred by the town.~~
 - ~~(6) Licensee shall be solely responsible for the design and cost of construction of any attachments or new construction. Design shall be sealed by a North Carolina~~

~~professional engineer, who shall also be in control of contract, if any, and construction. All design shall be pursuant to REA specifications.~~

~~(Ord. of 2-6-08, § 10)~~

~~Sec. 6-191. Aesthetic requirements.~~

~~The town has the right to refuse attachment by a licensee if, in the opinion of the town, the attachment will render said poles unsightly in appearance.~~

~~(Ord. of 2-6-08, § 11)~~

~~Sec. 6-192. Technical requirements.~~

~~In addition to the requirements of the rules, as defined above, the following further technical requirements shall apply to all licensees:~~

- ~~(1) No tag, brand, or other device showing licensee's name or insignia shall be placed on, or attached to, any pole of town, except such tag or insignia which shows licensee to be only a licensee with respect to such pole (and not the owner thereof); provided, however, that no tag, brand, or other device shall be placed upon any pole without the written consent of the town.~~
- ~~(2) All attachments, attachment clearances and all associated facilities shall comply in all respects, and at all times, with all statutes, codes, rules, ordinances, regulations, policies, and all other requirements however named, as promulgated by the IEEE Association (the National Electric Safety Code), the federal government, the State of North Carolina, the North Carolina Department of Transportation, the County of Macon, the Town of Highlands, and any and all other regulatory authority with jurisdiction over such matters, and including all divisions, agencies or other subordinate entities of such authorities. It shall be the responsibility of all licensees to inform themselves of all amendments to the statutes, codes, rules, ordinances, regulations, policies and other requirements, as such amendments may be made, and to make changes as required by such amendments, and it shall be no defense to any action taken by the town under this section that the licensee was unaware of such amendments.~~

~~**State Law reference**—General statutory reference and authority: G.S. §§ 160A-311, 160A-312.~~

- ~~(3) Any unbalanced loading of the town's poles caused by the placement of licensee's attachments and facilities shall be properly guyed and anchored by licensee, at no expense to the town. In no case shall licensee's guys be attached to the town's anchors.~~
- ~~(4) All attachments shall be located on the same side of each pole as any existing attachments or secondary conductors, unless, in the opinion of the town, another arrangement is more appropriate and will not endanger the lives and safety of the public, the licensee, or the agents or employees of the town.~~
- ~~(5) Service connections of drops to licensee's customers shall be installed and maintained so as to provide at least a forty-inch climbing space directly over any service connections or drops.~~
- ~~(6) Licensee shall cause all cabinets, enclosures, and messengers to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.~~
- ~~(7) The town reserves the right to require power supplies, amplifiers, meters or other equipment to be installed on auxiliary poles. Otherwise, they may be attached directly to the town's poles.~~
- ~~(8) No bolt used by the licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.~~
- ~~(9) All attachments or facilities of the licensee shall have at least two (2) inches clearance from unbonded hardware.~~

- ~~(10) In no case shall a utility pole owned by the town be drilled less than three (3) inches between pole holes.~~
- ~~(11) Cable television circuits should be placed above telephone communication facilities. It is the responsibility of the cable television utility to negotiate with the appropriate telephone utility for specialized placements.~~
- ~~(12) All cable clearances shall conform to the dimensions specified by section 6-183, as defined under *rules*, or as specified by the town in these rules. No service connection shall be made or installed by the town until after licensee shall have completed installation of an approved fused service disconnect switch or circuit breaker.~~
- ~~(13) All licensees shall install and maintain any and all of their facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the pole, and all subject to approval of the town.~~
- ~~(14) All down guys, head guys or messenger dead ends installed by the licensee shall be attached to the poles by the use of through bolts. Such bolts placed in a "bucking" position shall have at least four (4) inches vertical clearance. Under no circumstances shall the licensee install down guys, head guys or messenger dead ends by means of encircling the poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.~~
- ~~(15) Adjustments to the town's existing pole line to make it ready to receive the additional attachments shall be done based on the construction staking sheets and reports developed with the make-ready survey.~~

~~(Ord. of 2-6-08, § 12; Ord. No. 2011-08 Ord, 8-16-11)~~

~~Sec. 6-193. Safety requirements.~~

~~All attachments and facilities shall be placed and maintained in accordance with the rules, as defined above. The most current revision of the rules shall apply to all attachments and facilities. A revision to the rules shall not require a modification to attachments or facilities in place on the effective date of such revision, unless the revision so requires, in which event licensees shall comply with the rules as revised. All new construction shall comply with the rules in effect at the time of such construction. Should a licensee fail to implement a safety upgrade or other modification required by revised rules, the town may elect to complete the safety upgrades and the licensee shall reimburse the town for the cost of such completion.~~

~~(Ord. of 2-6-08, § 13)~~

~~Sec. 6-194. No Interference with prior use.~~

~~A new licensee's attachments and facilities will not interfere with or damage existing attachments or facilities of poles by the town, other utility companies, or other licensees. Licensees will, on demand, reimburse such other users for any expenses incurred by the other users in transferring or rearranging their pre-existing facilities because of such interference, provided, however, that if pre-existing facilities of other users were in violation of the rules in effect at the time, the new licensee shall only be responsible for costs in excess of the costs incurred by the other users to correct their violations. Additionally, any licensee causing damage to the attachments or facilities of such other users shall be responsible for the actual cost of repair.~~

~~(Ord. of 2-6-08, § 14)~~

~~Sec. 6-195. Certification of compliance by engineer before issuance of permit.~~

~~Prior to the issuance of a permit, licensee's engineer or field personnel shall certify in writing that all attachments and facilities have been inspected and conform to the rules. If, in the reasonable judgment of the town, exercised in a non-discriminatory manner as to all pre-existing licensees and the licensee applicant, the proposed additional~~

~~attachments would result in an unsafe condition under the rules or be physically impossible, the town shall have the right to reject the application.~~

~~(Ord. of 2-6-08, § 15)~~

~~Sec. 6-196. — Maintenance of attachments.~~

~~After installation of attachments and facilities, licensees shall, at no expense to the town, maintain all their attachments and facilities in compliance with the rules.~~

~~(Ord. of 2-6-08, § 16)~~

~~Sec. 6-197. — Engineer's certificate of compliance and effect of noncompliance.~~

~~At any time, the town may demand, and a licensee shall provide, a written statement from a registered professional engineer that the licensee's facilities, including protection devices, attachments and other installations, as built, are fully in compliance with the rules. This certification shall be based upon the engineer's personal inspection and shall be delivered to the town within thirty (30) days after demand. In the event the engineer reports noncompliance with the rules, licensee shall cause such noncompliance to be corrected within thirty (30) days of the date the offending licensee receives notice of the report. After thirty (30) days from the date of notice, any nonconforming attachment will be assessed a fine of one hundred dollars (\$100.00) per day per attachment. In addition, after thirty (30) days of noncompliance from such notice, the town shall revoke the licensee's permit and may remove the attachments.~~

~~(Ord. of 2-6-08, § 17)~~

~~Sec. 6-198. — Licensee costs for new attachments.~~

~~Each licensee shall pay the town, or reimburse the town, as the case may be, for the following costs, to the extent made necessary for licensee's new attachments: changing out primary poles, secondary poles, and lift poles, including the cost of installation and/or removal of guys, anchors, stub poles, temporary construction, tree trimming, right of way clearing, materials (less salvage), labor, engineering (including, without limitation, design, proper conductor spacing and bonding, and calculations to determine proper ground clearances and pole and down-guy strength requirements for horizontal and transverse loading), supervision, overheads and all other construction items reasonably required under the rules. All re-sagging costs shall be borne by the licensees, except in cases where the primary conductors of the town are not sagged in accordance with the rules, in which case the town will re-sag the primary conductors at its own cost.~~

~~(Ord. of 2-6-08, § 18)~~

~~Sec. 6-199. — Town's right of inspections and audits.~~

~~The town reserves the right to inspect every installation, attachment, and facility of any licensee at any time. Licensees shall allow such inspections as the town deems appropriate upon reasonable notice from the town. The town reserves the right, in its sole discretion, to perform a system-wide audit every five (5) years. The town may also conduct, subject to mutual approval by all licensees on the system, more frequent audits, either system-wide or area-specific, at any time attachment count or code compliance issues so warrant. The cost of the audit shall be paid by the licensees in proportion to the number of attachments they have. This inventory may be conducted either by the town or independent contractors of the town, in its sole discretion.~~

~~(Ord. of 2-6-08, § 19)~~

~~Sec. 6-200. — Licensee costs for replacement of damaged or deteriorated poles.~~

~~In the event a pole becomes unusable because of normal aging or deterioration, or damage from actions of members of the public or weather-related events, or any other~~

~~event not related to activities of a licensee, the town may replace the pole but has no obligation to replace it. In the event the town chooses to replace the pole, the costs of replacement of the pole shall be paid by the town, but the costs of transferring their respective facilities shall be paid by the licensees. In the event a pole is damaged under the circumstances set forth in this section, licensees shall not be entitled to a refund of attachment fees.~~

~~(Ord. of 2-6-08, § 20)~~

~~Sec. 6-201. — Relocation of poles by town.~~

~~Whenever right-of-way considerations make relocation of a pole necessary, such relocation shall be made by the town at its own expense, except each licensee shall pay the cost of transferring its own attachments. The town shall be the sole judge in determining whether to abandon and remove an existing line or pole. Before making such replacement or relocation, the town shall give notice in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to all licensees attached to the pole, specifying in such notice the date and time of such proposed replacement or relocation. All licensees shall, at the date and time so specified, transfer their attachments to the new or relocated pole, or licensees shall place their facilities underground if the pole line is to be abandoned and removed by the town. After thirty (30) days from the date of written notice, any non-transferred attachment will be assessed one hundred dollars (\$100.00) per day per attachment. Additionally, after thirty (30) days from such notice, the town may remove the attachments.~~

~~(Ord. of 2-6-08, § 21)~~

~~Sec. 6-202. — Abandonment by licensee.~~

~~Licensees may at any time abandon the use of a pole by giving the town due notice in writing, and removing from their attachments and facilities. Licensee shall have no right to a pro-rata refund of any amounts already paid to the town under this article.~~

~~(Ord. of 2-6-08, § 22)~~

~~Sec. 6-203. — Abandonment by town.~~

~~The town reserves to itself and its successors and assigns the right to abandon any pole or poles for any reason in its discretion. All licensees on all poles to be abandoned shall be given thirty (30) days' notice of each proposed abandonment. Licensees who fail to remove their facilities within such time shall pay a fine of one hundred dollars (\$100.00) per day for each day after said sixty (60) days. Additionally, the town may remove the attachments.~~

~~(Ord. of 2-6-08, § 23)~~

~~Sec. 6-204. — Removal of facilities and payment of costs of removal.~~

~~Wherever in this article the town is given the right to remove facilities of a licensee, this provision shall apply. The town may dispose of the facilities in any manner it chooses. The expense of such removal and disposal shall be paid by the licensee. The town shall have no liability of any kind for such removal or disposal, and licensees will indemnify the town for any claims under the general indemnification provision herein.~~

~~(Ord. of 2-6-08, § 24)~~

~~Sec. 6-205. — Use of poles by town.~~

~~In the event it is necessary for the town, for the provision of electric service, to use space on poles permitted for use by a licensee, the licensee shall, upon receipt of thirty (30) days' written notice, either vacate the space by the removal or rearranging of its facilities.~~

~~(Ord. of 2-6-08, § 25)~~

~~Sec. 6-206. — Costs of changes paid by licensees.~~

~~In any case where facilities of the town are required to be rearranged, transferred, or the characteristics of the circuits on the poles of the town need to be changed to accommodate the attachments of licensee, licensee shall pay to the town the actual costs incurred by the town for such work. The licensee shall also reimburse other users of the poles for their costs of rearrangement to provide space or clearance for the facilities of licensee.~~

~~(Ord. of 2-6-08, § 26)~~

~~Sec. 6-207. — Change in number of attachments.~~

~~In the event the licensee desires to request a change in the number of attachments, it shall do so by submitting to the town the standard form suitable for that purpose.~~

~~(Ord. of 2-6-08, § 27)~~

~~Sec. 6-208. — Ownership of poles.~~

~~The town's poles shall remain the property of the town, and any payments made by the licensee, for changes in pole lines or otherwise, shall not entitle any licensee to ownership of any poles. No use, however extended, of the town's poles, shall create or vest in any licensee any ownership or property rights in said poles, but licensees' rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel the town to maintain any of said poles for a period longer than demanded by its own service requirements.~~

~~(Ord. of 2-6-08, § 28)~~

~~Sec. 6-209. — Electrical service.~~

~~In the event that licensee requires a source of electrical energy for power supply to its system, such energy will be supplied by the town in accordance with the provisions of its standard service extension policies and approved rates and tariffs. This charge will not be offset or reduced in any way by payment of pole attachment fees.~~

~~(Ord. of 2-6-08, § 29)~~

~~Sec. 6-210. — Necessary action.~~

~~Notwithstanding any other provide of this article, in cases of emergency, the town may take such action concerning any attachments or facilities of any licensees as the town in its discretion deems necessary, including relocating, replacing, or renewing facilities, transferring facilities, substituting poles, or other work. Affected licensees shall, on demand, reimburse the town for the expense thereby incurred.~~

~~(Ord. of 2-6-08, § 30)~~

~~Sec. 6-211. — Town not liable for service interruptions.~~

~~The town reserves to itself, its successors and assigns, the right to maintain, replace and enlarge its electric facilities and to operate the same from time to time in such a manner as will best enable it, in its sole judgment, to meet the needs of its customers and fulfill its own service requirements. The town shall not be liable to any licensee or any customer of a licensee for any interruption to service of any licensee or for interference with the operation of the cables, wires, and apparatus of a licensee arising in any manner out of the use of the town's poles hereunder, or arising in any manner out of the condition or character of the town's facilities or the manner of the operation thereof.~~

~~(Ord. of 2-6-08, § 31)~~

~~Sec. 6-212. Requirement of insurance.~~

~~All licensees must maintain, throughout the time during which it has attachments or facilities on the town's poles, public liability insurance covering the ownership liability and all operations of the licensee, with the town named as an additional insured, with limits for bodily injury or death of not less than five million dollars (\$5,000,000.00) each occurrence and five million dollars (\$5,000,000.00) aggregate per policy period and with limits for property damage of not less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate for the policy period. This required insurance may be in a policy or policies of insurance primary and excess including the umbrella or catastrophe form. Licensees shall furnish updated certificates of insurance to the town on an annual basis, and at the time of payment of attachment fees.~~

~~(Ord. of 2-6-08, § 32)~~

~~Sec. 6-213. Hold harmless provision.~~

~~Licensees shall indemnify, protect, defend, save harmless and insure the town from and against any and all claims, actions, judgments, loss, costs, expenses, and demands for property damages or bodily injury (including payments made under any applicable workers compensation law or under any plan for employees disability and death benefits) and including all expenses incurred in defending against any such claims, to the extent such claims arise out of or be related to the erection, maintenance, presence, use, rearrangements or removal of attachments and facilities, or by any act of a licensee, its agents and employees or contractors on or in the vicinity of the town's poles. Licensees shall waive any immunity viz. a viz. the town created by any applicable workers compensation law and shall indemnify the town against loss due to such immunity as may exist in favor of any of its contractors in respect to such contractor's employees who are injured or killed in the course of work related to the town's poles.~~

~~(Ord. of 2-6-08, § 33)~~

~~Sec. 6-214. Assumption of risk.~~

~~Licensees expressly assume the responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors, or employees of contractors. All such persons shall be conclusively presumed to have assumed all risks inherent in the activity of working on or around the town's poles.~~

~~(Ord. of 2-6-08, § 34)~~

~~Sec. 6-215. Reports of accidents.~~

~~Licensees shall make a verbal report to the town, as soon as possible, but not later than twenty four (24) hours, and a written report to the town within forty eight (48) hours of the occurrence of any incident resulting in bodily injury or property damage (including damage to other licensees' facilities or the town's facilities) in connection with work of a licensee's employees or contractors related to the poles.~~

~~(Ord. of 2-6-08, § 35)~~

~~Sec. 6-216. Necessary precautions.~~

~~Licensees shall take any necessary precautions prescribed by the town, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from licensees' activities on or around the town's poles. If, in the town's opinion, a licensee has not taken such necessary precautions, the town shall have the right to revoke all permits granted under this article upon thirty (30) days' written notice to the licensee. The town shall have the right to~~

~~remove immediately and without notice any attachment or facility that could place the town's poles, facilities or any person in danger of damage or injury.~~

~~(Ord. of 2-6-08, § 36)~~

~~Sec. 6-217. Penalties and remedies.~~

~~Unless a shorter time is provided for elsewhere herein, if a licensee shall fail to comply with any of the provisions of this article, or default in any of its obligations, and shall fail within sixty (60) days after written notice from the town to correct such default or noncompliance, the town may, at its option, revoke licensee's permit. In case of such termination, no refund shall be made. In the event of any serious safety issue caused by licensee, the town may remove licensee's facilities. A violation of this article shall constitute a misdemeanor under North Carolina General Statutes, section 14-4. The maximum fine for any such violation shall be five hundred dollars (\$500.00). Notwithstanding any other provision in this article, the town may file an action to enjoin violations of this article. In any action between the town and a licensee, arising out of this article, whether for damages, injunctive relief, or other relief, if the town prevails in such action, the licensee shall pay the costs of the action, including the town's attorney fees.~~

~~(Ord. of 2-6-08, § 37)~~

~~Sec. 6-218. Payment within thirty days.~~

~~Bills for expenses and other charges under this article, except those advance payments specifically covered herein, shall be payable within thirty (30) days after presentation. any payment not made within thirty (30) days after the due date shall bear interest at a compounded interest rate of eighteen (18) percent per annum until paid.~~

~~(Ord. of 2-6-08, § 38)~~

~~Sec. 6-219. No waiver of provisions of article.~~

~~Failure to enforce or insist upon compliance with any of the terms or conditions of this article shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.~~

~~(Ord. of 2-6-08, § 39)~~

~~Sec. 6-220. Reimbursement for work performed by town.~~

~~If a licensee shall default according to the time limits set herein in the performance of any work it is obligated to do under this article, upon thirty (30) days' written notice, the town may elect to do such work, and the licensee shall reimburse the town for the cost.~~

~~(Ord. of 2-6-08, § 40)~~

~~Sec. 6-221. Unauthorized attachments.~~

~~If any of licensee's facilities for which no permit has been issued shall be found attached to the town's poles, the town may, without prejudice to its other rights or remedies under this article, require licensee to submit, within fifteen (15) days after the date of written or oral notification from the town of the unauthorized attachment, an application and permit for pole attachments. If such application is not received by the town within the specified time period, licensee shall immediately remove the unauthorized facilities. The town may remove the unauthorized facilities if the licensee fails to remove them. licensees shall pay an attachment fee of one hundred dollars (\$100.00) per pole per attachment each full year or fraction thereof from the time that the unauthorized attachment was made up to and including the time that the unauthorized attachment was discovered by the town. The installations shall be presumed to have occurred on the date of the last field inventory. The total pole~~

attachment fee, calculated as described in this subsection, shall be paid by licensee together with its attachment application.

(Ord. of 2-6-08, § 41)

~~Sec. 6-222. Rights of others.~~

~~This article shall not be construed as affecting the rights or privileges granted by the town, by contract or otherwise, to others, to use the town's poles; and the town shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such contracts and arrangements.~~

(Ord. of 2-6-08, § 42)

~~Sec. 6-223. Permits not transferable.~~

~~Licensees shall not assign, transfer or sublet the permits or privileges granted under this article without the prior consent in writing of the town.~~

(Ord. of 2-6-08, § 43)

~~Sec. 6-224. Notice.~~

~~Wherever in this article notice is provided to be given by either party hereto to the other, unless otherwise specified, such notice shall be in writing and given by letter deposited in the U.S. mail, or by personal delivery to the town at its main office at the address shown on its web site.~~

(Ord. of 2-6-08, § 44)

~~Sec. 6-225. Bond requirement for new construction.~~

~~Prior to the start of all new construction or addition of attachments, licensees shall furnish satisfactory evidence of a performance bond in the amount of fifty thousand dollars (\$50,000.00) to guarantee the payment of any sums which may become due to the town for attachment fees, engineering fees, make ready surveys, make ready work, rearrangement of attachments, pole relocations or for other work performed for the benefit of the licensee under this article. This requirement shall cease upon the satisfactory completion of construction and the provision of a certificate of insurance as required elsewhere in this article.~~

(Ord. of 2-6-08, § 45)

~~Sec. 6-226. Trimming of right of way.~~

~~All necessary right of way maintenance, including tree trimming or cutting, shall be performed by the owner of the right of way. If the owner of the right of way is the town, the town shall have no responsibility to clear more right of way than is necessary for its electrical facilities. Further clearing shall be accomplished by licensees at no cost to the town.~~

(Ord. of 2-6-08, § 46)

~~Sec. 6-227. Drop attachments made in haste.~~

~~The town shall allow the making of limited drop attachments without formal application under this article in situations where such attachments can be made safely, easily, and quickly with no compromise of the public safety or convenience, provided, however, that a report of such attachments shall be made no later than three (3) days after attachment on a form provided by the town for such reports. Licensees shall comply with all additional rules set forth on such form. (Ord. of 2-6-08, § 47)~~



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of 4 yeas and 0 nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the 22nd day of March, 2018, 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 15 Utilities: Article V, Pole Attachment Regulation*
(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS IN RED.)

ARTICLE V. - POLE ATTACHMENT REGULATION

Sec. 15-301. - Purpose and scope.

The Town of Highlands finds that it would be in its best interest to regulate the use of its utility poles by entities providing cable television, telephone, or similar services within the town. The purpose of this article is to provide for the safe and orderly use of its poles.

(Ord. of 2-6-08)

Sec. 15-302. - Short title.

This article shall be known and may be cited as the "Pole Attachment Ordinance of the Town of Highlands, State of North Carolina".

(Ord. of 2-6-08)

Sec. 15-303. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Change in character of a circuit shall mean any reconfiguration of the pole or pole-mounted appurtenances in order to accommodate joint use of the pole; e.g., an increase in vertical clearance.

Facilities shall mean the cables, apparatus, equipment, material, instruments and devices appurtenant to or associated with a licensee's business and being an "attachment".

Licensee shall mean any person who is required by the terms of this article to have a permit as required by this article.

Make-ready audit shall mean the process by which a survey of the work is presented to the Town, or produced by the Town, and a cost estimate is provided, whether by a third party contractor to the Town, or by the Town itself.

Person shall mean any natural person, partnership, corporation, association, joint venture, or organization of any kind that uses the town's poles. This term shall include all successors, transferees and assignees of such entities.

Pole shall mean any utility pole ~~within the corporate limits of the Town of Highlands~~ and owned by the Town of Highlands.

Pole attachment or *attachment* shall mean a physical connection, by any means, of a cable, wire, or other medium or facility by which communications signals of any kind are transmitted by a licensee in the normal course of its operations.

Rearranging shall mean the moving of attachments from one (1) position on a pole to another position on the same pole.

Rules shall mean:

- (1) The National Electrical Safety Code (NESC);
- (2) The Occupational Safety and Health Act (OSHA);
- (3) The Rural Utility Service (RUS)/Rural Electrification Administration (REA);
- (4) County ordinances;
- (5) State statutes, codes and regulations;
- (6) Good utility practice;
- (7) This article; and
- (8) All other applicable town ordinances.

Town shall mean the Town of Highlands, North Carolina.

Transferring shall mean the removing of any attachment from one (1) pole and placing it upon another pole.

(Ord. of 2-6-08)

Sec. 15-304. - Permit required.

No person shall make or maintain any attachment to a pole owned by the town, nor modify or change any existing attachment, change any pole loading, or over lash any existing attachments on any pole, without first requesting and obtaining from the town a written permit authorizing such work, pursuant to this article, including the payment of all amounts due hereunder.

(Ord. of 2-6-08)

Sec. 15-305. - Authorization required.

No permit shall be issued except to applicants who are duly authorized to erect and maintain facilities within public streets, highways and other thoroughfares of the town, who have secured or shall secure, prior to submitting any application for pole attachments hereunder, all necessary consents, franchises or other authorizations from federal, state, or municipal authorities and from the owners of property on which the town's poles are located, to construct and maintain facilities at the poles that are the subject of the application. If a licensee has no such authority or fails to provide same to the town upon request, then no permit will be granted and any such permit that may have been granted shall be revoked at the town's option. Should a licensee lose such authority after issuance of a permit, the permit shall be revoked.

(Ord. of 2-6-08)

Sec. 15-306. - Effect of permit.

The holding of a permit by a licensee shall constitute for all purposes the licensee's agreement to abide by each and every provision of this article including an attachment period of one (1) year from the date the pole attachment permit is issued, at which time if the licensee has not attached to the permitted poles the permit process will need to be recompleted.

(Ord. of 2-6-08; Ord. of 7-18-13)

Sec. 15-307. - Pole attachment permit fee.

The amount of the fee to be paid for an initial pole attachment permit shall be based upon the total number of poles to which the licensee is requesting to attach to. Fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina.

(Ord. of 2-6-08; Ord. No. 2011-09-Ord, § I, 8-16-11; Ord. of 4-18-13)

Sec. 15-308. - Pole attachment fees.

Licensees shall pay to the town a pole attachment fee as set forth in the Town of Highlands Fee Schedule maintained in the town office by the town clerk. On or about December 1st of each year, the town and the licensees shall tabulate the total number of attachments as of that day. This tabulation shall determine the number of attachments on which advance pole attachment fees are to be paid for the year commencing January 1. The first year of payment for a licensee shall not be pro-rated and shall be paid with licensee's application for a permit, but such payment shall relate back to January 1 of the year of application.

(Ord. of 2-6-08)

Sec. 15-309. - No warranty of easements by town.

The town does not and shall not warrant or assure to any licensee any right-of-way privilege or easements on or across property not owned by the town. Licensees shall at all times be responsible for obtaining such easements and rights-of-way. If a licensee shall at any time be prevented from placing or maintaining its facilities on the town's poles, no liability shall attach to the town.

(Ord. of 2-6-08)

Sec. 15-310. - Procedure for obtaining permit.

The following procedure shall be followed by a licensee in the obtaining of permits for **initial pole attachments or increasing the number of attachments on a pole to which a licensee already has one or more attachments:**

- (1) The applicant shall submit an application for pole attachment to the town on the town's form for this purpose and shall submit the appropriate pole attachment permit fee.
- (2) The fee for the application (pole attachment permit fee) shall be set by the town board of commissioners. The amount for each pole shall be set forth on the town's current schedule of fees.
- (3) Included with the application shall be the following:
 - a. A cover letter, addressed to the town's administrator at the address shown on the town's web site. The cover letter shall include a brief description of the project and the planned start and completion dates.
 - b. A marked up route map/strand map, which shall be entitled, "Location of the Licensee Service Area," stating the corporate name of licensee, and showing,

outlined in red, the proposed service area of the licensee. This map shall be no larger than twenty-four (24) inches × thirty-six (36) inches, shall be properly folded to the size of eight and one-half (8 ½) inches × eleven (11) inches for inclusion with the application and stapled to the application in the upper left corner. The licensee shall submit the location of the attachments based upon the town's pole numbering system. The map will include the proposed route including tap lines to which the attachments are to be made.

- c. Manufacturer's specifications for messenger wire or strand.
 - d. Manufacturer's specifications for coaxial cable.
 - e. Manufacturer's specifications for fiber optic cable.
 - f. Manufacturer's specifications for bolted attachments and other hardware.
 - g. Construction drawings.
 - h. Guy and anchor assembly types, ratings, drawings and installation specifications.
 - i. The name, title, mailing address, e-mail address, office phone, cell phone, and fax number of licensee's project manager. This information shall be updated at least annually.
 - j. The name, title, mailing address, e-mail address, office phone, cell phone, and fax number of licensee's billing department and pertinent project descriptions or account identification numbers necessary for licensee's internal recognition of the town's invoices. This information shall be updated at least annually.
 - k. ~~Payment for pole attachment permit fee.~~
 - l. A certificate of insurance showing that the licensee has insurance coverage as required by this article.
- (4) The town will evaluate the marked up map and data sheets and **may** subsequently meet with licensee's representative for a field review to identify such "make ready" improvements (required by the town, the department of transportation, or any other controlling authority) as may be identified without a "make-ready" survey.
- (5) At the discretion of the town, a "make-ready" survey may be required by the town to determine whether the existing poles are adequate to receive licensee's proposed attachments and facilities and what rearranging or other action may be necessary to make the poles ready. The town reserves the right to make such survey with its own staff, to enter into contracts with other entities to make such survey, or to require the licensee to make such survey. In any case, a written report, including an estimate of construction costs, shall be produced, and licensee shall pay all costs related to the survey and the report. ~~If, after receiving the written report and estimate, a licensee does not want to proceed with its application, the licensee will immediately reimburse the town for the costs of the preliminary surveying engineering and other expenses incurred by the town.~~
- (6) **Licensee may coordinate with other users to move or rearrange wires reimbursing the other user directly. Licensee may also request the town as the owner of the poles, to hire a contractor to complete this make-ready work. The licensee will receive a copy of the "make-ready" survey and cost estimate for approval. If the licensee approves and chooses to move forward, the licensee will pay the town the cost of the "make-ready" estimate. Licensee will pay in advance full cost of any design, engineering, construction, etc. involved in rearranging or replacement to accommodate licensee. The town will instruct the contractor to move forward with the project. The contractor will rearrange all facilities, ensuring all applicable poles are in compliance with the rules including the additional space requested by licensee. At the end of the project, if the actual cost of the make-ready work was less than the estimate, the town will reimburse the licensee. If the actual cost of the make-ready work was more than the estimate, the licensee will reimburse the town.**

- (7) Licensee shall be solely responsible for the design and cost of construction of any attachments or new construction. At the end of the project, the town may require installation to be certified by a North Carolina professional engineer, who shall also be in control of contract, if any, and construction. All design shall be pursuant to REA specifications.
- (8) After the town has ensured there is adequate space for new attachment and all pole attachment fees along with any other reimbursements have been paid, the town shall provide license with a permit for pole attachment. At such time, the licensee may attach to the town's poles at height designated by town staff per Town of Highlands Pole Attachment Schematic.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-311. - Aesthetic requirements.

The town has the right to refuse attachment by a licensee if, in the opinion of the town, the attachment will render said poles unsightly in appearance.

(Ord. of 2-6-08)

Sec. 15-312. - Technical requirements.

In addition to the requirements of the rules, as defined above, the following further technical requirements shall apply to all licensees:

- (1) No tag, brand, or other device showing a licensee's name or insignia shall be placed on, or attached to, any pole of town, except such tag or insignia which shows licensee to be only a licensee with respect to such pole (and not the owner thereof); provided, however, that no tag, brand, or other device shall be placed upon any pole without the written consent of the town.
- (2) All attachments, attachment clearances and all associated facilities shall comply in all respects, and at all times, with all statutes, codes, rules, ordinances, regulations, policies, and all other requirements however named, as promulgated by the IEEE Association (the National Electric Safety Code), the federal government, the State of North Carolina, the North Carolina Department of Transportation, the County of Macon, the Town of Highlands, and any and all other regulatory authority with jurisdiction over such matters, and including all divisions, agencies or other subordinate entities of such authorities. It shall be the responsibility of all licensees to inform themselves of all amendments to the statutes, codes, rules, ordinances, regulations, policies and other requirements, as such amendments may be made, and to make changes as required by such amendments, and it shall be no defense to any action taken by the town under this section that the licensee was unaware of such amendments.

State Law reference— General statutory reference and authority, G.S. §§ 160A-311, 160A-312.

- (3) Any unbalanced loading of the town's poles caused by the placement of a licensee's attachments and facilities shall be properly guyed and anchored by licensee, at no expense to the town. In no case shall a licensee's guys be attached to the town's anchors.
- (4) The town reserves the right to require power supplies, amplifiers, meters or other equipment to be installed on auxiliary poles. Otherwise, they may be attached directly to the town's poles. All power supplies shall be inspected for compliance with all rules and regulations.
- (5) No bolt used by the licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
- (6) In no case shall a utility pole owned by the town be drilled less than three (3) inches between pole holes.

- (7) Cable television circuits should be placed above telephone communication facilities. It is the responsibility of the cable television utility to negotiate with the appropriate telephone utility for specialized placements.
- (8) All cable clearances shall conform to the dimensions specified by subsection (6) above, or as specified by the town in these rules. No service connection shall be made or installed by the town until after licensee shall have completed installation of an approved fused service disconnect switch or circuit breaker.
- (9) All licensees shall install and maintain any and all of their facilities in a neat and workman-like manner consistent with the maintenance of the overall appearance of the pole, and all subject to approval of the town.
- (10) All down guys, overhead guys or messenger dead ends installed by the licensee shall be attached to the poles by the use of through bolts. Such bolts placed in a "bucking" position shall have at least four (4) inches vertical clearance. Under no circumstances shall the licensee install down guys, head guys or messenger dead ends by means of encircling the poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
- (11) Adjustments to the town's existing pole line to make it ready to receive the additional attachments shall be done based on the construction staking sheets and reports developed with the make-ready survey.

(Ord. of 2-6-08; Ord. No. 2011-09-Ord, § II, 8-16-11; Ord. of 4-18-13)

Sec. 15-313. - Safety requirements.

All attachments and facilities shall be placed and maintained in accordance with the rules, as defined above. The most current revision of the rules shall apply to all attachments and facilities. A revision to the rules shall not require a modification to attachments or facilities in place on the effective date of such revision, unless the revision so requires, in which event licensees shall comply with the rules as revised. All new construction shall comply with the rules in effect at the time of such construction. Should a licensee fail to implement a safety upgrade or other modification required by revised rules, the town may elect to complete the safety upgrades and the licensee shall reimburse the town for the cost of such completion.

(Ord. of 2-6-08)

Sec. 15-314. - No interference with prior use.

A new licensee's attachments and facilities will not interfere with or damage existing attachments or facilities of poles by the town, other utility companies, or other licensees. Licensees will, on demand, reimburse such other users for any expenses incurred by the other users in transferring or rearranging their pre-existing facilities because of such interference; provided, however, that if pre-existing facilities of other users were in violation of the rules in effect at the time, the new licensee shall only be responsible for costs in excess of the costs incurred by the other users to correct their violations. Additionally, any licensee causing damage to the attachments or facilities of such other users shall be responsible for the actual cost of repair.

(Ord. of 2-6-08)

Sec. 15-315. - Certification of compliance by engineer before issuance of permit.

Prior to the issuance of a permit, licensee's engineer or field personnel shall certify in writing that all attachments and facilities have been inspected and conform to the rules. If, in the reasonable judgment of the town, exercised in a nondiscriminatory manner as to all pre-existing licensees and the licensee-applicant, the proposed additional attachments would result in an unsafe condition under the rules or be physically impossible, the town shall have the right to reject the application.

(Ord. of 2-6-08)

Sec. 15-316. - Maintenance of attachments.

After installation of attachments and facilities, licensees shall, at no expense to the town, maintain all their attachments and facilities in compliance with the rules.

(Ord. of 2-6-08)

Sec. 15-317. - Engineer's certificate of compliance and effect of noncompliance.

At any time, the town may demand, and a licensee shall provide, a written statement from a registered professional engineer that the licensee's facilities, including protection devices, attachments and other installations, as built, are fully in compliance with the rules. This certification shall be based upon the engineer's personal inspection and shall be delivered to the town within thirty (30) days after demand. In the event the engineer reports noncompliance with the rules, licensee shall cause such noncompliance to be corrected within thirty (30) days of the date the offending licensee receives notice of the report. After thirty (30) days from the date of notice, any nonconforming attachment will be assessed a fine of one hundred dollars (\$100.00) per day per attachment. In addition, after thirty (30) days of noncompliance from such notice, the town shall revoke the licensee's permit and may remove the attachments at any time by whatever means the town deems necessary at the licensee's expense equal to an arbitrational pole remediation fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-318. - Licensee costs for new attachments.

Each licensee shall pay the town, or reimburse the town, as the case may be, for the following costs, to the extent made necessary for licensee's new attachments: Changing out primary poles, secondary poles, and lift poles, including the cost of installation and/or removal of guys, anchors, stub poles, temporary construction, tree trimming, right-of-way clearing, materials (less salvage), labor, engineering (including, without limitation, design, proper conductor spacing and bonding, and calculations to determine proper ground clearances and pole and down guy strength requirements for horizontal and transverse loading), supervision, overheads and all other construction items reasonably required under the rules. All resagging costs shall be borne by the licensees, except in cases where the primary conductors of the town are not sagged in accordance with the rules, in which case the town will resag the primary conductors at its own cost.

(Ord. of 2-6-08)

Sec. 15-319. - Town's right of inspections and audits.

The town reserves the right to inspect every installation, attachment, and facility of any licensee at any time. Licensees shall allow such inspections as the town deems appropriate upon reasonable notice from the town. The town reserves the right, in its sole discretion, to perform a system-wide audit whenever deemed necessary. The town may also conduct, subject to mutual approval by all licensees on the system, audits by contract, either system-wide or area-specific, at any time attachment count or code compliance issues so warrant. The cost of the audit shall be paid by the licensees in proportion to the number of attachments they have.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-320. - Licensee costs for replacement of damaged or deteriorated poles.

In the event a pole becomes unusable because of normal aging or deterioration, or damage from actions of members of the public or weather-related events, or any other event not related to activities of a licensee, the town may replace the pole but has no obligation to replace it. In the event the town chooses to replace the pole, the costs of

replacement of the pole shall be paid by the town, but the costs of transferring their respective facilities shall be paid by the licensees. In the event a pole is damaged under the circumstances set forth in this section, licensees shall not be entitled to a refund of attachment fees.

(Ord. of 2-6-08)

Sec. 15-321. - Relocation of poles by town.

~~Whenever right-of-way considerations make~~ **Whenever the Town of Highlands determines the relocation of a pole or attachment is necessary,** such relocation shall be made by the town at its own expense, **unless it is necessary due to the licensee's actions,** except each licensee shall pay the cost of transferring its own attachments. The town shall be the sole judge in determining whether to abandon and remove an existing line or pole. Before making such replacement or relocation, the town shall give notice in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to all licensees attached to the pole, specifying in such notice the date and time of such proposed replacement or relocation. All licensees shall, at the date and time so specified, transfer their attachments to the new or relocated pole, or licensees shall place their facilities underground if the pole line is to be abandoned and removed by the town. After thirty (30) days from the date of written notice, any nontransferred attachment will be assessed one hundred dollars (\$100.00) per day per attachment. Additionally, after thirty (30) days from such notice, the town may remove the attachments at any time by whatever means the town deems necessary at the licensee's expense equal to an arbitrational pole remediation fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-322. - Abandonment by licensee.

Licensees may at any time abandon the use of a pole by giving the town due notice in writing identifying which poles are being abandoned and removing their attachments and facilities. Licensee shall have no right to a pro-rata refund of any amounts already paid to the town under this article.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-323. - Violations by licensee.

If during an inspection of a pole, the town discovers a licensee is in violation with the rules, the licensee shall be given thirty (30) days' notice of each violation. Licensees who fail to correct the violation within such time shall pay a fine of one hundred dollars (\$100.00) per day for each day after said thirty (30) days. Additionally the town reserves the right, at any time, to correct the violation by whatever means the town deems necessary at the licensee's expense equal to an arbitrational pole remediation fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses.

(Ord. of 4-18-13)

Sec. 15-324. - Abandonment by town.

The town reserves to itself and its successors and assigns the right to abandon any pole or poles for any reason in its discretion. All licensees on all poles to be abandoned shall be given thirty (30) days' notice of each proposed abandonment. Licensees who fail to remove their facilities within such time shall pay a fine of one hundred dollars (\$100.00) per day for each day after said thirty (30) days. Additionally, the town may, at any time, remove the attachments.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-325. - Removal of facilities and payment of costs of removal.

Wherever in this article the town is given the right to remove facilities of a licensee, this provision shall apply. The town may dispose of the facilities in any manner it deems necessary at the licensee's expense equal to an arbitrational pole remediation fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses. The town shall have no liability of any kind for such removal or disposal, and licensees will indemnify the town for any claims under the general indemnification provision herein.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-326. - Use of poles by town.

In the event it is necessary for the town, for its own purposes, to use space on poles permitted for use by a licensee, the licensee shall, upon receipt of thirty (30) days' written notice, either vacate the space by the removal or rearranging of its facilities. After thirty (30) days from the date of written notice, any nontransferred attachment will be assessed one hundred dollars (\$100.00) per day per attachment. Additionally, after thirty (30) days from such notice, the town may remove the attachments at any time by whatever means the town deems necessary at the licensee's expense equal to an arbitrational pole remediation fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-327. - Costs of changes paid by licensees.

In any case where facilities of the town are required to be rearranged, transferred, or the characteristics of the circuits on the poles of the town need to be changed to accommodate the attachments of licensee, the licensee shall pay to the town the actual costs incurred by the town for such work. The licensee shall also reimburse other users of the poles for their costs of rearrangement to provide space or clearance for the facilities of licensee. **If the town has utilized any contract labor for any make-ready audits or construction of any kind, the licensee shall pay to the town the actual cost incurred by the town for such work.**

(Ord. of 2-6-08; Ord. of 4-18-13)

~~Sec. 15-328. - Change in number of attachments.~~

~~In the event the licensee desires to request a change in the number of pole attachments, it shall do so by submitting to the town the standard form suitable for that purpose. Licensee may coordinate with other users to move or rearrange wires reimbursing the other user directly. In the event other users are unaccommodating, licensee may request the town to coordinate with other users. Any reimbursement to other users for rearranging wires will be paid by licensee to the town. The town, only after payment from licensee shall reimburse other users. Any additional expenses incurred by the town due to arbitration between licensee and other users shall be paid by the licensee to the town before a permit will be issued. At such time other users will have thirty (30) days for the first two (2) poles and one (1) day per each additional two (2) poles (4 poles = 31 days; 10 poles = 34 days). Licensees who fail to move their facilities within such time shall pay a fine of one hundred dollars (\$100.00) per day per pole. Additionally, the town reserves the right, at any time, by whatever means the town deems necessary to rearrange wires at the other user's expense equal to an arbitrational pole remediation fee to be set by the town board of commissioners and will be listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses.~~

~~(Ord. of 2-6-08; Ord. of 4-18-13)~~

Sec. 15-329. - Ownership of poles.

The town's poles shall remain the property of the town, and any payments made by the licensee, for changes in pole lines or otherwise, shall not entitle any licensee to ownership of any poles. No use, however extended, of the town's poles, shall create or vest in any licensee any ownership or property rights in said poles, but licensees' rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel the town to maintain any of said poles for a period longer than demanded by its own service requirements.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-330. - Electrical service.

In the event that licensee requires a source of electrical energy for power supply to its system, such energy will be supplied by the town in accordance with the provisions of its standard service extension policies and approved rates and tariffs. This charge will not be offset or reduced in any way by payment of pole attachment fees. Power supply from the town's system including existing connections, shall be applied for in the same manner as a regular electrical service and upon certificate of inspection from the county or any other regulatory agency shall be granted.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-331. - Necessary action.

Notwithstanding any other provision of this article, in cases of imminent danger, such as but not limited to, fallen wires in streets, on homes, or in areas of pedestrian traffic, the town may, in its discretion, relocate, repair (which may be temporary), remove and/or replace any lessee's pole attachments and facilities (as defined in section 15-303) in order to eliminate such danger. The town will attempt to notify the affected lessees prior to taking such action, but notification shall not be a prerequisite for the town's actions under this section, nor a defense to an action by the town under this article for collection of the costs of such action. The requirement of written notice under section 15-345 shall not apply to cases of imminent danger, and notice shall be deemed sufficient under this section if oral, by telephone, or any other means reasonably calculated to give notice. In addition to the other requirements in this article that licensees bear certain costs associated with their activities, licensees shall pay the operational expenses incurred by the town in connection with actions under this section. "Operational expenses", as used in this section, shall mean the licensee's share (as determined by the town) of the expenses reasonably necessary to effectuate the elimination of the cause of the imminent danger, in excess of the normal salaries of town employees involved in the work. In addition, the town will assess as a standard charge an "emergency pole remediation fee" for actions taken under this section. This fee will be listed on the town's fee schedule.

(Ord. of 2-6-08; Ord. of 4-18-13; Ord. of 9-19-13)

Sec. 15-332. - Town not liable for service interruptions.

The town reserves to itself, its successors and assigns, the right to maintain, replace and enlarge its electric facilities and to operate the same from time to time in such a manner as will best enable it, in its sole judgment, to meet the needs of its customers and fulfill its own service requirements. The town shall not be liable to any licensee or any customer of a licensee for any interruption to service of any licensee or for interference with the operation of the cables, wires, and apparatus of a licensee arising in any manner out of the use of the town's poles hereunder, or arising in any manner out of the condition or character of the town's facilities or the manner of the operation thereof.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-333. - Requirement of insurance.

All licensees must maintain, throughout the time during which it has attachments or facilities on the town's poles, public liability insurance covering the ownership liability and all operations of the licensee, with the town named as an additional insured, with limits for bodily injury or death of not less than five million dollars (\$5,000,000.00) each occurrence and five million dollars (\$5,000,000.00) aggregate per policy period and with limits for property damage of not less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate for the policy period. This required insurance may be in a policy or policies of insurance primary and excess including the umbrella or catastrophe form. Licensees shall furnish updated certificates of insurance to the town on an annual basis, and at the time of payment of attachment fees.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-334. - Hold harmless provision.

Licensees shall indemnify, protect, defend, save harmless and insure the town from and against any and all claims, actions, judgments, loss, costs, expenses, and demands for property damages or bodily injury (including payments made under any applicable workers compensation law or under any plan for employees disability and death benefits) and including all expenses incurred in defending against any such claims, to the extent such claims arise out of or be related to the erection, maintenance, presence, use, rearrangements or removal of attachments and facilities, or by any act of a licensee, its agents and employees or contractors on or in the vicinity of the town's poles. Licensees shall waive any immunity viz. a viz. the town created by any applicable workers compensation law and shall indemnify the town against loss due to such immunity as may exist in favor of any of its contractors in respect to such contractor's employees who are injured or killed in the course of work related to the town's poles.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-335. - Assumption of risk.

Licensees expressly assume the responsibility for determining the condition of all poles to be serviced by its employees, agents, contractors, or employees of contractors. All such persons shall be conclusively presumed to have assumed all risks inherent in the activity of working on or around the town's poles.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-336. - Reports of accidents.

Licensees shall make a verbal report to the town, as soon as possible, but not later than twenty-four (24) hours, and a written report to the town within forty-eight (48) hours of the occurrence of any incident resulting in bodily injury or property damage (including damage to other licensees' facilities or the town's facilities) in connection with work of a licensee's employees or contractors related to the poles.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-337. - Necessary precautions.

Licensees shall take any necessary precautions prescribed by the rules, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from licensees' activities on or around the town's poles. If, in the town's opinion, a licensee has not taken such necessary precautions, the town shall have the right to revoke all permits granted under this article upon thirty (30) days' written notice to the licensee. The town shall have the right to remove immediately and without notice any attachment or facility that could place the town's poles, facilities or any person in danger of damage or injury.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-338. - Penalties and remedies.

Unless a shorter time is provided for elsewhere herein, if a licensee shall fail to comply with any of the provisions of this article, or default in any of its obligations, and shall fail within sixty (60) days after written notice from the town to correct such default or noncompliance, the town may, at its option, revoke licensee's permit. In case of such termination, no refund shall be made. In the event of any serious safety issue caused by licensee, the town may remove licensee's facilities. A violation of this article shall constitute a misdemeanor under G.S. § 14-4. The maximum fine for any such violation shall be five hundred dollars (\$500.00). Notwithstanding any other provision in this article, the town may file an action to enjoin violations of this article. In any action between the town and a licensee, arising out of this article, whether for damages, injunctive relief, or other relief, if the town prevails in such action, the licensee shall pay the costs of the action, including the town's attorney fees.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-339. – ~~Payment within thirty (30) days~~ **Immediate payment.**

Bills for expenses and other charges under this article, except those advance payments specifically covered herein, shall be payable **immediately**. ~~within thirty (30) days after presentation. Any payment not made within thirty (30) days after the due date shall bear interest at a compounded interest rate of eighteen (18) percent per annum until paid.~~ **The Town is not obligated to take any action under this Ordinance unless it is paid immediately.**

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-340. - No waiver of provisions of ordinance.

Failure to enforce or insist upon compliance with any of the terms or conditions of this article shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-341. - Reimbursement for work performed by town.

If a licensee shall default according to the time limits set herein in the performance of any work it is obligated to do under this article, upon thirty (30) days' written notice, the town may elect to do such work, and the licensee shall reimburse the town for the cost equal to an arbitrational pole remediation fee to be set by the town board of commissioners and listed in the fee schedule of the Town of Highlands, State of North Carolina plus operational expenses.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-342. - Unauthorized attachments.

If any of licensee's facilities for which no permit has been issued shall be found attached to the town's poles, the town may, without prejudice to its other rights or remedies under this article, require licensee to submit, within fifteen (15) days after the date of written or oral notification from the town of the unauthorized attachment, an application and permit for pole attachments. If such application is not received by the town within the specified time period, licensee shall immediately remove the unauthorized facilities. The town may remove the unauthorized facilities if the licensee fails to remove them. The licensees shall pay an attachment fee of one hundred dollars (\$100.00) per pole per attachment each full year or fraction thereof from the time that the unauthorized attachment was made up to and including the time that the unauthorized attachment was discovered by the town. The installations shall be

presumed to have occurred on the date of the last field inventory. The total pole attachment fee, calculated as described in this subsection, shall be paid by the licensee together with its attachment application.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-343. - Rights of others.

This article shall not be construed as affecting the rights or privileges granted by the town, by contract or otherwise, to others, to use the town's poles; and the town shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such contracts and arrangements.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-344. - Permits not transferable.

Licensees shall not assign, transfer or sublet the permits or privileges granted under this article without the prior consent in writing of the town.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-345. - Notice.

Wherever in this article notice is provided to be given by either party hereto to the other, unless otherwise specified, such notice shall be in writing and given by letter deposited in the U.S. Mail, or by personal delivery to the town at its main office at the address shown on its web site.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-346. - Bond requirement for new construction.

Prior to the start of all new construction or addition of attachments, licensees shall furnish satisfactory evidence of a performance bond in the amount of fifty thousand dollars (\$50,000.00) to guarantee the payment of any sums which may become due to the town for attachment fees, engineering fees, make-ready surveys, make-ready work, rearrangement of attachments, pole relocations or for other work performed for the benefit of the licensee under this article. This requirement shall cease upon the satisfactory completion of construction and the provision of a certificate of insurance as required elsewhere in this article.

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-347. - Trimming of right-of-way.

All necessary right-of-way maintenance, including tree trimming or cutting, shall be performed by the owner of the right-of-way. If the owner of the right-of-way is the town, the town shall have no responsibility to clear more right-of-way than is necessary for its electrical facilities. Further clearing shall be accomplished by licensees at no cost to the town.

(Ord. of 2-6-08; Ord. of 4-18-13)

~~**Sec. 15-348. - Drop attachments made in haste.**~~

~~The town shall allow the making of limited drop attachments without formal application under this article in situations where such attachments can be made safely, easily, and quickly with no compromise of the public safety or convenience; provided, however, that a report of such attachments shall be made no later than three (3) days after attachment~~

~~on a form provided by the town for such reports. Licensees shall comply with all additional rules set forth on such form.~~

(Ord. of 2-6-08; Ord. of 4-18-13)

Sec. 15-349. - Reserved.

Commissioner Patterson asked if the definition to “Make-ready audit” was the same as “Make-ready survey” and MIS/GIS Shuler stated it was the same thing. Commissioner Patterson stated it seemed confusing and felt the “Make-ready audit” definition should be clearer.

Town Attorney Jay Coward stated the idea of the “Make-ready” reference was to make it all part of the audit and includes all the “Make-ready” references in numbers 1-6.

Town Attorney Jay Coward changed the definition from “*Make-ready audit* shall mean the estimated cost of a pole attachment as provided by a third party contractor to the Town.” to “Make-ready audit shall mean the process by which a survey of the work is presented to the Town, or produced by the Town, and a cost estimate is provided, whether by a third party contractor to the Town, or by the Town itself.”

Commissioner Patterson made a motion to accept the Ordinance Amendments for Chapter 6, Article VI., Regulating the Attachment of Cables, Wires and Apparatus to the Poles of the Town, as presented, and Chapter 15: Article V., Pole Attachment Regulation, as amended, which was seconded by Commissioner Stiehler and the vote was unanimous.

12. Surplus of Vehicles & Equipment – Police Dept.

Police Chief Bill Harrell stated the repairs for the 2010 Traverse turned out to be more than it's worth and will have to ask for another vehicle in the next few years, but would try to put it off as long as possible.

Surplus Vehicles and Equipment

2010 V-6 Chevy Impala White in Color VIN #2G1WD5EM1A1149426

- 1- Approximately 104,500 miles
- 2- Needs Head gaskets
- 3- Cage will not be taken out

2010 Traverse AWD White in Color VIN #1GNLVEED6AS129946

- 1- Mileage: 112,100
- 2- Timing Chains need to be Replaced
- 3- Catalytic Converter needs to be replaced
- 4- transmission fluid sensor pressure switch sensor/switch needs to be replaced

RICOH Printer Aficio 2020D

- 1- Network Capable
- 2- Duplex
- 3- Copy
- 4- Print
- 5- Fax
- 6- Scan
- 7- Uses different sizes of paper
- 8- Includes Metal Printer Stand with Doors
- 9- Two trays (see note below)
- 10- Uses RICOH toner 320
- 11- Black Only, No Color

Very Good Condition, Low Usage (58,975 copies since 2006)
Only know problem is: Tray#1 does not feed

There may be other problems that are unknown
Sold as Is

Commissioner Stiehler made a motion to accept the consent agenda as presented, which was seconded by Commissioner Patterson and the vote was unanimous.

13, Budget Amendments – Recreation Capital

Finance Director Rebecca Shuler stated the changes to the Budget on behalf of the Recreation Department for Phases I and II had been approved, but there wasn't a formal Budget Amendment to satisfy the Auditor's. Finance Director Rebecca Shuler stated that after the money allocated in the budget had been spent, the gift of \$350,000 from the County would be allocated and would probably closer to the end of the fiscal year.

TOWN OF HIGHLANDS BUDGET AMENDMENT
AMENDMENT # _____

March 9, 2018

FROM: General Fund



DEPARTMENT: Rec Dept.

EXPLANATION: Appropriate funds to cover difference in budgeted amount and contract amount of Phase 1 & 2 of the Recreation Renovation along with change orders. Contract approved July 27, 2017. Also, appropriated fund to cover Phase 3 of the Recreation Renovation along with change orders. Contract approved September 21, 2017.

	Account	Description	Increase/Decrease	Debit	Credit
1.	Phase 1 & 2				
	10-3100-0910	Fund Bal Approp. ~ GF	Increase		\$71,005.00
	10-6200-7300	Capital Outlay/Other Improvements	Increase	\$71,005.00	
			Subtotals	\$71,005.00	\$71,005.00
2.	Phase 3				
	10-3100-0910	Fund Bal Approp. ~ GF	Increase		\$261,248.00
	10-6200-7300	Capital Outlay/Other Improvements	Increase	\$261,248.00	
			Subtotals	\$261,248.00	\$261,248.00
			Totals	\$332,253.00	\$332,253.00

Approved by Town Manager

Action by Town Board

Approved and Entered on Minutes Dated

Finance Director

Commissioner Patterson made a motion to accept the Budget Amendment as presented, which was seconded by Commissioner Stiehler and the vote was unanimous.

14. Arnold Road/Sunset Road Discussion

Public Works Director and Town Engineer Lamar Nix stated that the Lake Sequoyah Property Owner's Association has requested to pave the unpaved section of Arnold Road with the Town paying 15% of the cost.

Public Works Director and Town Engineer Lamar Nix stated that he went out with the Street Department and measured the depth of the gravel at 100 foot intervals and determined that 256 Tons of gravel was needed to provide the 6 inch base to pave with NCDOT standards, with an estimated cost of \$4,000.00. Public Works Director and Town Engineer Lamar Nix recommended that a decision to be made with the Town

costs at approximately \$18,100, including the gravel and to make a new agreement with the Association with regards to maintenance.

Fred Jones Attorney for the Lake Sequoyah Property Owner's Association stated that he appreciated the discussions had with Public Works Director and Town Engineer Lamar Nix and Town Manager Josh Ward. Attorney Jones stated that there needed to be one refinement to the Association's proposal. The hired engineer requested 8 inches of gravel but Lamar feels sure that the 6 inches of gravel would be sufficient, so the concern and issue is it would affect the paving warranty. Attorney Jones stated that the Association would like the Town to coordinate the paving, not changing the scope of responsibility, but to address the 6 inch verses 8 inch gravel issue.

Town Manager Josh Ward stated a concern would be the money going in and out and the accounting responsibility, including being out the money ahead of time.

Commissioner Patterson asked if the Town needed to participate by paving or leave as it is, the road has been adequately maintained for 25 years, so should the taxpayers be paying to pave and maintain a paved gated private road.

Mayor Taylor asked if there was a new agreement about the future maintenance would that satisfy the concern of future maintenance.

Commissioner Patterson stated the homeowner's are upgrading for their own reasons and the Town doesn't have the responsibility to pave the road and shouldn't have the responsibility to maintain a paved road or repaving in the future.

Mayor Taylor stated the Town wanted to be a good neighbor and possibly if a new agreement could be reached with the Town being a partner in maintenance and not fully responsible for the maintenance of the whole road would it be considered, and Commissioner Patterson stated she would possibly consider.

Attorney Jones stated that he had no authority to date to negotiate a new agreement. Mayor Taylor stated that discussions with Town Attorney Jay Coward, Town Manager Josh Ward, Public Works Director and Town Engineer Lamar Nix and the Public Works Committee should continue to possibly come up with a mutual acceptable resolution.

Town Attorney Jay Coward stated the current agreement obligates the Town to maintain because it built the road and another subdivision couldn't ask for the same benefits because the situation is different, but suggested a new Agreement be worked out.

Attorney Jones stated that the property owners was seeking a win/win situation so a mutual agreement should be attainable and thanked the Board for their time.

Public Works Director and Town Engineer Lamar Nix stated that Commissioner Patterson had voiced concerns about erosion from Sunset Road at a previous Town meeting and it was determined a solution was needed.

Public Works Director and Town Engineer Lamar Nix stated he had provided estimates for various levels of paving the road at the Town Board Retreat, and it was determined not to pave the street, but to close it and let it be a hiking trail.

Public Works Director and Town Engineer Lamar Nix stated the overhead powerlines that serve Ravenel Ridge Subdivision and Playmore have to be maintained and accessed by the Electric Dept. using the upper portion of the road, and using access through Ravenel Ridge is an option, and is being discussed with the Homeowner's Association.

Public Works Director and Town Engineer Lamar Nix stated the Deeds to the Land Trust provided access and easement to Sunset Road for the use of the public, but found the owners of the road are actually Beth H. Hiers, Trustee, Playmore Highlands Ten, LLC and Highlands Cashiers Land Trust, so the Town really has no obligation to maintain the road except to provide the Electric Dept. access to take care of the utilities and the superintendent said it was fine if they had to use a four wheel drive and crawl to get there.

Mayor Pro Tempore Pierson stated if we cease to maintain because it is the property owner's responsibility it will take care of itself.

Commissioner Patterson stated that we created the problem and we need to clean it up. Commissioner Patterson also stated we should put up a sign as a service to Town visitors.

Commissioner Stiehler stated he thought the Town should work with the property owner's to work on a solution since we created the problem.

Mayor Taylor stated that staff would continue to work on the issue and come back with a possible resolution at the next meeting.

Public Works Director and Town Engineer Lamar Nix stated he would need to know whether or not to remove the road from the Powell Bill Map by July and confirmed with the Board that the street department was to cease to maintain the road at this time.

15-16. Closed Session: Pursuant to NCGS §318.11(a)(3) and NCGS §318.11(a)(4)

Mayor Pro Tempore Pierson made a motion to go into Closed Session pursuant to NCGS §318.11(a)(3) for Attorney Client Privilege and NCGS §318.11(a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body at 8:27pm, which was seconded by Commissioner Dotson and the vote was unanimous.

Once discussion was held, Commissioner Dotson made a motion to go back into open session at 8:49pm, which was seconded by Commissioner Stiehler and the vote was unanimous.

17. Adjournment

As there were no further matters to come before the Board of Commissioners, Commissioner Dotson moved to adjourn which was seconded by Commissioner Stiehler and upon a unanimous vote, the Town Board adjourned at 8:50pm.

Patrick Taylor
Mayor

Gilberta B. Shaheen
Town Clerk