

Memorandum

TO: Rep. Jonathan C. Jordan and Sen. Andy Wells—Co-Chairs of the Joint Legislative Administrative Procedure Oversight Committee

Rep. James L. Boles, Jr., Rep. Ted Davis, Jr., and Sen Shirley B. Randleman--- Co-Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety

FROM: T.C. Morphis, Jr. (General Counsel for the Village of Whispering Pines) and Brady Herman

DATE: November 1, 2018

RE: Response to the Requirements set forth in Section 3 of Session Law 2018-69 (House Bill 379) for the Village of Whispering Pines, N.C.

Attached is the response of the Village of Whispering Pines, North Carolina to the requirements set forth in Section 3 of Session Law 2018-69 for local governmental units. The attached document contains a list of all Whispering Pines ordinances that create criminal offenses pursuant to G.S. 14-4(a), with brief descriptions of the prohibited conduct. Additionally, there is a link to Whispering Pines website for a reference to the ordinances summarized.

If you have any questions about this Memorandum, please contact either T.C. Morphis by email at morphis@broughlawfirm.com, or Brady Herman at bherman@broughlawfirm.com, at The Brough Law Firm, tel: (919)-929-3905. Also, please acknowledge receipt of this Memorandum and its sufficiency in complying with Session Law 2018-69, Section 3.

Chapter B- Fire Prevention and Fire Protection¹

Article III---Responsibilities of Residents and Non-Resident Visitors

Section 1—Following Fire Rescue Apparatus: Prohibits any motor vehicle to (1) follow closer than one Village block any rescue apparatus that is responding to a call, (2) pass such apparatus or (3) to park within the same block in which an emergency incident is in progress.

Section 2—Yielding Right-of-Way: Requires every driver of civilian vehicles in and upon all public streets, lanes, alleys or other public ways to yield to all fire rescue apparatus responding to an emergency. Drivers are required to bring their vehicles to a stop, on the right-hand side of the street, and must not move their vehicles until such apparatus has passed.

Section 3—Interfering with Fire Rescue Personnel Apparatus: Prohibits (1) interfering or hindering with fire rescue personnel in the discharge of their official duties; and (2) loitering around the fire rescue station or handling any fire rescue apparatus or equipment other than Fire Rescue Department employees.

Section 4—Who May Ride Fire Rescue Apparatus: Prohibits any person, other than a Junior Member or an employee of the Fire Rescue Department, to ride in any fire rescue apparatus responding to an emergency, unless approval is given by the Fire Rescue Chief. Adults and minors under adult supervision may ride fire rescue apparatus in an observer capacity with prior approval from the Fire Rescue Chief.

Section 5—Interfering with Fire Alarm Systems: Prohibits carelessly or willfully interfering with any public or private fire alarm system.

Section 6—Protection of Fire Hose: Prohibits any person, firm, or corporation to drive over, or in any way damage any fire horse while in use at a fire or otherwise.

Section 7—Giving False Alarm of Fire Forbidden: Prohibits giving or causing to be given any false alarm of a fire or other emergency incident.

Section 9—Use of Fire Department Facilities: Prohibits using the Fire Rescue Department facilities without the prior approval of the Fire Rescue Chief.

Article IV---Fire Hazards

Section 1—Permitted Fires within Corporate Limits: Allows fires without a permit (1) used solely for outdoor cooking on appropriate devices and/or grills, and (2) for human warmth, so long as there are no nuisances is created, and is located in an outdoor fire place, fire pit, or similar device, and is completely extinguished whenever the fire is unattended.

Section 1.2—Prohibited Fires within Corporate Limits: Prohibits (1) the burning of trash, refuse, shavings, paper, leaves, litter or any other materials of any kind; (2) creating fires for the disposal of natural resources generated as a result of a natural disaster; or (3) maintaining or creating any bonfire

¹ <https://www.whisperingpinesnc.net/files/documents/ChapterB1313112350022618AM.pdf>

or campfire on or in any street, road, lane, public ground, or upon any private lot within the limits of the Village.

Section 2—Encumbrances Before or On Fire Exit: Prohibits placing any encumbrances of any kind before or upon any fire escape, balcony, or ladder that is intended as means of escape from a fire. Upon discovering any of the violations of this section, the Fire Rescue Chief must immediately notify the owner(s) or their agents to remove such encumbrances.

Section 3—Lots Kept Free from Fire Hazard: Prohibits permitting any trash, junk, refuse, debris, fallen trees, or articles of combustible or flammable nature to accumulate or remain on any lot or premises with the Village.

Section 4—Fires to be Guarded by Watchman: Requires all persons, firms or corporations who are allowed to have a fire, as permitted in this Article, to maintain a careful and competent watchman in charge of such burning. Fires escaping from such burning will be strong evidence of neglect of this section.

Chapter C---Streets²

Article I—Damaging Streets

Section 1—Permit to Dig in Street: Prohibits any person, firm or corporation to dig any hole, ditch or excavation of any kind on any street or right-of-way within the Village without first securing a permit from the Village Clerk or Planning Administrator.

Section 2—Street Repair: Requires any person, firm or corporation who opens or digs a ditch, trench, or hole in any Village maintained street or right-of-way to repair it to the same condition prior to the cutting or digging operation.

Section 3—Excavations: Prohibits making any excavation for any purpose in any of the Villages streets without (1) securely covering such excavations with planks or place ropes around the same three (3) feet from the ground, (2) placing a sufficient number of warning lights around such excavation before dark, and (3) keeping such light burning all night and every night such excavation is open.

Section 4—Streets Not to be Damaged: Prohibits operating or causing to operate any vehicle, machine or tool upon any asphalt or other permanently paved street or dirt road of the Village so as to damage or cut the surface in any way.

Section 5—House Moving: Prohibits moving any house or building upon or across the public streets with the Village without the written consent of the Planning and Zoning Administrator and paying the applicable fee as set forth in the Village Code.

Section 6—Damage to Bridges and Culverts: Prohibits (1) damaging or misplacing any part of any bridge culvert, ditch, drain or other property belonging to or used by the Village; or (2) placing any obstruction

² <https://www.whisperingpinesnc.net/files/documents/ChapterC1313112630022618AM.pdf>

in any culvert, ditch or drain to prevent the free flow of water on, under, or over any streets within the Village.

Section 7—Damage to Lights, Signs: Prohibits damaging, tampering with, defacing, removing or painting upon any sign, signpost, streetlight, bulletin board or other municipal property.

Chapter F--- Firearms and Noise³

Article I—Weapons and Concealed Weapons

Section 1—Use of Firearms Regulated: Prohibits shooting firing, or discharging any gun, pistol, or other type of firearm within the Village, except: (1) in defense of himself and his family or in the defense of his property against any other person bent on committing a crime; (2) any law enforcement officer while in the performance of his official duties and in discharging his official duties; and (3) in any area in the Village where the Council grants special permission for firearms to be used, under properly prescribed regulations.

Section 2—Discharge of BB Guns, Air Rifles, and Paint Ball Guns: Prohibits carrying, discharging, shooting, or otherwise firing any BB gun, paintball gun, air rifle, air pistol, pellet gun, or similar type of weapon within the corporate limits of the Village. This provision does not apply to an individual's private property, a guest on the individual's private property, and if under the age of 16 under immediate adult supervision.

Section 3—Discharge of a Bow, Recurve Bow, Automatic Bow, Compound Bow, and Crossbow: Prohibits discharging, shooting or otherwise firing any traditional or recurve bow within the Villages corporate limits, except: (1) for recreational purposes only, (2) on an individual's private property, a guest on the individual's private property, and if under the age of 16 under immediate adult supervision. These exceptions only apply to arrows from a bow with a non-penetrating tip. This provision also prohibits discharging, shooting, or firing any automatic bow or crossbow within the corporate limits of the Village.

Article II—Noises

Section 1—Noises Regulated: Prohibits creating, producing, or emitting any loud noise, amplified speech, music or other sound that tends to annoy, disturb, or frighten any person within the Village. These acts include, but are not limited to: (1) vehicle horns and signaling devices that are unreasonably loud or have a harsh sound; (2) using of a gong or siren on any vehicle; (3) playing any loud music, radio, TV, or other musical instrument during the hours of 11:00pm and 7:00am that tends to annoy or disturb the quiet, comfort, or enjoyment of the resident; (4) discharging the exhaust of any engine except through a muffler or other device that will effectively prevent loud noises; (5) using of any mechanical device operated by compressed air unless the noise is effectively muffled or reduced; and (6) any noise-making construction activities between the hours of 8:00pm and 7:00am unless a permit is obtained from the Zoning Administrator in emergency situations.

³ <https://www.whisperingpinesnc.net/files/documents/ChapterF1313112739022618AM.pdf>

Chapter H---Animal Control⁴

Section 2—Control of Animals

Section 2.1—Running at Large Prohibited; Public Nuisance: Prohibits any owner or custodian of an animal to permit such animal to run at large or otherwise act as a public nuisance at any time within the Village corporate limits. All owners or custodians of an animal are responsible for (1) maintaining such animal on a secure leash when off the property of the owner or custodian; (2) the actions of such animal including any damage caused by said animal; and (3) cleaning up animal droppings on walkways or other public areas within the Village.

Section 2.2—Nuisance Animals Defined: It is presumed to be a nuisance when any animal barks, howls, cries or makes any other noise continuously for a period of ten (10) minutes or more, or intermittently for one-half (1/2) hour or more.

Section 2.3—Killing of Birds by Animals Unlawful: Prohibits any owner or custodian of any animal to allow such animal to kill any songbird or other native bird as protected by the Village Bird Sanctuary Ordinance.

Section 3—Control of Rabies: Prohibits any animal owner or other person to fail to comply with the State's general statutes and County laws relating to the control of rabies.

Section 4—Maintaining other Animals Prohibited: Prohibits keeping, harboring, or possessing any wild or domestic animals anywhere in the Village that are considered dangerous to persons or property.

Section 5—Hunting and Trapping Prohibited: Prohibits hunting or trapping any animals within the Village corporate limits. This provision does not apply to the NC Wildlife Enforcement, Moore County's Office Animal Services, Police Department, or the Public Works department while in the performance of official duties for the protection of public health and safety.

Section 6—Livestock

Section 6.1—Animals Kept for Commercial Purposes: Requires all animals that are kept for commercial purposes, including but not limited to horses, cattle, hogs, sheep, goats and poultry must comply with the requirements as set forth in the Villages Land Development Ordinance.

Section 6.2—Other Domesticated Animals Kept for Noncommercial Purposes: Prohibits keeping or owning any horses, cattle, hogs, sheep, goats, chickens and other poultry for noncommercial or domestic purposes within the Village corporate limits, except as specifically authorized by the Villages Land Development Ordinance, as set forth in the previous section.

⁴ <https://www.whisperingpinesnc.net/files/documents/ChapterH1313114752022618AM.pdf>

Chapter I--- Lakes and Parks⁵

Article I—Use of Lake Facilities

Section 5.2—Use of Lake Water for Irrigation- Application of the Ordinance: Prohibits (1) any property owners within the Village from using water from the lakes for irrigation purposes without first obtaining a permit from the Village Planning and Zoning Administrator; and (2) delivering or giving lake water by any permit holder to any party not holding a permit.

Section 5.5—Wasting Water: Prohibits operating any irrigation system in a manner that causes water to be wasted, including but not limited to unnecessary watering of impervious areas. This section does not apply to activity required by the Village for maintenance of a Village lake.

Section 6—Operation of Watercraft: Prohibits (1) operating any watercraft in any way that endangers or creates a nuisance to any persons, other watercrafts, shorelines, or other property of any sort; (2) placing or operating any watercraft without obtaining a valid boat permit from the Village; (3) operating watercrafts in a manner that is dangerous to persons or property, including but not limited to jet skis, water scooters, wave surfers, power sleds, and other similar devices. Watercrafts must be launched into the lake either by approved access areas or from private property with approval by the owner.

Section 7—Codes of Conduct and Dress: Requires all persons using the Lakes, access areas and parks to comply with the high standards of conduct and consideration for others. Proper swimming, sports, or causal attire must be worn at all times while using the lakes, parks, and access areas.

Section 8—Docks and Floats: Any new floating docks or platforms, from the date of the issuance of this ordinance, are prohibited except those that the Village authorizes in designated swimming areas. Floating docks in existence on the effective date of this Ordinance may be retained but must be maintained in such a way as to not be detrimental to the safety, health, and general welfare of the people. Any floats that are destroyed and discontinued must not be replaced. Requires all docks, boat houses, and other structures in the lakes that have deteriorated to the point of being a health or safety concern to repair or remove at the owner's expense.

Section 9—Clearing of Vegetation from the Lake: Prohibits using any chemical substances or other procedures including the introduction of fish to clear the vegetation from the lakes unless it is approved by the Village's Public Works Director. This section does not prohibit those persons from clearing vegetation that exists in the lake adjacent to his or her property, so long as any cleared vegetation is removed and properly disposed of.

Section 10—Parks and Access Areas: All parks and access areas, including dams are closed to the public during the period from 9:00 pm to 6:00 am. The parks at 57 Lakeview Drive and 204 Pine Ridge Drive are restricted to swimming and recreational use only and no motorized boats are allowed in this area or within 150 feet of the shoreline. Non-lake front residents or property owners may store non-trailed, hand launch watercrafts so long as they meet the conditions and requirements as set forth in the Village Code.

⁵ <https://www.whisperingpinesnc.net/files/documents/ChapterI1313114856022618AM.pdf>

Section 11—Regulations and Safety Rules: Prohibits (1) boats 26 feet or longer on the lakes, (2) children under the age of 12 from swimming, boating, or playing in the lake without adult supervision; and (3) operating any watercraft at more than 32 MPH or over 5 MPH within 150 feet of any residential shoreline. Requires all boats (1) to be equipped with personal floatation devices (PFD) for each person riding in the boat and all water skiers must wear a PFD at all times; (2) to be numbered by the State as required by the NC Wildlife Commission; and (3) operating on the lakes between sunset and one hour after sunset to display proper running lights as required by NC boating law.

Section 12—Fishing in Lakes: Prohibits anyone fishing from (1) the dams or bridges of the lakes, or (2) the access areas, except where permitted, so long as the fishing doesn't interfere with any swimmers use of the lakes.

Land Development Ordinance⁶

Chapter 3: Development Review Process

Section 3.6—Temporary Uses: Prohibits placing or establishing a temporary use in the zoning district in which the property is located without first receiving a temporary use development permit from the Village Administrator.

Section 3.8—Certificate of Compliance: Prohibits occupying any building, structure, or lands prior to the completion of all required inspections, including compliance with the development permit and all conditions of approval.

Chapter 5: Zoning District

Section 5.9—Flood Damage Prevention Overlay District

Section 5.9.7—Compliance: Prohibits locating, extending, converting, altering, or developing any structures or land without full compliance with the terms of this Chapter of the Village Ordinance and other applicable regulations.

Section 5.9.15(E)—Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

Chapter 10: Open Space and Environmental Regulations

10.8.22—Penalty: Prohibits any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required shall be guilty of a Class 2 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000 or by both.

⁶ <https://www.whisperingpinesnc.net/pview.aspx?id=20723&catid=0>

Chapter 15—Enforcement

Section 15.3 (A)--- Violations and Remedies: violations of the provisions of the Villages Land Development Ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits and violations of Stop work Orders shall constitute a class 3 misdemeanor, punishable by a fine of up to \$500.00, as provided in G.S. 14-4

Section 15.4.1—Stop Work Orders: If the Village Administrator determines in those instances where a violation consists of work being done which will cause irreparable injury if the violation is not terminated immediately, the Administrator may order that specific part of the work to be immediately stopped.

Section 15.4.3—Violation of Stop Work Order: Prohibits any person, owner or developer who is served with a copy of a Stop Work Order may thereafter cause, suffer, or permit a violation of the order while it remains in effect.