

CHAPTER 35: TOWN POLICIES

Section

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Commissioners, it shall be the policy of the town to pay defense costs, expenses, judgments, interest on judgments, deductibles on insurance policies, and other related costs on behalf of its officers and employees against civil claims and judgments, and to satisfy same either through the purchase of insurance or otherwise, provided that adoption of this section shall not be deemed an assumption of liability for payment claims or judgments in excess of any fund established by the Town Board for payment of claims or judgments in addition to any insurance coverage or any combination of this type of a fund and insurance coverage.

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(B) Further, the town will not defend a claim or lawsuit or pay a claim or judgment when the officer or employee willfully:

GENERAL PROVISIONS

§ 35.01 TOWN LIABILITY.

(A) As resolved by the Town Board of

(1) Acts or fails to act because of actual fraud, corruption, or malice;

(2) Acts or fails to act as a result of or at a time when self-indulgence substantially impaired his or her judgment (as, for

example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job);

(3) Acts or fails to act, except in case of emergencies or the existence of extenuating circumstances, directly contrary to instructions from his or her superior, or directly contrary to advice of the Town Attorney; or

(4) Acts or fails to act in such a manner as to constitute a criminal act (as, for example, misappropriation of property or funds).

(C) The Mayor or his or her designee shall determine whether or not a claim or suit filed against an officer or employee meets the requirements specified herein for providing a defense for that officer or employee. If the Mayor or designee determines that a claim or suit does not meet the requirements specified herein, the affected officer or employee may appeal the determination to the Town Board of Commissioners. The Board shall afford the officer or employee a hearing on the matter and shall decide whether or not the claim or suit meets the requirements of this section.

(D) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

OFFICER and *EMPLOYEE*. Present or past Mayors and members of the Town Board, officers, employees, or volunteers, and present or past appointed members of town boards, agencies, committees, and commissions who might hereafter have claims or judgments entered against them.

(E) The policies specified herein shall not be applicable unless notice of the claim or suit is given to the Town Board of Commissioners through the Mayor or Town Attorney prior to the time the claim is settled or civil suit is litigated and judgment is entered.

(F) This section shall not be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interests of any insured under the policy, or to reduce or eliminate the rights of any officer or employee of the town against any other party.

Further, except as expressly stated herein, this section is not to be interpreted as a waiver of any rights the town has against any party.

Nor shall the adoption of this section be construed to waive the defense of

governmental immunity.

§ 35.02 MINORITY BUSINESS DEVELOPMENT.

(A) The town shall have a verifiable goal of 5% for participation by minority businesses in building construction contracts, awarded pursuant to G.S. § 143-128.2.

(B) The Town Clerk shall compile a list of minority businesses within the bidding area, using information obtained from the State Department of Economic and Community Development, Minority Business Development Agency, or from other institutions or agencies providing this type of information.

(C) This list shall be updated on an annual basis and shall be open for inspection and shall be available

so that minority businesses will have the opportunity to add their names to the list.

Copies of this section shall be transmitted to the businesses on the list as soon as practicable along with the name of the official who shall serve as the contact person for minority businesses and be responsible for answering project related questions posed by minority businesses.

(D) For each building contract put out for bids under the separate specification system or the single prime contract system, notice of the contract shall be transmitted to minority businesses on the above list.

(E) For each building contract put out for bids under the separate specification or single prime contract system, documents related to the contract shall be available for inspection at a convenient and accessible location of which minority businesses shall receive notice.

(F) For each building contract put out for bids under the separate specification or single prime contract system, the contact person designated pursuant to division (C) of this section shall hold a pre-bid conference to orient contractors and subcontractors to the policy expressed in this section as well as bid procedures and regulations. Minority businesses on the list obtained and maintained as provided herein shall be notified of and invited to these pre-

bid conferences.

(G) For each building contract put out for bids under the separate specification or single prime contract system, published notice of the contract shall include a summary of this section.

(H) For any building contract put out for bids under the separate specification contract system, the contact person designated herein shall maintain records with respect to:

(1) Those contractors or subcontractors notified of the project and the number of these contractors and subcontractors that are minority businesses as defined in G.S. § 143-128 appearing on the list of minority businesses maintained pursuant to division (B) of this section;

(2) Those contractors or subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses;

(3) Those contractors or subcontractors awarded contracts as part of the project and the number and identity of those that are on the list of minority businesses; and

(4) The percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this section.

(I) For any building contract put out for bids under the single prime contract system, the single prime contractor shall:

(1) Notify those minority businesses appearing on the list of minority businesses maintained pursuant to division (B) of the portion of the project which will be subcontracted by the single contractor and solicit bids from those minority businesses; and

(2) Submit with his or her bids records with respect to:

(a) Those subcontractors notified of the project and of those elements of the project for which subcontractors will be let, and the number of these subcontractors that are minority businesses as defined in G.S. § 143-128 appearing on the list of minority

businesses maintained pursuant to division (B) of this section;

(b) Those subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses;

(c) Those subcontractors awarded contracts as part of the project and the number and identity of those that are on the maintained list of minority businesses; and

(d) The percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this section.

(J) These policies shall be a part of the request for proposals for any building contract, and noncompliance by any single prime bidder shall be grounds for declaring the bid non-responsive.

Cross-reference:

Purchasing Procedures, see §§ 34.35 through

34.41

§ 35.03 DISPOSAL OF PERSONAL PROPERTY.

(A) The Town Board is hereby authorized, pursuant to G.S. § 160A-266(c), to dispose of any surplus personal property owned by

the town, whenever it determines, in its discretion, that:

(1) The item or group of items has a fair market value of less than \$5,000;

(2) The property is no longer necessary for the conduct of public business; and

(3) Sound property management principles and financial considerations indicate that the interests of the town would best be served by disposing of the property.

(B) The Town Clerk may dispose of any surplus personal property by any means which he or she judges reasonably calculated to secure for the Town the fair market value in money or other consideration and to accomplish the disposal efficiently and economically to include offering for sale at public auction, donation to a non-profit organization, Internet online auction, upset bid process, or destruction.

Such sale may be public or private, and with or without notice and minimum waiting period. The Town Clerk shall have the right to add to or delete from the properties to be

(C) The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the Town of Cooleemee and the

Town Clerk is hereby authorized to execute and deliver any applicable title documents necessary or appropriate to consummate such sale .

If no offers are received within a reasonable time , the Town Clerk may retain the property for the town ,obtain any reasonably available salvage value, donation to a non-profit organization or cause it to be disposed of as waste material

(D) The Town Clerk shall keep a record of all property sold under the authority of this resolution and that record shall describe the property sold or exchanged , to who it was sold ,or with whom it was exchanged , and the amount of money or other considerations received for each sale or exchange. This record shall be reported to the Board on an annual basis.

(E) The town Clerk is authorized to delegate any or all of the authority granted or responsibilities assigned under this resolution to other town employees.

§ 35.04 MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE.

The records retention and disposition schedule and retention periods governing the records series listed herein are hereby approved.

In accordance with the provisions of G.S. Chapters 121 and 132, the records do not and will not further use or value for official business, research, or reference purposes after the respective retention periods specified herein are authorized to be destroyed or otherwise disposed of by the agency or official having custody of them without further reference or approval.

These records may not be destroyed prior to the time periods stated; however, for sufficient reason they may be retained for longer periods.

§ 35.05 SMOKING RESTRICTED IN TOWN BUILDINGS AND VEHICLES.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SMOKING. The inhaling, exhaling, burning, or carrying of a lighted pipe, cigar, cigarette, or other combustible tobacco product.

(B) *Smoking prohibited in municipal buildings.* It shall be unlawful for any person to smoke in the Town Hall.

(C) *Smoking in municipal vehicles.* It shall be unlawful for any person to smoke in any

vehicle now or hereafter owned or leased by the town when the vehicle is occupied by someone other than a town employee. Smoking is not prohibited at other times.

(D) *Penalty.* Violation of this section shall constitute a misdemeanor punishable in accordance with G.S. § 14-4.

(Ord. 24, passed 9-13-93) Penalty, see § 10.99

Statutory reference:

Authority to protect employee and public health,

safety, and welfare, see G.S. § 160A-174.

***USE OF TOWN PROPERTY FOR
SPECIAL EVENTS***

§ 35.15 PURPOSE.

The Town Clerk is authorized to issue permits for the use of town-owned property for the following purposes:

(A) Outdoor entertainment, including but not limited to outdoor musical concerts or performances;

(B) Sporting events;

(C) Recreational programs;

(D) Festivals and celebrations;

(E) Class reunions, family reunions, religious events, weddings, parties, and club or organization meetings;

(F) Events honoring or recognizing persons or organizations;

(G) Non-commercial promotional activities;

(H) Non-commercial fundraising functions; or

(I) Any activity similar in nature to those listed in divisions (A) through (H) of this section.

§ 35.16 CONDITIONS FOR ISSUANCE OF PERMIT.

(A) The Town Clerk shall not issue a permit for the use of town-owned property unless the person or organization seeking the use of town-owned property or part thereof shall first make written application to the Clerk.

The written application shall be filed with the Clerk at least 15 days before the proposed date of the special event.

The Clerk shall provide a form for making an application. The Town Clerk may issue a permit if the Clerk finds:

(1) The proposed use of town-owned property or part thereof will not unreasonably interfere with the normal activities of surrounding residents, businesses, or institutions;

(2) Neither the proposed use nor the anticipated noise level arising from that use will have an unreasonably adverse effect upon surrounding residents, businesses, or institutions;

(3) The pedestrian and motor vehicle traffic generated by the proposed use can be accommodated reasonably and safely on the streets and walkways of the area surrounding the town-owned property or portion thereof;

(4) Adequate security and crowd control can be provided by the Police Department;

(5) Adequate fire control and fire prevention service can be provided by the Volunteer Fire Department;

(6) The applicant has obtained liability insurance coverage as may be required for this type of event or filed a hold harmless waiver agreement with the Town Clerk; and

(7) The applicant has paid the required fee as set by the Town Board of Commissioners.

(B) Applications for a special events permit shall be filed with the Town Clerk not later than 15 days before the proposed date of the event.

The permit shall be granted or denied within a reasonable time after the filing of the application. The Mayor shall provide for the holding of an informal hearing for any person whose application for a permit has been denied, provided, however, that the person requests an informal hearing not later than three days after the denial.

(C) Any person aggrieved by a decision of the Mayor may appeal that decision to the Town Board of Commissioners by giving notice for the appeal in writing to the Town Clerk on a form prescribed by the town not later than three days after the decision. The appeal shall be set for a hearing before the Town Board at the next regular meeting of the Board.

The Town Clerk shall notify the person filing the appeal in writing of the time and place of the hearing. The Board may

affirm, modify, or reverse the decision of the Mayor.

§ 35.17 REVOCATION OF PERMIT.

(A) The Town Clerk shall revoke any permit granted for a special event for the following causes:

(1) The violation by any participant of § 35.16 of this section; or

(2) The failure to comply with the terms of the permit.

(B) The provisions of this section shall not apply to any event or activity conducted under the sponsorship of the town.

§ 35.18 INTERFERENCE PROHIBITED.

It shall be unlawful for any person to interfere with the use by any person or organization holding a permit issued by the town for a special event pursuant to the provisions of this subchapter.

Penalty, see § 10.99

§ 35.19 PARKS AND RECREATION.

(A) In order to enforce regulations at the Town's recreation park and playgrounds located on the town's property the following is effective: no littering allowed, no profanity allowed, no dogs nor any other animals (whether on leash or not) are permitted to enter the grounds enclosed by the park gates, no bicycles allowed, no alcoholic beverages allowed, no drugs allowed, no vandalism allowed and no admittance allowed, to the park, after dark.

(B) Any person, firm or corporation violating the provisions of this section shall pay a civil penalty in the amount of \$50 to the Town Clerk within 15 days after issuance of a citation.

Any unpaid civil penalties shall be collected by means of a civil action in the nature of debt.

(Ord. passed 5-6-02)