

Berryville – Clarke County
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BERRYVILLE
EST. 1798 *Genuine* VIRGINIA

BERRYVILLE PLANNING COMMISSION

Regular Meeting

Tuesday, May 23, 2023 – 7:00 p.m.

101 Chalmers Court – Main Meeting Room – Second Floor

AGENDA

1. Call to Order – William Steinmetz, Chair
2. Approval of Agenda
3. Approval of Minutes – March 28, 2023
4. Citizens' Forum
5. Set Public Hearing – Text Amendments for short-term rental regulations

The Berryville Planning Commission is sponsoring a text amendment to Article I Definitions in order to define short-term rentals in the Town of Berryville. Additional amendments are also proposed to residential and some commercial zoning districts to allow short-term rentals as a use by special permit. TA 01-23

6. Discussion - Planning Update
7. Other
8. Adjourn

Harry Lee Arnold, Jr.
Mayor

Erecka L. Gibson
Vice Mayor

Council Members

William Steinmetz
Ward 1

Diane Harrison
Ward 2

Grant Mazzarino
Ward 3

Ryan Tibbens
Ward 4

Keith R. Dalton
Town Manager

BERRYVILLE PLANNING COMMISSION
Berryville-Clarke County Government Center
Meeting Minutes
March 28, 2023

A meeting of the Berryville Planning Commission was held on Tuesday, March 28, 2023 at 7:00 p.m. at the Berryville-Clarke County Government Center in Berryville.

ATTENDANCE: Members of the Planning Commission present: William Steinmetz, chair, Michael Bell, Gwen Malone, Michelle Marino, Tom Parker, Sheryl Reid

Absent: Kim Kemp, vice chair

Staff present: Christy Dunkle, Community Development Director, Jean Petti, Deputy Town Manager

Press present: none

Others present: Julie Kerby

1. CALL TO ORDER – William Steinmetz, Chair

Chair Steinmetz called the meeting to order at 7:00 p.m.

2. APPROVAL OF AGENDA

Ms. Malone made the motion to approve the agenda as presented, seconded by Ms. Reid. The motion passed by voice vote.

3. APPROVAL OF MINUTES

Ms. Marino made the motion to approve the February 28, 2023 minutes as presented, seconded by Mr. Bell. The motion passed by voice vote with Mr. Parker abstaining.

4. CITIZENS' FORUM

Chair Steinmetz said Julie Kerby had signed up to discuss proposed short-term rental regulations owns a property that is being used as such. He began the discussion under item 5.

5. DISCUSSION – SHORT-TERM RENTAL REGULATIONS

Chair Steinmetz asked staff to review the matter. Ms. Dunkle said Ms. Petti has conducted research on current regulations in the region. Ms. Dunkle said the police and planning departments had received complaints on one property owner operating a short-term rental. She said current requirements include obtaining a business license and paying monthly transient occupancy taxes (TOT). She explained the process by which Airbnb obtains local transient occupancy taxes. Ms. Dunkle said the Town Council Public Safety and Community Development committees have discussed short-

term rental regulations in their respective meetings. Ms. Petti said the committees had slightly different recommendations. Ms. Petti said that everyone agrees that the issue needs to be addressed but there is some deviation in the details. She discussed the tax code and the need to reference short-term rentals. She requested feedback from Planning Commission noting that she has not received much public input. Ms. Dunkle described the Town's process for adopting text amendments.

Chair Steinmetz asked if there is a specific reason not to permit food preparation. Ms. Petti said it infringes on actual bed and breakfast operations and would cross over into food facilities. Chair Steinmetz asked if kitchens are required to be inspected in bed and breakfasts and Ms. Dunkle said they are. There was a discussion about enforcement of proposed regulations.

Mr. Parker asked about private parties or events. There was a discussion about the definition of a party or event. Ms. Dunkle said parking could be an issue with larger numbers of people at a respective location. There was a discussion about on- and off-street parking concerns. Ms. Petti referenced concerns about accessory structures being allowed to be accommodation. There was a discussion about other possibilities for overnight stays. Mr. Parker asked if public water and sewer is available in an accessory structure and an occupancy permit is issued, why couldn't they be used as a short-term rental. Ms. Petti said public safety was a concern. There was a discussion about obtaining occupancy permits through the County. Ms. Dunkle said she has had conversations with County building staff, the state fire marshal's office, and Virginia Department of Health adding that the latter organizations cannot take enforcement action without a current certificate of occupancy. There was a discussion about addresses and occupancy permits. Mr. Parker asked about RV's. Ms. Dunkle said there are regulations in the Town Code concerning inhabiting and parking recreational vehicles.

Ms. Dunkle said the benefit of having these facilities is that people can stay in Town which helps current residents and local businesses. She said the Town has less than six.

Ms. Dunkle explained current regulations and enforcement in Clarke County and Winchester. Ms. Malone said the County Planning Commission has just completed recommendations for campground regulations. She said County enforcement is prompted by complaints. There being no further discussion, Ms. Dunkle introduced Julie Kerby who owns a short-term rental property on North Buckmarsh Street.

Ms. Kerby said she owns a property on North Buckmarsh Street which has four bedrooms and two-and-a-half baths. She said she either rents the entire building or two bedrooms at a time. She said she was contacted by Rosemont to offer full-house rentals during wedding season. She said she allowed bookings six months ahead for a full-house rental and three months ahead for rentals by room. Ms. Kerby said she does not offer any food but does have a coffee maker and pre-packaged snack bars available.

Ms. Kerby said she has two off-street parking spaces and there are additional on-street spaces in front of the house. She said she informs people of the fire hydrant location. She said that she has

never had more than two vehicles on-site and added that she is not aware of any problems with parking.

Ms. Kerby said her guests have included those attending weddings at Rosemont, retreats at the Sanctuary, vendors for Lucketts Market, and currently has a travel nurse renting a room for several months. She said hikers from the Appalachian Trail, visitors to Shenandoah National Park, those attending local and regional festivals, and people who have been renovating their own homes have rented the house. She added that she had a local resident inquiring about renting for an extended stay due to a divorce and wanted to remain in Berryville as his children finish the school year.

Ms. Kerby said that she has an extensive house manual that gives visitors information about the house, the Town, and nearby attractions. Chair Steinmetz asked if she has consistent bookings. Ms. Kerby discussed her timeframes for booking the entire house and by room and that the bulk of her income from the short-term rental is from longer bookings. Mr. Parker asked about requirements for parking. Ms. Kerby said if there was a concern about parking, perhaps the owner should advertise the space as "adult only." Mr. Parker said his concerns include parking, number of occupants permitted, and enforcement concerns. He said that Bedford has limits to the number of occupants and vehicles. Chair Steinmetz said that enforcement remains a concern. Mr. Bell said enforcement is key. There was a discussion about the definitions of "hotel" and the differences between zoning regulations and building code requirements. Ms. Malone said she was concerned about the ability to enforce any regulations in the respective facility.

There being no further discussion, it was determined that staff will take comments made by Planning Commission back to the Public Safety and Community Development committees for further vetting.

6. DISCUSSION – PLANNING UPDATE

Ms. Dunkle reminded Commissioners of the 225th anniversary activities and events and recommended a visit to the Barns to see the Berryville memorabilia.

7. OTHER

Chair Steinmetz said he will miss Mr. Mathur and appreciated his efforts while on the Planning Commission.

8. ADJOURN

There being no further discussion, Ms. Reid moved for adjournment, seconded by Mr. Bell, with the motion passing by consensus at 7:58 p.m.

William Steinmetz, Chair

Christy Dunkle, Secretary

Planning Commission Agenda Item Report Summary

May 23, 2023

Item Title

Set Public Hearing – Text amendments for short-term rentals

Prepared By

Christy Dunkle

Background/History/General Information

A portion of the March 28, 2023 staff report is included for reference:

March 28, 2023 Staff Report

The Town Council Public Safety and Community Development committees discussed regulations for short-term rentals at their meetings held on February 23 and February 28, respectively. The minutes from both meetings are included in this staff report.

Staff has drafted the following definition to begin the discussion:

Short-term rental - the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. Advertisement or operation of a short-term rental unit requires a business license, remittance of transient occupancy tax, and is limited to dwellings and accessory buildings which hold a Clarke County Certificate of Occupancy. Events are prohibited. No food preparation or service may be provided to primary renter or guests of short-term rental.

General information

There are approximately six properties being advertised on short-term rental sites in the Town of Berryville. Current requirements are obtaining a business license and paying transient occupancy taxes (TOT).

While determining appropriate regulations for short-term rentals, it is important to consider enforcement. For example, certificates of occupancy are issued by the Clarke County Building Department and any enforcement action would be overseen by the County.

Town staff has discussed regulations with Clarke County and Winchester planning directors. The County's regulation is based on assurance that the occupancy capacity set by the building code matches the capacity of the septic system. They require a zoning permit and business license. County staff indicated that the registry is difficult to manage and that a business license would suffice. Winchester has a registry which is handled by a consultant.

Discussion topics

1. Complaints on current accommodation

Complaints to the police and planning departments have been received consistently on one property owner. They consist of parking issues, noise, safety, and number of people on-site. No other comments have been forwarded to staff.

2. Economic development

After two feasibility studies conducted by the Town and Berryville Main Street, there appears to be no interest in building a small (+/-50 room) hotel in Berryville. There are a number of businesses, residents, events, and venues that would benefit from more accommodation in the community. These include Rosemont, Clarke County Fairground events such as Lockett’s Market and the Steam Show, local sporting events, and corporate needs for visiting staff and others.

3. Additional regulations

Discussion at committee and staff level about regulating short-term rentals included the following topics:

- Parking requirements
- Occupancy limits
- Whether accessory structures may be used
- Registry or not (please see attached VA Code language after this staff report)
- Hosted versus un-hosted accommodation

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Findings/Current Activity

Deputy Town Manager Jean Petti presented the following definition to Town Council at their May 9, 2023 meeting:

Short-term rental- The provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. Advertisement or operation of a short-term rental unit requires registration, a business license, remittance of transient occupancy tax, and is limited to dwellings which hold a Clarke County Certificate of Occupancy. Events are prohibited. No food preparation or service may be provided to primary renter or guests of short-term rental.

Each advertised short-term rental unit shall advertise and implement a maximum occupancy of no more than as permitted by the Virginia Uniform Statewide Building Code, (4) persons per bedroom, or (2) adults per off-street parking space, whichever is least and at no time exceed (13) individuals.

Additional proposed amendments would also be made to each zoning district in which short-term rentals would be allowed as a special permit use. Ms. Petti is recommending that the short-term rental use be a special permit use under the following zoning districts:

Short-term Rentals permitted as a Special Use Permit

R-1 Residential
R-2 Residential
R-3 Residential
OSR Open Space Residential
DR-1 Detached Residential
DR-2 Detached Residential
DR-4 Detached Residential
AR Attached Residential
MR Multifamily Residential
BC Business Commercial
C Commercial
C-1 Commercial

Short-term Rentals will not be permitted in the following:

LI Light Industrial
C-2 Commercial
L-1 Industrial
B Business
BP Business Park
ITL Institutional
OPR Older Person Residential

Planning staff is recommending that L-1 Industrial be considered for short-term rentals due to amendments made to the district in 2016 that include residential lofts and apartments as a use by special permit (Berryville Zoning Ordinance Section 609.3(n)).

Additional information concerning the proposed amendment:

- A short-term rental would not be considered a home occupation, therefore a property owner renting rooms in their home would not be required to have a second special use permit for this use.
- Existing legally-operated short-term rentals may continue operation as long as there is no extension, change of use, or removal or destruction of the building in which a non-conforming use is located (Berryville Zoning Ordinance Section 408 Non-Conforming Uses of Structures or Buildings).
- The Town Business Office would be responsible for maintaining the registry.

Discussion at the meeting should include a definition of "event" and enforcement concerns.

Additional proposed modifications to the Town Code are included in this packet.

Schedule/Deadlines

Staff is recommending that the Planning Commission set a public hearing for the June 27, 2023 meeting.

Other Considerations

N/A

Recommendation

Set a public hearing for the June 27, 2023 meeting to hear public comment and make recommendations to Town Council.

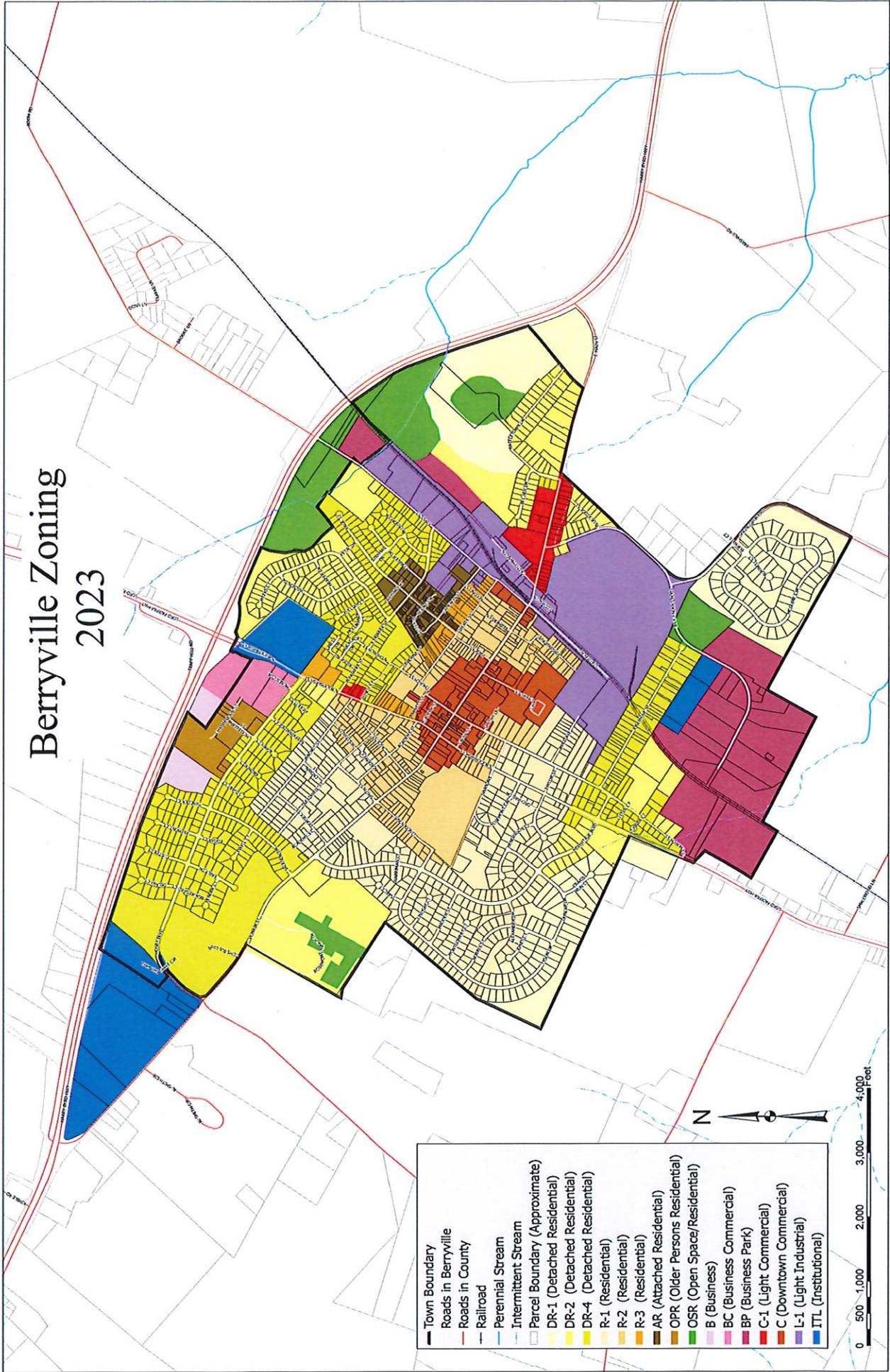
Sample Motion

I move that the Planning Commission of the Town of Berryville set a public hearing for a text amendment to Article I, Definitions, of the Berryville Zoning Ordinance, establishing a definition for "short-term rental" and to add this as a use by special permit to ordinance sections as identified at this meeting.

Attachments:

- Zoning map
- ARTICLE III. - OTHER LICENSES, LICENSE REQUIREMENTS (Town Code)
- ARTICLE VIII. - TRANSIENT OCCUPANCY TAX (Town Code)

Berryville Zoning 2023



ARTICLE III. - OTHER LICENSES, LICENSE REQUIREMENTS.

Sec. 9-31. - Alcoholic beverages.

- (a) Every person who shall engage in the business of manufacturing, bottling, wholesaling or retailing alcoholic beverages within the town shall obtain a license and shall pay an annual license tax, in addition to the business, professional and occupational license tax assessed upon the gross receipts of such person, an annual alcoholic beverage license tax as follows:
- (1) For each distiller's license, five hundred dollars (\$500.00); provided that no license shall be required of any distiller manufacturing not more than five thousand (5,000) gallons of alcohol or spirits, or both, during the license year;
 - (2) For each winery license, five hundred dollars (\$500.00);
 - (3) For each brewery license, five hundred dollars (\$500.00);
 - (4) For each bottler's license, two hundred dollars (\$200.00);
 - (5) For each wholesale beer license, twenty-five dollars (\$25.00);
 - (6) For each wholesale wine distributor's license, twenty-five dollars (\$25.00);
 - (7) For each retail on-premises wine and beer license for a hotel, motel, restaurant or club, twenty dollars (\$20.00);
 - (8) For each retail off-premises wine and beer license, twenty dollars (\$20.00);
 - (9) For each retail on-premises beer license for a hotel, motel, restaurant or club, twenty dollars (\$20.00);
 - (10) For each banquet license, five dollars (\$5.00);
 - (11) For each mixed beverage caterer's license, twenty dollars (\$20.00).
 - (12) Any person in the town who holds a mixed beverage restaurant license from the state shall obtain from the town a mixed beverage license and pay an annual license tax as follows:
 - a. Persons operating restaurants, including restaurants located on the premises of and operated by hotels or motels:
 1. Two hundred dollars (\$200.00) for each restaurant with a seating capacity at tables for up to one hundred (100) persons.
 2. Three hundred fifty dollars (\$350.00) for each restaurant with a seating capacity at tables for more than one hundred (100) but not more than one hundred fifty (150) persons.
 3. Five hundred dollars (\$500.00) for each restaurant with a seating capacity at tables for more than one hundred fifty (150) persons.
 - b. A private, nonprofit club operating a restaurant located on the premises of such club, three hundred fifty dollars (\$350.00).
- (b) The licenses referred to in this section shall be as respectively defined by Title 4.1, Chapter 1 of the Code of Virginia, and the terms used in this section shall have the meaning respectively prescribed to them by such Chapter 1 of Title 4.1.

- (c) No local alcoholic beverage license issued pursuant to this section shall exempt any licensee from the local license tax prescribed by section 9-26 of this chapter. The base for measuring the local license taxes prescribed in section 9-26 shall include sales from alcoholic beverages in addition to the local alcoholic beverage license tax prescribed by this section.
- (d) The provisions of this section shall not apply to any wholesaler for the privilege of delivering alcoholic beverages in the town when such wholesaler maintains no place of business within the town.
- (e) No license shall be issued under this section to any person unless such person shall hold or secure simultaneously therewith the proper state license, which state license shall be exhibited to the town treasurer. Any violation of the terms of this provision shall be sufficient grounds for the revocation of the license issued pursuant to this section.

(Ord. of 12-10-96)

State Law reference— Code of Virginia, §§ 4.1-205 and 4.1-233.

Sec. 9-32. - Amusement machines, coin operated machines.

- (a) For the purpose of this section, the term "amusement operator" means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine, which machine or coin-operated device is located within the Town of Berryville; provided, however, that the term "amusement operator" shall not include a person owning less than three (3) such machines on property owned or leased by such person.
- (b) Every amusement operator shall pay an annual license tax of two hundred dollars (\$200.00) for the operation of ten (10) or more coin-operated amusement machines and one hundred ninety-five dollars (\$195.00) for the operation of less than ten (10) such machines located within the Town of Berryville, notwithstanding the situs requirements of Section 58.1-3703.1 of the Code of Virginia.
- (c) Every amusement operator subject to the provisions of this section shall furnish to the town treasurer a complete list of all coin-operated amusement machines such operator has located within the town, indicating the location and address of each location of each such machine, on or before January thirty-first of each year. Each such machine shall have conspicuously located thereon a decal, sticker, or other adhesive label, no less than one (1) by two (2) inches in size, clearly denoting the operator's name and address.
- (d) Upon payment of the license tax prescribed herein, the town treasurer shall issue a license which, when signed by the treasurer, shall evidence the payment of the license tax.
- (e) The license tax prescribed by this section shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor operators of devices or machines affording rides to children, or for the delivery of newspapers.

(Ord. of 12-10-96)

State Law reference— Code of Virginia, §§ 58.1-3720, 58.1-3721 and 58.1-3722.

Sec. 9-33. - Taxicabs, motor vehicle carriers.

Every person who operates or intends to operate within the town any taxicab or other motor vehicle for the transportation of passengers for consideration shall pay an annual license tax of thirty dollars (\$30.00) for each vehicle.

(Ord. of 12-10-96)

State Law reference— Code of Virginia, § 46.2-2017.

Sec. 9-34. - Exemptions from local license taxes and fees.

No local license fee or license tax shall be imposed or levied upon the following:

- (1) For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, provided such products are grown or produced by the person offering such products for sale;
- (2) Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from the state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;
- (3) On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;
- (4) Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store within the town; provided, however, this subdivision shall not be construed as prohibiting the town from imposing the local license tax on a peddler at wholesale pursuant to section 58.1-3718 of the Code of Virginia;
- (5) Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boarding houses;
- (6) Upon a wholesaler or retailer for the privilege of selling bicentennial medals or products on a nonprofit basis for the benefit of a local bicentennial commission or committee, provided such commission or committee has been officially sanctioned by the town;
- (7) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Service Code Section 511, et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in Internal Revenue Service Code Section 501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code Section 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning;
- (8) On or measured by gifts, contributions, and membership dues of a nonprofit organization. For the purpose of this subdivision, a "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Service Code Section 501(c)(3) other than charitable nonprofit organizations;

- (9) On any person or activity as may be specifically provided pursuant to Section 58.1-3703 of the Code of Virginia.

(Ord. of 12-10-96)

State Law reference— Code of Virginia, § 58.1-3703.

Sec. 9-35. - Carnivals, circuses, speedways; penalties; certain restrictions.

- (a) A license tax of five hundred dollars (\$500.00) is hereby imposed for each performance held in the town given by or upon carnivals, circuses or speedways which are operating within the limits of the town. Until such tax has been paid, the town shall have a lien upon the property of such carnival, circus or speedway to the extent of the unpaid tax. For the purpose of this section, a performance shall be the entire time or number of days the business is operated in the town during a calendar year.

Every person which exhibits or gives a performance or exhibition of any of the shows, carnivals, or circuses, above described in this section, without the license required shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense.

In addition to any other license tax imposed by this section, a license tax of one thousand (\$1,000.00) for each performance of a traveling circus, carnival or show giving performances in the town in the open air or in a tent or tents, within fifteen (15) days previous to, or during the week of, or within one (1) week after the time of holding any agricultural fair in the town is hereby imposed. The license taxes provided for in this section shall be assessed and paid before any performance is permitted to be held.

It shall be unlawful for any circus, carnival or show to publish or post in any way, in the town at any time within fifteen (15) days prior to the holding of such fair, in the town, advertising of the exhibition of any such circus, carnival or show.

A fine not to exceed two thousand dollars (\$2,000.00) for each offense of any person violating any provision of this section shall be imposed. The provisions of this section shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in the town.

For the purpose of this section a "carnival" shall mean an aggregation of shows, amusements, concessions, eating places and riding devices or any of them, operated together on one (1) lot or street or on contiguous lots or streets, moving from place to place, whether or not the same are owned and actually operated by separate persons.

- (b) A resident mechanic or artist may exhibit any production of his own art or invention without compensation and no registration, bond or license may be required of any industrial arts exhibit or of any agricultural fair or the shows exhibited within the grounds of such fair or fairs, during the period of such fair, whether an admission is charged or not. In addition, no registration, bond or license may be required of resident persons performing in a show or exhibition for charity or other benevolent purposes, or of exhibitions of volunteer fire companies, whether an admission is charged or not. Whenever such show, exhibition or performance is given, whether licensed or exempted by the terms of this subsection, those persons performing or acting in a show, exhibition or performance and operating under either license or exemption, shall be exempt from such tax.

The provisions of the preceding paragraph shall not be construed to allow, without payment of the tax imposed by this section, a performance for charitable or benevolent purposes by a company, association or persons, or a corporation, in the business of giving such exhibitions, no matter what terms of contract may be entered into or under what auspices such exhibition is given by such company, association or persons, or corporation. It is the intent and meaning of this section that every company, association, person, or corporation in the business of giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section. Such tax shall not be imposed on a bona fide local association or corporation organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit therein agricultural or industrial arts products as a part of such exhibition.

([Ord. of 10-8-19\(3\)](#))

Editor's note— An [Ord. of 10-8-19\(3\)](#), set out provisions intended for use as 9-34. For purposes of maintaining the numbering style of the Code, and at the editor's discretion, these provisions have been included as 9-35.

State Law reference— Code of Virginia, § 58.1-3728.

Sec. 9-35. Short-term Rental Registry

- (a) Registration of short-term rentals is required prior to operation, must be renewed annually, and be updated to reflect current contact information as needed. Each registration shall include:
- a. name, telephone number, mailing address, and email address of property owner;
 - b. name, telephone number, mailing address, and email address of operator, if different;
 - c. address of property;
 - d. emergency contact telephone number and email address;
 - e. number of bedrooms, bathrooms, and parking spaces that will support the short-term rental unit;
 - f. listing platforms that will be used for advertisement of unit;
 - g. copy of certificate of occupancy issued by Clarke County Building Department; and
 - h. filing fee as set by Town Council.
- (b) Registration of short-term rentals may be waived under Code of Virginia Title 15.2, Ch. 9, § 15.2-983 if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

State Law Reference – Code of Virginia, § 15.2-983.

ARTICLE VIII. - TRANSIENT OCCUPANCY TAX

Sec. 16-101. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Hotel shall mean any public or private hotel, inn, apartment hotel, bed and breakfast, hostelry, tourist home or house, motel, rooming house or other lodging place within the town offering lodging for two (2) or more persons at any one (1) time, and the owner and operator thereof, who, for compensation, furnishes lodging to any transients.~~

~~Room or space rental shall mean the total charge made by any hotel, inn, bed and breakfast, hostelry, tourist home or house, motel, rooming house, campground, short-term rental, or any other lodging furnished to any transient~~ or travel campground for lodging or space furnished any transient. If the charges made by such ~~room or space rental~~ hotel or travel campground to transients includes any charge for services or accommodations, in addition to that of lodging, and the use of space, then such portion of the total charge as represents only room and space rental shall be distinctly set out and billed to such transient by such hotel or travel campground as a separate item.

~~Town shall mean Town of Berryville, Virginia.~~

~~Transient shall mean any natural person who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any room or space rental hotel or travel campground for which lodging or use of space a charge is made.~~

~~Travel campground means any area or tract of land used to accommodate two (2) or more camping parties, including tents, travel trailers or other camping outfits.~~

(Ord. of 4-21-15)

Sec. 16-102. - Penalty for violation.

Any person violating or failing to comply with any of the provisions of this article shall be guilty of a class 3 misdemeanor. Each such violation or failure and each day's continuance thereof shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, collection or remittance of the tax as provided in this article.

(Ord. of 4-21-15)

Sec. 16-103. - Amount and levy.

There is hereby imposed and levied by the town, in addition to all other taxes, fees, and charges of every kind, now or hereafter imposed by law, a tax in the amount of two (2) percent of the total amount paid for room or space rental ~~to any hotel travel campground.~~

(Ord. of 4-21-15)

Sec. 16-104. - Collection.

Every person receiving any payment of room or space rental with respect to which a tax is levied under this article, shall collect the amount of tax hereby imposed from the transient on whom the same is levied or from the person paying for such room or space rental, at the time payment for such rooms or space is made, and the tax shall be paid to the town.

(Ord. of 4-21-15)

Sec. 16-105. - Delegation of administration.

The town treasurer is hereby delegated the authority to administer all provisions of this article.

(Ord. of 4-21-15)

Sec. 16-106. - Reports and remittances.

The person collecting any tax levied under this article shall make out a report upon forms, setting forth information as the town treasurer may prescribe and require, showing the amount of room or space rental charges collected and the tax required to be collected, and shall sign and deliver the same, along with a remittance of such tax, to the town treasurer. Such reports and remittances shall be made to the town treasurer on or before the twentieth day of the calendar month following the month being reported.

(Ord. of 4-21-15)

Sec. 16-107. - Reserved.

Sec. 16-108. - Advertising payment or absorption of tax.

No person shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this article will be paid or absorbed by ~~him~~ **them** or by anyone else, or that ~~he~~ **they** or anyone else will relieve any purchaser of the payment of all or any part of such tax.

(Ord. of 4-21-15)

Sec. 16-109. - Penalty and interest for failure to remit taxes when due.

If any person whose duty it is to do so shall fail or refuse to remit to the town treasurer the tax required to be collected under this article, within the time and in the amount specified in this article, there shall be added to such tax by the town treasurer a penalty as set from time to time by the town council. In addition, there shall be added to such unpaid tax interest at a rate as set from time to time by the town council on the amount of tax delinquent, such interest to commence on the first day of the month following the month in which such taxes are due. For the second and subsequent years of delinquency, interest shall be imposed at the rate established pursuant to section 6621 of the Internal Revenue Code of 1954, as amended, or at a rate as set from time to time by the town council, whichever is greater.

(Ord. of 4-21-15)

Sec. 16-110. - Procedure upon failure or refusal to collect taxes or make remittances and reports.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article or to make within the time provided in this article the reports and remittances required by this article, the town treasurer shall proceed ~~in such a manner as he may deem best~~ to obtain the facts and information ~~as he is able to obtain~~ upon which to base the assessment of any tax payable by any person who has failed or refused to collect such tax or to make such report and remittance. The town treasurer shall proceed to determine and assess against such person such tax and penalty by registered mail at his last known place of address of the amount of such tax and interest and penalty and the total amount thereof shall be payable within ten (10) days from the date of such notice.

(Ord. of 4-21-15)

Sec. 16-111. - Preservation of records.

It shall be the duty of every person required by this article to pay to the town the taxes imposed by the article to keep and to preserve for a period of two (2) years records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The town treasurer or duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof.

(Ord. of 4-21-15)

Sec. 16-112. - Cessation of business; report and tax due immediately.

Whenever any person required to collect and pay to the town a tax under this article shall cease to operate and shall otherwise dispose of his business, any tax payable under the provisions of this article shall become immediately due and payable. Such person shall immediately make a report and pay the tax due.

(Ord. of 4-21-15)