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George F. Goosmann, III, Mayor  
Fran G. Cogburn, Mayor-Pro Tem  
E. Glenn Kelly, Commissioner  
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,  
Town Manager

October 30, 2018

Susan L. Sitze  
Staff Attorney  
North Carolina General Assembly  
Legislative Analysis Division  
Suite 545, LOB  
300 N. Salisbury Street  
Raleigh, NC 27603-5925

RE: Town of Biltmore Forest Compliance with S.L. 2018-69

Dear Ms. Sitze,

Attached to this email, please find a comprehensive listing of the Town's ordinances that result in conduct subject to criminal punishment under the Town's ordinances. For our review, Town staff has compiled all ordinances that include these penalty provisions, and followed this up by including all specific penalty language at the conclusion of the document.

Please feel free to let me know if there is anything else the Town needs to do to comply with the requirements of S.L. 2018-69. Thank you.

Sincerely,

Jonathan B. Kanipe  
Town Manager

Copy: William Clarke, Biltmore Forest Town Attorney

**Town of Biltmore Forest, North Carolina**  
**Ordinance Provisions Resulting in Criminal Penalties**  
**pursuant to GS 14.4 (a)**

**Title III. Administration**

**Chapter 34.06 – Civil Emergencies** Establishes curfew during State of Emergency. Also allows prohibition of possession of explosives, firearms, ammunition or dangerous weapons; buying or selling of beer and wine; demonstrations such as parades, marches, or vigils; the sale of gasoline, kerosene or other explosive fluids; travel upon any public street or alley or carrying on of any business activity during a State of Emergency.

**Title V. Public Works**

**Chapter 50.01 – Tampering with City Property** Unlawful for any person unauthorized by the Town to tamper with alter or injure any valve on street mains or curb cocks, or fixtures used in connection with the waterworks system of the Town.

**Chapter 50.02 – Contamination of Water Supply** Makes unlawful contamination or pollution of water supply of the Town, or throwing dirt or debris into any reservoir containing water supply for the Town.

**Chapter 50.10 – Metering Tampering and/or Unauthorized Taps** Prohibits any unauthorized person to alter, tamper with, or bypass a meter for the purpose of measuring water or knowingly use water bypassing a meter provided by the water supplier.

**Chapter 50.33 – Regulations** – Water service connections must be protected from contamination and pollution; Installations of reduced pressure principle backflow must be installed adjacent to property line; cross-connections must meet testing requirements of the Foundation for Cross-Connection Control and Hydraulic Research, the American Water Works Association, and the State Building Code; all cross-connections must be maintained in a safe condition and in good working order; RPZ devices must be inspected annually and remain free of obstructions; fire protection water lines must have an RPZ device; commercial buildings with a boiler system must have an RPZ device; no irrigation lines in Town right of way.

**Chapter 51.02 – Littering** - Provides that it shall be unlawful to throw or deposit upon any street, street right-of-way, or private property any trash or debris that may be unsightly, offensive, or dangerous to traffic.

**Chapter 51.04 – Materials Resulting from Clearing Land** – Requires trees, shrubbery, or underbrush from land clearing by disposed of by contractor or builder.

**Chapter 51.05 – Garbage Collection** – Prohibits placement of solid waste from outside corporate limits for collection by the Town.

**Chapter 51.06 – Garbage Receptacles** – Garbage cans shall not be located behind closed fences, inside closed buildings, or any other inaccessible place. No garbage from dumpsters collected by Town.

**Chapter 51.12 – Accumulation of Garbage, Refuse, Rubbish, and Waste Prohibited** – Prohibits collection of garbage, refuse, or waste that becomes dangerous or prejudicial to public health.

**Chapter 51.13 – Recycling and Recyclable Material** – Requires all recyclable materials fit entirely in appropriate container, prohibits placement of recycling materials from outside corporate limits for Town collection, and prohibits removal of recycling materials from containers by unauthorized persons.

### **Title IX: General Regulations**

**Chapter 90.01 – Cruelty to Animals** – No person shall cruelly treat any animal in any way; no person shall inhumanely beat, underfeed, overload, abandon, or mistreat any animal in any way.

**Chapter 90.02 – Animals at Large** – Prohibits any person from allowing farm animals from running at large.

**Chapter 90.04 – Pens and Enclosures** – Any pens used for household pets must not create a health hazard or a nuisance from offensive odors.

**Chapter 90.05 – Limitation on Household Pets** – Prohibits any resident from owning more than six household pets. Prohibits condition or behavior of household pet from interfering with other residents' enjoyment.

**Chapter 90.06 Certain Animals Expressly Prohibited** – Unlawful to keep any hog, pig, horse, pony, cattle, goat, sheep, chicken, duck, turkey, goose, swan or other farm animals in corporate limits.

**Chapter 90.21 Trapping, Hunting, or Shooting Wild Birds Prohibited** – It shall be unlawful to trap, hunt, shoot, or otherwise kill any native wild bird.

**Chapter 90.36 Restraint of Dogs** – All dogs must remain confined to premises unless under physical control of a competent person or be under sufficient control so as not to disturb neighbors.

**Chapter 90.39 Control of Dangerous Dogs** – No person shall own control or keep a dangerous unruly dog in Town unless confined to an enclosed area with a warning sign.

**Chapter 91.01 Destruction of Street Signs** – Prohibits injury or removal of street signs located in Town.

**Chapter 91.02 Construction of Private Drives, Permit** – Requires a permit for construction of private driveways. Also mandates driveways to be constructed in a manner that does not impede drainage of surface water, and driveways within the right of way be constructed of stone base or asphalt.

**Chapter 91.03 Hauling Building Materials and Construction Debris** – Makes property owner responsible for removal of construction debris and building materials.

**Chapter 91.04 Permit Required for Cutting, Excavating Under, or Boring within Roadways of the Town** – Prohibits cutting, excavating under or any other damage to Town maintained streets without written permission.

**Chapter 92.01 Abatement of Nuisances** – Unlawful to fail to start abatement of nuisance within 24 hours of receiving notice.

**Chapter 92.02 Stagnant Water** – Prohibits allowance of stagnant water to stand in ponds, holes or otherwise so as to be detrimental to health.

**Chapter 92.03 Obstruction of Natural Drainage** – No person shall erect any dam or obstruction which shall prevent the natural flow of water.

**Chapter 92.04 Cleanliness of Premises** – Requires property owners keep premises free from noxious weeds and trash which may be dangerous to public health, maintain grass and weeds, and keep outdoor areas maintained in an orderly, uncluttered manner.

**Chapter 92.20 Burning Trash Within The Town Prohibited** – Prohibits burning of trash, paper, leaves or other material anywhere outside in the corporate limits.

**Chapter 92.21 Lots To Be Kept Free From Fire Hazards** – It shall be unlawful to accumulate articles of combustible or inflammable nature.

**Chapter 92.22 False Fire Alarms** – It shall be unlawful for any person to give any false alarm of fire.

**Chapter 93.01 Protection of Parkways** – It is unlawful for any person or pet to injure, carry away, break, or in any other manner deface trees, shrubs, plants or other property on roads, streets, or parkways of the town.

**Chapter 93.15 Destruction, Injury to Park Property** – It shall be unlawful for any person to cut, break, injure, or take any plants, flowers, or vegetation from any municipal park or playground, or to remove or injure playground equipment or other appurtenances.

**Chapter 93.30 – 93.41 Tree Protection** - Prohibits unauthorized removal or cutting of trees and requires replacement of protected trees

### **Title XIII: General Offenses**

**Chapter 130.01 Firearms and Other Weapons** – No person shall shoot, discharge, or release firearms, spring-propelled devices, or guns within the corporate limits.

**Chapter 130.02 Sounds Impacting Residential Life** – All construction activities must take place Monday through Saturday between 7:30 am and 6:00 pm. Sound from radio or other noises that disrupts quiet enjoyment of property is prohibited.

**Chapter 130.03 Offenses Against the Public Peace** – The following acts are prohibited: Disturbing the peace, Resisting arrest, Impersonating any officer of the town, Assembling for purposes of gambling, Committing a breach of the peace, Appearing intoxicated outside of home, Making unusual or unnecessary noises to disturb the peace, Violent or boisterous conduct, Using profane language towards others, Committing riotous acts, Maliciously interfering with pedestrians or traffic, or Indecent acts in the presence of others.

**Chapter 130.04 Regulating Solicitors, Peddlers, Hawkers, Itinerant Merchants, or Transient Vendors** – Prohibits uninvited door to door solicitations

**Chapter 130.05 No Human Burials Permitted** – With no existing cemeteries, no human body shall be buried inside the corporate limits

**Chapter 130.06 Removal of Fallen Tree Limbs** – Property owners are responsible for disposing of portions of fallen tree or limbs not on town property.

## **Title XV: Land Usage**

**Chapter 151 – Flood Damage Prevention Ordinance** – Violations or failure to comply with provisions constitutes a Class I misdemeanor

**Chapter 153 – Zoning Ordinance** – Violations of provisions of this chapter results in a misdemeanor and a fine of \$50 and/or imprisonment not to exceed 30 days.

## **Penalties**

### **§ 10.99 GENERAL PENALTY.**

Any person, firm, or corporation violating any of the provisions of any section or division of this code of ordinances for which no other penalty is provided, or failing or neglecting or refusing to comply with same, shall, upon conviction, be guilty of a Class 3 misdemeanor and subject to a fine not to exceed \$50 or imprisonment not to exceed 30 days, and each day that any of the provisions of this code of ordinances are violated shall constitute a separate offense.

(G.S. § 14-4(a))

### **§ 34.99 PENALTY.**

The violation of any provision of this chapter, or any provision of any restriction imposed by any proclamation authorized by this chapter, shall constitute a misdemeanor, punishable as provided by § 10.99.

### **§ 50.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) (1) Any person violating any of the provisions of § 50.10, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500 or imprisoned not longer than two years or both fined and imprisoned in the discretion of the court.

(2) Whoever is found in a civil action to have violated any provision hereof shall be liable to the water supplier in the triple amount of losses and damages sustained or \$500 whichever is greater.

**§ 51.99 PENALTY.**

(A) Any willful and knowing refusal to pay fees assessed in this chapter shall subject the offender to a civil penalty in the amount of \$50 payable to the town as law provided.

(B) Violation of this chapter shall constitute a misdemeanor for each day such violation occurs and subject the violator of this chapter to a fine of \$50 or 30 days imprisonment or both for each violation of this chapter.

**§ 90.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person violating the provisions of § 90.02 shall be subject to a penalty as provided in § 10.99.

(2013 Code, § 4-2)

(C) The violation of any portion of §§ 90.35, 90.36, or 90.39 by any of those persons described in said sections shall constitute a misdemeanor and the violator shall be punished accordingly.

**§ 91.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Violation of § 91.02 shall constitute a misdemeanor, for each day such violation occurs and subject the violator of § 91.02 to a fine of \$50 or 30 days imprisonment or both for each violation of § 91.02.

**§ 93.99 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) (1) A violation of §§ 93.30 through 93.41 is a Class 3 misdemeanor under North Carolina law. The penalty for violating §§ 93.30 through 93.41 shall be \$250 per day. Each day of continued violation shall be a separate offense. The town shall also have the right to pursue civil remedies for a violation of the subchapter including injunctive relief, and a civil penalty of \$250 for each day's violation of the subchapter pursuant to G.S. § 160A-175.

(2) Upon determining that a violation has occurred, the Town Manager shall record the nature of the violation, and send a notice of violation to the responsible person or entity by regular and certified mail. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30 days, the Town Manager may proceed with criminal charges pursuant to G.S. § 14-4, or may take such other enforcement action as may be necessary to carry out the purposes of §§ 93.30 through 93.41.

**§ 130.99 PENALTY.**

Any person violating the provisions of this chapter shall be guilty of misdemeanor subject to a fine not to exceed \$50 or imprisonment not to exceed 30 days as provided by G.S. § 14-4.

**§ 151.99 PENALTY.**

(A) Violations of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$25,000 or imprisoned for not more than 120 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

**§ 153.999 PENALTY.**

(A) Any person, firm, or corporation who violates the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding \$50 and/or imprisoned for a period of time not exceeding 30 days. Each day of violation shall be considered a separate offense.