



Town of Boiling Springs

**Board of Planning & Adjustment Agenda
October 18, 2022
5:30 PM**



Town of Boiling Springs

PO Box 1014 | Boiling Springs, NC 28017
Phone 704-434-2357 | Fax 704-434-2358
www.BoilingSpringsNC.net

Board of Planning & Adjustment

MEETING AGENDA
October 18, 2022

ROUTINE BUSINESS

1. Chairman's Call to Order
2. Public Comment
3. Minutes from the September 20th Meeting

REGULAR BUSINESS

4. Consider Amending Chapter 92 of the Code of Ordinances
5. Adjourn

**Town of Boiling Springs
Board of Planning & Adjustment Minutes
September 20, 2022**

ROUTINE BUSINESS

Chairman's Call to Order

Chairman Martin Called the meeting to order at 5:30pm.

Recognize Citizen's Present & Public Comment

No Citizen presented Comments

Minutes from the August 16th Meeting

Approve the August 16th meeting minutes as presented.

Motion made by Thom Bates, seconded by David Wacaster

Voting Yea: Chairman Martin, Thom Bates, Bill Daves, Alan McWhirter, Karma Harris

REGULAR BUSINESS

Downtown Overlay District

Recommendation of adoption of a defined overlay district area

Mr. Longino presented the downtown overlay district area designation and asked Planning Board for a recommendations to Town Council.

Mr. Bates asked what would be the impact if Gardner-Webb Buildings left in. Believes since other Gardner-Webb buildings has been excluded this should be.

Motion to recommend to Town Council adoption of the the underlying map as presented

Motion made by Thom Bates, Seconded by Bill Daves.

Voting Yea: Chairman Martin, Thom Bates, Bill Daves, Alan McWhirter, Karma Harris

Land Use Plan RFP

Staff requests review of the Future Land Use Plan RFP to be used to attract a firm to update the plan

Mr. Longino presented the proposed RFP for the future land use plan.

Chairman Martin stated allowing plenty of opportunity for public comment

The consensus of the Planning Board was the Land Use Plan RFP looked good.

UDO Flood Plain Ordinance Update

Changes to the Flood Plain Ordinance as recommended by NCDEM

Mr. Longino presented on the flood plan ordinance Revision.

Recommend approving ordinance as presented

Motion made by Thom Bates, Seconded by Bill Daves.

Motion made by Thom Bates, Seconded by Bill Daves.

Voting Yea: Chairman Martin, Thom Bates, Bill Daves, Alan McWhirter, Karma Harris

Motion to Adjourn

Motion to Adjourn at 5:55pm

Motion made by Thom Bates, Seconded by Alan McWhirter.

Voting Yea: Chairman Martin, Thom Bates, Bill Daves, Alan McWhirter, Karma Harris



REVISIONS TO CHAPTER 92

Options to Proceed:

1. Motion to recommend amending Chapter 92 as presented by staff
2. Motion to recommend amending Chapter 92 with changes discussed
3. Motion to table for further review
4. No motion needed to leave Chapter 92 as it currently reads

Staff recommends Option 1

SUMMARY

Staff has reviewed ordinances from towns across the state regarding animals, livestock, chickens, etc. We also sought feedback from the Planning Board and Town Council on the revision of this ordinance. Feedback received was that the ordinance needed to be more restrictive and include more enforceability.

Currently, the Town contracts with Cleveland County Animal Services for ‘animal control’ services. This has been a long-standing partnership and the Town does not wish to take on this responsibility from the County. However, we do recognize the need to be able to have some control over situations in town and not solely rely on another agency whose base of operations is outside of our corporate limits.

Additionally, Cleveland County Animal Services recently (within the last year) overhauled its animal ordinance. The Boiling Springs chapter referenced, almost in its entirety, the *former* Cleveland County ordinance.

Therefore, staff recommends removing the majority of the language in Chapter 92 and replacing it with a reference to adopting the Cleveland animal ordinance and all of its parts. To give us the ability to have more control, staff has recommended a section (92.04 Restraint and Keeping of Animals; penalty) that allows the town manager or their designee to enforce those regulations outlined within the corporate boundaries of the town. Included with this is language to ‘include but not limit’ certain situations for broader authority and an increasing fine structure that can also require the containment of the animals.

For your reference, we have included a ‘redline’ copy and a ‘clean’ copy of the proposed changes to Chapter 92.

MATERIALS PROVIDED

- **Redline and Clean copy of proposed changes**

CHAPTER 92. ANIMALS

Sec. 92.01. County ordinance; enforcement.

- (a) The Cleveland County ordinances regulating animals shall be applicable within the corporate limits of the Town of Boiling Springs. The county animal services department as established and governed by county ordinance shall enforce such county ordinance within the town limits with the full cooperation of the town.
- (b) In addition to the Cleveland County ordinance, the town manager or their designee may enforce the regulations set forth in Section 92.04 as needed to maintain the general welfare of the residents of the town without interfering with the regulations set forth in the Cleveland County ordinance.
- (b) Where any conflict appears between the provisions of this chapter and such county ordinance, the more restrictive shall apply and control.

Sec. 92.02. Exclusions.

The provisions of this chapter shall not apply to any sworn law enforcement officer or law enforcement dog acting in the course of his/her normal duties as an employee of the town, county, state or other law enforcement agency working in conjunction with the police department.

Sec. 92.03. Territorial application.

This chapter shall apply only within the corporate boundaries of the town as the same may exist and as may hereafter be amended by the town council.

Sec. 92.04. Restraint and Keeping of Animals; penalty.

- (a) The keeping of any animal in such manner or in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:
 - 1) Having an animal that disturbs the rights of, threatens the safety of, or injures a member of the general public, or interferes with the ordinary use and enjoyment of their property;
 - 2) The keeping of any animal which by continued or repeated loud noises would disturb the quiet, comfort or repose of a reasonably prudent person;
 - 3) No animal shall be kept, maintained or allowed off of the premises owned or controlled by its owner or keeper unless it is then controlled by a tether, leash or similar device.
 - 4) Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers, damaging gardens, flowers, or vegetables, or defecating upon the property of another;
 - 5) Maintaining animals in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person;
 - 6) The keeping, possession, harboring or feeding of animals; wild, feral or domesticated, which threaten the public health, safety and welfare of the community;
- (b) Enforcement by civil citations shall be in accordance with the following:

- 1) Civil citations may be used to enforce any section of this chapter. Such citations may be used independently or in conjunction with any other enforcement method. Violations related to enforcement of ordinances through interlocal agreements may only be enforced by the issuance of a civil citation.
- 2) Each day that an ongoing violation continues shall be considered a separate and distinct violation from any previous or subsequent violation, and each separate violation may be the basis for a citation.
- 3) The penalties assessed by civil citations subject to an escalating civil penalty must be evidenced by the issuance of a civil citation or a criminal conviction arising from a prior offense before the next escalated penalty for subsequent offenses may be assessed. Penalties shall only escalate when the same offense has been committed by the same owner in the past. No offense occurring more than ten (10) years before the current offense shall be considered.
- 4) In addition to civil citations that are subject to an escalating civil penalty, violations determined to be a repeated offense may also be enforced using the following methods:
 - i. First offense: Warning issued.
 - ii. Second offense: \$100 fine.
 - iii. Third offense: \$200 fine and/or restraint measures of the offending animal
 - iv. Fourth offense: \$500 fine and/or restraint measures of the offending animal

Sec. 92.05. Additional remedies.

In addition to the penalties provided in this chapter, enforcement of this chapter may be by injunction, restraining order or order of abatement from a court of competent jurisdiction, as provided by G.S. § 160A-175(d) and (e).

PART II - CODE OF ORDINANCES
 TITLE IX. - GENERAL REGULATIONS
 CHAPTER 92. ANIMALS

CHAPTER 92. ANIMALS

Sec. 92.01. Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Animal control department means the Cleveland County Animal Control Department.

Animal control officer means that person appointed by the Cleveland County Health Director having all the authority granted within the Cleveland County Ordinance or granted by the General Statutes of the State of N.C. to animal control officers.

Animal shelter means the Cleveland County Animal Shelter or any premises designated by the county for the purpose of impounding and caring for all animals in accordance with the provisions of this chapter.

At large means off the premises of the owner or custodian of the animal, and not under the immediate physical control of the owner or custodian.

Cleveland County ordinance means the "Ordinance Regulating the Keeping of Dogs, Cats and Other Animals within the County of Cleveland, North Carolina" as adopted and amended by the Cleveland County Town council.

Dangerous dog means a dog that without provocation has killed or inflicted severe injury on a person; or determined by the animal control officer to be potentially dangerous because the dog has engaged in one or more of the behaviors listed under the definition *potentially dangerous dog* in this section, any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

Dog means male, female or neutered canine.

Immediate physical control means an animal is restricted in its movement by a tether, leash, chain or other such device.

Keeper means any person, not an owner, who shall have possession or control of any dog by permission of and with knowledge of the dog's owner, and who shall be charged by the owner, whether explicitly or tacitly, with the care of such dog, either gratis or for compensation.

Keeping, maintenance means allowing a dog to remain on or about one's premises or providing food, shelter, protection, personal care or any combination of same to such dog.

Owner means any person, group of persons, firm, partnership or corporation owning, keeping, having charge of, sheltering, feeding, harboring or taking care of any animal. The owner is responsible for the care, actions and behavior of his/her dog(s). In the event that the owner or keeper of a dog is a minor, the parent or guardian of such minor shall be held liable for noncompliance with the provisions of this chapter.

Owner's real property means any real property owned or leased by the owner of a dog, but does not include any public right of way or a common area of a condominium, apartment complex, or townhouse development.

Person in control of a dog means the owner, keeper or any other person possessing actual physical control over the conduct, whereabouts, care or behavior of a dog by permission of the owner, by force of law or otherwise.

Potentially dangerous dog means a dog that the animal control officer determines to have inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or approached a person when not on the owners property in a vicious or terrorizing manner in an apparent attitude of attack.

Restrain means a dog is under restraint within the meaning of this chapter if it is controlled by means of a chain, leash, or other like device; on or within a vehicle being driven or parked; within a secure enclosure; or within the dwelling, house or other structure of the owner or keeper.

Secure enclosure means any area enclosed or limited by any type fence, wall, barrier or other form of enclosure, and which is used at anytime to confine or limit the mobility of any dog.

Threatening disposition means a demonstrated tendency to threaten or habit of threatening imminent attack by charging, advancing upon; snarling, snapping at or lunging at; or otherwise apparently attempting to injure or intimidate any person or animal without reasonable provocation or justification.

Town means the Town of Boiling Springs, North Carolina.

Vicious means a predisposition or tendency to attack, bite, snap at, injure or display overt aggression toward humans or animals without reasonable provocation or justification.

(Ord. of 6-30-92; Ord. of 6-27-00; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.02. Exclusions.

The provisions of this chapter shall not apply to any sworn law enforcement officer or law enforcement dog acting in the course of his/her normal duties as an employee of the town, county, state or other law enforcement agency working in conjunction with the police department.

(Ord. of 6-30-92; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.03. Territorial application.

This chapter shall apply only within the corporate boundaries of the town as the same may exist and as may hereafter be amended by the town council.

(Ord. of 6-30-92; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.04. Presumption of ownership.

The purchase of rabies or any other vaccinations for any dog or the affixing to any dog of any type of collar, harness, choke chain, tax tag, rabies vaccination tag or any form of identification tag or device bearing such person's name, address or phone number or other means of identification, by any person, shall constitute prima facie evidence of the ownership, keeping or control of such dog by such person.

(Ord. of 6-30-92; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.05. Restraint and Keeping of ~~dogs~~Animals; penalty.

(a) The keeping of any animal in such manner or in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:

- 1) Having an animal that disturbs the rights of, threatens the safety of, or injures a member of the general public, or interferes with the ordinary use and enjoyment of their property;

- 2) The keeping of any animal which by continued or repeated loud noises would disturb the quiet, comfort or repose of a reasonably prudent person;
- 3) No animal shall be kept, maintained or allowed off of the premises owned or controlled by its owner or keeper unless it is then controlled by a tether, leash or similar device.
- 4) Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers, damaging gardens, flowers, or vegetables, or defecating upon the property of another;
- 5) Maintaining animals in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person;
- 6) The keeping, possession, harboring or feeding of animals; wild, feral or domesticated, which threaten the public health, safety and welfare of the community;

(b) Enforcement by civil citations shall be in accordance with the following:

- 1) Civil citations may be used to enforce any section of this chapter. Such citations may be used independently or in conjunction with any other enforcement method. Violations related to enforcement of ordinances through interlocal agreements may only be enforced by the issuance of a civil citation.
- 2) Each day that an ongoing violation continues shall be considered a separate and distinct violation from any previous or subsequent violation, and each separate violation may be the basis for a citation.
- 3) The penalties assessed by civil citations subject to an escalating civil penalty must be evidenced by the issuance of a civil citation or a criminal conviction arising from a prior offense before the next escalated penalty for subsequent offenses may be assessed. Penalties shall only escalate when the same offense has been committed by the same owner in the past. No offense occurring more than ten (10) years before the current offense shall be considered.
- 4) In addition to civil citations that are subject to an escalating civil penalty, violations determined to be a repeated offense may also be enforced using the following methods:
 - i. First offense: Warning issued.
 - ii. Second offense: \$100 fine.
 - iii. Third offense: \$200 fine and/or restraint measures of the offending animal
 - iv. Fourth offense: \$500 fine and/or restraint measures of the offending animal

(a) No dog shall be kept, maintained or allowed off of the premises owned or controlled by its owner or keeper unless it is then controlled by a tether, leash or similar device.

(b) In addition to all other penalties prescribed by law, a dog is subject to impoundment and all other applicable provisions of the Cleveland County Animal Control Ordinance if the dog is found off of the premises of its owner or keeper and unrestrained as provided for in paragraph (a) above.

(c) The penalties for violation of this section shall be as follows:

- (1) First violation \$ 50.00
- (2) Second violation 75.00
- (3) Third and subsequent violations 100.00

(d) The Cleveland County Animal Control Department is authorized to collect, at the time of redemption, an appropriate penalty if the animal was impounded due to violation of this section.

Formatted: Not Highlight

(e) For the purpose of determining how many offenses have been committed, and for determining the appropriate penalty, each offense shall remain on the record of the Cleveland County Animal Control Department for a period of two years. Subsequent to two years expiration, an offense shall be removed from the record and no longer used for purposes of calculation of penalties.

(Ord. of 6-30-92; Ord. of 6-27-00; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.06. County ordinance; enforcement.

(a) (a) —The Cleveland County ordinances regulating animals ~~Animal Control Ordinance as it pertains to animal control~~ shall be applicable within the corporate limits of the Town of Boiling Springs town. The county animal control services department as established and governed by county ordinance shall enforce such county ordinance within the town limits with the full cooperation of the town.

(b) In addition to the Cleveland County ordinance, the town manager or their designee may enforce the regulations set forth in Section 95.05 as needed to maintain the general welfare of the residents of the town without interfering with the regulations set forth in the Cleveland County ordinance.

(b) Where any conflict appears between the provisions of this chapter and such county ordinance, the more restrictive shall apply and control.

(Ord. of 6-30-92; Ord. of 6-27-00; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.07. County ordinance adopted.

~~The Cleveland County Animal Control Ordinance is hereby adopted and incorporated by reference as if fully set out herein.~~

(Ord. of 6-30-92; Ord. of 6-27-00; Ord. No. 070807.01, pt. 1, 8-7-07)

Sec. 92.08. Additional remedies.

In addition to the penalties provided in this chapter, enforcement of this chapter may be by injunction, restraining order or order of abatement from a court of competent jurisdiction, as provided by G.S. § 160A-175(d) and (e).

(Ord. of 6-30-92; Ord. No. 070807.01, pt. 1, 8-7-07)

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.58"