

ORDINANCE 03-09-09

**AN ORDINANCE TO AMEND TITLE II, CHAPTER 23,
OF THE CODE OF ORDINANCES**

WHEREAS, the North Carolina General Assembly in 2003 adopted Senate Bill 89, which was ratified July 9, 2003 and became law on July 20, 2003; and

WHEREAS Senate Bill 89 authorizes the Town of Lake Lure to adopt an Ordinance establishing a Lake Lure Marine Commission, after adoption of a resolution by the Board of Commissioners of Lake Lure and after due advertising and public hearing; and

WHEREAS under the authority granted by the General Assembly of the State of North Carolina, and for the public safety and welfare of the public, the Board of Commissioners of the Town of Lake Lure herein proposes to create a Lake Lure Marine Commission.

NOW, THEREFORE, the Board of Commissioners of the Town of Lake Lure, North Carolina, meeting in regular session, and having adopted a resolution on August 12, 2003, calling for a public hearing on September 9, 2003, and after advertisement and public hearing as required by the enabling statute, and with a majority of Councilmen voting in the affirmative, do hereby ordain and enact as follows:

SECTION 1. Title II: Government and Administration of the Code of Ordinances of the Town of Lake Lure is amended by adding the following new sections to Chapter 23: Departments, Boards and Commissions, which shall thereafter read as follows:

§ 23.20 ESTABLISHMENT.

Pursuant to the provisions of Senate Bill 89, effective July 20, 2003, and authority granted by the General Assembly of the State of North Carolina, the Board of Commissioners of the Town of Lake Lure hereby establishes the Lake Lure Marine Commission.

§23.21 DEFINITIONS.

For purposes of this Section:

- (1) "Board" means the Board of Commissioners of the Town of Lake Lure.
- (2) "Commission" means the Lake Lure Marine Commission or its governing board, as the case may be.
- (3) "Commissioner" means a member of the governing board of the Lake Lure Marine Commission.
- (4) Lake Lure Reservoir, known for purposes of this Article as "Lake Lure" or "the waters of Lake Lure", means the body of water along the Broad River in Rutherford County,

impounded by the dam at Tumbling Shoals, and lying below the 995 foot contour line above sea level.

- (5) "Shoreline area" means the area submerged by the dam at Tumbling Shoals, lying below 995 feet above mean sea level of the normal full pond elevation of 992 feet above mean sea level, on Lake Lure.

- (6) "Wildlife Commission" means the North Carolina Wildlife Resources Commission.

§ 23.22 POWERS AND DUTIES.

The Commission shall enjoy the powers and have the duties and responsibilities conferred upon it by the Lake Lure municipal ordinance, or any modification, amendment or rescission of any ordinance, subject to the provisions of this Section and the laws of the State of North Carolina.

§ 23.23 GOVERNING BOARD.

The Commission shall have a governing board. The governing board shall, unless otherwise amended by future ordinance, be the Board of Commissioners of the Town of Lake Lure.

§ 23.24 COMPENSATION; BUDGETARY AND ACCOUNTING PROCEDURES.

Any compensation, or separate budgetary and accounting procedures for the Commission shall be as subsequently established by the Board of Commissioners of the Town of Lake Lure, Compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees, if any, shall be as subsequently approved by the Board of Commissioners of the Town of Lake Lure. The Commission shall be governed by these budgetary and accounting procedures as may be specified by the municipal ordinance and the applicable laws of North Carolina.

§ 23.26 POWERS OF COMMISSION; ADMINISTRATIVE PROVISION.

- (A) Within the limits of funds available to it, and subject to the provisions of this Chapter and of the Town of Lake Lure municipal ordinance, the Commission may:
- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;
 - (2) Contract with consultants for such services as it may require;
 - (3) Contract with the State of North Carolina or the federal government, or any agency or department or subdivision of them, for property or services as may be provided to or by these agencies, and carry out the provisions of such contracts;

- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of such contracts;
 - (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vehicles, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this Article; and
 - (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public recreation, public safety on the waters of Lake Lure and its shoreline area, or protection of property in the shoreline area, subject, however, to the provisions of Chapter 113 of the General Statutes and rules promulgated under that Chapter as to property within North Carolina.
- (B) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, or by private and civic sources.
- (C) The Board of Commissioners of the Town of Lake Lure may appropriate funds to the Commission out of surplus funds or funds derived from non tax sources. It may appropriate funds out of tax revenues and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the North Carolina Constitution or as provided by G.S. 160A-209.
- (D) In the event the Commission receives or expends any funds in any town fiscal year, it shall be also audited annually in conjunction with the town's audit as required by law.
- (E) In carrying out its duties, and either in addition to or in lieu of exercising various provisions of the above authorizations, the Commission may, with the agreement of the Board of Commissioners of the Town of Lake Lure, utilize personnel and property or assign responsibilities to any officer or employee of the Town of Lake Lure. Such contribution in kind, if substantial, may with agreement between the Board and the Commission be considered to substitute in whole or in part for the financial contribution required of the Town in support of the Commission.

§ 23.27 FILING AND PUBLICATION OF APPLICABLE MUNICIPAL ORDINANCES.

- (A) A copy of the initial municipal ordinance creating the Commission and of any ordinance amending or repealing the resolution creating the Commission shall be filed with:

- (1) The Executive Director of the Wildlife Commission. Upon request, the Executive Director shall also send a certified single copy of any and all applicable ordinances to the chairman of the Commission.
 - (2) The Secretary of State.
 - (3) The clerk to the Town of Lake Lure.
 - (4) The clerk of superior court of Rutherford County.
 - (5) A newspaper of general circulation in Rutherford County.
- (B) This Ordinance shall take effect when the text has been submitted to the Secretary of State for filing. Certifications of the Board under the seal of the Commission as to the text or amended text of any municipal ordinance and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by the clerk of superior court of Rutherford County of the text of any certified ordinance filed with the clerk by the Board is admissible in evidence and the Board's submission of the resolution for filing to the clerk shall constitute prima facie evidence that such resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the Board to any person other than the Secretary of State.

§ 23.28 REGULATORY AUTHORITY.

- (A) Except as limited in subsection (B) of this section, by restrictions in any municipal ordinance, and by other supervening provisions of law, the Commission may make regulations applicable to Lake Lure and its shoreline area concerning all matters relating to or affecting the use of Lake Lure. These regulations may not conflict with provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in Rutherford County at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Lake Lure, the Commission may, after public notice, request that the Wildlife Resources Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.
- (B) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.
- (C) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Lure or its shoreline area. Ordinances providing regulations for specific areas shall clearly establish

the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When an ordinance providing regulations for a specific area is proposed, owners of the parcel of land involved as shown on the county tax listing, and the owners of land within 500 feet of the proposed area to be regulated, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first-class mail at the last addresses listed for such owners on the county tax abstracts. This mailing requirement does not apply in regulations affecting the entire lake. Notice shall also be given by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to the waters of Lake Lure or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in Rutherford County.

- (D) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:
 - (1) The Secretary of State;
 - (2) The clerk of superior court of Rutherford County;
 - (3) The Executive Director of the Wildlife Resources Commission; and
 - (4) The federal Energy Regulatory Commission licensee for Lake Lure, if other than the Town of Lake Lure.
- (E) Any official designated in subsection (D) of this section may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.
- (F) Publication and filing of regulations promulgated under this section as required above are for informational purposes and are a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained, and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

§ 23.29 ENFORCEMENT.

- (A) All law enforcement officers with territorial jurisdiction as to any part of the waters of Lake Lure or its shoreline area within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of the waters of Lake Lure and its shoreline area. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.
- (B) Where a law enforcement officer with jurisdiction over any part of the waters of Lake Lure or its shoreline area is performing duties relating to the enforcement of the laws on the waters of Lake Lure or in its shoreline area, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of the waters of Lake Lure and its shoreline area; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of Rutherford County. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.
- (C) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held, and no officer shall take any additional oath or title of office.

SECTION 2. This Ordinance is effective immediately upon adoption.

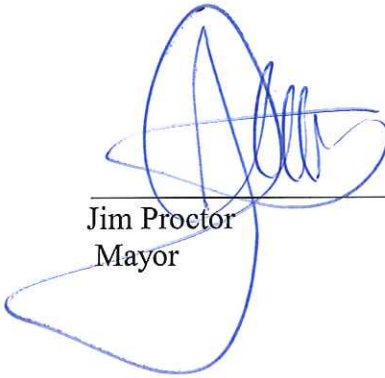
Adopted this 9th day of September, 2003.

ATTEST:



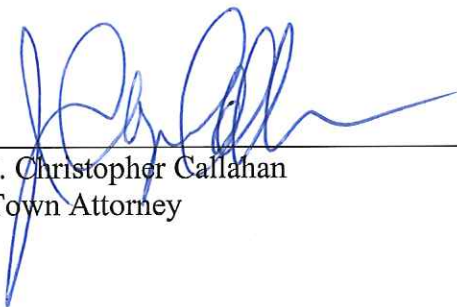


Mary A. Flack, MMC
Town Clerk



Jim Proctor
Mayor

APPROVED AS TO FORM:



J. Christopher Callahan
Town Attorney