



BERRYVILLE TOWN COUNCIL

MEETING AGENDA

Berryville-Clarke County Government Center

101 Chalmers Court, Second Floor

Berryville, VA

Main Meeting Room

Regular Session

October 8, 2019

7:30 p.m.

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The Town Council proposes to approve a revised Schedule of Water and Sewer Fees and Charges to implement recommendations of its consulting engineer's utility rate study.	

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No closed session scheduled

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Call to Order

Pledge of Allegiance

Please stand, as you are able, during the Pledge of Allegiance.

Approval of Agenda

Public Hearings

Town Council Agenda Item Report Summary September 11, 2019

Item Title

Schedule of Water and Sewer Fees and Charges

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Town Council allocated \$40,000 for completion of a Utility Rate Study. The study was to provide the Town with:

Information that it needs operate the water and sewer systems properly over the next two decades. This information includes:

- needed future capital projects and estimated costs, and
- future operational cost estimates

User and Availability fee rates required to meet future expenses.

A fixed asset inventory.

An updated hydraulic model.

Pennoni and Associates was tasked with completing the study. The study was completed in early July.

Pennoni and Associates presented their findings to the Town Council at a work session on July 9, 2019.

At its July work session the Town Council determined that it would provide the public with one preferred option for how it would like to proceed regarding water and sewer user fee rates. The Council also determined that it would receive public comment on the study and preferred approach on September 11, 2019 at 7:00 pm. Town staff was directed to provide water and sewer customers with an executive summary of the study findings and the Town Council's preferred path forward.

An executive summary of the study and notice of the Town Council's preferred path forward was included with the August water and sewer bill.

A public input session was held by the Council on September 11, 2019 so that its members could hear from utility customers before a proposal on which a public hearing would be held was finalized. The Council heard comment and agreed to hold a public hearing on the proposed changes to the Schedule of Water and Sewer Fees and Charges on October 8, 2019.

Findings / Current Activity

No further findings.

The Council will hold a public hearing on this matter on October 8, 2019.

Financial Considerations

The utility rate study identified projects totaling in excess of \$24,000,000 in the water system and in excess of \$11,000,000 in the sewer system that should be completed over the next twenty years. The rate increases recommended by the engineer are necessary to meet system needs.

Schedule/Deadlines

After a public hearing is held the Town Council will likely approve an updated Schedule of Water and Sewer Fees and Charges. The new schedule would become effective as directed by the Council. The current proposal provides for the new schedule to become effective on November 22, 2019.

Other Considerations

The Council will also begin discussions regarding the programming of increases over the next several years to meet funding requirements.

Attachments

- Public Hearing Notice
- Utility Rate Study Executive Summary and Public Input Session Notice
- Water and Sewer Schedule of Fees
- Draft Town of Berryville Schedule of Water and Sewer Fees and Charges
- Utility Rate Study

Recommendation

Discuss matter after public hearing and adopt a fee schedule with an effective date of November 22, 2019.

Sample Motion

I move that the Council of the Town of Berryville adopt the attached Schedule of Water and Sewer Fees and Charges and that the new schedule become effective November 22, 2019.

TOWN OF BERRYVILLE
TOWN COUNCIL
PUBLIC HEARING NOTICE

The Berryville Town Council will hold the following public hearing at 7:30 p.m., or as soon after as this matter may be heard, on **Tuesday, October 8, 2019**, in the Main Meeting Room, Second Floor, of the Berryville-Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia, to consider the following:

Water/Sewer Rates, Fees, and Charges

The Berryville Town Council proposes to amend its Schedule of Water and Sewer Fees and Charges to adjust rates, fees, and related deposits to meet revenue needs identified in a recently completed utility rate study.

The proposed changes to the Schedule are extensive. The highlights of the proposed changes include: adoption of a new monthly administrative fee of \$2.50 for water service and \$2.50 for sewer service, a 25 cent reduction in water user fee rate and a 27 cent increase in the sewer user fee rate, and an \$8,250 increase in the water availability fee (5/8" meter) and an \$8,250 decrease in the associated sewer availability fee.

If the new Schedule is adopted, then it is expected to become effective on November 22, 2019.

Copies of materials pertinent to this matter, including the utility rate study and the proposed Schedule of Water and Sewer Fees and Charges, may be examined at the Town of Berryville Business Office, Berryville-Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia, during regular business hours, holidays excepted. Additional information may be obtained by calling the Town Business Office at (540) 955-1099.

Any person desiring to be heard regarding the above matters should appear at the appointed time and place. Written copies of statements at public hearings are requested but not required.

The Town of Berryville does not discriminate against disabled persons in admission or access to its programs and activities. Accommodations will be made for disabled persons upon prior request.

By Order of the Berryville Town Council,
Keith R. Dalton, Town Manager

++++
Please publish on September 30, 2019

Utility Rate Study Executive Summary

The Town of Berryville recently completed a comprehensive evaluation of its water and sewer systems. The evaluation provides the Town with information such as future operational costs, future capital costs, and water and sewer fund evaluation to determine rate levels necessary to meet system needs.

Overview

The Town of Berryville maintains a water system that includes treatment facilities, transmission facilities, and storage structures. The Town also maintains a sewer system that includes collection facilities, treatment facilities, and treated water transmission facilities. Operational and capital expenses in the water system are paid for with monies from the Water Fund. Operational and capital expenses in the sewer system are paid for with funds from the Sewer Fund. These two funds, known as Enterprise Funds, operate as separate entities that must pay their own way. These two funds receive income from user fees (monthly charges to customers), availability fees (paid by new connections to the systems), and borrowing. Debt is serviced by income from user fees and availability fees.

Study Methodology

Pennonni Associates Inc. (Consultant) examined water system and sewer system needs over the next 20 years. Such needs include operations and maintenance, asset replacement, and changes in the systems necessitated by growth or more stringent regulations.

The Consultant evaluated existing assets in order to determine replacement dates and costs, and also reviewed growth rates over the past 60 years to estimate future system demands and user base.

The Consultant calculated the income required to meet needs of the water system and sewer system. Income needs and user base estimates were used to calculate user and availability fees that would provide income sufficient to operate, maintain, and upgrade both systems.

Key Study Conclusions

- The Town's growth rate was forecast at .5% per year.
- The rated capacity of both the water treatment plant and the wastewater treatment plant will be sufficient to meet average daily demand through the year 2040.
- The projected cost of replacement of both vertical and horizontal assets in the water system through 2040 is estimated at \$24.3 million.
- The Town should increase its water user rate by at least 10.2% annually for the next five years.
- The Town should increase its water availability fee by at least 130%.
- The projected cost of replacement of both vertical and horizontal assets in the sewer system through 2040 is estimated at \$11.3 million.
- The Town should increase its sewer user rate by at least 2.3% each year for the next five years.
- The Town should decrease its sewer availability fee by 42%.

A copy of the complete Utility Rate Study is available at:

<https://www.berryvilleva.gov/DocumentCenter/View/843/Pennonni-Utility-Rate-Study>

Please contact the Town of Berryville Business Office at 540.955.1099 if you have any questions regarding this notice.

The reverse of this notice provides specific rate changes that the Town Council is proposing to address the needs identified in the Utility Rate Study and hearing notices.

Water and Sewer Schedule of Fees Public Input Session Notice

The Berryville Town Council will hold a public input session regarding proposed changes to water and sewer related fees (including user rates (monthly bills)), from 7:00 pm until 8:30 pm on September 11, 2019. This session will be held in the Main Meeting Room of the Berryville-Clarke County Government Center at 101 Chalmers Court.

The chart below provides both current and proposed rate information. Rates and availability fees apply to in-town customers and properties (including properties located in an approved annexation area). *Rates and availability fees for customers and properties outside town will be charged an additional 25 percent.*

WATER

	Current	Proposed	Amt. of Change
Monthly Administrative Fees	\$0	\$2.50	\$2.50
Minimum Monthly Usage Bill	5.00	5.00	0
Charge per 1,000 Gallons of Usage	8.40	8.15	-.25
Availability Fee for Connection Served by a 5/8" meter	5,250.00	13,500.00	8,250.00

SEWER

	Current	Proposed	Amt. of Change
Monthly Administrative Fees	\$0	\$2.50	\$2.50
Minimum Monthly Usage Bill	15.00	15.00	0
Charge per 1,000 Gallons of Usage	17.00	17.27	.27
Availability Fee for Connection Served by a 5/8" meter	22,750.00	14,500.00	-8,250.00

The chart below provides a comparison between bills for certain usages under both current and proposed rates.

WATER AND SEWER MONTHLY BILL

Usage (Thousands of Gallons)	Current	Proposed	Amt. of Change
0	\$20.00	\$25.00	\$5
1	25.40	30.42	5.02
2	50.80	55.84	5.04
3	76.20	81.26	5.06
4	101.60	106.68	5.08
5	127.00	132.10	5.10

The Council will review the proposed rate adjustments enumerated above and the approach it will take to rate adjustments over the next five years.

A copy of the proposed Water and Sewer Fee Schedule is available at www.berryvilleva.gov.

<https://www.berryvilleva.gov/DocumentCenter/View/858/Schedule-of-Proposed-Water-and-Sewer-Fees-and-Charges>

Please contact the Town of Berryville Business Office at 540.955.1099 if you have any questions regarding this notice or upcoming meetings.

After receiving public comment on the revised rates, the Town Council will finalize its proposal and hold a public hearing on the matter. Please monitor the Town's website for the public hearing date and time.

TOWN OF BERRYVILLE
SCHEDULE OF WATER AND SEWER FEES AND CHARGES

Effective November 22, 2019

I. USER FEES

A. WATER

1. Within corporate limits or the limits of an approved annexation area: \$8.15 per 1,000 gallons of usage. Minimum charge \$5.00 per month for usage under 1,000 gallons during billing period.
2. Other: \$10.18 per 1,000 gallons of usage. Minimum charge \$6.25 per month for usage under 1,000 gallons during billing period.

B. SEWER

1. Within corporate limits or the limits of an approved annexation area: \$17.27 per 1,000 gallons of usage. Minimum charge \$15.00 per month for usage under 1,000 gallons during billing period.
2. Other: \$21.58 per 1,000 gallons of usage. Minimum charge \$18.75 per month for usage under 1,000 gallons during billing period.

II. ADMINISTRATIVE FEES AND DEPOSITS

A. ADMINISTRATIVE FEES

Monthly Administrative Fees, charged with usage:

Water \$2.50

Sewer \$2.50

Late Fee: 10% of bill amount

Service Disconnection/Reconnection Fee: \$50

Returned Check/ACH Fee: \$50

B. DEPOSITS

Residential: individually metered single-family units, town homes, and duplexes: \$235

Residential: multi-family with master meter: \$188 per unit

Business/Commercial excluding restaurants and laundries: \$235

Restaurant: \$845*

Laundry: \$4,660*

Institutional: \$1,610*

Industrial: \$5,715*

*Town Manager may increase or decrease on the basis of actual usage.

Note: Town Manager may establish reasonable deposit amounts for use types not anticipated by this schedule.

III. AVAILABILITY FEES

A. WATER

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)	Meter Cost
5/8	1	\$ 13,500.00	\$ 16,875.00	Meter Fee
3/4	1.5	\$ 20,250.00	\$ 25,312.00	Meter Fee
1	2.5	\$ 33,750.00	\$ 42,187.00	Meter Fee
2	4.375	\$ 59,063.00	\$ 73,828.00	Meter Fee
3	8	\$ 108,000.00	\$ 135,000.00	Meter Fee
4	16	\$ 216,000.00	\$ 270,000.00	Meter Fee
5	25	\$ 337,500.00	\$ 421,875.00	Meter Fee
6	50	\$ 675,000.00	\$ 843,750.00	Meter Fee

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

Notes:

(a) Multi-family residences are defined as any master-metered group of apartment, townhouse, condominium, or other residential units with each unit having separate kitchen facilities.

(b) In cases in which a master meter serves multi-family residences or a combination of multi-family and commercial units, the applicant will pay a fee based on the higher of A) an amount derived by multiplying the unit charge of \$10,800 for a multi-family residence times the total number of residential and commercial units to be served by a single meter, or B) an amount based on the meter size as specified above.

(c) Meter fee is calculated by adding the cost of the meter and a 30% (of meter cost) handling fee.

B. SEWER

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)
5/8	1	\$ 14,500.00	\$ 18,125.00
3/4	1.5	\$ 21,750.00	\$ 27,187.00
1	2.5	\$ 36,250.00	\$ 45,312.00
1.5	4.375	\$ 63,438.00	\$ 79,297.00
2	8	\$ 116,000.00	\$ 145,000.00
3	16	\$ 232,000.00	\$ 290,000.00
4	25	\$ 362,500.00	\$ 453,125.00
6	50	\$ 675,000.00	\$ 843,750.00

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

IV. LATERAL OR CONNECTION FEES

Connection to the Town's water distribution and/or sewer collection system may be completed only if the following conditions are met:

- Party applying to connect to the system agrees to assume all costs associated with connection to the systems, including excavation, taps, vaults, traffic control, restoration (including pavement), testing, inspections, etc.
- Contractor responsible for completing work has been vetted and approved by the Town.
- Plans for the work, including restoration, have been approved by the Town.
- Required surety has been approved and provided to the Town.
- Required insurance coverage is in place and documentation thereof provided to the Town.
- Required permits have been issued by the Town, Virginia Department of Transportation, or other applicable agency.

V. INSPECTIONS**A. Sanitary Sewer Camera Service and Storm Sewer Camera Inspection Service****1. Mains and Laterals Over 4 Inches in Diameter**

Mobilization Fee: \$300

Camera Fee: \$2.50 per linear foot

2. 4-Inch Laterals

Laterals Under 50 Feet in Length: \$150

Laterals 50 Feet in Length or Greater: \$150 plus \$2.50 per linear foot

B. Inspections

Town staff: \$65 per hour

Licensed professional engineer or approved third-party inspector: Cost

Notes: Cleaning of lines will be required prior to camera use. Line cleaning is the responsibility of the applicant. If lines are not clean and camera crew must remobilize later to perform the inspection, a second mobilization fee will be charged.

VI. SIGNIFICANT INDUSTRIAL USER FEES

Sewer system discharge permit: \$500

VII. WATER METER TESTING

5/8" meter: \$100

All other meters: \$100 + cost

Note: Fee is refunded if meter is found to be over-registering.

VIII. HYDRANT METERS

Nonrefundable account establishment fee \$50

Deposit \$1,200

Note: Usage metered through hydrant meters will be billed for both water and sewer user fees.

IX. UNAUTHORIZED USE OF SERVICE

For unauthorized water withdrawals from fire hydrants or any other part of the Town water system, or when a customer willfully takes steps to reactivate service after service has been disconnected by the Town because of nonpayment of any charge owed to the Town, and the Town must take action to discontinue service again by removal of the meter or any other necessary measures, a \$250 charge for unauthorized use of services will be imposed. This charge will be in addition to any other charge for

water and sewer services owed to the town, and in addition to any legal remedies the Town may pursue for unauthorized use of service.

DRAFT

Utility Rate Study
Town of Berryville, Virginia
Utility Rate Study
Pennoni Associates, Inc., Winchester VA
July 2019



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Utility Rate Study
 Town of Berryville, Virginia
 Utility Rate Study
 Pennoni Associates, Inc., Winchester VA
 July 2019

1. Introduction

The Town of Berryville operates a water system to supply, treat, and distribute water for human consumption and 5th other uses and operates a wastewater system to collect and treat sewage. Town billing data for the period September 2017 through August 2018 would conclude there were an average 1,515 homes served water and 208 other water accounts during that period. Most of these same accounts are served both water and wastewater, but the Town reports that as of September 2018 there were 45 water-only accounts, including 20 residential, six commercial, and three industrial accounts inside the Town limits, with the remaining 16 water-only accounts being outside the Town limits including 12 residential, two commercial, and two institutional accounts. In order to continue to operate this system adequately and provide the level of service expected by these customers, the water and wastewater systems will need to maintain adequate financing.

In order to maintain adequate funding for daily operations, maintenance and renewal of assets, and meet the increasingly stringent regulatory requirements, the Town is undertaking an important study to forecast future service demands, perform an initial evaluation of its water and wastewater assets, review its financial condition, and provide options for water and wastewater rate setting to provide sufficient capital to maintain its assets and meet customer and regulatory requirements. This report summarizes the findings of this study.

According to the American Water Works Association of Denver, Colorado in a Manual of Practice for Developing Rates for Small Systems, several underlying principles are suggested:

- A. That water utilities provide sufficient revenue for annual operations and maintenance expenses, capital costs and debt service, and working capital and reserves. This study addresses all these issues.
- B. Water utilities should account for its funds separate from other governmental entity operations. The Town has achieved this principle through establishing and maintaining a Water Fund and a Sewer Fund separate from the General Fund.
- C. That water systems adopt a uniform system of accounts for accounting and management controls. The Town has developed such a system.
- D. Financial reporting should meet requirements of legislative, judicial, or regulatory bodies. This requirement is audited annually by the Town through a Certified Public Accountant.
- E. Water rate schedules should be designed to distribute the cost of water service equitably among each function and class of service. This study and report follow this principle; where segregation of data for this purpose is not available, assumptions are used based on industry norms.
- F. Water utilities should maintain asset records with sufficient information to monitor and manage the physical condition of infrastructure and should support planned and preventive maintenance programs and budgets adequate to maintain and rehabilitate/renew assets at levels of service consistent with good utility practice. This study initiates a structure to provide asset listing and condition based upon basic data to include age, size, material specifications, and engineering judgment reflecting known maintenance history and past design work. The rate structure proposed by this study incorporates judgment on the future need to replace existing assets and is a starting point in identifying large financial impact where more detailed analyses beyond this study may be appropriate to continue to optimize costs of asset performance and reliability.

Background on Water System

The Town supplies its water through an intake facility on the Shenandoah River which receives and screens river water and then pumps the untreated ("raw") water to the Berryville Water Treatment Facility. The Treatment Facility treats the water to excel beyond federal and state drinking water standards through a Neptune Microfloc package system built in 1984 that includes conventional filtration to remove particles, after which the water is disinfected and pumped through a high service pumping station to the Town's transmission and distribution system. The water supply, treatment, and pumping system is permitted by the Virginia Department of Health for a capacity of 864,000 gallons per day, and the water intake and pumping and water treatment facility can achieve that capacity. The high service pump station is limited to 754,000 gallons per day as a result of internal constraints, thereby this limitation becomes the "choking" point on how much treated water can be delivered into the distribution system.

From a review of Town water production records between 2013 and 2018, the monthly average daily water pumped into the distribution system varied from 261,000 gallons per day in April 2018 to 394,000 gallons per day in April 2014. For the period between September 2017 through August 2018, the annual average daily volume of water pumped to the distribution system was 325,000 gallons per day. During that same one-year period, billed consumption averaged 282,000 gallons per day. From this data one would conclude that 13.2% of the treated water pumped to the distribution system is not metered and billed, referred to in the industry as the non-revenue water rate. All water distribution systems have a component of non-revenue water which can be contributed from numerous sources, including water use from a fire hydrant, leaks from water system assets including water main breaks, water theft, and under-registration of water consumed by meters not accurately calibrated. The water industry sets a standard of striving for non-revenue water below 10%, and above 15% is a "flag" for the need of significant improvement. The Town of Berryville falls in an adequate range but can still strive to improve water accountability. A key place to start is accurate meter registration. It is noted the Town plans to replace the water meters in its system in 2022 and the performance of this action is favorably recommended in this study.

There are also expected water "losses" between the quantity of water filtered or purified and the quantity of water pumped into the distribution system. The largest uses in this category include essential backwashing of the water filters and clean "make-up" water for diluting chemicals, as well as other water used in the treatment process. Plant production records between September 2017 and August 2018 suggest that an average 10.5% of water treated is used within the treatment process, therefore, to pump 325,000 gallons per day into the distribution system, a total of 363,000 gallons per day is treated and filtered.

Based on operational records reported monthly to the Virginia Department of Health and the data distributed by the Town through its annual consumer confidence reports, its treated water is currently meeting all quality drinking water standards of federal and state regulations.

The water transmission and distribution systems consist of an interconnected network of water mains, most within public street rights-of-way, within two pressure zones, and include two elevated water tanks, one ground storage tank, and a booster pump station. The two pressure zones are identified as the 758 Zone and the 808 Zone, where 758 and 808 represent the static head elevations of the two zones in reference to mean sea level. Most of the water distribution system and service connections are on the 758 Zone, with the 808 Zone serving the northwest corner of the system near Route 7 West where the Town's natural ground elevations are highest. One elevated tank and one ground storage tank are located in the 758 Zone, and a second elevated tank serves to maintain water pressure in the 808 Zone as water demand in that zone fluctuates. All treated water at the water plant is pumped into the 758 Zone, a separately located booster pump station transfers water from the 758 Zone to the 808 Zone.

More detailed information on the water system assets is provided under the Evaluation of Assets chapter of this report.

Background on Wastewater System

The Town collects wastewater through a system of underground pipes sloped to allow flow by gravity to the wastewater treatment plant, supplemented by four wastewater pump stations that pump or lift sewage from isolated low points through a "force main" back into the gravity system.

The Berryville Wastewater Treatment Plant is a 700,000 gallons per day (monthly average) state-of-the art facility constructed in 2010 that consists of 4-Stage Bardenpho Bioreactor Basins and a Membrane Bioreactor for advanced nutrient removal to meet stringent nutrient discharge limits for Chesapeake Bay watersheds. The facility also includes a flow equalization tank of 0.7 million gallons to hold incoming peak sewer flows and allow the Bioreactors to operate optimally at a steady rate. Berryville is consistently meeting its stringent effluent limits and is a member of the Virginia Nutrient Credit Exchange Association whereby nutrient removal in excess of the facility's allocation can be sold on an exchange for a modest amount of revenue. Most importantly, this membership also allows the Town to purchase credits at the member rates should circumstances ever be necessary for the Town to maintain regulatory compliance.

Metered sales records from the Town between September 2017 and August 2018 indicate that an average 279,000 gallons of wastewater per day was registered for billing purposes.

2. Water and Wastewater Demand Projections

This chapter of the report summarizes the review of historical water and wastewater system demand, including treatment plant metering and reporting data, customer billing data, and reported growth trends. A long-term growth projection is provided in 5-, 10-, 15- and 20-year intervals based upon information provided by the Town of Berryville's Planning and Zoning Department. This chapter also discusses capacities of water and wastewater system components and the abilities of these capacities to meet growth needs.

This study reviewed development information from the Town's Department of Planning and Zoning, including recent development activity and forecasted ultimate growth in water and wastewater use through build-out of undeveloped land by zoning sub areas. Table 2-1 summarizes recent development activity, and Table 2-2 summarizes growth in demand by potential long-term build-out. Potential quantities in additional water demand from build-out in gallons per day are taken directly from the Town's Planning and Zoning projections and suggest the very long-term potential that the Town's metered water consumption could increase from the present 283,000 gallons per day annual average to up to as high as 816,000 gallons per day. This data also suggests that although current consumption from outside Town limits is a very small percentage, a significant amount of future growth to water and wastewater demand could come from property presently outside of the Town's corporate limits. The Town has a defined Annexation Area and may intend to annex much of this property at some future date, but to the extent future service increases beyond the Town limits, ratemaking may need to consider more closely the equity of charges to outside vs. inside customers.

Table 2-1

Recent Commercial Activity

Source: Town of Berryville Department of Planning and Zoning, October 15, 2018

			Data from Capacity of Waterworks: 12 VAC 5-590-690	
Date of Approval	Planning Area	Development	VDH Criteria	Capacity Added (gpd)
January 25, 2017	Sub Area 7	McDonald's (assumes 60 seats)	Restaurant - 50 gpd/seat	3,000
August 9, 2017	Sub Area 6	67-bed assisted care	Nursing Home - 200 gpd/bed	13,400
October 24, 2018	Sub Area 6A	120 age-income restricted apartments	Residential - 100 per unit	12,000
Total Capacity Added (gpd):				28,400

Note: Capacity is how VDH looks at what excess capacity the water system needs to assure service to a specific new project at the time of application. It may be conservative and therefore not reflective of long-term consumption and revenue.

Table 2-2

Future Activity - Long-Term Build-Out

Source: Town of Berryville Department of Planning and Zoning, October 15, 2018

	Total Build-Out Flow Added (gpd)	Build-Out Flow Added by User Class				Town Limits	Comments
		Residential Flow (gpd)	Commercial Flow (gpd)	Institutional Flow (gpd)	Industrial Flow (gpd)		
Sub Areas 1 and 2	189,700	170,730		18,970		Outside	Zoned to allow Institutional but forecasted likely mostly residential. Assume 90% Institutional; 10% Residential
Sub Area 6A	24,000	14,400		9,600		Inside	Mostly residential; Includes 120 income restricted apartments; limited small commercial
Sub Areas 6 and 7	182,800		182,800			Inside	Business Commercial, Includes grocery store and bank
Sub Area 12B	7,500		7,500			Outside	Business Park
Sub Area 19A	11,000		11,000			Inside	Business Park
Sub Area 27A	24,850	24,850				Partial	Residential - Hermitage V
Sub Area 9	47,600	47,600				Inside	Residential - Includes 22,050 gpd for Fellowship Square; also Includes Shenandoah Crossing
Sub Areas 13, 14, 15	45,300	45,300				Outside	Identified by Town as likely Residential

Totals

Inside Town Limits	277,800	74,400	193,800	9,600	-
Outside Town Limits	255,000	228,500	7,500	19,000	-
Totals	532,800	302,900	201,300	28,600	-

Historical growth trends and qualified population projections should be strongly considered in forecasting future growth in water and wastewater demands over a 20 to 30-year horizon. The best sources of information in Virginia on population trends and growth projections are the U. S. Census Bureau, Virginia Employment Commission and The Weldon Cooper Center at the University of Virginia. Table 2-3 summarizes historical population trends for both the Town of Berryville and Clarke County, from census information reported by *World Population Review*. Also shown is Weldon Cooper Center for Clarke County (The Weldon Cooper Center does not report data for Towns < 5,000 population). The data reflects "up and down" patterns of growth typical for actual historical data over the past 57 years, with higher growth in the 1980s and the 2000s. Recent growth averaged over several years fall into a range of 0.28% to 1.25% per year.

Table 2-3
Berryville and Clarke County Population

Source 1: *World Population Review: Reporting Claims Using U S Census Data and Census Estimates*

Source 2: *University of Virginia Weldon Cooper Center, Demographics Research Group (2017), Virginia Population Projections. Retrieved from https://demographics_coopercenter.org/virginia-population-projection*

Year				Average Annual Growth		
	Town Population	County Population		Town	County	
	Source 1	Source 1	Source 2		Source 1	Source 2
1960			7,942			
1970			8,102			0.20%
1980			9,965			2.09%
1990	3,097	12,101	12,101			1.96%
2000	2,963	Not Provided	12,652	-0.44%		0.45%
2010	4,179	14,011	14,034	3.50%		1.04%
2011	4,222	14,187	14,211	1.03%	1.26%	1.26%
2012	4,237	14,242	14,276	0.36%	0.39%	0.46%
2013	4,246	14,250	14,148	0.21%	0.06%	-0.90%
2014	4,264	14,320	14,323	0.42%	0.49%	1.24%
2015	4,266	14,255	14,206	0.05%	-0.45%	-0.82%
2016	4,286	14,322	14,240	0.47%	0.47%	0.24%
2017	4,338	14,508	14,312	1.21%	1.30%	0.51%
Total 1990 to 2017				1.25%	0.67%	0.62%
Total 2000 to 2017				2.27%	Not Available	0.73%
Total 2010 to 2017				0.54%	0.50%	0.28%

Table 2-4 provides future population growth projections published by the Virginia Employment Commission and The Weldon Cooper Center for Clarke County (projections on Town of Berryville were not found within the data published by these agencies). The computation of average annual growth rates over periods of 20 to 30 years from these projections are highly consistent, varying between 0.42% per year to 0.47% per year. The Town of Berryville Planning and Zoning Department reports that in recent years growth within the Town's utility service area has been observed to be "slightly" higher than Clarke County. For the purpose of this rate study, it will be assumed that the growth of demand for water and wastewater within the Town's systems will be forecasted as 0.50% per year.

Table 2-4

Forecasted Growth Rate - Clarke County

Source 1: Town of Berryville Planning and Zoning, October 15, 2018,

Quoted from Clarke County Community Profile at Virginia Employment Commission

Source 2: University of Virginia Weldon Cooper Center, Demographics

Research Group (2017), Virginia Population Projections. Retrieved from

https://demographics_coopercenter.org/virginia-population-projection

	Population		Annual Average Growth Rate	
	Source 1	Source 2	Source 1	Source 2
2010	14,034	14,034		
2015		14,206		0.24%
2020	14,337		0.21%	
2025		14,801		0.41%
2030	15,266		0.63%	
2035		15,615		0.54%
2040	15,965		0.45%	
2045		16,315		0.44%

Average Rate 2010 - 2030

0.42%

Average Rate 2010 - 2040

0.43%

Average Rate 2015 - 2035

0.47%

Average Rate 2015 - 2045

0.46%

Table 2-5 uses this 0.50% per year average demand to forecast water and sewer metered customer consumption demands over the next 20 years. Current demand is segregated by customer class and represented as inside or outside the Town's limits based on customer billing data provided by the Town. Forecast growth is assigned to customer class and inside or outside Town limits based on a straight-line projection from current class of use toward build-out using the current classification of land use for future development provided by the Town's Planning and Zoning Department. As noted previously in this report, a greater amount of the future growth is projected on land that is presently outside Town limits.

Table 2-5
Forecasted Future Average Day Billed Consumption for Town of Berryville

Customer Class	Current Annual Average Daily Billed		Forecasted Annual Average Daily Billed Consumption (MGD)							
			2025		2030		2035		2040	
	Inside Town Limits	Outside Town Limits	Inside Town Limits	Currently Outside Town Limits	Inside Town Limits	Currently Outside Town Limits	Inside Town Limits	Currently Outside Town Limits	Inside Town Limits	Currently Outside Town Limits
Water Service										
SF Residential	0.169	0.002	0.170	0.005	0.171	0.008	0.172	0.011	0.173	0.014
MF Residential	0.015	0.000	0.015	0.000	0.015	0.001	0.016	0.001	0.016	0.002
Commercial	0.022	0.000	0.025	0.000	0.028	0.000	0.032	0.000	0.035	0.000
Institutional	0.031	0.013	0.031	0.013	0.031	0.014	0.031	0.014	0.032	0.014
Industrial	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000
Totals	0.267	0.015	0.271	0.018	0.276	0.023	0.281	0.026	0.285	0.030
	0.282		0.289		0.299		0.307		0.316	
Wastewater Service										
SF Residential	0.167	0.000	0.168	0.003	0.169	0.006	0.170	0.009	0.171	0.012
MF Residential	0.015	0.000	0.015	0.000	0.015	0.001	0.016	0.001	0.016	0.002
Commercial	0.021	0.000	0.024	0.000	0.027	0.000	0.031	0.000	0.034	0.000
Institutional	0.032	0.014	0.032	0.014	0.032	0.015	0.032	0.015	0.033	0.015
Industrial	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000
Totals	0.265	0.014	0.269	0.017	0.273	0.022	0.279	0.025	0.284	0.029
	0.279		0.286		0.295		0.304		0.313	

An important part of capital planning is an understanding if the capacity of the utility system can meet projected future demands. The projected 2040 average day customer metered consumption of 315,000 gallons per day for water and 313,000 gallons per day for wastewater are both well within the current capacities for the treatment facilities (864,000 gallons per day water treatment and 700,000 gallons per day wastewater treatment) and further provide adequate excess capacity to meet expected peak demands. The Town is presently updating its analysis of the full capacity of the water distribution system through a calibrated computer model and it is recommended the Town consider a similar updated analysis of its sewer collection system.

3. Evaluation of Assets

Water and wastewater utilities are capital intensive. Expensive underground pipelines, pumping stations, storage tanks, river intake facilities, and treatment facilities require significant funding for construction, operation and maintenance, and for adequate repair, renewal or replacement as facilities age. Without proper assets and asset care, the utility will fail to continuously provide a reliable level of service. Community citizens expect this high level of service to be maintained 24 hours per day, 7 days per week, and every day of the calendar year. Operation and maintenance should be planned, executed and documented, and a condition of the assets should be regularly assessed.

The Town of Berryville is to be commended for initiating an asset management program through this study to provide an initial assessment of the condition of the assets of the water and wastewater systems. The scope of this work includes relying upon a review of existing available information provided by the Town together with some engineering judgment from Pennoni's Senior Engineer who has performed previous inspection and design work for the Town. The scope of this study did not include a visual inspection of the assets or a detailed assessment. The review did include review of the Town's fixed asset data and available information regarding initial construction, material, age, and reported significant improvements made after initial construction. Data on underground water distribution and sewer collection system assets were obtained from the Town's water and wastewater data within the Clarke County GIS database. Expected service life was estimated from engineering judgment using experience within the water and wastewater industry based on basic types of material or design, understanding of the quality of manufacture at time of installation, maintenance history available, and any other known related factors. This study then provides a budget that assumes the full replacement of the asset once the estimated remaining life is complete. This evaluation is considered a useful guide to preparing an initial financial estimate to maintain the reliability of aging assets, but beyond this study it is recommended that a more detailed condition assessment be considered, particularly as assets approach the time of expected replacement, to confirm the appropriate actions that are optimal in the actual expenditure of funds. Sometimes full replacement is the optimal solution, whereas other times some significant repair or partial replacement that extends the life of the asset can be more cost-effective over the long-term. The optimal solution comes through later detailed assessment.

Water System

The assets of the Berryville water system generally function adequately to meet the system demand and level of service with limited interruptions. Small local interruptions are sometimes necessary to isolate small areas of the system for repair of water main breaks, but large-scale interruptions are minimal. Like many water systems across the United States, some of the water system assets are aging at or near the expected service life. Table 3-1 provides a 20-Year replacement schedule for water system assets estimated to reach the end of life within the next 20 years in their present condition. The assets in this table have significant above-ground structures, referred to as vertical assets. Table 3-2 provides a separate 20-Year replacement schedule for underground water main pipe and appurtenances referred to as horizontal assets. The combination of vertical and horizontal assets provides the complete fixed assets of the water system.

Tables 3-1 and 3-2 are summarized from an Excel spreadsheet with the summary listing only those assets expected to reach end of life within the next 20 years, based on available information. The larger spreadsheet provides a listing of all water system vertical and horizontal assets, along with estimated remaining service life, date of replacement, and estimated cost of replacement in 2019=\$. The spreadsheet is being provided separately in electronic form to the Town of Berryville, providing a way that these spreadsheets become a living document to be amended as further conditions are assessed and adjustment to the schedules are made.

Table 3-1
Vertical Assets of the Berryville Water System - 20-Year Replacement
Schedule

	Type of Asset	Estimated Replacement Year	Budgeted Replacement Cost (2019=\$)
Shenandoah River Intake	Equipment	2026	\$ 520,000
	Land	2026	\$ 50,000
Raw Water Pumping Station	Equipment	2026	\$ 340,000
Berryville Water Treatment Plant	Building	2026	\$ 2,500,000
	Equipment	2026	\$ 13,000,000
Finished Water Pumping Station	Equipment	2019	\$ 260,000
Booster Pump Station to Zone 808	Building	2032	\$ 250,000
	Equipment	2032	\$ 715,000
			\$ 17,635,000

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Table 3-2
Horizontal Assets of the Berryville Water System - 20-Year Replacement Schedule

	Diameter (in)	Total Length (linear feet) or Quantity (Ea)	Budgeted Replacement Year	Budgeted Replacement Cost (2019=\$)	Comments
Cast Iron Water Main	2	350	2024	\$ 30,000	To be replaced with 6"/8" DI
	4	1500	2024	\$ 204,750	To be replaced with 12" DI
		4000	2028	\$ 338,000	To be replaced with 6"/8" DI
		5000	2028	\$ 422,500	To be replaced with 6"/8" DI
		4000	2035	\$ 338,000	To be replaced with 6"/8" DI
	6	3000	2026	\$ 253,500	To be replaced with 6"/8" DI
		3000	2028	\$ 253,500	To be replaced with 6"/8" DI
		3000	2025	\$ 253,500	To be replaced with 6"/8" DI
		1500	2035	\$ 135,200	To be replaced with 6"/8" DI
	8	1000	2026	\$ 84,500	
		2000	2028	\$ 169,000	
		5000	2030	\$ 422,500	
		3000	2035	\$ 253,500	
PVC Water Main	10	20100	2040	\$ 1,829,100	Finished water transmission main. May have to be replaced earlier.
Transite Water Main	4	1500	2022	\$ 126,750	To be replaced with 8" DI
	4	1500	2024	\$ 126,750	To be replaced with 8" DI.
Galvanized Steel Water Main	1	500	2024	\$ 76,050	To be replaced with 6" DI
	2	1500	2024	\$ 126,750	To be replaced with 6" DI
Water Meters: Option 1		1700	2022	\$ 600,000	With installation, retain current function
Water Meters: Option 2		1700	2022	\$ 1,200,000	With installation, software and training to operate smart meter system

Total with Meter Option 1 \$ 6,043,850
Total with Meter Option 2 \$ 6,643,850

Notes:

1. Water main appurtenances such as gate valve and other fittings are included with main replacement. Service connections and meter boxes
2. The Town of Berryville presently provides \$400,000 in its Capital Improvement Program to replace all water meters in 2022 with meters using similar reading technology. The water industry today also offers "smart" meters which transmit data continuously and electronically, eliminating the need for personnel for most meter reading, providing data for trending of peak use and prompt leak detection, and allowing for advanced customer service when combined with a web-based customer portal. A "smart" system for a community the size of the Town of Berryville would cost about \$1.2 million plus \$20,000 per year in licensing costs.

The most significant asset in Tables 3-1 and 3-2 shown for replacement in the next 20 years is the Water Treatment Plant, at a cost of \$15,500,000, scheduled for 2026. Also included are replacement of aging cast iron, galvanized iron, and Transite water mains. These projects will require considerable funding and could have a significant effect on the Town's water rates. Possible strategies for funding will be further discussed below and in the next chapter of this report. Total replacement cost for end life assets within 20 years is estimated to be \$23.5 million, or an average of \$1.18 million per year. This compares to a capital improvement investment by the Town in its FY 2018-19 budget of \$500,845, of which \$300,000 was funded by reserves.

Another significant asset obtaining much attention in the discussions of this study are the water meters, which the Town has scheduled in its CIP for replacement in 2022 at a budget of \$400,000. In today's market the specifications for water meters can vary significantly depending upon whether a utility desires to know customer consumption only once per billing cycle or obtain data on weekly, daily, and even hourly patterns through "smart" meters that are digital and can transmit data electronically from the meter to a database server. "Smart" meters allow better understanding of usage

patterns for faster leak detection, better customer service, and better water system planning, and though they cost more initially they can lead to cost savings in the longer run.

Through a "budget" level review of water meter options it was concluded that \$400,000 is sufficient to cover the capital cost of replacing all water meters in the Town's system with meters performing an equal function to the present, however, \$600,000 would be a more appropriate budget if the Town intends to also contract the cost of installation. Option 1 in Table 3-2 summarizes this option.

Option 2 describes a "smart" meter option. In order to provide the capability for all new meters to transmit meter reading by an electronic signal, an additional \$350,000 to \$400,000 is recommended to be budgeted depending on whether the transmission is a fixed polling system that can read all meters nearly continuously, or transmission is to a mobile vehicle with local polling capability. With the further addition of software and personnel training and licensing to provide customer service and analytical capability, it would be suggested that a total budget of up to \$1,200,000 be considered.

Wastewater System

Similar to the water system assets, all the wastewater system assets have been identified on an Excel spreadsheet, that includes an estimated service life and replacement costs in 2019=\$. Table 3-3 summarizes vertical assets and Table 3-4 summarizes horizontal assets expected to reach end of life within 20 years. The Berryville Wastewater Treatment Plant is less than 10 years old and generally expected to be in very good condition, but the advanced filtering membranes are expected to be replaced every 10 years, at a pre-purchased cost of \$1,120,000 (2019=\$), and some plant process equipment will reach end of life within the next 20 years. Several horizontal assets, including aging concrete gravity sewer pipe, aging cast iron force main, and up to 275 older manholes are shown for replacement within 20 years. Total replacement cost for end life assets within 20 years is estimated to be \$11.3 million, or an average of near \$565,000 per year. This compares to a capital improvement investment by the Town in its FY 2018-19 budget of \$300,225, of which \$15,000 was funded by reserves.

Table 3-3
Vertical Assets of the Berryville Wastewater System - 20-Year Replacement
Schedule

	Type of Asset	Estimated Replacement Year	Budgeted Replacement Cost (2019=\$)
Lift Station 1	Building	2021	\$ 75,000
	Equipment		\$ 130,000
Lift Station 2	Building	2022	\$ 75,000
	Equipment		\$ 130,000
Lift Station 3	Equipment	2030	\$ 260,000
Lift Station 4	Equipment	2030	\$ 260,000
Lift Station 5	Equipment	2030	\$ 130,000
Lift Station 6	Equipment	2030	\$ 325,000
Berryville Wastewater Treatment Plant	Membranes	2023	\$ 1,120,000
	Equipment	2029	\$ 150,000
	Membranes	2033	\$ 1,120,000
	Equipment	2034	\$ 1,950,000
			\$ 5,725,000

Table 3-4
Horizontal Assets of the Berryville Wastewater System - 20-Year Replacement Schedule

	Diameter (in)	Total Length (Linear feet) or Quantity (each)	Budgeted Replacement Year	Budgeted Replacement Cost (2019=)	Comments
PVC Sewer Gravity Main	6	1000	2025	\$ 124,000	To be replaced with 8" PVC
Concrete Gravity Sewer Main	4	500	2026	\$ 62,000	To be replaced with 8" PVC
	8	15000	2026	\$ 1,853,000	To be replaced with 8" PVC
		4000	2026	\$ 494,000	To be replaced with 8" PVC
		3000	2026	\$ 371,000	To be replaced with 8" PVC
		1000	2026	\$ 124,000	To be replaced with 8" PVC
Concrete Gravity Sewer Main (Lined)	4	1000	2035	\$ 124,000	To be replaced with 8" PVC
	8	3000	2026	\$ 371,000	To be replaced with 8" PVC
		2000	2026	\$ 124,000	To be replaced with 8" PVC
		2000	2026	\$ 247,000	To be replaced with 8" PVC
		1000	2035	\$ 247,000	To be replaced with 8" PVC
Sanitary Sewer Manholes		225	2026	\$ 900,000	
		50	2035	\$ 200,000	
Cast Iron Sanitary Sewer Force Main	8	2500	2035	\$ 334,000	
				\$ 5,575,000	

4. Revenue Requirements and Future Rates

A very important component of utility rate setting is to understand the operating and capital renewal goals of the Town for its utility systems, and perform the following: (1) analyze existing budget and audit data to thoroughly understand existing costs; (2) develop revenues and costs under existing rates for a test year or normalized year valued as typical and average for the Town without anomalies such as weather that may skew costs or revenues during unusual periods; then (3) use the test year to predict future financial performance under the existing rates and establish the amount of the need for additional revenue. A further part of developing utility rates is public acceptance, which in part can be understood by comparing the Town's existing rates to nearby communities similar in characteristics to the Town. This chapter of the report begins with a comparison of rates with other communities, addresses water availability fees, then presents the results of the financial review and quantifies the need for additional revenue to meet the Town's objectives. These objectives include implementing a prudent replacement program for assets at the end of service life as addressed in Chapter 3.

Comparison of Rates with Other Communities

Utility rates must generate sufficient financial capital to maintain water and sewer system assets to a reliable level of performance that meets community expectations. To the extent consistent with this goal, the rates themselves should attempt to be acceptable to the community and should be fair and reasonable. An important part of rate consideration is to make comparisons with the utility rates and rate structure of other nearby communities that demographically and geographically similar to the Town of Berryville. For comparison purposes, the following eight communities were selected for this study --- In Virginia: Frederick County Sanitation Authority (Frederick Water); Town of Front Royal; Town of Luray; Town of Purcellville; Town of Round Hill; and City of Winchester. In West Virginia: Charles Town Utility Board and City of Martinsburg.

Similar to the current Town of Berryville rates, each of the eight communities has a minimum charge for a customer account per billing cycle with a consumption allowance, and a volumetric charge for consumption above the minimum allowance. The Town of Round Hill has a flat volumetric charge that remains the same for each additional 1,000 gallons of consumption, like Berryville, but the other seven communities have tiered volumetric rates where the rate per 1,000 gallons changes as consumption moves from one block to the next block. Four of the tiered rates are declining, and three are inclining. Four of the eight communities charge higher rates to customers outside of the corporate limits of the city or town providing the service.

All eight communities, like Berryville, require a system development charge (sometimes called "availability fee", "capital cost fee", or "facility fee") for new connections to the system, to help defray the costs of providing the higher system capacity required for the new service. Seven of the eight communities determine the fee for the new connection based upon the capacity of the water meter needed for the service, like Berryville. Charles Town uses a schedule listing types of facilities (e.g., restaurant, office building, etc.) and size of the development to determine the fee. System Development Charges (Town of Berryville calls "Availability Fee") are often based on water meter size and AWWA declares this an acceptable method. Some would argue that a schedule of facilities is more accurate, but implementing that approach comes with higher administrative costs and is rarely used by smaller communities.

Since fee structures are designed differently, the best means to compare the cost of water and sewer service between multiple communities is by selecting specific values of monthly metered consumption and comparing the cost in each community for that particular volume of use. Table 4-1, and Figures 4-1 and 4-2 compare the Town of Berryville to each of the eight communities for monthly water and sewer charges for a metered consumption of 3,000 gallons per month, 10,000 gallons per month, and 20,000 gallons per month.

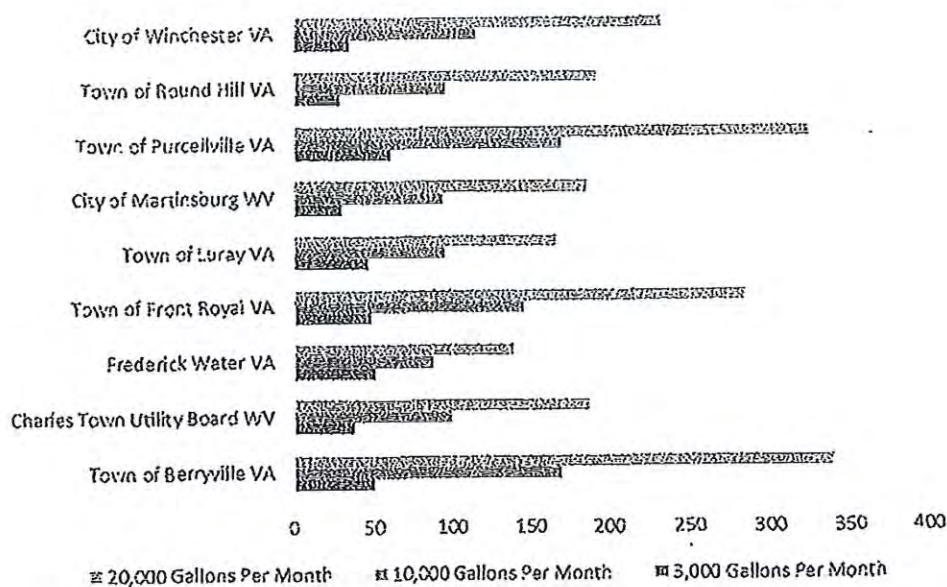
Table 4-1
Comparison of Water and Sewer Charges for Selected Monthly Consumption
Based on Rate Schedules Published on Internet as of February 2019

	3,000 Gallons Per Month			10,000 Gallons Per Month			20,000 Gallons Per Month		
	Water	Sewer	Total	Water	Sewer	Total	Water	Sewer	Total
Town of Berryville VA	\$ 25.20	\$ 51.00	\$ 76.20	\$ 84.00	\$ 170.00	\$ 254.00	\$ 168.00	\$ 340.00	\$ 508.00
Charles Town Utility Board WV	30.99	38.26	69.25	103.30	99.79	203.09	191.20	187.69	378.89
Frederick Water VA	30.41	51.64	82.05	60.65	87.83	148.48	103.85	139.53	243.38
Town of Front Royal VA	29.76	48.51	78.27	89.33	145.88	235.21	174.43	284.98	459.41
Town of Luray VA	35.67	47.24	82.91	72.07	96.03	168.10	125.07	167.13	292.20
City of Martinsburg WV	23.32	30.13	53.45	73.16	94.46	167.62	144.36	186.36	330.72
Town of Purcellville VA	34.41	61.47	95.88	90.50	169.90	260.40	204.40	324.80	529.20
Town of Round Hill VA	24.90	28.83	53.73	83.00	96.10	179.10	166.00	192.20	358.20
City of Winchester VA	45.58	34.89	80.47	90.24	116.30	206.54	154.04	232.60	386.64

Figure 4-1: Comparison of Water Charges/Month (\$)



Figure 4-2: Comparison of Sewer Charges/Month (\$)



At a consumption of 3,000 gallons per month, which is slightly above the median residential water bill, the Town of Berryville has the third lowest water rates and the third highest sewer rates of the nine communities shown in Table 4-1. The total water and sewer bill at 3,000 gallons per month use is fourth of nine from the lowest, or near the median. At a consumption of 10,000 gallons per month, Berryville's water rates are the fourth highest of nine, and the sewer rates are the highest, with the total bill the second highest. At 20,000 gallons per month, Berryville remains near the median for water service and highest for sewer service, and second highest overall. This comparison would suggest that the Town of Berryville has very competitive rates at 3,000 gallons per month consumption but becomes less competitive based on the higher sewer charges for customers whose use approaches or exceeds 10,000 gallons per month.

Table 4-2 shows the distribution of water consumption by number of accounts within each major customer class for the Town of Berryville, from billing data averaged over a one-year period between September 2017 and August 2018. Customer classes shown include Residential both within and outside the Town limits, Commercial both within and outside the Town limits, and Industrial. Within this table Multi-Family and Institutional customers are shown as a part of the Commercial class. Within the one-year period as defined above, all Industrial customers were inside the Town limits. Most of the Town customers are inside residential. Looking more closely at the Residential – Inside Town class, 60% of these customers use 3,000 gallons per month or less, and 90% use 6,000 customers or less. So, while the data suggests the Town's rates become less competitive at consumption of 10,000 gallons per month and higher, these higher rates affect only a small number of the highest consumers of water and sewer service.

Table 4-2

Town of Berryville - Distribution of Water Consumption by Account for Typical Month

Source: Town of Berryville Utility Billing System - Averaged from Meter Reading and Billing Data from September 2017 through September 2018

Metered Consumption (1000 gallons)	Residential - Inside Town Limits		Residential - Outside Town Limits		Commercial ¹ - Inside Town Limits		Commercial - Outside Town Limits		Industrial ²	
	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to
-	92	6.1%	1	7.7%	39	21.4%	2	11.8%	3	25.0%
1	209	20.0%	3	30.8%	38	42.3%	0	11.8%	2	41.7%
2	312	40.7%	3	53.8%	19	52.7%	1	17.6%	1	50.0%
3	296	60.4%	2	69.2%	13	59.9%	1	23.5%	1	58.3%
4	223	75.2%	2	84.6%	9	64.8%	1	29.4%	0	58.3%
5	147	84.9%	1	92.3%	7	68.7%	1	35.3%	0	58.3%
6	89	90.8%	0	92.3%	6	72.0%	1	41.2%	1	66.7%
7	53	94.4%	0	92.3%	6	75.3%	1	47.1%	0	66.7%
8	34	96.6%	0	92.3%	3	76.9%	1	52.9%	0	66.7%
9	20	97.9%	0	92.3%	4	79.1%	1	58.8%	0	66.7%
10	12	98.7%	0	92.3%	3	80.8%	1	64.7%	0	66.7%
11 - 20	16	99.8%	1	100.0%	16	89.6%	2	76.5%	1	75.0%
21 - 50	2	99.9%	0	100.0%	10	95.1%	2	88.2%	1	83.3%
51 - 100	1	100.0%	0	100.0%	5	97.8%	1	94.1%	0	83.3%
Greater Than 100	0	100.0%	0	100.0%	4	100.0%	1	100.0%	2	100.0%

Notes:

¹For purposes of this table, accounts in billing system identified as Multi-Family and Institutional are grouped with Commercial.

²There were no industrial accounts in the billing system identified as Outside Town Limits

With respect to Availability Fees, the Town of Berryville is at the median by comparison with the other eight communities for the water utility (for an equivalent residential unit four communities charge higher fees and four charge lower fees) but is the highest of all nine communities with respect to wastewater fees. Table 4-3 depicts this comparison.

Table 4-3

Comparison of System Development Charges¹ (Availability Fee) for New Service Connection
Equivalent to One Residential Unit (5/8-inch Water Meter)

	Water	Sewer	Total
Town of Berryville VA	\$ 5,250.00	\$ 22,750.00	\$ 28,000.00
Charles Town Utility Board WV	2,576.00	1,127.00	3,703.00
Frederick Water VA	14,115.00	2,461.00	16,576.00
Town of Front Royal VA	4,340.00	9,750.00	14,090.00
Town of Luray VA	3,320.00	5,940.00	9,260.00
City of Martinsburg WV	1,301.00	2,260.00	3,561.00
Town of Purcellville VA	25,754.00	21,600.00	47,354.00
Town of Round Hill VA	8,197.23	12,676.23	20,873.46
City of Winchester VA	5,300.00	7,200.00	12,500.00

¹Separate Fees for cost of service lateral and meter/meter box not included

When considering the future need to raise additional revenue, the Town should also consider what actions other communities are likely to take. One of the eight communities surveyed, the City of Winchester, has published its proposed rates through FY 2022-23. Winchester proposed annual increases over the next four years compounding to a total of 34%, or an average of 7.5% per year. Studies published nationally by organizations such as the American Water Works Association suggest that water and sewer rates are increasing an average of about 4% per year nationally, in response to new regulations, growth, and aging infrastructure.

Water System Availability Fees

The Town's Availability Fees, referenced generically by the American Water Works Associations (AWWA) as System Development Charges, represent the costs of providing the additional systemwide capacity to serve new customers. The laws of the Commonwealth of Virginia permit these charges but require that the charges are "fair and reasonable". AWWA provides discussion in its manual of practice on Principles of Water Rates, Fees, and Charges that offer additional guidance toward what the industry considers fair and reasonable, but also defers water utilities specifically to its legal counsel regarding specific questions of legal interpretation. The proposal offered in this report regarding Availability Fees follows guidance in the AWWA manual but it is also strongly recommended that the Town review this proposal with the Town Attorney for an opinion on the appropriate application of the law to the specific and unique circumstances of the Town's water and wastewater systems before any action is taken regarding the proposal herein or any other proposal.

AWWA suggests there should be a rational nexus between Availability Fees and the reasonable expected added costs to a particular water system to provide expanded capacity for new service to its system. AWWA goes on to list several factors to consider in providing that a "proportionate share be borne by new development." Three methods are defined: a "buy-in" method, an incremental cost method, and a combined cost method. The "buy-in" method is the best and fairest approach for a community like Berryville that has sufficient capacity already provided by existing customers for capacity expansion over a reasonable period, the incremental method works best for a utility at or near existing capacity and facing the need for a capital program that would not be necessary except to expand capacity, and the combined method is best for communities where some functions of its system have extra capacity and other functions need capital improvements to expand.

From the review of assets summarized in the previous chapter, the Town of Berryville has available capacity in all major functional aspects to provide additional capacity to and beyond 2040. From Table 2-5, the future forecast for annual average daily billed water consumption for the Town in 2040 is 0.315 million gallons per day, or 315,000 gallons per day. The existing water system for the Town of Berryville has a river intake and water treatment capacity of 864,000 gallons per day and a raw water pumping station capacity of 786,000 gallons per day, and a treatment water pumping station capacity of 754,000 gallons per day. Though the capacity of pumping and treatment facilities must also consider non-revenue water uses, water plant uses, and peak daily capacity needs, as shown in Table 4-4, the existing system capacities remain sufficient to provide future needs. It is also understood that the water distribution system has excess capacity, which should be confirmed by updated calibration and analysis of water system modeling, to confirm the specific capacity available.

Table 4-4
Capacity of Water System Functions

<i>Demand Factors:</i>	
<i>Assumed Losses in Raw Water Transmission</i>	2%
<i>Water Supplied and Treated but Not Pumped to Transmission (%)</i>	10.5%
<i>Water Supplied and Treated but Not Metered to Customer (%)</i>	13.3%
<i>Maximum Day to Average Day Ratio</i>	1.6
<i>Annual Growth Rate</i>	0.5%

	Capacity (MGD)	Demand Factor	Average Current Monthly Metered Consumption (MGD)	Capacity Used by Existing Customers (MGD)	Capacity Available for New Customers (MGD)	% of Capacity Available	Current Capacity Forecasted Available in Future Years Based Upon 0.5% Growth Per Year			
							2030	2040	2050	2060
Water Supply	0.786	2.04	0.282	0.576	0.210	26.7%	22.6%	18.6%	14.5%	10.1%
Water Treatment	0.864	2.00		0.565	0.299	34.6%	30.9%	27.4%	23.7%	19.8%
Water Transmission Pumping	0.754	1.81		0.511	0.243	32.2%	28.4%	24.7%	20.9%	16.9%

Given the Town of Berryville system has reasonable excess capacity and is not planning capital improvements for increasing its existing capacity except for upsizing on three minor projects replacing water distribution mains, the "buy-in" method is the proper method for looking at Availability Fees. This study constructs that method though the listing of assets summarized in chapter 3 of this report and valuing them based on the current replacement cost. AWWA accepts this method and refers to it as "Replacement Cost New".

The value obtained from this method is then divided by the number of equivalent residential units (ERUs) in the system to determine a cost per ERU. The Town's billing system separates customers into classes, and by evaluating the single-family residential class through billing data between September 2017 through August 2018, which was an average and typical year, average consumption per account was 113 gallons per day inside the Town limits and 123 gallons per day outside the Town limits. As stated previously, water system assets also need to account for peaking factors and unmetered water in developing system capacity to serve existing and new customers, and using measured or reasonable assumptions for these added factors, it is reasonable to conclude that the water and wastewater systems must provide a capacity of 230 gallons per day for each single-family residence, which is also a 5/8-inch meter connection as an equivalent residential unit. Based on current system capacity, we would conclude that the utility systems have 3,320 capacity units at a 5/8-inch meter size, and the estimated cost of providing system capacity per equivalent residential unit (a 5/8-inch meter) is approximately \$12,100 for the water system and \$13,100 for the wastewater system. The Town should consider its policy objectives, including comparative rates with other communities, and consult with legal advice, in considering if the Town desires to amend its current fees by the amount identified above.

This study also evaluated the water consumption of Multiple-Family residential units as compared to Single-Family residential units, based on data from the Town regarding the number of Multiple-Family units within each billed account. It was concluded from that evaluation that with respect to the Town of Berryville, consumption per residential unit for Multi-Family is about 80% of Single-Family. The Town's current Availability Fee Schedule uses 90%, and it is recommended that the schedule be adjusted to 80%.

In the event the Town wishes to adjust its Availability Fees by the adjustment calculated above, the current and proposed fees for the 5/8-inch meter are shown in Table 4-5. The fees for other meter sizes, like the Town's current Availability Fee structure, can be derived by applying the same multiplication factors as are used for the current fees.

Table 4-5

Existing and Proposed Availability Fees (Meter Charges and Administrative Fees Not Included)

Water Meter Size	Water		Sewer	
	Current Availability Fee	Proposed Availability Fee	Current Availability Fee	Proposed Availability Fee
Single Family Residential: 5/8-inch	\$ 5,250	\$ 12,100	\$ 22,750	\$ 13,100
Townhouse/Duplex: 5/8-inch	5,250	12,100	22,750	13,100
Multi-Family Per Unit	4,725	9,700	20,475	10,500
3/4-Inch	7,825	18,000	34,125	20,000
1-Inch	13,125	30,300	56,875	33,000
1-1/2-Inch	22,970	52,900	99,535	57,000
2-Inch	42,000	96,800	182,000	105,000
3-Inch	84,000	193,600	364,000	210,000
4-Inch	131,250	302,500	568,750	328,000
6-inch	262,500	605,000	1,137,500	655,000

Development of Multiple Year Flow of Funds and Determination of Revenue Requirements

The two core pieces of the scope of this rate study are developing the asset tables with condition assessment and a replacement schedule (summarized in Chapter 3) and the determination of future revenue requirements to maintain operations and implement the asset renewal. The first step in determining future revenue requirements is to determine the revenues and expenses under current rates and current consumption for a typical or average fiscal year, which AWWA refers as a "test year". From the test year, escalating factors are then used to account for future growth in consumption from new connections, expected changes over time in consumption patterns, inflation, salary increases, and other anticipating factors that will increase costs or revenues (at current rates).

In order to develop a test year, this study reviewed six adopted budgets provided by the Town for the Water Fund and Sewer Fund from FY 2014 through FY 2019 at the detailed line-item level, identifying trends as well as anomalies, in order to assess a reasonable test year value. Where expenses or revenues were showing a reasonable and progressive upward trend, more value was placed in the final year as indicative of a test year, but where a line-item showed a haphazard or declining trend, and there was no other explanation of the changes over time, six-year averages were identified for the test year.

The review also included operating and non-operating revenues and operating expenses by line-items reported in the audited financial statements for FY 2013 through FY 2017 (the audit for FY 2018 was not available), and trends from the audited statements were compared to the budgeted forecast for the same line-item or function. In some cases, the audited actual revenues and expenses closely tracked the budgeted amounts, but in many cases audited actual expenses were 10% to 20% below the budgeted amounts. This phenomenon is not unusual, as it is natural in the day-to-day world to manage operations with the overall budget serving as a "not-to-exceed" amount except under extraordinary circumstances. For purposes of developing a test year, audited trends were matched closely with budgeted trends, and the test year was adjusted accordingly, as it is desired that the test year be as true an indication of actual expenditures as is feasible as a base in forecasting future financial performance. Finally, expenses were placed into broader categories. The test year was developed on a cash basis, typical of rate studies performed for most local government agencies.

Table 4-6 shows the test year identified for both the water fund and the sewer (wastewater) fund, in 2019=.

Table 4-6
Town of Berryville - Test Year for Revenue and Expense Forecasting

	Water System	Wastewater System
<u>Operating Revenues</u>		
Water Service at Existing Rates	850,000	-
Wastewater Service at Existing Rates	-	1,660,000
Other Fees and Charges	33,000	2,000
<i>Total Operating Revenues</i>	<u>883,000</u>	<u>1,662,000</u>
<u>Operating Expenses</u>		
Wages and Fringe Benefits	(344,000)	(522,000)
Power	(58,000)	(135,000)
Chemicals	(40,000)	(90,000)
Repairs and Maintenance	(136,000)	(141,000)
Other Materials and Supplies	(37,000)	(22,000)
Other Purchases	(56,000)	(84,000)
<i>Total Operating Expenses</i>	<u>(671,000)</u>	<u>(994,000)</u>
<u>Non-Operating Revenues</u>		
Interest on Investments	6,000	9,000
Availability Fees (Existing Rates)	33,000	143,000
Grants and Other Funds	-	-
<i>Non-Operating Revenues</i>	<u>39,000</u>	<u>152,000</u>

With the test year in place, forecasts for revenues (at existing rates) and expenses for future years were developed using the following escalation factors:

- Growth in metered sales = 0.5% per year;
- Increases in salaries and benefits = 3% per year
- Increases in other expenses = 2% per year, except that expenses varying with meter sales (chemicals and electricity) reflect both the 2% per unit cost increase and the 0.5% volume increase = 2.5% per year
- When new debt is incurred it is assumed the terms of a new loan will be 30 years at an interest rate of 4% with uniform annual principle and interest payments

Table 4-7 shows a five-year forecast for the water system as a flow of funds using the test year as a base with the escalation factors above. For capital outlay or contributions, the existing Town of Berryville 2018-23 Capital Improvements Program (CIP) adopted by the Town Council in 2018 was used. As reflected by that CIP, an issuance of new debt with a principal of \$1.75 million is shown in fiscal year 2022.

Table 4-7
Water System Current Year Plus Five-Year Flow of Funds with Existing Capital Improvement Plan at Existing Rates

	2019	2020	2021	2022	2023	2024
Operating Revenues						
Water Service at Existing Rates	850,000	854,000	858,000	862,000	866,000	870,000
Other Fees and Charges	33,000	33,000	33,000	33,000	33,000	33,000
Total Operating Revenues	883,000	887,000	891,000	895,000	899,000	903,000
Operating Expenses						
Wages and Fringe Benefits	(344,000)	(354,000)	(365,000)	(376,000)	(387,000)	(399,000)
Power	(58,000)	(59,000)	(60,000)	(62,000)	(64,000)	(66,000)
Chemicals	(40,000)	(41,000)	(42,000)	(43,000)	(44,000)	(45,000)
Repairs and Maintenance	(136,000)	(139,000)	(142,000)	(145,000)	(148,000)	(151,000)
Other Materials and Supplies	(37,000)	(38,000)	(39,000)	(40,000)	(41,000)	(42,000)
Other Purchases	(56,000)	(57,000)	(58,000)	(59,000)	(60,000)	(61,000)
Total Operating Expenses	(671,000)	(688,000)	(706,000)	(725,000)	(744,000)	(764,000)
Net Operating Revenue	212,000	199,000	185,000	170,000	155,000	139,000
Non-Operating Revenues						
Interest on Investments	6,000	6,000	6,000	6,000	6,000	6,000
Availability Fees (Existing Rates)	33,000	37,000	37,000	37,000	37,000	37,000
Grants and Other Funds	-	-	-	-	-	-
Non-Operating Revenues	39,000	43,000	43,000	43,000	43,000	43,000
Total Revenue Minus Operating Expenses (Net Revenue)	251,000	242,000	228,000	213,000	198,000	182,000
Debt Service						
Payment on Outstanding Bonds	-	-	-	(35,000)	(129,000)	(129,000)
Payment on Proposed Bonds	-	-	-	(35,000)	(129,000)	(129,000)
Total Debt Service	-	-	-	(35,000)	(129,000)	(129,000)
Debt Service Coverage (Net Revenue/Total Debt Service) <i>(Minimum 1.5 Recommended)</i>	NA	NA	NA	6.1	1.5	1.4
Existing CIP Contribution to Capital Expense	(501,000)	(215,000)	(200,000)	(1,750,000)	(120,000)	-
Sale of Bonds	-	-	-	1,750,000	-	-

The end of year balance shows a deficit for 2019 (expected and planned as set aside reserves were programmed for some capital expenses) and a small deficit for 2023, with small surpluses in the other years. Overall, through the end of fiscal year 2024, forecasted revenues fall \$15,000 short of meeting forecasted expenses, which is well below 1% of the total expenses for the period. Only one need is identified which would require further action. In 2024, two years following the forecasted sale of \$1.75 million in new debt, the debt service coverage, which is a ratio of net revenues to debt expenses, falls to 1.4, slightly below the 1.5 minimum recommended as a good financial practice. The coverage ratio could be corrected by an increase in water rates in 2024 by 2%, which would also correct the \$15,000 overall deficit for the 2019-2024 period.

Table 4-8 provided a similar analysis for the wastewater system. Payments on an existing VRA loan for the new wastewater treatment plant are shown in this table, but no new debt was programmed into the adopted CIP through 2023. This forecast shows one year in deficit, but all other years in surplus, with an overall surplus for the period of \$42,000.

Table 4-8
Wastewater System Current Year Plus Five-Year Flow of Funds with Existing Capital Improvement Plan at Existing Rates

	2019	2020	2021	2022	2023	2024
Operating Revenues						
Wastewater Service at Existing Rates	1,660,000	1,668,000	1,676,000	1,684,000	1,692,000	1,700,000
Other Fees and Charges	2,000	2,000	2,000	2,000	2,000	2,000
Total Operating Revenues	1,662,000	1,670,000	1,678,000	1,686,000	1,694,000	1,702,000
Operating Expenses						
Wages and Fringe Benefits	(522,000)	(538,000)	(554,000)	(571,000)	(588,000)	(606,000)
Power	(135,000)	(138,000)	(141,000)	(145,000)	(149,000)	(153,000)
Chemicals	(90,000)	(92,000)	(94,000)	(96,000)	(98,000)	(100,000)
Repairs and Maintenance	(141,000)	(144,000)	(147,000)	(150,000)	(153,000)	(156,000)
Other Materials and Supplies	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)
Other Purchases	(84,000)	(86,000)	(88,000)	(90,000)	(92,000)	(94,000)
Total Operating Expenses	(994,000)	(1,020,000)	(1,046,000)	(1,074,000)	(1,102,000)	(1,131,000)
Net Operating Revenue	668,000	650,000	632,000	612,000	592,000	571,000
Non-Operating Revenues						
Interest on Investments	9,000	9,000	9,000	9,000	9,000	9,000
Availability Fees (Existing Rates)	143,000	159,000	159,000	159,000	159,000	159,000
Grants and Other Funds	-	-	-	-	-	-
Non-Operating Revenues	152,000	168,000	168,000	168,000	168,000	168,000
Total Revenue Minus Operating Expenses (Net Revenue)	820,000	818,000	800,000	780,000	760,000	739,000
Debt Service						
Payment on Outstanding Bonds	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)
Payment on Proposed Bonds	-	-	-	-	-	-
Total Debt Service	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)
Debt Service Coverage (Net Revenue/Total Debt Service) (Minimum 1.5 Recommended)	1.7	1.7	1.7	1.7	1.6	1.6
Existing CIP Contribution to Capital Expense	(300,000)	(255,000)	(240,000)	(810,000)	(250,000)	-
End of Year Balance (Surplus/Deficit)	50,000	93,000	90,000	(500,000)	40,000	269,000

The overall financial performance in Tables 4-7 and 4-8 looks good, but the existing CIP behind this performance does not include the asset replacement program developed in Chapter 3 of this report. The pathway portrayed in these two tables would continue to postpone the renewal of aging assets, which would ultimately lead to a failure of assets, including critical assets that may result in significant consequences to public health, the environment, or interruptions in metered sales and financial performance. In short, though appealing in the short-term, the performance shown in Tables 4-7 and 4-8 is not sustainable in the long-term. The Town recognized this shortfall in requesting that an evaluation of assets be conducted as a part of this study.

Tables 4-9 and 4-10 produce a similar multi-year view of water system financial performance but is different from Table 4-7 in reflecting the asset capital replacement program from Chapter 3 as the Capital Improvement Program instead of the currently adopted one. An additional escalation factor was added: the asset replacement tables in Chapter 3 provide estimates for all projects in 2019=\$, these estimates are escalated in Tables 4-9 and 4-10 by 2% per year for every year

after 2019. Further, inasmuch as the asset replacement program shows a large expenditure in 2026 which would require the building of additional financial reserves in earlier years, Tables 4-9 and 4-10 are extended to forecast performance through 2027. A line is added to Operating Revenues to identify additional revenue to be derived by increasing water rates, and a line at the bottom of the Tables shows the increase as a percentage of the rates in place before each increase. The objective in these tables were to deliver the asset replacement program developed in Chapter 3 for all years through 2027, maintain uniform annual percentage increases of water rate revenue optimized to produce the lowest percentage increase that maintains positive reserves and maintains adequate debt coverage (ratio = 1.5 or greater). In order to achieve each of those objectives, an iterative process ensued to determine the optimal balance of capital reserves and bond funds to be used to meet the large capital expenditures forecasted in 2026. The 2026 expenditures include replacement of the water treatment plant, raw water pumping station, and the intake on the Shenandoah River.

To achieve the entire asset replacement program, significant uniform annual rate increases are required. Table 4-9 is based upon Option 1 for water meter replacements, budgeted at \$600,000 in FY 2022 using available water capital reserves, and Table 4-10 is based upon Option 2 for water meter replacements, upgrading to "Smart Meters" in FY 2022 at a budget of \$1,200,000 using debt financing. Table 4-9 concludes that annual water revenue increases of 9.6% are required through 2027, whereas in Table 4-10 annual water revenue increases of 10.1% are required.

Table 4-11 produces a forecast for the wastewater system using the asset replacement schedule, which also shows bond funding for a significant capital expenditure programmed for 2026. The 2026 wastewater expenditures are shown for replacement of end-of-life concrete sewer mains, cast iron force mains, and aging sanitary sewer manholes. The wastewater treatment plant is relatively new and does not require significant capital replacement, other than the anticipated replacement of tertiary membranes which have already been factored into the Town's maintenance and collection of financial reserves. The uniform annual rate increase for sewer is 2.4%.

Separate from this report, the Town of Berryville will receive the actual Excel spreadsheets that include the data in Tables 4-9 through 4-11, allowing the Town to make further assumptions and look at multiple "what-if" scenarios.

For a Town customer at the 60th percentile using 3,000 gallons per month, the current water and sewer bill would equal \$76.20 per month. If increases of 10.1% for water and 2.4% for wastewater were adopted for one year, assuming consumption remains unchanged, the total bill would increase to \$79.98, or an additional 5.0% overall. If the same percentage increases were adopted in a second year, the overall bill would increase to \$84.03, or 5.0%. In summary, the impact on the total bill would be about 5% per year.

Review of Adequacy of Financial Reserves

The Town of Berryville provided a calculation of its financial reserves as of September 30, 2018 for purposes of this study and asked that they be evaluated for adequacy. The Town reported "liquid accounts" with \$665,425 from the Water Fund and \$2,726,742 for the Sewer Fund. The Town also reported it has a "CIP Account" with \$1,987,141 from the Water Fund and \$3,235,161 from the Sewer Fund. Some of the funds in the CIP Account were designated for a particular future project and other funds were represented as "Capital Reserve", "Unencumbered", or "VRA Reserve". Future projects included Clearwell Expansion, Membrane Replacement, Water Line Improvements, Sewer Collection System Rehabilitation, SCADA, Equipment Repair Reserve, Water Plant Building Maintenance, and Utility Rate Study. Designating capital reserve funds to future projects can be a useful internal management tool to guide in assuring future needs are adequate but can be reviewed in the future and revised and are not binding on the Town. From the information reviewed in the analysis of financial reserves, the only funds binding on the Town from parties outside the Town were the VRA Reserve and Membrane Replacement. It is not necessary to evaluate the condition of financial reserves at the project level, and this review combined the funds into simpler categories of operating reserves (which represents the "liquid accounts") and capital reserves (which represents the CIP Account).

Two conditions are recommended for consideration in maintaining operating reserves: a minimum operating reserve for short-term cash flow, and a "rate stabilization" reserve for unanticipated conditions. For operating cash flow, best practices suggest a minimum of "60-days cash" and preferably "90-days cash". As 90 days represents approximately three months or one-fourth of a year, the minimum required for this reserve is derived by computing 25% of the projected annual expenditures. Rate stabilization can provide a cushion for events such as a significant emergency repair, an emergency declaration, a drought, or other similar unanticipated conditions that dramatically increase expenses and/or decrease revenues. The rate stabilization is calculated as 20% of operating revenues for the year. To identify the necessary minimum operating reserves, the cash flow reserve and the rate stabilization reserve are added.

The Town of Berryville presently conforms to best management practices and maintains adequate operating reserves and it is forecasted that by maintaining current levels, operating reserves will be adequate through 2027 based on the flow of funds predicted in Tables 4-10 and 4-11. Table 4-12 illustrates the adequacy of operating reserves both for the Water and Wastewater systems.

An analysis of the capital reserves is included as a part of Tables 4-10 and 4-11 and the use of such reserves are critical to the identification of additional revenue requirements. The Town's current capital reserve levels are strong, and the Town should be commended for its excellent fiscal discipline in developing strong reserves and the tools to manage them appropriately for future capital expenses. In the Flow of Funds shown in Tables 4-10 and 4-11, reserves are used toward funding of major capital expenditures in the year 2026 together with acquiring a loan or bonds to optimize financial performance that yields the benefits of the asset program. The Town's capital reserves in its Sewer Fund are especially useful to keep down the increases in rates required to meet revenue requirements. Table 4-10 shows a slow building of additional capital reserves in anticipation of the revenue required in 2026 to hold down the amount of funds borrowed and meet debt coverage requirements without large spikes in water rate increases.

Table 4-12
Analysis of Operating Reserves

WATER	2019	2020	2021	2022	2023	2024	2025	2025	2027
<u>Minimum Recommended:</u>									
Minimum Operating Reserve by Policy (90 days cash)	(168,000)	(172,000)	(177,000)	(181,000)	(186,000)	(191,000)	(196,000)	(201,000)	(206,000)
Minimum Rate Stabilization Reserve (20% of Operating Revenues)	(177,000)	(195,000)	(215,000)	(237,000)	(261,000)	(289,000)	(319,000)	(352,000)	(389,000)
<u>Total as Minimum Required</u>	<u>(345,000)</u>	<u>(367,000)</u>	<u>(392,000)</u>	<u>(418,000)</u>	<u>(447,000)</u>	<u>(480,000)</u>	<u>(515,000)</u>	<u>(553,000)</u>	<u>(595,000)</u>
<u>Operating Reserves Available</u>									
Operating Cash Balance Beginning of Year	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000
Budgeted Use During Year	-	-	-	-	-	-	-	-	-
Operating Cash Balance End of Year	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000
<u>Operating Cash Reserve Surplus/(Deficit)</u>	<u>320,000</u>	<u>298,000</u>	<u>273,000</u>	<u>247,000</u>	<u>218,000</u>	<u>185,000</u>	<u>150,000</u>	<u>112,000</u>	<u>70,000</u>
WASTEWATER									
<u>Minimum Recommended:</u>									
Minimum Operating Reserve by Policy (90 days cash)	(249,000)	(255,000)	(262,000)	(269,000)	(276,000)	(283,000)	(291,000)	(298,000)	(306,000)
Minimum Rate Stabilization Reserve (20% of Operating Revenues)	(332,000)	(342,000)	(351,000)	(361,000)	(371,000)	(382,000)	(392,000)	(403,000)	(415,000)
<u>Total as Minimum Required</u>	<u>(581,000)</u>	<u>(597,000)</u>	<u>(613,000)</u>	<u>(630,000)</u>	<u>(647,000)</u>	<u>(665,000)</u>	<u>(683,000)</u>	<u>(701,000)</u>	<u>(721,000)</u>
<u>Operating Reserves Available</u>									
Operating Cash Balance Beginning of Year	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000
Budgeted Use During Year	-	-	-	-	-	-	-	-	-
Operating Cash Balance End of Year	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000
<u>Operating Cash Reserve Surplus/(Deficit)</u>	<u>2,146,000</u>	<u>2,130,000</u>	<u>2,114,000</u>	<u>2,097,000</u>	<u>2,080,000</u>	<u>2,062,000</u>	<u>2,044,000</u>	<u>2,026,000</u>	<u>2,006,000</u>

5. Future Rate Design Options and Recommendations for Meeting Additional Revenue Requirements

The Town of Berryville is taking an important step in total management and sustainability of the assets of its water and wastewater system through an analysis of the age and general condition of the assets, with a schedule for replacing assets at the expected end of their service life. Further, this report has developed a schedule for replacing those assets in which the service life will come due within the next 20 years and has provided a financial analysis through the year 2027 of the revenues that would be required to achieve the asset replacement scheduled within those years, including obtaining a loan in 2026.

This analysis should be viewed as a starting point for further discussion and may inform but not fully represent the final decisions made by the Town over the next 8 to 10 years. First, the analysis in this report assumes that the only source of revenue for this asset program will be local water and wastewater revenues from fee increases. Every effort should be made to find other potential sources of revenue, possibly in the form of grants or below-market interest rates on loans, even though the market for grant opportunities is very difficult. A few years ago, the Town was successful in obtaining an interest-free loan from the Virginia Resource Authority toward financing a new wastewater treatment plant and was also able to take advantage of grants from the Virginia Water Quality Improvement Fund.

Second, the asset evaluation described in this report should be a starting point for further steps toward sustainable asset management, with the ultimate goal of optimizing expenses for asset renewal and reliability. It is recommended that a next step be a more detailed asset evaluation of large projects scheduled for replacement within the next 10 years. These projects include the water treatment plant, raw water pumping station, and river intake facility for the water system, and the replacement of aging concrete and cast-iron pipe and aging manholes in the wastewater system. The goal of a detailed evaluation would be to identify if there are any strategies whereby assets could be modified or extended to increase their service life at less overall life-cycle cost than the replacement of the asset. For the water plant and the intake and pumping facilities, this would be accomplished through a detailed engineering study well beyond the scope of this study. Its conclusions could better inform the Town as to the optimal strategy for long-term asset performance. For the wastewater system, it is suggested that a sewer system evaluation survey using closed circuit cameras and physical manhole inspections be conducted in an engineering study to determine if alternative renewal strategies may be more cost-effective. Numerous "in-situ" strategies today provide lining systems without excavation and replacement that could provide extended service life.

For all discussions within this Chapter 5 regarding rate designs, it is assumed that Water Meter Option 2 is selected for the asset replacement schedule.

Even though additional engineering studies may refine the asset management program developed by this study, which may then refine the financial strategy, it is very clear that the Town of Berryville has aging water and wastewater assets that will require capital expenditures within the next 5 to 10 years and beyond, and these expenditures will require greater revenues than the Town is currently collecting. There are numerous directions in which the Town Council and management could choose to initiate the collection of revenues that will ultimately be required. This report suggests one strategy as implementing the changes in the Town's water and wastewater rates identified by the analysis herein (increase overall operating revenue by 10.1% for water per year and 2.4% for wastewater per year) for a 5-year period while conducting the additional engineering studies recommended to refine the asset management program. It will require several months to perform these engineering studies, and once they are completed, to the extent the recommendations modify the revenue requirements, the water and wastewater rates can be revisited and modified as appropriate.

Rate Design Options

Several different forms or rate designs are accepted within the water industry and used to obtain sufficient revenue to meet future operating and capital needs. The specific design selected by any given community is a choice reflective of the community's strategic plan, vision and goals as much or more than any technical or management need for the water and wastewater utility. Different rate designs can produce the same amount of overall annual revenue, each satisfying the utility's need. The difference between rate designs is in the weight that different classes of customers carry in providing that revenue, based on the size, class, or volume of use by the customer.

Three different types of rate designs are the most commonly used and each is evaluated in this Chapter. The three designs include: (1) Flat Rates; (2) Declining Rates; and (3) Inclining Rates. The methodologies for calculating each of these types of rate design are well accepted and defined by AWWA. For each type of rate design a minimum charge can be overlaid; for purposes of comparing rate designs the discussion of minimum charge is postponed until a later part of this Chapter.

Flat Rates describes a condition where one rate is set per unit of consumption (the Town uses 1,000 gallons as a unit of consumption) and applies to each and every unit registered without respect to the size of the customer or the amount of water or wastewater service used. The Town presently uses this design. For example, the current Town water rate is \$8.40 per 1,000 gallons. A customer using 3,000 gallons or 3 units in a month pays \$8.40 for each unit, for a total of \$25.20—the customer pays the same amount for each unit. Likewise, a customer using 100,000 gallons or 100 units still pays the same for each unit, including an added \$8.40 for the last 1,000 gallons consumed.

Declining Rates describe a condition where the unit cost of water declines with a greater number of units consumed within a billing cycle and is commonly provided in three to four blocks of consumption. An example would be that a customer pays \$10 each 1,000 gallons for the first 4,000 gallons, then pays \$9 per 1,000 gallons for the next 4,000 gallons, etc. Inclining Rates describe the opposite condition, where the unit cost of water increases for higher consumption within a billing cycle.

Each rate design has its own advantages as well as disadvantages, which may or may not be in harmony with the community goals, thereby a public policy choice. Advantages of Flat Rates include the ease of use and understanding, and a strong appearance of fairness in that each unit of consumption costs the same. Declining Rates have an advantage of reflecting the reality that customers using higher quantities of water through larger meters, including commercial, institutional and industrial accounts, more often than not use water at a more steady rate with lower peaks than smaller (residential) customers, and higher peaks require greater utility system capacity and higher costs to manage. Declining Rates also signal as public policy an encouragement for the growth and development of new business that can produce jobs in the community but require larger volumes of water. Inclining Rates, properly designed, speak to the sustainability of water and encouragement of conservation practice, and if they are successful in reducing consumption can be financially favorable to utilities nearing system capacity by postponing the need for system expansion. The caution with Inclining Rates is that they must apply only within a relatively homogeneous customer class. Comparing water use of one single-family residence to another single-family residence is fairly homogeneous, whereas comparing water use by a single-family residence to water consumed through one meter and account serving a 100-unit hotel can never be homogeneous.

To overcome this caution with Inclining Rates, this report suggests its use only within the residential class, applied as water and wastewater use per residential unit.

Flat Rate Design Option for the Town of Berryville Revenue Needs

All Rate Designs provided in this section of the report are targeted to achieve the forecasted annual revenue requirements shown in Table 4-10 (Water) and Table 4-11 (Wastewater) and provide funding for the schedule of asset replacements shown in Chapter 3. The Flat Rate Design is the simplest, once the total operating revenues required for a given year and the forecasted total consumption are both determined, the expected total consumption is simply divided into the total revenue needed. Table 4-10 and Table 4-11 provide both the revenue needed and consumption anticipated (as a percent of growth from the "test year"). The Flat Rate Design for a 5-Year period for the Town of Berryville is provided in Table 5-1.

Table 5-1
Flat Rate Design for Town of Berryville Water and Wastewater Rates

	Current	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
WATER						
Per 1,000 gallons of usage	\$ 8.40	\$ 9.26	\$ 10.20	\$ 11.24	\$ 12.39	\$ 13.65
SEWER						
Per 1,000 gallons of usage	\$ 17.00	\$ 17.39	\$ 17.79	\$ 18.20	\$ 18.62	\$ 19.05

Declining Rate Design Option for the Town of Berryville Revenue Needs

The design of the Declining Rate Option followed the guidelines and recommendations published in Manual of Practice M1 published by AWWA. The Base-Extra Capacity Method was chosen and a distribution of water consumption by customer class and account was provided through billing data by the Town of Berryville. Billing data from the 12-month period of September 2017 through August 2018 was chosen. Customer classes evaluated included Residential, Commercial, Institutional, and Industrial. When it was determined that Commercial and Institutional were similar, these two classes were combined into one. The Industrial class was retained separately though it was noted that this database is much smaller as the Town of Berryville has a limited number of Industrial accounts. As is typical of most utilities, the Town of Berryville did not have real-time data on maximum day and maximum hour peak uses for individual customer classes, accordingly these peak conditions were assumed from examples provided in the AWWA Manual as typical.

Table 5-2 provides the results of the Declining Rate Design. By comparison to the Flat Rates in Table 5-1, customers will pay more for the first 3,000 gallons of water under declining rates, but for larger customers the cost of water decreases as use increases. Most residential customers, which is a significant percentage of the Town's accounts, will pay more per month for water under Declining Rates than Flat Rates, and most Commercial, Institutional and Industrial customers will pay less.

Table 5-2**Declining Block Rate Design for Town of Berryville Water and Wastewater Rates**

	Current	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
WATER						
First 6,000 gallons of usage	\$ 8.40	\$ 10.24	\$ 11.28	\$ 12.44	\$ 13.70	\$ 15.10
Next 8,000 gallons of usage	\$ 8.40	\$ 8.54	\$ 9.41	\$ 10.37	\$ 11.43	\$ 12.59
Next 46,000 gallons of usage	\$ 8.40	\$ 7.53	\$ 8.30	\$ 9.14	\$ 10.08	\$ 11.11
Usage beyond 60,000 gallons	\$ 8.40	\$ 6.18	\$ 6.81	\$ 7.51	\$ 8.27	\$ 9.11
SEWER						
First 6,000 gallons of usage	\$ 17.00	\$ 18.20	\$ 18.62	\$ 19.05	\$ 19.48	\$ 19.93
Next 8,000 gallons of usage	\$ 17.00	\$ 15.70	\$ 16.06	\$ 16.43	\$ 16.81	\$ 17.20
Next 46,000 gallons of usage	\$ 17.00	\$ 15.10	\$ 15.45	\$ 15.80	\$ 16.17	\$ 16.54
Usage beyond 60,000 gallons	\$ 17.00	\$ 11.95	\$ 12.22	\$ 12.51	\$ 12.79	\$ 13.09

Note: Usage is as measured within a single billing cycle. Billing is monthly. All rates are cost per 1,000 gallons.

Inclining Rate Design Option for the Town of Berryville Revenue Needs

The design of the Inclining Rate Option followed the guidelines and recommendations published in Manual of Practice M1 published by AWWA. First and foremost, AWWA recommends this type design apply only to a homogeneous class of customers of similar size and required usage patterns. As a result, inclining rates are rarely used within the water industries for customer classes other than residential. A review of the Town's commercial, institutional, and industrial accounts confirms that these customers are of varying sizes and usage patterns (e.g., a commercial laundry will by nature of its business have a very different water use pattern compared to a retail store. For simplicity of administration of the rate design, Inclining Rates proposed to the Town of Berryville will apply only to residential customers, and other classes of customers will be charged Flat Rates.

Multiple-Family accounts may be billed as Residential Customers, provided the Rate Table is applied as per dwelling unit. This does require the Town to maintain within its billing records the number of dwelling units applied to a single account, and a billing system that is able to calculate an individual account rate table using the adopted rates applied to multiple dwelling units; some billing systems require program modification for this calculation to occur. As an example, assume an Inclining Rate Block is adopted as \$8.95 per 1,000 gallons for the first 3,000 gallons then \$9.86 per 1,000 gallons for the next 3,000 gallons used per dwelling unit. Then assume a meter is read and 5,000 gallons is consumed in a billing cycle. If that meter were attached to a single-family dwelling, \$8.95 would apply to the first 3,000 gallons and \$9.86 to the next 2,000 gallons. However, if that meter were attached to a triplex serving three separate dwellings, \$8.95 would apply to all 5,000 gallons as the first 3,000 gallons per unit is 3,000 x 3 equals the first 9,000 gallons on the meter.

Further, on occasion water piping within a Multiple-Family complex may be looped to serve multiple buildings and include fire protection, connected to the multiple system through two or more meters. If such situations exist within the Town, it may be necessary to combine multiple meters into a single account for billing purposes and define how billing is adjusted when there is water use for fire protection.

The principle behind Inclining Rates is that among users of similar size and usage patterns, a customer who chooses to use more water places a higher burden on the cost of peak capacity of the water and wastewater system than a customer who conserves and uses less water. AWWA methodology allows a degree of flexibility in how this peaking capacity is charged. For this study, only the depreciation cost of the replacement of the future assets is weighted based on water use, in increments of 3,000-gallon blocks, to establish the inclining rates.

There is a financial risk in converting from Flat Rates to Inclining Rates that is extremely difficult to measure as foresight. The risk is that residential customers presently using higher volumes of water (e.g., irrigation of lawns) may reduce consumption to avoid the charges in the higher blocks. This may be a desirable outcome from the standpoint of sustainability, but it can also mean lower actual operating revenues than forecasted. Some attempt to plan for this possibility has been built into the design of rates in this report, as it was assumed that residential customers now using greater than 6,000 gallons per month per dwelling will reduce consumption by 5% under the Inclining Rates. If Inclining Rates are adopted, this trend should be monitored, and rates adjusted if needed.

Table 5-3 provides the results of the Inclining Rate Table design.

Table 5-3

Inclining Block Rate Design for Town of Berryville Water and Wastewater Rates

Residential Customers Only - Usage is per dwelling unit within a single monthly billing cycle

	Current	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
WATER						
First 3,000 gallons of usage	\$ 8.40	\$ 8.95	\$ 9.86	\$ 10.87	\$ 11.98	\$ 13.20
Next 3,000 gallons of usage	\$ 8.40	\$ 9.75	\$ 10.74	\$ 11.84	\$ 13.05	\$ 14.38
Next 3,000 gallons of usage	\$ 8.40	\$ 11.35	\$ 12.51	\$ 13.78	\$ 15.19	\$ 16.74
Usage beyond 9,000 gallons	\$ 8.40	\$ 14.85	\$ 16.36	\$ 18.03	\$ 19.87	\$ 21.90

SEWER						
First 3,000 gallons of usage	\$ 17.00	\$ 17.15	\$ 17.54	\$ 17.95	\$ 18.36	\$ 18.78
Next 3,000 gallons of usage	\$ 17.00	\$ 18.10	\$ 18.52	\$ 18.94	\$ 19.38	\$ 19.82
Next 3,000 gallons of usage	\$ 17.00	\$ 19.40	\$ 19.85	\$ 20.30	\$ 20.77	\$ 21.25
Usage beyond 9,000 gallons	\$ 17.00	\$ 23.00	\$ 23.53	\$ 24.07	\$ 24.62	\$ 25.19

Commercial, Institutional and Industrial Customers

WATER						
Per 1,000 gallons of usage	\$ 8.40	\$ 9.26	\$ 10.20	\$ 11.24	\$ 12.39	\$ 13.65
SEWER						
Per 1,000 gallons of usage	\$ 17.00	\$ 17.39	\$ 17.79	\$ 18.20	\$ 18.62	\$ 19.05

Note: Multiple-Family accounts use Residential Customers table with rates calculated per dwelling unit

Discussion Regarding Rate Design Options

Three different rate designs have been provided above, each of which are designed to achieve the same revenue requirements. Each design serves a different purpose, and the purposes are embedded in community goals and public policy. In that sense there is no right or wrong answer as long as the objectives of each design are understood and the rate design that is adopted is in harmony with community goals. This discussion does not attempt to make a firm recommendation as to which option the Town Council should adopt but does make a few observations as suggestions toward the Council's deliberation.

- The Town's current Flat Rates are very competitive with nearby communities for accounts with 3,000 gallons per month or less water use, but its fees are higher than most nearby communities at higher levels of consumption. A shift to Inclining Rates will increase that effect with respect to residential customers. A shift to Declining Rates will reduce that effect.

- Inclining Rates work best for a water or wastewater system that is approaching its capacity and facing major capital costs to expand its infrastructure that can be delayed through conservation – If revenue declines as a result of Inclining Rates, it can be offset by a reduced short-term capital improvement program. This structure does not work as well for a utility with plenty of excess capacity in its infrastructure but facing a need for renewal of end of life assets. Revenue is needed for renewal without respect to reductions in consumption, thereby lower consumption requires higher rates in an attempt to retain the needed revenue, and customers who expect to pay less as a reward for conservation can be frustrated.
- The Town of Berryville average consumption per residential unit is 113 gallons per day. This quantity is lower than current averages in published statistics throughout North America, indicating that some reasonable level of conservation is already a part of the fabric in the community. Approximately 60% of single dwelling households in the Town use 3,000 gallons per month or less.
- Trends within the water industry today are moving in the direction of Flat Rates to Inclining Rates and away from Declining Rates. Most communities used Declining Rates in the 1960s through 1980s, but many moved away from this design in a greater promotion of sustainability and conservation. Interestingly, Declining Rates are still a part of a majority of the nearby communities surveyed as part of this study.
- Flat Rates are the simplest and easiest to administer. Greater complexity can make customer understandability and satisfaction more complex and can increase the risk of billing errors.

Through its review of data as a part of this study, Pennoni did not identify any compelling reasons to recommend that the Town of Berryville shift its rate design from the current Flat Rates to either the Declining or Inclining Rate structures. At the same time, each of the rate structures presented in this Chapter represent fair and reasonable approaches with acceptable and proven methods to obtain the revenue the Town requires to effectively maintain and replace its assets to maintain an acceptable level of service to the community. Most important is that the rate design selected be aligned with the strategic vision and goals of the community.

Review of Minimum Charge in the Current Rate Structure

Expenses for water and wastewater operations can be segregated into two-types: expenses that are variable with the quantity of water or wastewater conveyed and treated, and expenses that are fixed without respect to quantity of flow or treatment. General administrative costs are considered fixed costs as are some of the costs of operation and maintenance. For the most part, personnel costs in operation and maintenance are considered fixed costs. By example, an appropriately certified treatment plant operator is required by permitting to be on-site to operate most water treatment and wastewater treatment facilities when the facilities are in operation. Except for extraordinary circumstances, the number of personnel on-site do not vary with flow.

AWWA rate methodology endorses a strategy whereby water and wastewater utilities can establish a minimum charge per account in order to assure that all customers are contributing reasonably to the fixed costs of the utility regardless of metered consumption. Many utilities, including the Town of Berryville and the utilities represented in the comparative analysis performed in this study, include a minimum charge per bill as well as a charge per unit volume of water or wastewater service provided. This study included a review of the Town of Berryville's current minimum charges of \$5.00 per bill for water service and \$15.00 per bill for wastewater service.

To conduct this review, operating expenses for the "test year" were reviewed at a budget summary level to identify a percentage of expenses to be labeled as "fixed". Fixed costs included all general administration expenses, all personnel wages and fringe benefits, and select operating costs that included 20% of electricity costs (representing demand and customer components of electric rates), permit, fees and laboratory testing costs, Miss Utility costs, and professional services costs. If only general administrative expenses are considered, a fixed cost would be \$3.00 per bill for water and \$3.00 per bill for wastewater service. If operating personnel and select operating costs are added, fixed costs could be as high as \$13.75 per bill for water service and \$30.25 per bill for wastewater service.

There are two widely accepted practices for applying fixed costs in utility bills. One method is to establish a specific fixed cost for every bill that is added to a variable cost based on consumption, with the bill being the sum of a fixed cost and a variable cost. The second method is to calculate all bills based on the variable cost (\$ per 1000 gallons), and then apply the unit of consumption times the variable cost as the bill except when this calculation is below the minimum amount, in which case the minimum applies. The Town presently uses the second method, with a minimum charge, and in the comparative analysis it was identified that other nearby communities' trend toward the second method as well. When using the second method, the minimum bill is generally set higher than the fixed cost calculation, recognizing that within the minimum amount is an allowance for some consumption within the variable costs.

In reviewing the Town of Berryville's accounts, this study recommends that the Town retain the current method of a minimum charge that includes an allowance for consumption, but further recommends that the minimum charge be increased from the current \$5.00 for water and \$15.00 for wastewater to an amount equivalent to the first 2,000 gallons of consumption. This increased allowance is a very reasonable and good fit when considering all administrative and operating fixed costs as defined above. For simplicity, the minimum charge equivalent to 2,000 gallons of consumption could apply to whichever rate design the Town selected.

If the Town were to prefer a fixed cost per bill separate from consumption allowance, this study would suggest that fixed amount be set at \$3.00 per bill for water and \$3.00 per bill for wastewater, considering only the general administrative costs. A fixed charge as high as \$13.75 per bill for water and \$30.25 for wastewater is not recommended, as it would result in an unintended significant increase in cost to customers using between 2,000 gallons and 4,000 gallons per month, which represents 51% of the customer base.

Rates for Customers Outside Town Limits

The Town of Berryville currently does not include a surcharge for customers who are outside of the Town's corporate limits, but such practice is allowed both by AWWA's defined practices and under laws of the Commonwealth of Virginia, and many municipalities in the Commonwealth of Virginia do adopt this surcharge. The legal test is that such surcharges be fair and reasonable. The Town has a very limited number of customers outside the Town's limits, but review of the billing data on these limited accounts within the residential category does show about 10% higher consumption than per dwelling consumption for accounts within the Town. Furthermore, it is known within the industry that suburban residential areas have larger lots on average and higher peak water use as a ratio to average consumption compared to in-town lots and residences. Finally, AWWA suggest that a rate of return should be considered by the Town for outside Town customers, similar to how a private sector water utility may expect a return for its investors, as property owners outside the Town are not contributing to tax revenues and ultimately it is the Town and its residences who bear the burden for the risks and consequences of risk failure should they occur in operating an water and wastewater utility.

Considering all these factors, it would be reasonable for the Town to consider a 25% surcharge on all accounts outside the Town's corporate limits as a part of monthly billing. This surcharge would apply to the rate calculated by whatever rate design the Town Council chooses and would apply to every class of customer.

The 25% surcharge could also apply to Availability Fees for a new service approved outside the Town's corporate limits, if there are no current plans to annex the property in the foreseeable future. Since Availability Fees are a one-time "buy-in" for a new customer proposed to be added to the system for the long-term, the Town should consider waiving the surcharge on the Availability Fee for new customers within the proposed Annexation Area, although surcharges would apply to monthly billing until the month when the property served effectively becomes a part of the Town limits.

"Crystal Balling" the Future of Water and Wastewater Regulations

The advance of federal and state regulations regarding drinking water and water discharge to streams and rivers has made a dramatic impact on the quality of both public health and the environment over the past 50 years, starting with the passage of the federal Clean Water Act and the Safe Drinking Water Act in the 1970s as well as the creation of the Environmental Protection Agency. At the same time, the emerging regulatory environment has often created a significant challenge to long-term financial planning for water and wastewater utilities. As advancement in public health and the environment has occurred, new issues were often discovered, and the public interest in quick results has produced new regulations, often requiring significant capital improvement, with a short timeline for implementation and compliance. A case-in-point is the development of wastewater regulations and impact on wastewater treatment facilities, with primary treatment in the 1960s growing to secondary treatment in the 1980s, advanced ammonia removal in the 1990s, and enhanced nitrogen and phosphorus removal in the 2000s to the present. Although developing a "crystal ball" for future regulations can be very tricky and speculative, it has become a part of today's rate studies.

There are no specific changes in capital improvement planning currently being recommended to the Town of Berryville based on anticipating future recommendations, but this section of the report does discuss some trends that the Town should keep in its vision. One is a trend toward requiring utilities to adopt and maintain asset management programs as a condition in federal and state revolving fund low-interest financing, and even some trends toward making asset management a regulatory requirement in permitting. The Evaluation of Assets in this report makes a strong effort in this direction, but today's discussion within the water industry is moving toward asset management as a continuing program integrating maintenance and performance in contrast to a study performed periodically. This report recommends efforts toward asset renewal and maintenance, which is aligned with this regulatory trend.

Another trend to watch is the development of new drinking water regulations that may result from EPA's Contaminant Candidate List and Regulatory determinations, an ongoing process of regulating new contaminants incorporated into the Safe Drinking Water Act. One current topic of significant conversation is perfluoroalkyl and polyfluoroalkyl substances, expected to be regulated at the federal level within the next two years. These substances are not known to be in the Town's water supply but is an area of awareness, as special removal technology is required. Other organic compounds and a class of "emerging contaminants" that include by-products of endocrines or personal care products are on the EPA's current Candidate List. EPA published its Candidate Lists at <https://www.epa.gov/ccl/basic-information-ccl-and-regulatory-determination>.

On the wastewater side, clean water regulations in Virginia have seen significant changes within the past 15 years, largely as a result of the public goal of "cleaning up" the Chesapeake Bay. Nitrogen and phosphorus allocations were established for most wastewater plants in Virginia in 2005, including the Town's facility, and significant capital expenditures have been required to address these regulations. EPA adopted a Total Maximum Daily Load (TMDL) standard for the Chesapeake Bay in 2010, and is under an ongoing review presently, but most expectations are that there will not be significant changes, if any, in wastewater plant allocations within the Potomac/Shenandoah river basin. The Town of Berryville constructed a new wastewater treatment plant about 2010 and is in compliance with the current nitrogen and phosphorus standards.

The Virginia Division of Environmental Quality (DEQ) has recently proposed new ammonia standards for wastewater treatment plants, but the Town's current advanced facility should meet the ammonia criteria. Other current DREQ Initiatives have focused more on stormwater.

Similar to the Contaminant List for Drinking Water, the federal Clean Water Act requires a Tri-Annual Review for Clean Water in which states report to EPA on the health of the nation's rivers and invite public comment, and the Clean Water Act has provisions for developing TMDL's for rivers that are not meeting designated use standards. These processes bear watching to be abreast as early as possible if trends develop that may affect local capital needs.

Discussion of Public Hearing Items

BERRYVILLE TOWN COUNCIL**MOTION APPROVE THE SCHEDULE OF WATER AND SEWER FEES AND CHARGES**

Date: October 8, 2109

Motion By:

Second By:

I move that the Council of the Town of Berryville approve the attached Schedule of Water and Sewer Fees and Charges and that the new schedule become effective November 22, 2019.

VOTE:

Aye:

Nay:

Abstain:

ATTEST:

Harry Lee Arnold, Jr., Recorder

TOWN OF BERRYVILLE
SCHEDULE OF WATER AND SEWER FEES AND CHARGES

Effective November 22, 2019

I. USER FEES

A. WATER

1. Within corporate limits or the limits of an approved annexation area: \$8.15 per 1,000 gallons of usage. Minimum charge \$5.00 per month for usage under 1,000 gallons during billing period.
2. Other: \$10.18 per 1,000 gallons of usage. Minimum charge \$6.25 per month for usage under 1,000 gallons during billing period.

B. SEWER

1. Within corporate limits or the limits of an approved annexation area: \$17.27 per 1,000 gallons of usage. Minimum charge \$15.00 per month for usage under 1,000 gallons during billing period.
2. Other: \$21.58 per 1,000 gallons of usage. Minimum charge \$18.75 per month for usage under 1,000 gallons during billing period.

II. ADMINISTRATIVE FEES AND DEPOSITS

A. ADMINISTRATIVE FEES

Monthly Administrative Fees, charged with usage:

Water \$2.50

Sewer \$2.50

Late Fee: 10% of bill amount

Service Disconnection/Reconnection Fee: \$50

Returned Check/ACH Fee: \$50

B. DEPOSITS

Residential: individually metered single-family units, town homes, and duplexes: \$235

Residential: multi-family with master meter: \$188 per unit

Business/Commercial excluding restaurants and laundries: \$235

Restaurant: \$845*

Laundry: \$4,660*

Institutional: \$1,610*

Industrial: \$5,715*

*Town Manager may increase or decrease on the basis of actual usage.

Note: Town Manager may establish reasonable deposit amounts for use types not anticipated by this schedule.

III. AVAILABILITY FEES

A. WATER

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)	Meter Cost
5/8	1	\$ 13,500.00	\$ 16,875.00	Meter Fee
3/4	1.5	\$ 20,250.00	\$ 25,312.00	Meter Fee
1	2.5	\$ 33,750.00	\$ 42,187.00	Meter Fee
2	4.375	\$ 59,063.00	\$ 73,828.00	Meter Fee
3	8	\$ 108,000.00	\$ 135,000.00	Meter Fee
4	16	\$ 216,000.00	\$ 270,000.00	Meter Fee
5	25	\$ 337,500.00	\$ 421,875.00	Meter Fee
6	50	\$ 675,000.00	\$ 843,750.00	Meter Fee

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

Notes:

(a) Multi-family residences are defined as any master-metered group of apartment, townhouse, condominium, or other residential units with each unit having separate kitchen facilities.

(b) In cases in which a master meter serves multi-family residences or a combination of multi-family and commercial units, the applicant will pay a fee based on the higher of A) an amount derived by multiplying the unit charge of \$10,800 for a multi-family residence times the total number of residential and commercial units to be served by a single meter, or B) an amount based on the meter size as specified above.

(c) Meter fee is calculated by adding the cost of the meter and a 30% (of meter cost) handling fee.

B. SEWER

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)
5/8	1	\$ 14,500.00	\$ 18,125.00
3/4	1.5	\$ 21,750.00	\$ 27,187.00
1	2.5	\$ 36,250.00	\$ 45,312.00
1.5	4.375	\$ 63,438.00	\$ 79,297.00
2	8	\$ 116,000.00	\$ 145,000.00
3	16	\$ 232,000.00	\$ 290,000.00
4	25	\$ 362,500.00	\$ 453,125.00
6	50	\$ 675,000.00	\$ 843,750.00

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

IV. LATERAL OR CONNECTION FEES

Connection to the Town's water distribution and/or sewer collection system may be completed only if the following conditions are met:

- Party applying to connect to the system agrees to assume all costs associated with connection to the systems, including excavation, taps, vaults, traffic control, restoration (including pavement), testing, inspections, etc.
- Contractor responsible for completing work has been vetted and approved by the Town.
- Plans for the work, including restoration, have been approved by the Town.
- Required surety has been approved and provided to the Town.
- Required insurance coverage is in place and documentation thereof provided to the Town.
- Required permits have been issued by the Town, Virginia Department of Transportation, or other applicable agency.

V. INSPECTIONS**A. Sanitary Sewer Camera Service and Storm Sewer Camera Inspection Service****1. Mains and Laterals Over 4 Inches in Diameter**

Mobilization Fee: \$300

Camera Fee: \$2.50 per linear foot

2. 4-Inch Laterals

Laterals Under 50 Feet in Length: \$150

Laterals 50 Feet in Length or Greater: \$150 plus \$2.50 per linear foot

B. Inspections

Town staff: \$65 per hour

Licensed professional engineer or approved third-party inspector: Cost

Notes: Cleaning of lines will be required prior to camera use. Line cleaning is the responsibility of the applicant. If lines are not clean and camera crew must remobilize later to perform the inspection, a second mobilization fee will be charged.

VI. SIGNIFICANT INDUSTRIAL USER FEES

Sewer system discharge permit: \$500

VII. WATER METER TESTING

5/8" meter: \$100

All other meters: \$100 + cost

Note: Fee is refunded if meter is found to be over-registering.

VIII. HYDRANT METERS

Nonrefundable account establishment fee \$50

Deposit \$1,200

Note: Usage metered through hydrant meters will be billed for both water and sewer user fees.

IX. UNAUTHORIZED USE OF SERVICE

For unauthorized water withdrawals from fire hydrants or any other part of the Town water system, or when a customer willfully takes steps to reactivate service after service has been disconnected by the Town because of nonpayment of any charge owed to the Town, and the Town must take action to discontinue service again by removal of the meter or any other necessary measures, a \$250 charge for unauthorized use of services will be imposed. This charge will be in addition to any other charge for

water and sewer services owed to the town, and in addition to any legal remedies the Town may pursue for unauthorized use of service.

DRAFT

Citizens' Forum

Presentations/Awards and Recognitions

Consent Agenda

**Town Council Agenda Item Report Summary
October 8, 2019**

Item Title

Consent Agenda

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

A consent agenda is a tool utilized by the Town Council that permits it to group routine business and reports into one agenda item.

Any member of the Council may, as a matter of privilege, remove an item from the consent agenda and have it placed in under another agenda item.

Findings / Current Activity

September's consent agenda contains four meeting minutes to be considered for approval.

Financial Considerations

None

Schedule/Deadlines

It is preferable to have minutes approved in a timely manner but no deadline for approval of meeting minutes exists.

Other Considerations

None

Attachments

Minutes of the following meetings:

- 9/10/19 Town Council regular meeting
- 9/11/19 Town Council work session
- 9/26/19 Budget and Finance Committee meeting
- 9/23/19 Community Development Committee meeting
- 9/24/19 Personnel, Appointments, and Policy Committee meeting
- 9/25/19 Public Safety Committee meeting
- 9/24/19 Streets and Utilities Committee meeting

Recommendation

None

Sample Motion

I move that the Council of the Town of Berryville approve the consent agenda.

MINUTES
BERRYVILLE TOWN COUNCIL
 Berryville-Clarke County Government Center
 Regular Meeting
 September 10, 2019
 7:30 p.m.

Town Council: Present--Patricia Dickinson, Mayor; Harry Lee Arnold, Jr., Recorder; Donna Marie McDonald; Diane Harrison; Erecka Gibson; Kara Rodriguez

Staff: Present--Keith Dalton, Town Manager; Desiree Moreland, Assistant Town Manager/Treasurer; Christy Dunkle, Assistant Town Manager/Planner; Paul Culp, Town Clerk; Chief Neal White, Berryville Police Department; Greg Jacobs, incoming Assistant Town Manager/Treasurer

Press: Mickey Powell, The Winchester Star

1. Call to Order

Mayor Dickinson called the meeting to order at 7:30 p.m.

2. Pledge of Allegiance

Following the Pledge, Mayor Dickinson extended her condolences, on behalf of the Council, to Council member McDonald regarding the recent death of Mr. McDonald. She then invited Town Manager Dalton to explain the new agenda format, the rationale behind certain of its features, and further changes he expects as the Town adopts the CivicClerk agenda-creation package.

3. Approval of Agenda

Mayor Dickinson asked for a motion to approve the agenda.

Council member Harrison made the motion to approve the agenda, seconded by Council member Rodriguez.

Roll call vote as follows:

McDonald: Aye
 Harrison: Aye
 Gibson: Aye
 Rodriguez: Aye
 Arnold: Aye
 Dickinson: Aye
 Abstain: None

4. Public Hearing

Four public hearings were scheduled:
 Town Planner Dunkle presented the first item:

Special Use Permit—Home Occupation

Julie Wheeler Abrera (Owner, Beaumont House Design) is requesting a Special Use Permit under Section 603.3(f) of the Berryville Zoning Ordinance in order to operate a home occupation at her property located at 204 Battletown Drive, identified as Tax Map Parcel number 14A3-((2A))-21A zoned DR-2 Detached Residential. SUP 01-19

Ms. Abrera described her business, which creates floral arrangements for weddings and special events and also teaches floral design. She said she wanted to conduct workshops, no more than six annually, ranging from a half-day to two days each and with no more than 12 participants each, during the hours between 9:00 a.m. and 9:00 p.m. She said she has a limited number of clients and wants to have client-vendor meetings between 9:00 a.m. and 5:00 p.m., for which she needs permission.

Referring to documents submitted to the Council and incorporated into the agenda, Ms. Dunkle described potential problems and remedies: Parking is the largest issue, and Ms. Abrera said her property can accommodate six cars in the driveway in addition to parking on the street. She also said a landscape architect had devised a landscape screening plan and that a lighting plan had also been developed. She said the business does not use a sign except for one at the top of the driveway directing workshop participants.

Council member McDonald asked the applicant about the expansion of her business. Ms. Abrera said she would like for the workshops to grow large enough that she no longer holds them at home. Council member McDonald asked if it would be possible for attendees to park at another site and be shuttled to the Abrera property. Ms. Abrera said she had not considered this but that it was an option. Recorder Arnold asked whether a two-day workshop counted as one workshop in Ms. Abrera's estimate of six workshops per year, and she said it did and that six workshops could add up to 12 days. Recorder Arnold expressed concern about access to the area by fire and rescue vehicles and asked whether Ms. Abrera could notify clients to park on only one side of the street. She said she had addressed the matter in her application and that her understanding was that there was a grassy public right of way where people could park clear of the street. Recorder Arnold said the police had been summoned to the property, and Ms. Abrera said the occasion was a private party, not a business function, that neighbors had complained about cars being parked on their grass, and that the cars had been moved off the grass and into the street as requested.

Mayor Dickinson, referring to the documents submitted by Ms. Abrera, asked what a style dinner is. Ms. Abrera explained, and they discussed it briefly.

Mary Veilleux of 100 Battletown Drive spoke on Ms. Abrera's behalf, stating that Ms. Abrera had exercised proper due diligence, that a gathering of as many as 20 people on the property would not present problems and that the business provided good exposure for Berryville and enhanced economic development. She commended Ms. Abrera's involvement in the community.

Tim Mercer said he is a longtime resident whose mother lives across the street from Ms. Abrera, whom he said he does not know, and that nearby residents have already been adversely affected by Ms. Abrera's business. He said that the accessory structure on her property, a reconstructed log cabin, sets a bad precedent regarding what other residents may now be allowed to put in the back yards. He said parking on Battletown Drive creates traffic problems because of the narrowness of the road, and that Ms. Abrera sometimes has the driveway coned off instead of having cars parked there, resulting in cars being parked in the street. He said as many as 20 cars had been parked there on July 14. Mr. Mercer also asked about enforcement and whether Ms. Abrera would police herself regarding the number of meetings and attendees.

Mr. Mercer also expressed concern about fire and emergency access. He said Brian Lichty, director of the Clarke County Department of Fire, Rescue and Emergency Management, had visited the site and determined that the width is inadequate. Mr. Mercer recalled that a trench had collapsed on a worker several years ago and that the rescue team had been forced to take a complicated roundabout route to reach him. He asked the Council to reject Ms. Abrera's application and said the new structure on her property is only the beginning.

Sara Mitchell said she agreed with Mr. Mercer and that a special use permit in a specifically residential neighborhood has the potential for negative impacts, noting that the street had been blocked for several hours when the trench collapsed on the worker. She said that approval of the application would set a negative precedent for all neighborhoods.

There being no other comment, Mayor Dickinson closed the first hearing.

Town Planner Dunkle presented the second item:

Rezoning—Hermitage Phase V

The Berryville Planning Commission is sponsoring a Rezoning request by Hermitage, LLC (Ron Mislowsky, Pennoni Associates, Agent) for Hermitage Phase V in order to adjust the zoning to align with the proposed lot configuration for 71 parcels on Tax Map Parcel number 14A4-((A))-23 zoned R-1 Residential and Tax Map Parcel number 14-A-11A zoned DR-1 Detached Residential-1. RZ 01-19

Ron Mislowsky, representing Pennoni Associates, explained that Section V is the last phase to be developed. He said the original plan had been approved 13 years ago when the lots were configured differently and that the state has since passed new stormwater management laws requiring more open space for water quality treatment, necessitating a new layout. He said that two lots have been lost and that to keep rezoning lines from going through properties, a shift of line is needed. He said an HOA will be created for the purpose of maintaining stormwater management facilities in this phase of the development.

Council member McDonald asked whether the HOA would apply to the entire development or just to Section V, and Mr. Mislowsky said Section V only. Council member McDonald voiced concern about the HOA being in Phase V only.

David Bowen of Tyson Drive asked when the changes would occur and how residents would be affected. Ms. Dunkle and Mr. Mislowsky said an additional public hearing would be necessary and that it would be a joint meeting of the Berryville Planning Commission and the Berryville Area Development Authority. Mr. Mislowsky said he hoped construction could proceed on the first phase this fall, that the only changes to layout would be internal to Phase V and that road patterns would be only minimally affected except for construction traffic. He said Dunlap Drive or Alexander Drive would be most affected but that more discussion with the Town was needed.

Mayor Dickinson recommended that Mr. Bowen confer with Ms. Dunkle for further details.

Mr. Dalton said stormwater would go to the same place as called for in the earlier plan but that it would travel more slowly. He also said that the Planning Commission and Berryville Area Development Authority would be discussing traffic routing. He said that three roads provide access to Phase V, with Alexander being the most likely starting point for construction activities because of the configuration of utilities. He asked when the groundbreaking would be.

Property owner Richie Wilkins said groundbreaking likely would not occur until 2020 or 2021.

Mr. Bowen said trucks damage roads and asked whether an allowance would be made for that. He asked what the maintenance and drainage arrangements would be. Mr. Wilkins said that when water reaches a certain volume it is piped to a storm pond. He said he was open to discussion about roads. Ms. Dunkle said the public hearing on the final plan would establish which roads would be used. Mr. Wilkins said that most large equipment is brought in one time and stays on-site.

Jean Kelly asked whether future meetings would discuss how many builders would be involved. Mr. Dalton and Ms. Dunkle said the Town does not regulate this.

There being no further comment, Mayor Dickinson closed the second hearing.

Mr. Dalton read the third item:

The Council of the Town of Berryville will take public comment on the submission of an application to the Virginia Department of Transportation's Transportation

Alternatives Program in order to fund the construction of unfinished sidewalk sections on the north side of Mosby Boulevard.

Ms. Dunkle described the Transportation Alternatives Program (TAP) grant intended to fund construction of sidewalk sections on the north side of Mosby to accommodate safe pedestrian access by residents of new and existing multi-family developments and existing single-family homes to businesses and services on McNeil Drive.

Mr. Dalton asked how much was the total match needed. Council member Gibson said \$29,843. Ms. Dunkle said she would meet with the engineer and finalize plans next week.

There being no further comment, Mayor Dickinson closed the public hearing.

5. Discussion of Public Hearing Items

In discussing the special use permit, Recorder Arnold said he was supportive of business but that parking and street width presented challenges. He said he was satisfied with Ms. Abrera's proposal except for the parking problem and that he would support the opinion of the fire and rescue director.

Council member Harrison said Ms. Abrera had addressed the parking issue in her presentation and that it did not constitute a problem. She said it was sufficient to have a driveway accommodating six cars and the opportunity to park in the right of way. She said open communication among neighbors is important.

Council member Gibson said she was concerned about fire and rescue and that safety comes first. Council member Harrison said that cars park along that street daily and asked whether no cars should be permitted there. Council member Gibson said that would be fine. Council member Harrison said there were two separate issues, parking and the business itself. She said it would not be acceptable to single out Ms. Abrera if people park along the street already.

Council member McDonald asked how the Town could know whether Ms. Abrera increased the number of workshop participants beyond 12. Ms. Dunkle said that enforcement is complaint-driven and that she would provide enforcement in her capacity as zoning administrator.

Mr. Dalton asked Chief White if parking on the pavement was a violation of the law and could result in ticketing. Chief White said that this is the case on that street. Mayor Dickinson asked whether cars must be off the paved street, and Chief White said yes. He explained that there is a 50-foot right of way and a travel way of approximately 18 feet. He said enforcement begins with locating the vehicle's owner and asking that the vehicle be moved, and can escalate to ticketing, and that in an emergency the vehicle can be towed. Mr. Dalton asked whether the police might do nothing or issue a warning in a mild case and take a more active role in an egregious case or in

answer to a complaint. Chief White said it was a matter of a judgment call by the officer in question.

There was a brief discussion of the requirement that all four wheels be off the pavement, and the possibility that residents might stop maintaining the grass right of way if it is used for parking. Council member McDonald asked how it would be maintained in such a case, and Mr. Dalton said the right of way would be mowed twice annually by the Town.

Council member Harrison asked whether, if events on site were reason for concern, there would be any reservations about clients and vendors visiting the house.

Ms. Dunkle said a home office is permissible. She and Mr. Dalton explained that approval can be conditional, and Mr. Dalton made recommendations about the process.

Recorder Arnold asked Ms. Abrera if she had room for six cars and if some vehicles could be parked at the neighbors' homes. Ms. Abrera said she had identified some such opportunities. Recorder Arnold asked if she could rework her parking plan, and she said she was not sure what other plan she could devise. Recorder Arnold said keeping cars off the street should be the starting point. Ms. Abrera asked whether it would be acceptable to have attendees park only in front of her house.

Mayor Dickinson said her main concern was with enforcement. She said if enforcement is complaint-driven, and there is already some opposition to the permit, animosity could ensue. She said that people had purchased homes in the expectation that the neighborhood would be purely residential. She suggested that such an area might not be the right place for the log cabin, and also expressed concern about fire and rescue matters.

Mayor Dickinson asked for a motion to approve the special use permit. Recorder Arnold asked whether the matter might be postponed. Mr. Dalton asked Ms. Dunkle about the maximum allowable time for review. She said there is no specific time-frame for approval. Mr. Dalton said that there is a statutory limit but that a decision could be postponed pending further review.

Council member Rodriguez asked whether an immediate decision was necessary. Ms. Abrera said she had made her application in a timely manner and in good faith, also citing delay caused by the Council not meeting in August. She said she has holiday workshops coming up and will soon need to proceed with promoting them. She said she had expected a decision at this meeting.

Council member Rodriguez moved that the Council of the Town of Berryville approve the request for a Special Use Permit (SUP 01-19) in order to allow a home occupation at the property located at 204 Battletown Drive, identified as Tax Map Parcel number 14A3-((2A))-21A, zoned DR-2 Detached Residential with the following conditions:

1. Workshops on site are limited to no more than six (6) per year with a maximum of 12 participants attending each workshop;
2. Hours of operation shall be limited to the hours between 9:00 a.m. and 9:00 p.m.;
3. Participants shall park in the driveway of the property referenced above until it has reached its capacity;

Council member Harrison seconded.

Roll call vote as follows:

McDonald: Nay

Harrison: Aye

Gibson: Nay

Rodriguez: Aye

Arnold: Nay

Dickinson: Nay

The motion failed.

The Council then discussed the Hermitage Phase V rezoning request. Council member McDonald asked for clarification of the HOA's duties. Mr. Dalton and Ms. Dunkle said all streets would be Town-maintained. Mr. Dalton said the HOA is the only vehicle available for the developer to maintain Best Management Practices and that the HOA's only responsibility will be for BMPs in conservation areas.

Council member McDonald asked whether residents in Phase V would be responsible for HOA fees, and Mr. Dalton said yes. Ms. Dunkle said buyers would be aware of this in advance. Council member McDonald expressed concern about the HOA fee for a new section. Mr. Dalton explained that new buyers would know about it up front and that lots in other areas would be unaffected.

Council member Gibson asked whether residents of the new section would help defray the cost of stormwater-related problems in other parts of the development. Mr. Dalton said the HOA is an overlay on Section V, which is also obligated to the development as a whole. The mayor and Council member McDonald asked for clarification that residents of Section V would be paying for maintenance of their own section. Mr. Dalton explained that stormwater regulations have become more rigorous, especially regarding water quality, and that the HOA is the best vehicle available.

Recorder Arnold moved that the Council of the Town of Berryville approve the request to align zoning with the proposed lot configuration for Phase V of the Hermitage subdivision on Tax Map Parcel number 14A3-((A))-23 zoned R-1 Residential and Tax Map Parcel number 14-A-23 zoned DR-1 Detached Residential. Council member Rodriguez seconded the motion.

Council member McDonald said she would not want to pay an HOA fee and also be assessed for a catastrophe elsewhere. She said residents' obligations must be made clear.

Roll call vote as follows:

Harrison: Aye
 Gibson: Aye
 Rodriguez: Aye
 Arnold: Aye
 Dickinson: Aye
 Abstaining: McDonald

There was no discussion of the TAP grant.

Council member Harrison moved that the Council of the Town of Berryville adopt the attached resolution of support in order to request VDOT Transportation Alternatives grant funds for the completion of sidewalk sections and associated ADA facilities on the north side of Mosby Boulevard. Recorder Arnold seconded. [Motion attached.]

Roll call vote as follows:

McDonald: Aye
 Harrison: Aye
 Gibson: Aye
 Rodriguez: Aye
 Arnold: Aye
 Dickinson: Aye

6. Citizens' Forum

Mary Ivie of 11 Dorsey Street thanked the Town Council for its attention to stormwater matters. She said all her neighbors know it is a work in progress. She asked what would come next and whether residents would be notified of inspections. She said she also spoke on behalf of Chris Crawford.

7. Presentations/Awards and Recognitions

Town Manager Dalton recognized Assistant Town Manager/Treasurer Desiree Moreland, who is retiring at the end of the month after 43 years of service to the Town. He thanked her on behalf of the elected and appointed officials and Town staff, commending her unmatched dedication and loyalty and saying that she had always represented the Town well.

Council member McDonald moved to approve a resolution honoring Ms. Moreland, with Council member Gibson seconding. [Resolution attached.]

Roll call vote as follows:

McDonald: Aye

Harrison: Aye
 Gibson: Aye
 Rodriguez: Aye
 Arnold: Aye
 Dickinson: Aye

The Council then presented the resolution to Ms. Moreland.

8. Consent Agenda

Mayor Dickinson requested a motion for approval of the consent agenda comprising the minutes of the July 9 Town Council work session and regular meeting, the minutes of the July 22 Community Development Committee, and the minutes of the August 27 Streets and Utilities Committee meeting.

Council member McDonald moved that the consent agenda be approved, seconded by Council member Harrison.

Roll call vote as follows:

McDonald: Aye
 Harrison: Aye
 Gibson: Aye
 Rodriguez: Aye
 Arnold: Aye
 Dickinson: Aye

9. Unfinished Business

The first item being approval of the minutes of the June 11, 2019 Town Council regular meeting, the Council discussed the minutes as amended, as provided in a markup copy in the agenda packet. Council member Harrison moved to approve the amended minutes as provided in the markup copy, seconded by Council member Rodriguez.

Council member McDonald moved that minutes of the June 11, 2019 regular meeting of the Town Council be approved as amended, seconded by Council member Rodriguez.

Roll call vote as follows:

McDonald: Aye
 Harrison: Aye
 Gibson: Aye
 Rodriguez
 Arnold: Aye
 Dickinson: Aye

Mr. Dalton then discussed the proposed downtown street light pilot project.

Mayor Dickinson asked if the locations of the lighting had been changed. Mr. Dalton said the project was moved farther to the east because of other lighting that might conflict with results. Mayor Dickinson said she did not support a change from 70 to 135 watts, as this would nearly double the current light output and would create light pollution. She said that with such bright light the sudden contrast between lighted and dark areas would be undesirable. She said street-level lighting is poor and that the Town is trying to compensate. She said residents and business owners should be consulted regarding changes.

Council member Harrison noted that the project is not a permanent measure. She said that there are no residents in this area and that the Town would know soon if the new arrangements were feasible. Mr. Dalton said there would be multiple types of lights in the same area for comparative purposes. Council member Harrison suggested that longer arms would help distribute light to both sides of the street.

Council member Gibson asked whether there are any residents in the Masonic building. Mr. Dalton and Ms. Dunkle confirmed that there are residents but no windows on the west side of the building. There was a brief discussion of other buildings in the area.

Council member McDonald said that downtown at night is generally dark, that the sidewalks are uneven, and that improved lighting of some kind is needed.

Council member Harrison said the Town should try a 70-watt light on a ten-foot arm to compare it with a 135-watt light.

Council member Harrison moved that that the Council of the Town of Berryville direct staff to contact Rappahannock Electrical Cooperative and request that they begin the Downtown Street Light Pilot, which will include the following changes to the area's lighting:

Pole number N 59259 to a 70 W LED

Pole number N 2634 to a 135 W LED on a 10' arm

Pole number N 2633 to a 70 W LED on a 10' arm

Council member McDonald seconded the motion.

Roll call vote as follows:

McDonald: Aye

Harrison: Aye

Gibson: Aye

Rodriguez: Aye

Arnold: Aye

Dickinson: Nay

The final item of unfinished business being the utility rate study conducted by Pennoni Associates, Mr. Dalton said no further action was to be taken at present. He announced the public input session on proposed utility rate adjustments scheduled for the following evening, Wednesday, September 11, at 7:00 p.m.

10. New Business

There was no new business.

11. Council Member Reports

Council member Gibson asked whether staff had received any comment from the public about the executive summary of proposed utility rate adjustments that had been included with the most recent bills. Mr. Dalton, Ms. Dunkle, and Mr. Jacobs said the staff had received no comments.

Council member McDonald noted that the Council had selected the tenth scenario of those provided by Pennoni Associates in its report on possible utility rate adjustment options, and asked whether commitment to that scenario was permanent. Mr. Dalton said staff had been directed to create an executive summary and fee schedule based on that scenario, and that the Council had agreed to enter tomorrow's public input session with that particular proposal. There was a discussion of process and procedure.

Council member McDonald said she had nothing to report on Ward 1.

Mayor Dickinson asked Mr. Dalton to clarify the purpose of the member reports section in the new agenda format, and he explained that it replaced the practice of members using committee report time to speak out on issues of importance to them.

Council member Harrison had nothing to report from Ward 2.

Council member Gibson had nothing to report from Ward 3.

Council member Rodriguez of Ward 4 said she had been pleased by the number of Ward 4 residents at the August 27 Streets and Utilities Committee meeting at which stormwater problems and possible solutions had been discussed.

Neither Recorder Arnold nor Mayor Dickinson had anything to report.

12. Staff Reports

The Public Works, Public Utilities, and Police Departments had nothing to report.

Mayor Dickinson thanked Officer Joseph Shoremount of the Police Department for his rapid response and intervention resulting in the successful outcome, under extraordinary circumstances, of an EMS call in the Battlefield Subdivision.

Ms. Dunkle said in her Community Development report that the farmers' market had requested an additional market after the conclusion of the regular season on October 26.

Mayor Dickinson asked if the request is for only one market, and Ms. Dunkle said it is. The mayor said the motion calling for up to two additional markets must be changed. Ms. Dunkle said the farmers' market had changed its request after she had prepared her written report for the Council.

Mr. Dalton asked whether there had been an extra market last year and said there would be no problem with more than one. Ms. Dunkle said they had held a market last year on the same day as the Christmas parade and that there had been conflicts including street closings and vendor setup. Mr. Dalton asked whether the organization would be content with one market or needed to leave the number open, and Ms. Dunkle confirmed that only one additional market had been requested.

Council member Harrison said that as a potential vendor she would abstain from voting on the motion.

Council member Rodriguez moved that the Council of the Town of Berryville allow one additional Saturday market in the Rixey Moore parking lot on November 30 from 10 a.m. to 2:00 p.m.

Roll call vote as follows:

McDonald: Aye

Gibson: Aye

Rodriguez: Aye

Arnold: Aye

Dickinson: Aye

Abstaining: Harrison

There was no report for Administration/Finance. Council member Harrison asked whether workers compensation had doubled, and Mr. Dalton said he would speak with Ms Moreland and report back to the Council tomorrow.

The Town Manager's report by Mr. Dalton addressed Berryville Main Street's (BMS) rental of the old Town office at 23 Main Street, the current lease having been finalized in February 2018. He said the first floor has housed the Fire House Gallery and the BMS office, with BMS renting the two second-story office spaces as part of the Town/BMS effort to incubate new businesses.

He said BMS now wants to close the Gallery, put its office on the second floor, and sublease the first floor, and that it needs the Town's permission for the sublease.

The mayor recognized BMS president Nathan Stalvey.

Council member Gibson asked Mr. Stalvey how long the lease would run if BMS subleased the Gallery area. He said this had not yet been determined. She asked whether this was within the confines of his lease. He said yes. Mayor Dickinson asked if other businesses had shown interest, and Mr. Stalvey said they had. Council member Gibson asked how BMS would choose between them. Mr. Stalvey said BMS would have to discuss this as a board and that retail businesses were desirable. Mr. Dalton said the motion should direct the town manager to provide written approval of the Town Council's decision regarding the subleasing of the first floor of 23 Main Street.

Recorder Arnold moved that the Town Council of the Town of Berryville direct the town manager to provide written approval of the Town Council's decision regarding the subleasing of the first floor of 23 Main Street. Council member Harrison seconded the motion.

Roll call vote as follows:

McDonald: Aye

Harrison: Aye

Gibson: Aye

Rodriguez: Aye

Arnold: Aye

Dickinson: Aye

Mr. Dalton then addressed maintenance of conservation areas and §13-32 and §13.32.1 of the Berryville Town Code. He said that he and Ms. Dunkle had encountered the term "conservation areas" in discussion with developers and had determined that a conservation area is part of a Best Management Practice (BMP). Mayor Dickinson asked whether conservation areas were in people's back yards. Mr. Dalton and Ms. Dunkle explained their understanding of these areas. The mayor said something more attractive than weeds would be required. Mr. Dalton said that it would be a controlled planting but that there was cause for concern, hence the placement of the matter before the Council. Mr. Dalton said it was impossible to tell what DEQ would do.

13. Committee Updates

Council member Gibson said the Budget and Finance Committee would meet on September 22 at 10:30 a.m.

Council member Rodriguez said the Community Development Committee would meet on Monday, September 23 at 2:00 p.m.

Recorder Arnold said the Personnel, Appointments and Policy Committee would meet on September 24 at 9:00 a.m. and would discuss openings on the Tree Board and Architecture Review Board.

Council member McDonald said the Public Safety Committee would meet on Wednesday, September 25 at 2:00 p.m. The mayor asked if chapter 20 is ready for review, and Council member McDonald said yes. Council member Gibson requested an overview or executive summary. Mayor Dickinson noted that Chief White had undertaken the revisions and had based them on the Charlottesville code. She recommended that further discussion be postponed, and Recorder Arnold concurred.

Council member Harrison said the Streets and Utilities Committee meeting on August 27 had been good and that the committee would next meet on Tuesday, September 24 at 10:30 a.m. She asked Mr. Dalton whether scopes for the next projects were ready. He said he would provide one for the Town run before the next meeting and suggested having Ron Mislowsky of Pennoni Associates there. Council member Harrison agreed and said that the lighting standard should be discussed at that time also.

There was a brief discussion of the agenda format.

Council member McDonald praised the recent improvements to Washington Square.

14. Closed session

No closed session was scheduled.

15. Adjourn

Council member Gibson moved for adjournment, seconded by Council member Rodriguez. The motion passed by consensus.

The meeting adjourned at 10:13 p.m.

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Public Input Session
September 11, 2019

A public input session of the Berryville Town Council was held on Wednesday, September 11, 2019 at 7:00 p.m. in the Berryville-Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia, for the purpose of discussing proposed adjustments to water and sewer rates.

Town Council: Present: Patricia Dickinson, Mayor; Harry Lee Arnold, Jr., Recorder; Donna Marie McDonald; Diane Harrison; Erecka Gibson; Kara Rodriguez

Staff: Present: Keith Dalton, Town Manager; Desiree Moreland, Treasurer; Christy Dunkle, Town Planner; David Tyrrell, Public Utilities Director; Jodi Kern, Utilities Clerk; Paul Culp, Town Clerk; Greg Jacobs, incoming Treasurer

Press: Mickey Powell of The Winchester Star

1. Call to Order:

Mayor Dickinson called the meeting to order at 7:01 p.m.

2. Approval of Agenda:

The mayor acknowledged that September 11 is Patriots Day and the anniversary of the 2001 World Trade Center attacks. She then asked for a motion to approve the agenda. Council member Rodriguez moved to approve the agenda as presented, seconded by Council member Harrison. The motion was approved unanimously by voice vote.

3. Unfinished Business: Public Input Session—Water and Sewer Schedule of Fees

Mayor Dickinson recognized Tom Frederick of Pennoni Associates, which had prepared a report analyzing the Town's water and sewer needs and providing fifteen scenarios for fee structures to address those needs.

Mr. Frederick noted that water is vital for all aspects of life and that assets pertaining to it must be maintained so as to be reliable and resilient. He said assets wear out over time or are compromised by disastrous events, and that backup systems are necessary.

Mr. Frederick summarized the analysis and recommendations in the Pennoni Associates study. He said the Berryville area could expect population growth at a rate of one-half of one percent annually

and that the system in its present condition was more than adequate to cope with population growth for at least 20 years. He said Town staff had asked Pennoni Associates to look at existing assets, including vertical ones—meaning buildings, pumping stations, and storage tanks—and horizontal ones such as underground pipes. He said Pennoni was able to project the remaining useful life of those assets and determine what the replacement budget would be and the probable capital costs involved, and from there construct a more accurate capital improvement model than the Town has had previously, with an eye to keeping the system resilient. Mr. Frederick said Pennoni had done this for both water and sewer and then developed a 20-year plan for maintaining the system.

He said Pennoni had then compared Berryville's water and sewer rates with those of eight nearby communities and that Berryville's water rates are average to slightly below average while its sewer rates trend toward the high end of the scale. He said the Town had performed a large amount of work on its sewer system in the last decade, particularly its construction of the wastewater treatment plant, with some of this work having been required by state regulations. He said the Town's sewer system, particularly its vertical assets, is relatively new and therefore will not need as much attention in the near future as would be the case with an older system. He said sewer rates would not need a significant increase and could remain stable, while the water system's assets are older, especially the treatment plant, and that the Town should take steps to assure future maintenance, including sufficient attention to fire protection.

Mr. Frederick said Pennoni recommended adjustments to availability fees. He said the current availability fee for water is \$5,250 per equivalent residential unit for a new connection while the equivalent fee for sewer is \$22,750. He said Pennoni recommends adjustments according to which the total amount for a new connection would not change, but the charge for water would increase while the charge for sewer is reduced by a corresponding amount. The water charge per ERU would then be \$12,100.

Mr. Frederick said the Council and Town staff had been given spreadsheets taking into account projected growth, inflation, and asset replacement projected over eight years, with five years of water and sewer rate projections. He said total water revenue from rates should be adjusted by 10.1 percent per year, and total sewer revenue from rates by 2.2 percent per year. He said the nationwide average currently is 5 to 6 percent when water and sewer are combined. He said water and sewer systems throughout the country generally have not kept pace in terms of asset replacement, and that more stringent regulations are also placing heavier fiscal demands on systems. He said the rates recommended by Pennoni are in line with national averages overall but added that the water rates recommended for Berryville would be above average and its sewer rates below average.

Mr. Frederick said the Pennoni study had employed three methodologies in determining how to distribute the necessary rate increases: 1) maintaining current flat rates, 2) inclining block rates, meaning a customer's cost per unit would rise with increased use, and 3) declining rates, with the customer paying less per unit for higher quantities.

Mr. Frederick said Pennoni's recommendation for Berryville was that the Town maintain flat rates, meaning the unit rate would remain the same for all levels of consumption. He said Pennoni had been asked to consider billing for administrative or fixed costs, or minimum charges on bills, and that it recommended a fixed administrative fee on each bill to cover costs such as management, billing of accounts, meter reading, and personnel, those being costs that do not vary with consumption. He contrasted non-variable costs with variable ones such as the amount of electricity used in pumping, the increased use of equipment when flow rates are high, and chemical costs that tend to vary with demand. He said that for billing purposes variable costs should be reflected in unit cost components, meaning the cost per thousand gallons, while fixed costs could be reflected in administrative charges.

Mr. Frederick said the Town's fixed costs were sufficient to justify an administrative fee that would be raised over time. He said the initial rate could be \$2.50 per bill, increasing to \$7.50 the following year, and possibly reaching \$22.50 in the fifth year. He said the effect of this on the rate per 1,000 gallons would be fairly constant, that five years from now the rate for water would be the same as today and the rate for sewer slightly lower. The increased revenue would be generated via the gradual increase in the administrative fee.

Mr. Frederick having completed his summary, Mayor Dickinson invited the Council to ask questions. She asked Mr. Frederick whether the percentages of the proposed rate increases might change if the Town secured another source of revenue, such as a grant or loan program. Mr. Frederick said this was possible and recommended that the Town aggressively pursue such opportunities.

Town Manager Dalton said a loan might make a rate adjustment possible, depending on the structure of debt servicing. Mr. Frederick said Pennoni recommends a limit of 4 percent on borrowing, and that the Town undertake a significant borrowing for its water system, associated with the treatment plant, and smaller amounts for the sewer system. He said it is wise to look at utility rates every year to determine whether they are in line with what is happening to interest rates.

There being no further questions from the Council, the mayor opened the public session.

Wayne Webb said he had read in the Town budget that Berryville is paying half a million dollars annually for debt servicing, and asked when the debt for the sewage treatment plant would be paid off. Town Manager Dalton said it would be in 2037. Mr. Webb said he hoped the Town would revert to the practice of billing four times annually, to reduce administrative costs. He said the savings would offset costs associated with undetected leaks occurring between more widely spaced billings. He said administrative fees were hurtful to lower-income residents because small users must pay the same amount as large users. He said the budget for fiscal year 2019 included \$150,000 for contingencies and that he wondered how that funding is used. He said the budget also included line items related to money being made by money and facilities, and asked whether the Town has this money in the bank and could apply it to utility upgrades.

Lonnie Grimes asked why there would be separate administrative fees of \$2.50 each for water and sewer if both services appear on the same bill. He said the prospect of a \$22.50 administrative fee would discourage people from living in Berryville.

Mayor Dickinson said she thought the current administrative fee is \$20. Mr. Dalton explained that there is no administrative fee at present, only a minimum charge intended to recoup some of the cost of operating the system regardless of usage. He cited billing, meter reading, collection operations, and personnel performing cutoffs as activities that occur and create operating expenses whether usage is high or low. He said the engineers had determined that low-end users are paying a lower percentage of these monthly recurring costs. He said the intent was to bring some of those costs to bear at that usage level but not abruptly. He said the addition of administrative fees would allow rates to remain essentially static, and that the intent was to provide for collection of recurring costs in a way that distributes them over all users and not just heavier users.

Mr. Grimes asked if he had understood correctly that the administrative fee would be \$22.50. Mayor Dickinson explained that this was in the proposal but that the Council had not decided the matter. He asked what the Town would do to add more users to the system. Town Planner Dunkle said more than 200 units were on the way.

Council member Gibson explained that there are two charges of \$2.50 because water and sewer services are provided by separate self-funding revenue streams and must be treated accordingly as a matter of accounting procedure. She said each service has its own fixed costs.

Mr. Grimes suggested billing via email. Council member Gibson explained that there would still be recurring costs. Council member Harrison said that more was involved than paper usage, citing salaries. Council member Gibson suggested that an explanation of fixed costs be posted on the website so residents would understand what expenses are covered by administrative fees.

Mr. Grimes indicated that he understood most of the billing to be automated. Utilities Clerk Kern said this was not the case. She said the Town incurs expenses in sending technicians out to investigate possible leaks, and that services of that nature creates operating expenses that are addressed by the \$2.50 charges. She said the Town goes above and beyond in many ways on behalf of residents but that this carries a cost.

Mayor Dickinson explained that the Town does not have a fully automated system, which while desirable would entail replacing all meters at a cost of \$800,000 to \$1 million.

Mr. Dalton said that even with full automation it would be desirable to have boots on the ground periodically because human observers can detect problems in a way that saves money in the long term.

The Council remained in session to provide any late arrivals an opportunity to speak.

Mayor Dickinson said the Council needed to set a public hearing on rates for the October regular meeting of the Council, for publication of the rates contained in tonight's packet. There being no objection, the hearing was set for that time.

Council member McDonald asked whether the new rates would go into effect after that meeting. Council member Gibson said they would if the Council voted on them and approved them. Mr. Dalton said the Council would vote and establish an effective date for the new rates. He directed the Council's attention to the proposed date of November 22 in the packet. Council member McDonald indicated her understanding that a vote in October would mean new rates going into effect in November. Mr. Dalton said it would be possible to delay approval until November but that proceeding in October would be best. He said November 22 is the day of meter reading. Mr. Grimes suggested that the holidays would not be a beneficial time for a rate increase. Mr. Dalton said that since the rate adjustment has been advertised as occurring on November 22, putting it into effect sooner is not possible but doing so later is permissible.

Mayor Dickinson noted that it would be possible to set the effective date for later in order to avert negative impacts on residents during the holidays.

Council member McDonald asked why the rate adjustment could not occur before November 22, and Mr. Dalton said that he believed that the Council's advertisement of that date bound it to implement the changes no earlier than November 22. The mayor reiterated that a later date would be permissible.

Mr. Dalton warned against a situation in which a new, higher rate might be combined with an estimate if snow or ice prevents meter reading. Council member McDonald agreed that many residents would be displeased by such a development.

There being no further discussion, Mayor Dickinson closed the public input session and asked for new business.

4. New Business:

There was no new business.

5. Other:

No other business came before the Council.

6. Closed Session:

No closed session was scheduled.

7. Adjourn

Mayor Dickinson asked for a motion to adjourn. Council member McDonald so moved, seconded by Council member Gibson. The motion passed unanimously by voice vote at 8:30 p.m.

BERRYVILLE TOWN COUNCIL BUDGET AND FINANCE COMMITTEE
Berryville-Clarke County Government Center
MINUTES
September 26, 2019

A meeting of the Berryville Town Council Budget and Finance Committee was held on Thursday, September 26, 2019 at 10:30 a.m. in the Berryville-Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

Attendance: Members of the Committee present: Erecka Gibson, Chair; Mayor Pat Dickinson; Kara Rodriguez

Staff present: Keith Dalton, Town Manager; Desiree Moreland, Treasurer/Assistant Town Manager; Greg Jacobs, incoming Treasurer/Assistant Town Manager; Heather Halterman, Finance Clerk; Paul Culp, Town Clerk

Press present: None

1. Call to Order

Chair Gibson called the meeting to order at 10:31 a.m.

2. Approval of Agenda

Ms. Rodriguez moved to approve the agenda as presented, seconded by Mayor Dickinson. The motion was approved by consensus.

3. Unfinished Business

Online Payments

Ms. Halterman said she had evaluated a vendor, Payment Services Network, Inc. (PSN), recommended by Southern Software, and that she believed it superior to the other vendor she had considered. She said she recommended that the Town purchase the base-model service package, which would enable residents to make payments with Visa, MasterCard, and Discover, and by check. She said there would be a convenience fee that the Town could pass on to customers and that the Town can add taxes and other charges. She said there would be a termination fee if the Town discontinued use of PSN but that PSN had agreed to reduce the initial term from three years to one.

Ms. Halterman said payment would go through PSN but the Town will retain its swipe-only credit card capability. She said there would be a yearly security compliance fee and that the other fees are in line with what the Town currently has. She said PSN would help with notifying residents of the availability of the new service.

Ms. Halterman said it might be possible in June of 2020 to begin adding tax payments and real estate to the ordinary bill-paying capability but that the inclusion of personal property tax payments would not yet be advisable. She said she would put together a plan of execution if the new service is approved.

Mr. Dalton asked about chip technology and cards and swipe machines. He asked whether the proposed service would make the Town compliant with chip requirements. Ms. Halterman said the Town's swipe integration would be with Sturgess and would be available in the fourth quarter of this year. She said the Town is not likely to be doing in-house swipe payments with PSN.

Mr. Dalton confirmed that the PSN arrangements would be for telephone or online transactions but not for in-house payments, which would be via Sturgess integrated with Southern Software. Ms. Halterman said handling in-house transactions via PSN would be problematic because card information would go through the PSN portal, as opposed to the Town's in-house system not retaining that information.

Mr. Jacobs said keeping the two separate was preferable in any case because doing so would provide a clearer audit trail.

Mr. Dalton asked what the process would be like if the Town Council gave the go-ahead at its regular meeting on October 8. Ms. Halterman said the rollout would take 60 days at most and that a target date of January 1, 2020 would be realistic. Mr. Dalton asked whether any types of payments the Town is currently receiving could not be taken via PSN. Ms. Halterman said anything owed to the Town could be processed that way but that there would be a fee for ACH payments. She said utilities transactions are the most numerous, and recommended starting there and bringing in more complex transactions over time.

Ms. Halterman said the purchase of business licenses through PSN is possible but would be complicated and not practical. Mr. Dalton asked whether the Town could be processing utilities and tax transactions within 60 days, and Ms. Halterman said utilities were possible but that May 1 of 2020 would be a realistic start date for real estate taxes and November of 2020 for personal property taxes.

Ms. Rodriguez asked whether fees would be the same regardless of payment method, and Ms. Halterman said the fee would vary according to whether payment was by credit card, check, or phone. Ms. Rodriguez asked whether payments would post on the due date if paid that day, and Ms. Halterman said they would post by 8:00 p.m.

There was a discussion of potential abuses of the system.

There was a discussion about security compliance, chargeback fees, and disputed transactions.

Chair Gibson asked whether the Town attorney would be reviewing the agreement. Mr. Dalton said that would be possible and probably advisable, considering the unfamiliar nature of the subject matter.

There was a discussion of the accessibility of the portal from the Town website.

Mayor Dickinson asked how the auditing and reconciliation processes would be managed. Mr. Jacobs said separate accounts would help with tracing transactions and that the requirements would not differ substantially from the Town's current processes.

Chair Gibson asked Ms. Halterman to notify the committee when she has researched the chargeback fee fully.

Mayor Dickinson said the committee would need to move forward with crafting a policy in order to be ready when the staff is ready. Mr. Dalton asked what policies are needed. The mayor recommended seeing what other towns do. Ms. Halterman said the Town could expand its check and credit card policies and modify existing policies. Mayor Dickinson and Ms. Rodriguez expressed approval.

Mayor Dickinson moved that the committee forward the proposed online payment arrangements to the full Town Council for approval. Ms. Rodriguez seconded the motion, which passed unanimously.

4. New Business

Long-term Financial Sustainability Plan

Ms. Rodriguez provided an example from Leesburg as a model for how to forecast the future and plan for it.

Chair Gibson said the Town does not have budgeting software and that it is needed for department heads to see the history of expenses and make forecasts. She suggested not trying to develop a long-range plan until the Town has the tools to do so efficiently, lest the process create an inordinate drain on staff time.

Mayor Dickinson asked what Leesburg's process had been like. Chair Gibson asked what sort of guidance department heads had received. The mayor recommended creating a structure before assigning the task to the staff and then acquiring the needed budgeting software.

There was a discussion of software types and how to explore options. Chair Gibson explained the enhanced precision made possible with the right software.

Mayor Dickinson said she supports the development of a plan and would like to begin the pre-software phase. Mr. Jacobs said it must begin with the departments. The mayor and Chair Gibson said that department heads must be given guidance from the Town Council first. The mayor said a vision for the Town must inform the process. Mr. Jacobs suggested that the Town's comprehensive plan should do this, but she said it is insufficient for her.

There was a discussion of budgeting methods.

Mayor Dickinson said the Council must create a vision as staff looks for the tools necessary to implement it.

The committee agreed to meet again on Thursday, November 4 at 10:30 a.m.

5. Other

There was no other business.

6. Closed Session

There was no closed session.

7. Adjourn

Chair Gibson invited a motion to adjourn. Ms. Rodriguez so moved, seconded by Mayor Dickinson. The motion passed by consensus and the meeting adjourned at 11:44 a.m.

BERRYVILLE TOWN COUNCIL COMMUNITY DEVELOPMENT COMMITTEE
Berryville-Clarke County Government Center
MINUTES
September 23, 2019

A meeting of the Berryville Town Council Community Development Committee was held on Monday, September 23, 2019 at 2:00 p.m. in the Berryville-Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the committee present: Kara Rodriguez, Chair; Diane Harrison; Donna McDonald

Staff present: Keith R. Dalton, Town Manager; Christy Dunkle, Assistant Town Manager/Planner; Paul Culp, Town Clerk

Press present: Mickey Powell of The Winchester Star

1. Call to Order

Chair Rodriguez called the meeting to order at 2:05 p.m.

2. Approval of Agenda

Council member Harrison moved for approval, seconded by Council member McDonald. The motion passed.

3. Unfinished Business:

A. John Rixey Moore Playground / Rose Hill Park Improvements

Mr. Dalton directed the committee's attention to a memorandum of November 2017 in which the proposed improvements to the playground were enumerated. He said the budget has been raised from an estimated \$41,855 in 2017 and that the fiscal year 2020 budget provides up to \$60,000 for this work.

Mr. Dalton said it would be necessary to replace some of the sidewalk leading to the fall zone and that two trash cans also would require replacement. He said that in addition to new equipment for children aged five to 12 the improvements would include a new shade structure, costing \$3,700, that would be flush-mounted on the slab and removable for the winter months. He said the basketball court would need sealant for cracks, a surface overlay, and repainting, and that the fencing and the gazebo also needed repair.

Chair Rodriguez asked about drainage in the park. Mr. Dalton said some work has been done, that it drains well now but is in a flood plain. He said another pipe might be desirable but that some flooding would occur regardless.

Mr. Dalton said a third-party inspection had indicated that the Saddle-Mates and spring riders and the Buck-A-Bout are in proper repair. He stated that the proposal provides for this equipment to be painted. He said the diggers would be replaced and pea gravel added.

Chair Rodriguez asked about a matching grant, and Mr. Dalton said the grants are not available for the discounted equipment.

Chair Rodriguez asked Mr. Dalton whether it would be advisable to place the proposal before the Town Council for a vote in November, and he yes, that the project should have a lead time of 10 to 12 weeks in order to insure completion by spring.

Mr. Dalton said it would be necessary to occupy the parking lot behind 23 Main Street to use as a staging area for construction and that he had discussed this with Berryville Main Street.

Ms. Harrison asked whether the umbrella pole would present a hazard, and asked if padding would be possible. Mr. Dalton said he would inquire with the shade provider. There was a brief discussion of what might be available, the possible placement of a bench around the pole, and the color of the umbrella.

The consensus of the committee was that it should recommend the new estimates to the Town Council. Chair Rodriguez asked whether the estimate for repair of the gazebo would be available in time for the next Council meeting, and Mr. Dalton said this would depend on what measures the Public Works Department recommends for restoring the gazebo to a suitable condition.

Chair Rodriguez asked whether it would be acceptable, because of time constraints, to deviate from the order of the printed agenda and discuss branding and marketing before discussing the economic development MOU. Committee and staff agreed to this.

B. Branding and Marketing

Chair Rodriguez explained that she had made changes to the email identifying the scope of work she had originally submitted at the committee's previous meeting, placing marketing before branding in response to the committee's consensus regarding priorities.

Ms. Dunkle asked what the Town is trying to promote and to whom, for businesses or for residents. Chair Rodriguez said the intent is to increase commercial investment and present Berryville as a desirable destination for business, but also to attract visitors.

Ms. Harrison said the study is mainly to evaluate the Town's present and future commercial direction. Ms. McDonald asked whether it would be desirable to consider why businesses leave Berryville. Ms.

Dunkle recommended against delving into that issue, because of the variety of reasons for businesses leaving.

Ms. Harrison said the Town needs to be more specific about its economic development aims than it has been in the past. There was a brief discussion of other Virginia towns that have issued RFPs of this kind.

Chair Rodriguez asked when the matter could be brought before the full Town Council. Ms. Dunkle said the RFP, including the scope, should be created first. Mr. Dalton said the scope is necessary.

Ms. McDonald asked about progress toward encouraging the construction of a hotel in Berryville. Mr. Dalton said he and Ms. Dunkle had discussed the matter extensively and had laid the groundwork but needed more direction from the Council, that they need to know whether a hotel is really a high priority. He said a hotel would be conducive to the economic health of the Town and County, supporting existing businesses and encouraging new ones, and that it would be important for tourism and for local residents hosting visitors. He said he and Ms. Dunkle needed guidance as to whether this was a high priority.

Chair Rodriguez asked whether Mr. Dalton would require a formal motion. He said yes, and that he would like to see the same level of commitment from the County. Ms. McDonald asked about funding. Mr. Dalton said the goal is to incentivize and facilitate, referencing tourism zone incentives. He said that this will be a project funded by the private sector.

Ms. Harrison and Mr. Dalton discussed the matter of a marketing packet. She suggested putting one together, including study results and available properties. Mr. Dalton said he recommends that this be a high priority for the Town Council.

Ms. McDonald asked whether Mr. Dalton and Ms. Dunkle had spoken with any hotel chains. Ms. Dunkle explained that large hotel chains often do not have small-hotel brands. She said the feasibility studies identify the need for a 50-room hotel, while chains typically have a lower limit of 80. She said she and Mr. Dalton had discussed possibilities with investors.

Ms. Harrison said she wanted a motion to place the hotel matter before the full Council and make it a high priority for staff. There was a discussion of the need for one more month to work on the scope. The committee agreed to meet again on October 28 at 2:00 p.m.

Ms. McDonald asked whether branding and marketing would include a website and email campaign. Chair Rodriguez said these were not included in the 2019 budget.

C. Economic Development Memorandum of Understanding with Clarke County

Discussion of the MOU having begun in the committee's previous meeting, Chair Rodriguez directed attention to item number 10, which addresses the need for technical guidance and support for tourism efforts by a staff member, consultant, or designated group, as decided by the Joint Committee.

Ms. Dunkle said the economic development and tourism websites appear not to be active and that the county is working on a new website.

There was a discussion of the role of social media in promoting economic development. Ms. McDonald said social media use is not necessary and could lead to additional controversy. Chair Rodriguez said social media should be overseen by one person.

Ms. Harrison said technical guidance/support and the management of websites and social media would require the creation of a new position. Chair Rodriguez said the relevant section of the MOU should be rewritten to stipulate oversight by one person.

Ms. McDonald asked whether the Town could have a policy forbidding social media use by public officials in their official capacities, as Clarke County does. Mr. Dalton said this option had been offered when staff developed a social media policy for the Town Council and that such a ban had been rejected. Ms. McDonald said it should be revisited. Ms. Harrison said the current policy does have rules regulating social media use by officials, but Ms. McDonald said the rules had not been followed and that the Town needs additional protection. The consensus of the committee was that this is a matter for the Personnel Committee.

There was a discussion of the current transient occupancy tax.

There was a discussion of the proposed branding and marketing study as an aid to identifying new revenue sources for economic development and tourism.

The committee briefly discussed the need to create business retention strategies. Ms. Harrison said it would be important for businesses and Town officials to communicate regularly.

Chair Rodriguez suggested finishing the committee's discussion of the MOU in its October meeting, revising it, and presenting it to the full Council in December. Mr. Dalton said it is necessary to be specific about the Town's financial commitment.

There was a discussion of the County and Town funding the new position discussed previously. Ms. Dunkle recommended looking at the County's economic development strategic plan. Ms. Harrison said the MOU has been too vague so far.

4. New Business

There was no new business.

5. Other

There was no other business.

6. Closed Session

There was no closed session.

7. Adjourn

Chair Rodriguez invited a motion to adjourn. Ms. Harrison so moved, seconded by Ms. McDonald. The motion passed and the meeting adjourned at 3:28 p.m.

BERRYVILLE TOWN COUNCIL PERSONNEL, APPOINTMENTS, AND POLICY COMMITTEE
Berryville-Clarke County Government Center
MINUTES
September 24, 2019

A meeting of the Berryville Town Council Personnel, Appointments, and Policy Committee was held on Tuesday, September 24, 2019 at 9:00 a.m. in the Berryville-Clarke County Government Center, located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the Committee present: Jay Arnold, Chair; Erecka Gibson; Pat Dickinson

Staff present: Keith R. Dalton, Town Manager; Desi Moreland, Assistant Town Manager/Treasurer; Greg Jacobs, incoming Assistant Town Manager/Treasurer; Heather Halterman, Finance Clerk; Paul Culp, Town Clerk

1. Call to Order

Chair Arnold called the meeting to order at 9:00 a.m.

2. Approval of Agenda

Ms. Gibson made the motion to approve the agenda with a change of order to permit the discussion of employee handbook updates before discussion of Council policies. The motion was approved by consensus.

3. Unfinished Business

A. Employee Handbook Updates

Mr. Dalton said the committee and Town staff had provided input on multiple sections of the employee handbook and that the most significant unresolved issue was how to address the payout of holiday leave. He said Mayor Dickinson had also been concerned about the Town's liberal leave policy, particularly with regard to the Friday of the Apple Blossom Festival.

Mr. Dalton said it had also been proposed that the terminology in the handbook referring to annual leave and sick leave be changed to "paid time off" and that the section on compensatory leave had been updated in the proposed changes so as to be clearer about when compensatory leave is paid. He said the proposed changes also include verbiage stipulating that changes in an employee's job description must be signed by the employee and kept in his or her file.

Ms. Gibson suggested that the phrase "eligible for PTO" in the section on employees' introductory period should be changed to "eligible to use PTO." Mr. Dalton concurred.

Ms. Halterman drew the meeting's attention to the handbook section on holidays and said that only Streets and Utilities and Police Department employees accrue holiday time, inasmuch as those departments continue to function on holidays, meaning that a day off at that time is an ordinary day off. She said the Town needs for employees not to exceed the holiday leave cap of 96 hours per annum.

Ms. Halterman and Mr. Dalton discussed the need for verbiage giving Mr. Dalton flexibility to deal with exceptional circumstances related to accrued leave. There was a discussion of work load and short-staffing in the Utilities and Police Departments leading to employees not taking time off.

Chair Arnold said that the town manager should have the flexibility to permit accruals greater than 96 hours if needed and that the town manager should report these situations to the Town Council.

Mayor Dickinson, with reference to the holiday leave section, said Lee-Jackson Day should be removed from the calendar of holidays. Ms. Moreland said Lee-Jackson Day is still on the state calendar. Mayor Dickinson said she did not expect this to remain the case much longer.

There was a discussion of the Town's military leave policy. Ms. Harrison said that for periods of up to 30 days an employee is required to pay only the normal employee share of health insurance premiums but for longer leaves must pay the entire premium. Mr. Jacobs asked whether an employee in the latter case remained on the Town's books rather than being on COBRA, and Mr. Dalton and Ms. Harrison said that this is the case. Mayor Dickinson asked for clarification of the passage stating that "[a]nnual leave and holiday benefits will continue to accrue during a military leave of absence." She said she did not believe this is standard. Ms. Halterman said she would investigate.

Mr. Dalton said liberal leave has customarily been declared at midday on the Friday of Apple Blossom weekend but that some employees decide to continue working and are permitted to do so. He said the mayor had expressed concern about liberal leave and that he would like the Council to consider the matter.

Mayor Dickinson said liberal leave is acceptable but that closing the office is not appropriate, as doing so does not put the needs of citizens first. Ms. Gibson asked how the announcement of a closure occurs. Mr. Dalton said it is made to employees and posted on the website and on the doors of the Government Center. The mayor said residents would not expect the office to be closed on such an occasion. Chair Arnold said that it depends on how long someone has lived here, and that closing for Apple Blossom is customary. Mayor Dickinson said it should be made official in that case.

Ms. Gibson said people are accustomed to it and that it does not have a significant customer service impact. Chair Arnold said that some people leave town. He said there is no need to declare a holiday

for Town employees but that they should be polled to see how many plan to take time off, with the idea of keeping the office open if possible. He said that no matter what means of notification is used, some people still do not get the word.

Mr. Dalton asked Mayor Dickinson whether she opposed liberal leave in general or only for Apple Blossom. The mayor said her objection was to closing the office and thereby violating citizen expectations.

Chair Arnold said he has no objection to closing the office for Apple Blossom. Mayor Dickinson said the handbook passage under discussion was generic and not merely for that occasion. There was a discussion of other examples of office closures.

Chair Arnold asked for a motion to forward the proposed handbook changes to the full Council. Ms. Gibson moved that the Personnel, Appointments, and Policy Committee forward the attached amendments to the employee handbook, to include the points just discussed, to the Town Council for consideration. Mayor Dickinson seconded the motion, which passed by unanimous vote.

B. Council Policies

Mr. Dalton said Mayor Dickinson earlier this year had expressed concern about the use of voice vote as the Town Council's default voting method. He presented to the committee a draft policy calling for elimination of the voice vote and its replacement by a show of hands for most Council business.

Ms. Gibson said that a show of hands would not register on the audio recording of the meeting. Mr. Dalton said that the town clerk could announce the results of a vote. Chair Arnold said he preferred retaining the voice vote, with a roll-call vote only if the results are not clear. Ms. Gibson said Council Member Diane Harrison had suggested using the roll call for only some business. She said it would be possible to request a roll-call vote and that it would be a good idea to have guidelines regarding which matters should require one.

Mayor Dickinson said that matters such as approval of the agenda, approval of the consent agenda, and adjournment were examples of things that can be handled with a voice vote.

Mr. Culp asked whether the silence of a show of hands would actually present a problem, considering that the Town does not retain the audio recordings in perpetuity. Mayor Dickinson said she keeps copies of them.

Ms. Gibson said the Council probably would agree to the midway approach of having voice votes for some business and roll-call votes for others.

Recorder Arnold asked whether the committee was ready to forward the matter to the full Council. Mayor Dickinson said it would be necessary to see the draft policy first. Ms. Gibson said that with

only two weeks remaining before the next Council meeting, a short deadline would put pressure on staff. She suggested dealing with the matter at the next committee meeting.

The committee agreed to meet again on October 22 at 9:00 a.m.

Mr. Dalton said Mayor Dickinson had expressed a desire for more definite guidelines, policies, and procedures for responding to public requests for official recognition of people, causes, and events.

There was a brief discussion of Mr. Dalton's draft policy related to congratulatory letters and who would write them, and proclamations and resolutions. Mayor Dickinson asked why it would be necessary for a request to be made four weeks in advance. Mr. Dalton said this would be necessary for reviewing requests and composing the documents in question, taking into account other elements in staff work load. The mayor asked how the policy would be published, if adopted. Mr. Dalton said it could be published on the website, with application form. Mayor Dickinson said she did not care for "must" in the four-week stipulation and that she would prefer "requested."

With reference to the hierarchy of recognitions—resolutions being reserved for instances of the highest honor and importance, followed by proclamations and letters of congratulation—Mayor Dickinson said she usually provides what people ask for. She said anyone on the Council can produce a letter, while proclamations are mayoral, with resolutions being for Council. Mr. Dalton concurred.

Mayor Dickinson said that proclamations and resolutions should not be lumped together.

There was a discussion of the circumstances in which each type of recognition is appropriate. Chair Arnold said the Council needs to see a list of everything issued up to this point. Mayor Dickinson said she believed she has shared everything except letters of congratulation, of which she said there have been only a few. She said the town clerk gets a copy of each document and that sharing with Council can be made an official policy.

The consensus of the committee was that the matter needs further attention at committee level before being forwarded to the full Council.

Mayor Dickinson said she needed more guidance with regard to the circumstances in which each type of recognition should be issued. She said six weeks should be allowed for resolutions and that allowances could be made for emergencies.

C. Town Manager Performance Assessment

Mr. Dalton said he would look for an instrument for the Council to review. He said he would prefer a formal assessment by the Council late in the calendar year as a tool for budgeting and compensation, with another, less formal, discussion about expectations near the end of the fiscal year. Mayor Dickinson said she agreed regarding the timing.

Ms. Gibson said that expectations and goals should be set before the assessment, which should be forward-looking. She said things should be addressed as they occur, with no surprises occurring at the time of the assessment.

Mr. Dalton asked whether the committee would play a role in this or if it would be a matter solely for the full Council. Ms. Gibson said the committee can establish guidelines but that beyond this it is a Council matter. Mayor Dickinson said the committee could review a template and then turn the matter over to the Council.

4. New Business

A. Appointments

Mr. Dalton noted that the term of H. Allen Kitselman III on the Berryville Area Development Authority (BADA) will expire on November 13 and that Mr. Kitselman would like to be considered for reappointment. He said there is a vacancy on the Architectural Review Board (ARB) because of the resignation of Gene Williamson and that there is a vacancy on the Tree Board.

There was a discussion of the application of Mary Serock for the ARB vacancy and the application of Derek Sprincis for the Tree Board vacancy.

Mr. Dalton asked the committee whether the appointment of persons too young to vote is acceptable. There was a discussion of whether to create an age limit or possibly maintain a seat on the Board for a student member, the Tree Board being strictly advisory in nature.

The committee agreed that an interview would be desirable and that Mr. Sprincis and Ms. Serock should be interviewed when the committee meets on October 22.

There was a brief discussion of the reappointment of H. Allen Kitselman III to the BADA. Ms. Gibson said it was necessary to change the language regarding the starting date of the position. The committee agreed that the position should be said to run from November 13, 2019 through June 30, 2022.

Ms. Gibson moved that H. Allen Kitselman III be reappointed to the Berryville Area Development Authority for the specified term. The motion passed unanimously by voice vote.

B. Administration Intern Program

Mayor Dickinson said she had received multiple requests for internships. She said other communities offer them and that they would be helpful to students and staff. Mr. Dalton asked whether the mayor desired the creation of a policy. She said she just wanted to start a discussion of how to get high school students involved.

Chair Arnold said the concept was acceptable but the timing is not good because the Town is planning to create a new assistant town manager position at a time when it also has a new treasurer and clerk. Mr. Dalton raised the issue of sensitive information routinely handled in the Town offices.

Mayor Dickinson said the internships could be offered in the Public Works, Streets and Utilities, and Police Departments. Chair Arnold said liability would be a problem and the need for safety training extensive.

There was a brief discussion of how long an internship would be and how it would be scheduled. Mayor Dickinson suggested that interns work after school.

5. Other Business

There was no other business.

6. Closed Session

There was no closed session.

7. Adjourn

Ms. Gibson moved for adjournment, seconded by Mayor Dickinson. The motion passed unanimously and the meeting adjourned at 10:26 a.m.

BERRYVILLE TOWN COUNCIL PUBLIC SAFETY COMMITTEE
Berryville-Clarke County Government Center
MINUTES
September 25, 2019

A meeting of the Berryville Town Council Public Safety Committee was held on Wednesday, September 25, 2019 at 2:00 p.m. in the Berryville-Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the Committee present: Donna McDonald, Chair; Diane Harrison; Mayor Pat Dickinson

Staff present: Keith Dalton, Town Manager; Christy Dunkle, Town Planner; Paul Culp, Town Clerk

1. Call to Order

Chair McDonald called the meeting to order at 2:02 p.m.

2. Approval of Agenda

Mayor Dickinson moved to approve the agenda, seconded by Ms. Harrison. The motion was approved by consensus.

3. Unfinished Business

Review of Chapter 8 of the Berryville Code

Mr. Dalton said he had examined areas of the Town Code needing amendment, specifically those related to dumpsters. He said he and Chief White need guidance regarding the section requiring that dumpsters visible from the right of way be screened. He said Chief White had said that the dumpsters could be visible from someone's property or after development occurs. Mr. Dalton said screening helps with litter control and that the screening requirement could be extended to all dumpsters within the corporate limits. He said the drafting of revisions should involve Ms. Dunkle as planner in order to avert flood plain problems. He said that if dumpsters are buoyant and contained, they are acceptable in that regard. He said that in some cases walls and gates must be strengthened and that this should be approached on a case-by-case basis. Mayor Dickinson and Ms. Harrison concurred, citing the unattractiveness of unscreened dumpsters.

Mr. Dalton described problems involving certain businesses that have needed either to construct enclosures or revert to using toters.

Mr. Dalton said the committee should provide guidance to staff regarding how to proceed with dumpster regulation. He said the process would involve development of new standards and the requirement that dumpsters already in use be brought into compliance with those standards with a prescribed period.

Mr. Dalton said the revised code would also stipulate that no commercial, business, or industrial entities would receive service outside downtown, the boundaries of which Ms. Dunkle said should be defined by zoning. There was a discussion of downtown boundaries.

Chair McDonald asked how long curbside cans should be left on the street, and exactly where they should be placed. Mayor Dickinson recommended allowing residents to decide where to put them and then formulating a preference on the basis of that observed preference. There was a discussion of location and duration. The mayor said that business owners, in the interests of making their establishments as attractive as possible, would remove their refuse in a timely manner. Chair McDonald requested clarification about businesses outside downtown not receiving service. The mayor said they would not and that trash removal would be a business expense for them.

Ms. Harrison asked how people would benefit from purchasing business licenses if this were the case. Mayor Dickinson said they would gain the privilege of doing business in Berryville. Mr. Dalton cited police protection, street lights, and planning services as benefits. The mayor mentioned water and sewer services and said that public works functions benefit them and are subsidized by Town taxes.

Chair McDonald said people would be displeased by the changes and would want to know why the Town was not collecting their trash anymore.

Mayor Dickinson suggested a phasing-in of regulations for outside-town and downtown areas.

Mr. Dalton asked whether a 60-day period for dumpster compliance would be desirable. The mayor expressed a preference for 30 days. Chair McDonald asked about dumpster enclosures, and Mr. Dalton said one year would be appropriate.

Mr. Dalton recommended 60 days for dumpster compliance and a year for the construction of an enclosure. It will be presented as Phase 1 outside town, Phase 2 downtown, and Phase 3 residential.

The committee agreed to meet again on November 25 at 12:30 p.m. to finish constructing a policy to present to the full Council.

There was a discussion of composting.

4. New Business**Report of Chief White**

Chief White was unable to attend.

5. Other

There was no other business.

6. Closed Session

There was no closed session.

7. Adjourn

Mayor Dickinson moved to adjourn, seconded by Ms. Harrison. The motion passed by consensus and the meeting adjourned at 2:55 p.m.

BERRYVILLE TOWN COUNCIL STREETS AND UTILITIES COMMITTEE
Berryville-Clarke County Government Center
MINUTES
September 24, 2019

A meeting of the Berryville Town Council Streets and Utilities Committee was held on Tuesday, September 24, 2019 at 10:30 a.m. in the Berryville-Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the committee present: Diane Harrison, Chair; Mayor Pat Dickinson

Other Council member present: Recorder Jay Arnold

Staff present: Keith R. Dalton, Town Manager; Rick Boor, Director of Public Works; Neal White, Chief of Police; Paul Culp, Town Clerk

Others present: Representing Pennoni Associates, Inc.: Ron Mislowsky

Press present: Mickey Powell, Winchester Star

1. Call to Order

Chair Harrison called the meeting to order at 10:36 a.m.

2. Approval of Agenda

The agenda was approved by consensus.

3. Unfinished Business

Stormwater Preliminary Engineering Reports

Mr. Dalton said staff had provided scopes of work based on Pennoni Associates' preliminary engineering reports (PER) for the Town Run and Virginia Avenue. He explained that Mr. Mislowsky was present to provide insight regarding the Town Run and also for his opinion regarding what could be done prior to work on the Town Run. Mr. Dalton said the Town Council has not yet discussed the nature of needed improvements and the precise goals. He said his impression was that the Council wanted to ensure that stormwater moves freely and without obstruction, but he does not know how the Council wishes to proceed.

Mr. Mislowsky said parts of the channel are piped, while others are riprapped or natural or have driveways crossing them. He said the most serious problems are where there is a culvert with a larger

passage that must be channeled into it. He said culverts at large crossings cause the major obstructions and that what is needed is a smooth, uniform channel with minimal changes in size and texture.

Mr. Dalton said permanent easements, or possibly temporary ones, would be needed for construction. He asked Mr. Mislowsky what models he had encountered, and Mr. Mislowsky said there should always be a permanent easement on property. Chair Harrison said this would give the Town control of maintenance. Mr. Dalton said that maintenance responsibility would be a big issue to clarify.

Mr. Mislowsky said it would be possible to create a model for the Town Run matching FEMA's model and identifying constrictions caused by culverts and channel sections. A cost estimate for the Town Council's consideration would then be possible.

Mr. Dalton presented three maps for discussion.

Mr. Dalton also noted that this is an opportunity to study ways of dealing with water quality. He said that the Town could look into working with Clermont in this regard.

Mr. Dalton and Mr. Mislowsky discussed the level (frequency) of storm the channel should accommodate.

There was a discussion about Phase V of Hermitage and two other subdivisions currently under review.

Mayor Dickinson took issue with the portion of the draft scope that stated that the Town Run functions relatively well channeling water through the Town. She pointed out areas where problems had been reported.

Mr. Mislowsky said the proposed study would identify problem areas.

There was a discussion of the sequence of improvements and the need to take a holistic approach, to consider how an improvement in one area would affect others.

Mayor Dickinson drew the meeting's attention to verbiage in the Virginia Avenue scope calling for a visual inspection of the area. She said this had not been required before in the new portion of town. Mr. Mislowsky said it had been done. The mayor said it is difficult to distinguish between the Town Run and what flows next to her house. She said that properties in the first study had not been visually inspected and asked how this might affect future work. She expressed concern about a domino effect of compromised reports.

Mr. Mislowsky said Pennoni Associates had employed the most up-to-date topography and that the study was based on worst-case scenarios.

Mr. Dalton said the two projects are different inasmuch as one deals with ponding in a flat area and the other with obstructions.

Mr. Mislowsky said a standard is necessary in order to proceed, in terms of working according to two-year or 10-year possibilities, for example. He said a two-year standard was the minimum.

Mr. Dalton said the goal is to have a channel that moves well and is easily maintained. Chair Harrison said consistent flow in all areas is desirable.

Mayor Dickinson, referencing the stormwater master plan, said that as of 1991 culverts were undersized for a 10-year event.

Mr. Dalton asked whether he should provide a revised scope for the committee's next meeting. Mayor Dickinson and Chair Harrison said the matter could proceed to the full Town Council and should do so as soon as possible.

Mr. Dalton directed the meeting's attention to photos of a pooling problem on Virginia Avenue. He said no road work should occur until the drainage issues are abated. He said the Town should get an easement and cut ditches in a very localized area. The necessary work being a budgeted item, the committee told Mr. Dalton he could proceed.

Chair Harrison returned to the topic of the Town Run and the need to know the impacts of each component of the proposed work. She said she needed information as soon as possible for budgeting purposes. Mr. Mislowsky said it would be a six-month project. Mr. Dalton said borrowing would be necessary in any case.

Mayor Dickinson said a strategic approach to stormwater is necessary, that the Council must consider goals and guiding principles, hard and soft costs, current and future needs. She said it is necessary to assume that it will not be possible to solve all problems.

4. New Business

Street Lighting Standard

Chair Harrison said priority-setting is crucial for budgeting and that the committee or the Public Safety Department must establish standards. She said the Town as a whole must be considered and that exceptions for all citizen complaints are not possible. She said light pollution is a major problem and that the Town must consider not only lighting on the streets but also what residents are permitted to put on their property. She said the Town is compliant with Dark Sky or is becoming so as it implements street-lighting changes.

Mayor Dickinson said there is a great deal of light trespass into homes and that shielding is needed. She said Round Hill has a pilot program and is inviting citizen input and that Portland, Oregon, has a shield request process.

Chair Harrison said a code is necessary, that the Town does not have a right to do something that affects someone other than the person making the request. She asked whether a policy or ordinance would be required.

Mr. Dalton and Mayor Dickinson said the matter can remain with the committee and begin with a policy.

Ms. Harrison said lighting in new developments is a concern, citing Darbybrook as dark. She asked Chief White for his opinion. He said the Police Department would need time to consider the matter but would be pleased to participate.

Mayor Dickinson asked for clarification regarding the goal of lighting changes, whether the Town is striving for ambience or safety, for example.

Mr. Dalton said he has asked Town Planner Christy Dunkle to bring Rappahannock Electric Cooperative (REC) into the early stages of planning processes and that this will allow the administrative body to see plans and review them.

Mayor Dickinson asked whether the Town has criteria in its subdivision ordinance. Mr. Dalton said no and that the Town has criteria for commercial development but not for public property. The mayor said criteria for subdivisions would be desirable.

Chair Harrison said the committee should begin work on developing lighting standards for Town street lights. Mr. Dalton said towns do this many different ways and that Berryville should consider their examples.

Mayor Dickinson asked whether the downtown pilot had begun, and Mr. Dalton said not yet.

The committee agreed to meet again on October 22 at 10:30 a.m.

5. Other

Mr. Dalton said staff had been considering standards for street signs and will be forwarding something to the Town Council soon.

6. Closed Session

There was no closed session.

7. Adjourn

Chair Harrison invited a motion to adjourn. Mayor Dickinson so moved. The meeting adjourned at 11:53 a.m.

Unfinished Business

**Town Council Agenda Item Report Summary
October 8, 2019**

Item Title

Town Ordinance Revision – Chapter 20

Prepared By

W. Neal White, Chief of Police

Background / History / General Information

The Public Safety Committee routinely reviews and evaluates ordinances and regulations of the Town with respect to matters of public health, safety, and welfare. Beginning in June of 2018, staff initiated a review of ordinances and regulations pertaining to special events and demonstrations. That review illustrated a need for revisions to chapter 20 of the Town Code, creation of a regulation manual associated with special events, and compiling all forms associated with special events within the regulation manual.

The Public Safety Committee then began a committee review of the ordinance, regulation manual, and forms beginning in July 2018. The Public Safety Committee decided that the regulation manual should be the initial focus with the ordinance revisions taking place to support and codify elements contained within the regulations. The regulation manual went through six revisions in committee including a review by legal counsel. Once the regulations along with associated forms were completed, the ordinance was revised and reviewed by legal counsel. A final committee review of the ordinance revisions, regulation manual, and forms took place on June 26, 2019 where it was decided that the documents should be forwarded to Town Council for review and consideration.

Some of the key points surrounding this matter include:

- The regulation manual was drafted using a set of regulations adopted by Charlottesville, Virginia following the protests of August 2017. These regulations, specifically the permitting process, have been legally challenged since adoption and found to be legal by a court of jurisdiction.
- The regulations give Town staff clear guidance of when a permit is required for a special event and a clear process on how permits are reviewed, granted or denied, and establishes a method for appeals.
- The regulations address public safety, health, and welfare issues through the prohibition of dangerous items, establishing restrictions concerning the duration and location of events, requiring issues of sanitation and food preparation be addressed, and making allowances for the need to have public safety personnel on site based upon the size and nature of the proposed event. All regulations and prohibitions were incorporated in a manner that respects the Constitutional rights and protections afforded to those participating in the event.
- The work done included research to make sure that other regulatory agencies were mentioned and included within the regulation. Permits required by outside agencies such as the Virginia Department of Transportation, Virginia Department of Health, Virginia Alcohol and Beverage Control Board, and Clarke County Building Department are all examples that have been incorporated into the regulation manual.
- The regulation manual designates a single point of contact, the Events Liaison, to whom all permits are submitted to begin the review process. This eliminates any confusion among staff

concerning the permitting process and offers the applicant a single destination for questions and concerns regarding a permit.

- A review of the regulations and ordinance revision also revealed that two additional ordinances would need revisions in order to be congruent with the recommended changes.
 - A section of Chapter 10 (Motor Vehicles) required additional language to be added to sec. 10-7 which granted the Town Manager the ability to close streets pursuant to approved special event permits.
 - A section would need to be added to Chapter 9 (Licenses) to address carnivals and circuses.

Findings / Current Activity

All documents concerning this agenda item are attached for review and adoption consideration at this meeting.

Financial Considerations

Not applicable.

Schedule / Deadline

Not applicable

Other Considerations

Not applicable

Attachments

- Current Berryville Code Chapter 20
- Current Berryville Code Chapter 10 (Section 10-7)
- Current Berryville Code Chapter 9
- Ordinance for adoption of amendments to Town Code
- Revised Berryville Code Chapter 20
- Revised Berryville Code Chapter 10 (mark-up)
- Revised Berryville Code Chapter 9
- Special Events and Demonstrations Fee Schedule
- Regulations for Special Events and Demonstrations

Recommendation

- Repeal and re-adopt Chapter 20
- Repeal sec. 10-7 and re-adopt proposed revision
- Revise existing sec. 9-34 to be designated as sec. 9-40.
- Adopt proposed sec. 9-34 concerning carnivals and circuses
- Reserve sec. 9-35 through 9-39 for future use
- Adopt Special Events and Demonstrations Fee Schedule
- Provide comment on proposed Regulations for Special Events and Demonstrations

Sample Motion

I move that the Council of the Town of Berryville:

- adopt the attached ordinance amending Chapters 20, 10, and 9 of the Berryville Code effective November 1, 2019

- approve the attached Special Events and Demonstrations Fee Schedule effective November 1, 2019
- direct the Town Manager and Chief of Police to finalize, and cause be published on the Town's website, Regulations for Special Events and Demonstrations, prior to November 1, 2019

Chapter 20 - ASSEMBLIES, DEMONSTRATIONS, AND PARADES

Sec. 20-1. - Purpose.

Pursuant to the authority granted to the town by the Code of Virginia and its general police powers, the town does hereby adopt the following sections in order to provide for the public health, safety, and general welfare in the town, to ensure the free and safe passage of pedestrians and vehicles on the public rights-of-way, and to ensure the safe and unimpaired use and enjoyment of public property in places open to the general public, and otherwise to regulate and control the time, place, and manner of activities that would otherwise threaten or impair the public health, safety, and welfare in the town while also encouraging the exercise of the rights to free speech and assembly in the town.

(Ord. of 5-13-08)

Sec. 20-2. - Definitions.

The following terms shall have the meanings set out herein:

- (a) *Parade* means any march, demonstration, procession, or motorcade consisting of people, animals, or vehicles, or a combination thereof, upon the streets, sidewalks, or other public areas within the town with an intent or likely effect of attracting public attention that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property.
- (b) *Public assembly* means any meeting, demonstration, picket line, rally, or gathering of more than ten (10) people for a common purpose as a result of prior planning that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property within the town, or that interferes with or has a tendency to interfere with the normal use of any public property in a place open to the general public.
- (c) *Spontaneous event* shall mean an unplanned or unannounced coming together of people, animals, or vehicles in a parade or public assembly which was not contemplated beforehand by any participant therein and which is caused by or in response to unforeseen circumstances or events occasioned by news or affairs first coming into public knowledge within five (5) days of such parade or public assembly.

(Ord. of 5-13-08)

Sec. 20-3. - Permit required.

- (a) It shall be unlawful for any person to conduct or participate in a public assembly, demonstration, or parade on the public streets, sidewalks, or other public property of the town in a place open to the general public for which a written permit has not been issued in accordance with the provisions of this chapter.
- (b) The provisions of this permit shall not apply to:
 - (1) Spontaneous events;

- (2) Recreational activities, including jogging or walking, that do not require closing public streets or other way and that do not interfere with or have a tendency to interfere with the normal use of any public place open to the general public;
 - (3) Door-to-door advocacy, including canvassing, pamphleteering, religious or political proselytizing, and the distribution of written materials, and similar activities that do not interfere with or have a tendency to interfere with the free passage of pedestrians and vehicles on the public rights-of-way or the normal use of any public property in a place open to the general public.
 - (4) Door-to-door sales of goods or services, and similar activities that do not interfere with or have a tendency to interfere with the free passage of pedestrians and vehicles on the public rights-of-way or the normal use of any public property in a place open to the general public; provided, however, that any persons or organizations engaging in such activities shall comply with any other applicable requirements of the Code of the Town of Berryville.
 - (5) Funeral processions;
 - (6) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;
 - (7) The United States Army, Navy, Air Force, and Coast Guard, the military forces of the state, and the police and fire departments of the town;
 - (8) A governmental agency/agencies acting within the scope of its functions; or
 - (9) Park and recreation areas that are regulated by the town.
- (c) Permits may be granted if they are requested by individuals or organizations who desire to have a permit, even though the permit is not required under this section.

(Ord. of 5-13-08)

Sec. 20-4. - Application.

- (a) Any person desiring to conduct a parade or public assembly shall make written application to the chief of police, or his designee, at least five (5) days prior to such parade or public assembly. Such application shall set forth the following information:
 - (1) The name, address, and telephone number of the person requesting the permit;
 - (2) The name and address of any organization or group the applicant is representing;
 - (3) The name, address, and telephone number of the person who will act as the parade or public assembly leader or chairman and who will be responsible for the conduct of the parade or public assembly;
 - (4) The type of public assembly, including a description of the activities planned during the event;
 - (5) The date and time (start and ending) of the parade or public assembly;
 - (6) If an assembly, the specific location or locations of the assembly;
 - (7) If a parade, the specific assembly and dispersal locations, the specific route, and the plans, if any, for assembly and dispersal;
 - (8) The approximate number of people who, and animals and vehicles which, will constitute such parade or public assembly, and the type of animals and a description of the vehicles;
 - (9) A statement as to whether the parade or public assembly will occupy all or only a portion of the

- width of the streets or sidewalks or other public rights-of-way proposed to be traversed or used;
- (10) A description of any recording equipment, sound amplification equipment, banners, signs, or other attention-getting devices to be used in connection with the parade or public assembly; and
 - (11) Such other information as the chief of police, or his designee, may deem reasonably necessary in order to properly provide for traffic control, street and property maintenance, administrative arrangements, police and fire protection, and for the protection of public health, safety, and welfare.
- (b) The chief of police, or his designee, shall not issue the permit if any material information supplied by the applicant is false or intentionally misleading.
 - (c) The chief of police, or his designee, shall have the authority to and shall make reasonable efforts to consider an application hereunder which is filed less than five (5) days before the date the parade or assembly is proposed to be conducted if, after due consideration of the date, time, place, and nature of the parade or public assembly, the anticipated number of participants, and the town services required in connection with the event, and where good cause is otherwise shown, the chief of police, or his designee, determines that the waiver of the permit application deadline will not present an undue hazard to public safety.

(Ord. of 5-13-08)

Sec. 20-5. - Issuance or denial of permit.

- (a) The chief of police, or his designee, shall issue the permit within three (3) days of receipt of the completed application, and in any event prior to the scheduled parade or public assembly if the proposed parade or public assembly will not endanger the public health, welfare, or safety, applying the following criteria and finding that:
 - (1) The time, duration, route, and size of parade or assembly will not unreasonably interrupt the safe and orderly movement of vehicular or pedestrian traffic or the normal use of public property in a place open to the general public;
 - (2) The parade or assembly is not of such a nature that it will require diversion of so great a number of police and fire personnel to properly police the line of movement in the areas contiguous thereto so as to impair the normal protection of the remainder of the town;
 - (3) The applicant has, where appropriate, designated monitors sufficient to control the orderly conduct of the parade or assembly in conformity with such permit;
 - (4) The conduct of the parade or assembly will not unduly interfere with the proper fire and police protection of, or ambulance service to, the remainder of the town, or unreasonably disrupt other public services and protection normally provided to the town;
 - (5) The parade or assembly will not interfere with another parade or assembly for which a permit has been granted; and
 - (6) The parade or assembly proposed will not violate, and will conform with, all applicable state regulations and laws governing the proposed event.
- (b) For parades or public assemblies held on a regular or recurring basis at the same location, an application for an annual permit covering all such parades or assemblies during the calendar year may be filed with

the chief of police, or his designee, at least five (5) and not more than sixty (60) days before the date and time at which the first such parade or public assembly is proposed to commence. The chief of police, or his designee, may and shall make reasonable efforts to waive the minimum five-day period after due consideration of the factors specified in subsection (c) in the previous section.

- (c) If the chief of police, or his designee, denies an application, he shall promptly mail to the applicant a notice of his action, stating the reasons for his denial of the permit, and notifying the applicant of his right to appeal the denial pursuant to section 20-10 of this chapter.
- (d) If two (2) or more applications are submitted requesting a permit under this chapter for a parade or assembly to be used at the same time and place, the application first filed shall be granted if it meets the requirements of this chapter;
- (e) Nothing in this chapter shall permit the chief of police, or his designee, to deny a permit based upon political, social, or religious grounds, or reasons or based upon the content of the views expressed. Denial of a permit on such grounds is prohibited.

(Ord. of 5-13-08)

Sec. 20-6. - Alternative permit.

The chief of police, or his designee, in denying a permit for a parade or public assembly shall be empowered to authorize the conduct of the parade or assembly on a date, at a time, at a place, or over a route different from that proposed by the applicant. An applicant desiring to accept an alternate permit shall file a written notice of acceptance with the chief of police, or his designee. An alternate permit shall conform to the requirements of and shall have the effect of a permit under this chapter.

(Ord. of 5-13-08)

Sec. 20-7. - Notice to town and other officials.

Immediately upon the issuance of a permit, the chief of police, or his designee, shall send a copy thereof to the following:

- (a) The town manager;
- (b) The town attorney; and
- (c) The John H. Enders Fire and Rescue Company fire chief.

(Ord. of 5-13-08)

Sec. 20-8. - Compliance with directions and conditions.

Every person to whom a permit is issued under this chapter shall substantially comply with all permit terms and conditions and with all applicable laws and ordinances. The parade or assembly chairman or other person heading or leading the parade or assembly shall carry the permit upon his person during the conduct of the parade or assembly, and show the permit when requested to do so.

(Ord. of 5-13-08)

Sec. 20-9. - Revocation of permit.

The chief of police, or his designee, shall have the authority to revoke any permit issued pursuant to this chapter if any material information supplied by the applicant is discovered to be false or intentionally misleading, or if any term, condition, restriction, or limitation of the permit has been substantially violated, or if there is any continued violation of the terms, conditions, restrictions, or limitations of the permit after the applicant or anyone acting in concert with him is notified of a violation of the permit by an appropriate law enforcement official.

(Ord. of 5-13-08)

Sec. 20-10. - Appeal.

- (a) Any person aggrieved by the refusal of the chief of police, or his designee, to grant a permit, or by the revocation of a permit after one has been issued, may appeal the denial or revocation to the town manager, or his designee, by filing with the town manager's office, within five (5) working days after the date of denial or revocation, a written notice of the appeal setting forth the grounds therefore. The town manager, or his designee, shall act upon the appeal within five (5) working days after its receipt.
- (b) The decision of the town manager, or his designee, may be appealed to the Circuit Court of the County of Clarke, in accordance with the laws of the Commonwealth of Virginia.
- (c) In any appeal under this section, the town shall have the burden of demonstrating that the denial or revocation of the permit was justified under section 20-5 of this chapter.

(Ord. of 5-13-08)

Sec. 20-11. - Public conduct during parades, demonstrations, and assemblies.

- (a) *Interference.* No person shall unreasonably hamper, obstruct, impede, or interfere with any parade, demonstration, or assembly, or with any person, vehicle, or animal participating or used in a parade, demonstration or assembly, for which a written permit has been issued in accordance with the provisions of this chapter.
- (b) *Driving through parades.* No driver of a vehicle shall drive between the vehicles, persons, or animals comprising a parade, demonstration, or assembly or funeral procession except when otherwise directed by a police officer. This shall not apply to authorized emergency vehicles.
- (c) *Parking on parade, demonstration, or assembly route.* The chief of police, or his designee, shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the public streets or public rights-of-way constituting a part of the route of a parade, demonstration, or assembly. The chief of police, or his designee, shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this chapter.

(Ord. of 5-13-08)

Sec. 20-12. - Severability.

If any portion of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this chapter and such invalid provisions or portions thereof shall be severable.

(Ord. of 5-13-08)

Sec. 10-7. - General authority of town manager relative to traffic.

- (a) The town manager, except as otherwise provided by this chapter and except as otherwise directed, from time to time, by the council, shall have the power and is hereby authorized to regulate the operation and parking of vehicles within the corporate limits of the town by the erection or placing of proper signs or markers indicating prohibited or limited parking, angle parking, the parking of buses, trucks and other vehicles of various weights, "U" turns, turning at intersections, hazardous intersections, school zones, hospital zones, loading and unloading zones, quiet zones, traffic-control signals exhibiting colored lights or the words "go," "caution" or "stop" and other signs or markers indicating the place and manner of operating or parking vehicles in the town.
- (b) The town manager shall also have the power and is hereby authorized:
 - (1) To regulate the movement of pedestrians upon the streets and sidewalks of the town by the erection or placing of proper signs or markers indicating the flow of pedestrian traffic.
 - (2) To designate bus stops and to erect signs prohibiting the parking of vehicles other than buses at such stops.
 - (3) To mark off traffic lanes on streets and parts of streets indicting and directing the flow of traffic.
 - (4) To designate and mark fire lanes on private property, including alleys in which lanes the parking of vehicles shall be prohibited.
- (c) On proper application, the town manager may assign to taxicab operators such space along the public streets of the town for parking vehicles actively in service in such business as the town manager may deem best suited and to the interest of the public, provided permission of the abutting property owner is secured. Fees for the use of such space shall be as prescribed, from time to time, by the council.
- (d) The town is authorized to secure all signs, signals or markers to be erected or placed on any street or part of a street in order to carry out the purposes of this section.
- (e) The existence of signs, signals or markers referred to in this section at any place within the corporate limits of the town shall be prima facie evidence that such signs, signals or markers were erected or placed by and at the direction of the town manager in accordance with the provisions of this section and it shall be unlawful for any person to disobey the directions of any such sign, signal or marker.
- (f) No sign, signal or marker referred to in this section shall be erected or placed on any street which is a part of the state highway system, without the approval of the state department of highways and transportation.

Chapter 9 - LICENSES

ARTICLE I. - IN GENERAL

Sec. 9-1. - Overriding conflicting ordinances.

Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this governing body, whether or not compiled in the Code of this jurisdiction, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within this locality.

(Ord. of 12-10-96)

Sec. 9-2. - Definitions.

For the purposes of this chapter, unless otherwise required by the context:

Affiliated group means:

- (1) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation if:
 - a. Stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and
 - b. The common parent corporation directly owns stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any

corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

- (2) Two (2) or more corporations if five (5) or fewer persons who are individuals, estates or trusts own stock possessing:
 - a. At least eighty (80) percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and
 - b. More than fifty (50) percent of the total combined voting power of all classes of stock entitled to vote or more than fifty (50) percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one (1) or more of the includable corporations, including the common parent corporation is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

Assessment means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

Assessor or assessing official means the town manager/treasurer of the Town of Berryville.

Base year means the calendar year preceding the license year, except for contractors subject to the provisions of the Code of Virginia, § 58.1-3715, and except for beginning businesses, as set forth in section 9-13 herein.

Business means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

- (1) Advertising or otherwise holding oneself out to the public as being engaged in a particular business; or
- (2) Filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

Contractor shall have the meaning prescribed in § 58.1-3714.B of the Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for thirty (30) consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

Financial Services means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this chapter.

- (1) *Broker* shall mean an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.
- (2) *Commodity* shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.
- (3)

Dealer for purposes of this ordinance shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

- (4) *Security* for purposes of this ordinance shall have the same meaning as in the Securities Act (§ 13.1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

Buying installment receivables

Chattel mortgage financing

Consumer financing

Credit card services

Credit Unions

Factors

Financing accounts receivable

Industrial loan companies

Installment financing

Inventory financing

Loan or mortgage brokers

Loan or mortgage companies

Safety deposit box companies

Security and commodity brokers and services

Stockbroker

Working capital financing

Gross receipts means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia.

State Law reference— Code of Virginia, §§ 58.1-3732, 58.1-3732.1 and 58.1-3732.2.

License year means the calendar year for which a license is issued for the privilege of engaging in business.

Personal services shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this ordinance, or rendered in any other business or occupation not specifically classified in this ordinance unless exempted from local license tax by Title 58.1 of the Code of Virginia.

Those engaged in conducting or rendering personal services include, but without limitation, the following:

Addressing letters or envelopes

Ambulance service

Answering service

Barbershop, beauty parlor, hairdressing establishment

Bicycle repair

Business consulting services (excluding professional services as defined herein)

Business and office machines repair and service

Chartered club

Cleaning chimneys or furnaces

Clinical laboratory

Correspondence establishment or bureau

Day nursery (other than foster homes)

Dental laboratory

Dressmaking, slipcovers, upholstering, drapery or curtain making

Electrical and home appliance repair

Exterminating, fumigating or disinfecting service

Funeral services and crematories

Furniture/upholstery refinishing and repair

Gunsmith or gun repairing

Hauling or transfer (excluding taxicab services)

Hotels, motels, bed and breakfast establishments

House-cleaning service

Janitorial service

Jewelry repair (including watches and clocks)

Job printer, printing shop, duplicating services

Kennel or small animal hospital

Laundry and/or dry cleaning services and establishments

Machine shop or boiler shop

Massage therapy (excluding massage parlors)

Messenger service, excluding telephone or telegraph services

Leasing or renting of motor vehicles, trucks and trailers

Nursing or convalescent home

Packing, crating, shipping, hauling or moving goods or chattel for others

Photographer (excluding non-resident photographic services)

Physicians, registry or nurses' registry

Picture framing or gilding

Private school (other than religious or nonprofit)

Renting any kind of tangible personal property not taxable under another section of this ordinance

Secretarial service

Shoe repair

Storage (all types)

Tire repair

Title insurance company

Tree surgery, trimming and removal

Vehicle and engine repair of any kind

Washing, cleaning, detailing of automobiles

Welding shops and services

In addition, any service rendered for compensation to any business, trade or occupation licensed under this chapter or to any governmental agency, unless such service is specifically provided for under another section of this chapter; any other personal service occupations, including any service rendered for compensation to private individuals, not provided for in another section of this chapter; and any other repair service, including repairing, renovating or servicing any article or item of personal property, unless such service is specifically provided for in another section of this chapter.

Professional services means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may list in the BPOL guidelines promulgated pursuant to § 58.1-3701 of the Code of Virginia. The department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and

in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

Purchases shall mean all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

Real estate services shall mean rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this ordinance, and such services include, but are not limited to, the following:

Appraisers of real estate

Escrow agents, real estate

Fiduciaries, real estate

Lessors of real property, excluding any person, firm or corporation engaged 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

Real estate agents, brokers and managers

Real estate selling agents

Rental agents for real estate.

Retailer or Retail merchant shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

Services shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

Wholesaler or Wholesale merchant shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

(Ord. of 12-10-96)

Sec. 9-3. - License Requirement.

- (a) Every person engaging, within the Town of Berryville, in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this ordinance, unless otherwise exempted by law, shall apply for a license for each such business if (i) such person maintains a definite place of business in this jurisdiction, (ii) such person does not maintain a definite office anywhere but does maintain an abode in the Town of Berryville, which abode for the purposes of this ordinance shall be deemed a definite place of business, or (iii) there is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in §§ 58.1-3717, 3718, or 3728, respectively of the Code of Virginia, or is a contractor subject to § 58.1-3715 of the Code of Virginia, or is a public service corporation subject to § 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business. A person engaged in two (2) or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.
- (b) Each person subject to a license tax shall apply for a license prior to beginning business, if he was not subject to licensing in this jurisdiction on or before January first of the license year, or no later than March first of the current license year if he had been issued a license for the preceding license year. The application shall be

on forms prescribed by the assessing official. The license application for beginning businesses shall be in accordance with the provisions of section 9-13 of this chapter.

- (c) The tax shall be paid with the application for the required license.
- (d) The assessing official may grant an extension of time, not to exceed ninety (90) days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten (10) percent of the portion paid after the due date.
- (e) A penalty of ten (10) percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Any such penalty when so assessed shall become a part of the tax. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within thirty (30) days the treasurer may impose a ten (10) percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

Acted responsibly means that:

- (1) The taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and
- (2)

The taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

Events beyond the taxpayer's control, include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

- (f) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment, at a rate not to exceed ten (10) percent per year. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this ordinance from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged.

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than thirty days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.

(Ord. of 12-10-96)

State Law reference— Code of Virginia, § 58.1-3916.

Sec. 9-4. - Situs of gross receipts.

(a)

General rule. Whenever the tax imposed by this chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

- (1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of § 58.1-3715 of the Code of Virginia.
- (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two (2) or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.
- (3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.
- (4)

The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

- (b) *Apportionment.* If the licensee has more than one (1) definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule (and the affected jurisdictions are unable to reach an apportionment agreement), except as to circumstances set forth in § 58.1-3709 of the Code of Virginia, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.
- (c) *Agreements.* The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than one hundred (100) percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

(Ord. of 12-10-96)

Sec. 9-5. - Limitations and extensions.

- (a)

Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this ordinance, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

- (b) Notwithstanding § 58.1-3903 of the Code of Virginia, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six (6) preceding years.
- (c) The period for collecting any local license tax shall not expire prior to the period specified in § 58.1-3940 of the Code of Virginia, two (2) years after the date of assessment if the period for assessment has been extended pursuant to this subdivision, two (2) years after the final determination of an appeal for which collection has been stayed pursuant to Section 9-6(b) or 9-6(d) of this ordinance, or two (2) years after the final decision in a court application pursuant to § 58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later.

(Ord. of 12-10-96)

Sec. 9-6. - Appeals and rulings.

- (a) Any person assessed with a licensing tax under this ordinance as the result of an audit may apply within ninety (90) days from the date of the assessment to the assessing official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be

accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed, including the name and address to which an application should be directed.

- (b) Provided an application is made within ninety (90) days of an assessment, collection activity shall be suspended until a final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subsection 9-3(f) of this ordinance, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.
- (c) Any person assessed with a license tax under this ordinance as a result of an audit may apply within ninety days of the determination by the assessing official on an application pursuant to subsection 9-6 (a) above to the tax commissioner for a correction of such assessment. The tax commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to § 58.1-1821 of the Code of Virginia, and the tax commissioner may issue an order correcting such assessment pursuant to § 58.1 - 1822 of the Code of Virginia. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984 of the Code of Virginia. However, the burden shall be on the party making the application to show that the ruling of the tax commissioner is erroneous. Neither the tax commissioner nor the department of taxation shall be made a party to an application to correct an assessment merely because the tax commissioner has ruled on it.
- (d) On receipt of a notice of intent to file an appeal to the tax commissioner under subsection 9-6 (c) above, the assessing official shall further suspend collection activity until a final determination is issued by the tax commissioner, unless the assessor determines that collection would be jeopardized by delay or that the

taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subsection 9-3 (f), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subsection 9-6(b) above.

- (e) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

(Ord. of 12-10-96)

Sec. 9-7. - Recordkeeping and audits.

Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

(Ord. of 12-10-96)

Sec. 9-8. - Exclusions and deductions from gross receipts.

(a)

General rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) The following items shall be excluded from gross receipts:

- (1) Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, or for any federal or state excise taxes on motor fuels.
- (2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- (3) Any amount representing returns and allowances granted by the business to its customer.
- (4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.
- (5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
- (6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.
- (7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.
- (8)

Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

- (b) The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:
 - (1) Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.
 - (2) Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

(Ord. of 12-10-96)

Sec. 9-9. - License not to be issued contrary to zoning regulations.

The town treasurer shall not issue a license for conducting any business, profession, trade or occupation at a location where the conduct of such business, profession, trade or occupation is prohibited by the zoning regulations of the town. All such licenses shall be subject to verification to ascertain compliance with the zoning regulations. Failure to comply shall be just cause for immediate revocation of the license by the town treasurer.

(Ord. of 12-10-96)

Sec. 9-10. - Display of license.

The license form issued by the town to show payment of the license tax imposed by any section of this chapter shall be displayed in a conspicuous place at the regular place of business of the licensee, which license shall be produced by the licensee on the request of any authorized enforcement officer of the town for inspection. All licensees who maintain no regular place of business within the town shall produce the license form to show payment of the license tax within a reasonable period of time following such request for inspection by any authorized enforcement officer of the town.

(Ord. of 12-10-96)

Sec. 9-11. - License to be personal privilege; suspension.

Every license issued pursuant to this chapter shall be deemed to confer a personal privilege to transact, carry on or conduct the business, trade or occupation which is subject to the license, and shall not be exercised except by the person licensed. If it is determined that the person to whom the license has been issued has transferred the same, except as prescribed in Section 9-12 herein, or if the town treasurer has cause to believe that such person is otherwise abusing the privilege for which the license was issued, the treasurer may suspend such license. Such suspension shall remain in effect until the causes are removed.

(Ord. of 12-10-96)

Sec. 9-12. - Transfer of license.

- (a) Licenses issued pursuant to this chapter shall be transferable, except where otherwise provided, only where the business for which the license was issued has been sold or disposed of, but is to be continued by the purchaser or transferee within the Town of Berryville, whether at the same location or some other location. In no case shall any transfer of a license be legal or valid unless notice in writing of such transfer shall have been provided to the treasurer, which notice shall contain the name, trade name, if any, and the address of the proposed transferee, the proposed new location, if any, and the time of the proposed transfer, and unless the town treasurer shall have approved the transfer in writing on the license.

(b)

It is specifically provided that, if the transferor's license for the current year was based on an estimate of gross receipts, as provided in Section 9-13 herein, the transferor shall reveal his gross receipts for the period he was in business during the current license year. If the accumulation of gross receipts by the transferor shall exceed the original estimate, the license shall be amended and any additional tax payable thereon shall be paid prior to any such transfer of the license.

- (c) The town treasurer shall collect a ten dollar (\$10.00) administrative fee for each such license transfer, and shall keep a record of all transfers pursuant to this section.
- (d) No person shall transfer or attempt to transfer a license contrary to the provisions of this section.

(Ord. of 12-10-96)

Sec. 9-13. - Estimate of gross receipts for beginners.

- (a) Every person beginning a business, profession, trade or occupation which is subject, under the provisions of this chapter, to a license tax based in whole or part on gross receipts, shall estimate the amount of the gross receipts he will receive between the date of beginning business and the end of the then current license year and his license tax for the then current year shall be computed on such estimate.
- (b) Whenever a license tax is computed upon estimated gross receipts pursuant to this section, any erroneous estimate shall be subject to correction and the town treasurer shall assess such person with any additional license tax found to be due after the end of that license year and shall, at the same time, correct the estimate for the then current year, until a full year of operation has been completed. In case of an overestimation, the taxpayer shall be entitled to a refund of the tax in excess of his assessed liability. The refund shall be computed in accordance with the provisions of Section 9-3 (f) of this chapter.

(Ord. of 12-10-96)

Sec. 9-14. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 3 misdemeanor if the amount of the tax lawfully assessed is one thousand dollars (\$1000.00) or less, or a Class 1 misdemeanor if the amount of the tax lawfully assessed is more than one thousand dollars (\$1000.00).

(Ord. of 12-10-96)

Cross reference— § 58.1-3916.

Secs. 9-15—9-25. - Reserved.

ARTICLE II. - LICENSE TAX SCHEDULE

Sec. 9-26. - License fee and tax.

Every person or business subject to licensure under this chapter shall be assessed and required to pay annually:

- (1) A fee for the issuance of such license in the amount of twenty dollars (\$20.00), provided that payment of a license fee shall not be required when the license tax assessed upon such person or business exceeds twenty dollars (\$20.00).
- (2) Except as may be otherwise provided in §§ 58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, every such person or business with annual gross receipts of more than twenty thousand dollars (\$20,000.00) shall be assessed and required to pay annually a license tax as provided in this chapter at a rate set forth below for the class of enterprise listed:
 - a. For contractors and persons constructing for their own account for sale, twelve cents (\$0.12) per one hundred dollars (\$100.00) of gross receipts;
 - b. For retailers, twelve cents (\$0.12) per one hundred dollars (\$100.00) of gross receipts;
 - c. 1.
For financial services, twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts;

2. For real estate and professional services, twenty-five cents (\$0.25) per one hundred dollars (\$100.00) of gross receipts;
- d. 1. For repair services, ten cents (\$0.10) per one hundred dollars (\$100.00) of gross receipts;
2. For personal and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, fifteen cents (\$0.15) per one hundred dollars (\$100.00) of gross receipts;
- e. For wholesalers, five cents (\$0.05) per one hundred dollars (\$100.00) of purchases (see § 58.1-3716 of the Code of Virginia for limitations);
- f. For carnivals, circuses and speedways, one hundred dollars (\$100.00) per day for each performance held in this jurisdiction (see § 58.1-3728 of the Code of Virginia for limitations);
- g. For fortune-tellers, clairvoyants and practitioners of palmistry, one thousand dollars (\$1000.00) per year;

State Law reference— Code of Virginia, § 58-1-3726

- h. For massage parlors having more than two (2) persons engaged as a masseuse or masseur, five thousand dollars (\$5000.00) per year;
- i. For itinerant merchants or peddlers pursuant to Section 58.1-3717 of the Code of Virginia, one hundred dollars (\$100.00) per year; provided, however, that itinerant merchants or peddlers participating in a community event officially sanctioned or sponsored by a charitable nonprofit organization or a nonprofit organization exempt from federal income tax under Internal Revenue Service Code Section 501(c)(3) may be exempted from the license and license tax requirement provided the qualified sponsoring organization of such community event has obtained one (1) "umbrella" license on behalf of all the itinerant merchant/peddler participants in such event, and provided further that the sponsoring organization has furnished a complete list of all such participants to the town treasurer prior to such community event.
- j. For non-resident photographers pursuant to Section 58.1-3727 of the Code of Virginia, thirty dollars (\$30.00) per year;

- k. For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of ten thousand (10,000) persons, open to the public, one thousand dollars (\$1000.00) per year;

State Law reference— Code of Virginia, § 58.1-3729.

- l. For savings and loan associations and credit unions, fifty dollars (\$50.00) per year;

State Law reference— Code of Virginia, § 58.1-3730.

- m. For direct sellers as defined in § 58.1-3719.1 of the Code of Virginia with total annual sales in excess of four thousand dollars (\$4,000.00), twelve cents (\$0.12) per one hundred dollars (\$100.00) of total annual retail sales or five cents (\$0.05) per one hundred dollars (\$100.00) of total annual wholesale sales, whichever is applicable.
- n. For operators of general amusements, including, without limitation, arcades or buildings devoted to general amusement or entertaining, amusement parks, billiards or pool, bowling alleys, golf driving ranges, miniature golf courses, theatres, skating rinks or other sports facilities operated for profit, or for any person providing any type of entertainment or show for which compensation is received, excluding such entertainment or shows sponsored by a recognized nonprofit community service organization or as may not be otherwise specifically provided for or exempted under another section of this chapter or the Code of Virginia, thirty cents (\$0.30) per one hundred dollars (\$100.00) of gross receipts.
- o. For manufacturers, millers and processors, provided, however, that no license fee or tax shall be imposed or levied upon a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture, fifteen cents (\$0.15) per one hundred dollars (\$100.00) of gross receipts.
- p. For certain public service corporations (heat, light, power and gas, telephone and telegraph companies), one-half of one percent (0.005) of the gross receipts of such company accruing from sales to the ultimate consumer in the Town of Berryville, provided, however, that gross receipts shall exclude the following:

1. In the case of telephone companies, charges for long distance telephone calls, charges for services provided to the government of the United States or the Commonwealth of Virginia and their officers or agents, or local exchange revenues from coin-operated telephones;
2. In the case of heat, light, power and gas companies, charges for services furnished to federal, state and local authorities and sales for resale to other electric companies.

(Ord. of 12-10-96)

State Law reference— Code of Virginia, § 58.1-3731.

Secs. 9-27—9-30. - Reserved.

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.

AN ORDINANCE REPEALING AND REPLACING CHAPTER 20 AND AMENDING CHAPTERS 9
AND 10 OF THE CODE OF THE TOWN OF BERRYVILLE

BE IT ORDAINED, by the Council of the Town Of Berryville, that Chapter 20 – Assemblies, Demonstrations, and Parades, of the Code of the Town of Berryville be repealed and readopted as Chapter 20 – Special Events, as provided on the attached document.

BE IT FURTHER ORDAINED, by the Council of the Town of Berryville, that Chapter 9 – Licenses, be amended as provided on the attached document so as to 1) renumber Section 9-34 – Exemptions from local license taxes and fees to Section 9-40, create a new Section 9-34 – Carnivals, circuses, speedways; penalties; certain restrictions, and reserve Sections 9-35 through 9-39.

BE IT FURTHER ORDAINED, by the Council of the Town of Berryville, that Chapter 10 – Motor Vehicles and Traffic be amended as provided on the attached document, so as to add Section 10-7-(b)-(5) that provides the Town Manager authority to close streets in accordance with Special Events and Demonstrations Regulations adopted in conformance with Chapter 20 –Special Events, of the Code of the Town of Berryville.

I HEREBY CERTIFY THAT THE FOREGOING Ordinance was duly adopted by the Council of the Town of Berryville in meeting assembled October 8, 2019 and will become effective on November 1, 2019.

Signed: _____
Patricia Dickinson, Mayor

Date: October 8, 2019

Attest: _____
Harry L. Arnold, Jr., Recorder

Date: October 8, 2019

May 17, 2019

Sec. 20-1. - Purpose.

The purposes of this article are to:

- (a) To establish procedures and standards governing the use of public property by non-town organizations and individuals for the purpose of conducting events, and to ensure the preservation of public convenience in the use of town streets and outdoor areas, the preservation of public order and safety, and the defraying of administrative expenses associated with certain types of uses; and,
- (b) To protect the right of persons and groups to organize and participate in peaceful assemblies to express their political, social, religious, or other views on town streets, sidewalks, other public ways, parks, and other public lands, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in such assemblies in not having their ability to use town streets, sidewalks, and other public ways to travel to their intended destinations, city parks for recreational purposes, and other town lands for their intended purposes unreasonably impaired.
- (c) The application of the provisions of this article, and any rules and regulations adopted pursuant to these provisions, shall be without regard to the content of the beliefs expressed or anticipated to be expressed during any permitted event.

Sec. 20-2. - Definitions.

Community event means the events listed in section E(21) of the Town of Berryville Regulations for Events and Demonstrations, and such other events designated by town council as "community events" from time to time.

Demonstration means an event involving non-commercial expression protected by the First Amendment of the United States Constitution (such as picketing, political marches, speechmaking, vigils, walks, etc.) conducted on public property, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual activity by persons which does not have an intent or propensity to attract a crowd or onlookers.

Event may refer either to a demonstration or a special event, or to demonstrations and special events, collectively.

Open burning and *open fire* have the same meaning as set forth in this Code section 6-1.

Open flame means fire whose flame is supported by a wick, oil or other slow-burning means to sustain itself. "Open flame" includes, but is not limited to, flame producing devices such as candles, torches, and juggling or other fire artist equipment; provided, however, that "open burning and open fire" and "open flame" shall not include handheld candles when used for ceremonial purposes, provided that they are not held or used in an intimidating, threatening, dangerous or harmful manner.

Prohibited items shall mean:

- (1) All items prohibited by law from being held, carried, displayed, worn or otherwise used in public;
- (2) Items banned from public or park lands;
- (3) Any BB guns, pellet guns, air rifles or pistols, paintball guns, pellet guns, nun chucks, tasers, stun guns, heavy gauge metal chains, lengths of lumber or wood, poles, bricks, rocks, metal beverage or food cans or containers, glass bottles, axes, axe handles, hatchets, ice picks, acidic or caustic materials, hazardous, flammable, or combustible liquids, dogs (except service dogs), skateboards, swords, knives, daggers, razor blades or other sharp items, metal pipes, pepper or bear spray, mace, aerosol sprays, catapults, wrist rockets, bats, sticks, clubs, drones, explosives, fireworks, open fire or open flames, or other item considered an "implement of riot";

May 17, 2019

- (4) Any items capable of inflicting bodily harm when these items are held or used in an intimidating, threatening, dangerous or harmful manner; and
- (5) Law enforcement or military-like uniforms or uniform-like clothing, badges, insignia, shields, hats, helmets, masks, equipment and other items that when held, carried, displayed or worn tend to suggest or imply that the wearer is a current member of law enforcement, the military, a private militia, or other public safety organization, such as a fire department or emergency medical services agency.

Special event means sports events, pageants, celebrations, historical reenactments, carnivals, music festivals and other entertainments, exhibitions, dramatic presentations, fairs, festivals, races (i.e., runs/walks), block parties, parades and other, similar activities, conducted on public property, which (i) are not demonstrations, and (ii) are engaged in by twenty five (25) or more persons. The term "special event" shall be construed to include a community event or private organization celebration held in or on town-owned property and is attended by more than twenty five (25) people. The term "special event" shall exclude gatherings of ten (10) or more people in a park for general recreational or sports activities.

Sponsor means the person (as defined above) or persons who sign, or whose authorized representative(s) sign, an application for an event permit and who will be responsible under the permit, if issued, for ensuring that the event will be conducted in accordance with these regulations. Where a purported sponsor is not a legal entity, the sponsor shall be the individual(s) signing the permit application.

Sec. 20-3. - Permit required.

- (a) The town manager is authorized to adopt standard operating procedures that establish a permit application process. The procedures shall also provide for the grant or denial of permit applications within specified times; establish the grounds for revocation of an approved permit; provide for the application of reasonable time, place and manner regulations for permitted events; establish reasonable fees, charges, rentals and insurance and indemnification requirements; and restrict the possession or use of prohibited items, as defined herein, during the event.
- (b) Any person intending to hold or sponsor an event on any town-owned or leased property must first obtain a permit, unless:
 - (1) The event is exempt from permitting requirements under the standard operating procedures promulgated by the town manager; or
 - (2) Such person is holding or sponsoring such event pursuant to a valid permit issued by the town manager pursuant to another chapter of this Code.
- (c) By accepting a permit issued by the town pursuant to this article, the sponsor represents that:
 - (1) All information included or presented as part of the permit application was, to the best of the sponsor's information and belief, complete and correct;
 - (2) That all terms and conditions of such permit have been or will be complied with; and
 - (3) That a copy of the permit will be made available for inspection by any town representative during the event.

Sec. 20-4. - Insurance requirements.

- (a) To further the goal of public safety and to protect the town and its officers, officials and employees from claims for damage to property or bodily injury occurring during the event, the sponsor of an event shall be required to furnish a general liability and property damage insurance contract insuring the sponsor's liability for personal injury and death and damages to property resulting from its use of public property. The required general liability and property damage insurance, unless waived in whole or in part, shall be provided in an amount not less than one million dollars (\$1,000,000.00),

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and the insurance policy shall name the town (including its officers, officials, employees and agents), as additional insured parties to the insurance contract.

- (b) This insurance requirement may be waived, in whole or in part, by the town manager or his or her designee because:
 - (1) The cost of the insurance will result in a documented financial hardship to the sponsor; or
 - (2) For an event that:
 - a. Does not pose a high level of liability risk to the town or a material risk to public safety; and
 - b. Does not involve any inherently dangerous activity.

A written request to waive or modify any insurance requirement must be made by the sponsor at the time a permit application is submitted. An approval or denial of the request will be made in writing to the event sponsor.

- (c) The decision on whether the insurance requirement will be waived in whole or in part will be based on the following factors:
 - (1) Whether the event and planned activities present a risk of personal injury or property damage;
 - (2) Whether the event involves a large number of participants relative to the size of the event venue;
 - (3) Whether the event involves the preparation and sale of food;
 - (4) The duration of the event; and
 - (5) Whether the event involves transportation or installation of heavy equipment, or the installation of a stage or other temporary structures. Provided however, that, in deciding whether insurance will be required or waived for a demonstration the town manager or his or her designee shall not consider the number of anticipated onlookers or counter-demonstrators, the potential risk of property damage or bodily injury that may be caused by onlookers or counterdemonstrators, nor the possibility that the demonstration will be controversial in nature.

Sec. 20-5. - Violations and penalties.

The following conduct is declared to be unlawful and shall be, upon conviction, punishable as a class IV misdemeanor, unless a greater penalty is authorized and imposed in any other chapter of this Code or by the laws of the Commonwealth of Virginia:

- (a) Sponsoring, holding or conducting an event for which a permit is required, without first obtaining a permit;
- (b) Sponsoring, holding or conducting a permitted event on days or at times not authorized by the permit;
- (c) Intentionally providing false, misleading or incomplete information in a permit application;
- (d) Failing to comply with any terms or conditions placed on a permit;
- (e) The failure to comply during an event with any lawful directive of a law enforcement officer, or with any lawfully posted public sign, direction or instruction;
- (f) Climbing, during an event, upon any tree, or any wall, fence, shelter, fountain, statue, or any other structure not specifically intended for climbing purposes;
- (g) Rendering any part of an event venue dangerous, unsafe or unsuitable for use by others;
- (h) Closing any street or public right-of-way during an event, or using any street or right-of-way in a manner that obstructs vehicular or pedestrian passage during an event, without first obtaining a street closing permit;

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- (i) Holding, carrying, displaying or using any prohibited item as defined herein within the area where a permitted event is taking place, without the prior written consent of the town manager or his or her designee;
- (j) Throwing or propelling objects of a potentially dangerous nature during an event, including but not limited to rocks, bottles, sticks, staffs, glass objects or cans;
- (k) Engaging in a course of conduct or committing any act that endangers the public welfare or safety of others during an event;
- (l) Damaging landscaping, plantings, improvements, equipment or structures located on town property where an event is being held.
- (m) Unreasonably hampering, obstructing, impeding, or interfering with any parade, demonstration, assembly, or event; or with any person, vehicle, or animal participating or used in a parade, demonstration, assembly, or event, for which a written permit has been issued in accordance with the provisions of this chapter.

In addition to the criminal sanctions authorized herein, any person engaging in the unlawful conduct proscribed by this section, or who violates any section in this article, may also be held civilly liable for any damages or loss, and may be banned from the future use of town-owned property for a specified period of time.

Sec. 10-7. - General authority of town manager relative to traffic.

- (a) The town manager, except as otherwise provided by this chapter and except as otherwise directed, from time to time, by the council, shall have the power and is hereby authorized to regulate the operation and parking of vehicles within the corporate limits of the town by the erection or placing of proper signs or markers indicating prohibited or limited parking, angle parking, the parking of buses, trucks and other vehicles of various weights, "U" turns, turning at intersections, hazardous intersections, school zones, hospital zones, loading and unloading zones, quiet zones, traffic-control signals exhibiting colored lights or the words "go," "caution" or "stop" and other signs or markers indicating the place and manner of operating or parking vehicles in the town.
- (b) The town manager shall also have the power and is hereby authorized:
 - (1) To regulate the movement of pedestrians upon the streets and sidewalks of the town by the erection or placing of proper signs or markers indicating the flow of pedestrian traffic.
 - (2) To designate bus stops and to erect signs prohibiting the parking of vehicles other than buses at such stops.
 - (3) To mark off traffic lanes on streets and parts of streets indicting and directing the flow of traffic.
 - (4) To designate and mark fire lanes on private property, including alleys in which lanes the parking of vehicles shall be prohibited.
 - (5) To close streets pursuant to permits approved for Special Events and Demonstrations under the Town's Regulations for Special Events and Demonstrations.
- (c) On proper application, the town manager may assign to taxicab operators such space along the public streets of the town for parking vehicles actively in service in such business as the town manager may deem best suited and to the interest of the public, provided permission of the abutting property owner is secured. Fees for the use of such space shall be as prescribed, from time to time, by the council.
- (d) The town is authorized to secure all signs, signals or markers to be erected or placed on any street or part of a street in order to carry out the purposes of this section.
- (e) The existence of signs, signals or markers referred to in this section at any place within the corporate limits of the town shall be prima facie evidence that such signs, signals or markers were erected or placed by and at the direction of the town manager in accordance with the provisions of this section and it shall be unlawful for any person to disobey the directions of any such sign, signal or marker.
- (f) No sign signal or marker referred to in this section shall be erected or placed on any street which is a part of the state highway system, without the approval of the state department of highways and transportation.

- (g) The town manager shall have the authority to remove, or to order the removal of, any sign not erected by the Town which the town manager finds mimics or is similar to town or state erected traffic signs, street name signs, or directional signs and could reasonably confuse or mislead motorists, emergency response personnel, or the public generally. If such sign is erected on private property, the town manager shall provide written notice to the property owner to remove the sign, and if the sign is not removed within seven (7) days of the providing of the notice, the Town may remove the sign and expenses thereof shall be chargeable to and paid by the owner of such property.

(Code 1971, §§ 11-3, 11-38, 11-58)

State Law reference – Authority for above section, Code of Virginia § 46.2-1300

Sec. 9-34. - Carnivals, circuses, speedways; penalties; certain restrictions.

- (a) A license tax of \$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 \$50.00 nor more than \$500.00 for each offense.

In addition to any other license tax imposed by this section, a license tax of \$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 15 days previous to, or during the week of, or within one 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 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 \$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 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.

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

APPENDIX A

Special Events and Demonstrations Fee Schedule

1. Event Permit Application Fee (pay upon application) \$25.00 (non-refundable)
2. Street Closure Fee (pay upon application) \$100.00 (non-refundable)
3. Gazebo Security Deposit (pay upon application) \$50.00
4. Public Space Rent (events to which entry is limited by tickets or admission fees)

0 – 1,000 attendees	\$50.00
1,001 – 1,999 attendees	\$100.00
2,000 – 2,999 attendees	\$150.00
3,000 attendees and up	\$500.00

\$50.00 due with application. Remainder of Public Space Rent to be submitted to the Town within five (5) calendar days following conclusion of the event, along with documentation of total ticket sales or attendance count. The Town may monitor attendance to verify attendance numbers.

5. Electricity Fee \$50.00 Advance deposit

Advance deposit covers first four (4) hours of use. Sponsor will be billed \$10.00 per hour for each additional hour of actual usage.

6. "No Parking" Signs \$1.00 per sign – Billed
7. Building Permit Fee (Tent) Contact Clarke County Building Department
8. Amusement Ride Inspections Contact Clarke County Building Department
9. Public Works Fee \$100.00 Advance deposit

Advance deposit covers first two (2) hours of labor associated with event. Sponsors will be billed \$50.00 per hour for each additional hour of labor that is provided.

10. Public Safety Personnel

\$50.00 per required Officer, Advance deposit
(Refundable up to 24 hours prior to Event)

- Deposit due with application
- For ticketed events, where tickets are sold in advance an additional \$50.00 deposit required per required officer/technician, as calculated based on tickets sold as of 48 hours prior to the Event. The additional deposit is due 24 hours in advance of the Event.
- Sponsor will be billed per hour for each officer/technician actually utilized (based on police / fire / EMS estimates of actual attendance and/or circumstances of the event and based on the regular hourly rates or salaries for the police/fire/EMS personnel utilized).
- *Hourly Rates:* The Sponsor will be billed the higher of: (i) \$30.00 per hour, or (ii) the established hourly wage for overtime work, or (iii) the special event flat rate for FSLA exempt employees, as may apply for each of the particular officer(s)/technician(s) willing and available to cover the event, for each officer/technician actually utilized, plus an administrative fee in the amount of ten percent (10%) of the total billed amount.

11. Public Safety Vehicle Fee

\$25.00 per required vehicle – Billed

12. Cleanup Fee

- Closed Event (Admission limited by tickets or fees) \$300.00 Advance Deposit
Refundable if Event cancelled in advance
- Other Events \$100.00 Advance Deposit
Refundable if Event cancelled in advance

13. Approval

The schedule of fees contained above were approved and adopted by action of the Town of Berryville Council on October 8, 2019.



Regulations for Special Events and Demonstrations

05/2019

The following document establishes new guidelines concerning processes associated with events and demonstrations conducted on public property. These guidelines and processes reference existing ordinances of the Town of Berryville, State Code, Planning and Zoning Ordinances of the Town of Berryville and Clarke County Building Department Regulations.

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Regulations for Special Events and Demonstrations on Town Property

I. PURPOSES

To establish procedures and standards governing the use of public property by non-Town organizations and individuals for the purpose of conducting events, and to ensure the preservation of public convenience in the use of town streets and outdoor areas, the preservation of public order and safety, and the defraying of administrative expenses associated with certain types of uses.

To protect the right of persons and groups to organize and participate in peaceful assemblies to express their political, social, religious, or other views on Town streets, sidewalks, other public ways, parks, and other public lands, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in such assemblies in not having their ability to use Town streets, sidewalks, and other public ways to travel to their intended destinations, Town park for recreational purposes, and other Town lands for their intended purposes unreasonably impaired.

II. TOWN DEPARTMENTS/ORGANIZATIONS AFFECTED

The Town Manager, directly or through the Town Clerk, shall manage the scheduling of events on Town-owned property. The Town Planning Department, Police, Public Works, Virginia Department of Transportation (VDOT), John H. Enders Fire & Rescue, and Clarke County Fire & Rescue shall have an opportunity to review event applications and propose reasonable time, place and manner modifications thereto and conditions thereon in keeping with these ordinances and the purposes stated in section I above.

III. POLICY

A. Definitions

"Advertising" and "Advertisement" shall mean anything containing any words, symbols, pictures and/or logos directing attention to any business or to any commodity or service for sale to the public; excluding, however: (i) a price sign, a sign or logo identifying the name of a vendor and item being sold by that vendor, when such signs are located within an area specifically delineated as part of an event and the vendor holds a valid permit, (ii) a sign or logo naming the sponsor(s) of an event, and (iii) stands or vehicles with semi-permanent or permanently installed signs, if being used for authorized recreational activities or events.

"Commercial Activity" means performing services or providing goods that can normally be obtained from private enterprise.

"Community event" shall mean events designated by Town Council or Town Manager as "community events" from time to time.

"Demonstration" shall refer to non-commercial expressions protected by the First Amendment of the United States Constitution (such as picketing, political marches, speechmaking, vigils, walks, etc.) conducted on public property, the conduct of which has

the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual activity by persons which does not have the intent or propensity to attract a crowd or onlookers.

"Event" may refer to a demonstration, community event or a special event, or to demonstrations, community events and special events, collectively.

"Events Liaison" means the Town Clerk, or another person designated by the Town Manager.

"Open burning and open fire" have the same meaning as set forth in the Berryville Town Code § 6-1.

"Open flame" means fire whose flame is supported by wick, oil or other slow burning means to sustain itself. "Open flame" includes, but is not limited to, flame producing devices such as candles, torches, and juggling or other fire artist equipment; provided, however, that "open burning and open fire" and "open flame" shall not include handheld candles when used for ceremonial purposes, provided that they are not held or used in an intimidating, threatening, dangerous or harmful manner.

"Person" shall mean and include any individual, corporation, Limited Liability Company, partnership, limited partnership, association, company, business, non-profit company, trust, joint venture or other legal entity.

"Prohibited Items" shall mean (i) all items prohibited by law from being held, carried, displayed, worn or otherwise used in public, (ii) items banned from public or park lands, (iii) any BB guns, pellet guns, air rifles or pistols, paintball guns, pellet guns, nun chucks, tasers, stun guns, heavy gauge metal chains, lengths of lumber or wood, poles, bricks, rocks, metal beverage or food cans or containers, glass bottles, axes, axe handles, hatchets, ice picks, acidic or caustic materials, hazardous, flammable, or combustible liquids, dogs (except service dogs), skateboards, swords, knives, daggers, razor blades or other sharp items, metal pipes, pepper or bear spray, mace, aerosol sprays, catapults, wrist rockets, bats, sticks, clubs, drones, explosives, fireworks, open fire or open flames, or other item considered an "implement of riot", (iv) any items capable of inflicting bodily harm when these items are held or used in an intimidating, threatening, dangerous or harmful manner, and (v) law enforcement or military-like uniforms or uniform-like clothing, badges, insignia, shields, hats, helmets, masks, equipment and other items that when held, carried, displayed or worn tend to suggest or imply that the wearer is a current member of law enforcement, the military, a private militia, or other public safety organization, such as a fire department or emergency medical services agency.

"Special event" shall refer to sports events, pageants, celebrations, historical reenactments, circus, carnivals, music festivals and other entertainments, exhibitions, dramatic presentations, fairs, festivals, races (i.e., runs/walks), block parties, parades and other, similar activities, conducted on public property, which (i) are not demonstrations, and (ii) are engaged in by 25 or more persons. The term "special event" shall be construed to include a community event or private organization celebration held in or on town-owned property and is attended by more than 25 people. The term "special event" shall *exclude* gatherings of ten or more people in a park for general recreational or sports activities.

"Sponsor" shall mean the person (as defined above) or persons who sign, or whose authorized representative(s) sign, an application for an event permit and who will be responsible under the permit, if issued, for ensuring that the event will be conducted in accordance with these regulations. Where a purported sponsor is not a legal entity, the sponsor shall be the individual(s) signing the permit application.

"Streets" shall mean public streets, sidewalks, walkways, alleys, lanes and highways in the Town.

"Structure" shall mean and include props and displays (such as, but not limited to: crates, crosses, theaters, cages, and statues); furniture and furnishings (such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns); shelters (such as tents, boxes, inflatables, booths and other enclosures); wagons and carts; and all other similar types of property which might tend to harm Town land or street areas, including aesthetic interests.

B. Permit Requirements

- (1) Events may be held only pursuant to a permit issued by the Town Manager, with the following exceptions: events involving fewer than 25 persons where no space is requested to be reserved, or demonstrations which occur without prior planning or announcement for the purpose of an immediate and spontaneous response to a news-worthy occurrence, may take place without a permit if (i) it is otherwise a lawful assembly conducted in accordance with the regulations set forth in sections III E(1) through III E(3) and sections III E(6) through III E(15) herein, (ii) the group will not unreasonably interfere with other events scheduled or taking place concurrently, and (iii) the demonstration does not block streets or access to Town property; and (iv) the demonstration does not pose a threat to public safety. Without limitation of the foregoing, demonstrations taking place in response to a news-worthy occurrence more than 48 hours after such news-worthy occurrence will not qualify as spontaneous demonstrations, even without prior planning or announcement, and sponsors of events outside this window must apply for and receive a permit for an event expected to draw 25 or more persons.

- (2) Wherever these regulations specify that a particular use or activity may be conducted only pursuant to a permit, such permit shall be required in order for that use or activity to be lawful.

C. Permit Applications

- (1) Permit applications may be obtained from the Events Liaison. Inquiries regarding use of Rose Hill Park may also be directed to the Events Liaison.
- (2) Applications for permits shall be submitted by the event sponsor in writing, on a form provided by the Town, so as to be received by the Events Liaison at least (i) thirty (30) business days in advance of any event, if not requiring street closure, removal of parking, or provision of public safety personnel, or (ii) sixty (60) business days in advance of any event, if requiring street closure, removal of parking, or provision of public safety personnel. These periods may be reduced by the Town Manager with respect to demonstrations only if, upon consultation with the Police Chief, Fire Chief or other appropriate public safety officials, the size and nature of the proposed demonstration will not reasonably require commitment of Town resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period, and review of the permit by all appropriate personnel for the purposes contemplated by these ordinances is feasible within the necessary time period. In all cases, sponsors are encouraged to submit requests for permits as far in advance of any event as possible (but not to exceed 6 months). A permit may be denied if, taking into account the size and nature of the proposed event, the Town Manager does not have sufficient time to evaluate the proposed event's potential impact upon public safety, persons and property, and the interests of persons not participating in the event being able to use Town streets, sidewalks, and other public ways to travel to their intended destinations, Town parks for recreational purposes, and other Town lands for their intended purposes.
 - a. Each application shall specify (i) the name, address and telephone number of a contact person for the sponsor, (ii) the nature of the event, (iii) the date when the event is to be conducted, (iv) the times when the event is to begin and end, and the approximate times when assembly for, and disbanding of, the event are to take place, (v) the location(s) of the event and any assembling or disbanding areas, as well as any related stands or other structures to be used in the event, (vi) the approximate number of persons, animals, and vehicles that will participate in the event, (vii) whether the sponsor will invite, publicize or advertise the event to groups and other persons that the sponsor does not directly represent, (viii) a description of the types of animals, the types of vehicles to be used, the number of bands and other musical units and sound trucks to be used, and the number, type, and size of banners, placards, and signs to be used, (ix) the number of persons who will be designated by the sponsor to monitor the event, and (x) any other information required by these regulations. The sponsor must disclose in an application whether the sponsor requests permission for a prohibited item to be used during a demonstration due to its expressive or symbolic quality relevant to the subject matter of the demonstration, including without limitation symbolic

weapons, open flames or other similar items. If the permit grant includes the right to carry or display a prohibited item, such item must be carried or displayed in strict accordance with the terms of the permit and must otherwise at all times conform to applicable law.

- b. Any permit granted will be based on the information provided in the application being, and remaining, complete, accurate and not lacking any material omissions regarding the nature of the event, any structures or items to be used during the event, or any activities to be conducted during an event, which information constitutes conditions and limits on the event. Sponsor will notify the Town as soon as practicable if any information in the application is no longer complete or accurate and provide a revised application containing the updated information. The Town will promptly review the revised application and notify the sponsor whether the permit will stand, or be revoked, modified or subject to additional conditions or limits. The sponsor will be responsible for notifying the anticipated attendees of any applicable conditions and limits placed on an event and any relevant subject matter of these regulations directly applicable to their conduct at an event, such as the list of prohibited items and the allotted time and location for an event and its initial staging and dispersal, if applicable.
- c. Each application must be accompanied by all required fees and deposits and signed by all sponsors responsible for the event unless, with respect to an application for a demonstration only, the sponsor claims in the application a bona fide financial hardship and the sponsor demonstrates to the Town Manager by reasonable evidence that the monetary obligations imposed by these regulations on the event would render the sponsor not reasonably able to conduct the demonstration, in which event the Town Manager shall waive, in whole or in part, compliance with the monetary obligations, including the obligations of indemnification, imposed by these ordinances to the extent necessary to enable the sponsor to conduct the demonstration.
- d. If applicable, the sponsor of (i) an event at which at least 500 people will or may be expected to attend, or (ii) a special event for which admission fees will be charged shall provide the Town with the location and number(s) of people who attended the past three events staged by the sponsor (or the sponsor's officers, directors or other principals). This will assist Town officials and public safety personnel in planning for any services which may be necessary in connection with the event, including by contacting counterparts in other jurisdictions for the purpose of assessing the appropriate levels of such services.
- e. Clarke County Building Department permits are required for tents that are greater than 900 square feet in size.

D. Permit Processing

- (1) Permit applications for events will be processed in order of receipt. The use of a particular area is allocated in order of receipt of completed applications (including any applicable fees or charges); however, the application of a

sponsor who applies for a hardship fee waiver or reduction will not be considered incomplete due to non-payment of any fees or charges unless and until a determination is made that any fees or charges are due and owing from the sponsor and the due date for the fee has passed without the payment having been made. Unless otherwise provided by these regulations, no applications shall be accepted more than six months prior to the proposed date of an event. This restriction shall not apply to community events which routinely repeat on an annual basis. Upon receipt of a permit application, the Events Liaison shall promptly deliver a copy of such application to the Town Manager, the Police Chief, the Director of the Department Public Works, the Town Planner and any other Town officials whom the Town Manager may, from time to time, designate as reasonably necessary to receive and review permit applications, or their respective designees. Such officials shall promptly deliver to the Town Manager their recommendations with respect to granting or denying the requested permit, or any modifications, conditions or limits upon which issuance of the permit should be based.

- (2) **Priority of Use.** Community events shall have priority of use of the particular street or Town land specified in section E (21) of these regulations, and those areas shall be deemed reserved unless released in writing by the sponsor. Other events may be allowed in areas which have been reserved for a community event, if they do not materially interfere with the community event and the community event sponsor consents.
- (3) **Permit Application Fees.** An application fee shall be paid by the sponsor of every proposed event for which a permit is required. See Appendix A for the amount of the fee. If a permit is denied or revoked, the application fee will not be refunded.
- (4) **Requests for Information.** Before or after permit issuance, the Town Manager or his or her designee may request from the sponsor such additional information with respect to a proposed event as reasonably deemed necessary for evaluating the proposed event's compliance with these regulations and the impact of the proposed event upon public safety, persons, and property, and the interests of persons not participating in the event being able to use Town streets, sidewalks, and other public ways to travel to their intended destinations, Town parks for recreational purposes, and other Town lands for their intended purposes unreasonably impaired. This may include a personal meeting with the Town Manager and Town of Berryville staff. The sponsor's failure to timely provide such additional information constitutes grounds for the denial of a permit request or the modification, conditioning or limiting of a permit.
- (5) **Grounds for Rejecting or Revoking a Permit.** A permit may be denied, or its grant may be conditioned or limited by the Town Manager, or an issued permit may be revoked upon the following grounds:
 - a. Receipt of Multiple Requests: a fully executed application for the same time and

place has been received at an earlier time, reserving an area for an event or activities which do not reasonably permit multiple events in the particular area.

- b. Impact on Public Safety: If it reasonably appears that the proposed event, due to its nature, location, anticipated number of attendees or other factors, will present a threat to public safety or health or would be unlawful (including, without limitation, where a permit or license required by the Health Department or the Virginia Department of Alcoholic Beverage Control has not been obtained).
- c. Incompatible Use: the proposed event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; would be inconsistent or incompatible with the purpose(s) for which the area sought to be reserved is normally used, or with other uses of the area sought to be reserved.
- d. Failure to Meet Conditions: the application proposes activities contrary to one or more of the purposes, conditions or limits specified within these regulations.
- e. No Responsible Person: there is no person authorized to sign an application on behalf of the sponsor applying for a permit and/or there is no person willing or able, as demonstrated to the Town Manager by reasonable evidence, to accept responsibility for and perform the sponsor's obligations set forth in these regulations, including, without limitation, the sponsor's indemnification obligations.
- f. In the case of a proposed special event: the proposed special event cannot be accommodated within a reasonable allocation of Town funds and/or resources, considering the event's public appeal and the anticipated participation of the general public therein.
- g. Failure of the Event to be Consistent with the Application: The Town Manager reasonably determines at any time, following consultation with the Police Chief or other appropriate Town officials, that any material information set forth in the permit application is incorrect or misleading, or has become since the submission of the application incorrect or misleading and the permit must be revoked, modified, conditioned or limited consistent with these regulations.

- h. Prohibited Items: Prohibited items are not allowed at events and an event permit will be denied or revoked if at any time it appears that prohibited items will be used, or are being used, during an event, and the Town has not granted special permission in the permit covering such use. It will not be grounds for rejection of a permit that a sponsor wishes event attendees to carry or use a prohibited item in an expressive or symbolic way, including without limitation a symbolic weapon, open flame or other similar item, provided that all attendees must be licensed to carry such weapons if required by law and the use of such items must be otherwise lawful, and further provided that the event sponsor pays for any additional police, fire and emergency medical personnel required to maintain public safety in accordance with these regulations. If any prohibited item for which special permission has been received is held or used during the demonstration in an intimidating, threatening, dangerous or harmful manner, such use will be unlawful and the permit's allowance of such use shall be automatically revoked. The person responsible for the unlawful use of the item will be directed by law enforcement to leave the demonstration area, and any person refusing to do so shall be subject to arrest for trespassing.

Nothing in these regulations shall prohibit a disabled person from carrying, possessing or using a wheelchair, cane, walker, or similar device necessary for providing mobility so that the person may participate in a permitted event.

Nothing in these regulations shall prohibit certified law enforcement officers or other public safety officials acting in their official capacity from carrying or possessing materials, weapons and / or devices used in the performance of law enforcement duties.

- (6) Modifying or Placing Conditions or Limits on Permit Grants. A permit may be modified or its grant may be conditioned or limited by the Town Manager where necessary to meet the requirements of these regulations or to further their purposes. Such conditions and limits may include, for example, requiring the event to be relocated to an alternative venue if doing so is required to safely accommodate the number of anticipated attendees or type of event; provided, however, that with respect to demonstrations only, the Town Manager shall take into account whether the alternative venue is suitable for communicating the content of the demonstration. The Town reserves the right to limit the number of persons allowed at events based on the location or nature of the event, and to require that the sponsor provide a certain number of individuals, who may be volunteers within sponsor's organization, to act as crowd managers to assist with ensuring that the assembly is and remains lawful and in compliance with these regulations and liaising with Town officials prior to and during the event.

(7) Notice of Decision

- a. Applicants shall be notified of the Town's approval or denial of a permit for an event as soon as reasonably practicable after the date on which the application was received. The Town may also issue approval of a permit for an event conditioned upon the sponsor's accepting modifications, conditions or limits imposed on the event consistent with these regulations.
- b. Unless denied or modified within 10 business days following the submission of a completed permit application, or within thirty (30) business days if the event requires a street closure, removal of parking, or provision of public safety personnel, all requests for demonstration permits shall be deemed granted, subject to the conditions and limits set forth in the permit and these regulations, so long as the area proposed for the demonstration had not been reserved by another person prior to the date on which the permit would be deemed granted in accordance with this section.
- c. All denials of requests for or conditional approvals of, demonstration permits shall include a reasonably detailed description of the reason for the denials or the modifications, conditions or limits, and specific instructions for how an appeal of the denial or conditional approval can be submitted to the Town Manager.

(8) Permit revocation

- a. An issued permit for an event may be revoked by the Town Manager or designee upon a finding of a violation, or a reasonably anticipated violation, of any rule, ordinance, law, regulation and/or condition or limit of the permit, or a finding that a permit application was not complete or accurate or had a material omission of fact when granted, or a finding that the information in the permit application has become, or is reasonably likely to become, incomplete, inaccurate or to contain a material omission. Immediately upon such a revocation, the Town Manager or designee shall send a written notice to the sponsor at the sponsor's address in the permit application, specifying the reason for the revocation. Written notice requirements may also be satisfied by virtue of electronic transmissions via e-mail or fax.

- b. During the conduct of an event, a permit may be revoked by the ranking police officer, fire marshal or other public safety supervisory official in charge, and the event attendees dispersed, if the event is unlawful, prohibited items are being used, there exists an imminent likelihood of violence or other threat to public safety endangering persons or threatening to cause significant property damage, or if the Town, County or Commonwealth has declared either a state of emergency or an unlawful assembly covering the area in which such demonstration is being or will be held. Upon such revocation, the sponsor and the other sponsor attendants shall communicate the need to disperse the demonstration to the attendees.
- c. When a permit has been granted, or is deemed to have been granted pursuant to these regulations, the Town Manager may revoke, modify condition or limit the permit for any reason for which it could have been denied, modified, conditioned or limited originally.
- d. Except for permits revoked during demonstrations, all revocations of demonstration permits shall include a reasonably detailed description of the reason for the revocation and specific instructions for how an appeal of the revocation can be taken, and shall be served personally or by certified mail, with a copy sent by fax or e-mail at the sponsor's request.

(9) Appeals

- a. Except for permits revoked during demonstrations, an appeal of the denial, conditional approval or revocation of a demonstration permit must be made to the Town Manager in writing, and shall include a statement of the basis for the objection to the denial, conditional approval or revocation.
- b. The Town Manager shall make a decision on appeal expeditiously and, if practicable, at least three (3) business days prior to the date the demonstration is planned to commence, and shall explain in writing the reasons for the decision.

E. Permit Conditions and Limits. All events are subject to the following conditions and limits:

(1) Excluded Areas and Prohibited Items

- a. No events that charge an admission fee or offer goods or services will be permitted in Rose Hill Park.
- b. Prohibited items are excluded from all events.

(2) Street Closings

- a. No street may be closed for any event, unless done so pursuant to a street closure permit applied for by the event sponsor and issued by the Town Manager pursuant to sec. 10-7 of the Town Code; or for streets within Town maintained by VDOT, a VDOT land use permit. No such permit shall be granted unless the Town Manager or Chief of Police determines that such closure is reasonably required due to the location of the event and:
 - 1. Such closing is necessary because the event will impede or pose a reasonable risk of harm to traffic and/or pedestrian travel, or, if not strictly necessary, such a closing would not be unduly detrimental to public safety and convenience; and,
 - 2. If the street in question is an extension of the state highway system, adequate provision shall be made to detour through traffic during the event (C.Ref. Temporary Street Closings, Generally; State Code 15.2-2013), and
 - 3. The sponsor permitted to use public right(s)-of-way being closed will furnish a public liability and property damage insurance contract, as required by Va. Code §15.2-2013 and §E(4) of these regulations.
- b. No street may be closed for an event except on a temporary basis, not to exceed 10 hours in duration.
- c. Even if not requested by a sponsor, if the circumstances of a proposed event are such that a street closing is necessitated because the event will likely impede or pose a threat to vehicular or pedestrian travel then the Town will require a permit and a street closing in connection with the event, along with all application fees applicable thereto, and may require that the event be held at an alternate site if a suitable alternate site is available where the event is not likely to impede or pose a threat to vehicular or pedestrian travel.

- d. Upon approval of a street closing in connection with an event, the sponsor shall be issued a street closure permit by the Town Manager. This permit shall be displayed in a prominent place during the event.
 - e. During the conduct of an event, the sponsor of that event shall comply immediately with the lawful request of any police officer, firefighter, rescue service person, or town employee, made for public safety or other emergency reasons, to move any structure or persons from a street which has been closed in connection with that event.
 - f. Notwithstanding any of these provisions, the Town Manager may close any street for a neighborhood-based gathering when (i) 1 block or less is to be closed, (ii) there is an alternative for all traffic, (iii) reasonable notice of the closure is given by posting signs at either end of the block, and (iv) the Town Manager believes that there are no safety issues. In these cases, no permit is required and applicants shall be referred to the Town Clerk for street closure permits.
- (3) **No Impediments to Public Access.** During any street closure, all Town ordinances and State statutes limiting the use or obstruction of fire lanes, access to Fire Department fire suppression system connections and fire hydrants, emergency routes, and pedestrian walkways must be observed at all times. No person(s) or group(s) participating in an event shall block any entrances to or exits from buildings, nor shall such person(s) or group(s) interfere with the use of buildings, parks or facilities by non-participating persons for their ordinary purposes, whether by impeding access, impeding egress using fire exits and routes, creating unreasonable noise or otherwise.
- (4) **Indemnification and Insurance.**
- a. Sponsors of events for which a permit is required shall be required to indemnify and hold harmless the Town, its officials, employees and agents from any personal injury, death and damages to property, and any other loss, cost and/or damage occurring as a result of the actions or inactions of the event's sponsor, or the sponsor's failure to comply with these regulations.
 - b. The sponsor(s) will accept the reserved area as-is, and the Town does not warrant that any public area(s) are suitable for the activities to be conducted as part of the event. The event sponsor(s) shall be solely responsible for any damages or injuries resulting to any person or property arising out of the sponsor(s)' use of Town property for the event, and the sponsor(s)' failure to obtain any required public liability

insurance for the event is at the sponsor(s)' sole risk. The Town expressly reserves all sovereign and governmental immunity to which it, and its officers, officials and employees may be entitled to under the laws of the Commonwealth of Virginia.

- c. Insurance or Other Liability Contract. The sponsor of an event shall furnish a general liability and property damage insurance contract insuring the Sponsor's liability for personal injury and death and damages to property resulting from its use of public property. If alcohol is to be served or sold in connection with the event, then the required insurance shall cover liability specifically in connection with that activity. The required general liability and property damage insurance shall be provided in an amount not less than \$1,000,000, and the insurance policy shall name the Town (including its officers, officials, employees and agents) as an additional insured party to the insurance contract. Failure to provide required insurance, and reasonable documentation of the insurance, will be grounds for denial and/or revocation of a permit.

- 1. Prior to commencement of the event, the Sponsor must provide the Town with an insurance certificate that verifies the insurance coverage required by these regulations.
- 2. This insurance requirement may be waived, in whole or in part, by the Town Manager for events that do not (i) pose a high level of liability risk to the Town or a material risk to public safety, and (ii) do not involve any inherently dangerous activity. A written request to waive or modify any insurance requirement must be made by the sponsor at the time a permit application is submitted. An approval or denial of the request will be made in writing to the event sponsor by the Town Manager.

- d. The sponsor of an event for, or in connection with, which any type of royalty(ies) are required to be paid must agree to pay all such royalties (including, without limitation, any which may be due to ASCAP and BMI) and to indemnify and hold the Town harmless from and against any and all royalty payments sought from the Town.

- (5) Limited Duration. No event shall be authorized for a duration in excess of two (2) days and no street closing shall be authorized for a duration in excess of eight (8) hours. Provided, however, that the stated period may be extended, upon request no later than 24 hours prior to the expiration of the then-authorized duration for demonstration only, up to one (1) day unless another application has requested use of the particular area and said application precludes double occupancy.

(6) **Time of Day Restrictions.** No event shall be permitted in any Town park during hours that the park is otherwise closed to the public.

(7) **Sound Amplification.**

- a. The Town Manager may approve a request in the permit application for the use of sound amplification equipment in connection with the permitted event in accordance with exemptions to noise ordinance violations enumerated in Chapter 11 of the Code of the Town of Berryville. The Town Manager may reasonably limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area of an event and/or so that it will not unreasonably interfere with the conduct of another event, or an outdoor business enterprise in the vicinity or area.
- b. No amplified sound shall be generated by or in connection with an event between the hours of 10:00 pm and 09:00 am.

(8) **Sales or Distribution of Merchandise/Information**

- a. When the sale or display of merchandise, or the distribution or display of educational, informational or other materials (including the distribution of non-commercial printed materials) is to be done in or upon Town streets or parks with the aid of a table, stand or structure, no such table, stand or structure shall exceed 4 ft. x 4 ft. or 2 ft. x 8 ft.
- b. Whether or not a permit is required, the sale, display or distribution of merchandise or other materials, and the solicitation of contributions or donations, is prohibited in the following areas: (1) any location that would impede access to the entrance of any adjacent building or driveway; (2) any location such that the sale or distribution activity would occupy more than half the available sidewalk width, or four feet of sidewalk width, whichever is less; (3) within 10 feet of a fire hydrant, a public telephone, a fire escape, the driveway of a fire or police station, or a loading zone; (4) within the portion of any street intended for the use of motor vehicles which has not been temporarily closed for or in connection with the demonstration or special event; (5) if done with the aid of a table, stand or structure: within any area reserved by a permit issued for an event, if the sponsor of the event has not consented to the presence of the table, stand or structure; (6) upon the lands or within the structures of Rose Hill Park.

- c. Persons or organizations engaged in the sale, display or distribution of written or printed materials, and/or the solicitation of donations or contributions, whether or not a permit is required, shall not obstruct or impede pedestrians or vehicles, harass park visitors or the attendees of any event with physical contact, misrepresent the purposes or affiliations of those engaged in the activity, or misrepresent whether written or printed materials being distributed are available without cost or donation.
 - d. No sales or distribution activity may be conducted after 10:00 p.m., except that such activity shall be allowed past 10:00 p.m. in connection with a community event.
- (9) **Food and Beverage Sales.** The sale or distribution of food and/or beverages as part of an event is allowed pursuant to a permit.
- a. All sales and/or other provision of food and/or beverages must be done in accordance with all licenses, permits and approvals (including, without limitation, those required by the Health Department, the Department of Alcoholic Beverage Control and the Town Treasurer) required by law. If the sponsor cannot provide documentation to the Town that all required licenses or permits have been obtained, that shall be grounds for denial or revocation of the permit for the event.
 - b. The sponsor shall provide the Town with a diagram identifying the size and location of any tables, stands, food trucks or mobile food units or other structures to be used for or in connection with the sale of food and beverages. There shall be no sales or distribution of food or beverages in any of the following locations: (1) any location that would impede access to the entrance of a building or driveway; (2) any location such that the sale or distribution activity would occupy more than half the available sidewalk width, or four feet of sidewalk width, whichever is less; (3) within 10 feet of a fire hydrant, a public telephone, a fire escape, the driveway of a fire or police station, or a loading zone (unless the loading zone is located in a street temporarily closed in connection with the event); (4) within the portion of any street intended for the use of motor vehicles which has not been temporarily closed for or in connection with the event.
 - c. Any person selling or otherwise providing food and/or beverages during an event or community event, within an area reserved pursuant to the permit authorizing that event or community event, must do so with the consent of the sponsor and must have all licenses, permits and approvals required by law. The sponsor controls vendors only within the area designated for the event or community event.

- d. There shall be no sale or other provision of food or beverages at any event after 10:00 p.m.
 - e. In accordance with the Deed of Gift for the lands of Rose Hill Park, no food and/or beverages may be offered for sale, however, food and/or beverages excluding those containing alcohol and in accordance with all other regulations set forth in this section may be provided free of charge by the sponsor to event attendees.
- (10) **Signs and Banners.** The use of signs and banners in or upon the Town's streets is prohibited, for or in connection with any event, except:
- a. Signs hand-carried by an individual are allowed up to 3 feet by 5 feet in size. If during an event signs, due to their size or collective use by persons, interfere with the public safety personnel's ability to conduct their duties, such signs can be restricted or banned from the event.
 - b. Signs are allowed on or within any table, stand or other structure at which food, beverages or merchandise is being sold, or at which non-commercial printed material is being distributed, so long as that sign is no larger than two (2) square feet in area and contains no advertising or advertisement.
 - c. Signs that are attached permanently, or semi-permanently, to stands or vehicles being used for or in connection with authorized recreational activities or events are allowed.
- (11) **Advertising.** Advertising/Advertisement (see definitions set forth in section IIIA) by the use of banners, billboards, signs, markers, audio devices, or any other means whatsoever is prohibited in or upon Town streets, sidewalks and parks for or in connection with any event. (C.Ref. State Code 15.2-2013).
- (12) **Temporary Structures.** The erection, placement or use of structures of any kind is prohibited, except:
- a. In connection with permitted events, temporary structures may be permitted provided that notice to the Town Manager is provided contemporaneously with the permit application. Examples of temporary structures that may be permitted are as follows: structures erected for the purpose of symbolizing a message, first aid facilities, lost child alerts, shelter for electrical or other sensitive equipment.
 - b. Structures that are being hand-carried are allowed as part of a demonstration.
 - c. Structures that are permitted pursuant to other sections of these regulations are allowed.

- d. When allowed: (1) structures are not permitted on sidewalk(s) unless they meet the size criteria described in section (8)a of these regulations; (2) structures must be erected in such a manner so as not to unreasonably harm park or other public area resources and the sponsor of the event must agree to remove such structures as soon as practicable after the conclusion of the permitted demonstration or special event; (3) structures must be capable of being removed upon 10 hours' notice and without permanent damage to Town lands (with the sponsor being responsible for any non-*de minimis* costs of remedying any damage arising out of such removal), and shall be secured in such a manner so as not to interfere unreasonably with use of any park area by other permittees authorized under this section; (4) structures shall not be attached to or fashioned in any way that would damage trees or other existing structures on public lands; and (5) the sponsor must comply with all other regulations concerning temporary structures and required permits as established by the Berryville Planning Department and Clarke County Building Department.
- e. The Town Manager may impose other restrictions upon the use of temporary structures in the interest of protecting park or other public areas and/or traffic and public safety considerations.

(13) Sanitation and Garbage.

- a. Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on public property during an event shall be removed from the area by the sponsor of the event, or deposited in receptacles provided for that purpose. The improper disposal of such waste is prohibited.
- b. The sponsor of every event shall be required to pay a fee for cleanup costs, in the amount specified within Appendix A, to cover anticipated costs to the Town of cleaning up the site for restoring the area in question to its pre-event condition, and disposing of trash and refuse resulting from the event. This fee must be paid in advance. If actual cleanup costs incurred by the Town exceed the amount of the Cleanup Deposit collected in advance by the Town, the sponsor will be billed by the Town for the excess.
- c. A sponsor of any event must arrange for such public restroom facilities as may be required by the Health Department. The Town shall bear no responsibility for the cost of providing such facilities, and it shall be the sponsor's obligation to provide documentation to the Town Manager that all restroom facilities required by the Health Department have been arranged. Failure to provide documentation of Health Department approvals prior to an event shall be grounds for denial or revocation of a permit.

(14) Electricity.

Sponsors in community events may have the use of Town electrical outlets, as needed. Sponsors may be required to pay an Electricity Fee, in advance, at the discretion of the Town Manager and based upon anticipated electricity needs for the event. Attendees in events may not have the use of Town electrical outlets.

(15) Fireworks Displays; Open Flame.

Persons desiring to conduct a pyrotechnic display of fireworks on streets or public lands must obtain approval from the State Fire Marshall's Office. Persons desiring to use open burning or open flame on streets or public lands must obtain a permit from the Town as required by sec. 6-1 (Open burning; generally) of the Town Code. Fires upon the lands of Rose Hill Park are prohibited with the exception of fires within grills located in the park designed for the preparation of foods or in conjunction with special ceremonies approved by the Town Manager. (Berryville Town Code sec. 13-36(i) The Chief of Police, in consultation with the Clarke County Director of Fire and EMS, may withhold approval of such permit to the extent its issuance would result in the violation of a Town ordinance or it might jeopardize public health, safety or welfare.

(16) Public Safety Personnel.

- a. No permit will be granted for an event unless adequate security will, in the determination of the Town Manager upon consultation with the Police Chief, Clarke County Director of Fire and EMS, or other appropriate public safety official, be available for the welfare and safety of those attending the event and of the general public.

1. General Requirements.

- (A) Minimum Required Security Officers:

- (1) Open Events (Admission not restricted by tickets, fees, or otherwise) Where Alcohol is Served or Offered for Sale. Baseline: the sponsor must pay the cost of one police officer to staff the event, regardless of attendance. Where attendance exceeds, or is expected to exceed, 100 people, the sponsor must, in addition, pay the cost of one police officer for every 100 people (or portion thereof) attending or expected to attend.
 - (2) Closed Events (Admission restricted by tickets, fees or otherwise) Where Alcohol is Served or Offered for Sale. Baseline: the sponsor must pay the cost of two police officers to staff the event,

regardless of attendance. Where attendance exceeds, or is expected to exceed, 350 people (or portion thereof), the sponsor must, in addition, pay the cost of one police officer for every 350 people.

- (3) Events at Which No Alcohol Will Be Served or Offered for Sale (whether open or closed to the general public). Where attendance exceeds, or is expected to exceed, 1000 people, the sponsor must pay the cost of one police officer to staff the event, regardless of attendance. The sponsor must, in addition, pay the cost of one police officer for every 1000 people (or portion thereof) attending or expected to attend.
- (4) Marathons/Races/Walks. Baseline: The sponsor must pay the cost of one police officer per hour of the race. The sponsor may be required to pay for additional police officers to staff the event, if the Police Chief (or his designee) determines additional police officers to be necessary due to the geographic location of the proposed event, the time of day the event is planned to occur, or other factors related to the safety of attendees or the general public and the efficient flow of traffic and pedestrian travel along the planned route of the event.
- (5) Additionally, the sponsor shall be required to pay the cost of one traffic/parking control officer for every 1,000 people (or portion thereof) attending the event.
- (6) Upon a determination by the Chief of Police, or his designee, due to public safety factors such as the size of the crowd, the location or nature of the event, or the anticipated use of structures, sound equipment or items that could during an event become prohibited items, that one or more police vehicles are necessary to assure safe and efficient police coverage of an event, the sponsor must pay a vehicle fee, as specified in Appendix A, for each required vehicle. A sponsor may request, in advance of an event, an estimate of the number of vehicles that may be required; however, if circumstances of the event require the

assignment of additional vehicles, the sponsor will be billed, and must pay, the required fee for each vehicle actually deployed.

- (7) Upon a determination by the Clarke County Director of Fire and EMS, or his designee, due to public safety factors such as the size of the crowd, the location or nature of the event, or the anticipated use of structures, sound equipment or items that could during an event become prohibited items, that one or more fire vehicles and / or emergency medical services vehicles are necessary to assure safe and efficient fire or emergency coverage of an event, the sponsor must pay a vehicle fee, as specified in Appendix A, for each required vehicle. A sponsor may request, in advance of an event, an estimate of the number of vehicles that may be required; however, if circumstances of the event require the assignment of additional vehicles, the sponsor will be billed, and must pay, the required fee for each vehicle actually deployed for the event.
- (8) Upon a determination by the Clarke County Director of Fire and EMS, or his designee, that due to public safety factors such as the size of the crowd, the location or nature of the event, or the anticipated use of structures, sound equipment or items that could during an event become prohibited items, one or more firefighters, fire officers or emergency medical services providers are necessary to assure safe and efficient fire and emergency coverage of an event, the Sponsor must pay the cost of those firefighters, fire officers or emergency medical services providers. A Sponsor may request, in advance of an event, an estimate of the number of firefighters/officers that may be required; however, if circumstances of the event require the assignment of additional firefighters/officers, the Sponsor will be billed, and must pay, the required fee for each firefighter/officer actually deployed.
- (B) Fees and Charges: The fee(s) and charges associated with the above-stated police officer, career fire fighter and emergency vehicle requirements are set forth

within Appendix A. The costs charged to sponsors for required police, fire and emergency personnel coverage will be the established hourly wage for overtime work for the particular officer(s) willing and available to cover the event. In the event that the Town's actual cost of police, fire, and emergency personnel coverage necessitated if the event exceeds the amount(s) collected in advance as deposits, the sponsor will be billed by the hour for each Town officer, fire and emergency personnel utilized to patrol or at the location available to assist the event as needed.

- (C) Where Admission Fees Will be Charged: The sponsor of an event for which admission fees will be charged shall provide at least two secure access gates, at locations approved by the Town's Police Department. For events to which tickets are sold in advance, the sponsor shall, two days prior to the event, and at any other time reasonably requested by the Town, advise the Town as to how many tickets have been sold as of the day of the report. This will assist the Town in planning for any additional police or other services which may be necessary in connection with the event.

(17) **Facilities Charges.**

The sponsor of an event to which an admission fee will be charged (by ticket sales or otherwise) shall pay the Town a rental fee in the amount specified in Appendix A. These types of events tend to have a greater impact upon the community in general and upon the specific area reserved for the event.

(18) **Carnivals and Circuses**

- a. No circus, carnival, or other similar show shall publish or post in any way within the Town, at any time within 15 days prior to the holding of such event within the Town, any advertising of the exhibition of the circus, carnival or other similar show. (C.Ref. Va. Code 58.1-3728).
- b. Any circus, carnival or other, similar show shall obtain the license required by section 9-34 of the Town Code before commencing any activity.
- c. The sponsor of the circus, carnival, etc. shall pay a fee, as specified on Exhibit A hereto, for the inspection of any amusement rides to be offered as part of the event, and shall pay the tent erection fee(s) required by regulations of the Clarke County Building Department.

(19) Other Conditions and Limits.

- a. A permit may contain additional conditions and limits, consistent with these regulations, as may be warranted by the nature of a particular event, in the interest of protecting park or other town resources, the use of nearby areas by other persons, and other legitimate property and/or public safety concerns.
- b. Sponsors who request the Town to provide special equipment or facilities (e.g., barricades and cones for street closings, tables, chairs, public address systems, fencing, etc.) will be charged a reasonable fee and rental therefore. The appropriate fees shall be identified by the Town Manager to the sponsor following the sponsor's request for such items.
- c. A permit for a demonstration may be subject only to reasonable time, place and manner conditions or limits that: (i) are narrowly tailored to serve the Town's significant interest, and (ii) leave open ample alternative channels for communication of the content of the demonstration. No permit denials, revocations, or modifications, and no time, place, or manner conditions or limits imposed on a demonstration, may be based on the content of the beliefs expressed or anticipated to be expressed during the demonstration, or on factors such as the attire or appearance of persons participating or expected to participate in a demonstration (except to the extent involving unlawful or prohibited items), nor may such conditions or limits favor special events over demonstrations. With respect to demonstrations, these regulations shall be applied, and the Town Manager or his or her designee shall make permitting decisions in compliance with and to further the intent of this section (19) c. The Town Manager may impose such conditions or limits on a demonstration (i) during the permitting approval process, or (ii) during the occurrence of a permitted demonstration if necessary: (A) to ensure that the demonstration meets the stated terms and purposes of these regulations (B) due to the occurrence of circumstances unrelated to the demonstration that were not anticipated at the time of the approval of the permit and that were not caused by demonstration attendees, counter-protestors or Town officials, or (C) due to a determination by the Police Chief, the Clarke County Director of Fire and EMS or other appropriate public safety official during the demonstration that there exists an imminent likelihood of violence or other threat to public safety endangering persons or threatening to cause significant property damage.

- (20) **Information Collection.** The information collected under these regulations will be used to provide notification to the Town Police, Town Department of Public Works, and local fire and rescue officials of the plans of sponsors of events in order to assist in the provision of security and logistical support.
- (21) **Community Events.** Except as expressly stated, community events shall be conducted in accordance with all the conditions and limits on events as specified in section E above. Except as specified below, the sponsor of a community event shall pay the fees and deposits specified in these regulations and required by the Town Code. Community events include the following:
- a. **Farmers' Market**

The Farmer's Market is held on the Rixey-Moore parking lot on Saturday mornings from April through October. The market is governed by a Board and has its own set of regulations which have been reviewed by Town Council.
 - b. **Music in the Park**
 - c. **Homecoming Parade**
 - d. **Christmas Parade**
 - e. **Summer Concert Series**
 - f. **National Night Out**
 - g. **Memorial Day Observance**
 - h. **Veterans Day Observance**

Special Events and Demonstrations Fee Schedule

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**FEE SCHEDULE TO BE INSERTED
AFTER APPROVAL BY TOWN OF BERRYVILLE COUNCIL**

APPENDIX B

Special Events Forms

- I. Special Event Permit Application
- II. Town of Berryville Land Use Permit
- III. Rules and Regulations Governing the Use of Rose Hill Park



Special Event Permit Application

FOR OFFICIAL USE ONLY

Organizational Status

☐ Non-Profit ☐ Commercial ☐ Independent

Attachment Verification

☐ Maps ☐ Insurance ☐ ABC Permit

☐ Tent Permit ☐ VDH Permit

☐ Road Closure Permits

Activity type (Please select all that apply):

☐ Block Party

☐ Demonstration

☐ Other

☐ Parade

☐ Festival

(please describe)

☐ Film Production

☐ Race/Walk

☐ Carnival

☐ Fair

Event Location Requested:

☐ Rose Hill Park

☐ Rixey-Moore Parking Lot

☐ Hogan's Alley

☐ Other _____

Group Requesting Event _____

Date of Event _____

Rain Date, if any _____

Time of Event _____

Date Application Received

Organizer's contact Information (Representative must be present at the event with approved permit available for inspection)

Primary Name _____ Cell Phone _____

Address _____ Work Phone _____

City _____ State/Zip _____

Email _____ Home Phone _____

Secondary Name _____ Cell Phone _____

Address _____ Work Phone _____

City _____ State/Zip _____

Email _____ Home Phone _____

Description of the Event (Please attach additional sheet if more space is needed)

Will the activity require the blocking of any surrounding public streets, driveways or entrances?

Yes _____ No _____ If yes, please identify: _____

Event Hours

Set-Up Time _____ Hours of Event _____ Clean-Up Time _____

Anticipated Attendance

Participants _____ Spectators _____ Other _____

Name of Insurance Company: _____

(Certificate of Insurance and additional insured endorsement providing \$1 million in general liability insurance required. May be increased or waived as deemed necessary as determined by the Town Manager or their designee.) Please note that animals on site require additional insurance.

Will sound amplification devices be used? Yes _____ No _____

If Yes, length of time: _____

Will the event require use of any parking lots for staging areas? Yes _____ No _____

If Yes, please identify: _____

Will alcohol be served? Yes _____ No _____

If Yes, all state laws and local ordinances must be followed. The organizer must obtain a Virginia ABC permit (<http://www.abc.virginia.gov/>) and is responsible for all required permits.

Will food be served? Yes _____ No _____

If Yes, the organizer may be required to obtain a permit from the Virginia Department of Health (540/955-1033) and is responsible for all requisite permits.

Will any fees be charged in association with the event, admission, etc.?

Yes _____ No _____ If yes, amount to be charged _____

If Yes and the special event is to occur in Rose Hill Park, please note that a Fundraising Permit is required upon application for valid and duly-constituted non-profit organizations for the purpose of approved charitable, educational, cultural, and/or community-oriented projects and activities. Commercial activity is prohibited.

Will you have security on site? Yes _____ No _____

If Yes, please identify who will be on site _____

Will weapons or firearms be present? Yes _____ No _____

If Yes, please provide detail of activity _____

Will there be a parade? Yes _____ No _____ (If yes, please complete the following section)

VDOT and/or Town of Berryville Land Use Permit and fee are required.

Please identify parade route

Will there be vehicles in the parade? Yes _____ No _____ Number of vehicles anticipated _____

What time will staging occur? _____

Where will staging occur? _____

Will there be animals in the parade? Yes _____ No _____

If Yes, what type and how many? _____

Will you need assistance from Fire & Rescue? Yes _____ No _____

If Yes, please contact John H. Enders Fire & Rescue at 540/955-1110 at least ten (10) days prior to the event.

Will you be using any of the following? (Mark all that apply)

☐ Tents

☐ Tables

☐ Portable Toilets

☐ Live Radio

☐ Signs

☐ Electricity

☐ Banners

☐ Animals

Please note: Architectural Review Board review and approval and Zoning Permits may be required for certain banners, signs and temporary structures.

Please supply a sketch of how the requested venue will be organized for the event below, or attach a map with this application.

Hold Harmless Agreement

_____ (Legal name of business/organizer, exactly as it appear on Insurance Endorsement), shall defend and hold harmless, the Town, its officers, employees, agents, and representatives thereof, harmless from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect on behalf of _____ (Legal name of business/organizer) while their personal property is situated on Town Property.

_____ (Legal name of business/organizer) shall further hold the Town harmless for any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree.

Legal Name of Business/Organizer _____
(As it appears above)

By (signature): _____

Name (printed): _____

Title: _____

Address: _____

Date: _____

+++++
For Office Use Only

Permit Approved _____ Denied _____

By: _____

Date: _____

Permit # _____

Special Event Permit # _____

Permission is hereby granted to _____
(Name of Organization/ Organizer)

for the use of the facilities identified in the attached application on _____
(Date)

from _____ to _____
(Time)

This permit is issued with the understanding that _____
(Name of Organizer)

shall accept responsibility for adherence to the Town of Berryville Special Events and Demonstrations Regulations, Ordinances of the Town of Berryville (Chapter 20- Parades and Demonstrations), and Ordinances of the Town of Berryville (§ 13-36 Regulation of Use and Conduct in Rose Hill Park) as well as to any special conditions which may be attached hereto.

Date _____ Signed _____
Town Manager

Special Fundraising Permit

Permission is further granted to the above-named Organization for a fundraising event pursuant to the approved application for same dated _____.

Date _____ Signed _____
Town Manager



LAND USE PERMIT

LUP-A Land Use Permit Application

APPLICATION is hereby made for permit as shown on the accompanying plan or sketch and as described below. Said activity(s) will be done under and in accordance with the rules and regulations of the Council of the Town of Berryville, in so far as said rules are applicable thereto and any agreement between the parties herein before referred to. Where applicable agreements may be attached and made a part of the permit assembly including any cost responsibilities covering work under permit. Applicant agrees to maintain work in a manner as approved upon its completion. Applicant also hereby agrees and is bound and held responsible to the owner for any and all damages to any other installations already in place as a result of work covered by resulting permit. Applicants to whom permits are issued shall at all times indemnify and save harmless the Town of Berryville Council members, the Town and all Town employees, agents, and offices, from responsibility, damage, or liability arising from the exercise of the privileges granted in such permit to the extent allowed by law. In consideration of the issuance of a permit the applicant agrees to waive for itself, successors in interest or assigns any entitlements it may otherwise have or have hereafter under the Uniform Relocation and Assistant Act of 1972 as amended in event the Town or its successor, chooses to exercise its acknowledged right to demand or cause the removal of any or all fixtures, personality of whatever kind or description that may hereafter be located, should this application be approved.

Type or print clearly

Applicant Driver's license or Tax ID No. _____

Owner Name _____

Address _____

City _____ State _____ Zip Code _____

Agent Driver's license or Tax ID No. _____

Agent Name _____

Address _____

City _____ State _____ Zip Code _____

Contact Name _____

E-mail Address _____

Telephone Number (____) _____ - _____

Emergency Telephone Number (____) _____ - _____

Fax Number (____) _____ - _____

Contact Name _____

E-mail Address _____

Telephone Number (____) _____ - _____

Emergency Telephone Number (____) _____ - _____

Fax Number (____) _____ - _____

Permit Term Requested _____ Fees Enclosed \$ _____ Check Number _____

Money Order _____ Other _____ Estimated cost of work to be performed on Town of Berryville Right of Way \$ _____

Surety Information:

Surety Posted by: Owner ☐ Agent ☐ Surety Refund to: Owner ☐ Agent ☐ Surety Waived ☐

Amount of Surety \$ _____ Obligation Amount \$ _____ Check # _____

Surety Company Name _____ Bond # _____

☐ LUP-CS CASH SURETY AFFIDAVIT PROVIDED FOR CASH SURETY

Applicant has provided proof of the following requirements in accordance as defined in §2.2-1151.1 of the Code of Virginia

- (1) The utility company has registered as an operator with the appropriate notification center.
- (2) Attached is a notarized affidavit, stating that the utility owner has notified the commercial and residential developer, owner of commercial or multifamily real estate, or local government entities with a property interest in any parcel of land located adjacent to the property over which the land use is being requested, that application for the permit has been made.

Request permission to perform the following activity(s): _____

_____ as per attached plans.

Location: [] Town of _____ Route No. _____ Street Name _____

Latitude _____ Longitude _____ Tax Map Number _____ Applicant Job No. _____

Between Route No. _____ Street Name _____ and Route No. _____ Street Name _____

[] IF APPLICABLE, I AGREE TO PAY THE FULL SALARY AND EXPENSES OF A TOWN ASSIGNED INSPECTOR IN CONJUNCTION WITH ACTIVITIES AUTHORIZED UNDER THE AUSPICES OF A TOWN OF BERRYVILLE LAND USE PERMIT

Signature of Applicant: _____ Title _____ Date _____

Signature of Agent: _____ Title _____ Date _____

All applicable items on this form must be completed to avoid delay in processing the issuance of a Town of Berryville Land Use Permit.
Prepayment required with remittance payable to Town of Berryville.

TOWN OF BERRYVILLE USE ONLY

Receipt is hereby acknowledged for: CHECK No. _____ MONEY ORDER No. _____

In the Amount of \$ _____ for PERMIT FEE \$ _____ CASH SURETY \$ _____

Authorized Town Signature: _____ Date: _____



PLEASE READ CAREFULLY

RULES AND REGULATIONS GOVERNING THE USE OF ROSE HILL PARK

NOTICE: THE TOWN OF BERRYVILLE IS NOT RESPONSIBLE FOR ACCIDENTS, INJURY, OR LOSS OR DAMAGE TO PERSONAL PROPERTY.

1. All applications for permission to use Rose Hill Park facilities for a special event shall follow procedures outlined in the Regulations for Special Events and Demonstrations.
2. It shall be a condition of all special event permits issued for use of the park and its facilities that no person, whether or not a member of the sponsoring group or a participant in the special event, can be denied access or free passage to, from, or within all or any portion of Rose Hill Park or any facilities therein. Rose Hill Park shall at all times remain a public park with right of free passage to all members of the public.
3. No individual, group or organization will be permitted to use the park for profit or gain in the absence of a special fund-raising permit obtained from the Town pursuant to paragraph four (4) herein. All regular park permits shall be conditioned on an understanding that the special event is not a benefit affair, that no admission is to be charged, and that no tickets will be sold. There will be no gambling or games of chance except as may be permitted by a special fund-raising permit issued pursuant to paragraph four (4) herein.
4. The Town may issue a special fund-raising permit upon application, on forms provided by the Town, by valid and duly-constituted non-profit organizations for the purpose of approved charitable, educational, cultural, religious and/or community-oriented projects and activities. All other rules and regulations governing the use of Rose Hill Park, as set forth herein, shall apply to such fund-raising events approved by special permit.
5. No alcoholic beverages or illegal controlled substances are allowed on the premises at any time.
6. Users of the Rose Hill Park gazebo may not deface the structure in any way. No driving of nails, thumb tacks, or fastening to light fixtures will be permitted. Plans for any decorating must be submitted for approval with special event permit applications.
7. The Town of Berryville furnishes only such lighting and electrical service which is in place. Any additional services and equipment needed for a special event must be furnished by the user. When special or additional lighting or other electrical equipment is required, approval of electrical connections by the Town of Berryville Director of Public Works must be obtained at forty-eight (48) hours prior to any such lighting or equipment being placed in use.
8. All groups using the Rose Hill Park facilities will be responsible for setting up any equipment, such as chairs and tables, to their own liking. The Town of Berryville cannot provide personnel assistance for any loading, unloading, or setting up of such equipment.

9. All groups using the Rose Hill facilities shall clean up, dismantle and remove any equipment, and in general, leave the premises in the same condition as they found them upon conclusion of the special event. All garbage and trash must be put in heavy-duty plastic trash bags, to be supplied by the sponsoring group, and place in the Park's trash containers.
10. Any and all damage to the grounds, buildings and equipment must be corrected by the sponsoring group to the satisfaction of designated officials of the Town of Berryville. Correction may include replacement if deemed warranted by such Town Officials.
11. All activities and required clean-up shall be concluded no later than 12:00 Midnight of the day of the scheduled event.
12. Users of the Park and its facilities must take adequate provision to guard against public disturbances or other unsafe practices.
14. No event is official until it is entered on the schedule and a special event permit is issued by the Town of Berryville.
15. All groups using the Park and its facilities must abide by these rules and regulations and any special conditions which might be attached to individual permits. In the event unusual and special considerations associated with a particular event would render complete satisfaction of these provisions a hardship, prior approval of any variance or deviation must be obtained from designated Town Officials. The Town reserves the right to require a damage deposit, in such amount as the Town deems appropriate, as a special condition to individual permits.
16. For cause, permits are subject to cancellation or revocation by the Town of Berryville.

Revision Table

Draft V2_9/2018

Page	Revision
I	Table of Contents added
1	Commercial Activity defined
2	Event liaison – language struck
6	Requests for information – language added
9	Permit revocation (a) – designee language added
13	Limited duration (5) – hours decreased from 48 to 8
14	(8)b – Commercial activity prohibition in Rose Hill Park added
15	Signs and banners – (10)a struck
16	(10)e struck
16	(12)d – Removal of temporary structure reduce from 24 hours to 8
17	(12)d – Berryville Planning Department added
17	(15) Open Flames – Town Code 13-36 cited – Fires in Rose Hill Park
19	(16)a1(A)(7) – Fire Chief replaced with Director of Fire and EMS
20	(16)a1(A)(8) – Fire Chief replaced with Director of Fire and EMS
21	(18) Parades removed from section
22-23	Additional Community Events added

Draft V3_10/18

Page	Revision
2	Sec. II Town Planning Department added
6	Permit Applications C(2)e – Reworded for clarity
8	D(5)b - Grammar
10	D(8)a – Permit revocation – Language added for electronic written notice
13	E(3) – Permit Conditions – “Park” added to list of sites

Draft V4_11/18

Page	Revision
3	Community event added to Event definition language
4	Streets definition - grammar
5	C.(1) Permits – “will” replaced with “may”
5	C.(2) Events Coordinator replaced with Events Liaison
7	D.(1) Events Coordinator replaced with Events Liaison
7	D.(2) Referenced section (21) corrected to E(21)
14	E.(5) – “will” replaced with “may”

Draft V6_01/19

Page	Revision
6	C(2)d – “If applicable” added to text
12	E(2)a1 – Time of day modified from 4:00 pm to 3:30 pm
12	E(2)b – Hours of closure changed from 8 to 10
13	E(3) – “Town” removed from buildings to include all buildings and not just Town owned.
14	E(5) - Hours of closure changed from 8 to 10
18	E(12)d - Hours of closure changed from 8 to 10

Final Draft V7_05/19

Page	Revision
All	All corrections and revisions incorporated and formatted
All	Review and recommendations of legal counsel incorporated