

Town of Broadway, Virginia

Town Code

2023



AN ORDINANCE TO AMEND, RE-ENACT, AND RECODIFY THE GENERAL ORDINANCES OF THE TOWN OF BROADWAY, VIRGINIA, AND REPEALING THE TOWN CODE OF THE TOWN OF BROADWAY, VIRGINIA (2003)

WHEREAS the Town Council (the “Council”) of the Town of Broadway, Virginia (the “Town”) is empowered under Virginia Code § 15.2-1433 to enact ordinances, to codify such ordinances into an organized town code, and to amend, re-enact, and re-codify such ordinances at its pleasure; and

WHEREAS the Town Code of the Town of Broadway was last recodified and re-enacted in 2003; and

WHEREAS the Council has determined that it is now appropriate to amend, revise, re-enact, and recodify ordinances of general applicability in the Town.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF BROADWAY, VIRGINIA, to wit:

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

§ 10.01 TITLE AND NATURE

(a) This Code shall be known as the “Town Code of the Town of Broadway, Virginia (2023)”.

(b) All ordinances of a permanent and general nature (except ordinances relating to zoning or subdivision, which are contained in the Land Development Regulations), as revised, codified, rearranged, renumbered, and consolidated into component codes, titles, chapters, and sections, shall be known and designated as the "Code," for which designation "code of ordinances," or "codified ordinances" may be substituted. Code title, chapter, and section headings do not constitute any part of the law as contained in the Code.

(c) All references to codes, titles, chapters, and sections are to the components of the Code unless otherwise specified. Sections of this Code may refer to or cite other sections of this Code by the designation "§" followed by the number, such as "§ 10.01", and with or without the preceding phrase “Town Code”. Headings and captions used in this Code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

(d) Whenever in one section reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.02 RULES OF INTERPRETATION

(a) Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this Code as those governing the interpretation of state law.

(b) The construction of this Code shall be moreover by the following rules, unless that construction is plainly repugnant to the intent of the Council or of the context of the section being interpreted:

(i) When a statute, Code provision or ordinance requires an act to be done which, by law, an agent, designee, assistant, or deputy as well may do as the principal, that requirement shall be satisfied by the performance of the act by an authorized agent or deputy.

(ii) Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(iii) A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

(c) This Code shall be interpreted in harmony with the Town's Land Development Regulations as one, unified legal code for the Town.

§ 10.03 APPLICATION TO FUTURE ORDINANCES

All provisions of this Title I shall apply to ordinances hereafter adopted which amend or supplement this code unless otherwise specifically provided.

§ 10.04 CAPTIONS

Headings and captions used in this Code other than section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 GENERAL DEFINITIONS

(a) Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(b) For the purpose of this Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Code means this code as modified by amendment, revision, and adoption of new titles, chapters, or sections, but does not include the Land Development Regulations.

Council or Town Council means the Town Council of the Town.

Land Development Regulations means the Town's Land Development Regulations, adopted originally on December 6, 2011, and subsequently amended, which consist of the Town's Zoning Ordinance and the Town's Subdivision Ordinance.

Law means any constitution, charter, statute, ordinance, judicial decision, or regulation, whether local, state, or federal.

May means that the act referred to is permissive.

Month or calendar month means a calendar month, regardless of the number of days in such month.

Oath includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words *swear* and *sworn* shall be equivalent to the words *affirm* and *affirmed*. All terms shall mean a pledge taken by the person and administered by any individual authorized under state law.

Officer, Office, Employee, Commission, or Department mean an officer, office, employee, commission, or department of the Town unless the context clearly requires otherwise

Person means a natural person, individual, person, persons, firm, corporation, partnership, trustee or other fiduciary, limited liability company, lessee, or receiver. Whenever used in any clause requiring an act or proscribing an omission, the terms *person* or *whoever* as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations or limited liability company, the officers or agents thereof.

Preceding or following mean next before or next after, respectively.

Shall means that the act referred to is mandatory.

Signature includes a mark when the person cannot write, and also includes an electronic signature in any instance that state law permits.

State means the Commonwealth of Virginia.

Town means the Town of Broadway, Virginia.

Written means any representation of words, letters, or figures, whether by printing or otherwise, and includes an e-mail, word processing or PDF document, or other electronic collection of words, letters, or figures.

Year means a calendar year, unless otherwise expressed.

(c) A defined term in this Code may be capitalized for clarity, but the lack of capitalization is not to be taken to mean that the Town Council intends a different definition.

§ 10.06 SEVERABILITY

If any provision of this Code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 10.07 AUTHORITY OF TOWN ATTORNEY TO RENUMBER, CORRECT ERRORS, ETC.

(a) The Town Attorney is hereby authorized and empowered, without action of the Town Council, to (i) create a table of contents for this code; (b) to renumber, reorganize, recodify, or reclassify any provision in this Code, without altering the substance thereof, to provide for the better or more concise organization of the Code, or to prevent duplication of section numbers; and (c) to correct obvious scrivener's errors in this Code or in any other enactment of the Town Council, in order to implement the manifest intention of the Council.

(b) The Town Attorney shall exercise his powers under paragraph (a) by transmitting a letter to the Town Clerk detailing the changes being made and his reasons for the same.

§ 10.08 REPEAL OF PRIOR CODE

This Code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this Code shall be deemed repealed from and after the effective date of this Code. The Town Code of the Town of Broadway adopted on August 5, 2003, is hereby repealed. Nothing in this Code shall affect the validity of the Town's Land Development Regulations, which are not repealed, or of the Town's existing uncodified guidelines for implementing the Public-Private Education Facilities and Infrastructure Act of 2002 (presently codified at Virginia Code § 56-575.1 *et seq.*).

§ 10.09 SAVING OF PRIOR UNCODIFIED ORDINANCES

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this Code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.10 EFFECTIVE DATES

(a) Future ordinances shall take effect upon the Council's adoption of such ordinances unless the Council specifies a different effective date.

(b) This Code shall take effect on the first day of the calendar month following its adoption.

§ 10.11 TRANSITION PROVISIONS

(a) All offenses committed under laws in force prior to the effective date of this Code shall be prosecuted and remain punishable as provided by those laws. This Code does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Code. Such liabilities, proceedings and rights are continued; punishments, penalties, or forfeitures shall be enforced and imposed as if this Code had not been enacted.

(b) In connection both the adoption of this Code, and the future amendment hereof, no suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(c) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

§ 10.12 REFERENCES TO OTHER LAW

When this Code references any other law, all future amendments to such law, together with any recodifications or changes in section number, are adopted by reference in this Code as if they had been in existence at the time this code was adopted, unless this Code expresses a clear intention to the contrary.

§ 10.13 GENERAL PROVISIONS REGARDING PENALTIES

(a) Whenever any section of this Code criminalizes any act or omission, and this Code does not provide a penalty for such act or omission, the person engaging in such act or omission shall be guilty of the lesser of (i) a Class 1 misdemeanor, as that term is defined in State law, or (ii) the maximum penalty permissible under state law.

(b) The imposition of any penalty pursuant to this or any other provision of this Code, shall not prohibit the Town from seeking equitable relief in any court of competent jurisdiction, to enjoin the violation of any provision of this Code or other ordinance of the locality.

(c) Each day any violation of this Code or any other ordinance of the Town shall continue shall constitute a separate offense, except where otherwise provided.

(d) In the event this Code provides for a penalty for an act or omission that impermissibly exceeds the penalty imposed under state law, then the penalty imposed under this Code shall be the maximum penalty imposed under state law.

§ 10.14 GENERAL PROVISIONS REGARDING NOTICES

(a) The provisions of this section shall apply whenever the Town is required under this Code or other law (other than the Land Development Regulations) to provide notice to someone, and this Code or other law does not provide procedures for giving such notice.

(b) The Town may give notice by any one or more of the following methods, and such notices shall be effective at the earlier of the time indicated below, or the time indicated in paragraph (c):

(i) By personal delivery to the person affected, whether such delivery occurs through a sheriff, a Town police officer, another agent or employee of the Town, or a private process server; and such notice shall be effective when delivered;

(ii) In the event that such notice concerns an act or omission in connection with particular property that the Town knows is unoccupied or not owner-occupied, or when the Town does not know whether the property is unoccupied or owner occupied, by both (A) posting on the front door to such property, and (B) providing notice to the owner of such property at the owner's last known address; and such notice shall be effective as of the latest date that both such posting and such other notice have been accomplished;

(iii) In the event that such notice concerns an act or omission in connection with particular property that the Town knows is owner-occupied, by posting on the front door to such property;

(iv) In cases where the notice does not concern an act or omission in connection with any particular property, by posting on the front door of the last known address of the person affected, and such notice shall be effective when posted;

(v) By deposit with a reputable overnight delivery service or overnight U.S. Mail, addressed to the last known address of the person affected; and such notice shall be effective one business day after such deposit; or

(vi) By certified mail, return receipt requested, to the last known address of the person affected; and such notice shall be effective five (5) days after such notice is sent.

(c) Notices to be provided under the Land Development Regulations shall be governed by the provisions thereon, or by state law, as applicable, and not by this section.

(d) The Town may determine a recipient's last known address by any reasonable method, including without limitation the following methods: (i) consultation with the records of Rockingham County officials, such as (without limitation) the Commissioner of the Revenue, the Treasurer, or the Rockingham County Circuit Court; and (ii) consultation with the Town's utility, tax, or other records.

§ 10.15 NOTICE ACTUALLY RECEIVED

Whenever this Code requires notice, notice that a recipient has actually received is valid notice to such person, effective when so received, even if not given by the method prescribed.

§ 10.16 NOTICE TO PERSONS NOT NATURAL PERSONS

Whenever this Code requires notice to a person that is not a natural person, notice to such a person may be delivered to any registered agent for such person, or to any official who is an authorized recipient of service to such person under state law related to service upon persons who are natural persons.

TITLE III: ADMINISTRATION

Chapter

- 30. GOVERNING BODY; ELECTED OFFICERS**
- 31. UNELECTED OFFICERS AND EMPLOYEES**
- 32. DEPARTMENTS, BOARDS AND COMMISSIONS**
- 33. ELECTIONS**
- 34. FINANCE**
- 35. PROCUREMENT ACT PROVISIONS**

CHAPTER 30: GOVERNING BODY; ELECTED OFFICERS

§ 30.01 TERM OF VICE-MAYOR

At the Organizational Meeting of the Town Council each year, the Town Council shall elect one of its members to serve as the Town's Vice-Mayor. The Vice Mayor shall serve until the following annual Organizational Meeting of the Town Council, or until he is no longer a member of the Town Council, whichever comes first. The failure of the Town Council to elect a Vice-Mayor during its organizational meeting shall not affect the validity of the term or office of a Vice-Mayor elected at another meeting.

§ 30.02 MEETINGS OF TOWN COUNCIL

(a) Organizational Meeting. The Town Council shall hold its Organizational Meeting each year on the first Tuesday in January, at 7:00 PM, at the Town Council Chambers. If the date of the Organizational Meeting falls on a state holiday, the Organizational Meeting shall be held on the next succeeding Tuesday, unless the Town Council by motion or resolution shall set a different date. Notwithstanding the foregoing, the Mayor of the Town may, by proclamation, fix a different date within the month of January for the organizational meeting. Such proclamation shall be posted at the Town Office, and copies posted on the Town's website.

(b) Other Regular Meetings. Pursuant to its charter power to provide, by ordinance, for the time of the meetings of the Town Council, the Town Council provides as follows: Regular meetings of the Town Council shall take place on the first Tuesday of every month, and on the Thursday preceding such Tuesday, in each instance at 7:00 PM, at the Town Council Chambers. In the event that the first Tuesday of a month is a state holiday or is the day before a state holiday, or in the event that a quorum cannot be obtained on such date, such meeting shall take place on the following Tuesday without any action by the Town Council. The Council may, by motion, set a different date for any regular meeting, and shall post notice of such changed meeting on the Town's website and on the bulletin board outside the Town Office.

(c) Special Meetings. Special meetings of the Town Council may be held in accordance with the procedures prescribed in the Town Charter.

§ 30.03 SALARIES OF TOWN COUNCIL MEMEBERS

Each Town Council member shall receive a salary of \$250 per month, except the Mayor, who shall receive a salary of \$300/month. A member of the Town Council who serves as a representative to the Broadway Hometown Partnership or to the Central Shenandoah Planning District Commission shall receive an additional salary of \$50 per month.

**§ 30.04 COUNCIL REPRESENTATIVES AND DEPARTMENT LIAISONS;
COMMITTEES**

(a) The Mayor shall designate one of the Town Council members to serve as its representative on each of the Planning Commission, the Broadway Hometown Partnership, and the Central Shenandoah Planning District Commission.

(b) The Mayor may appoint a Member of the Town Council to serve as the liaison between Town staff and the Town Council for a particular subject or policy area.

(c) The Town Council may form such standing or ad hoc committees as it may deem expedient to carry out its business. The Mayor shall appoint the members of all such committees.

§ 30.05 PUBLIC HEARINGS; PUBLIC COMMENT

(a) The Town Council and the Planning Commission shall hold public hearings (a) whenever required by state or federal law; (b) whenever specified by motion or other action of the Town Council or Planning Commission, respectively; or (c) when directed by the Town Manager, the Mayor, or the Chairman of the Planning Commission to facilitate business on an agenda for a particular meeting of the Town Council or Planning Commission. The Town Manager and the Town Attorney shall cause any necessary advertisements for such public hearings to appear in the *Daily News-Record* or other publication appropriate under Virginia law.

(b) The presiding officer at any public hearing or public comment period may set reasonable limits on the time allotted to any speaker from the general public. Such limits shall be enforced with reasonable uniformity between speakers, and without reference to the viewpoint of the speaker. The presiding officer may allow the applicant or principal proponent of the proposed action to speak at greater length than commenters from the general public, in order to allow presentation of the proposed action, or to respond to comments from members of the public.

§ 30.06 POLICY REGARDING REMOTE PARTICIPATION IN MEETINGS

(a) A Town Council member may participate in a meeting through electronic communication means from a remote location, including a location that is not open to the public, only as described in this section.

(b) Remote participation is permissible in the event a Town Council member is unable to attend the meeting in person because of (a) a personal matter; or (b) a temporary or permanent disability or other medical condition prevents the Town Council member from attending; or (c) a member of the Town Council's family has a medical condition that requires the member to provide care for such family member, thereby preventing the Town Council member's physical attendance.

(c) In the event that the Town Council member seeks to participate remotely on account of a personal matter, then on or before the day of a meeting, the member shall notify the Town Manager that the member is unable to attend the meeting due to a personal matter. The member

must identify with specificity the nature of the personal matter. At the beginning of the meeting, the Town Council must then vote to approve or disapprove the member's remote participation.

(d) In the event that the Town Council member seeks to participate remotely on account of the disability or medical circumstances described above, then on or before the day of a meeting, the member shall notify the Town Manager that the member is unable to attend the meeting due to such circumstances, and shall specify whether such circumstances relate to the member's own disability or medical condition, or the medical condition of a family member. At the beginning of the meeting, the Town Council must then vote to approve or disapprove the member's remote participation.

(e) In the event that the Town Council votes to approve the remote participation, the minutes of the meeting shall include: (a) the fact of the member's remote participation; (b) the grounds for remote participation as provided to the Town Manager (including the specific nature of the personal matters that prevent participation in person, if the reason for the remote participation is a personal matter); and (c) the physical location from which the member is participating remotely (which location need not be open to the public).

(f) The Town Council shall not disapprove remote participation unless such participation would violate this policy or other law. In the event of such disapproval, the minutes shall record with specificity the violations that members of the Town Council believed would have occurred in connection with the remote participation.

(g) Notwithstanding the remote participation of one or more members pursuant to this policy, a quorum of the Town Council must nevertheless be assembled physically, in person, at the Town Council chambers or other central meeting location.

(h) This policy shall be applied strictly and uniformly, without exception, to the entire membership of the Town Council and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

(i) A member may participate remotely on account of a personal matter no more often than three (3) times in any calendar year. There is no limit to the number of times that a member may participate remotely due to a temporary or permanent disability or other medical condition, or the medical condition of a family member as described above.

(j) The Town Manager shall ensure that the member participating remotely can hear all comments made in the meeting room, and that other members of the Town Council and the public can hear comments that the member participating remotely makes.

(k) If the Town Council goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

(l) This section shall not apply to instances in which other law permits the Town Council as a whole to meet by electronic communication means, even if some Town Council members are present in person at a public meeting location during such meetings.

CHAPTER 31: UNELECTED OFFICERS AND EMPLOYEES

SUBCHAPTER A – UNELECTED TOWN OFFICERS

§ 31.10 TOWN CLERK; DUTIES

There is hereby established the office of Clerk of the Town Council of the Town of Broadway. The Clerk shall perform the duties prescribed by the Town's Charter or by general state law, as well as any other duties assigned by the Town Council or the Town Manager. The Clerk shall serve an indefinite term at the pleasure of the Town Council, and shall have all the powers described in the Town Charter or other law, but shall report to the Town Manager for the day-to-day conduct of his duties.

§ 31.11 TOWN TREASURER/DIRECTOR OF FINANCE; DUTIES

There is hereby established the office of Treasurer of the Town of Broadway. The Treasurer shall perform the duties prescribed by the Town's Charter or by general state law, as well as any other duties assigned by the Town Council or the Town Manager. The Treasurer shall be the officer responsible for the administration of the Town's financial affairs, subject to the direction and control of the Town Manager and the Town Council. The Treasurer shall serve an indefinite term at the pleasure of the Town Council, and shall have all the powers described in the Town Charter or other law, but shall report to the Town Manager for the day-to-day conduct of his duties. At the direction on the Town Manager, the Treasurer may also have the title of Director of Finance, and in his capacity as Director of Finance, shall have such duties as the Town Manager may prescribe.

§ 31.12 TOWN MANAGER; DUTIES

(a) There is hereby established the office of Town Manager of the Town of Broadway. The Town Manager shall perform the duties prescribed by the Town's Charter or by general state law, as well as any other duties assigned by the Town Council. The Town Manager shall be the administrative head of the Town government, with all the powers permitted to such administrative head by the Town Charter or Virginia law, except as may be otherwise provided herein. To the extent permitted by law, the Town Manager shall have the executive powers of the Mayor to take care that the laws be faithfully executed, subject to the supervision and authority of the Mayor. The Town Manager shall have such other powers as the Town Council may prescribe, or as may be prescribed by general law. The Town Manager shall serve an indefinite term at the pleasure of the Town Council. Except as may be otherwise provided, the Town Manager shall have the power to make and to execute all agreements, contracts and documents on behalf of the Town.

(b) The Town Manager may delegate any power or duty that he has to any other Town officer or employee, whether or not this Code specifically refers to the "Town Manager or his

designee". The Town Manager may revoke such delegation at any time. The Town Manager may supervise such other officer or employee in the exercise of any such power or duty.

(c) If this Code or other law charges the Town Manager with the responsibility for any decision, and the Town Manager believes that the Town Council should, instead, take such decision, then the Town Manager may refrain from making any such decision and may refer such decision to the Town Council for action.

(d) The Town Manager shall serve as the Town's FOIA Officer.

(e) The Town Manager may appoint such deputy or assistant Town Managers as he may deem appropriate, and may make delegations to such deputy or assistant under subparagraph (b) above.

§ 31.13 TOWN ATTORNEY

There is hereby established the office of Town Attorney of the Town of Broadway. The Town Attorney shall have responsibility for the management, charge, and control of the Town's legal affairs, subject to the direction and supervision of the Town Council and the Town Manager. The Town Attorney or his assistant or deputy shall attend all meetings of the Town Council unless excused from doing so by the Mayor or Town Manager. The Town Attorney shall receive for his services a compensation agreed to among the Attorney and the Town Council, which compensation may be on an hourly basis or on another basis, or a combination thereof. The Town Attorney may use other attorneys in his firm to conduct the Town's legal work if he judges that doing so will result in greater efficiency, provided that the Town Manager does not object to such use. The Town Council may also from time to time designate one or more Assistant Town Attorneys, or may retain special counsel for particular legal services such as a bond issue. The Town Attorney and any Assistant Town Attorneys are hereby authorized, at the specific request of the Town Manager, and with the approval of the Commonwealth's Attorney if required under state law, to prosecute criminal cases charging violation of Town ordinances, or misdemeanors alleged to have occurred within the limits of the Town. The Town Attorney, any Assistant Town Attorneys, and any other attorneys retained under this section are the attorneys of the municipal corporation constituting the Town, and are not the attorneys of the Town Manager in his individual capacity, or of any other officer or employee of the Town in their individual capacities, absent a separate written engagement between such individual and such attorney. Such an engagement is only permissible in accordance with the ethics rules of the Virginia state bar and further provided that the Town waives any conflict that might arise from such an engagement.

§ 31.14 CHIEF OF POLICE

There is hereby established the office of Chief of Police of the Town of Broadway. The Chief of Police shall be the chief law enforcement officer of the Town, shall have general supervision over the police force of the Town, subject to the direction of the Town Manager and the Mayor, and shall have such other duties as provided in the Town's charter, general law, or the direction of the Town Manager. The Chief of Police shall not be required to provide a bond.

§ 31.15 BONDS

The following officers shall be required to post bond upon the assumption of their positions, in an amount to be determined by the Town's insurance brokers: Town Manager, Town Treasurer, Town Clerk. In addition, the Town Manager may require any other officer or employee to post a bond if he determines such employee will have access to the Town's funds.

§ 31.16 SALARIES FOR OFFICERS

The salaries or other compensation of the officers appointed under this Subchapter A shall be as stated in the budget adopted by the Town each year, as the Town Council provides by separate ordinance, or as the Town has otherwise agreed.

SUBCHAPTER B – OTHER TOWN EMPLOYEES

§ 31.20 OTHER EMPLOYEES

The Town Council has the responsibility for hiring and appointing the officers or employees described in §§ 31.10 through 31.14, may terminate such officers at its pleasure, and reserves to itself the power to terminate such officers or employees, who shall serve at the pleasure of the Town Council. The Town Council delegates the responsibility for hiring all other employees of the Town to the Town Manager, subject to the Town Council's appropriations for their salaries. The Town Manager may also terminate the employment of any such employee for any reason that does not violate law when, in his judgment, such termination promotes the best interests of the Town.

§ 31.21 BACKGROUND CHECKS

The Town Manager shall obtain background checks on each employee of the Town before making an offer of employment to such person. He shall evaluate the results of such background check in determining whether to make an offer to such potential employee, or, if responsibility for such appointment rests in the Town Council, he shall make such information available to the Town Council.

§ 32.22 BONUSES FOR EMPLOYEES

The town manager is authorized to establish bonus programs to address a variety of needs, including recruitment, retention, holiday bonuses, and performance, for any employee of the Town (except the Town Manager). Bonuses may be provided to employees in accordance with adopted personnel rules and regulations. Holiday bonuses may be provided from year to year in accordance with a schedule that the Town Manager may create in consultation with the Town Council or its Personnel Committee. A "bonus" shall be defined as a lump-sum payment to an employee that is not part of the base salary.

CHAPTER 32: DEPARTMENTS, BOARDS, AND COMMISSIONS

SUBCHAPTER A – POLICE DEPARTMENT

§ 32.10 ESTABLISHMENT OF POLICE DEPARTMENT

There is hereby established a Town of Broadway Police Department. The Police Department shall be the official law enforcement agency of the Town, and shall have the responsibility of keeping good peace and order within the Town consistently with state law, Town ordinances, and the directions of the Town Manager, and shall have all authority provided to police departments of towns under Virginia law. The Police Department shall operate under the supervision of the Chief of Police, subject to the ultimate authority of the Town Manager and the Mayor. The Chief of Police shall provide for the smooth organization and operation of the Police Department.

§ 32.11 EMPLOYMENT OF OFF DUTY POLICE OFFICERS

A Town police officer not on duty may accept employment or independent contractor work that occasionally requires him to use his police powers in the course of such employment. The Chief of Police is authorized to promulgate, in writing, reasonable rules and regulations applicable to such off duty employment or contract work.

§ 32.12 REIMBURSEMENT OF TOWN FOR EXPENSES INCURRED IN RESPONDING TO TERRORISM HOAX INCIDENT

Any person who is convicted of a violation of subsections B or C of Va. Code § 18.2-46.6, when such violation the a proximate cause of any incident resulting in an appropriate emergency response, shall be liable at the time of sentencing or in a separate civil action to the Town or to any volunteer rescue squad within the Town, or both, which may provide such emergency response for the reasonable expense thereof, in an amount not to exceed \$1,000 in the aggregate for a particular incident occurring in the Town. If the Police Chief determines that it is in the Town's best interests to attempt to collect such amounts, the Town Treasurer shall bill a flat fee of \$250 or a minute-by-minute accounting of the actual costs incurred to the Town. As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services.

§ 32.13 REIMBURSEMENT OF TOWN FOR EXPENSES INCURRED FOR METHAMPHETAMINE LAB CLEANUP COSTS

Any person who is convicted of an offense for manufacture of methamphetamine pursuant to Virginia Code § 18.2-248 or 18.2-248.03 shall be liable at the time of sentencing or in a separate civil action to the Town or to any other law-enforcement entity for the expense in cleaning up any methamphetamine lab related to the conviction. The amount charged shall not exceed the actual expenses associated with cleanup, removal, or repair of the affected property or the replacement cost of personal protective equipment used. If the Police Chief determines that it is in the Town's

best interests to attempt to collect such amounts, the Town Treasurer shall bill such person for all such amounts.

§ 32.14 REIMBURSEMENT OF EXPENSES INCURRED IN RESPONDING TO DUI AND OTHER TRAFFIC INCIDENTS

Any person convicted of violating any of the following provisions shall, at the time of sentencing or in a separate civil action, be liable to the Town or to any responding volunteer fire or rescue squad, or both, for restitution of reasonable expenses incurred by the locality for responding law enforcement, firefighting, rescue and emergency services, including those incurred by the volunteer fire or rescue squad, or by any combination of the foregoing, when providing an appropriate emergency response to any accident or incident related to such violation. A person convicted of violating any of the following provisions shall, at the time of sentencing or in a separate civil action, be liable to the Town or to any responding volunteer fire or rescue squad, or both, for restitution of reasonable expenses incurred by the Town when issuing any related arrest warrant or summons, including the expenses incurred by the by any volunteer fire or rescue squad, or by any combination of the foregoing:

- A. The provisions of Virginia Code §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1, 29.1-738, 29.1-738.02, or 46.2-341.24, when such operation of a motor vehicle, engine, train or watercraft while so impaired is the proximate cause of the accident or incident;
- B. The provisions of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;
- C. The provisions of Article 1 (§ 46.2-300 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia relating to driving without a license or driving with a suspended or revoked license; and
- D. The provisions of Va. Code § 46.2-894 relating to improperly leaving the scene of an accident.

Personal liability under this section for reasonable expenses of an appropriate emergency response pursuant shall not exceed \$1,000 in the aggregate for a particular accident, arrest, or incident occurring in such locality. In determining the "reasonable expenses," a locality may bill a flat fee of \$350 or a minute-by-minute accounting of the actual costs incurred. If the Police Chief determines that it is in the Town's best interests to attempt to collect such amounts, the Town Treasurer shall bill such amounts. As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement, firefighting, rescue, and emergency medical services.

§ 32.15 TRESPASS VIOLATIONS

The owner, lessee, custodian, or persons lawfully in charge of real property (as such term is defined in state law) may designate the Town's Police Department as a "person lawfully in charge of the property" for the purpose of forbidding another to go or remain upon such lands, buildings, or premises as specified in the designation. Any such designation shall be in writing and shall be on file with the Police Department. The Police Chief may establish policies to govern such designations and procedures for the submission thereof. The Police Chief may reject any such designation for any reason.

§ 32.16 ASSESSMENT FOR MAINTENANCE OF ELECTRONIC SUMMONS SYSTEM

There is hereby imposed and assessed by the Town, in accordance with Section 17.1-279.1 of the Code of Virginia, 1950, as amended, or any successor statute, an additional sum of five dollars (\$5.00) as part of the costs in each criminal and traffic case prosecuted on a town warrant or summons in either the circuit court, general district court, or juvenile and domestic relations district court. The assessment shall be collected by the Clerk of the court in which the warrant or summons is filed and remitted to the Town treasurer. The Town shall employ such funds to defray the hardware, software and other equipment costs associated with implementation and maintenance of the Town's electronic summons system.

SUBCHAPTER B – PLANNING COMMISSION

§ 32.20 ESTABLISHMENT OF PLANNING COMMISSION

There is hereby established a local planning commission for the Town of Broadway, under the name and title "Planning Commission of the Town of Broadway".

§ 32.21 MEMBERSHIP; TERM

(a) The Planning Commission shall consist of five (5) members, all of whom shall be residents of the Town, and one-half of whom shall be owners of real property. One Member of the Planning Commission shall be a member of the Town Council (the "Council Representative").

(b) Each member of the Planning Commission shall serve a term of four (4) years, except that the term of the Council Representative shall expire at the expiration of his term on the Council or upon the selection of a successor to the Council Representative at the first meeting of the Town Council in any calendar year, whichever occurs first.

§ 32.22 POWERS OF PLANNING COMMISSION

The Planning Commission shall have all the powers delegated or permitted to be delegated to Planning Commissions under Virginia law.

§ 32.23 SALARIES OF PLANNING COMMISSION

Each member of the Planning Commission shall receive a salary of \$30 per month, except that the Council Representative shall receive a salary of \$50 per month in addition to any salary received as a member of the Town Council.

SUBCHAPTER C – INDUSTRIAL DEVELOPMENT AUTHORITY

§ 32.30 ESTABLISHMENT OF AUTHORITY

There is hereby established a political subdivision of the Commonwealth of Virginia with such public and corporate powers as are set forth in the Industrial Development and Revenue Bond Act (Chapter 49, Title 15.2 of the Code of Virginia 1950, as amended), including such powers as may hereafter be granted from time to time by the General Assembly of Virginia.

§ 32.31 NAME OF AUTHORITY

The name of the political subdivision of the Commonwealth of Virginia shall be the Industrial Development Authority of the Town of Broadway, Virginia (the “Authority”).

§ 32.32 LEGISLATIVE INTENT REGARDING CODIFICATION

The provisions of §§ 32.30 and 32.31 are declarative of existing law, and are intended to codify, reenact as positive law, and reaffirm the Town Council’s Ordinance of February 6, 2001, which created the Authority. The Authority continues in existence as it did before the enactment of this Subchapter, and the existing officers and directors of the Authority continue in office. This codification shall not affect any existing obligation of the Authority.

SUBCHAPTER D – FIRE AND RESCUE

§ 32.41 DESIGNATION OF ORGANIZATIONS; DEFINITION

The Broadway Volunteer Fire Department, Incorporated, is designated as the Fire Department of the Town. The Broadway Emergency Squad, Inc., is designated as the Emergency Medical Service provider of the Town. Such two entities shall be deemed “first responders” within the Town and are recognized as part of the Town’s safety program. Such entities are referred to in this Chapter as the “Units”.

§ 32.42 LIMITATIONS

(a) The Town reserves such other powers as the Code of Virginia may grant it with respect to the Units.

(b) Nothing in this chapter shall create a command structure allowing the Town to control the Units. To the extent that any governmental control is appropriate, the Town recognizes Rockingham County's unique responsibility to maintain a coordinated fire and rescue system throughout Rockingham County.

(c) This chapter shall have no effect outside boundaries of the Town.

(d) Nothing in this chapter shall be construed to create any duty for public support of the Units.

§ 32.43 REQUIREMENT TO PROVIDE FIREFIGHTING SERVICE

By accepting the designation in this Chapter, the Broadway Volunteer Fire Department, Incorporated agrees to provide firefighting service to areas within the political boundaries of the Town.

CHAPTER 33: ELECTIONS

§ 33.01 POLLING PLACE

The Town shall consist of a single precinct, and the polling place for such precinct shall be the Broadway Fire Department.

CHAPTER 34: FINANCE

§ 34.01 ESTABLISHMENT OF FUNDS

The Town Treasurer shall be charged with maintaining the following funds in order to provide for the sound and efficient financial administration of the Town: a General Fund, a Water Fund, and a Sewer Fund. This section shall not be construed to require separate depository or investment accounts for the assets of each fund.

§ 34.02 AUTHORITY TO SIGN CHECKS

The Mayor, Treasurer, and Town Manager are authorized signatories on the Town's accounts. Every check shall be only for a duly authorized and appropriated disbursement of the Town's funds. Each check must be signed by the Town Manager and, in addition, by one other authorized signatory; provided, however, in the event that the Governor has declared a State of Emergency and only one Town official is available to sign check on account of public health regulations or other applicable law, a single Town official named above may sign checks.

§ 34.03 PENALTY FOR RETURNED CHECKS

Any persons who utters, publishes or passes any check, draft, or order for payment of taxes or any other sums due to the Town, which is subsequently returned for insufficient funds or because there is no account or the account has been closed, or because such check, draft, or order was returned because of a stop-payment order placed in bad faith on the check, draft, or order by the drawer, shall, in addition to the amount otherwise owed to the Town, shall be assessed an additional fee of Fifty Dollars (\$50.00).

CHAPTER 35: PUBLIC PROCUREMENT

SUBCHAPTER A: GENERAL PROVISIONS

§ 35.10 PURPOSE

The purpose of this chapter is to enunciate the Town's policies pertaining to governmental procurement from nongovernmental sources, to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public purchasing by this Town, to maximize the purchasing value of public funds in procurement so that high quality goods and services may be obtained at the lowest possible price, and to increase public confidence in procurement practices by providing safeguards for maintaining a procurement system of quality and integrity.

§ 35.11 APPLICATION

This chapter shall govern the procurement of goods and services by the Town. To the maximum degree possible under state law, this Title and the regulations issued hereunder shall supersede the provisions of the Virginia Public Procurement Act. Those portions of the Virginia Public Procurement Act that apply to all localities, notwithstanding the adoption of an alternate procurement ordinance, shall continue to apply to the Town and shall be read in conjunction with this chapter, which supplements such provisions of state law.

§ 35.12 DEFINITIONS

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) *Act.* Virginia Public Procurement Act, as amended from time to time, but presently codified at Title 2.2, chapter 43 of the Code of Virginia.
- (b) *Business.* Any corporation, general or limited partnership, limited liability company, limited liability partnership, individual, sole proprietorship, joint stock company, joint venture or any other non-governmental legal entity.

- (c) *Construction.* Building, improving or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property, but not including maintenance or repairs.
- (d) *Contract.* All types of Town agreements, oral or written, regardless of what they may be called, for the procurement of goods, services, insurance or construction.
- (e) *Contractor.* Any person having a contract with the Town or a using agency thereof.
- (f) *Emergency.* An emergency shall exist when, in the opinion of a using agency, a breakdown in an essential service occurs or under any other circumstances when supplies are needed for immediate use in work which may vitally affect the safety, health or welfare of the public.
- (g) *Employee.* An individual drawing a salary, wages or other compensation from the Town whether elected or not, or any noncompensated individual performing personal services for the Town or any entity established by the Town.
- (h) *Insurance.* A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss or provide a defense to any claim.
- (i) *Invitation for bids.* All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids in a competitive sealed bidding process, formal or informal.
- (j) *Nonresponsible.* A bidder or responder to a request for proposal is nonresponsible when the Town Manager determines that it has overestimated its capacities and lacks the ability to supply the goods or to perform the services that the Town seeks to procure in a particular procurement proceeding.
- (k) *Person.* Any business, association, individual, union, committee, club, other organization or group of individuals.
- (l) *Request for proposals.* All documents, including those attached or incorporated by reference, used to solicit proposals in a competitive negotiation process, formal or informal.
- (m) *Using agency.* Any department, division, office, council, or other unit in the Town government requiring goods, services, insurance or construction as provided for in this chapter.

Except to the extent the definition is altered herein, any other terms used in this Chapter and not otherwise defined, but which are defined in the definitions section of the Act, shall have the same meaning as in the definitions section of the Act.

SUBCHAPTER B: PURCHASING SYSTEM

§ 35.20 ESTABLISHMENT OF PURCHASING SYSTEM

There is hereby created a purchasing system to operate under the direction and supervision of the Town Manager.

§ 35.21 AUTHORITY AND DUTIES OF TOWN MANAGER

The Town Manager shall serve as the principal public purchasing official for the Town and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this Title, as well as the management and disposal of goods. In his capacity as such, the Town Manager shall have the following duties and powers:

- (a) *Duties.* In accordance with this chapter, the Town Manager shall:
 - (1) Purchase or supervise the purchasing of all goods, services, insurance and construction needed by the Town;
 - (2) Sell, trade or otherwise dispose of surplus goods belonging to the Town;
 - (3) Establish and maintain programs for specifications development, contract administration, inspection and acceptance, in cooperation with the public agencies using the goods, services and construction;
 - (4) Maintain a current file of source of goods, services, insurance and construction to be known as a “bidder list” in which vendors can request to be included; and
 - (5) Perform such other functions and duties as may be necessary for the effective operation of the purchasing system.
- (b) *Receiving and tabulating bids for construction:* The Town Manager shall advertise, receive, open, and tabulate any and all bids for construction in accordance with the requirements and conditions set forth in the invitation to bid.
- (c) *Award of contracts:*
 - (1) The Town Manager shall award all contracts on behalf of the Town Council except for:
 - (a) Contracts for construction which are expected to exceed \$200,000.00; and
 - (b) Contracts where the Town Manager, in his sole discretion, has determined that an award by the Town Council is appropriate.

- (2) The Town Council shall award all contracts not awarded by the Town Manager.
- (d) Except as otherwise provided herein, the Town Manager have the power to take any action, on behalf of the Town, that a “public body” is permitted to take under the Virginia Public Procurement Act.

§ 35.22 DELEGATION OF AUTHORITY BY TOWN MANAGER

The Town Manager may delegate authority to purchase certain goods, services or construction items to other Town officials, provided adequate accountability to the Manager is maintained.

§ 35.23 PURCHASES FOR FIRE DEPARTMENT AND RESCUE SQUADS

The Town Manager shall have authority to sell supplies, materials and equipment to volunteer fire departments and rescue squads within the Town at the same cost as the cost of such supplies, materials and equipment to the Town.

§ 35.24 UNAUTHORIZED PURCHASES

Except as otherwise provided in this chapter, no elected or appointed official, or any employee, shall purchase or contract for any goods, services, insurance or construction within the purview of this Title other than by and through the Town Manager, and any purchase order or contract made contrary to the provisions hereof is not approved and the Town shall not be bound thereby. Any person responsible for such purchase shall be held personally liable for such purchase, and if already paid for out of Town funds, the amount may be recovered in the name of the Town in an appropriate action instituted therefor.

§ 35.25 REGULATIONS

The Town Manager may promulgate reasonable regulations, not inconsistent with this chapter or with state law, for the implementation of the provisions of this chapter and the establishment of procurement procedures hereunder, including procedures involving competitive sealed bidding and competitive negotiation, substantially as those terms are used in the Act, and procedures for small purchases where permitted by the Act.

§ 35.26 AUTHORITY FOR PROPERTY DISPOSAL

The Town Manager shall sell, transfer, trade or otherwise dispose of all materials, supplies, equipment or other personal property of the Town which has become obsolete and/or unusable by the using agency for which it was purchased and is unusable for public use.

§ 35.27 SALE OF SURPLUS PROPERTY

All sales of property pursuant to this chapter shall be sold on the basis of competitive bids, public auction or firm price offered to all persons wishing to participate in the sale. The Town Manager shall use whichever method he believes will raise the highest revenue for the Town.

SUBCHAPTER C: SOURCE SELECTION, DEBARMENT, AND REMEDIES

§ 35.30 EXCEPTIONS TO REQUIREMENT FOR COMPETITIVE PROCUREMENT

The following exceptions apply to the requirements of this chapter:

- (a) The Town may enter into contracts without competition for the purchase of goods or services which are performed or produced by *bona fide* nonprofit organizations.
- (b) The Town may enter into contracts for (i) legal services, (ii) expert witnesses, and (iii) other services associated with litigation or regulatory proceedings, in each instance without competitive sealed bidding or competitive negotiation.
- (c) The Town may enter into contracts for special police work without competitive sealed bidding or competitive negotiation.
- (d) The Town may award single or term contracts not expected to exceed the Small Purchase Limit without competitive sealed bidding or competitive negotiation under alternate written procedures, which the Town Manager may adopt generally, or may adopt in advance of a particular procurement for such procurement. Such procedures shall require obtaining quotes from at least three offerors whenever practical. No small purchase procedure for construction projects shall waive compliance with the Statewide Building Code. The Small Purchase Limit is
 - (i) \$200,000, for goods and services other than professional services and transportation-related construction;
 - (ii) \$80,000, for professional services; and
 - (iii) \$25,000, for transportation-related construction.
- (e) The Town may enter into contracts for purchases of legal publications without competitive sealed bidding or competitive negotiation.
- (f) If an emergency occurs during office hours, the using agency shall immediately notify the Town Manager, who shall either purchase directly or authorize the purchase of the needed goods. If any emergency occurs during a time when the Town Manager is unavailable, the using agency may purchase any goods or services needed to meet such existing emergency; provided, that the head of the using agency shall send as soon as practicable to the Town Manager a requisition and a copy of the delivery receipt together with written explanation of the circumstances of the emergency.
- (g) This Title shall not apply to financing transactions entered into by the Industrial Development of the Authority of the Town of Broadway, Virginia, entered into at

the request of a “conduit borrower” as that term is defined in Title 26 of the Code of Federal Regulations.

§ 35.31 DEBARMENT

The Town Manager may, in the public interest, debar a prospective contractor for any of the causes in paragraph (a) of this section, using the procedures in paragraph (c) of this section. The existence of a cause for debarment under such paragraph (a), however, does not necessarily require that the contractor be debarred; the seriousness of the contractor’s acts or omissions and any mitigating factors should be considered in making any debarment decision.

- (a) *Causes:* The Town Manager may debar a prospective contractor for any of the following causes:
 - (1) Conviction of or civil judgment for:
 - (a) commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
 - (b) violation of federal or state antitrust statutes relating to the submission of offers;
 - (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
 - (d) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor.
 - (2) Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as (a) a willful failure to perform in accordance with the terms of one or more contract, or (b) a history of failure to perform, or of unsatisfactory performance of, one or more contracts, or (b) a history of failure to perform, or of unsatisfactory performance of, one or more contracts.
 - (3) Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.
- (b) *Responsibility of Manager.* The Town Manager shall promptly investigate any allegations of improper contractor conduct prior to initiating debarment procedures.
- (c) *Procedures:* The following procedures governing the debarment decision-making process are designed to be as informal as practicable, consistent with principles of fundamental fairness.

- (1) Debarment shall be initiated by advising the prospective contractor by certified mail, return receipt requested, that debarment is being considered. Such notice shall include the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction upon which it is based.
- (2) Debarment shall be for a period commensurate with the seriousness of the cause, as determined by the Town Manager in his sole discretion.
- (3) The prospective contractor may submit to the Town Manager, within thirty days after receipt of notice, in person, in writing or through a representative, information and argument to the proposed debarment, including any additional specific information that raises a genuine dispute over the material fact. If the proposed debarment is based upon a cause other than those specified in paragraph (1) of subsection (a), an informal hearing allowing the examination and cross-examination of witnesses shall be provided if so requested by the prospective contractor. In such cases, the Town Manager shall conduct the hearing and shall render his decision within fifteen days thereafter, or within fifteen days after receipt of written information and argument if no hearing is requested or required to be held.
- (4) The decision of the Town Manager services shall be final unless the prospective contractor appeals by invoking administrative procedures provided for by this chapter, or in the alternative by instituting legal action as provided in the Act.

§ 35.32 AWARDS

Unless cancelled or rejected, a responsive bid from the lowest responsible bidder in a competitive sealed bidding process, which does not exceed available funds, shall be accepted as submitted.

Appeal of awards and decisions to award: Any bidder or offeror who desires to appeal an award or a decision to award shall first file a written protest with the Town Manager or his designee, specifying the basis for the protest and the relief sought, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. The Town Manager or his designee shall render a written decision within ten days of receipt of the written protest stating the reasons for the decision. This decision shall be final and binding unless any bidder or offeror appeals according to the administrative appeals procedure established by this Title.

- (a) *Determinations of nonresponsibility:* Nonresponsive bidders shall be notified of the determination of nonresponsibility in writing by certified mail, return receipt requested. A determination of nonresponsibility is subject to administrative appeal according to the administrative appeals procedure established by this chapter.
- (b) *Waiver of irregularities:* The Town Manager may accept late bids, waive informalities in bids, or reject all bids when such action is necessary to protect the interests of the Town.

§ 35.33 NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER

If the bid from the lowest responsible bidder exceeds available funds, the Town may negotiate with the apparent low bidder to obtain a contract price within available funds. Such negotiations shall be conducted in accordance with the following procedures:

- (a) The Town Manager shall advise the lowest responsible bidder, in writing, that the proposed purchase exceeds available funds. He shall further suggest a reduction in scope for the proposed purchase, and invite the lowest responsible bidder to amend its bid proposal based upon the proposed reduction in scope.
- (b) Repetitive informal discussions with the lowest responsible bidder for purposes of obtaining a contract within available funds shall be permissible.
- (c) The lowest responsible bidder shall submit an addendum to its bid, which addendum shall include: the change in scope for the proposed purchase, the reduction in price, and the new contract value.
- (d) If the proposed addendum is acceptable to the Town, the Town may award a contract within funds available to the lowest responsible bidder based upon the amended bid proposal.
- (e) If the Town and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

§ 35.34 ADMINISTRATIVE APPEALS

The following procedures shall govern appeals under this chapter:

- (a) Any bidder or offeror may appeal:
 - (1) an award or a decision to award within ten days of the date of the adjudication of the initial protest pursuant to § 35.32 of this chapter;
 - (2) a decision to refuse to allow withdrawal of bids within thirty days of the refusal;
 - (3) a decision of disqualification within thirty days of the receipt of the determination of disqualification; or
 - (4) a decision of debarment within thirty days of the date of the initial appeal pursuant to § 35.31(c)(3) of this chapter; or
 - (5) a determination of non responsibility within ten days of the receipt of the determination of non responsibility notice pursuant to § 35.32(a) of this chapter.

- (b) Any appeal permitted by this section shall be in accordance with the following administrative procedures:
- (1) Any aggrieved person shall file a letter of appeal with the Town Manager. The letter of appeal shall specify the basis for the appeal, the relief sought, and whether the bidder or offeror wishes to have a hearing with respect to the appeal. If the appeal concerns an award or a decision to award, the letter of appeal shall also contain a statement that it has been mailed or otherwise delivered to all other bidders or offerors. Upon request, the Town Manager shall provide the names and addresses of all other bidders or offerors to the appealing bidder or offeror. No appeal will be allowed if the letter of appeal is untimely filed or does not contain the information required by this subparagraph. No person who has unsuccessfully protested or appealed a decision to award may protest or appeal the subsequent award of the same contract.
 - (2) Any bidder or offeror notified of the appeal may:
 - (a) file a written statement setting forth its position with the Town Manager, whether or not the letter of appeal requests a hearing. Such written statement also shall specify whether the bidder or offeror wishes to have a hearing. Such written statement shall be filed within eight days of the date of the letter of appeal.
 - (b) participate in any hearing requested by the appealing party or by any other bidder or offeror.
 - (3) If no hearing is requested, the Town Manager shall render a written decision within ten days of receipt of the letter of appeal or any written statement filed as provided in subparagraph (2) above, whichever is later. The written decision shall be sent to the appealing party and any other bidder or offeror who submitted a written statement with respect to the appeal.
 - (4) If a hearing is requested, it shall be held within 30 days of receipt of the letter of appeal, and a final decision shall be rendered within 30 days after the hearing. During the hearing, all parties to the process shall have the opportunity to present pertinent information and to cross-examine adverse witnesses. The hearing shall be an informal administrative proceeding rather than a judicial-type trial, and shall be conducted by a disinterested person designated by the Town Manager.
 - (5) The findings of fact shall be final and conclusive and shall not be set aside unless they are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

- (6) Any party to the administrative procedure shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.
- (c) Notwithstanding anything to the contrary contained in this section, no administrative protest or appeal shall lie to:
 - (1) a decision to award or an award made by the Town Council;
 - (2) a recommendation made by any person, selection committee, or other entity, to the Town Council concerning the award of a contract.
 - (3) any decision by the Town Manager or the Town Council to reject all bids.
- (d) No person shall be entitled to initiate a civil action for review of any determination in this Chapter without having previously exhausted its administrative remedies under this Chapter. In enacting this section § 35.34, the Town Council specifically intends to establish an alternative procedure for procurement appeals rather than using the procedures contained in the Act.

§ 35.35 AUTHORITY FOR SCORING SYSTEM

Notwithstanding any other provision of this chapter, and, to the full extent permissible under state law, notwithstanding any definition of “competitive sealed bidding” or “competitive negotiation” under state law, in any competitive sealed bidding process or competitive negotiation, the Town Manager is authorized to use a “scoring system” under which he will evaluate bids or proposals based on cost and other permissible factors stated in the request for proposal or invitation to bid. A reference in this ordinance or regulations issued thereunder to the “lowest responsible bidder” shall mean, in the context of a procurement process that involves a scoring system, the responsible bidder with the highest score. The Town Manager shall provide an explanation of the scoring system to be used in the invitation to bid or the request for proposal.

§ 35.36 RELATIONSHIP TO OTHER PROCUREMENT LAW

The provisions of this Chapter do not inhibit or repeal any uncodified procedures, policies, or guidelines that the Town Council may have adopted, or may adopt, to implement (a) the Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”, presently codified at Virginia Code § 56-575.1 *et seq.*) or (b) the provisions of Virginia law that permit design-build contracts or construction management at risk contracts. To the extent that such procedures, policies, or guidelines reference the procedures or principles of the Virginia Public Procurement Act (including, without limitation, competitive sealed bidding or competitive negotiation), the applicable provisions of this of this Chapter supplement, mutatis mutandis, the PPEA and such other law.

TITLE V: TAXATION

Chapter

- 50. GENERAL PROVISIONS**
- 51. REAL ESTATE**
- 52. PERSONAL PROPERTY**
- 53. MACHINERY AND TOOLS**
- 54. BUSINESSES AND PROFESSIONS**
- 55. MEALS TAX**
- 56. RESERVED**
- 57. OTHER TAXES**
- 58. TRANSIENT OCCUPANCY TAX**

CHAPTER 50: GENERAL PROVISIONS

§ 50.01 APPLICABILITY

The provisions of this chapter apply to all Town taxes assessed under this Title V unless a certain tax or taxes are specifically excluded, and, to the fullest extent permitted by state law, shall apply to any other amounts due to the Town and treated like taxes under applicable state or local law.

§ 50.02 FAILURE-TO-PAY PENALTY; FAILURE TO FILE RETURN; COLLECTION COSTS

(a) Unless otherwise stated, the penalty for failure to pay any tax or installment under this title by the date due shall be 5% of the tax past due, and shall be assessed on the day after the first installment is due.

(b) The penalty for failure to pay the tax on meals or transient occupancies by the due date thereof shall be 10% of the tax for the first month or portion thereof past due, and five percent for each month or portion thereof thereafter, up to a maximum of 25% of the tax collected but not remitted.

(c) The penalty for failure to pay the tax of cigarettes by the due date thereof shall be 10% for each month or portion thereof the tax is not paid, together with interest in the amount of 0.75% each month the tax is not paid.

(d) In any case where in a penalty is otherwise due, the minimum penalty shall be \$10.00. Notwithstanding any other provision herein, in no case shall the penalty exceed the amount of the tax assessable. Any penalty, when so assessed, shall become a part of the tax due and may be collected in the same manner.

(e) In addition to any other amount owed in connection with a delinquent tax, the taxpayer shall pay the actual costs of collection thereof in the maximum amount of 20% of the amount due but not paid. Such costs shall become part of the tax due and may be collected in the same manner. Such costs shall include, without limitation, the reasonable costs incurred by the Town in paying the Town Attorney to assist with such collection, at the Town Attorney's normal hourly rate. The Treasurer may waive the provisions of this paragraph in his reasonable discretion.

(f) If any person required to file any information return in connection with a tax does not do so by the due date thereof, in addition to the other interest and penalties for failure to pay provided in this title, such person shall be liable for an additional penalty of 10% of the tax due, or \$10.00, whichever is greater. Such penalty shall be an addition to the tax due and may be collected in the same manner.

§ 50.03 INTEREST

Interest shall commence the first day of the calendar month following the day any taxes under this title are due to be filed or paid, at the rate of 10% per annum. Where required by state law, the Town shall pay interest to a taxpayer who has been overcharged at the same rate.

§ 50.04 EXCEPTIONS TO PENALTY AND INTEREST

The penalties described in § 50.02 and the interest due and payable under § 50.03 shall not apply in the following circumstances:

(a) If the failure to file or pay was not the fault of the taxpayer, or was the fault in whole or in part of the Treasurer or the Rockingham County Commissioner of the Revenue. The determination of fault shall be made by the Treasurer in his reasonable discretion, using any presumptions regarding physical or mental impairment provided in state law. In any such event, the taxes shall be paid within 30 days of the date otherwise due, or, in the case of a fiduciary for an individual, within 120 days after the due qualification thereof.

(b) If the assessment of any tax (other than an excise tax or a business license tax) is made fewer than two weeks before the due date thereof, in which case the tax shall be paid within two weeks of such an assessment.

§ 50.05 EXTENSIONS OF TIME TO PAY

The time to pay a tax may be extended in the following circumstances:

(a) The Treasurer may grant a reasonable extension of time (not to exceed 90 days) the payment of real estate, personal property, merchants' capital, and the business, license tax, whenever good cause exists. The Treasurer shall keep a record of any such extension granted.

(b) In the case of real estate taxes on a primary residence, and in the case of personal property taxes on a qualifying vehicle (as defined under applicable law), the due date for taxes shall be extended automatically during the time in which the taxpayer is a member of the armed services of the United States who is deployed outside the United States, and for a period of 90 days following the end of such deployment.

§ 50.06 MANNER OF CREDITING PAYMENT

The Treasurer shall credit any payment of local levies first to penalties, interest and the principal of the longest overdue tax bill (not subject to a defense of the applicable statute of limitations) within the levy.

§ 50.07 OFFERS IN COMPROMISE

With the consent of the Town Manager, the Treasurer may compromise and settle the amount due and payable to the Town on any tax, or debt collected as if a tax, when the Treasurer determines

that the collection of the entire amount due is in substantial doubt and the best interests of the Town shall be served by such a compromise.

§ 58.08 RELEASE OF CERTAIN DELINQUENT TAX LIENS

The Treasurer is authorized (but is not required) to release the lien for delinquent taxes, in order to facilitate conveyance of the property thereby encumbered, if:

- (a) The purchaser is unrelated by blood or marriage to the owner;
- (b) The purchaser has no business association with the owner;
- (c) The purchaser owes no delinquent real estate taxes for any property; and
- (d) The property, including land and improvements, is valued at less than \$50,000.

No such release shall operate as a discharge of the personal liability of the owner of the property so encumbered at the time the liens were imposed.

§ 50.09 REGULATIONS

The Treasurer is empowered to promulgate reasonable regulations to interpret the provisions of this Title 5 or to provide for the orderly administration and collection of the taxes to be paid hereunder. A copy of all such regulations shall be available in the Treasurer's office.

§ 50.10 RATE SCHEDULE

The rates of several of the various taxes and fees enacted under this Title or other provisions of the Town Code may appear on a rate schedule appended to the Town Code for ease of reference thereof. Such rate schedule shall be an integral part of the Town Code and the Town Council has enacted it into positive law along with the rest of the Town Code.

§ 50.11 PREVIOUSLY GRANTED EXEMPTIONS

Any exemption from real property tax previously granted by the Town Council before the enactment of this Code shall remain in effect after the enactment of this Code until the Town Council modifies or repeals it as may be permitted by Virginia law. No ordinance granting such an exemption is repealed by the enactment of this Title.

Editor's Note – The real and personal property of the "John Kline Homestead" was exempted from property taxation by designation by Ordinance of September 6, 2011. This section is not set out in the Town Code, which contains only ordinances of general applicability, but attention is called to this ordinance by this reference. A copy of the ordinance is available from the Town Clerk.

§ 50.12 FAILURE TO FILE REQUIRED RETURN; FILING OF FALSE RETURN; FAILURE TO COLLECT OR REMIT TRUST TAX

(a) A person executing an application, report or return under this Title, whether individually or as an agent, certifies by his signature that the information on the application is true and correct to the best of his knowledge and belief. No oath shall be necessary on any such application, but the person's signature shall be sufficient. No such person shall intentionally

subscribe any such application, report, or return which he does not believe to be true and correct as to every material matter.

(b) No person who is required to collect, account for and pay over any transient occupancy, food and beverage, cigarette taxes authorized under this Title, shall willfully fail to collect or truthfully account for and pay over such tax, or willfully evade or attempt to evade any such tax or the payment thereof. All such taxes are held in trust for the Town from the time of their collection to the time such taxes are remitted to the Town.

(c) No person required by this Title or regulations made under authority hereof to make a return, keep any records or supply any information, for the purpose of the computation, assessment or collection of any Town tax, shall willfully fail to make such returns, keep such records or supply such information, at the time or times required by this Title or such regulations.

(d) Any person who violates this section shall be guilty of

(i) a Class 3 misdemeanor while the tax owed is less than \$1,000 and the tax is not a transient occupancy, food and beverage, or cigarette tax; and upon due conviction thereof shall be fined not more than \$500; or

(ii) a Class 1 misdemeanor, when the tax owed is more than \$1,000, or when the tax owed is a transient occupancy, food and beverage, or cigarette tax; and upon due conviction thereof shall be incarcerated for a period not to exceed twelve (12) months or fined not more than \$2,500, or both.

Such penalties shall be in addition to any other civil penalties due to the Town under this Title or other law.

(e) This section applies to a corporate or partnership officer of an entity that is liable for the taxes described in this section. The phrase “corporate or partnership officer” has the same meaning as in state law.

CHAPTER 51: REAL ESTATE

SUBCHAPTER A: GENERAL PROVISIONS

§ 51.10 LEVY OF TAX

There is hereby imposed an annual tax on all tracts of land, lots, and improvements thereon not exempt from taxation under applicable law, in a millage rate set by the Council from time to time and appearing on the rate schedule to the Town Code. Such tax shall be for general Town purposes.

§ 51.11 DUE DATE

Such taxes on real estate for each year shall be due and payable during the year for which the same are assessed on or before December 5.

§ 51.12 LIABILITY FOR TAX

All taxes annually imposed on real estate shall be payable by the persons who on January 1 in each and every year are the respective owners of record thereof.

§ 51.13 ASSESSMENT OF PROPERTY FOR TAX

For the purposes of collecting real property tax under this chapter, the Town shall compute the tax based on the assessed value of real property within the Town as finally determined by the appropriate officials of Rockingham County.

SUBCHAPTER B: EXEMPTION FOR ELDERLY AND DISABLED

§ 55.20 EXEMPTION; OWNERSHIP

The Treasurer shall exempt from the tax real property owned and occupied as the sole dwelling house of a natural person or persons

(a) who are either at least 65 years of age as of December 31st of the year preceding the year of assessment; or

(b) who are permanently and totally disabled as defined under applicable state law as of December 31 of the year preceding the year of assessment

upon the due application therefor. The Treasurer shall grant such applications only upon the restrictions and conditions hereinafter established.

For the purposes of this subchapter, the term “own” shall include (i) the ownership of a legal life estate in real property; (ii) the ownership of real property by a revocable inter vivos trust over which the taxpayer has a power of revocation; and (iii) the ownership of a present possessory equitable interest in real property.

The exemption provided hereunder shall extend to the lot on which is situate the dwelling house of the person eligible for the exemption, provided that the exemption shall be limited to 10 acres of property and the improvements thereon.

§ 55.21 INCOME LIMITATION

In order to qualify for such an exemption, the total combined income received from all sources during the preceding calendar by owners of the dwelling who use it as their principal residence, and others who live in the dwelling (except for persons living in the dwelling and providing bona fide caregiving services to the owner whether such relatives are compensated or not), shall not exceed the greater of \$50,000, or the income limits based upon family size for the Town’s metropolitan statistical area, annually published by the Department of Housing and Urban Development for qualifying for federal housing assistance pursuant to § 235 of the National

Housing Act (12 U.S.C. § 1715z). The Treasurer shall exclude from his calculation any amount up to \$10,000 of income of each relative who is not the spouse of an owner living in the dwelling.

§ 55.22 ASSET LIMITATION

In order to qualify for such an exemption, the net combined financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling and the land upon which it is situated (not exceeding 10 acres) shall not exceed \$200,000. Such value shall also exclude furniture, household appliances and other items typically used in a home.

§ 55.23 PRORATION OF EXEMPTION

When a taxpayer who is otherwise eligible for an exemption under this chapter owns real property in a form of joint tenancy with someone other than his spouse, and the other owners would not be eligible for an exemption if they owned such property alone, then the exemption shall be reduced *pro rata* in proportion to the ownership interest of the persons not eligible.

§ 55.24 APPLICATION FOR EXEMPTION

(a) The person claiming such exemption shall file annually with the Treasurer on forms supplied by the Town, a sworn affidavit setting forth:

- (1) The names of the persons occupying such real estate; and
- (2) That the total combined net worth, including equitable interests and the combined income from all sources, of the persons specified do not exceed the limits prescribed herein.

(b) If such person is under 65 years of age such form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in applicable state law; however, a certification pursuant to 42 U.S.C. 423 (d) by the Social Security Administration so long as the person remains eligible for such social security benefits shall be deemed to satisfy such definition. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability under applicable state law.

(c) Such application with affidavit shall be filed no later than the first day of September of each year, except that the Treasurer may, in his reasonable discretion, accept later

filings from owners otherwise meeting the provisions of this section who are unable to file by the first day of September due to personal or family illness or other ascertainable hardships, and from owners eligible to file for the first time, provided that such late acceptance will not disrupt the Town's tax administration.

(d) In lieu of filing a new application each year, an individual with an effective exemption based on an application submitted and approved may file, for the succeeding two tax years, a sworn statement with the Treasurer that no circumstance has arisen since the date of the application that materially affects such individual's eligibility for an exemption.

(e) The taxpayer shall notify the Treasurer if, after filing an application for exemption, circumstances arise that cause the taxpayer unexpectedly to exceed the income or net worth limitations described herein. In such an event that Treasurer shall revoke the exemption for the year of such change in circumstances.

§ 55.25 POWER OF TREASURER

The Treasurer may make further inquiry of persons seeking such exemption as may be reasonably necessary in determining the qualifications therefor. The Treasurer may require production of certified tax returns to establish the financial worth or income of any applicant. The Treasurer may require that such further inquiries shall be answered under oath.

§ 55.26 REGULATIONS

The Treasurer may promulgate reasonable rules and regulations (including forms) not inconsistent with the provisions of this chapter or state law to provide for the effective administration of this chapter.

§ 55.27 CHANGE IN CIRCUMSTANCES

An individual who does not qualify for an exemption under this subchapter based upon the previous year's income or financial worth limitations may nonetheless qualify for an exemption for the instant year if he files an affidavit with the Treasurer that clearly shows a substantial change in circumstances, not volitional, that will result in income or financial levels that are within the limitations of this subchapter.

§ 55.58 COUNTY EXEMPTIONS

In lieu of granting an exemption based upon the other procedures contained in this subchapter, the Treasurer may accept evidence that Rockingham County has granted the exemption described herein for elderly or disabled individuals, and shall exempt any property that the Treasurer is satisfied that Rockingham County has exempted.

SUBCHAPTER C: OTHER EXEMPTIONS FROM REAL PROPERTY TAX

§ 55.30 EXEMPTION FOR DISABLED VETERANS

The Treasurer shall exempt from real property tax any real property for which the Treasurer is notified that a valid Rockingham County exemption exists based on the owner's status as a disabled veteran under applicable state and Rockingham County law.

§ 55.31 EXEMPTION FOR CERTAIN WIDOWS OR WIDOWERS OF MEMBERS OF THE ARMED FORCES

The Treasurer shall exempt from real property tax any real property for which the Treasurer is notified that a valid Rockingham County exemption exists based on the owner's status as widow or widower of an individual killed in action while in the service of the armed forces of the United States under applicable state and Rockingham County law.

§ 55.32 LEGISLATIVE INTENT

The Town designates the Commissioner of the Revenue of Rockingham County as the official responsible to administer the exemptions contained in this subchapter to the fullest extent permissible by law, the intention of the Town Council being that an exemption from Town real estate taxes shall exist in every case in which a valid Rockingham County exemption described in this subchapter exists, in order to obviate the need for the Town to maintain a separate administrative system for such exemptions.

CHAPTER 52: PERSONAL PROPERTY TAX

SUBCHAPTER A: TAX GENERALLY

§ 52.10 LEVY OF TAX

There is hereby levied an annual tax on all tangible personal property within the Town that falls into the following categories:

- (a) Automobiles and trucks (regardless of weight); motorcycles, mopeds, all-terrain vehicles, and off-road motorcycles; and boats (regardless of weight); and
- (b) manufactured homes.

Such tax shall be at a millage rate set by the Council from time to time and appearing on the rate schedule to the Town Code. Such tax shall be for general Town purposes. The millage rate need not be the same from category to category to the fullest extent permissible under state law. The Town does not tax any other tangible personal property except as described in Chapter 53 herein.

§ 52.11 TAX DAY

The date for determining the situs of personal property for the purposes of assessing tax under this Chapter shall be January 1. Situs of property shall be determined under the rules prescribed in state law.

§ 52.12 DUE DATE

Such taxes on tangible personal property for each year shall be due and payable during the year for which the same are assessed on or before December 5.

§ 52.13 ASSESSMENT OF PROPERTY FOR TAX

For the purposes of collecting tangible personal property tax under this chapter, the Town shall compute the tax based on the assessed value of property sited within the Town as finally determined by the appropriate officials of Rockingham County.

SUBCHAPTER B – APPLICATION OF PERSONAL PROPERTY TAX RELIEF

§ 52.21 PURPOSE; DEFINITIONS; RELATION TO OTHER ORDINANCES

(a) The purpose of this subchapter is to provide for the implementation of the changes to the Personal Property Tax Relief Act of 1998 (PPTRA) effected by legislation adopted during the 2004 Special Session I and the 2005 Regular Session of the General Assembly of Virginia, and regularly readopted during budget cycles since then. Such changes require the Town to establish how it will allocate personal property tax relief funds transferred to the Town by the Commonwealth.

(b) Terms used in this subchapter that have defined meanings set forth in PPTRA shall have the same meanings as set forth therein.

(c) To the extent that the provisions of this subchapter conflict with any prior Ordinance or provision of the Town Code, this subchapter shall control, the overriding intent of the Town Council being to implement an ordinance that will entitle the Town to receive personal property tax relief funds from the Commonwealth.

§ 52.22 METHOD OF COMPUTING AND REFLECTING TAX RELIEF

(a) For tax years commencing in 2006, and for each tax year thereafter, the Town adopts the provisions of Item 503.E of the Acts of Assembly 2005, Chapter 951, and subsequently enacted annual provisions in the state budget that are substantially similar, providing for the computation of tax relief as a specific dollar amount to be offset against the total taxes that would otherwise be due but for PPTRA and the reporting of such specific dollar relief on the tax bill.

(b) The Town Council shall annually by motion or resolution set the percentage of tax relief at such a level that it is anticipated fully to exhaust PPTRA relief funds provided to the Town

of Broadway by the Commonwealth.

(c) Personal property tax bills shall set forth on their face the specific dollar amount of relief credited with respect to each qualifying vehicle, together with an explanation of the general manner in which relief is allocated.

§ 52.23 ALLOCATION OF RELIEF AMONG TAXPAYERS

(a) Allocation of PPTRA relief shall be provided in accordance with the general provisions of this subchapter as implemented by the specific provisions of the Town of Broadway's annual budget relating to PPTRA relief.

(b) Relief shall be allocated in such a manner as to eliminate personal property taxation of each qualifying vehicle with an assessed value of \$1,000 or less.

(c) Relief shall be in any event allocated in such a manner that when a vehicle is leased by a member of the United States Military on active duty, or a spouse thereof, or both, under a contract requiring the tenant thereof to pay personal property tax, and such vehicle would otherwise be exempt from tax under other applicable law, the tax based on the first \$20,000 in value of such vehicle shall be fully eliminated.

(d) Relief with respect to qualifying vehicles with assessed values of more than \$1,000 shall be provided at a percentage, annually fixed and applied to the first \$20,000 in value of each such qualifying vehicle, that is estimated fully to use all available state PPTRA relief, taking into account the exemptions described in paragraphs (b) and (c). The percentage shall be established annually as a part of the adopted budget for the Town of Broadway.

(e) Paragraph (d) of the Ordinance of September 1, 2006, which set out certain provisions regarding certain personal property tax bills that were delinquent on that date, is not repealed by the enactment of this title.

Editor's Note – The ordinance of April 4, 2006, which originally enacted provisions substantially similar to this subchapter, also contained in paragraph (d) thereof certain transitional provisions applicable to personal property tax bills delinquent on September 1, 2006. This provision, being of a temporary or transitional nature, is not set out in the Code. A copy is available from the Town Clerk.

CHAPTER 53: TOOLS AND MACHINERY TAX

§ 53.01 LEVY OF TAX

There is hereby levied an annual tax on all tools and machinery within the Town that is segregated for local taxation under state law. Such tax shall be at a millage rate set by the Council from time to time and appearing on the rate schedule to the Town Code. Such tax shall be for general Town purposes.

§ 53.02 TAX DAY

The date for determining the situs of machinery and tools for the purposes of assessing tax under this Chapter shall be January 1. Situs of property shall be determined under the rules prescribed in state law.

§ 53.03 DUE DATE

Such taxes on machinery and tools for each year shall be due and payable during the year for which the same are assessed on or before December 5.

§ 53.04 ASSESSMENT OF PROPERTY FOR TAX

For the purposes of collecting machinery and tools tax under this chapter, the Town shall compute the tax based on the assessed value of property sited within the Town as finally determined by the appropriate officials of Rockingham County.

CHAPTER 54: BUSINESSES AND PROFESSIONS

SUBCHAPTER A – IMPOSITION OF LICENSE TAX GENERALLY

§ 54.10 LICENSE REQUIREMENT; ISSUANCE OF LICENSE

(a) Every person shall apply for a license for each business or profession when engaging in a business in the Town if such person is not otherwise exempt under state law and if

(i) the person has a definite place of business in this jurisdiction;

(ii) there is no definite place of business anywhere and the person resides in the Town (including a direct seller whose sales exceed \$4,000 per year); or

(iii) there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler (including a peddler at wholesale), carnival, circus, contractor (subject to the provisions of this chapter relating to contractors), or public service corporation.

(b) A separate license shall be required for each definite place of business and for each business. A person engaged in two 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 subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of this Code;

(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 Treasurer may require concerning the nature of the several businesses and their gross receipts.

(c) No license shall issue except upon payment of any gross receipts tax, flat tax, or flat fee imposed by this chapter.

(d) No license shall issue unless the Treasurer is satisfied that the applicant has paid all delinquent Town business license, real estate, personal property, meals, or other taxes due under this title, or other debts owed the Town that have the same status as unpaid taxes under applicable law.

(e) The Treasurer shall promulgate forms upon which an applicant may apply for a license.

(f) This chapter shall be interpreted in conjunction with the provisions of Virginia law that enable localities to impose the tax described herein. Any terms not defined herein or in the general provisions of the Town Code shall have the meaning attributed to them in the provisions of state law that authorize the Town to impose the tax described herein.

(g) Any person who does not obtain a license required by this Chapter, and who does so with the specific intent of evading the any tax imposed under this title, shall be guilty of a Class 1 misdemeanor and upon due conviction thereof shall be incarcerated for a period not to exceed twelve (12) months and fined not more than \$2,500, or both.

(h) Any person who knowingly does not obtain a license required by this Chapter shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined not more than \$500. This offense is a lesser included offense to the offense described in paragraph (g). Each day of the offense described in this paragraph (h) shall be a separate offense.

§ 54.11 PAYMENT OF TAX; PENALTY; INTEREST

(a) Timing. Each person required to obtain a license shall apply for a license

(i) prior to beginning business, if he was not subject to licensure the Town on or before January 1 of the license year, or

(ii) no later than March 1 of the license year if he had been issued a license for the preceding year.

(b) Payment. The tax shall be paid on or before March 1, or in the case of a taxpayer beginning business, no more than 30 days after beginning business. Provided, however, that any dealer in motor vehicles who itemizes the tax and passes it along to his customer as a separate item on the invoice of such customer shall pay the tax on a quarterly basis each calendar quarter, such tax being due on the fifteenth day of the first month following the conclusion of such quarter.

(c) Extension of Time to Pay. In exercising his power to extend the date for the payment of the tax under § 50.05(a), the Treasurer may condition the extension upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then 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, with a penalty of 10 percent of the portion paid after the due date.

(d) Penalty.

(i) The Treasurer shall impose a penalty of 10 percent of the tax upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed if both the application and payment are late; however, the Treasurer shall impose both penalties if he determines that the taxpayer has a history of noncompliance.

(ii) In the case of an assessment of additional tax made by the Treasurer after the initial filing, 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 such additional assessment of tax by is not paid within 30 days, the treasurer may impose a 10 percent late payment penalty.

(iii) If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by Treasurer. 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. For the purposes of this paragraph, Acted Responsibly means that: (i) 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 (ii) 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 a Town official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(iv) This paragraph (d) shall control the assessment of penalties for failure to obtain the license and pay the tax required by this Chapter, and shall override the provisions of § 50.02(a). The provisions of §§ 50.02(d) and (e) continue to apply.

(e) Interest. Notwithstanding the provisions of §§ 50.03 and 50.04, interest at an annual rate of 10 percent 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. Whenever an assessment of additional or omitted tax is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with

interest at an annual rate of 10 percent on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any such tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. 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, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later, but all such interest shall be waived.

§ 54.12 SITUS OF GROSS RECEIPTS

(a) General Rule. The gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within the Town. 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:

(i) Except as otherwise provided herein, 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.

(ii) 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 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;

(iii) 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 to the definite place of business at which the rental of such property is managed; and

(iv) 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 to the definite place of business from which the services are directed or controlled.

(b) Special Rule for Contractors. When a contractor has paid any local license tax required by the county, city or town in which his principal office and any branch office or offices

may be located, no further license or license tax shall be required by the Town. Notwithstanding the foregoing, when the amount of business done by any such contractor in the Town exceeds the sum of \$25,000 in any year, such contractor shall obtain a local license from the Town, and the amount of business done in such other county, city or town in which a license tax is paid may be deducted by the contractor from the gross revenue reported to the county, city or town in which the principal office or any branch office of the contractor is located. Reciprocally, the Town shall allow such a deduction from gross revenue when the contractor maintains a definite place of business within the Town and a license tax is paid to another locality in the Commonwealth. Any contractor conducting business in the Town for less than thirty days without a definite place of business in any county, city or town of the Commonwealth, but who will do more than \$25,000 of business within the Town in a license year, shall be subject to the license fee or license tax imposed on contractors by the Town for the gross receipts derived from activities within the Town. Any contractor conducting such work for more than thirty days has a definite place of business within the Town, and shall be taxed on that basis.

(c) Apportionment. If the licensee has more than one 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, 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 the Town 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.

(d) Agreements. The Treasurer 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 100 percent of its gross receipts from all locations in the affected jurisdictions, the Treasurer shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the Treasurer or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to state law, and notice of the request shall be given to the other party. Notwithstanding the provisions of state law, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of state law, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

§ 54.13 LIMITATIONS AND EXTENSIONS

(a) Extension. Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the Treasurer 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) Fraud. Notwithstanding any limitation period prescribed by state law, the Treasurer 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 preceding license years.

(c) Tolling of Limitation Period. The period for collecting any local license tax shall not expire prior to the latest of

- (i) the period specified in state law for the assessment of tax;
- (ii) two years after the date of assessment if the period for assessment has been extended pursuant to this § 54.13;
- (iii) two years after the final determination of an appeal for which collection has been stayed pursuant to subchapter B of this chapter; or
- (iv) two years after the final decision in a court application for review of an assessment pursuant to state law for which collection has been stayed.

(d) State law exemptions. No license shall be required of any person exempt from license taxes and fees under the provisions of state law.

§ 54.14 STATEMENTS ON LICENSE APPLICATIONS; PENALTY

A person executing an application for a license, whether individually or as an agent, certifies by his signature that the information on the application is true and correct to the best of his knowledge and belief. No such person shall make a materially false or misleading statement on a license application. Any person who makes such a statement is guilty of a Class 1 misdemeanor and upon due conviction thereof shall be incarcerated for a period not to exceed twelve (12) months and fined not more than \$2,500, or both.

§ 54.15 DEFINITION OF GROSS RECEIPTS

Gross receipts shall in every case be defined in such a manner, and shall be subject to such exclusions and deductions, as provided by state law.

§ 54.16 RATE OF TAX

The tax imposed by this chapter shall be at a millage rate set by the Town Council and described on the rate schedule attached to this Code, except in situations in which the Town Council levies a flat license tax in lieu of the tax on gross receipts, or in such cases where the Town Council levies a license fee in lieu of any tax. Such flat license taxes and the license fee shall also appear on the rate schedule attached to this Code, or in the appropriate section of this Code.

SUBCHAPTER B: PROCUEURES FOR DISPUTED LICENSE TAXES

§ 54.20 ADMINISTRATIVE APPEALS BEFORE TREASURER

(a) Definitions. For purposes of this subchapter:

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the Treasurer's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license. An appealable event shall include a taxpayer's appeal of the classification applicable to a business, including whether the business properly falls within a business license subclassification established by the Town, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit, or any other action taken by the Town.

"Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from Rockingham County; (ii) remove his property therefrom; (iii) conceal himself or his property therein; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(b) Filing and contents of administrative appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this subchapter may file an

administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the Treasurer, and with a copy to the Town Attorney. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the 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 Treasurer shall hold a conference with the taxpayer if requested by the taxpayer or *sua sponte*, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal, and may have the assistance of the Town Attorney in so doing. The assessment placed at issue in the appeal shall be deemed prima facie correct. The Treasurer shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.

(c) Administrative Appeal of Classification. The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the Town. However, the appeal of the classification of the business shall not apply to any license year for which the Tax Commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.

(d) Notice of right of appeal and procedures. Every assessment made by the Treasurer pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal. For purposes of facilitating an administrative appeal of the classification applicable to a taxpayer's business, the Town shall maintain on its website the specific procedures to be followed with regard to such appeal and the name and address to which the appeal should be directed.

(e) Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the Treasurer shall be suspended until a final determination is issued thereon, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) determines that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) determines that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with §54.11(e), but no further penalty shall be imposed while collection action is suspended.

(f) Procedure in event of nondecision. Any taxpayer whose administrative appeal pursuant to the provisions of this § 54.20 has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the Treasurer, with a copy to the Town Attorney, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner in accordance with the provisions

of § 54.21. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the Treasurer was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the Treasurer to make his determination.

§ 54.21 APPEALS TO TAX COMMISSIONER

(a) Any person assessed with a local license tax as a result of a determination or that has received a determination with regard to the person's appeal of the license classification or subclassification applicable to the person's business, upon an administrative appeal to Treasurer pursuant to § 54.20, that is adverse to the position asserted by the taxpayer in such appeal, may appeal such assessment or determination to the Tax Commissioner within 90 days of the date of the determination by the Treasurer. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the Treasurer and the Town Attorney. The Tax Commissioner shall permit the Treasurer to participate in the proceedings, shall permit the Town Attorney to represent the Treasurer, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the Treasurer are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Va. Code § 58.1-1821, and the Tax Commissioner pursuant to Va. Code § 58.1-1822 may issue an order correcting such assessment or correcting the license classification or subclassification of the business and the related license tax or fee liability.

(b) Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the Tax Commissioner under § 54.21(a), collection activity with respect to the amount in dispute relating to any assessment shall be suspended until a final determination is issued by the Tax Commissioner, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) determines, or is by the Tax Commissioner, that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) determines, or is advised by the Tax Commissioner, that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of § 54.11(e), but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to § 54.21(a) is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal, or within 90 days of the determination being appealed.

(c) Implementation of determination of Tax Commissioner. Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to §54.21(a), the Treasurer shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer. The following provisions shall apply:

(i) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the Treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.

(ii) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the Treasurer shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.

(iii) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the Treasurer to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the Treasurer shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

(iv) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the Treasurer to undertake a new or revised assessment that will result in an obligation on the part of the Town to make a refund of taxes previously paid, the Treasurer shall promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or subclassification of the business, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Treasurer shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment or determination of the amount of the refund.

§ 54.22 JUDICIAL REVIEW OF DETERMINATION OF TAX COMMISSIONER

(a) Judicial Review. Following the issuance of a final determination of the Tax Commissioner pursuant to § 54.21(a), the taxpayer or Treasurer may apply to the Rockingham County Circuit Court for judicial review of the determination, or any part thereof, pursuant to Va. Code § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. 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.

(b) Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.

(i) On receipt of a notice of intent to file an application for judicial review, pursuant to Va. Code § 58.1-3984, of a determination of the Tax Commissioner pursuant to §54.21(a), and upon payment of the amount of the tax relating to any assessment that is not in

dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the Treasurer shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the Town. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

(ii) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the Town, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

(iii) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute or the application does not relate to any assessment by the Treasurer.

(iv) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to Va. Code § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(iv) The suspension of collection activity required by this § 54.22(b) shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to Va. Code § 58.1-3984 without prior exhaustion of the appeals provided by this subchapter.

(c) Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.

(i) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to § 54.21(a) shall be suspended if the Town serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to Va. Code § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the Town's application for judicial review is frivolous, as defined in this section.

(ii) No suspension of refund activity shall be permitted if the Town's application for judicial review fails to identify with particularity the amount in dispute.

(iii) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to Va. Code § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(d) Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of §54.11(e) , but no further penalty shall be imposed while collection action is suspended.

§ 54.23 PRIVATE LETTER RULINGS

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from Town Attorney. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the Town. 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 the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the Town Attorney 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.

§ 54.24 RECORD KEEPING AND AUDITS

Every person who is assessable with a local license tax shall keep sufficient records to enable the Treasurer to verify the correctness of the tax paid for the license years assessable and to enable the Treasurer 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 Treasurer in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the Town. The Treasurer 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 the Town, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

SUBCHAPTER C: SPECIAL RULES

§ 54.30 LIMITATION ON RATES AND AMOUNTS; STATE LAW EXEMPTIONS

(a) In the event that state law limits the maximum rate or amount of license tax otherwise assessable to any taxpayer under this chapter, and the tax to be charged hereunder exceeds the maximum rate or amount allowed, the tax shall be reduced for that taxpayer to the extent necessary to cause the tax to comply with state law.

(b) In the event that state law exempts a particular business, person, or activity from taxation, the Town shall not impose a license fee or license tax on such person.

§ 54.31 FLAT TAXES ON CERTAIN BUSINESSES

Any person engaged in the following activities is engaged in a business or profession within the meaning of this chapter, and shall be subject to a flat business license tax as shown on the schedule attached to the Town Code:

- (a) Any person who shall pretend to tell fortunes, to act as a clairvoyant, or to practice palmistry or phrenology; and
- (b) Building or savings and loan associations and loan companies.

§ 54.32 OPERATORS OF COIN MACHINES

(a) License required. Any amusement operator who operates more than three coin amusement machines within the Town is engaged in a business within the Town with a definite place of business in the location of such machines, all within the meaning of this chapter, and shall pay the license tax on gross receipts from such machines at the same rate as if such receipts were retail sales, subject to any dollar or other limitation imposed by state law. The Town does not require stickers to evidence payment of such tax.

(b) Penalty. In addition to the other penalties and interest provided herein, any coin amusement machine operated in violation of this chapter shall be subject to civil forfeiture to the Town.

§ 54.33 PHOTOGRAPHERS

A photographer who receives compensation for taking photographs, is a resident of the Town, but has no definite place of business anywhere, is required to obtain a business license pursuant to § 54.10(a)(ii). Such photographer shall pay a flat license tax as shown on the schedule attached to the Town Code.

§ 54.34 CARNIVALS

A carnival, circus, or speedway conducted within the limits of the Town is engaged in a business within the Town with a definite place of business in the location of such carnival, circus, or speedway, or with no definite place of business but which gives a performance within the Town, all within the meaning of this chapter, and unless otherwise exempt shall obtain a license therefor and shall pay a flat license tax per performance in the amount shown on the schedule attached to the Town Code.

§ 54.35 EXEMPTION WHEN TAX BELOW \$25; FEE ON CERTAIN BUSINESSES

If the gross receipts of a business are below the threshold that would cause the license tax otherwise due under this chapter to be less than \$25, then

- (a) such business shall be exempt from the license tax on its gross receipts; and

- (b) in lieu of such a license tax, the person shall pay a license fee of \$25.

In enacting this section, the Town is exercising its power to set a threshold below which the license tax shall not apply, and is setting such threshold for each classification at an amount of gross receipts that would otherwise result in a license tax of \$25. In addition, in that the businesses to which this section applies are not subject to a tax on gross receipts, the Town is exercising its power to impose a \$25 license fee on such businesses.

§ 54.36 GASOLINE SALES

Gasoline sales constitute a separate subclassification of business for the purposes of this chapter. The Town exempts gasoline sales from any license tax or license fee.

§ 54.37 ALCOHOLIC BEVERAGES TAX CREDIT

Any beer wholesaler or wholesale wine licensee paying a tax under this Chapter 54 shall be allowed a credit against such tax for any amounts paid to the Town as an alcoholic beverage license tax under § 57.21 *et sequitur*.

§ 54.38 TELEPHONE COMPANIES

In lieu of any other license tax imposed under this chapter, all persons engaged in the business of providing telephonic communications shall obtain a license each year and shall pay a tax equal to one-half of one percent of the gross receipts (as defined in this chapter) during the preceding year from local telephone exchange service, but excluding long distance telephone calls.

CHAPTER 55: MEALS TAX

§ 55.01 DEFINITIONS

The following words and phrases, when used in this ordinance, shall have, for the purposes of this chapter, the following respective meanings except where the context clearly indicates a different meaning:

- (a) Cater. The furnishing of food, beverages, or both on the premises of another, for compensation.
- (b) Food. All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.
- (c) Food establishment. Any place in or from which food or food products are prepared, packaged, sold or distributed in the Town, including but not limited to, any

restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, grocery store, movie theater; delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

- (d) Meal. Meal shall mean any prepared food or drink which is (i) (A) offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite immediately and (B) ready for immediate consumption; or (ii) sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

§ 55.02 IMPOSITION OF TAX

There is hereby imposed and levied by the Town on each person a tax at the rate described in the rate schedule to the Town Code, on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

§ 55.03 COLLECTION OF TAX BY SELLER

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collection shall be deemed to be held in trust for the Town.

§ 55.04 EXEMPTIONS; LIMITS ON APPLICATION

(a) The tax imposed under this chapter shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.

(b) The tax imposed under this chapter shall not be levied on the following items when a food establishment sells them exclusively for off-premises consumption:

- (1) Donuts, crackers, chips, cookies and other factory-prepackaged items of essentially the same nature sold primarily as snacks.
- (2) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream). Any food or beverage that is catered or delivered by a food establishment for off-premises consumption is not “sold in bulk” for the purposes of this paragraph, and is subject to tax.
- (3) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
- (4) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

(c) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated for the sale of prepared food and beverages constituting meals under this Chapter.

(d) The tax imposed hereunder shall not be levied on the following purchases of food and beverages, whether consumed on premises or off-premises:

- (1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
- (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
- (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
- (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.
- (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession

prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

- (6) Food and beverages sold on an occasional basis, not exceeding 12 times per calendar year, by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.
- (7) Food and beverages sold through vending machines.

§ 55.05 GRATUITIES AND SERVICE CHARGES

Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this chapter, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller. An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the food and beverages, is subject to the tax imposed by this chapter to the extent that such gratuity, tip, or service charge (a) exceeds twenty percent (20%) of the price of the food and beverages or (b) is not remitted by the seller to the employee providing such services.

§ 55.06 REPORT OF TAXES COLLECTED; REMITTANCE; PRESERVATION OF RECORDS.

(a) It shall be the duty of every person required by this chapter to pay to the Town the taxes imposed by this chapter to make a report thereof setting forth such information as the Treasurer may prescribe and require, including in the aggregate all purchases taxable under this chapter, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this chapter.

(b) Reports and tax payments for the months of January, February and March shall be made on or before the following April 20th. Reports and tax payments for the months of April, May, and June shall be made on or before the following July 20th. Reports and tax payments for the months of July, August, and September shall be made on or before the following October 20th. Reports and tax payments for the months of October, November, and December shall be made on or before the following January 20th.

(c) Further, every such person shall maintain records supporting the reports required by paragraph (a) of this section. Such records shall be kept and preserved for a period of five (5) years. The Treasurer or his duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.

(d) A remitter of the tax imposed by this Chapter shall be entitled to offset against the tax liability due to the Town a dealer administrative discount in accordance with the following chart:

<u>Balance of Tax</u>	<u>Percentage Discount</u>
\$0 - \$62,500	0.03
\$62,501 - \$208,000	0.0225
\$208,000 and up	0.15

Such discount shall be available only to a remitter who pays such tax on or before the due date thereof, and who, as of such due date, has no other outstanding past due tax liability to the Town.

§ 55.07 LEGISLATIVE INTENT

The intent of the Town Council is to levy the tax on meals served in or by restaurant, fast-food, catering, and similar establishments, as permitted under Virginia law, as opposed to normal grocery items that are not meals. This Chapter shall be liberally construed to effectuate the Town Council's intent.

CHAPTER 56: RESERVED

CHAPTER 57: OTHER TAXES AND FEES

SUBCHAPTER A: EXCISE TAX ON CIGARETTES

§ 57.11 ENACTMENT OF TAX

There is hereby imposed an excise tax on the sale of cigarettes to provide revenue for the general fund of the Town as set forth hereafter in this Chapter.

§ 57.12 DEFINITIONS

Except where the context clearly indicates a different meaning, the following words and phrases shall, for purposes of this subchapter, have the meanings respectively ascribed to them in this section, whether or not capitalized:

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

(b) Dealer means every manufacturer, manufacturer's representative, selfwholesaler, wholesaler, public warehouser or other person who supplies a seller within the Town with cigarettes.

(c) Package means any container, regardless of the material used in its construction, in which separate cigarettes are placed. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user.

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

(e) Sale means every act or transaction, regardless of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller to any other person within the town.

(f) Seller means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the Town, for any purpose other than resale.

(g) Stamp means a small gummed piece of paper or decal used to evidence payment of the tax authorized under this Chapter and to be affixed, manually or by machine, to every package of cigarettes sold within the Town.

§ 57.13 LEVY AND RATE

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the town an excise tax on the sale of cigarettes at a rate on each package containing 20 or more cigarettes sold within the Town that appears on the rate schedule to the Town Code. The tax shall be paid by the seller, if not previously paid, and collected in the manner and at the time provided for in this subchapter, provided that the tax shall be paid but once. The tax shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

§ 57.14 METHODS OF PAYMENT

Payment of the tax imposed by this Chapter shall be evidenced by the use of a stamp, purchased and affixed by the dealer or seller to every package of cigarettes to be sold within the Town. The tax shall be paid at the time the stamps are purchased from the treasurer. Every dealer and seller shall have the right to buy stamps and to affix the same to packages of cigarettes as provided in this Chapter.

§ 57.15 SALE OF STAMPS

The treasurer shall make available for sale stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this Chapter.

§ 57.16 DUTIES OF DEALERS

(a) Every dealer in cigarettes has a duty to purchase stamps necessary to pay the tax levied and imposed by this subchapter and to affix or cause to be affixed stamps of the prescribed monetary value to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller within the Town.

(b) Any dealer found to have sold, used, stored, received, purchased, or possessed more than 60 packages of cigarettes that is unable to furnish evidence of sufficient tax payments and stamp purchases to cover the cigarettes is presumed to be in violation of this Chapter unless the delivery memorandum described in section 57.17(c) has been timely filed.

§ 57.17 DUTIES OF SELLERS

(a) Every seller is required to examine each package of cigarettes, prior to exposing the same for sale, and ascertain whether each package has the proper stamps affixed or imprinted as required by this Chapter. If unstamped or improperly stamped packages of cigarettes are discovered, the seller shall either:

- (1) Purchase and affix stamps covering the tax imposed by this subchapter to such packages of cigarettes; or
- (2) Immediately notify the dealer that provided the cigarettes and, upon such notification, the dealer shall either affix the stamps necessary or replace the packages with properly-stamped packages.

(b) Any seller found to possess, prior to being offered for sale, more than 60 packages of cigarettes without stamps affixed that is not in the process of affixing such stamps or taking the action required under section 57.17(a) shall be presumed to be in violation of this subchapter. If such person received the cigarettes within the preceding 48 hours, and has not offered them for sale, the presumption shall not apply.

(c) In the event any seller elects to purchase and affix stamps before offering cigarettes for sale, the dealer delivering and furnishing such cigarettes shall not also be required to purchase and affix stamps; provided that the dealer files a copy of the delivery memorandum with the treasurer on the day following delivery that provides the name and address of the seller and the quantity and type of cigarettes.

§ 57.18 MONTHLY REPORTS AND RECORDKEEPING

(a) Every dealer is required to report monthly to the treasurer the following information:

- (1) The quantity of stamped cigarettes sold or delivered to:

- a. Each dealer;
- b. Each seller;
- c. Each separate person or place of business within the Town;

(2) The quantity of stamps on hand, both affixed and unaffixed on the first day of the previous calendar month and the quantity of stamps or stamped cigarettes received during that period;

(3) Copies of any cigarette tax reports submitted to the Virginia Department of Taxation;

(4) Such further information as the treasurer may require for the proper administration and enforcement of this subchapter for the determination of the exact number of cigarettes in the possession of each dealer or user.

(b) All information and reporting required under this section shall be filed with the Treasurer between the first and 20th day after the close of each calendar month.

(c) Upon request by the Treasurer, any seller shall provide in writing the name and address of the dealer who provides the seller with cigarettes.

(d) Every dealer and seller in the Town shall maintain and keep complete records of the number of packages of cigarettes delivered or sold for three years and make all records available for examination by the treasurer, upon demand, at any reasonable time.

§ 57.19 ASSESSMENT OF UNPAID TAXES

(a) When any person liable for the tax imposed by this subchapter is unable to furnish evidence of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, a presumption arises that such cigarettes were received, sold, used, stored, purchased or possessed without the proper tax having been paid. The Treasurer shall assess the tax as due and unpaid.

(b) The presumption in § 57.19(a) shall not arise if:

- (1) The person liable for the tax is a dealer and the delivery memorandum described in § 57.17(c) has been timely filed; or
- (2) The cigarettes are in transit or are in the possession of distributors or public warehouses that have filed notice with the treasurer indicating that the cigarettes are temporarily within the town and will be sent to consignees or purchasers outside the town in the normal course of business.

(c) Any person liable for the tax shall be notified by certified mail of the tax, penalty and interest assessed, all of which shall be due within ten days after notice has been received.

§ 57.110 DISPLAY OF STAMPS; SEIZURE

(a) Stamps shall be placed upon each package of cigarettes in a manner readily visible to the purchaser and shall be affixed so that their removal will require water or steam.

(b) Any vending machine located within the Town containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed in a manner that does not allow visual inspection for the stamp shall be presumed to contain untaxed cigarettes in violation of this subchapter. If a vending machine does not allow for visual inspection of the stamp, the Treasurer is authorized to direct the owner to open the machine to determine whether the cigarettes are stamped.

(c) Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this subchapter, other than motor vehicles, shall be declared contraband goods and may be seized by the Treasurer. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to the civil and criminal penalties provided under this subchapter.

(d) In lieu of seizure, the Treasurer may seal vending machines to prevent the continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this subchapter. Nothing in this subchapter prevents the seizure of any vending machine after it is sealed.

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

(f) Any seized cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the treasurer after all administrative appeals have been exhausted by the aggrieved party.

(g) No credit from any sale of cigarettes, vending machines or other seized property shall be allowed toward any tax, penalties or interest assessed.

§ 57.111 NOTICES AND HEARINGS

(a) Notice of sealing or seizure shall be sent to any party having a known property interest therein by certified mail within 24 hours of the sealing or seizure. When such parties are not known, notice shall be posted to the door or wall of the room or building that contained the sealed or seized property. All notices shall include procedures for appeal and the defenses available under this section.

(b) Any person assessed by the Treasurer with a cigarette tax, penalty, and interest or any person whose cigarettes, vending machines and other property have been sealed or seized may

appeal the action to the Town Manager. Appeals must be made in writing and received within ten days of the receipt of notice by the aggrieved party. The appeal must state the reasons why the action taken was in error and may request the correction of an assessment and the return of sealed or seized property. Within five days after receipt of the appeal, the Town Manager shall notify the aggrieved party by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within 15 days of the date notification is mailed. A request for a hearing will be denied if the assessed tax, penalties and interest have not been paid or if the request is untimely. The Town Manager shall notify the aggrieved party by certified mail within five days of the hearing stating whether the appeal has been granted or denied. The aggrieved party may appeal the decision of the Town Manager by filing a petition for review with the Circuit Court of Rockingham County within 30 days.

(c) An appeal may be granted if the aggrieved party shows by a preponderance of the evidence that:

- (1) The illegal sale or use of seized cigarettes, vending machines, or other property was not intentional;
- (2) The seized cigarettes, vending machines, or other property was in the possession of a person other than the aggrieved without consent at the time of the seizure or sealing; or
- (3) The aggrieved was authorized to possess the untaxed cigarettes.

(d) When an appeal is granted, relief shall include a refund of the tax erroneously assessed with any interest and penalties paid thereon and the return of any cigarettes, vending machines or other property sealed or seized.

§ 57.112 REFUND FOR UNUSED OR DAMAGED STAMPS

(a) Any person that acquires stamps from the Treasurer is entitled to a refund of the face value of the stamps if the person returns the stamps to the Treasurer with an affidavit stating that the stamps were acquired by such person but not used because the person ceased to be engaged in a business necessitating the use of the stamps, or because damage renders the stamps unusable.

(b) Any refund for unused or damaged stamps may be made on vouchers approved by the Treasurer. The refunds shall be charged against the sums collected for the sale of stamps. Payment to the person requesting the refund shall be made within 30 days of the request.

§ 57.113 INSPECTION OF RECORDS AND DELEGATION OF DUTIES

The Treasurer is authorized to examine the books, records, invoices, papers and all cigarettes in and upon any premises where placed, stored, sold, offered for sale, or displayed for sale. The Treasurer is authorized to delegate any of the powers and duties set out in this subchapter to one or more deputies or assistants, except as may be prohibited by law.

§ 57.114 SPECIFIC VIOLATIONS ENUMERATED

It shall be a violation of this subchapter for any person:

(a) To perform any act or fail to perform any act for the purpose of evading any tax imposed by this subchapter or for any dealer or seller, with intent to violate any provision of this subchapter, to fail or refuse to perform any of the duties imposed upon him under the provisions of this subchapter, or to fail or refuse to obey any lawful order issued under this subchapter.

(b) To falsely or fraudulently make, forge, alter or counterfeit any stamp, invoice or reports, to procure or cause to be made, forged, altered or counterfeited any such stamp, or to knowingly and willfully alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps.

(c) To sell, offer for sale, authorize or approve the sale of any cigarette upon which the Town stamp has not been affixed.

(d) To reuse or refill any package for which the tax has been paid with cigarettes for which the tax has not been paid.

(e) To remove from any package any stamp with intent to reuse or cause the same to be reused.

(f) To buy, sell, offer for sale or give away any used, removed, altered or restored stamps to any person.

(g) To reuse any stamp which has theretofore been used for evidence of the payment of any tax prescribed by this subchapter.

(h) To sell or offer to sell any stamp provided for herein, except as to the Treasurer.

(i) To possess, store, use, authorize or approve the possession, storage or use of cigarettes in quantities of more than 60 packages upon which stamps have not been affixed unless:

- (1) The person is a seller in the process of affixing such stamps, taking the action required under § 57.17(a) or has been in possession of the cigarettes for less than 48 hours and has not offered them for sale; or
- (2) The person is a dealer and the delivery memorandum described in § 57.17(c) has been timely filed.

(j) To transport, authorize or approve the transportation of any cigarettes, in quantities of more than 60 packages into or within the Town upon which the stamp has not been affixed, if they are:

- (1) Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or
- (2) Accompanied by a bill of lading or other document which is false or fraudulent in whole or part.

§ 57.115 VIOLATIONS

(a) In addition to the other penalties for nonpayment of tax imposed under this Title 57, if any Seller engage in fraud or evasion of the tax imposed by this subchapter, there shall be imposed a civil penalty of 50% of the tax due.

(b) Any person who fails to pay the tax imposed by this subchapter shall be guilty (i) of a Class 3 misdemeanor if the amount of tax not paid is \$1,000 or less, or (ii) of a Class 1 misdemeanor if the amount of tax not paid is more than \$1,000; and, in either instance, upon due conviction thereof, shall be subject the penalties prescribed in state law for such misdemeanors.

§ 57.116 REGULATIONS

The Treasurer may issue reasonable regulations, not arbitrary or capricious, that are necessary or convenient to the administration of this subchapter and the collection of the taxes imposed herein.

SUBCHAPTER B – LICENSE TAXES ON ALCOHOLIC BEVERAGES

§ 57.21 LEVY OF LICENSE TAX

The Town Council hereby levies a license tax on the sale of alcoholic beverages, in the amounts shown on the schedule to the Town Code.

§ 57.22 LICENSE REQUIRED

No person shall sell an alcoholic beverage within the Town without having first obtained a license as provided in this subchapter. No license shall issue to a person who does not also hold a valid state alcoholic beverage license. A separate license shall be required for each place of business.

§ 57.23 PENALTY

In addition to the penalties provided otherwise in this title, any person who sells an alcoholic beverage without a license shall be guilty of a Class 3 misdemeanor, and upon due conviction thereof, shall be fined an amount not to exceed \$500. Any person who sells an alcoholic beverage without a license and with the specific intent of evading the license taxes imposed in this subchapter shall be guilty of a Class 2 misdemeanor and upon due conviction thereof, shall be fined an amount not to exceed \$1,000 or imprisoned for not more than six months, or both.

SUBCHAPTER C – UTILITIES

§ 57.31 DEFINITIONS

For the purposes of this subchapter:

(a) Consumer means every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas services in the Town.

(b) Gas utility means a public utility authorized to furnish natural gas service in Virginia.

(c) CCF means the volume of gas at standard pressure and temperature in units of 100 cubic feet.

(d) Kilowatt hours (kWh) delivered means 1000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined under state law, it means kWh supplied from the electric grid to such customer-generators, minus the kWh generated and fed back to the electric grid by such customer-generators.

(e) Person means any individual, corporation, company, association or other entity.

(f) Pipeline distribution company means a person, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

(g) Residential consumer means the owner or tenant of property used primarily for residential purposes, including but not limited to, apartment houses and other multiple-family dwellings.

(h) Service provider means a person who delivers electricity to a consumer or a gas utility or pipeline distribution company which delivers natural gas to a consumer.

(i) Used primarily relates to the larger portion of the use for which electric or natural gas utility service is furnished.

§ 57.32 ELECTRIC UTILITY CONSUMER TAX

(a) Levy. There is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, at the rates that appear on the rate schedule to the Town Code.

(b) Exemptions. The following consumers of electricity are exempt from the tax imposed by this section § 57.32:

- (i) Any public safety agency as defined in state law.
- (ii) Any church or religious body exempt from real property taxation;
- (iii) The United States of America, the Commonwealth of Virginia and the political subdivisions thereof, including the Town.

(c) Billing, collection and remittance of tax. The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to the Town in accordance with state law. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify the Treasurer of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to the Town. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the Town.

(d) Computation of bills not on monthly basis. Bills shall be considered as monthly bills for the purposes of this paragraph if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the kWh will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax".

§ 57.33 NATURAL GAS UTILITY CONSUMER TAX

(a) Levy. There is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers" as such term is defined in state law, at the rates that appear on the rate schedule to the Town Code.

(b) Exemptions. The following consumers of natural gas shall be exempt from the tax imposed by this section § 57.33:

- (i) Any public safety agency as defined in state law;
- (ii) Any church or religious body exempt from real property taxation;
- (iii) The United States of America, the Commonwealth of Virginia and the political subdivisions thereof, including the Town.

(c) Billing, collection and remittance of tax. The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to the Town in accordance with state law. If any consumer receives and pays for natural gas billed but refuses to pay the tax imposed by this section, the service provider shall notify the Treasurer of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to the Town. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the Town.

(d) Computation of bills not on monthly basis. Bills shall be considered as monthly bills for the purposes of this ordinance if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the CCF will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax".

§ 57.34 CONSUMPTION TAX; ELECTION TO RECEIVE PAYMENTS

The Town Council elects to receive payments of the local consumption tax on pipeline distribution companies, gas utilities, and consumers of electricity as though the Town had enacted a license tax on such pipeline distribution companies, gas suppliers gas utilities, and electric suppliers in an amount of one-half of one percent of the gross receipts thereof within the Town, all as defined in Chapter 54, and up to the limits that appear on the rate schedule to the Town Code.

Editor's Note – For additional information, see Va. Code § 15.2-2901(F).

§ 57.35 MAINTENANCE OF RECORDS

Each service provider shall keep complete records showing all purchases in the Town, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof, the date of payment thereof and the amount of tax imposed under this subchapter. Such records shall be kept open for inspection by the duly authorized agents of the Town at reasonable times, and the duly authorized agents of the Town shall have the right, power and authority to make such transcripts thereof during such times as they may deem reasonably necessary for the fair and efficient collection of the tax imposed under this subchapter.

SUBCHAPTER D – BANK FRANCHISE TAX

§ 57.41 DEFININTIONS

For the purposes of this subchapter, the terms “bank” and “net capital” shall have the same definitions as in state law relating to the state bank franchise tax.

§ 57.42 LEVY

The Town Council hereby levies upon each bank located within in the boundaries of the Town a tax on net capital equaling 80% of the state rate of taxation for each \$100 of net capital. If any bank has offices located in the Town and any other one or more political subdivisions, including cities, towns, and counties, the tax imposed under this subchapter shall be imposed only upon such proportion of the taxable value of net capital as the total deposits of the bank, or offices located in the Town, bears to the total deposits as of the end of the preceding year. For the purposes of this paragraph, offices located within the Town shall be deemed not within Rockingham County.

§ 57.43 FILING OF RETURNS; PAYMENT OF TAX

Each bank having its principal office located in the Town as of January 1 of each year shall prepare and file with the Treasurer, on or before March 1 of each year, a return in duplicate which shall set forth the tax on net capital as computed under this subchapter. The return shall be in the form prescribed by the Virginia Department of Taxation. The Treasurer shall certify a copy of the bank's return and schedules and transmit such certified copy to the Virginia Department of Taxation. Additionally, a copy of the real estate deduction schedules and the apportionment for branch offices shall be filed with the Treasurer for each bank having an office in the Town. The return shall set forth the tax on net capital owing the Town, computed as described in this subchapter. Each bank owing tax under this chapter shall pay such tax to the Town before June 1 of each year.

CHAPTER 58: TRANSIENT OCCUPANCY TAX

§ 58.01 DEFINITIONS

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

Accommodation means any public or private hotel, inn, hostelry, short-term rental, motel or rooming, boarding or lodging house within the Town offering lodging as defined in this section, for compensation, to any transient as defined in this section.

Hotel means any structure or group of structures for rent or for hire that is primarily kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are offered to transients in return for compensation.

Lodging means the rental of room or space to any transient for compensation, in an accommodation as defined in this section, by a lodging provider or lodging intermediary, or the occupancy of such room or space by such transient. If the charge for the accommodation made by any person to such transient includes any charge for meals, parking or other services not related to the occupancy of the room in addition to lodging or the use of such room or space, then such portion of such total charge as represents only room or space rental shall be distinctly set out and billed to such transient by such person as a separate item.

Lodging fee means the room charge less the discount room charge, if any, provided that the lodging fee shall not be less than zero dollars (\$0.00).

Lodging intermediary means any person other than a lodging provider that facilitates the sale of an accommodation, charges a room charge to the customer, and charges a lodging fee to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one (1) or more payment processors, between a customer and a lodging provider.

Lodging provider means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

Short-term rental means any building, structure, or unit, on the same tax parcel, sharing the same mailing address, that is used, or is intended to be used, as a residence or home for one (1) or more persons available for rent or for hire to transients.

Transient means any person who, for a period of fewer than thirty (30) consecutive days, either at their own expense or at the expense of another, obtains lodging for which a charge is made at an accommodation, as defined in this section.

§ 58.02 IMPOSITION OF TAX; EXEMPTION

(a) There is hereby imposed and levied upon every transient obtaining or occupying lodging within the Town, in addition to all other taxes and fees of every kind now imposed by law, a tax on the total price paid for the lodging by the transient, or on the transient's behalf. The tax is a percentage of such price, as shown on the rate schedule to the Town Code.

(b) No tax shall be payable under this Chapter on any charge for lodging in, and during care or treatment in, any hospital, medical clinic, nursing or convalescent home, extended health care facility, sanatorium or sanitorium, home for the aged, infirmed, orphaned, disabled, or mentally retarded or other like facility; or in any educational institution.

§ 58.03 COLLECTION OF TAX LODGING PROVIDER OR LODGING INTERMEDIARY

(a) For any lodging not facilitated by a lodging intermediary, the lodging provider shall collect the tax levied pursuant to this article from the transient, or from the person paying for the lodging, at the time that payment for the lodging is made.

(b) For any lodging facilitated by a lodging intermediary, the lodging intermediary shall be deemed to have made the sale of the lodging and is responsible for collecting the tax levied for the lodging from the transient or the person paying for the lodging, at the time that payment for the lodging is made. When the lodging occurs at a hotel, the lodging intermediary

shall remit the taxes on the lodging fee to the city and remit the remainder, if any, to the hotel, which shall directly remit said remaining tax to the city. When the lodging occurs at a short-term rental, as defined in this article, or any other accommodation that is not a hotel, the lodging intermediary is responsible for remitting the full amount of tax to the city.

(b) The taxes collected by any person shall be deemed to be held in trust for the Town by the person required to collect them, until they have been remitted to the Town as provided in this Chapter.

§ 58.04 GRATUITIES AND SERVICE CHARGES

Where a transient occupant provides a gratuity for an employee of a transient occupancy provider, and the amount of the gratuity is wholly in the discretion of the occupant, the gratuity is not subject to the tax imposed by this chapter, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the provider. An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the transient occupancy by the provider, and required to be paid by the purchaser, as a part of the consideration for the transient occupancy, is subject to the tax imposed by this chapter to the extent that such gratuity, tip, or service charge (a) exceeds twenty percent (20%) of the consideration for the transient occupancy or (b) is not remitted by the seller to the employee providing such services.

§ 58.05 REPORT OF TAXES COLLECTED; REMITTANCE; PRESERVATION OF RECORDS; CIVIL PENALTIES FOR FAILURE TO FILE

(a) It shall be the duty of every person that this Chapter requires to collect taxes, to pay to the Town the taxes imposed by this Chapter, and to make a report thereof setting forth such information as the Treasurer may prescribe and require, including in the aggregate all consideration taxable under this chapter, the amount charged the occupant for each such purchase, the date thereof, the taxes collected thereon and the amount of tax that this Chapter requires to be collected. If a person, including a lodging intermediary, is collecting taxes from, or on behalf of, multiple accommodations, the report shall also be sufficient to identify the lodging charges and tax owed on lodging at each individual accommodation, including the accommodation's address and, in cases where a lodging intermediary is responsible for collecting and remitting the taxes, information sufficient to identify the lodging provider connected to the accommodation.

(b) Reports and tax payments for the months of January, February and March shall be made on or before the following April 20th. Reports and tax payments for the months of April, May, and June shall be made on or before the following July 20th. Reports and tax payments for the months of July, August, and September shall be made on or before the following October 20th. Reports and tax payments for the months of October, November, and December shall be made on or before the following January 20th. Lodging providers shall be required to file such reports with the Treasurer on the date described even in the event no tax is due and regardless of whether they collected the tax or if it was done on their behalf by a lodging intermediary.

(c) Further, every such person shall maintain records supporting the reports required

by paragraph (a) of this section, including records sufficient to determine for each stay at an accommodation the quantum of tax collected by a lodging provider or lodging intermediary. Such records shall be kept and preserved for a period of five (5) years. The Treasurer or his duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this Chapter, and to make transcripts of all or any parts thereof. All records kept under this section should be sufficient to identify each individual accommodation from which the lodging charges were collected, and the tax owed for transient stays at that accommodation, including the accommodation's address and, where taxes were collected and remitted by a lodging intermediary, identifying the lodging provider connected with the accommodation on whose behalf the taxes were collected.

(d) Whenever any person required to collect and remit to the Town any tax that this Chapter imposes shall cease to operate or otherwise dispose of their business, such tax shall immediately become due and payable, and such person shall forthwith make a report and remittance thereof.

TITLE VII: CRIMINAL CODE

Chapter

- 71. GENERAL OFFENSES**
- 72. MINORS CURFEW**
- 73. USE OF PUBLIC PROPERTY**
- 74. ANIMALS**
- 75. NOISE**
- 76. FIRE CODE**

CHAPTER 71: GENERAL OFFENSES

§ 71.01 INCORPORATION BY REFERENCE OF STATE CRIMINAL CODE

All of the provisions and requirements of the laws of the State of Virginia contained in Title 18.2 of the Code of Virginia, 1950, as amended and in force from time to time, except (a) those provisions and requirements the violation of which constitute a felony;(b) those provisions and requirements which by their nature can have no application to or within the municipality; and (c) to the extent the Town Council specifically rejects any amendment thereto or portion thereof, are adopted and incorporated in this Ordinance by reference and made applicable within the municipality. References to “the state” contained in the Code provisions and requirements adopted shall be deemed to refer to the Town of Broadway. The provisions and requirements are adopted, mutatis mutandis, and made a part of this Title as fully as though set forth at length. It shall be unlawful for any person, within the municipality, to violate or fail, neglect or refuse to comply with any provision of Title VII, the Criminal Code of the Town of Broadway, as hereby amended and revised by the applicable provisions of Title 18.2 of the Code of Virginia, 1950, as amended, which is adopted by this Ordinance. Except to the extent otherwise described in the Town Code, the penalty for each such violation shall be as prescribed in state law, but in no event shall the penalty imposed for the violation of any provision or requirement adopted exceed the penalty imposed for a similar offense under the incorporated provisions of the Code of Virginia, 1950, as amended. All future amendments to the sections of the Code of Virginia incorporated by reference under the provisions of this paragraph shall be included within the scope of this paragraph automatically upon their effective date, without any formal Town Council action.

§ 71.02 DISCHARGE OF WEAPONS

(a) Unless exempt under other law, no person shall discharge a firearm within the Town.

(b) No person shall shoot an arrow from a bow within the Town in such a manner that can reasonably be expected to result in the impact of the arrow on the property of another without the permission of the owner of such other property. For the purposes of this paragraph, "bow" includes all compound bows, crossbows, longbows and recurve bows having a peak draw weight of ten pounds or more. The term "bow" does not include bows which have a peak draw of less than ten pounds or which are designed or intended to be used principally as toys. The term "arrow" means a shaft-like projectile intended to be shot from a bow.

(c) No person shall shoot a pneumatic gun within the Town except upon private property with the permission of the owner or other legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property. In such event, to avoid a violation of this paragraph, any operator of a pneumatic gun that is under the age of sixteen (16) must do so under the supervision of a parent, guardian, or other adult supervisor. For the purposes of this paragraph, "pneumatic gun" means any implement, designed as a gun, that will expel a BB or a pellet by action of pneumatic pressure. "Pneumatic gun" includes a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

(d) The provisions of this section § 71.02 shall not apply to a facility approved as a shooting range under other applicable law.

(e) Any person who violates § 71.02(a) is guilty of a Class 1 misdemeanor and upon due conviction thereof, shall be imprisoned for a term not to exceed one year and shall be fined an amount not to exceed \$2,500, or both.

(f) Any person who violates §§ 71.02(b) or (c) is guilty of a Class 3 misdemeanor and upon due conviction thereof, shall be fined an amount not to exceed \$500.

§ 71.03 WILLFUL DAMAGE OR DEFACEMENT OF PROPERTY

(a) No person shall engage willful and malicious damage to or defacement of any public buildings, facilities or personal property or of any private buildings, facilities or personal property.

(b) Any person who violates § 71.03(a) is guilty of a Class 1 misdemeanor and upon due conviction thereof, shall be imprisoned for a term not to exceed one year and shall be fined an amount not to exceed \$2,500, or both. The punishment for any such violation in which the defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any criminal street gang, as that term is defined by state law, shall include a mandatory minimum fine of \$500.

(c) In the event that a court orders community service for a defendant for the violation of § 71.03(a), under any provision of state law requiring or permitting such community service, then such community service, to the extent feasible, shall include the repair, restoration or replacement of any damage or defacement to property within the Town, and may include clean-up, beautification, landscaping or other appropriate community service within the Town. The Town Manager or his designee shall supervise the performance of any community service work required and report thereon to the court imposing such requirement.

§ 71.04 TRICK OR TREAT

It shall be unlawful for any person to appear on the street, highways, public homes, private homes or public places in the Town to make trick or treat visitation. This provision shall not apply to children 14 years of age and under on Halloween Night or upon such other night as the Town Council designates for Halloween trick or treating. Any person who violates this § 71.04 shall be guilty of a Class 4 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$100.

§ 71.05 RIOT ACT

The Chief of Police shall have the power to regulate, restrict or prohibit any assembly of persons or the movement of persons or vehicles if there exists an imminent threat of any civil commotion or disturbance in the nature of a riot which constitutes a clear and present danger. In ordering such

regulation, restriction, or prohibition, the Chief of Police shall give the persons so regulated, restricted, or prohibited notice, reasonable under the circumstances, of the conduct so regulated, restricted, or prohibited. Any person who does not obey such regulation, restriction, or prohibition shall be guilty of a Class 1 misdemeanor and, upon due conviction thereof, shall be punished by confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

§ 71.06 ATTEMPTS

Every person who attempts to commit an offense which is a misdemeanor shall be punishable by the same punishment prescribed for the offense the commission of which was the object of the attempt.

CHAPTER 72: MINORS CURFEW

§ 72.01 DEFINITIONS

For the purpose of this Chapter, the following terms are defined:

- (a) “Minor” is any person under the age of eighteen (18) years.
- (b) “Parent” is any person having legal custody of a minor as a natural or adoptive parent, as a legal guardian of the minor’s person, as a person who stands in *loco parents*, or as a person to whom legal custody has been given by order of court.
- (c) “Street” is a way or place open to the use of the public as a matter of right for purposes of vehicular travel, or in the case of a sidewalk, for pedestrian travel. The term “street” includes cartway or traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term “street” applies irrespective of what such street is formally named, whether alley, avenue, court, road or otherwise.

§ 72.02 CURFEW

It shall be unlawful for any minor to be or remain in or upon the streets within the Town at night between the hours of 11:00 pm. and 6:00 a.m.

§ 72.03 EXCEPTIONS

This Chapter shall not apply to a minor who is

- (a) accompanied by a parent of the minor;
- (b) accompanied by an adult authorized by a parent of the minor to take the parent’s place in accompanying a minor for a designated period of time and purpose within a specified area;

(c) returning home, by a direct route from (and within thirty minutes of the termination of) a school activity, an organized dance, a theatre or sporting event, or an activity of a religious or other voluntary association;

(d) on the sidewalk of the place where the minor resides, or the sidewalk or either next door neighbor as long as the neighbor has not communicated an objection to a law enforcement officer;

(e) on a direct route traveling to or from an emergency errand which shall include, but not be limited to, traveling to obtain the services of a doctor, hospital, fire station, rescue squad, or police department;

(f) going to or returning home, by a direct route, from a place of employment at which the minor is employed during hours that necessitate the minor's travel on the streets during curfew hours;

(g) in a motor vehicle with the consent of the minor's parent. This contemplates normal travel such as bona fide movement through the Town and travel beginning or ending in the Town.

§ 72.04 PARENTAL RESPONSIBILITY

It shall be unlawful for a parent having legal custody of a minor knowingly to permit or by inefficient control to allow, the minor to be or remain upon street of the Town under circumstances not constituting an exception to, or otherwise beyond the scope of, this Section. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody.

§ 72.05 PENALTY

Any person who violates §§ 72.02 or 72.04 shall be guilty of a Class 4 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$100.

CHAPTER 73: USE OF PUBLIC PROPERTY

§ 73.01 POSTING PROHIBITED

No person shall post or affix, or cause to be posted or affixed, any bills, flyers, or other material on or to any public property, including but not limited to light poles, walls, and buildings.

§ 73.02 OPENING PERMIT REQUIRED

It shall be unlawful for any person, other than an authorized official of the Town, to make any opening or entrance in any street, alley, sidewalk, or public way of the Town unless a permit to make the opening has been obtained prior to commencement of the work.

§ 73.03 BARRIERS AROUND EXCAVATIONS

Any person engaged in or employing others in excavating or opening any street, sidewalk, alley, or other public way shall have the excavation or opening fully barricaded at all times to prevent injury to persons or animals.

§ 73.04 UNLOADING ON STREET OR SIDEWALK

No person shall unload any heavy material in the streets of the Town by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.

§ 73.05 OBSTRUCTIONS

(a) No person shall obstruct any street, alley, sidewalk, or other public way within the Town by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

(b) No owner, occupant, or person having the care of any building or lot of land, bordering on any street or sidewalk, shall permit such street or sidewalk to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.

§ 73.06 PENALTY

Any person who violates any provision of this Chapter (other than § 73.07) shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$500, and, in addition, may be required to repair or restore any damaged property to its condition prior to the violation.

§ 73.07 PERMIT REQUIRED FOR DISTURBANCE OF PUBLIC RIGHTS OF WAY

(a) No person shall enter into any repair, alteration, construction, or reconstruction of any type whatever, other than emergency repairs to or maintenance of public utility facilities, within the right-of-way lines of any public highway, without first having obtained a permit for such work from the Town Manager.

(b) Such permit may require the notification of all emergency services likely to be affected by such repair, alteration, construction or reconstruction; the types of traffic control devices necessary to properly warn the motoring public and provide for reinspection by the Town from time to time and at the conclusion of such repair, alteration, construction, or reconstruction.

(c) Any person holding such a permit shall be responsible for furnishing and maintaining the required traffic control devices in accord with the Virginia Manual of Uniform Traffic Control Devices for Streets and Highways.

(d) Any person who violates this section shall be guilty of a Class 4 misdemeanor for the first offence and upon due conviction thereof shall be fined an amount not more than \$250. Upon the second and subsequent violations thereof, such person shall be likewise guilty of a Class 3 misdemeanor and shall be fined an amount not more than \$500.

CHAPTER 74: ANIMALS

SUBCHAPTER A – DANGEROUS AND VISCIOUS DOGS

§ 74.11 DANGEROUS DOGS

(a) Definitions. For the purposes of this Chapter:

(i) “Dangerous dog” means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. When a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite; (ii) if both animals are owned by the same person; (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian; or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. No dog that has bitten, attacked, or inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

(ii) “Law-enforcement officer” includes a Town Police Officer.

(iii) “Animal control officer” means a Rockingham County animal control officer.

(b) Determination of Dangerousness. Any Town law-enforcement officer who has reason to believe that a canine or canine crossbreed within the Town is a dangerous dog shall apply to a magistrate serving Rockingham County for the issuance of a summons requiring the owner or custodian, if known, to appear before the General District Court of Rockingham County at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous; or, he may confine the animal himself in the Town's own facilities until the animal can be surrendered to an animal control officer. The animal control officer shall confine the animal until such time as evidence

shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this Section § 74.11. The court, upon finding the animal to be a dangerous dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be provided under the procedures contained in state law. The Town shall be required to prove its case beyond a reasonable doubt.

(c) Limitations on Determination. No canine or canine crossbreed shall be found to be a dangerous dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog if the threat, injury, or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog.

(d) Minors. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(e) Consequences After Determination. The owner of any animal found to be a dangerous dog shall, within 45 days of such finding, obtain a dangerous dog registration certificate from the Town Treasurer for a fee of \$150, in addition to other fees that may be authorized by law. The Treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. By January 31 of each year, until such time as the dangerous dog is deceased, all certificates obtained pursuant to this paragraph shall be updated and renewed for a fee of \$85 and in the same manner as the initial certificate was obtained. The Treasurer shall post registration information on the Virginia Dangerous Dog Registry.

(f) Conditions to Keeping Dangerous Dog. All dangerous dog registration certificates or renewals thereof required to be obtained under this Section § 74.11 shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable; (ii) that the animal has been neutered or spayed; and (iii)

that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (a) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (b) the animal has been permanently identified by means of electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000.

(g) Muzzling, etc. While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. While so confined within the structure, the animal shall be provided proper care according to state law. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(h) Notifications to Town and County. The owner shall cause the local animal control officer and the Town police department to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) chip identification information; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

(i) Escape; Relocation. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control officer and the Town police department to be notified if the animal (i) is loose or unconfined; (ii) bites a person or attacks another animal; or (iii) is sold, is given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved, and to the Town police department. Any dangerous animal relocating into the Town shall provide the same notification.

(j) Penalty.

(I) Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this Section § 74.11 or the parallel statute of another jurisdiction, or state law, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person. Upon due conviction thereof, such person shall be fined an amount not to exceed \$1,000 or imprisoned for a term not to exceed six months, or both.

(II) Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this Section § 74.11 or the parallel statute of another jurisdiction, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury. Upon due conviction thereof, such person shall be fined an amount not to exceed \$2,500 or imprisoned for a term not to exceed six months, or both.

(III) The provisions of subsections (I) and (II) shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

(IV) The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this Section § 74.11 is guilty of a Class 1 misdemeanor. Upon due conviction thereof, such person shall be fined an amount not to exceed \$2,500 or imprisoned for a term not to exceed six months, or both.

(V) Whenever an owner or custodian of an animal found to be a dangerous dog is charged with a violation of this section, the animal control officer or a Town police officer shall confine the dangerous dog until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal.

(k) Disposal of Animal After Conviction. Upon conviction, the court may (i) order the dangerous dog to be disposed of by an animal control officer or (ii) grant the owner up to 45 days to comply with the requirements of this section, during which time the dangerous dog shall remain in the custody of the animal control officer until compliance has been verified. If the owner fails to achieve compliance within the time specified by the court, the court shall order the dangerous dog to be disposed of by the animal control officer. The court, in its discretion, may order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time that the animal is disposed of or returned to the owner.

(l) Fees. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section and fees due to the State Veterinarian for maintenance of the Virginia Dangerous Dog Registry, shall be paid into a special dedicated fund in the treasury of the Town for the purpose of paying the expenses of any training course required for animal control officers under state law, or may be remitted to Rockingham County for the expenses of the same.

(m) Section Parallel to Rockingham County Ordinance and State Law; Enforcement. This Section § 74.11 does not displace the provisions of the Rockingham County animal control ordinance within the Town, or the provisions of state law that parallel this Section § 74.11. Violations of this Section § 74.11 may be enforced by both the Town under this Section § 74.11 and by Rockingham County under its animal control ordinance, or by the Commonwealth

under its laws, or by all three. Animal control officers have full authority to enforce this Section § 74.11 on the same basis as Town police officers.

§ 74.12 VIOIOUS DOGS

(a) Definitions. For the purposes of this Chapter, unless otherwise defined:

(i) "Serious injury" means an injury having a reasonable potential to cause death or any injury other than a sprain or strain, including serious disfigurement, serious impairment of health, or serious impairment of bodily function and requiring significant medical attention.

(ii) "Vicious dog" means a canine or canine crossbreed that has (i) killed a person, (ii) inflicted serious injury to a person, or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer of any jurisdiction as authorized by ordinance that it is a dangerous dog, provided that its owner has been given notice of that finding.

(iii) "Law-enforcement officer" includes a Town Police Officer.

(iv) "Animal control officer" means a Rockingham County animal control officer.

(b) Determination of Viciousness. Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within the Town is a vicious dog shall apply to a magistrate serving Rockingham County for the issuance of a summons requiring the owner or custodian, if known, to appear before the General District Court of Rockingham County at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is vicious; or, he may confine the animal himself in the Town's own facilities until the animal can be surrendered to an animal control officer. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized. The court, upon finding the animal to be a vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or to the estate of any person killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such vicious dog from the time the animal is taken into custody until such time as the animal is disposed of. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be provided under the procedures contained in state law. The Town shall be required to prove its case beyond a reasonable doubt.

(c) Exceptions. No canine or canine crossbreed shall be found to be a vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a vicious dog if the threat, injury, or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a vicious dog.

(d) Penalty. Any owner or custodian of a canine or canine crossbreed or other animal whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life and is the proximate cause of such dog or other animal attacking and causing serious injury to any person is guilty of a Class 1 misdemeanor, and upon due conviction thereof, such person shall be fined an amount not to exceed \$2,500 or imprisoned for a term not to exceed six months, or both.

(e) Section Parallel to Rockingham County Ordinance and State Law; Enforcement. This Section § 74.12 does not displace the provisions of the Rockingham County animal control ordinance within the Town, or the provisions of state law that parallel this Section § 74.12. Violations of this Section § 74.12 may be enforced by both the Town under this Section § 74.12 and by Rockingham County under its animal control ordinance, or by the Commonwealth under its laws, or by all three. Animal control officers have full authority to enforce this Section § 74.12 on the same basis as Town police officers.

SUBCHAPTER B – OTHER PROVISIONS REGARDING ANIMALS

§ 74.21 DOGS RUNNING AT LARGE

No owner or other person having custody, possession, or control of a dog shall permit such dog to run at large, or to remain unconfined, unrestricted or not penned up. A dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. Any person who violates this Section § 74.21 shall pay a civil penalty of \$150; provided, however, that if a dog violating this section causes damage to property or injury to person, in lieu of the civil penalty, the owner or custodian thereof shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$500, in addition to any proceedings under Subchapter A of this Chapter. This Section § 74.21 may be enforced both by Town police officers and by appropriate Rockingham County officials.

§ 74.22 BARKING DOGS

(a) Same Constitute a Nuisance. Except as otherwise provided in this Section § 74.22, any person who owns or who has possession of an animal within the Town, and who allows that animal to howl, bark, meow, or squawk in such a manner that creates noise that is plainly audible at least once a minute for ten (10) consecutive minutes (1) inside the confines of the dwelling unit, house or apartment of another or (2) at fifty (50) or more feet from the animal, is maintaining a public nuisance.

(b) Penalty. Such person shall be guilty of a Class 4 misdemeanor and upon due conviction thereof shall be fined an amount that does not exceed \$100. In addition, such public nuisance may be abated by any remedy available under Title 9 of this Code or under other applicable law.

(c) Exception. All dog kennels legally operating within the Town shall be exempt from this Section 74.22.

(d) Definition. For purposes of this section, “plainly audible” has the same meaning as in Chapter 75 of this Code.

§ 74.23 LIVESTOCK AND FOWL

No person shall keep livestock (as defined in the Land Development Regulations) within the Town except as permitted in the Land Development Regulations. No person shall permit any livestock to run at large within the Town. Any person who violates this Section § 74.23 shall be guilty of a Class 4 misdemeanor and upon due conviction thereof shall be fined an amount that does not exceed \$100. Each day of keeping livestock in violation of this section shall be a separate offense.

§ 74.24 ADOPTION OF ROCKINGHAM COUNTY ANIMAL REGULATIONS BY REFERENCE

Except to the extent that the Town has adopted its own ordinances regarding a particular subject in this Code, and to the full extent permitted by state law, the Town adopts the animal ordinances of Rockingham County. Such ordinances apply within the Town, and shall be administered by appropriate Rockingham County officials such that Rockingham County officials shall issue all licenses required and receive all fees for such licenses. Such ordinances may be enforced both by Town police officers and by appropriate Rockingham County officials.

CHAPTER 75: NOISE

§ 75.01 DECLARATION OF POLICY

At certain levels, noise can be detrimental to the health, welfare, safety and quality of life of inhabitants of the town, and in the public interest noise should be restricted. Moreover, certain social gatherings, using amplified sound, create excessive noise and related adverse effects for the citizens of this Town. It is, therefore, the policy of the Town to reduce, and eliminate where possible, excessive noise and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful and annoying noises from all sources as an exercise of the Town's police power. The Town exercises its power to prohibit both certain specified activities, as described in § 75.03, and to prohibit any other activity that causes noise above a certain level, as described in § 75.04.

§ 75.02 DEFINITIONS

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

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Dwelling unit means a building or portion thereof designed or intended to be occupied as living quarters by one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Motor vehicle means every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia (1950), as amended.

Owner means the person owning, controlling, or possessing land, premises, or personal property.

Person means any individual, partnership, corporation, limited liability company, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, town, city, or local government, or any agency or institution thereof.

Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties, provided that a sound shall be determined to be audible even if specific words or phrases cannot be distinguished. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

Property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one (1) person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions such as party walls, walls between dwelling units, or condominium unit boundaries.

Residential area means any property zoned for residential use under the Town's Land Development Regulations.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

Sound amplifying equipment means any machine or device used for the amplification of the human voice, music, or other sound. This term shall not include warning devices on authorized emergency vehicles, horns or other warning devices on other vehicles used only for traffic safety purposes.

§ 75.03 SPECIFIC ACTIVITIES PROHIBITED

No person shall cause or permit to be caused any of the following prohibited sounds or noises:

(a) *Large party nuisance.* The creation of plainly audible sound that emanates from a gathering of ten (10) or more people, whether the gathering is completely contained within a structure or spills outdoors into balconies, yards, common areas, parking lots, or other outdoor spaces, and is plainly audible (i) across a property boundary or (ii) at a distance of one hundred (100) feet or more from its source and on property other than that which the sound originates.

(b) *Sound-producing and sound-reproducing devices.* Except for commercial establishments located in areas zoned business, the use, operation or playing of any radio, phonograph, television, record, compact disc, tape, digital music, MP3 or DVD player, musical instrument, loudspeaker, sound amplifier, phone, tablet, or other machine or device capable of producing or reproducing sound, regardless of whether such sound-producing or sound-reproducing machine or device is located inside of a structure or outside of or on a structure, in such a manner or with such volume or duration that it is plainly audible between 10:00 p.m. and 7:00 a.m.:

(1) Inside the confines of the dwelling unit, house or apartment of another person; or

(2) In a residential area, at one hundred (100) or more feet from the device.

(c) *Noisy animals.* Allowing any animal to cause any sound or noise such that it is plainly audible:

(1) Inside the confines of the dwelling unit, house or apartment of another person at least once a minute for ten (10) consecutive minutes; or

(2) At one hundred (100) or more feet from the animal at least once a minute for ten (10) consecutive minutes.

(d) *Peddlers and hawkers.* Yelling, shouting, whistling, screaming or crying for the purpose of attracting attention to a performance, show, sale or display of merchandise between the hours of 10:00 p.m. and 7:00 a.m. on any public street, sidewalk or parking lot or any privately owned street, sidewalk or parking lot open to the public, except to summon aid in an emergency.

(e) *Amplified sound from vehicles.* Playing, using or operating, or permitting the playing, use or operation of, any radio, stereo, tape player, compact disc player, MP3 player, loudspeaker, tablet, phone, or other electronic device or mechanical equipment used for the amplification of sound, which is located on or within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of fifty (50) feet or more. The provisions of this subsection shall not apply to the playing of music or jingles by an ice cream truck or similar mobile food service vehicle, provided such vehicle may emit sounds otherwise prohibited by this subsection only between the hours of 7:00 a.m. and 10:00 p.m.

(f) *Lawn care activities.* Creating any sound or noise plainly audible across a property line in a residential area between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal or other landscaping, lawn or timbering activities. The provisions of this subsection shall not apply to (a) sound or noise generated by the maintenance of recreational facilities such as golf courses and ball or playing fields; or (b) to permitted commercial agricultural activities taking place in a residential area.

(g) *Horns, whistles, etc.* Sounding or permitting the sounding of any horn, whistle or other auditory sounding device on or in any motor vehicle on any public right-of-way or public property, or on any private property accessible to the public (such as a business parking lot) except as a warning of danger, for more than ten (10) seconds, or more than three (3) times in any one minute.

(h) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to permit sound to be plainly audible across a property boundary.

(i) *Vehicle noise other than from sound-producing and sound-reproducing devices.* Operation of a motor vehicle or operation of a motorcycle within the town with a gutted muffler, muffler cutout, straight exhaust, or without an exhaust in good working order, as provided under state law.

§ 75.04 GENERAL ACTIVITIES PROHIBITED

In addition to, and not in limitation of the specific prohibitions of § 75.03, no person shall operate or permit to be operated any noise source which generates a sound level exceeding the limits set forth in this section. The provisions of this section shall not apply to restaurants; rather, § 75.06 shall apply.

(a) *Nighttime.* No person shall permit, operate or cause any source of sound to create a sound level in excess of fifty-five (55) dBA when measured at or outside the property boundary between the hours 10:00 p.m. and 7:00 a.m.

(b) *Daytime.* No person shall permit, operate or cause any source of sound to create a sound level in excess of seventy (70) dBA when measured at or outside the property boundary between the hours 7:00 a.m. and 10:00 p.m.

§ 75.05 MEASUREMENT OF SOUND IN MULTIFAMILY DWELLINGS

Whenever it is necessary to determine the volume of sound for the purposes of §§ 75.03 or 75.04 inside a Two Family Dwelling or a Multi-Family Dwelling (as that term is defined in the Town's Land Development Regulations), the person making such determination may listen or take measurements to determine sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows in the normal position for the season. This section applies to both measurements of the decibel level of sound, and to the determination whether a sound is plainly audible.

§ 75.06 RESTARAUNTS

No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during operating hours in excess of sixty-five (65) dBA when measured at or outside the property boundary.

§ 75.07 EXCEPTIONS

The following activities or sources of noise shall be exempt from the prohibitions set forth in this chapter:

- (a) Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools;
- (b) Athletic contests and other officially sanctioned activities in Town parks;
- (c) Bells or carillons;
- (d) Activities for which the regulation of noise has been preempted by federal law;
- (e) Public and private transportation, refuse collection and sanitation services;
- (f) Sound which is necessary for the protection or preservation of property or the health, safety, life or limb of any person;
- (g) Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles;
- (h) Events that the Town or the Broadway Hometown Partnership conducts;

(i) Fire alarms and burglar alarms, including motor vehicle alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm;

(j) Locomotives and other railroad equipment, and aircraft;

(k) The striking of clocks;

(l) The activities (including military or law enforcement activities) of any local, regional, state, or federal government; and

(m) Any event for which a public assemblage permit has been issued under Chapter 97 of this Code, or any event for which a parade permit has been issued under Chapter 98 of this Code; provided, however, that the terms of any such permit may include a requirement that participants in the event must comply with this Chapter, and in such event, the exception contained within this clause (m) shall not apply.

§ 75.08 MEASUREMENT OF SOUND BY DECIBEL

(a) The decibel level of any noise may be measured by the use of a sound level meter which measures sound pressure levels. Such measurements shall be accepted as prima facie evidence of the level of noise at issue in any court or legal proceeding to enforce the provisions of this Chapter.

(b) The accuracy of the sound level meter may be tested by a calibrator.

(c) An individual operating a sound level meter pursuant to the provisions of this section shall issue a certificate to indicate:

- (1) That the sound level meter used to take the decibel level reading was operated in accordance with the manufacturer's specifications;
- (2) That the Town has on file a sworn report which states that the sound level meter has been tested within the past twelve (12) months and has been found to be accurate;
- (3) The name of the accused;
- (4) The location of the noise;
- (5) The date and time that the reading was made; and
- (6) The decibel level reading.

Such certificate, when attested by the operator taking the decibel level reading, shall be admissible in court in any criminal or civil proceeding as evidence of the facts therein stated and of the decibel level reading. A copy of the certificate shall be delivered to the accused upon request.

§ 75.09 PARTY PERMITS

Any person who wishes to inform the Town of a social gathering that has the potential to create noise prohibited under this Chapter, and who wishes to provide contact information to facilitate communication between the organizer of the gathering and the Town, may register such gathering with the Town. Such person shall provide the Town with the location of the gathering, the name and phone numbers of one or more persons responsible for the gathering, and any other information that the Town Manager or his designee may reasonably request. Registration does not excuse compliance with this Chapter; rather, it is intended to facilitate communication between the Town and the organizer of the gathering.

§ 75.10 PENALTY

Any person who creates any noise in violation of the provisions of this Chapter, shall be guilty of a Class 2 misdemeanor and, upon due conviction thereof, shall be punished by a fine of not less than three hundred dollars (\$300.00) for the first offense, five hundred dollars (\$500.00) for the second offense within a twelve (12) month period, and one thousand dollars (\$1,000.00) for any subsequent offense within the same twelve (12) month period. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

§ 75.11 NUISANCE REMEDIES AVAILABLE

In addition to the remedies provided in this Chapter, noise prohibited in this Chapter shall constitute a public nuisance. The Town or a private citizen may abate such public nuisance by any remedy available to abate public nuisances under Title 9 of this Code or other applicable law.

CHAPTER 76: FIRE CODE

§ 76.01 ADOPTION OF STATEWIDE FIRE CODE

The Statewide Fire Prevention Code, promulgated by the Commonwealth under state law, shall be in effect in the Town. The Rockingham County Fire Marshal shall enforce such regulations within the Town.

§ 76.02 PENALTY

Any person who violates the Statewide Fire Prevention Code shall be guilty of a Class 1 misdemeanor, and upon due conviction thereof, shall be fined an amount not to exceed \$2,500 or imprisoned for a term not to exceed 1 year, or both.

CHAPTER 76: FIRE CODE

§ 76.01 STATEWIDE FIRE PREVENTION CODE

The Statewide Fire Prevention Code shall be in effect in the Town. Specific provisions of this Chapter shall take precedence over conflicting provisions of such statewide code. No person shall violate any provision of the Statewide Fire Prevention Code that is in effect in the Town.

§ 76. PENALTY; ENFORCEMENT

Any person who violates any provision of the Statewide Fire Prevention Code in effect in the Town, or any other provision of this Chapter, shall be guilty of a Class 1 misdemeanor and upon due conviction thereof, shall be fined an amount not to exceed \$2,500 or imprisoned for a term not to exceed one year, or both. The County Fire Marshall shall have authority to enforce this Chapter.

TITLE IX: PROPERTY, HEALTH, AND SAFETY

Chapter

- 91. NUISANCES**
- 92. TRASH, GRASS, WEED, AND CLUTTER ACCUMULATION**
- 93. DILAPIDATED OR UNSAFE BUILDINGS AND STRUCTURES**
- 94. DEFACEMENT OF BUILDINGS AND STRUCTURES**
- 95. INOPERABLE MOTOR VEHICLES**
- 96. SNOW REMOVAL**
- 97. PUBLIC ASSEMBLAGE**

CHAPTER 91: NUISANCES

§ 91.01 NUISANCES GENERALLY

It shall be unlawful for any person, firm, or organization to create or maintain a nuisance on any public or private property within the Town. A nuisance shall be defined as any condition that is a nuisance under the common law of Virginia, the principles of equity, or Virginia statutory law. This definition includes, without limitation, anything that endangers life or health, gives offense to the senses, violates normal bounds of decency, or obstructs the reasonable and comfortable use of property, such as accumulations of offensive, unsanitary, or unhealthy substances in or on any place or premises; portions of any lot adjacent to a street where the difference in level between the lot and the street constitutes a danger to life and limb; unsafe, dangerous, or unsanitary public or private buildings, walls or structures; and use of any public place or property of any description in a manner not permitted to the general public without prior consent of the Town.

§ 91.02 MUNICIPAL ABATEMENT OF NUISANCES

(a) Whenever the Town Council or Town Manager has reasonable cause to believe that any such nuisance exists on private property, the Town may notify the property owner of record of such determination by certified mail, return-receipt requested, sent to the address listed in the real estate tax records for the property. Notice shall also be sent to any tenant or other occupant of such property, if other than the record owner. The Notice shall inform the party to whom it is directed that the Town Council or Town Manager will take evidence regarding the nuisance at the date and time specified in the notice, which shall not be less than five (5) days from the date the notice is delivered.

(b) Whenever the Town Council or Town Manager has reasonable cause to believe any such nuisance exists on public property, at the direction of the Town Council, a notice of violation as prescribed in subsection (a) shall be sent to the home or business address of the person or organization creating or maintaining such nuisance.

(c) On the date and time fixed in the notice, the Town Council or Town Manager shall receive evidence concerning the existence of the nuisance. The Town Council or Town Manager shall provide all interested parties with an opportunity to be heard regarding the nuisance. At the conclusion of the evidence, the Town Council or Town Manager may determine whether a nuisance exists. If the Town Manager is conducting the hearing and does not wish to adjudicate the question, he may adjourn the hearing and refer the matter to the Town Council. In either event, if the Town Council or Town Manager (as the case may be) determines after all evidence has been received that a nuisance exists, the Town Manager shall notify the property owner, the property occupant, and any party creating or maintaining the nuisance.

(d) If such nuisance is not abated, removed, or corrected within fifteen (15) days of receipt of such notice, or after the notice is returned as unclaimed mail, the Mayor or Town Manager may order the nuisance removed or corrected by the Town's own agents or employees. The cost or expense of such removal shall be chargeable to, and paid by, the owners of such private

property, or the person or organization creating or maintaining the nuisance on public property, and may be collected by the Town as taxes and levies are collected and, to the full extent permitted by state law, shall constitute a lien against the property on which the nuisance occurred, on parity with tax liens, to the full extent permissible under state law, and shall also be a personal obligation of the owner of such property.

(e) If the nuisance in question is the use of public property without prior consent of the Town, notice prior to abatement shall not be necessary.

(f) Any person creating or maintaining a public nuisance (including, without limitation, the use of public property without the prior consent of the Town) shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined no more than Five Hundred Dollars (\$500). Each day's continuance of the nuisance shall be a separate offense.

(g) The notice and hearing provisions of this section shall not apply when the Town Manager or Town Council determines in writing that a public nuisance exists and constitutes an imminent or immediate threat to life or property. In such instance the Town Manager or Mayor may order the nuisance removed or corrected immediately by the Town's own agents or employees, and the Town may recover the costs thereof under the provisions of subsection (d) herein.

§ 91.03 CIVIL ACTIONS TO ABATE NUISANCES

In addition to the remedies provided in § 91.02, the Town may maintain a civil action to compel a responsible party to abate, raze, or remove any public or private nuisance, to obtain a judicial determination of the existence of any nuisance, or to recover any damages caused by such nuisance during the period of its maintenance. Costs and reasonable attorneys' fees associated with any such action shall be assessed against the persons creating or permitting the nuisance.

§ 91.04 REMEDIES CUMULATIVE

The remedies for nuisances contained in the Town Code shall be in addition to any other remedies available to the Town or to a private citizen under other state or local law.

CHAPTER 92: TRASH, GRASS, WEED, AND CLUTTER ACCUMULATION

§ 92.01 REMOVAL OF WEEDS, GRASS, AND FOREIGN GROWTH

The owners of property within the Town, whether improved or unimproved, and including such property upon which buildings or other improvements are located, shall cut the grass, weeds, and other foreign growth (including running bamboo as defined under state law) on such property or any part thereof at such time or times as the Town Manager or his designee determines is reasonably necessary to maintain the safety, health, and good order of the Town. If the Town Manager or his designee deems it necessary, after ten (10) days' notice to the property owner, the Town Manager or his designee may have such grass, weeds, or other foreign growth cut by the Town's agents or employees, in which event the cost and expenses thereof shall be chargeable and

paid by the owner of the property and may be collected by the Town as taxes are collected, all as described in § 92.04. Provided, however, that the Town Manager is not obligated to give more than one notice to the owner of any particular property in one calendar year. The property owner may waive any such notice and consent to the Town's cutting of such grass, weeds, and other foreign growth; in such an event, the costs thereof shall be collected in same manner as if the property owner had not waived such notice and given such consent.

§ 92.02 DISPOSAL OF TRASH, ETC.

Trash, garbage, refuse, litter, clutter, and other debris shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purpose and in no other manner not authorized by law.

§ 92.03 REMOVAL OR TRASH, LITTER, OR CLUTTER

(a) The owners of property shall, within ten (10) days of notice, remove from such property any and all

(i) trash, garbage, refuse, litter, or clutter; or

(ii) other substances which might endanger the health or safety of other residents of the Town.

(b) If the Town Manager deems it necessary to protect the health or safety of residents of the Town, after ten (10) days' notice, he may have such trash, garbage, refuse, litter, clutter, or other like substances which might endanger the health of other residents of the Town, removed by its own agents or employees, in which event the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the Town as taxes are collected as described in § 92.04.

(c) For purposes of this section, "clutter" shall have the broadest possible definition that is permissible under state law, but shall include, at a minimum, mechanical equipment, household furniture, containers, and similar items that may be detrimental to the well-being of a community when they are left in public view for an extended period or are allowed to accumulate.

§ 92.04 CHARGES CONSTITUTE LIEN

All costs associated with action authorized under this Chapter shall constitute a lien on any property from which weeds are cut or trash or litter removed, on parity with tax liens, and may be collected in a manner identical to the manner in which real estate tax liens are collected. Such costs shall also be a personal obligation of the owner of such property.

§ 92.05 CIVIL AND CRIMINAL PENALTIES

(a) Civil Penalties. A person violating this chapter shall also be liable for a civil penalty of \$50 per day for each initial violation thereof, and of \$200 per day for each subsequent violation arising within the same twelve month period as an initial violation. Provided, however, that each day of a violation arising from the same set of operative facts in a twelve month period is penalized as an initial violation, not as a subsequent violation. In addition, a civil penalty for violation arising from the same set of operative facts may not exceed \$3,000 in any twelve month period.

(b) Criminal Penalties. Any person who has had a civil penalty imposed under paragraph (a) of this section three times within any twenty-four month period, for the same or similar violations, but on three different sets of operative facts, shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$500.

§ 92.06 NOTICE

(a) Whenever notice is required to be given under the provisions of this Chapter or Chapter 91, such notice shall be either by:

(1) personal and actual service of such notice on the property owner by a private process server, Town police officer or Rockingham County Sheriff Deputy;

(2) by certified or registered mail, return receipt requested; or

(3) by overnight mail or reputable overnight delivery service.

(b) When notice is given other than by personal service, it shall be sent to the property owner at the address maintained by Rockingham County's Commissioner of the Revenue, and at any other such other address as the Town Manager believes is reasonably calculated to provide actual notice to the property owner of the Town's proposed action.

(c) Notice shall be deemed given effective when served or when deposited with the United States Postal Service or reputable overnight delivery service, as appropriate.

(d) Notice not given in accordance with the above provisions, but actually received by the property owner, shall be effective when received.

(e) Service upon a person other than a natural person may be made upon any registered agent for such person, or upon any official who is an authorized recipient of service to such person under state law related to service upon persons other than natural persons.

CHAPTER 93: DILAPIDATED OR UNSAFE BUILDINGS AND STRUCTURES

§ 93.01 RESPONSIBILITY OF OWNERS TO PRESERVE PROPERTY

Upon notification by the Town Manager, the owners of property within the Town shall remove, repair, or secure any building, wall, or other structure that the Town Manager determines might endanger the public health or safety of other residents of the Town.

§ 93.02 REMEDIATION OF UNSAFE STRUCTURE

If the owner of property fails to comply with a notification from the Town Manager under § 93.01, the Town may remediate the unhealthy or unsafe building, wall, or other structure through its own agents. No such remediation shall take place until thirty (30) days have passed after final notice to the landowner of the Town's proposed remedial action. Such notice shall consist of notice in writing either mailed by certified or registered mail, return receipt requested, to the property owner at the address maintained by Rockingham County's Commissioner of the Revenue, and at any other such other address as the Town Manager believes is reasonably calculated to provide actual notice to the property owner of the Town's proposed action, or by personal and actual service of such notice on the property owner by a Town police officer. Further, such notice shall be published one per week for two successive weeks in a newspaper having general circulation in the Town. Provided, however, if the Town manager believes that the structure in question poses a significant threat to public safety, and states so in the notice, then the Town may take steps to prevent public access to the unsafe structure seven (7) days after such final notice. Notice shall be considered final on the second newspaper publication, or upon the return of the receipt from the certified or registered mailing, whichever occurs last.

§ 93.03 CHARGES CONSTITUTE LIEN

All costs associated with action authorized under this Chapter shall constitute a lien on any property on which the unsafe building, wall or structure, was situate, on parity with tax liens, and may be collected in a manner identical to the manner in which real estate tax liens are collected. Such costs shall also be a personal obligation of the owner of such property.

§ 93.04 DEMOLITION BY CONSENT

With the written consent of a property owner, the Town may demolish or remove a derelict nonresidential building or structure provided that such building or structure is neither located within or determined to be a contributing property within a state or local historic district nor individually designated in the Virginia Landmarks Register. If the property has liens, the consent shall identify the first lienholder thereon under a recorded lien (if any there be) and shall document the property owner's best reasonable efforts to obtain the consent of any such lienholder. The costs of demolition or removal shall be a lien on the property, on parity with tax liens, and to be collected in the same manner; provided, however, that in the event a first lienholder on the property does not consent to such demolition or removal, then such lien shall be subordinate to the first lien. In any event such costs shall be a personal obligation of the owner.

§ 93.05 CIVIL PENALTY

Any person who violates this chapter shall also be liable for a civil penalty of \$1,000 per violation.

CHAPTER 94: DEFACEMENT OF BUILDINGS AND STRUCTURES

§ 94.01 RESPONSIBILITY OF OWNERS TO REMOVE DEFACEMENTS

The Town Manager shall be responsible for ensuring the prompt removal of all defacements from public property. Upon notification from the Town Manager, the owners of private property shall promptly remove all defacements from such private property when such defacements are visible from a public right of way.

§ 94.02 REMEDIATION OF DEFACEMENTS

If the owner of private property fails to comply with a notification from the Town Manager under § 94.01, the Town may remove such defacements through its own agents. No such removal shall take place until fifteen (15) days have passed after final notice to the landowner of the Town's proposed removal action. Such notice shall consist either of notice in writing mailed by certified or registered mail, return receipt requested, to the property owner at the address maintained by Rockingham County's Commissioner of the Revenue, and at any other such other address as the Town Manager believes is reasonably calculated to provide actual notice to the property owner of the Town's proposed action, or of personal and actual service of such notice on the property owner by a Town police officer.

§ 94.03 CHARGES CONSTITUTE LIEN IF PERMITTED

To the full extent permitted by state law, all costs associated with action authorized under this Chapter shall constitute a lien on any property on which the defacement was situate, on parity with tax liens, and may be collected in a manner identical to the manner in which real estate tax liens are collected. Such costs shall also be a personal obligation of the owner of such property to the full extent permitted by state law.

§ 94.04 DEFINITION OF DEFACEMENT

For the purposes of this Chapter, "defacement" means the unauthorized application by any means of any writing, painting, drawing, etching, scratching, or marking of an inscription, word, mark, figure, or design of any type.

CHAPTER 95: INOPERABLE MOTOR VEHICLES

§ 95.01 RESPONSIBILITY OF OWNERS TO REMOVE INOPERABLE MOTOR VEHICLES

No person shall keep an inoperable motor vehicle in a residential zoning district for any period, or within a commercial zoning district for more than a two (2) week period, unless it is either within a fully enclosed building or structure, or otherwise shielded or screened from view.

§ 95.02 TOWN REMOVAL OF INOPERABLE MOTOR VEHICLES

If an owner violates § 95.01 and the Town Manager determines that it is advisable for the Town's agents to remove the inoperable motor vehicle, he shall notify the owner that such owner must remove the vehicle, and if the owner fails to do so within the times described in this paragraph, the Town's agents will do so. Such notice shall be either by certified or registered mail, return receipt requested, to the property owner at the address maintained by Rockingham County's Commissioner of the Revenue, and may also be at any other such address as the Town Manager believes is reasonably calculated to provide actual notice to the property owner; or, in lieu of notice by mail, may be by personal and actual service of such notice on the property owner by a Town police officer or appropriate Sheriff's deputy. If the property owner is an entity, such service may be on a registered agent or other agent authorized under applicable law to receive service on behalf of an entity. Seven days after the delivery of such notice or the return of such notice as undeliverable by certified or registered mail, the Town Manager may cause such inoperable motor vehicle to be removed. Seven days after providing additional notice on the same terms, the Town Manager may dispose of such vehicle in any reasonable manner.

§ 95.03 CHARGES CONSTITUTE LIEN

All costs associated with action authorized under this Chapter, together with civil penalties duly assessed hereunder, shall constitute a lien on any property on which the inoperable vehicle was situate, on parity with tax liens, and may be collected in a manner identical to the manner in which real estate tax liens are collected. Such costs shall also be a personal obligation of the owner of such property, and of the owner of the vehicle so removed, and may be collected any way that taxes are collected. In addition, and for the recovery of the same costs, the Town shall have a lien against the proceeds (if any) from the disposal of any vehicle removed under this Chapter.

§ 95.04 DEFINITIONS

- (a) For the purposes of this Chapter 95, "inoperable motor vehicle" means
 - (i) any motor vehicle which is not in operating condition;
 - (ii) any motor vehicle which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle; or

(iii) any motor vehicle on which there are displayed neither valid license plates nor a valid inspection decal.

Notwithstanding the foregoing, this definition shall not include any motor vehicle on the property of a licensed business that, on June 26, 1970, was regularly engaged in business as an automobile dealer, salvage dealer, or scrap producer.

(b) For the purposes of this Chapter 95, “shielded or screened from view” means not visible by someone standing at ground level from outside of the property on which the subject vehicle is located.

§ 95.04 PENALTY

(a) Civil Penalty. Any person who violates § 95.01 shall be subject to a civil penalty of \$200 for the initial summons and \$500 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period. A series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000.

(b) Criminal Penalty. Any person who violates § 95.01 after three civil penalties have previously been imposed against such person within a twenty-four (24) month period under § 95.04(a) shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$500. To support a conviction under this paragraph, the three previous civil penalties must not have arisen from the same set of operative facts. If this paragraph applies, a criminal penalty for the conduct described shall be in lieu of a civil penalty for the same violation.

(c) Remedies Cumulative. Except as otherwise provided in §§ 95.04(b) and 95.05, the remedies and penalties provided in this Chapter are cumulative to any other remedy available to the Town under the law of nuisance or otherwise.

§ 95.05 AUTHORITY OF TOWN MANAGER TO FACILITATE VOLUNTARY REMOVAL OF VEHICLES

In the event that the owner of an inoperable motor vehicle wishes to remove and abandon the vehicle but has not done so, such owner may request the Town to remove the vehicle and dispose of it. If the Town Manager believes that the removal of the vehicle would promote the public welfare, he is authorized to accept the title to such vehicle in the name of the Town, and shall promptly cause the removal of such vehicle and dispose of it. The Town shall bear the costs of such removal and disposal, and shall be entitled to reimburse itself for the costs of such removal and disposal from any proceeds generated by the disposal of the vehicle. The Town shall return the remainder of any such proceeds to the former owner of the vehicle, and an appropriation is hereby made for the purposes described in this paragraph. The provisions of §§ 95.02 and 95.04 shall not apply to a removal under this paragraph.

CHAPTER 97: PUBLIC ASSEMBLAGE

§ 97.01 PURPOSE

Pursuant to the authority granted to the Town by the Code of Virginia and its general police powers, the Town has adopted this chapter 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. The Town disavows any intention to engage in viewpoint discrimination in enacting the provisions of this chapter.

§ 97.02 DEFINITIONS

The following terms shall have the meanings set out herein:

Parade means any march, procession or motorcade consisting of people, animals, or vehicles, or a combination thereof, upon the streets, sidewalks or other public areas within the Town and that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon such streets, sidewalks, or other public property.

Public assembly or *assembly* means any meeting, demonstration, picket line, rally or gathering of more than ten 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.

Spontaneous event means 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 15 days of such parade or public assembly.

§ 97.03 PERMIT REQUIRED

(a) It shall be unlawful for any person to conduct or participate in a marathon and walking or physical endurance contest or exhibition, 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 section shall not apply to:

(1) Spontaneous events;

- (2) Recreational activities, including jogging or walking, that do not require closing public streets or other public rights-of-way and that do not interfere with or have a tendency to interfere with the normal use of any public property in a 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 this Code;
- (5) Funeral processions;
- (6) Students going to and from school classes or participating in educational activities part of the ordinary curriculum of an accredited educational institution, provided that such conduct is under the immediate direction and supervision of the proper school authorities, and that only students and school employees participate;
- (7) The United States Army, Navy, Air Force and Coast Guard, the military forces of the State and the police and fire divisions of the Town and Rockingham County; or
- (8) Governmental agencies acting within the scope of their functions;

(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.

§ 97.04 APPLICATION FOR PERMIT

(a) Any person desiring to conduct a marathon and walking or physical endurance contest or exhibition, parade or public assembly shall make written application, in a form approved by the Town Manager, to the Town Manager, or his designee, at least 15 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 chairperson 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;
- (11) Any conditions or undertakings regarding the event that the applicant wishes to proffer; and
- (11) Such other information as the Town Manager, 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 Town Manager, or his designee, shall not issue the permit if any information supplied by the applicant is false or intentionally misleading.

(c) The Town Manager, or his designee, shall have the authority to and shall make reasonable efforts to consider an application hereunder which is filed less than 15 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 marathon and walking or physical endurance contest or exhibition, 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 Town Manager, or his designee, determines that the waiver of the permit application deadline will not present an undue hazard to public safety.

§ 97.05 GRANT OR DENIAL OF PERMIT

(a) The Town Manager, or his designee, shall issue the permit within ten days of receipt of the completed application, and in any event prior to the scheduled parade or public assembly (unless the applicant has agreed to a different deadline), if the proposed marathon and walking or physical endurance contest or exhibition, parade or public assembly will not endanger the public health, welfare or safety, after applying the following criteria and finding that:

- (1) The time, duration, route and size of the 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 applicant has, where appropriate, agreed to be responsible for having appropriate traffic control devices installed in accordance with the Uniform Manual on Traffic Control Devices to close roadways to vehicular traffic sufficient to control the orderly conduct of the parade or assembly in conformity with such permit;
- (5) 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;
- (6) The parade or assembly will not interfere with another parade or assembly for which a permit has been granted; and
- (7) The parade or assembly proposed will not violate, and will conform with all applicable State regulations and laws governing the proposed event.

(b) For marathons and walking or physical endurance contests or exhibitions, 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 Town Manager, or his designee, at least 15 and not more than 60 days before the date and time at which the first such parade or public assembly is proposed to commence. The Town Manager, or his designee, may and shall make reasonable efforts to consider an application hereunder which is filed less than 15 days before the date and time at which the first parade or assembly is proposed to commence, after due consideration of the factors specified in Section 97.05.

(c) If the Town Manager, or his designee, denies an application, he shall promptly attempt to call and 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 97.09.

(d) If two or more applications are submitted requesting a permit under this article 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 article.

(e) Nothing in this article shall permit the Town Manager, 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.

(f) The Town Manager may refer any permit application to the Town Council for action, but such referral shall not affect the deadline described in § 97.05(a). The Council shall have the same powers in connection with a referred permit application as the Town Manager did prior to the referral.

(g) If the Town Manager, his designee, or the Town Council grants an application for a permit, any conditions that an applicant proffers with respect to such permit under § 97.04(a)(11) shall become part of the permit as issued.

§ 97.06 ALTERNATIVE OR MODIFIED PERMIT

The Town Manager, or his designee, in denying a permit for a marathon and walking or physical endurance contest or exhibition, parade or public assembly shall be empowered

(a) 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, and

(b) to impose reasonable time, place, or manner conditions on the applicant in order to further the purposes described in § 97.01.

An applicant desiring to accept the permit as so revised shall file a written notice of acceptance with the Town Manager, or his designee. Such permit, if accepted, shall conform to the requirements of and shall have the effect of a permit under this article.

§ 97.07 COMPLIANCE WITH DIRECTIONS AND CONDITIONS

Every person to whom a permit is issued under this article shall substantially comply with all permit terms and conditions and with all applicable laws and ordinances. The marathon and walking or physical endurance contest or exhibition, parade or assembly chairman, or other person heading or leading the marathon and walking or physical endurance contest or exhibition, 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.

§ 97.08 REVOCATION OF PERMIT

The Town Manager, or his designee, or the Town Council, shall have the authority to revoke any permit issued pursuant to this chapter if any information supplied by the applicant is discovered to be false or intentionally misleading, 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.

§ 97.09 APPEAL

(a) Any person aggrieved by the refusal of the Town Manager, or his designee, to grant a permit or by the revocation of a permit after one has been issued, may appeal the denial to the Town Council, by filing with the Town Manager, within five business days after the date of denial or revocation, a written notice of the appeal setting for the grounds therefor. The Town Council, or its designee, shall act upon the appeal at its next meeting following the denial.

(b) No appeal shall lie from a decision of The Town Council to deny a permit.

§ 97.10 PUBLIC CONDUCT DURING PERMITTED EVENTS

(a) No person shall unreasonably hamper, obstruct, impede, or interfere with any marathon and walking or physical endurance contest or exhibition, parade, demonstration or assembly or with any person, vehicle, or animal participating or used in such an event for which a written permit has been issued in accordance with the provisions of this Chapter.

(b) No driver of a vehicle shall drive between the vehicles, persons, or animals comprising a marathon and walking or physical endurance contest or exhibition, parade, demonstration, or assembly for which a written permit has been issued in accordance with the provisions of this Chapter, except as otherwise directed by a police officer. This shall not apply to authorized emergency vehicles such as fire apparatus, ambulances, and police vehicles.

(c) The Town Manager or the Chief of Police shall have authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the public streets or other public rights of way constituting part of the route of a marathon and walking or physical endurance contest or exhibition, parade, demonstration or assembly. The Town Manager or the Chief of Police shall

ensure that signs are posted to such effect. If such signs are duly posted, no person shall park or leave any vehicles in violation thereof.

§ 97.11 PENALTY

(a) Any person who

- (1) participates in a marathon and walking or physical endurance contest or exhibition, parade, demonstration or assembly on public property or which a permit is required under this Chapter, but for which no permit has been issued;
- (2) participates in a marathon and walking or physical endurance contest or exhibition, parade, demonstration or assembly on public property for which a permit has been issued under this Chapter, and violates any term or condition of such permit, or any other provision of this Chapter, or
- (3) violates any provision of § 97.10,

shall be guilty of a Class 4 misdemeanor for the first offence and upon due conviction thereof shall be fined an amount not more than \$250. Upon the second and subsequent violations thereof (not arising from the same set of operative facts), such person shall be likewise guilty of a Class 3 misdemeanor and shall be fined an amount not more than \$500. Provided, however, that if damage to property or injury to person results from the violation, then such person shall be guilty of a Class 1 misdemeanor and upon due conviction thereof shall be incarcerated for a period not to exceed six months and fined an amount not to exceed \$2,500, or both.

(b) Any person who intentionally makes a false statement on an application for a permit under this Chapter shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not more than \$500.

§ 97.12 SUPPLEMENTAL TO OTHER LAW

The provisions of this Chapter supplement, but do not replace, the other provisions of this Code, including, without limitation, the provisions regarding nuisances, noise, and parking.

TITLE XI: MOTOR VEHICLES AND TRAFFIC

Chapter

- 111. TRAFFIC REGULATION**
- 112. PARKING REGULATION**
- 113. OTHER PROVISIONS REGARDING MOTOR VEHICLES**
- 114. PENALTIES FOR VIOLATION OF TRAFFIC OR PARKING REGULATIONS**

CHAPTER 111: TRAFFIC REGULATION

§ 111.01 INCORPORATION OF STATE LAW BY REFERENCE

Pursuant to the authority of Section 46.2-1313 of the Code of Virginia, 1950, as amended, all of the provisions and requirements of the laws of the State of Virginia contained in Title 46.2 and in Article 2, Chapter 7, Title 18.2, of the Code of Virginia, 1950, as amended and in force from time to time, except (a) those provisions and requirements the violation of which constitute a felony;(b) those provisions and requirements which by their nature can have no application to or within the municipality and (c) to the extent the Town Council specifically rejects any amendment thereto or portion thereof, are adopted and incorporated in this Ordinance by reference and made applicable within the municipality. References to “highways of the state” contained in the Code provisions and requirements adopted shall be deemed to refer to the streets, highways and other public ways within the Town of Broadway. The provisions and requirements are adopted, mutatis mutandis, and made a part of this Title as fully as though set forth at length. It shall be unlawful for any person, within the municipality, to violate or fail, neglect or refuse to comply with any provision of Title 46.2 or Article 2, Chapter 7, Title 18.2 of the Code of Virginia which is adopted by this Section. Except to the extent otherwise described in the Town Code, the penalty for each such violation shall be as prescribed in state law, including any uniform schedule thereof, but in no event shall the penalty imposed for the violation of any provision or requirement adopted exceed the penalty imposed for a similar offense under the incorporated provisions of the Code of Virginia, 1950, as amended. All future amendments to the sections of the Code of Virginia incorporated by reference under the provisions of this paragraph shall be included within the scope of this paragraph automatically upon their effective date, without any formal Town Council action. Words and phrases used and contained in this chapter shall have the meanings ascribed to them by § 46.2-100 of the Code of Virginia, except where the context clearly requires a different meaning. For the avoidance of doubt, this incorporation by reference includes, without limitation, the incorporation of all regulations of state law, contained within the above-referenced statutes, which are applicable to bicycles and mopeds.

§ 111.02 TOWN MANAGER TO SET SPEED LIMITS

The Town Manager shall have the power to increase or decrease the speed limit on any street within the Town, provided such increase or decrease in speed shall be based upon an engineering and traffic investigation by the Town or its agent and provided such speed area or zone is clearly indicated by markers or signs. The Town Manager may also to reduce for a temporary period not to exceed sixty days, without such engineering and traffic investigation, the speed limit on any portion of any street of the Town on which work is being done or where the highway is under construction or repair. Nothing in this paragraph shall be construed to abridge the authority of the Town Council to make any such regulation directly.

§ 111.03 SPEED LIMIT WHEN NOT MARKED

Other than as altered under § 111.02, or as marked and existing on the date of the enactment of this Code, the speed limit on any street within the Town shall be twenty-five miles per hour.

§ 111.04 STOP AND YIELD INTERSECTIONS

The Town Manager may designate intersections at which vehicles shall come to a full stop or yield the right-of-way. The Town Manager shall ensure that all such intersections are marked, and no person shall be liable for a violation of this section if at the time of the alleged violation the sign or marker placed in conformity with this section is missing or is defaced so that an ordinarily observant person under the same circumstances would not be aware of the existence of the regulation.

§ 111.05 EXISTANCE OF SIGNS EVIDENCE OF TOWN MANAGER APPROVAL; CURRENT SIGNS

The existence of signs, signals or markers 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 Chapter. The Town Council ratifies and confirms the legality and enforceability of all signs that exist on the date that this Code was adopted, but the Town Manager may alter or remove such signs if he determines to change the stop-and-yield status of an intersection.

§ 111.06 BACKING

No vehicle operator shall back such vehicle unless such movement can be made with safety and without interfering with other traffic.

§ 111.07 TRAFFIC SCHOOLS

To the extent that traffic school is an appropriate penalty for violations of this Ordinance under state law, any traffic school designated for Rockingham County shall be designated as a traffic school for the Town.

§ 111.08 APPLICABILITY NOT BASED ON OWNERSHIP

The provisions of this chapter applicable to the drivers of vehicles shall apply to the drivers of all vehicles, regardless of ownership, subject to such specific exceptions as are set forth in this chapter.

§ 111.09 AUTHORITY OF FIRE DEPARTMENT OFFICIALS AND RESCUE SQUAD MEMBERS TO DIRECT TRAFFIC

Officers of a fire department and members of a rescue squad may direct or assist police in directing traffic at or in the near vicinity of a fire, vehicle accident, natural disaster or similar situations, as deemed necessary for public safety, subject in every instance to the supervision and control of the police department. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, or member of the fire department at the scene of a fire, who is invested by law or ordinance with authority to direct, control, or regulate traffic.

**§ 111.10 DRIVING THROUGH FUNERAL OR OTHER PROCESSIONS;
MANNER OF DRIVING IN FUNERAL PROCESSIONS**

(a) No operator of a vehicle shall drive between the vehicles, persons or animals comprising a funeral or other authorized procession, except when otherwise directed by a police officer. This provision shall not apply to authorized emergency vehicles.

(b) Each driver in a funeral procession shall drive as near to the right-hand edge of the roadway as is practicable and shall follow the vehicle ahead as close as is practicable and safe.

**§ 111.12 IDENTIFICATION OF VEHICLES IN FUNERAL PROCESSIONS;
RIGHT-OF-WAY OF SUCH VEHICLES**

(a) All motor vehicles participating in a funeral procession, when proceeding to any place of burial, shall display illuminated head lamps thereon and such other identification as the chief of police may prescribe.

(b) All motor vehicles so designated and traveling under police or sheriff's escort shall have the right-of-way, except for fire apparatus, ambulances and police vehicles, at any street or highway intersection within the city, and may proceed through a stop sign or signalized intersection with proper caution and safety.

(c) No vehicle that is not properly part of a funeral procession shall join, pass through, or interfere with the passage of any funeral procession under police or sheriff's escort, as provided in this section.

§ 111.13 CONDUCT OF PEDESTRIANS

All pedestrians shall:

(a) obey signs and signals erected on highways therein for the direction and control of traffic, and

(b) obey the orders of law-enforcement officers engaged in directing traffic on such highways.

**§ 111.14 BARRIERS OR SIGNS PLACED BY PUBLIC UTILITIES OR TOWN
DEPARTMENTS**

No person, public utility or any Town department shall erect or place any barrier or sign on any highway or sidewalk unless authorized by the Town Manager, Chief of Police, Director of Public Works, or other officer designated by the Council. It shall be unlawful for any person to disobey the instructions of any barrier or sign placed in any highway or sidewalk when the barrier or sign has been first approved by the designated officer and the same has been erected pursuant to authority from such officer. No person shall ride or drive any animal or vehicle or walk over any newly made pavement or freshly painted marking in any highway when a barrier or sign is in place

warning persons not to drive over such pavement or marking or when a sign is in place stating that the street or any portion thereof is closed.

§ 111.15 OFFENSES BY PERSONS OWNING OR CONTROLLING VEHICLES

Neither the owner, nor any person employing or otherwise directing the driver of any vehicle, shall require or knowingly permit the operation of such vehicle upon a street of this Town in any manner contrary to law.

CHAPTER 112: PARKING REGULATIONS

SUBCHAPTER A – GENERAL PARKING REGULATIONS

§ 112.11 INCORPORATION OF STATE LAW PROVISIONS BY REFERENCE

Except as expressly modified or supplemented by this Chapter, all of the provisions and requirements of the laws of the State of Virginia contained in Title 46.2 of the Code of Virginia, 1950 concerning parking or stopping, as amended and in force from time to time, except (a) any of those provisions and requirements the violation of which constitute a felony; (b) those provisions and requirements which by their nature can have no application to or within the Town, and (c) to the extent the Town Council specifically rejects any amendment thereto or portion thereof, are adopted and incorporated in this Code by reference and made applicable within the Town. References to “highways of the state” contained in the Code provisions and requirements adopted shall be deemed to refer to the streets, highways and other public ways within the Town. The provisions and requirements are adopted, mutatis mutandis, and made a part of this Title as fully as though set forth at length. It shall be unlawful for any person, within the Town, to violate or fail, neglect or refuse to comply with any provision of Title 46.2 or Article 2, Chapter 7, title 18.2 of the Code of Virginia which is adopted by this Section. Except to the extent otherwise described in the Town Code, the penalty for each such violation shall be as prescribed in state law, including any uniform schedule thereof, but in no event shall the penalty imposed for the violation of any provision or requirement adopted exceed the penalty imposed for a similar offense under the incorporated provisions of the Code of Virginia, 1950, as amended. Words and phrases used and contained in this chapter shall have the meanings ascribed to them by § 46.2-100 of the Code of Virginia, except where the context clearly requires a different meaning. All future amendments to the sections of the Code of Virginia incorporated by reference under the provisions of this paragraph shall be included within the scope of this paragraph automatically upon their effective date, without any formal Town Council action.

§ 112.12 AUTHORITY OF TOWN MANAGER

The Town Manager shall have the authority to make and administer parking regulations not inconsistent with this Chapter. Such authority shall include the authority to designate no parking zones and to limit the time that a vehicle may be parked in a given space. The existence of signs, signals or markers 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 Chapter. The Town Council ratifies and confirms the legality and enforceability of all signs that exist on the date that this Code was adopted, but the Town Manager may alter or remove such signs if he determines to change the parking regulations for an area. Nothing in this Chapter shall be construed to abridge the authority of the Town Council to make any such regulation directly.

§ 112.13 PARKING IN VIOLATION OF SIGN

It shall be unlawful to park any motor vehicle, trailer, or semi-trailer on the public streets or public grounds in violation of official permanent or temporary “No Parking” signs, or in violation of a sign that limits the amount of time a vehicle may be parked in a space. Official temporary “No Parking” signs, erected to facilitate emergency repairs, special events or like activities, shall be erected 24 hours prior to the initiation of any enforcement action. Official temporary “No Parking” signs shall be erected in a uniform manner as prescribed by traffic engineering and shall be marked on the reverse side with the date and the date signs were erected. Any motor vehicle, trailer, or semi trailer parked in violation of this section is subject to ticketing and towing.

§ 112.14 OTHER PROHIBITED PARKING

(a) It shall be unlawful to park any motor vehicle, trailer, or semi trailer, whether attended or unattended, so as to prevent the use of a curb ramp, fire hydrant, or driveway or other entrance, or mail box located on public property or on privately-owned property which is open to the public. A summons for the offense may be issued by police department employees without the necessity of a warrant being obtained by the owner of any private property.

(b) It shall be unlawful for the owner, operator, or driver of any motor vehicle over one-ton capacity to park such vehicle or to permit it to be parked on any street, alley, or other public way in the Town for longer than thirty (30) minutes. The provisions of this section shall not apply to any vehicle while actually engaged in loading or unloading.

(c) Except when actually loading or unloading, or as otherwise expressly permitted by law, no vehicle on a two-way street shall be parked or stopped with its left side adjacent to the curb.

(d) Except in an emergency or to allow another vehicle or a pedestrian to cross, no vehicle shall be stopped or parked in any street, except close to and parallel with the curb. In no case shall any vehicles be parked less than four (4) feet apart. In the absence of lines marked on a street to designate the limits of a curbside parking space, no vehicle shall be stopped or parked with the curbside wheels further than six (6) inches from the curb, except where parking regulations provide for parking at an angle to the curb.

(e) Vehicles shall not be parked two (2) or more abreast parallel with the curb.

(f) No vehicle shall be parked within twenty (20) feet of a street corner. The distance shall be measured from the point where the tangent line to radius of the curb is parallel with the roadway.

(g) On all streets marked with lines on the pavement indicating spaces for the parking of vehicles, the spaces between each two (2) lines shall constitute parking room for only one (1) four-wheeled vehicle or two (2) motorcycles or moped/electric powered vehicles. No vehicle parked in such space shall be parked with wheels across the line indicating the boundaries of the space.

(h) It shall be unlawful for any person to park a vehicle on or near a sidewalk or pedestrian crossing in such a way as to block or obstruct the free passage of pedestrians or with any portion of the vehicle on or overhanging any portion of the sidewalk.

(i) It shall be unlawful for any person to park any vehicle alongside any curb painted yellow.

(j) No vehicle shall be backed up to a curb, except during the time merchandise is actually being loaded or unloaded.

§ 112.15 PARKED VEHICLES; CURRENT LICENSE REQUIRED

It shall be unlawful for any person to park, keep, or permit to be parked or kept any motor vehicle, trailer, or semi trailer in or on any public highway, street, alley, public easement, or other public thoroughfare in the Town, unless:

(a) The motor vehicle shall be currently inspected and approved in accordance with the provisions of any applicable laws of Virginia or another state;

(b) The vehicle shall be currently registered under the applicable laws of Virginia or another state and licensed to be operated upon the highways of Virginia in accordance with the provisions of the laws of Virginia, including reciprocity laws; and

(c) The vehicle shall meet any applicable requirement currently licensed to be operated upon the highways of the Town in accordance with § 56.18, or under a similar applicable ordinance of another Virginia locality.

(d) Any Town vehicle license fee due in connection with such vehicle must have been paid.

§ 112.16 ROAD CONSTRUCTION WORKERS; EXEMPTIONS

The provisions of this chapter shall not apply to any vehicle owned or controlled by the state Department of Highways and Transportation or the Town, while actually engaged in the construction, reconstruction or maintenance of streets or highways.

§ 112.17 PARKING ON INCLINE

Whenever a motor vehicle is left standing on an incline, it shall be so parked that when the brake is released the curb will act as a check to prevent its movement, except under its own power; or so arranged as to prevent movement upon release of brake.

§ 112.18 OWNERSHIP OF VEHICLE

In any prosecution for a violation of this Chapter, proof that the vehicle described in the complaint, summons, parking ticket, citation, or warrant, was parked in violation of the ordinance or regulation, together with proof that the defendant was at the time the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who committed the violation.

SUBCHAPTER B – PARKING FOR PERSONS WITH DISABILITIES

§ 112.21 GENERALLY

It shall be unlawful for a vehicle not displaying disabled parking license plates, an organizational removable windshield placard, a permanent removable windshield placard, or a temporary removable windshield placard issued under Va. Code § 46.2-1241, or DV disabled parking license plates issued under Va. Code § 46.2-739(B), to be parked in a parking space reserved for persons with disabilities that limit or impair their ability to walk or for a person who is not limited or impaired in his ability to walk to park a vehicle in a parking space so designated except when transporting a person with such a disability in the vehicle.

§ 112.22 PENALTY

Any person who violates Section § 112.21 shall be guilty of a traffic infraction and upon due conviction thereof shall be fined an amount not less than \$100 but not more than \$500.

§ 112.23 PROOF OF VIOLATION

In any prosecution under § 112.21, proof that the vehicle described in the complaint, summons, parking ticket, citation, or warrant was parked in violation of such section, together with proof that the defendant was at the time the registered owner of the vehicle, as required under state law, shall constitute prima facie evidence that the registered owner of the vehicle was the person who committed the violation.

§ 112.24 ABSENCE OF SIGN

No violation of § 112.21 shall be dismissed for a property owner's failure to comply strictly with the requirements for disabled parking signs, provided the space is clearly distinguishable as a parking space reserved for persons with disabilities that limit or impair their ability to walk.

§ 112.25 ADOPTION BY REFERENCE OF CERTAIN PROVISIONS OF STATE LAW

The provisions of § Va. Code §§ 46.2-1247, 1248, 1249, 1250, 1251, 1252, and 1253, as amended and in force from time to time, are adopted by reference and are incorporated into this subchapter as if fully set out herein. Words and phrases used and contained in this subchapter shall have the meanings ascribed to them by § 46.2-100 of the Code of Virginia, as amended and in force from time to time, except where the context clearly requires a different meaning. All future amendments to the sections of the Code of Virginia incorporated by reference under the provisions of this paragraph shall be included within the scope of this paragraph automatically upon their effective date, without any formal Town Council action.

CHAPTER 113: OTHER PROVISIONS REGARDING MOTOR VEHICLES

§ 113.01 ABANDONED MOTOR VEHICLES

- (a) An “abandoned motor vehicle” is any motor vehicle, trailer, or semi trailer that:
 - (i) is left unattended on public property for more than 48 hours, except where permitted by state or local law;
 - (ii) has remained for more than 48 hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property, or
 - (ii) is left unattended on the shoulder of a primary highway.
- (b) No person shall cause a motor vehicle to become an abandoned motor vehicle within the Town. In any prosecution for a violation of this section, proof that the defendant was, at the time that the vehicle was found abandoned, the owner of the vehicle shall constitute in evidence a rebuttable presumption that the owner was the person who committed the violation. Such presumption, however, shall not arise if the owner of the vehicle provided notice to the Commonwealth, as provided under state law, that he had sold or otherwise transferred the ownership of the vehicle.
- (c) The Town Manager or his designee is authorized to remove any abandoned motor vehicle and to dispose of such vehicle using the procedures authorized under state law.

(d) Any person who violates § 113.01(b) shall be subject to a civil penalty not to exceed \$500.

§ 113.02 UNATTENDED OR IMMOBILE VEHICLES

(a) The Chief of Police is authorized to remove or to direct the removal for safekeeping any motor vehicle, trailer, semi trailer, or part thereof when:

(i) It is left unattended on a public highway or other public property and constitutes a traffic hazard;

(ii) It is illegally parked;

(iii) It is left unattended for more than 10 days either on public property or on private property without the permission of the property owner, lessee, or occupant;

(iv) It is immobilized on a public roadway by weather conditions or other emergency situation.

(b) The Chief of Police shall promptly report such removal to the Town Manager.

(c) No such motor vehicle, trailer, semi trailer, or part thereof shall be removed from private property except at the written request of the owner, lessee, or occupant of such property. The person at whose request the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer, or semitrailer is removed from private property shall indemnify the Town against any loss or expense incurred by reason of removal, storage, or sale thereof.

(d) Any motor vehicle, trailer, semi trailer, or part thereof described in § 113.02(a) shall be considered an abandoned vehicle, and subject to the additional provisions of § 113.01, when it:

(i) lacks either a current license plate; or a current county, city or town license plate or sticker; or a valid state safety inspection certificate or sticker; and

(ii) has been in a specific location for four days without being moved.

(e) No person shall recover possession of a motor vehicle, trailer, semi trailer, or part thereof removed under § 113.02(a) without paying to the Town all costs incidental to its removal and storage and locating the owner. If such person fails or refuses to pay the cost or if his identity or whereabouts is unknown and unascertainable after a diligent search has been made, and after notice to him at his last known address and to the holder of any lien of record with the state Department of Motor Vehicles against the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer, or semitrailer, the vehicle shall be treated as an abandoned vehicle under the provisions of § 113.01.

(f) The authority and powers granted under this § 113.02 are in addition to the authority and powers granted in § 113.01.

§ 113.03 REMOVAL OF VEHICLES IN ACCIDENTS

Whenever a motor vehicle, trailer, or semitrailer involved in an accident is so located as to impede the orderly flow of traffic, Chief of Police or his specifically authorized designee may:

(a) at no cost to the owner or operator remove the motor vehicle, trailer, or semitrailer to some point in the vicinity where it will not impede the flow of traffic; or

(b) have the vehicle removed to a storage area for safekeeping and shall report the removal to the state Department of Motor Vehicles, the Town Manager, and to the owner of the vehicle as promptly as possible. If the vehicle is removed to a storage area under this provision, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage.

§ 113.04 REMOVAL OF VEHICLES ON PRIVATE PROPERTY

On complaint of the owner of the property on which such motor vehicle, trailer, semitrailer, or part thereof has been left for more than 72 hours, that such motor vehicle, trailer, semitrailer, or part thereof, may be removed to a storage area by or under the direction of the Chief of Police or his designee who specifically is authorized to do so by him. The owners of private property which is normally open to the public for parking shall post or cause to be posted signs warning that vehicles left on the property for more than 72 hours will be towed or removed at their owners' expense. The person at whose request the vehicle, trailer, semitrailer, or part thereof is so removed shall indemnify the Town against any loss or expense incurred by reason of removal, storage, or sale thereof. Any motor vehicle, trailer, semitrailer, or part thereof shall be disposed of as if it were a vehicle removed under § 113.02.

CHAPTER 114: PENALTIES FOR VIOLATION OF TRAFFIC OR PARKING REGULATIONS

§ 114.01 ENFORCEMENT BY OFFICERS; OFFICERS TO BE UNIFORMED; OFFICERS TO BE PAID FIXED AND DETERMINED SALARIES

Every policeman shall enforce the provisions of this Title; provided, that such officer shall be uniformed at the time of such enforcement or shall display his badge or other sign of authority; and provided further, that all officers making arrests incident to the enforcement of this Title shall be paid fixed and determined salaries for their services and shall have no interest in, nor be permitted by law to accept the benefit of, any fine or fee resulting from the arrest or conviction of an offender against any provision of this Title.

§ 114.02 COMPLIANCE WITH CHAPTERS 111 AND 112; PENALTY FOR VIOLATION OF CHAPTERS

(a) Any person who refuses, fails or neglects to comply with any of the provisions of this Chapters 111 (the "Traffic Ordinance") and 112 (the "Parking Ordinance") or any rule or regulation promulgated pursuant thereto, shall be guilty of a traffic infraction.

(b) Whenever a specific penalty is provided in the Code of Virginia or a uniform fine schedule adopted thereunder for the violation of any section of the Code of Virginia adopted by reference under the Traffic or Parking Ordinance, the penalty for a violation of such section, charged on a Town warrant, shall be the same as provided by state statute.

(c) Every person convicted of a violation of any of the provisions of the Parking Ordinance, or any rule or regulation promulgated pursuant thereto, for which no other penalty is provided, shall be fined twenty dollars (\$20.00).

(d) Every person convicted of a violation of any of the provisions of the Traffic Ordinance, or any rule or regulation promulgated pursuant thereto, for which no other penalty is provided, for a first conviction thereof, be punished by a fine of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00); for a second such conviction within one (1) year, such person shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00); for a third or subsequent conviction within one (1) year, such person shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$500.00).

§ 114.03 DISPOSITION OF FINES

All fines or forfeitures collected upon a finding of violations of ordinance, or upon the forfeiture of bail of any person charged with violation of any of the provisions of this Title, shall be paid into the Town's treasury and deposited in the general fund.

§ 114.04 PROCEDURES FOR SUMMONS, ARRESTS, ETC.

Procedures for the issuance of summonses, bail, arrests of offenders, and similar matters shall be as prescribed in state law for the regulation of traffic, parking, and motor vehicle offenses.

TITLE XIII: UTILITIES

Chapter

- 131. SEWER AND WASTEWATER ORDINANCE**
- 132. WATER ORDINANCE**
- 133. DROUGHT MANAGEMENT**
- 134. SOLID WASTE ORDINANCE**
- 135. RATES AND CHARGES**

CHAPTER 131: SEWER AND WASTEWATER ORDINANCE

§ 131.01 PURPOSE AND POLICY

(a) This Chapter sets forth uniform requirements for Users of the Publicly Owned Treatment Works for the Town and enables the Town to comply with all applicable State and Federal laws, including the Clean Water Act (33 U.S.C. § 1251 *et seq.*) and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 *et seq.*). The objectives of this Chapter are:

(i) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;

(ii) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

(iii) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment, and the general public;

(iv) To improve the opportunity to reuse and recycle industrial wastewater and sludge from the Publicly Owned Treatment Works;

(v) To provide for recovery of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and

(vi) To enable the Town to comply with its Virginia Pollutant Discharge Elimination System (VPDES) permit conditions, sludge use and disposal requirements, and any other federal or Virginia laws to which the Publicly Owned Treatment Works is subject.

(b) This Chapter shall apply to all Users of the Publicly Owned Treatment Works. This Chapter authorizes the issuance of industrial user discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires User reporting.

(c) This Chapter shall be liberally construed to accomplish the objectives described in this section.

§ 131.02 ADMINISTRATION

Except as otherwise provided herein, and subject to the supervision of the Mayor, the Town Manager shall administer, implement, and enforce the provisions of this Chapter. The Town Manager may delegate any power or authority granted to or duties imposed upon him to another Town agent, officer or employee.

§ 131.03 **ABBREVIATIONS**

The following abbreviations, when used in this Chapter, shall have the designated meanings:

ASTM - American Society for Testing of Materials
BOD - Biochemical Oxygen Demand
BMP - Best Management Practice
BMR - Baseline Monitoring Report
CFR - Code of Federal Regulations
CIU - Categorical Industrial User
COD - Chemical Oxygen Demand
EPA - U.S. Environmental Protection Agency
gpd - gallons per day
IU - Industrial User
mg/l - milligrams per liter
NSCIU - Non-Significant Categorical Industrial User
POTW - Publicly Owned Treatment Works
RCRA - Resource Conservation and Recovery Act
SIU - Significant Industrial User
SNC - Significant Noncompliance
TSS - Total Suspended Solids
TRC – Technical Review Criteria
U.S.C. - United States Code
WPCF - Water Pollution Control Facilities
VDEQ – Virginia Department of Environmental Quality
VPDES - Virginia Pollutant Discharge Elimination System

§ 131.04 **DEFINITIONS**

Unless a provision explicitly states otherwise, the following words and phrases, as used in this Chapter, and whether capitalized or not, shall have the meanings hereinafter designated.

(a) Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

(b) Approval Authority. Virginia Department of Environmental Quality.

(c) Authorized or Duly Authorized Representative of the User.

(i) If the User is a corporation:

(A) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(B) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for industrial user discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(iii) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(iv) The individuals described in paragraphs (i) through (iii), above, may designate a different Duly Authorized Representative than the ones specified above if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.

(d) Biochemical Oxygen Demand. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

(e) Best Management Practices. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in § 131.07 (9 VAC 25-31-770.A.1. and B.). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

(f) Building Drain. Part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

(g) Building Sewer. The extension from the building drain to the public sewer or other place of disposal, also called house connection.

(h) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and

(c) of the Act (33 U.S.C. § 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(i) Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or Categorical Standard.

(j) Chemical Oxygen Demand. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

(k) Control Authority. The Town of Broadway.

(l) Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

(m) Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

(n) Easement. An acquired legal right for the specific use of land owned by others.

(o) Environmental Protection Agency. The United States Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

(p) Existing Source. Any source of discharge that is not a "New Source."

(q) Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

(r) Grab Sample. A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

(s) Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source.

(t) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected independent of the industrial flow rate and the duration of the sampling event.

(u) Interference. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the Town's VPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory or regulatory provisions or permits issued hereunder, or any more stringent

Virginia or Town regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any Virginia regulations contained in any Virginia sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

(v) Local Limit. Specific discharge limits developed and enforced by the Town upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 9 VAC 25-31-770.A.1. and B.

(w) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(x) Monthly Average. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

(y) Monthly Average Limit. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of daily discharges" measured during that month.

(z) Natural Outlet. Any outlet, including storm sewers, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

(aa) New Source.

(i) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

(A) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(B) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

(C) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

(ii) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure,

facility, or installation meeting the criteria of Section (i)(B) or (i)(C) above but otherwise alters, replaces, or adds to existing process or production equipment.

(iii) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(A) Begun, or caused to begin, as part of a continuous onsite construction program,

(1) any placement, assembly, or installation of facilities or equipment; or

(2) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(bb) Noncontact Cooling Water. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

(cc) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town VPDES permit, including an increase in the magnitude or duration of a violation.

(dd) Person. Any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

(ee) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

(ff) Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

(gg) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by

physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

(hh) Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

(ii) Pretreatment Standards or Standards. Pretreatment Standards shall mean prohibited discharge standards, Categorical Pretreatment Standards, and Local Limits.

(jj) Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances as described in this Chapter.

(kk) Publicly Owned Treatment Works. A treatment works, as defined by section 212 of the Act (33 U.S.C. § 1292), which is owned by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

(ll) Sanitary Sewer. Any sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(mm) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(nn) Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

(oo) Significant Industrial User. Except as provided in paragraphs (iii) and (iv) of this paragraph, a Significant Industrial User is:

(i) An Industrial User subject to categorical Pretreatment Standards;

(ii) An Industrial User that:

(A) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

(B) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(C) Is designated as such by the Town on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

(iii) The Town may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(A) The Industrial User, prior to the Town's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(B) The Industrial User annually submits the certification statement required in § 91.212 L (see 9 VAC 25-31-840.Q.), together with any additional information necessary to support the certification statement; and

(C) The Industrial User never discharges any untreated concentrated wastewater.

(iv) Upon a finding that a User meeting the criteria in Subsection (ii) of this paragraph has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the Town may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 9 VAC 25-31-800.F.6., determine that such User should not be considered a Significant Industrial User.

(pp) Slug Load or Slug Discharge. Any Discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards described in § 131.07 of this Chapter. A Slug Discharge includes any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

(qq) Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

(rr) Total Suspended Solids or Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

(ss) Town. The Town of Broadway, Virginia, which serves as the Control Authority.

(tt) Town Manager. The Town Manager for the Town, or his or her duly authorized agent designed to administer, implement, and enforce the provisions of this Chapter.

(uu) User or Industrial User. A source of indirect discharge.

(vv) Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

(ww) Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste. This definition includes, without limitation, the Town's wastewater treatment plant located at 5524 New Market Road, Timberville, Virginia.

(xx) A reference in this Chapter to any repealed or recodified statute, ordinance, or regulation shall be taken as a reference to the corresponding successor statute, ordinance, or regulation.

§ 131.05 USE OF PUBLIC SEWERS REQUIRED; LIMITED EXCEPTIONS

(a) It shall be unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner on public or private property within the Town or in any area under its jurisdiction any human or animal excrement, garbage, or objectionable waste.

(b) It shall be unlawful for any person to discharge to any natural outlet within the Town, or in any area under its jurisdiction, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

(c) Except as hereinafter provided, it shall be unlawful for any person to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

(d) The owner of any house, structure, buildings or camp used for human occupancy, employment, recreation, or other purposes, situated within the Town and abutting on any street, alley, or right-of-way, is hereby required to install, at the owner's expense, suitable toilet facilities therein, and to connect such facilities directly with the public sewer in accordance with the provisions of this Code, within (90) days after the date of official notice to do so, unless the Town Manager has determined that it is not feasible to make public sewer service available. This paragraph shall not apply to any property serviced by a private wastewater disposal system on the date that the Town determined to require connection to the public sewer system, and which has continually maintained such private wastewater disposal system since that date.

(e) No connections to the public sewer outside the corporate limits of the Town shall be made without the express approval of the Town Council.

(f) When a public sewer is available to a property served by a private wastewater disposal system and such private system fails or malfunctions, the Town Manager upon determining that such failure or malfunction exists shall direct the owner to connect to the public sewer within ninety (90) days, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleared of sludge and filled with suitable material.

(g) It shall be unlawful for any person to repair a private wastewater disposal system or any part thereof when public sewer is available, unless the Town Manager has determined that it is not feasible to make public sewer service available to such property.

(h) No statement contained in the Code shall be construed to interfere with any additional requirements that may be imposed by the County health officer.

(i) The Town Manager may discontinue sewer service to a consumer for repairs to the sewer system and shall give as much notice of such discontinuance to the consumer as is practicable under the circumstances.

§ 131.06 BUILDING SEWERS AND CONNECTIONS

(a) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Town Manager.

(b) All costs and expenses incidental to the installation and connection of a building sewer shall be borne by the owner. Each owner, jointly and severally, shall indemnify the Town from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer.

(c) A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway. In such a circumstance the building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such connection aforementioned.

(d) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Town Manager to meet all requirements of this Chapter.

(e) The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town, including without limitation the Town's specifications manual, as the Town may amend such manual from time to time. In the absence of such provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9, shall apply.

(f) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(g) No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain, which in turn is connected directly or indirectly to the POTW.

(h) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town, including without limitation the Town's specifications manual (as the Town may amend such manual from time to time) or, to the extent applicable and not in conflict with the Town's specifications manual, and in amplification of all such standards, the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials, or the specifications manual, must be expressly approved by the Town in writing prior to installation and must specifically reference a waiver of the requirements of this section. No note on any approved subdivision plat or other submission from a developer to the Town shall constitute approval of any such deviation; rather, such approval may only be given in a separate writing specifically granting such approval, and executed by an authorized official of the Town.

(i) The applicant for the building sewer permit shall notify the Town Manager when the building sewer is ready for inspection and connection to the public sewer. The connection and inspection shall be made under the supervision of the Town Manager or authorized representative thereof.

(j) Prior to any excavation for the building of sewer installations, notice shall be given to all authorities having underground utility installations in the vicinity. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work, shall be restored in a manner satisfactory to the Town and the relevant state authorities.

(k) All main lines and service lines lying in public property or in a utility or public right of way easement shall follow the route prescribed by the Town Manager.

(l) All connections shall be made by the Town or by a licensed plumber approved by the Town, at the expense of the applicant, who shall pay to the Town, or to the licensed plumber approved by the Town, the cost of making such connections, including all labor and materials necessary for such connections.

(m) The Town shall have the right to inspect all work done before service commences.

(n) Developers of new properties to be served by the Town sewer system shall construct the main lines to the property being developed and shall construct them on a route prescribed by the Town. The sizes of lines, materials, and configuration and construction methods shall be in accordance with the Town's specifications manual (as the Town may amend such manual from time to time), shall be approved by the Town in advance of construction, and shall

be subject to final acceptance contingent upon inspection and approval by the Town. The Town may connect to any necessary extensions from existing main lines to the property line of the property being developed.

(o) The Town may require that main or service lines be dedicated to the Town and that easements or rights-of-way be granted for the benefit of the Town. If such dedication is accepted by the Town, the owner or installer of such lines so dedicated shall be responsible for defects in such lines for a period of five years, commencing on the date of dedication. The Town may require a bond covering such defects.

(p) Cost of Constructing Lines.

(i) In connection with existing lots not created as part of a Major Subdivision, or lots created in the future as part of a Minor Subdivision, the Town shall run all sewer service lines at its cost under a public right of way or public property for a distance that is the lesser of (1) the distance between an existing sewer main and the applicant's property line; or (2) a distance of fifty (50) feet from the existing sewer main. If the distance exceeds fifty (50) feet, the applicant shall pay all costs of the extension beyond fifty (50) feet. The property owner shall pay all costs associated with the construction of the sewer line on its own property.

(ii) If the need for sewer lines arose or arises because of a Major Subdivision, the applicant shall bear the cost of all sewer lines (mains, laterals, and service lines) associated with any necessary sewer extension.

(iii) The terms "Major Subdivision" and "Minor Subdivision", as used in this section, shall have the same meaning as in the Land Development Regulations.

§ 131.07 PROHIBITED DISCHARGE STANDARDS

(a) General and Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater, which causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements. No person shall process or store Pollutants, substances, or wastewater prohibited by this Section 131.07 in such a manner that they could be discharged to the POTW. Furthermore, no user may contribute any of the following substances to the POTW:

(i) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60° C) using the test methods specified in 40 C.F.R. 261.21. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides;

(ii) Wastewater having a pH less than 5.5 or more than 9, or otherwise causing corrosive structural damage to the POTW or equipment;

(iii) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference. Solids shall not exceed one-half inch (1/2") or one and twenty-seven hundredths centimeters (1.27 cm) in any dimension;

(iv) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW;

(v) Wastewater having a temperature greater than 150° F (66°C), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C);

(vi) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;

(vii) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(viii) Trucked or hauled pollutants including septic tank waste;

(ix) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(x) Wastewater which imparts color, which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the Town's VPDES permit;

(xi) Wastewater containing any radioactive wastes or isotopes except specifically approved by the Town Manager in compliance with applicable State or Federal regulations;

(xii) Storm Water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by the Town Manager;

(xiii) Sludges, screenings, or other residues from the pretreatment of industrial waste;

(xiv) Medical wastes, except as the Town Manager may specifically authorize;

(xv) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail any applicable toxicity test;

(xvi) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW;

(xvii) Fats, oils, or greases of animal or vegetable origin in concentrations that might pass through at the treatment plant, thereby violating the Town's VPDES permit;

(xviii) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit of the meter.

(xix) Any material identified as hazardous waste according to 40 C.F.R. 261 except as may be specifically authorized by the Town Manager.

(xx) There shall be no discharge of bulk, expired, outdated, or concentrated prescriptions or non-prescription drugs, hazardous waste pharmaceuticals, or DEQ controlled substances to the POTW by a healthcare facility or reverse distributor pursuant to 40 C.F.R. 266.505.

(b) National Categorical Pretreatment Standards. Users must comply with the Categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405--471. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Town Manager shall impose an alternate limit in accordance with 9 VAC 25-31-780.E.

(c) State Pretreatment Standards. Users must comply with Virginia Regulations codified at Part VII-General Pretreatment Regulations for Existing and New Sources of Pollution, 9VAC 25-31.

(d) Local Limits.

(i) In addition to local limits prescribed elsewhere in this Section 131.07, the Town Manager is authorized to establish Local Limits pursuant to 9 VAC 25-31-770.C.

(ii) The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge into the POTW wastewater containing in excess of the following monthly average limits: 0.39 mg/l chromium; 0.039 mg/l copper; 0.79 mg/l lead; 0.39 mg/l nickel; 1849 mg/l total suspended solids; 0.31 mg/l zinc. The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal. The Town Manager may impose mass limitations in addition to the concentration-based limitations above.

(iii) The Town may develop Best Management Practices (BMPs), by Chapter or in industrial user discharge permit, to implement any additional Local Limits and the requirements stated herein.

(iv) The Town may set additional local limits in Industrial User Discharge Pennits, where necessary.

(v) The Town reserves the right to establish, by amendment to this Code or in industrial user discharge permits, more stringent Standards or Requirements on discharges to the POTW consistent with the purpose of this Chapter. No User shall have a vested right in any particular Standard, Requirement, or discharge limit; rather, the Town may alter or amend such Standards, Requirements, or limits at any time.

(e) Dilution. No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The Town Manager may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate.

(f) Planning for Plant Failure. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

§ 131.08 VARIANCES AND AGREEMENTS

The Town shall have the right to enter into special agreements with Categorical Industrial Users setting forth terms under which the user may discharge into the POTW. In no case will a special agreement waive compliance with a pretreatment standard. However, the industrial user may request a net/gross adjustment to a categorical standard in accordance with 9 VAC 25-31-870 in the event that such industrial user would like to obtain credit for pollutants present in the industrial user's influent water. Industrial users may also request a fundamentally different factor variance from the Categorical Pretreatment Standards of the EPA. Such a request must be either approved or not objected to by the EPA and State. An industrial user requesting a fundamentally different factor variance must comply with procedural and substantive provisions set forth in 9 VAC 25-31-850.

§ 131.09 VANDALISM; UNLAWFUL ENTRY

(a) No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, interfere with the proper functioning of, or tamper with any structure, appurtenance or equipment which is a part of the Town's POTW or any other element of the Town's sewer or wastewater system.

(b) No person shall, without lawful authority, climb over, get through or break into the enclosure of the Town's POTW any other facility associated with the Town's water system.

§ 131.10 PRETREATMENT OF WASTEWATER

(a) Pretreatment Facilities. Users shall provide wastewater treatment as necessary to comply with this Chapter and shall achieve compliance with all Categorical Pretreatment Standards, Local Limits, and the prohibitions set out in § 131.07 of this Chapter within the time limitations specified by EPA, the State, or the Town Manager, whichever is most stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Town Manager for review, and shall be acceptable to the Town Manager before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Town under the provisions of this Chapter.

(b) Additional Pretreatment Measures.

(i) Whenever he deems necessary, the Town Manager may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and impose such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this Chapter.

(ii) The Town Manager may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization offlow. An industrial user discharge permit may be required and issued solely for flow equalization.

(iii) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Town Manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Town Manager, and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the User at such User's expense. The User shall maintain records of the dates and means of disposal used, which shall be made available to the Town Manager upon request. Any removal and hauling of the collected materials not performed by the User through its own employees must be performed by a currently licensed waste disposal firm.

(iv) The Town Manager may require Users with the potential to discharge flammable substances to install and maintain an approved combustible gas detection meter.

(c) Accidental Discharge/Slug Discharge Control Plans. The Town Manager shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. The Town Manager may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. These actions may include construction of equipment or implementation of procedures that will significantly reduce the potential for occurrences of slug discharges. In the

alternative, the Town Manager may develop such a plan for any User. An accidental discharge/slug discharge control plan shall address, at a minimum, the following circumstances:

- (i) Description of discharge practices, including non-routine batch discharges;
- (ii) Description of stored chemicals;
- (iii) Procedures for immediately notifying the Town Manager of any accidental or Slug Discharge, as required by § 131.27; and
- (iv) Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

§ 131.11 PERMITS GENERALLY

No User shall uncover, make any connections with, use, alter, or disturb any sanitary sewer or storm sewer without first obtaining a written permit from the Town Manager. There are two classes of permits for connections to the POTW: (1) residential/commercial, and (2) industrial. In all cases, the owner shall make an application for a permit to connect to the POTW on a form that the Town Manager furnishes. The Owner shall submit the application with a connection fee established by the Town Council and appearing on the fee schedule attached to the Town Code. The Town may reject any applications for connection if they are not consistent with the long range growth plans of the Town or would adversely affect service to existing customers. The Town is not obligated to permit any User outside the limits of the Town to connect to the POTW absent explicit Town Council approval of such obligation.

§ 131.12 INDUSTRIAL PERMITS

(a) Industrial Waste Surveys. When requested by the Town Manager, a User holding or seeking an industrial user discharge permit must submit information on the nature and characteristics of its wastewater by completing an industrial waste survey. The User has 60 days to complete and return the survey.

(b) Industrial User Discharge Permit Requirements.

(i) No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an industrial user discharge permit from the Town Manager, except that a Significant Industrial User that has filed a timely application pursuant to § 131.12(c) may continue to discharge for the time period specified therein.

(ii) The Town Manager may require other Users to obtain industrial user discharge permits as necessary to carry out the purposes of this Chapter.

(iii) Any violation of the terms and conditions of an industrial user discharge permit shall constitute a violation of this Chapter and subjects the wastewater discharge permittee to the sanctions set out in § 131.34 through § 131.37 of this Chapter. Obtaining an industrial discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

(c) Industrial User Discharge Permitting: Existing Connections. Any User required to obtain an industrial user discharge permit who was discharging wastewater into the POTW prior to the effective date of former Town Code Chapter 91 and who wishes to continue such discharges in the future, shall, within 90 days after such date, apply to the Town Manager for an industrial user discharge permit in accordance with § 131.12(d), and shall not cause or allow discharges to the POTW to continue after one hundred and eighty (180) days such date except in accordance with said discharge permit issued by the Town Manager.

(d) Industrial User Discharge Permitting: New Connections. Any User required to obtain an industrial user discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this industrial user discharge permit, in accordance with § 131.12(e) must be filed at least 90 days prior to the date upon which any discharge will begin.

(e) Industrial User Discharge Permit Application Contents. All Users required to obtain an industrial user discharge permit must submit a permit application. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision. The Town Manager may require Users to submit all or some of the following information as part of a permit application:

(i) Identifying information to include name and address of the facility, including the name of the operator and owner.

(ii) Contact information, and description of activities, facilities, and plant production processes on the premises;

(iii) Environmental permits to include a list of any environmental control permits held by or for the facility;

(iv) A description of operations to include:

(A) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes;

(B) Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

(C) Number and type of employees, hours of operation, and proposed or actual hours of operation; type and amount of raw materials processed (average and maximum per day);

(D) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge; and

(E) flow measurements to include information showing the measured daily and maximum daily flow in gallons per day to the POTW from regulated process streams and other streams, as necessary.

(v) Measurement of Pollutants, to include:

(A) The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

(B) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required of regulated pollutants in the discharge from each regulated process.

(C) Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

(D) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in § 131.30 of this Chapter. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Town Manager or the applicable Standards to determine compliance with the Standard.

(E) Sampling must be performed in accordance with procedures set out in § 131.30 of this Chapter.

(vi) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on § 131.25(a) (9 VAC 25-31-840.E.2.).

(vii) Any other information that the Town Manager may deem necessary to evaluate the permit application.

(f) Application Signatories and Certifications.

(i) All wastewater discharge permit applications, User reports, and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in § 131.30(i).

(ii) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Town Manager prior to or together with any reports to be signed by an Authorized Representative.

(iii) A facility that the Town Manager determines to be a Non-Significant Categorical Industrial User must annually submit the signed certification statement in § 131.30(j)

(g) Industrial User Discharge Permit Decisions. The Town Manager will evaluate the data that the User furnishes and may require additional information. Within thirty (30) days of receipt of a complete permit application, or such longer time as the Town Manager reasonably requires to adjudicate such application, the Town Manager will determine whether to issue an industrial user discharge permit and shall communicate such decision to the User in writing. The Town Manager may deny any application for an industrial user discharge permit.

§ 131.13 CONTENTS OF INDUSTRIAL USER DISCHARGE PERMITS

(a) The Town Manager may include in an industrial user discharge permit any conditions that the Town Manager deems reasonably necessary to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(b) Industrial user discharge permits must contain:

(i) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

(ii) A statement that the wastewater discharge permit is nontransferable without prior notification to the Town in accordance with § 131.15, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(iii) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

(iv) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;

(v) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with § 131.25(a);

(vi) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law;

(vii) Requirements to control Slug Discharge, if the Town Manager determines such requirements are necessary

(viii) Any grant of the monitoring waiver by the Town Manager.

(c) Industrial user discharge permits may contain the following conditions:

(i) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(ii) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;

(iii) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;

(iv) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(v) The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;

(vi) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

(vii) A statement that compliance with the industrial user discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the industrial user discharge permit; and

(viii) Any other condition that the Town Manager deems to ensure compliance with this Chapter, and State and Federal laws, rules, and regulations.

§ 131.14 DURATION OF INDUSTRIAL USER DISCHARGE PERMITS

An industrial user discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An industrial user discharge permit may be issued for a period less than five (5) years, at the discretion of the Town Manager. Each industrial user discharge permit will indicate a specific date upon which it will expire.

§ 131.15 MODIFICATIONS OF INDUSTRIAL USER DISCHARGE PERMIT

Upon request of a User of whenever he otherwise deems it appropriate, the Town Manager may modify an industrial user discharge permit for good cause, including, but not limited to, the following reasons:

- (a) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
- (b) To address significant alterations or additions to the User's operation, processes, or wastewater volume or character since the time of the industrial user discharge permit issuance;
- (c) A change in the POTW that requires either a temporally or permanent reduction or elimination of the authorized discharge;
- (d) Information indicating that the permitted discharge poses a threat to the Town, the POTW, Town personnel, or the receiving waters;
- (e) Violation of any terms or conditions of the permit;
- (f) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- (g) Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 9 VAC 25-31-850;
- (h) To correct typographical or other errors in the industrial user discharge permit; or
- (i) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with § 131.16.

§ 131.16 INDUSTRIAL USER DISCHARGE PERMIT TRANSFER

Industrial user discharge permits may be transferred to a new owner or operator only if the permittee gives at least thirty (30) days' advance notice to the Town Manager and the Town Manager approves the industrial user discharge permit transfer. Failure to provide advance notice of a transfer, and to receive the approval of the Town Manager, renders the industrial user discharge permit void as of the date of the facility's transfer. The notice to the Town Manager must include a written certification by the new owner or operator which:

- (a) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- (b) Identifies the specific date on which the transfer is to occur; and
- (c) Acknowledges full responsibility for complying with the existing industrial user discharge permit.

§ 131.17 INDUSTRIAL USER DISCHARGE PERMIT REVOCATION

The Town Manager may revoke an industrial user discharge permit for good cause, including, but not limited to, the following reasons:

- (a) Failure to notify the Town Manager of significant changes to the wastewater prior to the changed discharge;
- (b) Failure to provide prior notification to the Town Manager of changed conditions pursuant to § 131.26;
- (c) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- (d) Falsifying self-monitoring reports and certification statements;
- (e) Tampering with monitoring equipment;
- (f) Refusing to allow the Town Manager timely access to the facility premises and records;
- (g) Failure to meet effluent limitations;
- (h) Failure to pay fines;
- (i) Failure to pay sewer charges;
- (j) Failure to meet compliance schedules;
- (k) Failure to complete a wastewater survey or the wastewater discharge permit application; or
- (l) Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit or this Chapter.

§ 131.18 AUTOMATIC REVOCATION OF INDUSTRIAL USER DISCHARGE PERMIT

(a) An industrial user discharge permits shall be revoked automatically upon cessation of operations.

(b) An industrial user discharge permits shall be revoked automatically upon transfer to a new owner or operator without compliance with the provisions of § 131.16.

(c) All industrial user discharge permits issued to a User are void upon the issuance of a new industrial user discharge permit to that User.

§ 131.19 INDUSTRIAL USER DISCHARGE PERMIT REISSUANCE

A User with an expiring industrial user discharge permit shall apply for an industrial user discharge permit reissuance by submitting a complete permit application, in accordance with § 131.12(e) *et seq.*, as if applying for a new permit, a minimum of one hundred and eighty (180) days prior to the expiration of the User's existing industrial user discharge permit.

§ 131.20 PUBLIC NOTICES; ADMINISTRATIVE APPEALS

(a) Pre-Issuance. The Town Manager will publish in a newspaper of general circulation that provides meaningful public notice with the jurisdictions served by the POTW, or on a Web page, a notice of a proposal to

(i) issue an industrial user discharge permit as an initial matter under § 131.12(e), or

(ii) modify an existing industrial user discharge permit under § 131.15, in a manner that would not constitute a minor modification under 9VAC25-31-400; or

(iii) reissue or renew an industrial user discharge permit under § 131.19.

The Town Manager shall issue such notice at least thirty (30) days prior to the issuance of the proposed permit. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.

(b) Post-Issuance. After taking an action described in § 131.20(a), the Town Manager shall provide public notice of having taken such action in the same manner as described in §131.20(a).

(c) Inadvertent Failure to Give Notice. The inadvertent failure to give a notice required under §§ 131.20(a) or (b) shall not affect the validity of the permit.

(d) Administrative Appeals.

(i) Any person, including the User, who is aggrieved by a final action that the Town Manager has taken under §§ 131.12 through 131.19 may petition the Town Manager to reconsider such action within thirty (30) days of such action by filing a written statement of the reasons therefor with the Town Manager. Failure to submit a timely petition for review shall be deemed to be a waiver of both the administrative appeal and the right to any subsequent judicial review.

(ii) In its petition, the appealing party must indicate the action objected to, the reasons for this objection, and the alternative action or the alternative condition, if any, it seeks to place in industrial user discharge permit. If the petition asks the Town Manager to reconsider his determination to deny a permit *in toto*, the appealing party shall state the conditions and other information that the petitioner believes should have been included in the issued permit.

(iii) If the appeal seeks reconsideration of a determination of the Town Manager to issue an industrial development discharge permit, the effectiveness of the industrial user discharge permit as the Town Manager issued it shall not be stayed pending the appeal.

(iv) If the Town Manager fails to act within thirty (30) days after receiving the petition, he shall be deemed to have denied the petition for reconsideration.

(e) Judicial Review.

(i) A person aggrieved by a final action that the Town Manager has taken under §§ 131.12 through 131.19, and who has exhausted the administrative remedy provided in § 131.20(d), may seek judicial review of such action in the Rockingham County Circuit Court. Such person must do so by filing a complaint within the time frames prescribed by law.

(ii) For the purposes of judicial review, the Town Manager's decision to deny an appeal under § 131.20(d) constitutes a final administrative action to implement the decision that has been appealed.

(iii) Except to the extent that state law requires a different standard of review, the Circuit Court may modify or reverse the Town Manager's action only if it is arbitrary and capricious, or not otherwise permitted by law.

§ 131.21 REGULATION OF WASTE RECEIVED FROM OUTSIDE THE TOWN

(a) If another municipality, or User located outside of the Town's jurisdiction, contributes wastewater to the POTW, the Town Manager shall enter into a written agreement with the contributing municipality or User.

(b) Prior to entering into an agreement required by paragraph (a), above, the Town Manager shall request the following information from the contributing municipality or User:

(i) A description of the quality and volume of wastewater to be discharged to the POTW;

(ii) If a municipality, an inventory of all Users located within the contributing municipality that are discharging to the POTW; and

(iii) Such other information as the Town Manager may deem necessary.

(c) Any agreement described above shall contain the following conditions:

(i) A requirement that a contributing municipality to adopt a sewer use ordinance which is at least as stringent as this Chapter and Local Limits, which are at least as stringent as those set out in § 131.07 and reporting requirements at least as stringent as the ones contained in this Chapter. The requirement shall specify that such Chapter and limits must be revised as necessary to reflect changes made to the Town's ordinances or Local Limits;

(ii) A requirement that a contributing municipality submit a revised User inventory on at least an annual basis;

(iii) A provision specifying which pretreatment implementation activities, including industrial user discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality or User; which of these activities will be conducted by the Town Manager; and which of these activities will be conducted jointly by the contributing municipality or User and the Town Manager;

(iv) A requirement for the contributing municipality or User to provide the Town Manager with access to all information that the contributing municipality or User obtains as part of its pretreatment activities;

(v) Limits on the nature, quality, and volume of the contributed wastewater at the point where it discharges to the POTW;

(vi) Requirements for monitoring the contributing municipality or User's discharge;

(vii) A provision ensuring the Town Manager access to the facilities of Users located within a contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties or activities that the Town Manager deems necessary; and

(viii) A provision specifying remedies available for breach of the terms of the agreement.

§ 131.22 BASELINE MONITORING REPORTS

(a) Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination under 9 VAC 25-31-780.AA., whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the Town Manager a report

which contains the information required below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to the Town Manager a report which contains the information listed below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Users described above shall submit all information required in § 131.12(e), paragraphs (i), (ii), (iii), (iv), (v), and (viii).

(c) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this § 131.22. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 9 VAC 25-31-780.E. to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 9 VAC 25-31-780.E this adjusted limit along with supporting data shall be submitted to the Town;

(d) Sampling and analysis must be performed in accordance with § 131.30;

(e) The Town Manager may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(f) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

(g) The baseline report shall include a statement, reviewed by the User's Authorized Representative as defined in § 131.04 and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

(h) If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the baseline report must include shortest schedule by which the User will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation). No such progress increment shall exceed nine (9) months. The User shall

submit a progress report to the Town Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Town Manager.

(i) All baseline monitoring reports must be certified in accordance with § 131.30(i) signed by an Authorized Representative of the User.

§ 131.23 REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE

Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the Town Manager a report containing the information described in § 131.12(e)(iv)E and e(v) 91.210, and § 131.22(b) of this Chapter. This report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with § 131.30(i) of this Chapter. All sampling must be done in conformance with § 131.30.

§ 131.24 PERIODIC COMPLIANCE REPORTS

(a) All Significant Industrial Users must submit, at a frequency determined by the Town Manager that is no less frequently than twice per year (June and December), reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Town Manager or the Pretreatment Standard necessary to determine the compliance status of the User.

(b) All periodic compliance reports must be signed and certified in accordance with § 131.30(i).

(c) All wastewater samples used to submit a periodic compliance report, or otherwise conducted or submitted under this Title, must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

(d) If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Town Manager using the procedures prescribed in § 131.30(f), the results of this monitoring shall be included in the report.

§ 131.25 WAIVERS OF SAMPLING

(a) The Town may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User (see 9 VAC 25-31-840.E.2).

(b) Such authorization is subject to the following conditions:

(i) The Town will authorize the waiver only where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(ii) The monitoring waiver is valid only for the duration of the effective period of the industrial user discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent industrial user discharge permit.

(iii) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility and that is representative of all wastewater from all processes.

(iv) The request for a monitoring waiver must be signed by an Authorized Representative in accordance with § 131.04(c), and include the certification statement in § 131.30(i) (9 VAC 25-31780.A.2.b.).

(v) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(c) Any grant of the monitoring waiver by the Town Manager must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Town Manager for 3 years after expiration of the waiver.

(d) Upon approval of the monitoring waiver and revision of the User's permit by the Town Manager, the Industrial User must certify on each report, subject to the statement in § 131.30(k) below, that there has been no increase in the pollutant in its waste stream due to activities of the Industrial User.

(e) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately:

(i) Comply with the monitoring and reporting requirements that would apply in the absence of the waiver, or other more frequent monitoring requirements imposed by the Town Manager, in connection with such pollutant; and

(ii) notify the Town Manager.

(f) This section does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

§ 131.26 REPORTS OF CHANGED CONDITIONS

(a) Each User must notify the Town Manager of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at as soon as possible before the change.

(b) The Town Manager may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application to conform with § 131.12(e).

(c) The Town Manager may issue an industrial user discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions, in each instance after complying with the notice requirements of § 131.20.

(d) No Industrial User shall implement the planned changed condition(s) until the Town Manager has responded to the Industrial User's notice.

§ 131.27 REPORTS OF POTENTIAL PROBLEMS

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the Town Manager of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

(b) Unless the Town Manager excuses compliance with this paragraph, within five (5) days following such discharge, the User shall submit a detailed written report describing the cause(s) of the discharge and the measures the User will undertake to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability the User might incur as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this Chapter or other applicable law.

(c) The User shall cause a notice to be permanently posted on the User's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in § 131.27 (a). Users shall ensure that all employees who could cause such a discharge to occur are advised of the emergency notification procedure.

(d) Significant Industrial Users are required to notify the Town Manager immediately of any changes at its facility affecting the potential for a Slug Discharge.

§ 131.28 REPORTS FROM UNPERMITTED USERS

All Users not required to obtain an Industrial User Discharge Permit shall provide appropriate reports to the Town Manager as the Town Manager may reasonably require.

§ 131.29 REPORT OF VIOLATION/REPEAT SAMPLING AND REPORTING

If sampling performed by a User indicates a violation, the User must notify the Town Manager within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Town Manager within thirty (30) days after becoming aware of the violation. Resampling by the Industrial User is not required if the Town performs sampling at the User's facility at least once a month, or if the Town performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Town receives the results of this sampling, or if the Town has performed the sampling and analysis in lieu of the Industrial User.

§ 131.30 ANALYTICAL AND PROCEDURAL REQUIREMENTS RELATED TO SAMPLING AND REPORTS

(a) The provisions of this section apply to all sampling undertaken at a User's facility, and to all reports submitted to the Town Manager in connection with a User's facility.

(b) All wastewater samples must be representative of the User's discharge.

(c) Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

(d) If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Town Manager using the procedures prescribed in § 131.30(f), the results of this monitoring shall be included in the reports made under this Chapter.

(e) All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or

analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Town Manager, the Commonwealth, or other parties approved by EPA.

(f) Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period. The following requirements shall also apply:

(i) Except as indicated in paragraphs (ii) and (iii) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Town. Where time-proportional composite sampling or grab sampling is authorized by the Town the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Town as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

(ii) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(iii) For sampling required in support of baseline monitoring and 90-day compliance reports required in § 131.22 and § 131.23 (9 VAC 25-31-840.B. and D.), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Town may authorize a lower minimum. For the reports required in § 131.24 (9 VAC 25-31-840.E. and 840.H.), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(g) Written reports shall be hand-delivered to the Town Office, sent to the Town Office via reputable overnight delivery service or overnight mail, or mailed to the Town Office via first class mail. Reports shall be deemed submitted on the date of actual receipt (in the case of hand delivery or delivery by first class mail) or one day after deposit with a reputable overnight delivery service or with United States Postal Service Express Mail.

(h) Users subject to any reporting requirement under this Chapter shall retain, and make available to the Town Manager or his designee for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Code, any additional records of information obtained pursuant to monitoring activities undertaken by the User

independent of such requirements, and documentation associated with Best Management Practices established under § 131.07(d)(iii). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the Town, or where the Town Manager has specifically assigned the User a longer retention period.

(i) The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with § 131.12; Users submitting baseline monitoring reports under § 131.22; Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under § 131.23; Users submitting periodic compliance reports required by § 131.24; and Users submitting an initial request to forego sampling of a pollutant on the basis of § 131.25. The following certification statement must be signed by an Authorized Representative as defined in § 131.04(c):

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(j) A facility that the Town Manager determines to be a Non-Significant Categorical Industrial User pursuant to Section §131.04(o)(iii) and § 131.12(f)(iii) must annually submit the following certification statement signed by an Authorized Representative in Section § 131.04(c). This certification must also accompany an alterative report required by the Town Manager:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR __, I certify that, to the best of my knowledge and belief that during the period from __ to __ [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in § 131.04(o)(iii); and

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and

(c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

[compliance information follows]

(k) Users that have an approved monitoring waiver based on § 131.25 must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under § 131.25.

§ 131.31 COMPLIANCE MONITORING

(a) Right of Entry: Inspection and Sampling.

(i) The Town Manager, bearing credentials and identification, shall have the right to enter the facility and property of any User to determine whether the User is complying with all requirements of this Chapter and their industrial user discharge permit (if applicable) or order issued hereunder. Users shall allow the Town Manager ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties. By accepting access to the public sewer system of the Town, or by accepting any industrial user discharge permit, each User is deemed to have consented to the inspection and sampling provisions of this Section.

(ii) Where a User has security measures in force, which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Town Manager shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(iii) The Town Manager shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.

(iv) The Town Manager may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to

measure wastewater flow and quality shall be calibrated periodically as required to ensure their accuracy.

(v) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the Town Manager and shall not be replaced. The User shall bear the costs of clearing such access.

(vi) While performing the necessary work, the Town Manager shall observe all safety rules applicable to the premises of the user. The User shall not responsible for injury or death to the Town employees or agents, except as such may be caused by negligence or failure of the User to maintain safe conditions.

(vii) The Town Manager and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all private property through which the Town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All work performed on any easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the property involved.

(viii) No person shall cause an unreasonable delay in allowing the Town Manager access to the User's premises.

(b) Search Warrants. If the Town Manager has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Town of Broadway designed to verify compliance with this Chapter or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Town Manager may seek a search warrant from an appropriate officer to order such inspection.

§ 131.32 CONFIDENTIAL INFORMATION

Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, industrial user discharge permits, and monitoring programs, and from the Town Manager's inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the Town Manager, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets or otherwise under applicable State law. Any such request must be asserted at the time of submission of the information or data, and must state specifically the State law basis for such exemption by citing the appropriate statute. When requested and demonstrated by the User furnishing a report that such information should be held confidential, and if the Town determines that State law permits the Town to withhold the information, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public. Notwithstanding the foregoing, any

information in the Town's possession shall be made available immediately upon request to government agencies for uses related to the VPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302, shall not be recognized as confidential information and shall be available to the public without restriction.

§ 131.33 PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE (SNC)

The Town Manager shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in § 131.07;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by § 131.07 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined by § 131.07 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Town Manager determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Town Manager's exercise of his emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an industrial user discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation, which may include a violation of Best Management Practices, that the Town Manager determines will adversely affect the operation or implementation of the local pretreatment program.

§ 131.34 ADMINISTRATIVE ENFORCEMENT REMEDIES

(a) Notification of Violation. When the Town Manager finds that a User has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Town Manager may serve upon that User a written Notice of Violation. Within five (5) days of the receipt of such notice, the User shall submit to the Town Manager an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of such a plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this paragraph shall limit the authority of the Town Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(b) Consent Orders. The Town Manager may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued and shall be judicially enforceable.

(c) Show Cause Hearing. The Town Manager may order a User which has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the Town Manager and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in § 131.04 or as otherwise permitted by law for service of process. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

(d) Compliance Orders. When the Town Manager finds that a User has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Town Manager may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, the Town may discontinue sewer service unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment

Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(e) Cease and Desist Orders. When the Town Manager finds that a User has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the Town Manager may issue an order to the User directing it to cease and desist all such violations and directing the User to: (1) Immediately comply with all requirements; and (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(f) Administrative Fines and Cost Recovery Fees. When the Town Manager finds that a User has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Town Manager may fine such User in an amount not to exceed \$5,000 per day, and may assess against such User a cost recovery fee to compensate the Town for its administrative and legal costs associated with the enforcement activity that the Town undertakes to address noncompliance. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation. Unpaid charges, fees, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of two percent (2%) per month. To secure unpaid fines, fees, charges, and penalties, the Town shall a lien against the User's property, collectable in the same manner as unpaid real estate taxes. Users desiring to dispute such fines or fees must file a written request for the Town Manager to reconsider the fine along with full payment of the amount within ten (10) days of being notified of the fine. In any appeal the Town Manager shall provide the User with an opportunity to be heard with respect to the fine or fee, and shall issue a written determination regarding the appeal stating the reasons for the granting or denial of such appeal. In the event the User's appeal is successful, the payment, together with any interest accruing thereto at the rate described above, shall be returned to the User. If the appeal is unsuccessful, the Town Manager may add the additional costs of adjudicating such appeal administrative enforcement actions, such as notices and orders, to the fine. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

(g) Emergency Suspensions. The Town Manager may immediately suspend a User's discharge, after notice to the User appropriate under the circumstances, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an clear and present danger to the health or welfare of persons. The Town Manager may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment. Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Town Manager may take such steps as deemed necessary, including

immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Town Manager may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Town Manager that the period of endangerment has passed, unless the Town commences termination proceedings under paragraph (h) below. A User that is responsible, in whole or in part, for any discharge presenting a clear and present danger shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Town Manager prior to the date of any show cause or termination hearing. Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

(h) Termination of Access to Sewer System. Any User who violates the following conditions is subject to termination of its right to discharge into the Town's sewer system:

- (i) Violation of industrial user discharge permit conditions;
- (ii) Failure to accurately report the wastewater constituents and characteristics;
- (iii) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- (iv) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling;
- (v) Violation of the Pretreatment Standards in § 131.07 of this Code; or
- (vi) Making a materially false statement on any application, report, or other documentation submitted to the Town under this Chapter.

Such User will be notified of the proposed termination of its discharge rights and shall receive an opportunity to show cause under paragraph (c) of this Section why the termination should not occur. Proceedings under this paragraph shall not be a bar to, or a prerequisite for, taking any other action against the User.

§ 131.35 JUDICIAL ENFORCEMENT REMEDIES

(a) Injunctive Relief. When the Town Manager finds that a User has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Town may commence a civil action in the nature of a suit in equity for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the industrial user discharge permit, order, or other requirement that this Chapter imposes on activities of the User. The Town may also seek such other action as is appropriate for legal or equitable relief, including a requirement for the User to conduct environmental remediation. An action for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

(b) **Civil Penalties.** A User who has violated, or continues to violate, any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the Town for a maximum civil penalty of \$1,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation. The Town may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires. The imposition of civil penalties, or an action to recover civil penalties, shall not be a bar against, or a prerequisite for, taking any other action against a User.

(c) **Criminal Prosecution.**

(i) A User who willfully or negligently violates any provision of this Chapter, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement shall be guilty of a Class One Misdemeanor, and upon due conviction thereof, shall be punished by a fine of not more than \$2,500 or imprisonment for not more than one (1) year, or both. Each day and violation constitute a separate violation of this paragraph.

(ii) A User who willfully or negligently introduces any substance into the POTW, which causes personal injury or property damage, shall be guilty of a Class One Misdemeanor, and upon due conviction thereof, shall be punished by a fine of not more than \$2,500 or imprisonment for not more than one (1) year, or both. Each day and violation constitute a separate violation of this paragraph. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(iii) Any person who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Chapter, an industrial user discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Chapter shall be guilty of a Class One Misdemeanor, and upon due conviction thereof, shall be punished by a fine of not more than \$2,500 or imprisonment for not more than one (1) year, or both. Each day and violation constitute a separate violation of this paragraph.

§ 131.36 SUPPLEMENTAL ENFORCEMENT ACTION

(a) **Penalties for Late Reports.** A penalty of \$500 shall be assessed to any User for each day that a report required by this Chapter, a permit or order issued hereunder is late, beginning five days after the date the report is due. Action to collect late reporting penalties shall not limit the Town Manager's authority to initiate other enforcement actions that may include penalties for late reporting violations.

(b) Performance Bonds. The Town Manager may decline to issue or reissue an industrial user discharge permit to any User who has failed to comply with any provision of this Chapter, a previous industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a bond or other collateral, in form and substance satisfactory to the Town Attorney, payable to the Town, in a sum not to exceed a value determined by the Town Manager to be necessary to achieve consistent compliance, and conditioned upon the User's compliance.

(c) Liability Insurance; Repair of Prior Damage. The Town Manager may decline to issue or reissue an industrial user discharge permit to any User who has failed to comply with any provision of this Chapter, a previous industrial user discharge permit or order issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has financial resources to complete the process of repair and restoration of any damage that a prior discharge caused to the POTW, and/or obtained has insurance sufficient to restore or repair damage to the POTW caused that a future discharge might cause.

(d) Payment of Outstanding Fees, Fines, and Penalties. The Town Manager may decline to issue or reissue an industrial user discharge permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this Chapter, a previous industrial user discharge permit or order issued hereunder.

(e) Water Supply Severance. Whenever a User has violated or continues to violate any provision of this Chapter, an industrial user discharge permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Town may sever water service to the User. Service will recommence, at the User's expense, only after the User has satisfactorily demonstrated its ability to comply.

(f) Public Nuisances. A violation of any provision of this Code, an industrial user discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement is hereby declared a public nuisance and may be corrected or abated though any provision of State or Town law relating to public nuisances.

(g) Informant Rewards. The Town Manager may pay up to one thousand dollars (\$1,000) for information leading to the discovery of noncompliance by a User. In the event that the information provided results in a civil penalty levied against the User, the Town Manager may disperse up to fifty percent (50%) of the collected fine or penalty to the informant. However, a single reward payment may not exceed one thousand dollars (\$1,000).

(h) Contractor Debarment. Users that have violated or continue to violate any provision of this Chapter, an industrial user discharge permit or order issued hereunder, or any other Pretreatment Standard or Requirement, are debarred from the award of Town contracts. The Town may terminate any such contract that already exists on the date the Town Manager finds any such violation or noncompliance.

§ 131.37 REMEDIES NONEXCLUSIVE

The remedies contained in this Chapter are not exclusive. The Town Manager may take any, all, or any combination of these actions against a noncompliant User. Moreover, the Town Manager is empowered to take more than one enforcement action against any noncompliant User.

§ 131.38 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

(a) Upset

(i) For the purposes of this paragraph (a), an “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(ii) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of (iii) below, are met.

(iii) Users who wish to establish the affirmative defense of upset shall show, through a preponderance of the evidence, that

(A) An upset occurred and the User can identify the cause of the upset;

(B) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures, including the requirement to plan for the loss or failure of its treatment facility and the source of power thereto; and

(C) The User has submitted to the Town Manager, within twenty-four (24) hours of becoming aware of the upset, and with a follow-up written submission provided within five (5) days, a description of the indirect discharge and cause of the noncompliance, the period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and a list of the steps the User is taking or planning to reduce, eliminate, and prevent recurrence of the noncompliance.

(b) Prohibited Discharge Standards. A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general or the specific prohibitions in § 91.206 of this Code if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause Pass Through or Interference and that either:

(i) A Local Limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or

(ii) No Local Limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the Town was regularly in compliance with its VPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

(c) Burden of Proof. In any enforcement proceeding, the User seeking to establish an affirmative defense shall have the burden of proof.

§ 131.39 BYPASS

(a) For the purposes of this Section:

(i) Bypass means the intentional diversion of waste streams from any portion of a User's treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) A User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this Section.

(c) Bypass Notifications

(i) If a User knows in advance of the need for a bypass that exceeds applicable Pretreatment Standards, it shall submit prior notice to the Town, at least ten (10) days before the date of the bypass, if possible.

(ii) A User shall submit oral notice to the Town of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. The User shall also provide a written submission within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Town Manager may waive the written report on a case-by-case basis if he has received the oral report within twenty-four (24) hours of the bypass.

(d) No bypass shall occur that causes violation of Pretreatment Standards or Requirements unless

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(iii) The User submits notices as required under paragraph (c) of this section.

(e) For any planned bypass that will cause a violation of Pretreatment Standards or Requirements, the User shall seek approval from the Town Manager. The Town Manager may approve such bypass, after considering its adverse effects, if the Town Manager determines that it will meet the three conditions listed in paragraph (d) of this Section.

§ 131.40 PROVISIONS FOR FEES AND DEPOSITS

(a) Before making any sewer connection, the User shall pay the connection fee prescribed on the fee schedule to the Town Code.

(b) Prior to receiving service, any prospective consumer not holding title to the property served by public sewer shall pay a deposit of an amount that appears on the fee schedule to the Town Code. Such deposits are refundable upon termination of service and the payment of all outstanding sewer and or water bills including any penalty and interest. If any person shall apply for sewer connection, paying all such deposits and fees, and such charges are increased prior to the actual introduction of sewer services into the applicant's premises, he shall also pay the difference between the current and prior rates.

(c) The Town Council shall set sewer rates, which shall appear on the rate schedule to the Town Code. Sewer rates shall be based upon water use, with no discount for filling of pools, watering lawns, or other water uses that do not implicate sewer use.

§ 131.41 SANITARY SEWER BACKUPS

(a) It is the policy of the Town that the Town should quickly resolve and pay certain small claims, filed in good faith by citizens of this Town and others, even though, as a technical matter, the law may not force the Town to pay such claims. To this end, the Town Manager shall have the authority, but not the duty, to compromise, settle, or pay in full, claims filed in good faith against the Town, its officers, officials, employees, volunteers, and agents, based on sanitary sewer backups, where the blockage or problem is determined by the Town to be located on Town property, and where the proposed payment to the claimant is \$1,000 or less.

(b) Persons proposing to make a claim against the Town, its officers, officials, agents, or employees, for damage to property alleged to have been sustained by reason of a sewer backup within the Town, shall file within 90 days after the damage is alleged to have occurred, with the Town Manager, a written statement of the nature of the claim and of the time and place at which the backup damage is alleged to have occurred, and a description of any insurance coverage available in connection with such claim.

(c) The Town Manager shall cause a factual investigation to be made of the claims and, if necessary, contact the Town Attorney for counsel and for research of the law governing the claim, and may deny or offer to settle the claim or make a recommendation with respect thereto, accordance with this Section.

(d) In reviewing any such claim, the Town Manager shall consider any available insurance coverage with respect to such claim, and shall not pay a claim or which insurance proceeds have made the claimant whole, unless otherwise required by law.

(e) All claims not disposed of under this policy shall be handled, decided, and disposed of, according to the law of the Commonwealth, the Town, and the United States of America. No settlement shall be made under this policy which would be prohibited by law.

CHAPTER 132: WATER ORDINANCE

§ 132.01 CONNECTION MANDATORY; FEES

(a) Unless the Town Manager has determined that a connection is not feasible, and except for Accessory Buildings (as that term is defined in the Town's Land Development Regulations), every owner of property with improvements within the Town shall cause the improvements thereon to be connected to the Town's water system.

(b) The Town Council shall set a fee for water obtained through the Town's water system, in an amount shown on the rate schedule to the Town Code. Any person who does not own title to the property to be serviced shall pay a deposit before obtaining service, in the amount shown on the rate schedule to the Town Code.

(c) The use of water from the Town's system operates as consent for the agents of the Town to enter upon the user's property at periodic intervals to read the water meter.

§ 132.02 PRIVATE SYSTEMS PROHIBITED

For the promotion of the health and general welfare of the general public, it shall be unlawful for any person other than the Town of Broadway to furnish any water to any other person within the corporate limits of the Town, where Town water is available. It shall further be unlawful for any person to furnish water for personal use within the corporate limits of the Town where Town water is available, without the approval of the Town Council.

§ 132.03 SUPERVISION AND CONTROL

(a) The water system of the Town shall be under the immediate supervision and control of the Town Manager. The Town Manager shall have supervision over the water system and all pipes, plugs and other properties in any way connected therewith. He shall keep all parts of the machinery and equipment in connection with the water system in good order and repair. He shall

keep a map showing the location of the main pipes and length and size of each of them. When there is an extension of any main pipe, he shall mark on the map the place of extension, size of the pipe used and other related information and shall keep an account of the cost of material and labor used in making such extension. He shall keep a record of all branch pipes, hydrants and other connections with the water system.

(b) The Town Manager may delegate any of his duties or powers under this Section or this Chapter generally to any other Town employee or official.

(c) The Town Manager may discontinue water service to a consumer for repairs to the water system or because of the inadequacy or pollution of the water supply and shall give as much notice of such discontinuance to the consumer as is practicable under the circumstances.

§ 132.04 STATE LAW

The Mayor and the Town Manager shall see that all provisions of this Code and other provisions of the Town and State law that safeguard the public health against injurious effects arising from impurities, contamination or other unsanitary conditions, are strictly enforced.

§ 132.05 CONNECTIONS GENERALLY

All connections to the Town water system shall be made as provided in this Chapter and only upon order of the Town Manager. The Town Manager shall have the power to promulgate reasonable regulations and rules, not arbitrary and capricious, to carry out his responsibilities as described in this Chapter and to amplify the provisions herein.

§ 132.06 APPLICATION

Any property owner along the line of any water main who desires the introduction of water into such property shall make written application therefore to the Town Manager. Such application shall set forth the name of the applicant, the location of the property into which the water is to be introduced, the purposes for which the water is to be used and the name of the plumber who is to do the work incident to the introduction of water into the premises. Such application shall also contain a provision which, upon acceptance of the application by the Town Manager and subsequent connection of the service pipe with the main, will obligate the owner of the premises to pay for all water furnished pursuant to such application. The Town Manager shall not cause water to be furnished at any water connection until the owner has agreed to pay for all water furnished. Without limiting the generality of the foregoing, the act of connection to the Town's water system indicates a connector's consent to pay for water drawn through such connection.

§ 132.07 SEPARATE CONNECTIONS OR METERS FOR INDIVIDUAL RESIDENCES OR PROPERTIES

Each individual residence or property shall be required to have a separate connection and meter unless the Town Manager otherwise authorizes. In addition, a building containing two or more

units of occupancy served by one water meter shall be charged according to the number of units in the building, at a rate equal to the individual metering of each unit.

§ 132.08 CONNECTIONS OUTSIDE OF TOWN

The Town shall not supply water to any person outside the corporate limits of the Town where such connection would require the extension of any water main, without the express permission of the Town Council.

§ 132.09 CONNECTION DEPOSITS AND CHARGES

(a) Before a connection to the Town water system shall be made, the applicant therefore shall pay to the Town Treasurer the material deposits, service fee deposits, and connection fees described on the rate schedule to the Town Code. A service fee deposit is refundable upon termination of service and the payment of all outstanding sewer and/or water bills including any penalty and interest.

(b) If any person shall apply for water and sewer connection, paying all required deposits and fees and such charges are increased prior to the actual introduction of water services into the applicant's premises, he shall pay the difference between the current and prior rates.

§ 132.10 EXCAVATION FOR WATER INSTALLATION; NOTICE, PROTECTION, AND RESTORATION

Prior to any excavation for the building of water installations, notice shall be given to all authorities having underground utility installations in the vicinity. All such excavations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be stored in a manner satisfactory to the Town and the relevant state authorities.

§ 132.11 COST OF WATER INSTALLATIONS; CONSTRUCTION SPECIFICATIONS; DEDICATION

The Town will provide the tap of the water main, at its cost, together with a water meter for each connection, as part of the water connection fee. All other costs associated with the connection, including the costs of the construction of water mains and other water lines, shall be the responsibility of the applicant. The construction of all such mains and lines shall be in accordance with the specifications prescribed by the Town Manager, and in every instance in accordance with the specifications contained within the Town's specifications manual, as the Town may amend the same from time to time. Upon proper installation as determined by the Town, such water mains in the subdivision shall become the property of and shall be maintained by the Town. Prior to the commencement of water service, the owner or developer shall execute and deliver appropriate instruments providing for the dedication of the same.

§ 132.12 RIGHT OF ENTRY OF TOWN MANAGER

Every person occupying a lot or tenement into which water is conveyed, from the Town water system, shall permit the Town Manager or his authorized agent to enter such lot or tenement, at reasonable hours, to inspect the work therein or to see if the provisions of this Code and other ordinances of the Town relative to the water system are being or have been violated. By connection to the Town's water system or drawing water from the same, the owner or occupant of such lot or dwelling consents to allowing the Town Manager or his authorized agent the access contained in this Section.

§ 132.13 UNAUTHORIZED USE, ETC. OF WATER, FIRE PLUG OR HYDRANT; INTERFERENCE WITH WATER SYSTEM

(a) No person, without obtaining the prior consent and approval of the Town Manager, shall use water from the Town's water system, open any pipe, cock or other part of the system so as to waste water, or remove or injure any part of the system.

(b) No person shall use or manipulate any of the fireplugs or hydrants of the Town unless by the order, or with the consent, of the Town Manager.

(c) No person shall interfere with the proper operation of, damage, destroy, remove, or replace any water meter, water main or line, or any other element of the Town's water system without the permission of the Town Manager.

(d) No person shall place any obstruction on public property that interferes with a service line, meter, or other Town water system element, nor shall any person do so on private property with the specific intention of interfering with the Town's inspection rights under § 132.12.

(e) In cases of a fire emergency, this Section shall not apply to the fire personnel.

§ 132.14 BATHING, POLLUTION OF RESERVOIR, ETC.

No person shall bathe in the reservoirs or springs of the Town water system. No person shall deposit any offensive matter or any sticks, mud or rubbish in the reservoir or springs of the Town's water system. No person shall knowingly or willfully cast any dead animals or any other noxious substance or matter, or what, is commonly known as bait, into any of the streams, springs, reservoirs, or other sources of the town water supply, or drown and leave or cause to be drowned and left, any animal therein, or do any other similar act by reason of which the health of any person is affected, or the water supply of the Town is rendered impure or offensive.

§ 132.15 UNAUTHORIZED ENTRY

No person shall, without lawful authority, climb over, get through or break into the enclosure of the reservoir or springs of the Town water system, the Town's water plant, or any other facility associated with the Town's water system.

**§ 132.16 PLACING BUILDING MATERIAL AT STOPCOCK, ETC.;
OBSTRUCTING ACCESS TO FIXTURES.**

No person shall place any building material, rubbish or other matter at a stopcock, street main or service pipe or obstruct access to any fixture connected with the waterworks.

§ 132.17 BACKFLOW PREVENTION

(a) An approved backflow prevention device shall be installed on each service line to a consumer's water system where, in the judgment of the Town Manager, a health, pollution or system hazard to the waterworks exists, and as a minimum, but not limited to, where the following conditions exist:

- (1) Premises having an auxiliary water system;
- (2) Premises on which any substance is handled in such a manner as to create an actual or potential hazard to a waterworks;
- (3) Premises having internal cross-connections that, in the judgment of the Town Manager, may not be easily correctable, or intricate plumbing arrangements which make it impracticable to determine whether or not cross-connections exist;
- (4) Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete cross-connection survey; or
- (5) Premises having a repeated history of cross-connections being established or re-established.

(b) The Town will have available, upon request, a list of approved backflow prevention devices. The Town will consider devices not appearing on the list provided they have been tested by a recognized testing laboratory or evaluation agency, and the Town Manager determines they are of satisfactory materials.

§ 132.18 TURNING ON WATER

Water shall not be turned on in any connection except by the order of the Town Manager, provided, however, that this provision shall not be construed to prohibit duly licensed and bonded plumbers from turning water into any such pipes to test same or for purposes of testing the plumbing connected thereto. The Town Manager shall not authorize water to be turned on while any outstanding connection, deposit, fees, interest, or other charges associated with a connection remain unpaid.

§ 132.19 NO RESALE OR RECONVEYANCE

(a) No owner or occupant of any premises upon which water has been conveyed shall permit such water to be used, taken or received by any person not lawfully entitled to its use.

(b) No owner or the occupant of any premises upon which water has been conveyed shall or to resell water that the Town has furnished.

§ 132.19 PENALTY

Any person who violates the provisions of §§ 132.13 through 132.18, inclusive, or who draws water from the Town's water system without appropriate authorization under this Chapter, shall be guilty of a Class 1 Misdemeanor and, upon due conviction thereof, shall be fined an amount not to exceed Twenty-Five Hundred Dollars (\$2,500) or imprisoned for a term not to exceed one (1) year, or both.

CHAPTER 133: DROUGHT MANAGEMENT

§ 133.01 PURPOSE

The purpose of this Chapter is to implement the water shortage and supply policies of the Town, as required under state law, and to provide for the enforcement of the Plan, and to voluntarily and mandatorily restrict the use of the Town's public water supply system during declared water shortages or water emergencies.

§ 133.02 INCORPORATION OF LOCAL AND REGIONAL WATER SUPPLY PLAN

Water supply regulations enacted by the State Water Control Board pursuant to 9 VAC § 25-780 and § 62.1-44.38:1 of the Code of Virginia are hereby incorporated into this Chapter by reference as if fully set out.

§ 133.03 DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms in this Chapter shall be as follows:

Plan shall mean the Upper Shenandoah River Basin Drought Preparedness and Response Plan as adopted by the Town on September 6, 2011.

CSPDC shall mean the Central Shenandoah Planning District Commission.

Council shall mean the Broadway Town Council.

Town shall mean the Town of Broadway, Virginia.

Town Manager shall mean the Town Manager of the Town.

Capitalized terms appearing in this Chapter and not otherwise defined shall have the same meaning as in the Plan.

§ 133.04 DROUGHT INDICATORS

The indicators used to designate drought severity shall be as described in Appendix A of the Plan. Upon determination that indicators exceed the threshold of a drought stage, as set forth in Appendix A of the Plan, the Town Manager may declare a specific drought stage. The Town Manager shall also declare a drought stage upon a corresponding declaration by the Commonwealth of Virginia.

§ 133.05 DROUGHT STAGE RESPONSES

Upon declaration of a Drought Watch or Drought Warning, voluntary conservation measures may be requested of residents and businesses served by the Town's public water supply as set forth in Appendix C of the Plan. Upon declaration of a Drought Emergency, mandatory restrictions shall apply to residents and businesses served by the Town's public water supply as set forth in Appendix C of the Plan.

§ 133.06 WAIVER OF RESTRICTIONS

Upon prior written request by an individual, business, or other water user, the Town Manager may permit less than full compliance with any drought restrictions upon good cause shown, including evidence that the applicant is affected in a substantial manner not common to other businesses or persons generally. The Town Manager shall not grant any waiver unless he determines that the public health, safety, and welfare will not be adversely affected by the waiver. The Town Manager shall report all waivers to the Council at its next regular meeting.

§ 133.07 ENFORCEMENT

(a) Any person who violates the provisions of this Policy, who fails to carry out duties and responsibilities imposed by this Policy, or who impedes or interferes with any action undertaken or ordered pursuant to this Policy shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed five hundred dollars (\$500.00). Each act or each day's continuation of the violation shall be considered a separate offense

(b) In addition, if the Town Manager learns of any violation of any water use restriction imposed pursuant to this Chapter, he shall cause a written notice of the violation to be affixed to the property where the violation occurred and mailed to the customer of record. Such notice shall describe the violation and order that it be corrected, cured, or abated immediately or within such specified time as the Town Manager determines is reasonable under the circumstances. If the violation continues after such time, the Town Manager may restrict or terminate water service to the customer by giving notice by mail or personal delivery that, due to the violation, water services will be restricted or discontinued within a specified time. A fee of \$50 shall be paid for with the reconnection of any water service restricted or terminated pursuant to this paragraph. In the event of subsequent violations, the reconnection fee shall be \$200 for the second violation and \$400 for each additional violation.

CHAPTER 134: SOLID WASTE ORDINANCE

§ 134.01 DEFINITIONS

For the purposes of this Chapter, the following words and phrases shall have the following meanings:

Combustible refuse means refuse accumulations of paper, excelsior, rags or wooden or paper boxes of containers, sweepings, and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places.

Garbage means every refuse accumulation of animal, fruit or vegetable matter that attends the preparation, use, cooking and dealing in, or storage of meats, fruit or vegetables, and any other matter of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gases or odors, or as breeding or feeding material for flies or other germ-carrying insects. "Garbage" also includes any container which can retain water contents and may serve as a breeding place for flies, mosquitoes or other water-breeding insects.

Garden cuttings means tree limbs that cannot be placed in containers and accumulations of grass or shrubbery, cuttings, and other refuse attending the care of lawns, shrubbery, vines and trees.

Non-combustible refuse means refuse materials that are unburnable at ordinary flame temperatures such as metals, mineral matter, large quantities of glass or crockery, metal furniture and auto bodies or parts.

Trash means garbage, combustible and non-combustible refuse, and garden cuttings.

Refuse means combustible and non-combustible refuse.

§ 134.02 AUTHORITY OF TOWN AND TOWN MANAGER AS TO COLLECTION, ETC., OF TRASH; PUBLIC POLICY REGARDING TRASH

(a) The Town Manager shall have full authority to supervise the collection and disposal of all trash in the Town; to make rules and regulations not in conflict with the provisions of this Chapter or other law, and not arbitrary and capricious, regarding the collection, removal and disposition of trash, the items eligible to be collected as part of the public waste disposal program, and the times of collection. The Town Manager may issue such regulations informally by posting them on the Town's website as trash collection procedures.

(b) No person shall fail, neglect or refuse to comply with the rules and regulations that the Town Manager has promulgated under this section.

(c) The Town has enacted this Chapter to provide for the public health and safety by requiring the orderly storage, collection, and removal of trash. The Town Council finds and declares that the storage, collection, and removal of trash in an improper way, or its accumulation, or the presence of trash containers on public streets for more than an appropriate amount of time, can all attract unwelcome animals, harbor germs, interfere with traffic, and obstruct parking. Accordingly, in enacting the provisions of this Chapter to prevent the same, and the civil and criminal penalties contained in § 134.13, the Town asserts its authority under Virginia Code §§ 15.2-901, 15.2-928, and other law to prescribe times for the removal of trash, and to enforce the same.

§ 134.03 PURPOSE AND PROHIBITED USE OF PUBLIC TRASH CONTAINERS

Trash containers placed upon the streets or sidewalks of the Town by the Town or by any private organization, under the direction and approval of the Town, shall be for the incidental use of the general public. No person shall load any such container with household or business trash.

§ 134.04 LITTERING

(a) No person shall throw into the streets or alleys or upon the sidewalks or other public places or private premises within the Town, or upon any private property within the Town without the consent of the owner thereof, any trash, rubbish, trash, paper, dirt, filth, vegetables, metals, fruit, broken glass or glass of any nature, or any other solid or substance or thing that renders the streets, sidewalks, alleys or private premises unclean or unsightly or unsafe to any person, animal or vehicle.

(b) No person shall place in the streets or alleys or upon the sidewalks, or other public places or private premises anything of a nature that could injuriously affect the health or welfare of the general community.

(c) No person shall cast, place, sweep, or deposit within the Town any trash in such amount that it may be carried or deposited by the elements upon any street, sideway, alley, or other public place, or into any occupied premises within the Town, except as the Town Manager may permit at certain times during clean up weeks or as part of a program to collect garden cuttings.

(d) Any person who violates this section shall be guilty of a Class 1 misdemeanor and upon due conviction thereof shall be subject to a fine not to exceed \$2,500 or to incarceration for a period not to exceed one year, or both.

§ 134.05 STORAGE OF TRASH, ETC., IN STREET; REMOVAL OF TRASH, ETC., SO STORED

Except as otherwise provided, no alley or street may be used to store any kind of trash, or any other material which causes any unsightly appearance in the Town. Anyone violating this provision shall have the trash, refuse or material in question removed within seventy-two hours after the Town Manager issues a removal notice. Procedures for such notice shall be the same as in § 92.06.

§ 134.06 DEPOSITING TRASH, ETC., NOT ORIGINATING WITHIN THE TOWN WITHOUT A PERMIT

No person shall deposit or cause to be deposited on private or public property in the Town, any trash not originating within the Town without first obtaining a permit from the Town Manager. Any person who violates this section shall be guilty of a Class 1 misdemeanor and upon due conviction thereof shall be subject to a fine not to exceed \$2,500 or to incarceration for a period not to exceed one year, or both.

§ 134.07 CONTAINERS FOR GARBAGE SET OUT FOR COLLECTION

(a) Except as described herein, all trash set out for collection in the Town shall be placed in sturdy containers not less than ten gallons nor more than thirty- five gallons in capacity, or in heavy-duty trash bags. Residents, occupants or places of business in the Town shall provide containers equipped with handles and covers, except as such containers may be provided by a contractor collecting such trash as described in § 134.10. Residents, occupants or places of business using heavy-duty trash bags shall securely fasten all trash bags. Filled containers or trash bags shall not contain any liquid or exceed fifty (50) pounds by weight.

(b) Garden cuttings or bulk pick-up items set out for collection in the Town shall be collected under regulations that the Town Manager may establish under § 134.02(a).

(c) Town employees will not collect hot ashes or any material burning in any container.

§ 134.08 SETTING OUT GARBAGE, ETC., CONTAINERS, ETC., FOR COLLECTION

(a) Except as provided herein, all containers for garbage to be collected shall be set out by the alley adjoining the property or set out next to the street where convenient to those making the collection. Residents and occupants shall place the containers by 7:00 a.m. on the day of collection but not earlier than 4:00 p.m. on the day before collection.

(b) For periodic “bulk” collection outside the purview of garbage normally collected on a weekly basis, trash (or trash containers) shall not be placed by the alley adjoining the property or set out next to the street where convenient to those making the collection except for the 60 hours before the start of collection. It may be kept in place until collected.

(c) All containers for trash shall be kept covered at all times. After emptying containers, collectors shall replace the covers or tops and replace the containers where they were prior to being emptied.

(d) After being emptied, each container for garbage, trash, refuse and other similar matter shall be removed from the sidewalk, curb, street or alley by the owner before noon of the day following the day of collection.

§ 134.09 REMOVAL OF WASTE MATERIALS RESULTING FROM CONSTRUCTION, ETC., OF BUILDINGS

All waste materials resulting from construction, repairs or demolition of buildings, such as lumber, stone, brick, cement, sand, glass, gravel, roofing, plaster and foundation stone or gravel, shall be removed by the owners of the buildings or their agents.

§ 134.10 PRIVATE CONTRACTORS

(a) The Town may engage a private contractor to collect garbage from some or all properties within the Town. The contractor will collect all such garbage, as provided in its contract with the Town.

(b) From time to time, the Town Manager may schedule the collection of items qualitatively or quantitatively beyond what the contractor will collect, within limits to be set by the Manager.

(c) Additionally, the Town Manager may authorize accepting such recyclable materials as he deems practicable.

§ 134.11 MAINTENANCE OF TRASH CONTAINERS

The owners and occupants of real property shall be responsible for the proper maintenance of dumpsters, recycle containers, grease dumpsters, and similar storage bins, regardless whether a private contractor, the Town, or another person provides the container, and regardless whether the owner or occupant participates in the Town's trash collection program. No owner or occupant shall allow garbage, grease, or other materials to accumulate in the immediate area of any such bin.

§ 134.12 PARTICIPATION IN PROGRAM; FEES

(a) All residential properties within the Town, and which do not receive trash collection services through a property owner's association, shall participate in the Town's trash collection program.

(b) From time to time, the Town will establish a fee for the services to be provided under this Chapter. All properties required to participate in the Town's trash collection program shall pay the fees that the Town Council establishes for trash collection, and which appear on the fee schedule to the Town Code.

(c) In the case of a Two Family Dwelling or a Multi-Family Dwelling (as those terms are defined in the Town's Land Development Regulations) that is required to participate in the Town's trash collection program, the fee shall be applied to each dwelling unit therein.

- (d) Fees due under this Chapter shall also be subject to the provisions of Chapter 135.

§ 134.13 PENALTIES

(a) Civil Penalties. A person violating any provision of this Chapter for which a penalty is not otherwise provided shall be liable for a civil penalty of \$50 per day for each initial violation thereof, and of \$200 per day for each subsequent violation arising within the same twelve month period as an initial violation. Provided, however, that each day of a violation arising from the same set of operative facts in a twelve month period is penalized as an initial violation, not as a subsequent violation. In addition, a civil penalty for violation arising from the same set of operative facts may not exceed \$3,000 in any twelve month period. No person shall be assessed a civil penalty under this section unless the Town Manager has previously provided seventy-two hours' notice of his intent to assess a civil penalty, and determined that the condition giving rise to the penalty has not been remedied before he assesses such penalty. Notice shall be provided by personal delivery to the owner or occupant of the property in question, or by posting of such notice on the front door of the principal structure of the property on which the violation is occurring. In the event that notice by personal delivery cannot practicably be made, the Town Manager may mail notice to the address of the property own as shown on the Rockingham County

(b) Criminal Penalties. Any person who has had a civil penalty imposed under paragraph (a) of this section three times within any twenty-four month period, for the same or similar violations, but on three different sets of operative facts, shall be guilty of a Class 3 misdemeanor and upon due conviction thereof shall be fined an amount not to exceed \$500. This paragraph shall not apply to violations of § 134.08, for which only a civil penalty may be imposed.

(c) Collection. All charges authorized by this section, including the civil penalties described in paragraph (a), shall constitute a lien against the property on which the violation took place, ranking on a parity with liens for unpaid local real estate taxes and enforceable in the same manner. Without limiting the generality of the foregoing, a civil or criminal penalty assessed for violations of §§ 134.07, 134.08, and 134.11 shall constitute a lien on the property on which the dumpster or other container is situate.

CHAPTER 135: RATES AND CHARGES

§ 135.01 APPLICIBILITY

Except as otherwise provided in separate contracts with the Town, the provisions of this title apply to any water, sewer, or solid waste fee charged under this Title 13.

§ 135.02 BILLING

Billing for water, sewer, and solid waste fees shall be on a bi-monthly basis beginning on January 1 of each calendar year. Bills shall be due on the 25th day of the calendar month following the end of each bi-monthly period.

§ 135.03 LATE FEES AND PENALTIES

Any bill for water, sewer, or solid waste fees not paid when due shall incur a late fee of 5% of the amount unpaid, or \$3.00, whichever is greater.

§ 135.04 DISCONTINUATION OF SERVICE

If any bill (including the associated late fee) is not paid on or before the 4th day of the second calendar month following the end of a bimonthly billing cycle, the Town shall discontinue service to such property. Service shall be reconnected only after all outstanding bills are paid. The Town may charge a reconnection fee in the amount shown on the rate schedule to the Town Code before reconnecting any service.

§ 135.05 TAMPERING WITH METER; DAMAGED METERS

If at any time a meter shall be found to have been tampered with, shall fail to register for any reason, or shall be found to be defective in registering since the last previous reading, the water and sewer consumption for such period may be based on the Town Manager's best estimate of such consumption, taking into account the average of past readings from that connection.

§ 135.06 LEAKAGE

In the event of a confirmed leak, customers shall, upon proof of repair within thirty (30) days of notification of such leak, be given credit against their bill for one-half (1/2) of the usage over and above their normal average consumption. Such credit shall apply both to water and sewer charges.

§ 135.07 METER ACCURACY

Any water or sewer user having a complaint in connection with the assessment of his water or sewer bill shall report the same to the Town Manager. Any water user who believes in good faith that he is over-assessed may have his meter tested by the Town. If the meter is found to over-register, the most recent invoice shall be adjusted.

§ 135.08 CHARGES CONSTITUTE A LIEN

To the fullest extent permitted by law, every charge that this Title 13 authorizes with which the owner of any such property has been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

§ 135.09 PERMITTING FEE FOR ACCESS TO PUBLIC RIGHT OF WAY

(a) Except to the extent that state law prohibits the imposition of a permitting fee, any public service company that wishes to access the public right of way within the Town shall obtain a permit to so do from the Town, and shall pay a Public Right of Way Access Permit review fee

to the Town in the amount shown on the rate schedule to the Town Code. In requesting such permit, the public service company shall submit to the Town any information that the Town Manager may reasonably request concerning the nature and extent of such proposed access.

(b) The Town Manager shall review such information and shall issue the permit if the Town Manager determines that access to the public right of way will not unreasonably interfere with the public's use of such right of way or the property or utility lines of the Town or another public service company within such right of way.

(c) Any public service company that accesses a public right of way within the Town shall restore such right of way to the condition it was in immediately before such access, shall not disturb the property or utility lines of the Town or another public service company except as necessary to perform the proposed work, and shall restore such property or utility lines after such work to the same condition as immediately before the work. Every public service company that accesses a public right of way within the Town shall provide a bond, with surety, to secure its full performance of its obligations under this paragraph.

feeTITLE XV: BUSINESS REGULATION

Chapter

- 151. REGULATION OF SHORT TERM RENTALS**
- 152. ITINERANT MERCHANTS, PEDDLERS, AND SOLICITORS**
- 153. DEALERS IN PRECIOUS METALS**
- 154. MASSAGE PARLORS**

CHAPTER 151: REGULATION OF SHORT TERM RENTALS

§ 151.01 DEFINITIONS

For the purpose of this Chapter, the following definitions apply:

"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

"Short term rental" means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes on a more or less transient or temporary basis, for a average period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. The term includes "Hotel", and "Bed and Breakfast or Short Term Rental" establishments as those terms are defined in the Town's Land Development Regulations, and potentially includes a "Boarding House" as that term is defined in the Town's Land Development Regulations, if the Boarding House's average length of stay is fewer than 30 consecutive days.

§ 151.02 REGISTRATION REQUIREMENT

(a) A short term rental operator shall register with the Town Treasurer within thirty (30) days of first holding itself out as offering lodging within the Town.

(b) After initial registration under the provisions of this Chapter, a short term rental operator shall re-register annually before July 1 of each year.

(c) The registration form shall require the operator of the short term rental to provide the name of the owner of each property so rented, the address of the property, and the Rockingham County tax map number of the property. The operator shall also provide the mailing and physical address of the operator (if different from the property address), the telephone number, and the e-mail address of the operator. If the operator of the property is a not a natural person, the operator shall also provide the name of a natural person who is responsible for the operator (who may be an owner, member, officer, manager, or agent of the operator), and shall provide contact information for that person.

(d) If the owner, operator, or responsible natural person changes in the middle of a registration year, but short term rentals will continue, the operator shall file a new registration form with the updated information within thirty (30) days of the change.

(e) No person shall be required to register if applicable state law exempts that person from the registration requirement.

§ 151.03 FEE

Upon each registration or re-registration of an operator of a short term rental under this Chapter, the Treasurer shall assess a fee as indicated on the Town's Schedule of Taxes, Fees, and Rates. If a single registration registers multiple properties, the Treasurer shall assess the fee only once.

§ 151.04 ENFORCEMENT

(a) No person shall offer the short term rental of a location within the Town without timely complying with § 151.02 above.

(b) A person who violates § 151.04(b):

(i) shall be assessed a civil penalty of \$500 for each instance of non-compliance;

(ii) shall not offer to rent, or actually rent, a short term rental during the period of such non-compliance, or during the period when the civil penalty related to such non-compliance remains unpaid.

(c) Upon repeated violations of this Chapter as it relates to a specific property, the Town Manager may prohibit from registering and offering that property for short-term rental.

(d) The Town Manager may prohibit an operator required to register from offering properties for short-term rental in the Town upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to a short-term rental. Violations to be considered are violations both under this Chapter and under other applicable Virginia, Rockingham County, and Town laws, ordinances, and regulations.

(e) The Town Manager may promulgate appropriate regulations, not arbitrary and capricious, including forms, to implement this Chapter.

§ 151.05 INTERACTION WITH OTHER LAW

Compliance with this Chapter does not excuse compliance with any other applicable Virginia, Rockingham County, or Town law, ordinance, or regulation; rather, the requirements of this Chapter are in addition to requirements under any other such law, ordinance, or regulation. Specifically, but without limitation, compliance with this Chapter does not excuse compliance with the Town's land development regulations, transient occupancy tax ordinance, or business and professional license ordinance. Registration under this Chapter does not create any land use or other vested rights, and does not operate to allow a short term rental in a zoning district not otherwise permitted in the Land Development Regulations.

CHAPTER 152: ITINERANT MERCHANTS, PEDDLERS AND SOLICITORS

§ 152.01 DECLARATION OF LEGISLATIVE INTENT AND PURPOSE

The Town Council recognizes that it is expressly empowered under Virginia law to regulate peddlers, and, in addition, to provide such other regulation as it deems appropriate to prevent fraud and deceit in the sale of property. The Town Council hereby finds and declares that the risks to the public of fraud and deceit in the sale of property are higher when a merchant has no fixed and determinable place of business, and, therefore is not easily accessible to the public in the period after the consummation of the transactions. Accordingly, the Town Council finds and declares that the public good necessitates the regulations in this Chapter for the purpose of preventing fraud or deceit in the sale of property.

§ 152.02 DEFINITIONS

For the purpose of this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Itinerant Merchant. "Itinerant merchant" means any person, whether as owner, agent, or consignee, who transports an inventory of new merchandise to a building, vacant lot, or other location within the Town and who, at that location, displays, sells or offers to sell the new merchandise to the public on a temporary basis. The term "itinerant merchant" shall not include a merchant with an established store, regularly open to the public; or a licensed merchant with a regularly serviced supply route or location.

New Merchandise means goods or products which are not used but are in a similar condition as the goods or products wholesaled by manufacturers or suppliers to established retail stores for first-time purchase by consumers. New merchandise shall not include (i) crafts or goods made by the seller or his own household; (ii) food stuffs; (iii) the seller's own household personal property; (iv) merchandise sold by nonprofit charitable, educational or religious organizations or at events sponsored by such organizations; (v) merchandise sold during parades, festivals, sporting or entertainment events, civic or fundraising activities sponsored by nonprofit charitable, educational or religious organizations; or (vi) any goods sold at the Broadway Farmers Market during a day on which the Farmers Market is open in the regular course of its business.

Peddler. Any person, not an itinerant merchant who: (i) travels from place to place but at times within the Town, by any means, carrying new merchandise for sale, or making sales of new merchandise, or making deliveries of new merchandise; or (ii) without traveling from place to place, sells or offers new merchandise for sale from any public place within the Town.

Solicitor. Any person who travels by any means from place to place but at times within the Town, taking or attempting to take orders for sale of new merchandise to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

§ 152.03 LICENSE REQUIRED

(a) No itinerant merchant, peddler, or solicitor shall operate within the Town without a duly issued license under this Chapter.

(b) The fee for the license required by this Chapter shall be as set on the fee schedule appended to the Town Code

(c) No license issued under this Chapter shall be transferable.

(d) All licenses issued under this Chapter shall expire 90 days after the date of issuance.

§ 152.04 APPLICATION PROCEDURE

All applicants for licenses required by this Chapter shall file an application with the Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation, or by a manager or other authorized member of a limited liability company. The applicant shall provide information concerning the following items:

(a) The name and address of the applicant;

(b) The name of the individual, a natural person, who has management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the Town;

(c) The local address of such individual;

(d) The permanent address of such individual;

(e) The capacity in which such individual will act;

(f) The name and address of the person, if any, for whose purpose the business will be carried on, and, if an entity, the state of organization of the entity;

(g) The time period or periods during which it is proposed to carry on applicant's business;

(h) The nature, character, and quality of the goods or services to be offered for sale or delivered;

(i) If goods, their invoice value and whether they are to be sold by sample as well as from stock;

(j) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;

(k) The nature of the advertising proposed to be done for the business;

(l) Whether or not the applicant, or the individual identified in (b) above has been convicted of any crime or misdemeanor (not including a traffic offense) and, if so, the nature of each offense and the penalty assessed for each offense.

In addition, applicants for peddler or solicitor licenses must provide further information concerning the following items, in addition to that requested above:

(m) A description of the applicant;

(n) A description of any vehicle proposed to be used in the business, including its registration number, if any.

All applicants for licenses required by this Chapter shall attach to their application, if requested by the Clerk, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required above, a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

§ 152.05 ISSUANCE OF LICENSE

(a) Upon receipt of an application, the Town Manager shall investigate an investigation the applicant's business reputation and moral character.

(b) The Town Manager shall approve the application, and issue a license, unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public welfare. In particular, the Town Manager shall deny the application upon tangible evidence that the applicant has been convicted of a crime of moral turpitude; has made willful misstatements in the application; has committed prior violations of applicable law pertaining to itinerant merchants, peddlers, solicitors, and the like; has committed prior fraudulent acts; or has a record of continual breaches of solicited contracts.

(c) If the Town Manager denies a license application, the Town Manager shall notify the applicant via personal delivery to the supervisor described above or to the applicant or other agent of the applicant, or by certified mail, return receipt requested, so to the local address given on the application described above.

§ 152.06 REVOCATION OF LICENSE

The Town Manager may revoke a license issued under this Chapter for a reason stated in § 152.07 below, after delivering a notice of his intent to do so via personal delivery to the supervisor described above or to the applicant or other agent of the applicant, or by certified mail, return

receipt requested, so to the local address given on the application described above, and after giving the applicant five days after receiving such notice to respond to the Town Manager regarding the notice. Such notice shall state, in brief, the Town Manager's reasons for his intent to revoke the license. Once the Town Manager has revoked the license, he shall notify the applicant using the one of the same procedures permissible for delivering the notice of intent to revoke.

§ 152.07 STANDARDS FOR REVOCATION

The Town Manager may revoke a license granted under this Chapter for any of the following reasons:

- (a) Any fraud or misrepresentation contained in the license application; or
- (b) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or
- (c) Any violation of this Chapter or other applicable law; or
- (d) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (e) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

§ 152.08 APPEAL; BARRING OF REPETITIVE APPLICATIONS

(a) An applicant aggrieved by the Town Manager's determination under §§ 152.05 or 152.06 may file a petition in Rockingham County Circuit Court for judicial review of the Town Manager's determination. The applicant shall file any such petition within ten (10) days of the applicant's receipt of the notice of the Town Manager's determination, or such petition shall be barred. The Circuit Court shall review the Town Manager's determination, but shall uphold such determination unless the applicant shows that such determination was arbitrary and capricious.

(b) The Town Manager may summarily deny any application for a license under this Chapter if, during the one-year period preceding the application, the applicant (i) was denied a license by the Town; (ii) has a license revoked by the Town, in either instance with or without judicial review. A summary denial under this paragraph is not reviewable.

§ 152.09 EXHIBITION OF LICENSE

(a) Any license issued to an itinerant merchant under this Chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the Town shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(b) The Clerk shall issue a license to each peddler or solicitor licensed under this Chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the

expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

§ 152.10 POLICY ON PEDDLING AND SOLICITING

The Town Council declares the policy of the Town that the occupants of the residences in the Town shall make the determination of whether peddlers or solicitors shall be, or shall not be, invited to their respective residences.

§ 152.11 NOTICE REGULATING PEDDLING OR SOLICITING

(a) Notice of the refusal of invitation to solicitors or peddlers to any residence shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows: "NO SOLICITORS INVITED". The letters shall be at least 1/3-inch in height. For the purpose of uniformity, the cards shall be provided by the Chief of Police to persons requesting, at the cost thereof.

(b) The card so exhibited shall constitute sufficient constructive notice to any peddler or solicitor of the determination by the occupant of the residence not to invite peddlers or solicitors to such residence.

§ 152.12 DUTY OF SOLICITORS AND PEDDLERS TO ASCERTAIN NOTICE

(a) Every solicitor and peddler has a duty, upon going onto any premises in the Town upon which a residence is located, first to examine the notice provided for in § 152.11 if any is attached, and to be governed by the statement contained on the notice. If the notice states "NO SOLICITORS INVITED" as provided above, then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(b) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

§ 152.13 PROHIBITED SOLICITATION

No person shall go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting or peddling in defiance of the notice exhibited at the residence in accordance with the provisions of § 152.11 above.

§ 152.14 COMPLAINT WITH STATE LAW

No itinerant merchant, peddler, or solicitor operating within the Town shall violate any applicable provision of state law.

§ 152.15 IMPLIED CONSENTS

(a) By submitting an application for a license under this Chapter, an applicant appoints the Secretary of the Commonwealth as its statutory agent for service of process in any civil action brought to enforce the provisions of this Chapter, or brought by a private citizen out of any transaction or contract entered into as a result of the business conducted in the Town under a license issued under this Chapter.

(b) By submitting an application for a license under this Chapter, an applicant consents to the personal jurisdiction of courts of the Commonwealth of Virginia in connection with any civil action brought to enforce the provisions of this Chapter, or brought by a private citizen out of any transaction or contract entered into as a result of the business conducted in the Town under a license issued under this Chapter.

(c) By submitting an application for a license under this Chapter, an applicant waives (i) any objection to venue in the state or federal courts sitting in Harrisonburg, Virginia, and (ii) agrees to a jury trial to the extent provided for under Virginia law, in each instance in connection with any civil action brought to enforce the provisions of this Chapter, or brought by a private citizen out of any transaction or contract entered into as a result of the business conducted in the Town under a license issued under this Chapter. The provisions of this paragraph apply regardless of any contrary provisions in any contract between the applicant or another party, and a purchaser of new merchandise sold under the license contemplated in this Chapter.

§ 152.16 PENALTIES AND ENFORCEMENT

(a) Any person who violates this Chapter (whether acting on his own behalf, or as an agent of an entity) shall be guilty of a Class 4 misdemeanor and upon due conviction thereof shall be fined \$250. Each solicitation by a solicitor or peddler, or each day's business by an itinerant merchant, shall constitute a separate violation.

(b) The provisions of paragraph (a) shall be cumulative to any civil remedy in equity. The Town Attorney is authorized, at the direction of the Town Manager, to bring a civil action in the nature of a suit in equity to restrain any violation of the provisions of this Chapter.

§ 152.17 RELATION TO THIRD PARTIES

(a) Nothing in this Chapter shall affect bona fide purchaser status as to title to new merchandise acquired from an itinerant merchant or peddler, or through the solicitation of a solicitor.

(b) This Chapter does not create any private right of action to enforce its provisions.

§ 152.18 RELATION TO OTHER LAW

The provisions of this Chapter are in addition to the requirements of other applicable state, federal, and local law including, without limitation, the Town's ordinance regarding business licenses and the Town's ordinances regarding trespassing.

CHAPTER 153: DEALERS IN PRECIOUS METALS

§ 153.01 APPLICABILITY AND DEFINITIONS

This Chapter applies to all dealers in precious metals or gems, referred to in this Chapter as "dealers".

"Coin" means any piece of gold, silver or other metal fashioned into a prescribed shape, weight and degree of fineness, stamped by authority of a government with certain marks and devices, and having a certain fixed value as money.

"Dealer" means any person, firm, partnership, or entity engaged in the business of (i) purchasing secondhand precious metals or gems; (ii) removing in any manner precious metals or gems from manufactured articles not then owned by the person, firm, partnership, or corporation; or (iii) buying, acquiring, or selling precious metals or gems removed from manufactured articles. "Dealer" includes all employers and principals on whose behalf a purchase is made, and any employee or agent who makes any purchase for or on behalf of his employer or principal.

The definition of "dealer" shall not include persons engaged in the following:

1. Purchases of precious metals or gems directly from other dealers, manufacturers, or wholesalers for retail or wholesale inventories, provided that the selling dealer has complied with the provisions of this chapter.
2. Purchases of precious metals or gems from a qualified fiduciary who is disposing of the assets of an estate being administered by the fiduciary.
3. Acceptance by a retail merchant of trade-in merchandise previously sold by the retail merchant to the person presenting that merchandise for trade-in.
4. Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business.
5. Purchases of precious metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers, or by mail originating outside the Commonwealth.
6. Persons regularly engaged in the business of purchasing and processing nonprecious scrap metals which incidentally may contain traces of precious metals recoverable as a by-product.

"Gems" means any item containing precious or semiprecious stones customarily used in jewelry.

"Precious metals" means any item except coins composed in whole or in part of gold, silver, platinum, or platinum alloys.

§ 153.02 DEALERS TO FOLLOW STATE LAW

Every dealer operating within the Town shall follow all applicable provisions of state law relative to dealers, including the provisions of state law requiring each dealer to have a license duly issued by the Town before engaging in business within the Town.

§ 153.03 AUTHORITY OF POLICE CHIEF

The Police Chief of the Town is hereby designated to have all authority in connection with dealers that state law provides to the chief law enforcement officer of the Town. This authority includes, without limitation, the authority to issue or revoke licenses to dealers as described in state law.

§ 153.04 STATEMENT OF OWNERSHIP

When providing the statement of ownership required by state law regarding a precious metal or a gem to be sold to a dealer, the seller thereof shall include, at a minimum, a statement from the seller about the provenance of the item including, if the seller knows, the name and contact information of the owner of the item immediately preceding the seller.

§ 153.05 BOND

Bonds required by state law in connection with the issuance of a license to a dealer shall be made out for the benefit of the Town.

§ 153.06 PENALTY

Any person who violates any provision of this Chapter shall be guilty of a Class 2 misdemeanor and upon due conviction thereof, shall be fined an amount not to exceed \$1,000. Any person who violates any provision of this Chapter and has been convicted previously on a separate offence under this Chapter, a state law regulating dealers, or the laws of another locality regulating dealers (within or without the Commonwealth) shall be guilty of a Class 1 misdemeanor and upon due conviction thereof, shall be fined an amount not to exceed \$2,500 or incarcerated for a period not to exceed one (1) year, or both. Such criminal penalties shall be in addition to any revocation of such dealer's license as authorized or required under state law.

CHAPTER 154: MESSAGE ESTABLISHMENTS

§ 154.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Erogenous Area. The pubic area, penis, scrotum, vulva, perineum or anus.

Health Club. Any establishment which offers service in the form of massage, baths, exercises or similar services, in combination, to club members, or to the public for a charge. The terms “health club” and “massage establishment” do not include:

(a) Hospitals, nursing homes, medical clinics, or other offices or quarters of a physician, a surgeon, a chiropractor or an osteopath or a physical therapist duly licensed by the state;

(b) Exercise clubs exclusively for the purpose of maintaining physical fitness and health where the services are performed, without massage in any form for pay and without any physical touching with any part of one person’s body with an erogenous area of any other person;

(c) Barbershops and beauty parlors in which massages are administered only to the scalp, the face, the neck the shoulder or below the knee;

(d) Any establishment:

(i) Offering or providing facilities for, or instruction in, controlled exercise, weight lifting, calisthenics, or general physical fitness;

(ii) Which is actually occupying the premises of not less than 5,000 square feet, of which not more than 5% is used for massages; and

(ii) Whose gross income from massages is less than 15% of the total gross business income derived from physical fitness sales contracts at each business location.

Massage Establishment. An establishment having a fixed place of business where massages are administered for pay including, but not limited to, massage parlors or salons, health clubs, sauna baths and steam baths.

Massage Therapist. A person licensed as a massage therapist under the general laws of the Commonwealth.

Massage Therapy shall have the same definition as in state law.

§ 154.02 COMPLIANCE WITH CHAPTER

(a) No person shall operate a massage establishment or health club, or practice as a massage therapist within the Town, without a massage permit.

(b) No person shall practice massage therapy within the Town other than in Massage Establishment or Health Club, or in an establishment described in subsection (d) of the definition of “Health Club” in § 154.01.

§ 154.03 LAW-ENFORCEMENT OFFICERS EXEMPT

No provision of this chapter shall apply to police officers while in performance of official duties relating to any violation of this chapter or of any law of the United States, the Commonwealth of Virginia, or the Town.

§ 154.04 ELIGIBILITY FOR PERMITS

(a) No massage permit shall be issued for any health club or massage establishment except to an owner or manager who is

- (1) A physician or chiropractor;
- (2) A registered nurse with at least two years’ nursing experience;
- (3) A licensed practical nurse with at least four years’ nursing experience; or
- (4) A registered physical therapist
- (5) A certified massage therapist
- (6) Other person authorized under state law to practice massage therapy.

(b) Upon receipt of the application, the Town may refer the application to the appropriate local building official, the fire department, or other appropriate Town official, each of which shall, with a period of 21 days from the date of application, review records and make an inspection of the premises proposed to be used as a massage establishment or health club and make a written recommendation to the Town concerning compliance with the law.

(c) A change of location of a licensed massage establishment may be approved by the Town if the applicant complies with all applicable provisions of this Code, including this chapter.

§ 154.05 PERMIT TO BE POSTED OR AVAILABLE FOR INSPECTION

The permit must be conspicuously posted in the massage parlor or health club, so that the permit may be readily seen by persons entering the premises in the public room thereof or, if the massage

is given in a permitted area other than a health club or massage establishment, the permit must be available on request.

§ 154.06 MESSAGE PERMIT TERM

Each permit shall be valid for one year. All provisions of this chapter shall apply to renewals in the same manner as they apply to application for a granting of initial permits.

§ 154.07 PERMIT APPLICATION

(a) Each application for a massage permit shall be upon a form provided by the Town. Each form shall contain the following information:

- (1) The name and address of the massage establishment or health club;
- (2) A list of all the beneficial owners of such massage establishment or health club;
- (3) The name of the primary owner or manager of the massage establishment or health club, and the names and addresses of all previous massage establishments where such owner or manager has been employed as a massage technician;
- (4) The criminal record, if any, other than misdemeanor traffic violations, of such primary owner or manager;
- (5) Whether any permit to provide massage services has previously been denied to such owner or manager or revoked and, if so, the circumstances of such denial or revocation;
- (6) A complete set of the primary owner or manager's fingerprints, which shall be taken by the chief of police or his agent, and a photograph of the primary owner or manager;
- (7) Written proof that the primary owner or manager is 18 years of age or older;
and
- (8) Proof of licensure of the primary owner or manager.
- (9) A list of all employees or others who will be practicing massage therapy or otherwise administering massages at such massage establishment or health club, together with the information described in sections (3) through (8) of such employees or others.
- (10) Plans and specifications of the quarters proposed to be occupied. Such plans shall show details of entrances, partitions, windows, openings, ventilation, plumbing or fixtures, water supply and waste and vent connections.

(b) Each holder of a massage permit shall report to the Town any change or supplementation (including, without limitation, new employees or independent contractors) in any

of the information required in division (a) of this section, such report to be made within 14 days of learning of the change. Failure to report such a change or supplemental information after learning of it shall be grounds for revocation of the permit.

§ 154.08 INVESTIGATION OF APPLICANTS; GROUNDS FOR DENIAL

(a) In addition to all other requirements of this Chapter, every application or supplement required under this Chapter shall include a sworn statement as to whether or not the primary owner or manager, and any employees or other persons practicing massage therapy, have been convicted, pleaded *nolo contendere*, or suffered a forfeiture of any felony charge or on a charge of violating any provision included in Va. Code § 18.2-344, *et seq.* and Va. Code § 18.2-372, *et seq.*, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction, or on a charge of violating any provision of this chapter or similar ordinance in any other jurisdiction. The application shall state thereon, "It is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or renovation of a permit."

(b) Upon receipt of the application fee as provided by the preceding sections, the Town shall make or cause to be made a thorough investigation relative to the application. The Town Manager shall deny any application for a permit after notice and hearing if he finds that the primary owner of manager, or an employee or other persons practicing massage therapy, has been convicted, pleaded *nolo contendere*, or suffered a forfeiture on any felony charge or on a charge of violating any provision included in Va. Code § 18.2-344, *et seq.*, which laws relate to sexual offenses, or on a charge of violating any similar law of any other jurisdiction. Provided, however, that in lieu of denial the Town Manager may permit the application to amend the permit application to remove any employee or other person who initially appeared in the application and has violated the statutes cited, but who will not be employed by the applicant.

(c) The Town Manager may also deny an application, or revoke a permit previously issued, if he finds that an application contains a materially false statement.

(d) The Town Manager shall revoke the permit of any person after notice and hearing if the Town Manager finds that such person has been convicted, pleaded *nolo contendere*, or suffered a forfeiture of any felony charge or on a charge of violating any provision included in Va. Code § 18.2-344, *et seq.*, and Va. Code § 18.2-372, *et seq.*, which laws relate to sexual offenses, or on a charge of violating any similar law of any other jurisdiction. Provided, however, that in lieu of revocation the Town Manager may permit the applicant to amend the permit to remove any employee or other person who initially appeared in the application and has violated the statutes cited, but who will no longer be employed by the applicant.

(e) Before any permit is denied or revoked, the applicant or holder is entitled to notice and a hearing. Notice of the hearing before the Town Manager shall be given in writing, setting forth the grounds of the proposed denial or revocation of the permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the address on the application at least 5 days prior to the date set for the hearing, or by personal delivery to the primary owner or manager

identified in the permit by a Town police officer. The Town Manager shall transmit his decision in writing to the applicant or holder within 5 days of the hearing by the same method.

(f) An applicant or permit holder aggrieved by the Town Manager's determination under (e) above may file a petition in Rockingham County Circuit Court for judicial review of the Town Manager's determination. The applicant or holder shall file any such petition within ten (10) days of such person's receipt of the notice of the Town Manager's determination, or such petition shall be barred. The Circuit Court shall review the Town Manager's determination, but shall uphold such determination unless the applicant shows that such determination was arbitrary and capricious.

§ 154.09 EQUIPMENT STANDARDS

(a) All tables, tubs, shower stalls, and floors, except reception and administrative areas, shall be made of non-porous materials which may be readily disinfected.

(b) Closed containers shall be provided for wet towels and waste materials.

§ 154.10 BUILDING INSPECTION AND REQUIREMENTS

(a) No health club or massage establishment shall begin operations until the building occupied or to be occupied shall have been approved by the Town Manager as to the requirements of the building, plumbing, electric and fire prevention codes, and any other requirements of this chapter or state law.

(b) No exterior or interior doors in any health club or massage establishment shall be equipped with any remotely controlled locking device.

§ 154.11 SANITATION AND HYGIENE

(a) All equipment, shower stalls, toilets, lavatories and any other such accouterments of the establishment shall be regularly treated with disinfectants, and shall be maintained in a clean and sanitary condition at all times.

(b) Health, plumbing, electric and other inspectors shall be given access to any part of the quarters of a health club or massage establishment for purposes of inspections at all reasonable times.

(c) No person shall practice any of the services of a massage therapist without a certificate of good health issued by a duly licensed physician, commensurate with the nature of the services rendered. Such certificate shall be renewed every 6 months.

(d) No health club or massage establishment shall knowingly serve any patron infected with any fungus or other skin infections; nor shall service be performed on any patron exhibiting skin inflammation or eruptions; provided that a duly licensed physician may certify that a person may be safely served, prescribing the conditions thereunder.

(e) All personnel shall wash their hands in hot running water, using a proper soap or disinfectant, before giving any service or treatment to each separate patron.

(f) All towels and tissues, all sheets or other coverings shall be used singularly for each patron, and discarded for laundry or disposal immediately after use.

(g) Non-disposable tools of the trade shall be disinfected after use upon one patron.

§ 154.12 SLEEPING QUARTERS

No part of any quarters of any health club or massage establishment shall be used for, or connected with, any bedroom or sleeping quarters; nor shall any person sleep in such club or establishment except for limited periods incidental to and directly related to a massage or bath. This provision shall not preclude the location of a health club or massage establishment in separate quarters of a building housing a hotel or other separate businesses or clubs.

§ 154.13 PROHIBITED CONDUCT

(A) No owner or manager of a health club or massage establishment shall tolerate in his or her club or establishment any activity or behavior prohibited by the laws of this Commonwealth, particularly, but not exclusive of, Va. Code § 18.2-346, *et seq.*, proscribing prostitution and bawdy places, etc.; and Va. Code § 18.2-372, *et seq.*, being the state statute on obscenity, dealing with shameful or morbid interest in nudity or sex, which appeals to prudent interest, and which covers obscene items, exhibitions, performances, indecent exposure, illicit photographs or photographic activity, and illicit modeling.

(B) No owner or manager of a health club or massage establishment shall tolerate in his or her club or establishment any activity or behavior which violates any other applicable local or federal laws or regulations similar in nature or subject to those listed in division (A) of this section.

§ 154.14 PENALTY

(a) Any person who violates any of the provision of this chapter other than §§ 154.02 or 154.13 shall be guilty of a Class 3 misdemeanor, and upon due conviction thereof shall be fined not more than \$500.

(b) Any person who violates §§ 154.02 or 154.13 shall be guilty of a Class 2 misdemeanor for the first offence, and upon due conviction thereof shall be fined not more than \$1,000, or confined in jail for a period not to exceed six months, or both. Upon conviction of any subsequent offense, such person shall be guilty of a Class 1 misdemeanor, and upon due conviction thereof shall be fined not more than \$2,500, or confined in jail for a period not to exceed six months, or both.

(c) Upon the first conviction by any court for violation of any provision of this chapter, the Town Manager may revoke such person's license to engage in business under this chapter for

a period of one full year from the date of conviction. Such revocation shall be mandatory upon a second conviction.

TOWN OF BROADWAY, VIRGINIA
SCHEDULE OF TAXES, FEES, AND RATES

(Note: All taxes and fees are annual unless otherwise noted or the context of the Code clearly requires otherwise.)

This rate schedule is part of the Town Code and is designed to provide easy reference to the various tax rates enacted by the Town Council. It is authorized by Town Code § 50.10.

Property Taxes

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Real Estate	§ 51.10	\$0.07 per \$100 of assessed value
Automobiles and trucks (regardless of weight); motorcycles, mopeds, all-terrain vehicles, and off-road motorcycles; and boats (regardless of weight)	§ 52.10	\$0.61 per \$100 of assessed value
Manufactured Homes	§ 52.10	\$0.07 per \$100 of assessed value
Tools and Machinery	§ 53.01	\$0.40 per \$100 of assessed value

Business License Taxes or Fees

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Business License Fee (applicable only if license tax would be less than \$25)	§§ 54.16, 54.35	\$25
Business License Tax – Retail Merchants	§ 54.16	\$0.08 per \$100 of gross receipts less than \$1,500,000 \$0.05 per \$100 of gross receipts more than \$1,500,000

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Business License Tax – Wholesale Merchants	§ 54.16	\$0.03 per \$100 of gross receipts less than \$1,500,000 \$0.025 per \$100 of gross receipts more than \$1,500,000
Business License Tax – Contractors	§ 54.16	\$0.08 per \$100 of gross receipts less than \$1,500,000 \$0.05 per \$100 of gross receipts more than \$1,500,000
Business License Tax – Repair, Personal, Business and Other Services	§ 54.16	\$0.08 per \$100 of gross receipts less than \$1,500,000 \$0.05 per \$100 of gross receipts more than \$1,500,000
Business License Tax -- Financial, Real Estate and Professional Services	§ 54.16	\$0.20 per \$100 of gross receipts
Flat Business License Tax – Fortune Tellers	§ 54.31(a)	\$1,000
Flat Business License Tax -- Building or Savings and Loan Associations and Loan Companies	§ 54.31(b)	\$50
Business License Tax – Operators of Coin Machines	§ 54.32	\$0.08 per \$100 of gross receipts
Flat Business License Tax – Resident Photographers with no Definite Place of Business	§ 54.33	\$30
Flat Business License Tax – Circuses and Carnivals	§ 54.34	\$100 per performance
Business License Tax – Telephone companies	§ 54.38	one-half of 1% of gross receipts

Alcoholic Beverage License Fees

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Alcoholic Beverage License Tax – Distillers	§ 57.21	5,000 gallons or less, exempt; 5,000 gallons – 36,00 gallons, \$750; 36,000 gallons or more, \$1000
Alcoholic Beverage License Tax – Fruit Distillers	§ 57.21	\$1,500
Alcoholic Beverage License Tax – Bed and Breakfast	§ 57.21	\$40
Alcoholic Beverage License Tax – Museums	§ 57.21	\$10
Alcoholic Beverage License Tax – Tastings	§ 57.21	\$5 per event
Alcoholic Beverage License Tax – Equine Events	§ 57.21	\$10
Alcoholic Beverage License Tax – Day Spas	§ 57.21	\$20
Alcoholic Beverage License Tax – Motor Car Sporting Event Facility	§ 57.21	\$10
Alcoholic Beverage License Tax – Meal Assembly Kitchen	§ 57.21	\$20
Alcoholic Beverage License Tax – Annual Arts Venue Event	§ 57.21	\$20
Alcoholic Beverage License Tax – Art Instruction Studio	§ 57.21	\$20
Alcoholic Beverage License Tax – Brewery	§ 57.21	500 barrels or less, \$250; more than 500 barrels, \$1,000

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Alcoholic Beverage License Tax – Beer Bottler	§ 57.21	\$500
Alcoholic Beverage License Tax – Wholesale Beer	§ 57.21	\$75 (credit against BPOL tax)
Alcoholic Beverage License Tax – Retail beer in restaurant, hotel or, club, or retail off-premises	§ 57.21	\$25
Alcoholic Beverage License Tax – Beer shipper	§ 57.21	\$10
Alcoholic Beverage License Tax – Winery	§ 57.21	\$50
Alcoholic Beverage License Tax – Wholesale Wine	§ 57.21	\$50 (credit against BPOL tax)
Alcoholic Beverage License Tax – Farm Winery	§ 57.21	\$50
Alcoholic Beverage License Tax – Wine Shipper	§ 57.21	\$10
Alcoholic Beverage License Tax -- Retail beer and wine in restaurant, hotel or, club, or retail off-premises	§ 57.21	\$37.50
Alcoholic Beverage License Tax – Hospital, Wine and Beer	§ 57.21	\$10
Alcoholic Beverage License Tax – Wine and beer, Banquets (temporary)	§ 57.21	one day: \$5; multi-day, \$20
Alcoholic Beverage License Tax – Wine and beer, gourmet brewing shop	§ 57.21	\$150
Alcoholic Beverage License Tax – Wine and Beer Shipper	§ 57.21	\$10

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Alcoholic Beverage License Tax – Wine and beer, banquet facility (annual)	§ 57.21	\$15
Alcoholic Beverage License Tax – Wine and beer, gourmet oyster house	§ 57.21	\$37.50
Alcoholic Beverage License Tax – Mixed beverages, restaurant	§ 57.21	Up to 100 people, \$200; 100-150 people, \$350; more than 150 people, \$500
Alcoholic Beverage License Tax – Mixed beverages, private, non-profit club	§ 57.21	\$350
Alcoholic Beverage License Tax – Mixed beverages, caterer	§ 57.21	\$500
Alcoholic Beverage License Tax – Mixed Beverages, Special Events	§ 57.21	\$10 per day
Alcoholic Beverage License Tax – Mixed Beverages, Club Events	§ 57.21	\$10 per day
Alcoholic Beverage License Tax – Mixed Beverages, Motor Sports Events	§ 57.21	\$300
Alcoholic Beverage License Tax – Mixed Beverages, Banquets	§ 57.21	\$75
Alcoholic Beverage License Tax – Limited Mixed Beverages, Restaurant	§ 57.21	Up to 100 people, \$100; 100-150 people, \$250; more than 150 people, \$400
Alcoholic Beverage License Tax –Mixed Beverages, Motor Sports Facility (annual)	§ 57.21	\$300

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Alcoholic Beverage License Tax –Mixed Beverages, Performing Arts Facility (annual)	§ 57.21	\$300

Utilities Taxes and Fees

These taxes are monthly.

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Consumption Tax – Electricity	§ 57.34	under 2,500 kWh, \$0.00038 per kWh; between 2,500 kWh and 50,000 kWh, \$0.00024 per kWh; over 50,000 kWh, \$0.00018 per kWh
Consumption Tax – Natural Gas	§ 57.34	\$0.004 per CCF
Consumer Utility Tax – Electricity	§ 57.32	<u>Residential Consumers</u> : \$1.05 plus the rate of \$0.011261 on each kWh delivered monthly to residential consumers by a service provider not to exceed \$1.50 monthly. <u>Commercial and Industrial Consumers</u> : \$1.72 plus the rate of \$0.010791 on each kWh delivered monthly to such consumers, not to exceed \$15.00 monthly.
Consumer Utility Tax – Natural Gas	§ 57.33	<u>Residential Consumers</u> : \$1.50 per month <u>Commercial and Industrial Consumers</u> : \$3.50 plus the rate of \$0.045 on each CCF delivered monthly, not to exceed \$15.00 monthly
Public Right of Way Permit Fee	§ 135.09	\$100

Other Miscellaneous Taxes and Fees

<u>Tax or Classification</u>	<u>Code Section</u>	<u>Rate</u>
Meals Tax	§ 55.02	4.5%
Cigarettes	§ 57.13	\$0.20 per package
Bank Franchise Tax	§ 57.42	80% of state rate per \$100 of capital
Transient Occupancy Tax	§ 58.02	7%

Permit Application Fees

<u>Permit</u>	<u>Code Section</u>	<u>Amount</u>
Permit for an Itinerant Merchant, Peddler, or Solicitor	§ 152.03	\$500
Short Term Rental Registration	§ 151.03	\$25

Utility-Related Fees

<u>Fee</u>	<u>Code Section</u>	<u>Amount</u>
Water Connection	§ 132.09	\$4,700 plus \$250 per meter
Sewer Connection	§ 131.11, 131.40	\$4,600

Utility Rates

<u>Fee</u>	<u>Code Section</u>	<u>Amount</u>
Water Use	§ 132.01(b)	(per two months) 0-3,000 gal - \$22.40 3,001-100,000 gal – add'l \$5.34 per 1,000 gal 100,001-400,000 gal – add'l \$5.44 per 1,000 gal Above 400,000 gal – add'l \$6.07 per 1,000 gal
Sewer Use	§ 131.40	(per two months) 0-3,000 gal - \$16.96 3,001-100,000 gal – add'l \$4.01 per 1,000 gal 100,001-400,000 gal – add'l \$4.08 per 1,000 gal Above 400,00 gal – add'l \$4.31 per 1,000 gal
Solid Waste Disposal	§ 134.12(b)	\$27.80 (per two months)
Deposits	§§ 131.40, 132.09	\$100 for renters; no deposit for owners
Reconnection Fee	§ 135.04	\$50

CERTIFICATE OF VOTES

Record of the roll-call vote by the Town Council of the Town of Broadway, Virginia, on the Ordinance entitled **AN ORDINANCE TO AMEND, RE-ENACT, AND RECODIFY THE GENERAL ORDINANCES OF THE TOWN OF BROADWAY, VIRGINIA, AND REPEALING THE TOWN CODE OF THE TOWN OF BROADWAY, VIRGINIA (2003)**, adopted by the Town Council of the Town of Broadway, Virginia, by a roll-call vote at a rescheduled regular meeting of the Town Council held on July 11, 2023, at which a quorum was present and acting. The recorded roll-call vote of the Town Council was as follows:

	AYE	NAY	ABSTAIN	ABSENT
Timothy S. Proctor, Mayor				
Richard E. Fulk				
David Jordan				
Douglas W. Harpine				
Leslie Fulk				
Bev London				
Chad Comer				

[SEAL]

Dated: _____

Town Clerk, Town of Broadway, Virginia