

**MINUTES**  
**BERRYVILLE TOWN COUNCIL**  
**Tuesday, April 14, 2015 continued to Tuesday, April 21, 2015**  
**Berryville-Clarke County Government Center**  
**Regular Meeting**  
**7:00 p.m.**

**Town Council:**

**Present:** Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; Mary Daniel; David Tollett;

**Absent:** Douglas Shaffer

**Staff:** Keith Dalton, Town Manager; Christy Dunkle, Assistant Town Manager/Planner; Desiree Moreland, Assistant Town Manager/Treasurer; Neal White, Chief of Police; Ann Phillips, Town Clerk

**Press:** Val Van Meter, Winchester Star

1. Call to Order

Mayor Kirby called the meeting to order at 7:00 p.m.

2. Closed Session

**Upon motion by Recorder Arnold, seconded by Council member Tollett, the Council entered a closed meeting in accordance with §2.2-3711-A-6, Code of Virginia, in order to discuss with legal counsel probable litigation pertaining to the construction of the Wastewater Treatment Plant. The vote carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

At 7:54 p.m., the members of the Town Council being assembled within the designated meeting place in the presence of members of the public and/or the media desiring to attend, the meeting was reconvened. **Recorder Arnold moved that the following Resolution Concerning Certification of the Closed Session be adopted. Council member Daniel seconded the motion which carried on the following roll call vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

### CERTIFICATION OF CLOSED SESSION

WHEREAS, the Council of the Town of Berryville, Virginia, has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Committee that such closed meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

3. Pledge of Allegiance

4. a. Public Hearing - ***Proposed Tax Rates for 2015***

The Mayor opened the public hearings and reminded the meeting attendees that each speaker would be permitted three minutes to address the Council.

Mayor Kirby recognized Wayne Webb of 510 Ewell Court, Berryville. Mr. Webb said the proposed 2016 tax increase is about \$185 per person compared to the 2015 increase of \$60 per person, and he said the rates may not include increases caused by the reassessment that will occur for 2016 taxes. He said the proposed burden is \$770,333 consisting of increased taxes and increased water and sewer fees. Mr. Webb added that consideration should be given to combining Town and County law enforcement operations since he sees no need for two law enforcement groups in a County of just over 14,000 people. Mr. Webb said that there is no need for two governments in an area this small. He said with the Clarke County and Town taxes combined the total is 0.885 per \$100 which is near twice the amount of neighboring counties.

The Mayor recognized Kara Rodriguez of 309 Walnut Street, Berryville. Ms. Rodriguez said that she moved here about two years ago and loves Berryville. She said what she thinks has been absent from the budget discussions has been funding for economic development. She said there needs to be a plan for future economic development with a regional focus.

Mayor Kirby recognized Denise Russell who declined to speak.

The Mayor recognized Stanley Kerns of 6 Battletown Drive, Berryville. Mr. Kerns said he is a supporter of Berryville, but is not a supporter of the tax hike. He said Council should reduce or spread the increase over a longer period. He noted that residents also pay County taxes and

questioned the benefit of living in Berryville. Mr. Kerns said with the current economic period this is a bad time to be proposing an increase.

Mayor Kirby recognized Sharon Strickland of 312 Early Drive, Berryville. Mrs. Strickland said she is president of Battlefield Estates Civic Association and asked that the tax increase be spread out.

The Mayor recognized Maureen McCallister of 100 Taylor Street, Berryville. Ms. McAllister said she is new to Town and was shocked to read about the tax increase. She said the jump is too much at one time and asked Council to spread out the increase.

Mayor Kirby recognized Carol Brophy of 300 Early Drive, Berryville. Ms. Brophy said the tax increase is too much. She said there had been bad planning in regard to the water treatment plant and there should be no budget increases. She added that elections are coming.

The Mayor recognized Scott Holmes of 8 Litten Court, Berryville. Mr. Holmes said he is not in support of the increase and would not have moved to the area had he known he would have to pay County and Town tax rates.

Mayor Kirby recognized Chris Horan who declined to speak.

The Mayor recognized Brian McClemens of 333 East Fairfax Street. Mr. McClemens said the recent Yard Sale day was a success. He added he is not in favor of a tax increase, but can see the needs of the budget. He noted that he pays business license and meals taxes to the Town, but that similar businesses in the County pay almost nothing, so the County could be doing more financially to benefit the community.

Mayor Kirby recognized Dan Garrett of 303 Archer Court, Berryville. Mr. Garrett said that tax is not a bad word, it reminds him of collective responsibility to do what is in the common interest. He said he is puzzled over why a simple development request that would add a \$15 million senior housing project is met with resistance. Mr. Garrett added that the referenced housing project offers economic solutions. He said the burden continues to fall on individual property owners.

The Mayor recognized Samantha Walraven of 411 Dunlap Drive, Berryville. Mrs. Walraven said she has lived here 12 years and is a stay-at-home mom of six children. She said she is feeling pinched at all levels with taxes. She asked that the Council look at its budgeting, and practice saving for things before spending as she and her family do.

Mayor Kirby recognized Alton Echols, 400 Custer Court, Berryville. Mr. Echols said the Council should table the tax increase until next month and spend a Saturday in the office hearing from citizens about the increase. He further suggested the Council appoint a committee to do economic development.

No others wished to speak on the topic of proposed tax rates.

4.b. Public Hearing - ***Proposed Water Rate Increase***

Mayor Kirby recognized Wayne Webb of 510 Ewell Court, Berryville. Mr. Webb said he had looked at budgets online for Berryville and other localities including Shenandoah County. He said he wanted explanation for what \$100,000 in availability fees referred to and that he had not included them in the \$770,333 number he used earlier.

The Mayor recognized Scott Holmes who declined to speak.

No others wished to speak on the topic of the proposed water rate increase.

4.c. Public Hearing – ***Proposed amendment to chapter 16 of the Berryville Code Establishing a Transient Occupancy Tax***

Mayor Kirby recognized William Genda of 16 Rosemont Manor Lane, Berryville. Mr. Genda said it is good to tax visitors coming through the area. He has owned Historic Rosemont Manor since 2009 and employs about 30 people. He explained the state already charges a transient occupancy tax of 5.3%, the county charges 2.0%, and if this tax is approved, his guests will be paying 11.3% in total occupancy taxes. Mr. Genda said his business hosts many weddings, and the tax on a \$20,000 wedding will be around \$2200. He says he will lose business because the tax is too much, and guests will choose to go elsewhere.

The Mayor recognized Rachel Worsley of 211 South Church Street, Berryville. Mrs. Worsley said she owns a bed and breakfast and is concerned about Section 16-107 of the proposed amendment. She said it would mean exemptions were given in some cases, but that legitimate businesses such as hers would be penalized.

Mayor Kirby recognized Alton Echols of 400 Custer Court, Berryville. Mr. Echols noted that \$10,000 had been spent on a study for a potential 40 room hotel or inn. He asked the Council to table the three issues on the public hearing schedule.

The Mayor recognized Sam Card of 404 Walnut Street. Mr. Card said that elderly people are burdened with taxes. He added that the transient occupancy tax would be terrible for business.

Mayor Kirby recognized Chris Horan of 304 Taylor Street, Berryville. Mr. Horan asked in reference to all the proposals if Council was trying to keep up with Loudoun. He added that the citizens were not getting enough services now, and taxes should not go up.

No others wished to speak on the topic of the proposed transient occupancy tax.

**Upon motion of Recorder Arnold, seconded by Council member Daniel, the public hearings were closed. The vote carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

**5. Approval of Minutes**

**Upon motion by Recorder Arnold, and seconded by Council member Tollett, the minutes of the March 10, 2015, meeting were approved by the following vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

**Upon motion by Recorder Arnold, and seconded by Council member Tollett, the minutes of the March 18, 2015, work session were approved by the following vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

**Upon motion by Recorder Arnold, and seconded by Council member Tollett, the minutes of the April 7, 2015, work session were approved by the following vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

## 6. Citizens' Forum

Mayor Kirby recognized Kenneth Liggins of 206 Josephine Street, Berryville. Mr. Liggins said he is a member of the Josephine Improvement Association which is against the tax increase. He presented a petition to Council asking that the CDBG funds be denied to the Town of Berryville. Mr. Liggins said that the Josephine Improvement Association is withdrawing support for the grant application after members learned that the grant included loans to residents for housing rehabilitation. He delivered a copy of the petition to the Clerk.

The Mayor recognized Daniel Garrett of 303 Archer Court, Berryville. Mr. Garrett asked for clarification on the proposed Marlyn Development senior housing project. He said that the agenda packet included an application from the landowner, Alton Echols, because Mr. Echols thinks the issue is not properly before the Berryville Area Development Authority. He said that Council did not initiate a request for amendment of the comprehensive plan, but called for a study of the proposed change request. Mr. Garrett asked Council to act to correct their request if it had been an oversight.

Mayor Kirby recognized Francis Nance of 308 35<sup>th</sup> Street, Virginia Beach, Virginia. Mr. Nance said he represents Marlyn Development which brought a senior housing proposal forward six months ago for 120 units when only 60 units were permitted. He is in support of the comprehensive plan amendment allowing more multifamily units and asked Council to act on the amendment. Mr. Nance said that would allow a response and expected plan amendment within 60 days.

The Mayor recognized Alton Echols of 400 Custer Court, Berryville. Mr. Echols addressed the bond recall. He said he tried to get streets repaved last fall, but the job was too small. He says he now has a contractor willing to do the work. Mr. Echols then addressed the text amendment by saying if it were handed over to the BADA correctly, then the BADA would have to respond in 60 days. He then said he was withdrawing the application for text amendments to the Berryville Zoning Ordinance and Berryville Area Plan and asked that the request be considered at the May meeting.

Mayor Kirby recognized Sharon Strickland of 312 Early Drive, Berryville. She opined the proposed senior housing project will employ 30-45 people, and will raise money by bringing jobs to Berryville.

## 7. Report of the Mayor

Mayor Kirby congratulated Berryville Main Street on the Yard Sale Day held April 11, 2015, saying there was beautiful weather and it was a successful event.

## 8. Planning and Zoning

- a) Text Amendment to Berryville Zoning Ordinance and Berryville Area Plan – Multit-family Senior Units

The Mayor noted that Mr. Echols had asked for this application to be withdrawn a few minutes previously when he addressed Council during the Citizens' Forum.

b) Call Bond Proceeds – Chamberlain and McClellan Streets and Section 4B Battlefield Estates

Mayor Kirby requested staff give an overview of the action. Ms. Dunkle described previous action taken by Council to set the respective bonds and timeframes in which they were set. Recorder Arnold moved that the Council of the Town of Berryville direct staff to give the Owner, Ketocin Land Company, a Notice of Default under the bond agreements for the completion of McClellan and Chamberlain Streets and of Section 4B public improvements, and if the work is not completed within thirty (30) days of the Notice of Default, the letters of credit shall be obtained in order to complete the work. Mr. Kitselman seconded the motion. Council member Tollett asked what happens if the work is not done in 30 days. Mr. Dalton replied that the Town has contractors that would complete the work and be paid by the bond proceeds. He suggested that the motion could be amended to allow 60 days rather than 30 days for work completion. **Recorder Arnold moved that the Council of the Town of Berryville direct staff to give the Owner, Ketocin Land Company, a Notice of Default under the bond agreements for the completion of McClellan and Chamberlain Streets and Section 4B public improvements, and if the work is not completed within sixty (60) days of the Notice of Default, the letters of credit shall be obtained in order to complete the work. Mr. Kitselman seconded the motion. The motion carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

c) Construction Standards and Specifications Manual Update

Ms. Dunkle said the Construction Standards and Specifications Manual had been reviewed by Town staff and recommended changes are before the Town Council tonight. She said the Town's engineer has recommended two changes which are incorporated into the document. She added that one additional change recommended by the engineer concerning corrosion of sanitary sewer pressure mains is currently under review by Town Utility and Public Works. She said the Materials Specifications document has been an administrative document which allows staff changes as needed. **Council member Tollett moved that the Council of the Town of Berryville approve the Construction Standards and Specifications Manual including Standard Details dated April 2015 with allowance for modifications to Section 6.I.B as identified in the staff report. The Material Specifications shall remain an administrative document. Council member Kitselman seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

d) Ms. Dunkle reported the County has selected an Economic Development Director and that announcement is forthcoming. She said the Berryville Area Development Authority has a new member, Wingate McKay-Smith, who will be at the next meeting.

Ms. Dunkle said the Appalachian Trail Community Certification induction ceremony has been scheduled for Monday, July 20 at 5:30pm and will be held in Rose Hill Park. She said this will occur during the 2015 Appalachian Trail Biennial which is being held at Shenandoah University.

8. Report of the Town Manager

Mr. Dalton noted the loss of a Town Council member in 2009. He said Officer Greg Frenzel, had been deeply involved in solving the crime and asked the clerk to read a proposed resolution. **Council member Daniel moved that the Town Council of the Town of Berryville pass the resolution thanking Officer Greg Frenzel for his efforts during the investigation of the death of Gail Smith. Council member Tollett seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BERRYVILLE  
THANKING OFFICER GREG FRENZEL FOR HIS EFFORTS DURING THE  
INVESTIGATION OF THE DEATH OF GAIL SMITH

WHEREAS, On July 30, 2009 Officer Greg Frenzel discovered Town Council Member Gail Smith deceased in her home on Pickett Court; and

WHEREAS, Over the subsequent five years, Officer Frenzel untiringly and meticulously investigated Gail Smith's death, amassing an extensive body of evidence, eventually being able to recall even the most minute detail of the investigation with uncommon clarity at a moment's notice; and

WHEREAS, In the course of the investigation Officer Frenzel coordinated the efforts of local, State, and Federal organizations; and

WHEREAS, During his investigation Officer Frenzel uncovered multiple plots involving the conspiracy to murder Gail Smith that pre-dated the plot that resulted in her death and developed a case along with the

Commonwealth's Attorney for Nottoway County that led to the successful prosecution of two individuals; and

WHEREAS, Officer Frenzel's determined efforts in conjunction with the Commonwealth's Attorney for Clarke County led to the preparation of a complex prosecution of three accused individuals; and

WHEREAS, Officer Frenzel's investigation was thorough and encompassing leading all three co-conspirators to plead guilty rather than face trial; and

WHEREAS, In large part, because of Officer Frenzel's efforts, all three co-conspirators have been sentenced to prison for their part in the murder of Gail Smith; and

WHEREAS, During the long investigation Officer Frenzel never lost sight of the critical mission of seeking justice for Gail Smith, keeping a picture of Gail above his desk with the caption "Who murdered this beautiful woman?";

NOW, THEREFORE BE IT RESOLVED THAT the Council of the Town of Berryville hereby thanks Officer Greg Frenzel for his extraordinary efforts investigating Gail Smith's death.

AND BE IT FURTHER RESOLVED THAT the Town Council is proud to have Officer Frenzel on the Berryville Police force as he has at all times in this investigation embodied the Berryville Police Department's core values of "Commitment, Service, Integrity, and Excellence".

By Order of the Council of the Town of Berryville on this the fourteenth day of April, 2015.

Mr. Dalton added that letters of thanks and praise could also be sent to the Clarke County Sherriff in recognition of Chief Deputy Travis Sumption and Sergeant Patricia Putnam. **Council member Daniel moved that Council authorize the Town Manager to sign and deliver letters of thanks and commendation to the Sherriff recognizing Chief Deputy Sumption and Sergeant Putnam. Council member Tollett seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

## 10. Standing Committee Reports

### a) BADA Liaison

Council member Kitselman said there will be a Berryville Area Development Authority meeting on April 22, 2015.

### b) Budget and Finance

Recorder Arnold said after hearing the speakers during the public hearing, he wishes to take another look at the budget before voting. The Treasurer explained the very short time frame allowing June tax bills to be mailed 30 days before payments are due.

The Mayor and Council member Daniel thanked the citizens for coming to the public hearing. A Budget and Finance Committee meeting was set for Thursday, April 16, 2015, at 9:15 a.m. A Town Council meeting (the continued meeting of the current session) was suggested for Tuesday, April 21, 2015, at 7:00 p.m.

Recorder Arnold suggested tabling the Transient Occupancy Tax vote until the budget and tax rates are finalized.

**Recorder Arnold moved that the Council of the Town of Berryville adopt the following Ordinance prescribing water service charges pursuant to Chapter 17, Article IV, Section 17-49 of the Code of the Town of Berryville. Council member Kitselman seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

TOWN OF BERRYVILLE  
AN ORDINANCE PRESCRIBING WATER SERVICE CHARGES  
PURSUANT TO CHAPTER 17, ARTICLE IV, SECTION 17-49  
OF THE CODE OF THE TOWN OF BERRYVILLE

BE IT ORDAINED, by the Council of the Town of Berryville, pursuant to Chapter 17, Article IV, Section 17-49 of the Code of the Town of Berryville, that effective June 24, 2015 charges for water services rendered by the Town of Berryville shall be eight dollars and forty cents (\$8.40) per one thousand (1000) gallons of water used. For those customers using less than a thousand gallons a minimum fee of five dollars (\$5.00) per month will be charged.

**Upon motion by Council member Tollett, seconded by Council member Daniel, a public hearing on the FY 2016 budget was set for May 12, 2015, during the regular Town Council meeting. The motion carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

Council member Daniel asked the Treasurer to address PPTRA. Mrs. Moreland gave a brief overview, and Council agreed by consensus to discuss the topic at the next meeting.

Recorder Arnold moved that the minutes of the Budget and Finance Committee meeting of March 4, 2015, be approved. Council member Daniel seconded the motion which passed.

Recorder Arnold moved that the minutes of the Budget and Finance Committee meeting of March 11, 2015, be approved. Council member Daniel seconded the motion which passed.

Mr. Dalton said that the recently passed ordinance regarding the cigarette tax was in need of some additional language facilitating enforcement. Council member Daniel moved that the Council of the Town of Berryville adopt the following ordinance amending the Berryville Code, Article VII, Cigarette Tax. Council member Kitselman seconded the motion which carried as follows:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Absent
David Tollett	- Aye

#### TOWN OF BERRYVILLE

#### AN ORDINANCE AMENDING THE BERRYVILLE CODE ARTICLE VII, CIGARETTE TAX

BE IT ORDAINED, by the Council of the Town of Berryville, Virginia, that the Berryville Code be amended by adding Article VII Sections 16-71 through 16-85 as follows:

#### ARTICLE VII. - CIGARETTE TAX

Sec. 16-71. – Definitions.

Sec. 16-72. – Levy and rate.

Sec. 16-73. – Delegation of administration.

Sec. 16-74. – Methods of collection.

Sec. 16-75. – Registered agents.

Sec. 16-76. – Notice of intention by retail dealers.

Sec. 16-77. – Requirements of retail dealers.

Sec. 16-78. – Sale of cigarettes in vending machines; contraband.

Sec. 16-79. – Illegal acts.

Sec. 16-80. – Jeopardy assessment.

Sec. 16-81. – Erroneous assessment: notices and hearings in the event of sealing of vending machines or seizure of contraband property.

Sec. 16-82. – Disposal of seized property.

Sec. 16-83. – Extensions.

Sec. 16-84. – Penalty for violation of article.

Sec. 16-85. – Each violation a separate offense.

Sec. 16-86. – Severability

Sec. 16-71. - Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Carton shall mean any container, regardless of material used in its construction, in which ten (10) packages of twenty (20) cigarettes are placed.

Cigarette shall mean and include any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

Dealer shall mean and include every manufacturer's representative, self wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the town.

Package shall mean and include any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a package contains twenty (20) cigarettes; however, "package" includes those containers in which fewer or more than twenty (20) cigarettes are placed.

Person shall mean and include any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation shall include all the officers and directors thereof.

Place of business shall mean and include any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the town.

Registered agent shall mean and include every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this article.

Retail dealer shall mean and include every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the town to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one (1) or more cigarette vending machines for the purpose of sale within the town of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the town to the ultimate consumer, who is not licensed as a wholesaler, or vending machine operator.

Sale or sell shall mean and include every act or transaction, regardless of the method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortuous act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the town from a dealer as herein defined to any other person for a consideration.

Stamp shall mean a small gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the town required to be affixed to every package of cigarettes sold, distributed or used within the town.

Store or storage shall mean and include the keeping or retention of cigarettes in this town for any purpose except sale in the regular course of business.

Town shall mean Town of Berryville, Virginia.

Use shall mean and include the exercise of any right or power over any cigarettes or packages or cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

User shall mean any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

Wholesale Dealers shall mean any individual, partnership, or corporation engaged in the sale of packages of cigarettes for resale into or within the town.

## Sec. 16-72. - Levy and rate.

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the town upon every person who sells or uses cigarettes within the town from and after the effective date of this

article an excise tax equivalent to ten cents (\$0.10) for each package containing twenty (20) cigarettes or less. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette package sold or used within the town shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes.

Sec. 16-73. - Delegation of administration.

- (a) The town treasurer is hereby delegated the authority to administer all provisions of this article.
- (b) The town treasurer is authorized to promulgate such rules and regulations, as it deems appropriate, governing:
  - (1) The display of cigarette stamps in vending machines;
  - (2) The placement of tax liens against property of taxpayers hereunder;
  - (3) The extending of varying discount rates;
  - (4) The establishing of different classes of taxpayers or those required to collect and remit the tax;
  - (5) The requirements concerning keeping and production of records;
  - (6) The administrative and jeopardy assessment of tax where reasonably justified;
  - (7) The required notice to authorities of sale of taxpayer's business;
  - (8) The audit requirements and authority;
  - (9) The criteria for authority of distributors and others to possess untaxed cigarettes;
  - (10) Any and all powers granted by the provisions of the Code of Virginia of 1950, as amended, or necessarily implied therefrom.
- (c) The town treasurer, is authorized to:
  - (1) Issue a common revenue stamp;
  - (2) Bring appropriate court action in its own name where necessary to enforce payment of the cigarette taxes or penalties;
  - (3) Provide cigarette tax agents and the necessary enforcement supplies and equipment needed to effectively enforce the cigarette tax ordinance.
  - (4) To conduct inspections of any place of business in order to enforce the provision of this ordinance.
  - (5) To appoint certain employee as Tobacco Revenue Agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machine, seize any cigarettes, counterfeit stamps or other property found in violation of this article and shall have the power of arrest upon reasonable suspicion and probable cause that a violation of this article has been committed.

Sec. 16-74. - Methods of collection.

- (a) The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the town to carry out the provisions of this article. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax and report separately for packages of twenty (20) cigarettes on forms prescribed for this purpose by the town:
  - (1) The quantity of town-stamped cigarettes sold or delivered to:
    - a. Each registered agent appointed by the town for which no tax was collected;
    - b. Each manufacturer's representative; and
    - c. Each separate person and place of business within the town during the preceding calendar or fiscal month; and

- (2) The quantity of town stamps on hand, both affixed and unaffixed on the first day and the last day of the preceding calendar or fiscal month and the quantity, of town stamps or town stamped cigarettes received during the preceding calendar or fiscal month; and
  - (3) The quantity of cigarettes on hand to which the town stamp had not been affixed on the first and last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the town stamp had not be affixed; and
  - (4) Such further information as the administrator for the town may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.
- (b) Each dealer or other person liable for the tax shall file such reports with the town and pay the tax due to the town between the first and twentieth day after the close of each calendar or fiscal month, and shall furnish a copy of any cigarette tax reports submitted to the Virginia Department of Taxation for the previous month.
  - (c) When, upon examination and audit of any invoices, records, books, cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the town of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The town shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid and impose a penalty of ten (10) percent and interest of ten (10) percent per annum of the gross tax due.
  - (d) When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the town shall administratively assess the tax due and unpaid and impose a penalty of fifty (50) percent and interest of ten (10) percent per annum of the gross tax due.
  - (e) The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the town stamp has been affixed thereto prior to offering them for sale.
  - (f) Any dealer or other person liable for the tax who shall receive cigarettes not bearing the town stamp shall, within one (1) hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the town stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any dealer or other person liable for the tax who has notified the town that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the town) without affixing the stamps required by this article. Any such interstate or intrastate stock shall be kept entirely separate and apart from the town-stamped stock, in such a manner as to prevent the co-mingling of the interstate or intrastate stock with the town stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.
  - (g) It shall also be the duty of each dealer or other person liable for the tax and he is hereby required to maintain and keep for a period of three (3) years, not including the current calendar year, records of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner, whatsoever, whether the same were stamped or unstamped, to make all such records available for audit, inspection and examination and to make available at all reasonable times the means, facilities and opportunity for making such audit, inspection or examination upon demand of the town.

#### Sec. 16-75. - Registered agents.

- (a) Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the town shall first make application to the town to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the town deems necessary. Any applicant whose place of business is outside the town shall automatically, by filing his application, submit himself to the town's legal jurisdiction and appoint the town treasurer as his agent for any service of lawful process.

Upon receipt of the properly completed application, the town shall issue to said applicant a permit to qualify him as a registered agent to purchase, sell, use, store, possess, distribute or transport within or into the town, town-stamped cigarettes.

- (b) After adoption of this article, dealers or other persons liable for that tax who shall sell, use, store, possess, distribute or transport tobacco products within or into the town shall be allowed thirty (30) days to become qualified as a registered agent.
- (c) All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the town.

#### Sec. 16-76. - Notice of intention by retail dealers.

- (a) Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the town shall notify the town in writing, of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business. Possession of a Virginia State Retail Sales and Use Tax Certificate and a Virginia State Retail Tobacco License and, where applicable, a retail business license issued by the town for each separate place of business by a retail dealer shall be considered sufficient written notification to the town.
- (b) No retail dealer, as defined herein, who shall have complied with the provisions of the article and who purchases only tax-paid town-stamped cigarettes for each separate place of business shall be required to qualify as a registered agent.

#### Sec. 16-77. – Requirements for retail dealers

- (a) Retail dealers who sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the town shall purchase cigarettes only from registered agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia state sales and use tax certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchase invoices/receipts must be retained by the retailer for a period of three (3) years and shall be made available to agents of the town upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one (1) year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the town to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the town stamp or the proper jurisdictional tax paid will be seized by agents of the town.
- (b) Retail dealers must make their place of business available for inspection by designated Tobacco Revenue Agents of the town to insure that all cigarettes are properly tax-stamped and all cigarette taxes are properly paid.

#### Sec. 16-78. - Sale of cigarettes in vending machines; contraband.

- (a) Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the town. Any vending machine located within the town containing cigarettes placed so as to not allow visual inspection of the town stamp through the viewing area as provided for the vending machine manufacturer shall be in violation of this article.
- (b) Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the town. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.
- (c) In lieu of seizure, the town may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

- (d) All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of said machine.

**Sec. 16-79. - Illegal acts.**

- (a) It shall be unlawful and a violation of the article for any dealer or other person liable for the tax:
- (1) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed under him under the provisions of the article or to fail or refuse to obey any lawful order which may be issued under this article; or
  - (2) To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or
  - (3) To sell, offer for sale, or authorize or approve the sale of any cigarettes upon which the town stamp has not been affixed; or
  - (4) To possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty (60) packages upon which the town stamp has not been affixed; or
  - (5) To transport, authorize or approve the transportation of any cigarettes in quantities of more than sixty (60) packages into or within the town upon which the town stamp has not been affixed, if they are:
    - a. Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or
    - b. Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or
    - c. Accompanied by a bill of lading or other document indicating:
      1. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of the jurisdiction; or
      2. A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia retail tobacco license and, where applicable, or a business license and a retail tobacco license issued by the local jurisdiction of destination; or
  - (6) To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or
  - (7) To remove from any package any stamp with intent to use or cause the same to be used after same has already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had therefore been used for evidence of the payment of any tax prescribed by this article or to sell, or offer to sell, any stamp provided for herein.

**Sec. 16-80. - Jeopardy assessment.**

If the town determines that the collection of any tax or any amount of tax required to be collected and paid under this article will be jeopardized by delay, the town shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the town may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this article for filing a return and paying the tax has expired.

Sec. 16-81. - Erroneous assessment: notices and hearings in the event of sealing of vending machines or seizure of contraband property.

- (a) Any person assessed by the town with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this article who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the town for a correction of such assessment and the return of such property seized or sealed.
- (b) Where holders of property interest in cigarettes, vending machines or other property known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four (24) hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.
- (c) Such hearing shall be requested within ten (10) days of the notice of such assessment, seizure, or sealing and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines or other property should be returned or released. Within five (5) days after receipt of such hearing request the town shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen (15) days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten (10) days from first notice to the petitioner of such seizure or sealing. Within five (5) days after the hearing, the town shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.
- (d) Appropriate relief shall be given by the town if it is proven by the preponderance of the evidence that the illegal sale or use of such seized cigarettes or vending machine or other property was not intentional on the part of the petitioner, and that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the town is satisfied that the tax was erroneously assessed, it shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the town may within thirty (30) days of the date of said decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.

Sec. 16-82. - Disposal of seized property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the town after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.

Sec. 16-83. - Extensions.

The town, upon a finding of good cause may grant an extension of time to file a tax report upon written application therefore, until the end of the calendar or fiscal month in which any tax report is due hereunder, or for a period not exceeding thirty (30) days. In no case shall a request for an extension of time to file a tax report be granted by the town when such request is not received within the due date for filing such tax report. No interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension. Where such extension is granted beyond the end of the calendar or fiscal month in which any tax report is due, hereunder, interest on the tax at a rate of ten (10) percent per annum shall be charged.

Sec. 16-84. - Penalty for violation of article.

Any persons violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

Sec. 16-85. - Each violation a separate offense.

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the town stamp has not been affixed shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

**Sec. 16-86. - Severability.**

If any section, phrase, or part of this article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the article, and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

**c) Community Improvements**

Council member Kitselman reported that the Yard Sale day had been a success.

**d) Planning Commission Liaison**

Council member Shaffer was absent.

**e) Police and Security**

Council member Daniel said the monthly report was included in the packet.

**f) Streets and Utilities**

Mayor Kirby noted the monthly reports for Public Works and Public Utilities were included in the agenda packet.

Mr. Dalton said Buckmarsh Street is scheduled for repaving by a Virginia Dept. of Transportation contractor this paving season. He said there had been concerns about the current pavement marking and alternatives have been discussed. The Virginia Dept. of Transportation has requested that the Town provide its preferred pavement marking scheme to them by April 17. **Recorder Arnold moved that the Council of the Town of Berryville recommend to the Virginia Dept. of Transportation that South Buckmarsh Street be marked in the following manner:**

**Starting at the intersection of Main and Buckmarsh Streets heading south –**

**From Main Street south to Crow Street no change (left turn lane for West Main Street and center turn lane)**

**From Crow Street to the south side of the entrance to Santorini Grill (108 South Buckmarsh Street) - no change (center turn lane)**

**From the south side of the entrance of the Santorini Grill (108 South Buckmarsh Street) to the approaches of the intersection of Buckmarsh and Hermitage mark with two yellow lines**

**Approaches of intersection of Buckmarsh and Hermitage as well as the intersection itself would remain the same (left turn lanes for Hermitage Blvd.)**

**The motion was seconded by Council member Kitselman and carried as follows:**



**MINUTES**  
**BERRYVILLE TOWN COUNCIL**  
**Tuesday, April 21, 2015**  
**Berryville-Clarke County Government Center**  
**Reconvention of the Regular Meeting of April 14, 2015**  
**7:00 p.m.**

**Town Council:**

Present: Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; David Tollett; Douglas Shaffer; Absent: Mary Daniel

**Staff:** Keith Dalton, Town Manager; Desiree Moreland, Assistant Town Manager/Treasurer; Neal White, Chief of Police; Ann Phillips, Town Clerk

**Press:** Val Van Meter, Winchester Star

1. Call to Order

Mayor Kirby called the reconvened meeting to order at 7:00 p.m.

2. Budget and Finance /CIP Committee

a. The Mayor asked the chairman of the Budget and Finance Committee, Recorder Jay Arnold, to recap the recent budget discussions. Recorder Arnold said there have been many challenges in planning the budget this year, with many needs and less money to meet those needs. He thanked the citizens for coming out and voicing their thoughts on the tax rates. Recorder Arnold said the committee had looked at many options, but has decided that a real estate tax rate of \$0.186 per \$100 of assessed value, representing a tax increase of \$0.05, is the best option. He then highlighted the effects of his proposal: it freezes one police department position, allows the funding of the VRS LEOS coverage, eliminates the funds for one police vehicle, provides level funding for emergency services, and allows about \$43,000 to be added to general fund capital reserves.

Mayor Kirby asked Council for comments on the proposal. Council member Kitselman said that the LEOS coverage is very important. He added that the fire and rescue contribution should be discussed, and if the plan is to reduce the contribution to the County funding a paid position, then the Town's intention needs to be clearly communicated to the County.

Council member Tollett said he is in favor of LEOS, but that this is not a good time to increase the tax rate so much. He said he wants a tax rate increase of \$0.02 per \$100 of assessed value, and added that he hopes we can do LEOS next year when there may be more funds after the County reassessment. Council member Tollett said he would like to see a cost of living increase for Town employees earning less than \$60,000 to help those on the lower end of the pay scale. He added that he supports fire and rescue, but that Fee for Service is coming in July which will eventually provide more funds for fire and rescue. He said he is in favor of letting the County fund the EMT position until Fee for Service funds become available.

Council member Shaffer asked about the difference between the proposal showing a \$0.176 tax rate and the other proposals. Mrs. Moreland said the \$0.176 rate proposal allows nothing to be put in reserves.

The Mayor asked for a motion.

**Recorder Arnold moved that the Council of the Town of Berryville adopt the following Ordinance setting the tax levies for tax year 2015 amending the Code of the Town of Berryville, Chapter 16- Taxation, Article I – In General, Section 16-1 Annual Tax Assessments; valuation of property. Council member Shaffer seconded the motion which carried on the following vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Absent
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Nay

Town of Berryville  
Town Council  
An Ordinance Setting Tax Levies For Tax Year 2015

BE IT ORDAINED, by the Council of the Town of Berryville, Virginia, that for the tax year 2015 there is hereby levied:

- (1) A tax of \$0.186 per \$100 assessed valuation on all real estate located within the Town of Berryville, such levy being also applicable to the real estate and tangible personal property of public service corporations;
- (2) A tax rate of \$1.25 per \$100 assessed valuation on all taxable, tangible personal property, except machinery and tools, located in the Town of Berryville;
- (3) A tax rate of \$1.30 per \$100 assessed valuation on tangible machinery and tools located in the Town of Berryville.

All levies shall be due and payable pursuant to the Code of the Town of Berryville, Chapter 16, Article I, Section 16-3.

b. **Recorder Arnold moved that the Council of the Town of Berryville adopt the following resolution providing for the implementation of the 2004-2005 changes to the Personal Property Tax Relief Act of 1998 for the tax year 2015. Council member Kitselman seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye

Mary Daniel	- Absent
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

**Town of Berryville  
Resolution  
To Provide for the Implementation of the 2004-2005  
Changes to the Personal Property Tax Relief Act of 1998  
For the Tax Year 2015**

**WHEREAS**, the Personal Property Tax Relief Act of 1998, Va. Code § 58.1-3523 *et seq.* (“PPTRA”), has been substantially modified by the enactment of Chapter 1 of the Acts of Assembly, 2004 Special Session I (Senate Bill 505) and the provisions of Item 503 of Chapter 951 of the 2005 Acts of Assembly, being the 2005 revisions to the 2004-2006 Appropriations Act (“the 2005 Appropriations Act”); and

**WHEREAS**, the legislative enactments require the Town to take affirmative steps to provide for the computation and allocation of relief provided pursuant to the PPTRA as revised; and

**WHEREAS**, these legislative enactments provide for the Town of a fixed sum to be used exclusively for the provision of tax relief to owners of qualifying personal use vehicles that are subject to local personal property tax on such vehicles.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Berryville in accordance with the requirements set forth in Va. Code § 58.1-3524(C) (2) and § 58.1-3912(E), as amended by Chapter 1 of the 2005 Acts of Assembly (2004 Special Session 1) and as set forth in Item 503 of the 2005 Appropriations Act, that any qualifying vehicle having situs within the Town during the tax year which begins on January 1, 2015, shall receive personal property tax relief in the following manner:

1. Personal use vehicles valued at less than \$1,000 will be eligible for 100 percentage of tax relief set by the Town Council during its annual budget deliberations.
2. Personal use vehicles valued between \$1,001 and \$20,000 will be eligible for 70 percentage of tax relief set by the Town Council during its annual budget deliberations.
3. Personal use vehicles valued at \$20,001 or more will be eligible for 70 percentage of tax relief on the first \$20,000 of assessed value set by the Town Council during its annual budget deliberations.
4. All other vehicles which do not meet the definition of “qualifying” (business use vehicles, farm use vehicles, motor homes, etc.) will not be eligible for personal property tax relief under PPTRA.

**PASSED THIS 21st DAY OF APRIL 2015.**

c. Mayor Kirby asked Recorder Arnold to recap the discussion of the proposed transient occupancy tax. Recorder Arnold said comments on the tax had been received at the last meeting. He said the committee suggests lowering the rate from 4% to 2%. Mr. Dalton said staff had done some additional research regarding tax exemptions, and recommends the ordinance be adopted with section 16-107 regarding exemptions being removed. **Recorder**

Arnold moved that the Council of the Town of Berryville adopt the following ordinance establishing a Transient Occupancy Tax effective July 1, 2015, noting the removal of section 16-107. Council member Shaffer seconded the motion which carried as follows:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Absent
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

AN ORDINANCE ADOPTING ARTICLE VII  
TRANSIENT OCCUPANCY TAX,  
OF THE CODE OF TOWN OF BERRYVILLE

BE IT ORDAINED, by the Council of the Town of Berryville, that the code of the Town of Berryville is amended to add Article VII, Transient Occupancy Tax, as follows:

ARTICLE VII - TRANSIENT OCCUPANCY TAX

Sec. 16-101. - Definitions.

Sec. 16-102. - Penalty for violation.

Sec. 16-103. - Amount and levy.

Sec. 16-104. - Collection.

Sec. 16-105. - Administrative guidelines.

Sec. 16-106. - Reports and remittances.

Sec. 16-107. - Reserved.

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

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

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

Sec. 16-111. - Preservation of records.

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

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 or more persons at any one 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 or travel campground for lodging or space furnished any transient. If the charges made by such 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 30 consecutive

days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any 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 or more camping parties, including tents, travel trailers or other camping outfits.

#### 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.

#### 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 percent of the total amount paid for room or space rental to any hotel or travel campground.

#### 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.

#### Sec. 16-105. - Delegation of Administration

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

#### 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 20<sup>th</sup> day of the calendar month following the month being reported.

#### 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 or by anyone else, or that he or anyone else will relieve any purchaser of the payment of all or any part of such tax.

#### 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.

#### 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 days from the date of such notice.

**Sec. 16-111. - Preservation of records.**

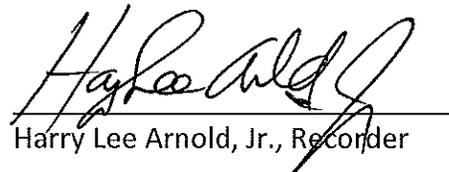
It shall be the duty of every person required by this article to pay to the town the taxes imposed by the article to keep and to preserve for a period of two years records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes 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.

**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.

**There being no further business, upon motion by Council member Shaffer, seconded by Council member Kitselman and passed unanimously, the meeting was adjourned at 7:22 p.m.**

  
Wilson Kirby, Mayor

  
Harry Lee Arnold, Jr., Recorder



**BERRYVILLE TOWN COUNCIL**  
**Streets and Utilities Committee**  
**Thursday, April 30, 2015**  
**Berryville-Clarke County Government Center**  
**101 Chalmers Court, Second Floor**  
**A/B Meeting Rooms**  
**Called Meeting**  
**9:00 a.m.**

**MINUTES**

**Roll:**

**Streets and Utilities Committee:**

Present: Wilson Kirby, Chairman; Doug Shaffer

**Staff:** Keith Dalton, Town Manager; Rick Boor, Director of Public Works; David Tyrrell, Director of Public Utilities

**Press:** none

1. Call to Order – Wilson Kirby, Chairman  
Chairman Kirby called the meeting to order at 9:00 a.m.

2. Update - Public Works

Rick Boor provided information on the following items:

- VDOTs plan to pave Buckmarsh Street after the July 4 holiday this summer
- North Buckmarsh water projects
- South Buckmarsh water projects
- Street Cleaning
- Fire Department water lateral replacement
- Cross walks at Buckmarsh and Main
- Battletown Drive water main project
- Water leak correlator purchase

Mr. Dalton addressed the milling and paving on Buckmarsh Street saying the VDOT contractor may ask for permission to work at night. By consensus the committee agreed that should the contractor request night operations that the Town would support the request.

Mr. Dalton said there were some funds remaining for FY15 paving projects: Archer Court, Breckinridge Court, and the Josephine Street cul-de-sac were suggested for paving. By consensus the committee agreed with the added projects.

3. Update - Public Utilities

Dave Tyrrell provided information on:

- VFD's on finish pumps at the waste water treatment plant
- Power surge issues at the water treatment plant and the waste water treatment plant
- Assisting with hydrant painting
- Working with the engineer discussing work on ground reservoir

Doug Shaffer asked if we had lowered our fluoride target to meet the new recommendations. Mr. Tyrrell responded that the levels had been adjusted in mid-2013 to address the new standards.

4. Discussion- Additional Street Maintenance FY15 / Street Maintenance Priorities for Fiscal 2016

Mr. Dalton reviewed the draft FY 16 Street Maintenance Priorities as follows:

Draft --Street Work Priorities FY 2016

<u>VDOT Reimbursement Limit</u>	\$ 431,000
<u>Work Items</u>	
Patch/Repair trouble areas in streets	\$ 45,000
Sidewalk repair	\$ 10,000
Engineering	\$ 10,000
Public Works Improvements – Storage Bins	\$ 0
Equipment Purchase/Maintenance/Repair (purchase (\$44,000) includes: 2 snow plows, ¾ ton truck, and camera)	\$ 65,000
Routine Maintenance (snow removal, tree trimming, drainage ditch cleaning, street cleaning etc.)	\$ 105,000
<u>Subtotal</u>	\$ 235,000
<u>Available within Reimbursement (\$431,000 – 235,000)</u>	\$ 196,000

Specific Repair Work Priorities

*Summer and Fall (2015)*

Smith Street (Main to Academy)	\$ 8,500
Liberty Street	\$ 55,000
Battletown Drive (Main to Bel Voi)	\$ 15,000

Total Summer/Fall (2015)	\$ 78,500
<i>Spring and Summer (2016)</i>	
Academy Street (Buckmarsh to Smith)	\$ 45,000
Walnut Street	\$ 71,000
Total Spring/Summer (2016)	\$ 116,000
<u>Remaining within Reimbursement</u>	\$ 1,500

By consensus the Committee directed staff to forward this matter to the Town Council.

5. Other

Mr. Kirby addressed the concerns of a property owner on South Church Street regarding the gravel strip between the road and the newly replaced sidewalk. Mr. Boor explained that he recommended leaving the strip as is and that adding top soil to the area will likely be problematic. The committee determined that it would meet after the May 12 Town Council meeting to discuss the matter.

Mr. Kirby asked about the status of the parking meter replacement. Mr. Boor stated the meters are due to be installed by the end of May.

Mr. Boor stated that new Christmas wreaths had been ordered and should be in soon. Mr. Dalton added that Mr. Boor is working with VDOT to get permission to place the wreaths on the street side of the poles to increase visibility because the last time the brackets were installed, VDOT required the wreaths to extend away from the street.

6. Adjourn

There being no further business, on a motion by Mr. Shaffer, seconded by Mr. Kirby and passed unanimously, the meeting was adjourned at 10:30 a.m.

