



Berryville Town Council

MEETING AGENDA

Berryville-Clarke County Government Center

101 Chalmers Court, Second Floor

Main Meeting Room

Regular Session

January 14, 2020

7:30 PM

Item

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2. Pledge of Allegiance

3. Approval of Agenda

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14. Closed Session

15. Adjourn

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Presentations/Awards and Recognitions - Fiscal Year 2019 Audit Report

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Town Council utilizes the services of Robinson, Farmer, and Cox to complete the audit of its financial statements. The field work for the audit of Fiscal Year 2019 was completed in mid-September with the assistance of both Desi Moreland and Greg Jacobs.

Findings/Current Activity

A hard copy of Robinson, Farmer, and Cox's *Town of Berryville, Virginia Financial Report For The Year Ended June 30, 2019* is provided in the packet delivered to the Town Council. A digital version of the Report will be posted on the Town website.

The Report provides an unqualified opinion on the Town's financial statements. Please note that such an opinion means that the independent auditor's judgement the Town's financial statements are fairly and appropriately presented, without any identified exceptions, and in compliance with generally accepted accounting principles.

Financial Considerations

The report in hand is an important tool for examination of the Town's financial practices and position.

Schedule/Deadlines

None

Other Considerations

None

Attachments

Recommendation

Review the document and address any concerns that Council members may have about the Report with the auditor.

Sample Motion

None

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Consent Agenda - Consent Agenda

Prepared By

Paul Culp, Town Clerk

Background/History/General Information

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

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

Findings/Current Activity

The consent agenda contains one item to be considered for approval:

Minutes of the 12/10/19 Regular Meeting of Town Council

Financial Considerations

None

Schedule/Deadlines

Timely approval of minutes is preferable, but no deadline for such approval exists.

Other Considerations

None

Attachments

1. Town Council Minutes 12.10.2019 with attachments

Recommendation

None

Sample Motion

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

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

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

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

Press: Mickey Powell, The Winchester Star

1. Call to Order

Mayor Dickinson called the meeting to order at 7:30 p.m. She announced the presence in the audience of the Boy Scout troop from Burnt Factory United Methodist Church in Stephenson.

2. Pledge of Allegiance

A member of the Scout troop led the pledge.

3. Approval of Agenda

Mayor Dickinson asked if there were any amendments or revisions to the agenda. Recorder Arnold said he wished to amend the agenda for discussion of a Code of Conduct violation and possible related action in his report.

Council member McDonald moved to approve the amended agenda, seconded by Council member Harrison. The motion passed unanimously by voice vote.

4. Public Hearing

No public hearing was scheduled.

5. Discussion of Public Hearing Items

There being no public hearing, no discussion occurred.

6. Citizens' Forum

Town resident Richard Blick addressed the meeting. He said he has resided in Berryville for nearly 22 years and is a concealed-weapons permit holder whose Second Amendment rights were threatened by lawmakers in Richmond. He said the new gun laws being discussed by the legislature were being promulgated with irresponsible haste. He said 60 other localities in Virginia are standing up for Second Amendment rights, and requested an immediate resolution protecting those rights. He said Council's oath of office bound it to protect the citizenry regardless of personal beliefs.

7. Presentations/Awards/Recognitions

There were no presentations, awards, or recognitions.

8. Consent Agenda

Mayor Dickinson invited a motion to approve the consent agenda comprising the minutes of the November 12 regular meeting of Council, the November 13 Council work session, and the November 25 meetings of the Community Development and Public Safety Committees.

Council member Rodriguez moved that the Council of the Town of Berryville approve the consent agenda as amended. Council member Gibson seconded the motion.

Roll call vote as follows:

McDonald: Aye

Harrison: Aye

Gibson: Aye

Rodriguez: Aye

Arnold: Aye

Dickinson: Aye

The motion passed.

9. Unfinished Business

Fiscal 2021 Budget Goals

Mr. Dalton said Council had met in a work session on November 13 to be briefed on FY2020 budget goals and to discuss FY2021 goals. He said he had provided in the agenda packet a concise description of those goals and that adoption of them in the present meeting would provide staff with guidance for the drafting of the FY2021 budget. Mr. Dalton said he understood the majority of Council to be inclined to approve the following goals:

1) In partnership with Clarke County, complete work necessary to create Annexation Area C (or expand Annexation Area B) in order to facilitate the expansion of the Clarke County Business Park; Town and County staff would work together to provide cost estimates. 2) Complete a compensation study; and 3) Provide funds necessary to begin work on Town Run / stormwater control projects as identified by the Town's engineer in preliminary engineering reports (PER).

Mr. Dalton referred Council to his report specifying financial considerations for each goal. He said two preliminary engineering reports had been completed to date, with two others being funded in the current fiscal year, for the Town Run and Virginia Avenue. He noted that Council wished to see the Town Run PER first in deciding how to proceed with projects.

Regarding the compensation study, Mayor Dickinson said Council had thought an internal study preferable because of the cost of hiring a consultant, but said she had contacted multiple institutions of higher education about the feasibility of students performing such a study as a research project under faculty guidance and had received positive responses. She asked that the Town bear this option in mind as a means of obtaining an independent view and conserving staff time.

Mr. Dalton said no cost estimate is available yet for goal number one and that the situation is similar for number three. He said borrowing will be necessary for the former. Council member Harrison asked whether Council would be allocating funds annually without naming specific projects, and Mr. Dalton said this would be a sound course of action.

Referencing annexation and the Business Park, Council member McDonald said a citizen had expressed concern about the inconvenience of a connector road running into Smallwood Lane. Mr. Dalton said he and Ms. Dunkle would be meeting with a concerned citizen next week and that concerns were understandable.

Council member McDonald said many homeowners in her neighborhood behind Fellowship Square and Shenandoah Crossing had expressed concern about stormwater being diverted in a manner that would cause problems for them. She said water must go to the Town Run and not onto those properties. Mr. Dalton and Ms. Dunkle said the Berryville Area Development Authority and the Planning Commission are reviewing construction projects in that vicinity. Mr. Dalton explained the process of developing and approving plans, and invited residents with concerns to ask Ms. Dunkle to see the plans. Ms. Dunkle said that best engineering practices are used, including those mandated by the Commonwealth. She noted that 2018 was an anomaly in terms of increased rainfall amounts and that it is not possible to engineer for all eventualities. Mr. Dalton said construction is the most difficult phase, when temporary measures are in place, and that Ms. Dunkle will keep a close eye on sedimentation and erosion control matters.

Council member McDonald spoke about problems that can arise during construction, especially with blasting, and recommended that homeowners be proactive about asking questions. Ms. Dunkle described regulations, standards, and preventive measures. Council member McDonald expressed

concern about a particular stormwater pipe breaking, and about cable lines. Mr. Dalton said staff would advise the developer of her concerns.

Council member Gibson said that although a fixed asset inventory is not included in the list of three goals, staff would develop policies and procedures for one as time permits.

Council member Rodriguez moved that the Council of the Town of Berryville approve the following as their Fiscal Year 2021 Budget Goals:

- 1) In partnership with Clarke County, complete work necessary to create Annexation Area C or expand Annexation Area B in order to facilitate the expansion of the Clarke County Business Park,**
- 2) Complete a compensation study, and**
- 3) Provide funds necessary to begin work on Town Run / stormwater control projects as identified by the Town's engineer in preliminary engineering reports.**

Roll call vote as follows:

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

The motion passed.

10. New Business

2020 Meeting Schedule

Mr. Dalton directed Council's attention to a draft calendar he had provided in the agenda packet. He explained that staff would be implementing a new agenda-creation platform in January and that he would like to schedule committee meetings in a manner that would facilitate prompt preparation of draft agendas and allow Council sufficient time to comment on them. He said Council had discussed having committee meetings only every other month and that he understood the intent to be that standing committees should meet six times annually. He said the draft calendar accordingly reduced the number of meetings and arranged for June, July, August, and December to be open.

The resultant discussion established that meetings could be arranged or canceled on an as-needed basis. There was a discussion of when particular committees should meet and whether to have work

sessions on certain dates. Mr. Dalton said the Public Safety Committee must deal promptly with the revision of Chapter 8 of the Town Code because the Town's contract for refuse collection expires on June 30 and staff must prepare an invitation for bid. Council member McDonald said that as chair of the committee she intends to provide firmer direction.

There was further discussion of when particular upcoming meetings would occur.

Council member Gibson suggested that newly elected members of Council would benefit from meeting in July immediately following their election. She suggested having a July meeting every other year. Mr. Dalton said the schedule was flexible enough to accommodate such a need.

The consensus of Council was that the proposed calendar should go into effect.

11. Council Member Reports

Council member McDonald having expressed misgivings about always being the first member to give her report, Mayor Dickinson inverted the usual order.

Ward 4:

Council member Rodriguez had nothing to report from her ward. She thanked County Supervisor Barbara Byrd for her many years of service to the community.

Ward 3

Council member Gibson had nothing to report.

Ward 2

Council member Harrison had nothing to report from her ward. As the Town's liaison with Barns of Rose Hill, she noted that Michael Hobert is the new chairman and that a new budget is in place. She said volunteers are always welcome.

Ward 1

Council member McDonald said her ward has been very active. She said most residents find the proposed water and sewer rate adjustments acceptable but that many of them will have questions about administrative charges.

Recorder

Recorder Arnold thanked everyone who volunteered to assist with the Christmas parade, and especially praised the efforts of Donna Peake. He noted that the Christmas tree-lighting had attracted a record crowd, and thanked Berryville Main Street for its role.

Discussion of Possible Code of Conduct Violation and Possible Action

Recorder Arnold read from an email (attached) from Mayor Dickinson, dated October 11, 2017, in which she suggested that he might be in violation of the Conflict of Interests Act and that he seek a legal opinion. He said he had received on April 6, 2018 an invitation to a candidates' forum at Mary Hardesty House on April 15, where he was asked a question about his alleged conflict of interest and replied that he had secured from the Commonwealth's Attorney an opinion that no conflict existed. Recorder Arnold read an email (attached) from the mayor, dated April 20, in which she said she had read the Commonwealth's Attorney's opinion and learned that Recorder Arnold did have a conflict of interest. Her email stated that a group of Berryville citizens, independently of the Commonwealth's Attorney's opinion, had sought an opinion from a local attorney who advised them via email (attached) that a conflict of interest did exist. Recorder Arnold provided Council with a spreadsheet generated by the local attorney and containing figures which Recorder Arnold said were in error.

Recorder Arnold directed Council's attention to a passage in the mayor's email in which she said she did not intend to make the matter public before the election but that she would place it before Council if he were reelected, or consider it closed if he were not reelected.

Recorder Arnold said that Mayor Dickinson, after receiving the determination of the Commonwealth's Attorney that no conflict of interest existed, had continued to promote the idea that he had such a conflict but had not submitted any such concerns to Council for an inquiry.

Recorder Arnold said that on April 28, just prior to the May 8 election, The Winchester Star had published a commentary by Bonnie Echols referencing his alleged conflict of interest and contrasting this with his opponent, her husband Alton Echols.

Recorder Arnold said that on December 21, 2018 an investigator from the State Police had met with an attorney representing a group of citizens.

Recorder Arnold read a memorandum (attached), dated January 26, 2018, in which Council had informed Mayor Dickinson that she had violated the Code of Conduct by making negative public comments on the performance of Chief White, directing Town staff and investigating citizen complaints outside proper channels with the Town manager, and expending excessive staff time and effort on fiscal matters Council regarded as being of minimal importance during budget preparation and amid other projects of significant dimensions.

Recorder Arnold said he had provided Council with copies of Mayor Dickinson's emails of October 11, 2017 and April 20, 2018. He said she had provided to the public and an association of citizens inaccurate information of an accusatory and defamatory nature without any investigation by Council occurring, and that she had threatened him via her aforementioned statement concerning the conditions under which she would make public his alleged conflict of interest.

Recorder Arnold asked for a motion finding the mayor in violation of the Code of Conduct.

Council member Harrison moved that the Council of the Town of Berryville find that Patricia Dickinson, Mayor, clearly violated the Code of Conduct as unanimously established by the Council. Council member McDonald seconded the motion.

Council did not have any questions. Mayor Dickinson said clarity of understanding would have been enhanced by Recorder Arnold providing documents in advance of the meeting. She said she had written the emails under discussion and that she had expressed to Council her concerns about the contract between the Town and Recorder Arnold's business. She said the opinion of the Commonwealth's Attorney clearly states that a conflict of interest exists and that this was the basis for her concern. She said had not been aware of Recorder Arnold's contract with the Town until she attended the forum at Mary Hardesty House, and that she did not know whether the citizens who shared their concerns with her had been aware of it before that time. Mayor Dickinson said she had contacted the County and had been told that there was a contract Recorder Arnold had secured via a public bidding process. She said it had then appeared to her that the arrangements were appropriate, and that she had explained this to the concerned citizens. She said she had then dropped the matter and taken no further action after learning of the contract and had no longer been concerned. She said she probably ought to have sent another email but did not think to do so. She said the contract did constitute a conflict of interest but that it does not violate the Conflict of Interests Act.

Mayor Dickinson said any member of Council should take appropriate action on any matter that could damage Council's reputation and that she had done this.

Recorder Arnold said he did not recall the matter ever being brought before Council. He said much of what occurred had been after the point at which Mayor Dickinson said her concerns had been laid to rest, that she had been in contact with the local attorney and members of the public about the matter after that point. He said she could have rectified matters but had chosen not to do so, with the result that charges were filed.

Mayor Dickinson said she was not aware that charges would be brought and reiterated that she had taken no further action after learning that the contract was in place.

Recorder Arnold said he was disappointed and that no member of Council should be subjected to such an experience. Council member Gibson concurred.

Council member McDonald questioned the appropriateness of the mayor's objection to Recorder Arnold not providing documents in advance of the meeting. She said the mayor had acted similarly on many occasions and had created confusion by doing so.

Recorder Arnold told Mayor Dickinson she had had in her possession the memorandum of January 26, 2018 and her own emails, and that it was she who had forwarded the attorney's documents to him.

Mayor Dickinson said she had tried to resolve the matter outside the public purview and that she had been surprised when charges were filed. Recorder Arnold said he had been shocked.

Council member Gibson said the matter could have been handled differently, especially the mayor's pre-election email, which indicated a lack of good faith. She said the controversy under discussion could have been averted if Recorder Arnold had been given the opportunity to answer questions from other Council members. She said free discussion should be possible on the Town Council and that the handling of this matter was disappointing.

Recorder Arnold said the wording of the mayor's pre-election email constituted a threat and that this was unnecessary and against the Code of Conduct. He said the matter could have been discussed in Council.

Recorder Arnold said the mayor sometimes refuses to sign checks if she questions the propriety of a transaction but that she had signed checks and other payments to his business on numerous occasions. Mayor Dickinson stated that she does not sign the credit card payments. Recorder Arnold noted that she authorizes fund transfers to make such payments.

Roll call vote as follows:

McDonald: Aye

Harrison: Aye

Gibson: Aye

Rodriguez: Aye

Arnold: Aye

Dickinson: Abstain

The motion passed.

Mayor

Mayor Dickinson had nothing to report.

12. Staff Reports

Public Works

Nothing was added to the written report submitted to the Council. Recorder Arnold thanked the Public Works department for its efforts on the Christmas tree and park.

Public Utilities

Nothing was added to the written report submitted to the Council.

Police Department

Chief White had nothing to add to his written report.

Community Development

Ms. Dunkle provided a request for Council to set bonds for public improvements and erosion and sediment controls for the Fellowship Square property currently being reviewed by the Planning Commission. She said the estimates were \$3,514,323 for public improvements and \$94,679 for erosion and sediment control.

Council member Harrison moved that the Council of the Town of Berryville approve the Public Improvements and Erosion and Sediment Control bonds as presented, including 25 percent contingencies for both, as follows:

| | |
|-------------------------------------|-----------------------|
| Public Improvements: | \$3,514,323.00 |
| Erosion and Sediment Control | \$94,679.00 |

Council member Gibson seconded the motion.

Roll call vote as follows:

McDonald: Aye
Harrison: Aye
Gibson: Aye
Rodríguez: Aye
Arnold: Aye
Dickinson: Aye

The motion passed.

Administration/Finance

Mr. Jacobs added nothing to the report submitted in the agenda packet and the additional report provided to Council at the meeting.

Town Manager

Mr. Dalton had nothing further to report.

13. Committee Updates

Budget and Finance

Ms. Gibson said the committee would meet for a budget work session on February 3. She ascertained from Mr. Jacobs that she would be able to participate in the upcoming budget software training to be provided to staff.

Community Development

Council member Rodriguez thanked the other committee members for allowing her to participate in the November meeting by telephone because of a child-care emergency. She said the committee had finished its recommendations for the economic development memorandum of understanding with the County and would polish them before presenting them to Council. She said the committee would next meet on January 27 to discuss the request for proposal for the branding and marketing study.

Mr. Dalton explained that when inspecting the Rixey Moore playground he had discovered an error in the proposed alignment of the new equipment Council had purchased. He said the Town would incur some extra cost for reinstalling the spring riders outside the expanded fall zone required by the new equipment. He said it also had been necessary to exclude one of the new items intended for installation.

Personnel, Appointments, and Policy

Recorder Arnold said a committee meeting had been scheduled for December 16 but that the planned addition of a deputy town manager was not yet ready as an agenda item. He said the committee needs to consider the reappointment of Ron Huff to the Clarke County Parks and Recreation Advisory Board and of Ms. Dunkle to the Clarke County Economic Development Advisory Committee. He said the committee could discuss the reappointments on the 16th and that it also was possible for Council to act in the present meeting.

Council member Rodriguez asked about the status of the deputy town manager position. Mr. Dalton said he had been working on an organization chart, job descriptions for the new position and for

current positions that would be affected by the restructuring, and an advertisement for the position. He said more time would be desirable. Recorder Arnold said he would prefer not to rush the matter.

Mayor Dickinson said she would prefer that the appointments be discussed when they can be treated as an agenda item to be placed before the public. The committee agreed to meet next in January rather than on December 16. The committee members agreed to handle the appointments at the next regular meeting of Council.

Public Safety

Council member McDonald said the committee had met in October to discuss garbage and refuse, which she described as a complex issue. She said she hoped the upcoming February 3 work session would result in Council taking action neither too soon nor too late. She recommended against moving too quickly, as winter and budget season and elections are all coming up. She said there are no pressing problems at present and that her preference as chair was to move slowly and allow Mr. Dalton ample discretion.

Council member McDonald said she was confused about what constitutes a member of a committee. She said her understanding was that committee members should attend all meetings of those committees and not just meetings treating topics of particular interest. Mayor Dickinson said she assumed the reference was to her remaining on the Public Safety Committee in order to follow through on trash-collection matters already in progress. Council member McDonald said this was correct. The mayor said she would attend all meetings of the committee.

Streets and Utilities

Council member Harrison said the committee had not met in November but that the new test lights had been deployed downtown. She urged everyone to observe the different types of lighting being tried. Mr. Dalton asked whether he was correct in his recollection that the committee had expressed interest in receiving public input via the Town website. Council member Harrison said this was correct and Mr. Dalton said staff would pursue this.

Council member Gibson recommended using Polco as a citizen engagement survey tool and described its operation. She said it is free and that the Town already has an account. Mr. Dalton said he would look into it.

Council member Harrison said the committee is waiting for a Town Run scope before scheduling its next meeting. She and the mayor and Mr. Dalton agreed on a February meeting.

Council member McDonald asked whether lighting would be standardized throughout the Town. There was a discussion of different lighting types and the wider applicability of the study outside the immediate downtown area. Council member McDonald said the Town must have the same standard

for everyone. Mr. Dalton said this is the case but Council possibly could deviate as needed, though this likely would involve additional costs.

Other

Council member Gibson provided further information on Polco.

14. Closed Session

There was no closed session.

15. Adjourn

Mayor Dickinson requested a motion to adjourn.

Council member Rodriguez moved to adjourn, seconded by Council member Gibson. The motion passed by consensus at 9:11 p.m.

Harry Lee Arnold, Jr., Recorder

Paul Culp, Town Clerk

COPY

Jay Arnold

From: Patricia Dickinson (Mayor) <mayordickinson@berryvilleva.gov>
Sent: Wednesday, October 11, 2017 3:42 PM
To: Jay Arnold (Council)
Subject: Conflict of Interest Act (COIA)

Importance: High
Sensitivity: Confidential

Jay, at the VML Mayors Institute I attended a work session on the Conflict of Interest Act (COIA). Based on what I learned at the conference I am concerned that, given your on-going business relationship with the town, you might be in violation of this Act. I suggest you seek a legal opinion on the matter.

Thanks, Pat

Patricia Dickinson
Mayor, Berryville Virginia
101 Chalmers Court, Suite A
Berryville, VA 22611
540 955 1099
www.berryvilleva.gov

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COPY

Jay Arnold

From: Patricia Dickinson (Mayor) <mayordickinson@berryvilleva.gov>
Sent: Friday, April 20, 2018 5:10 PM
To: Jay Arnold (Council)
Attachments: 4.6.18 Ltr to WIMC re-HLA COIA Violations (no exhibits).pdf; Exhibit 3 - Summary of CC Payments to Berryville Auto Parts FY 2017 .pdf

Importance: High
Sensitivity: Confidential

Jay,

At the Candidate Forum at Mary Hardesty House last week, I heard you say that you had received an opinion from the Commonwealth's Attorney confirming that you do not have a conflict of interest.

I was unaware that the Commonwealth's Attorney had rendered an opinion so I contacted her office and requested a copy of the opinion. In reading the opinion, issued last November, I learned that the Commonwealth's Attorney found that you do have a conflict of interest. She advised that, in order for you to not be in violation of the COIA, you must limit the total dollar value of all transactions between Berryville Auto Parts and the town of Berryville to less than \$5,000 per year, and, that no single transaction be more than \$500.

Just prior to receiving the Commonwealth's Attorney's opinion, a member of a group of Berryville citizens informed me that they had sought out a local attorney's legal opinion about the same issue. I was provided a copy of the legal opinion. The local attorney, without prior knowledge of the Commonwealth Attorney's opinion, analyzed the situation and also concluded that you have a conflict of interest. He also found that you have violated the COIA because the total value of all transactions in 2017 between you and the town was over \$8,000. He also noted that there were several transactions greater than \$500, including a \$1,899 transaction in December. I was able to secure an electronic version of the local attorney's opinion with one of the additional exhibits, which I have attached for your convenience.

It is not my intention to make this matter public prior to the election. However, if you are reelected, then I will bring the matter to Town Council. If you are not reelected then I would consider the matter closed.

If you would like to discuss these issues further, please call me. My cell phone number is 540-686-2928.

Thank you, Pat

Patricia Dickinson
Mayor, Berryville Virginia
101 Chalmers Court, Suite A
Berryville, VA 22611
540 955 1099
www.berryvilleva.gov

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VIA HAND-DELIVERY AND E-MAIL

April 6, 2018

Re: Legal Opinion Concerning Whether "Jay" Harold Arnold, Recorder for Berryville Town Council Is In Violation of the Virginia State and Local Government Conflict of Interests Act

To Whom It May Concern:

I am Timothy Johnson, an attorney in Berryville, Virginia, and I have been retained by an association of citizens from the Town of Berryville to provide a legal opinion as to whether the current Recorder for the Town of Berryville Town Council has violated the Virginia State and Local Government Conflict of Interests Act ("COIA"), and if re-elected to such position, and without modifying his current circumstances, would continue to violate COIA.

Background of COIA Issue.

Mr. Arnold is a lifelong resident of Berryville who has devoted much of his time to local public service including serving as a volunteer at the John H. Enders Volunteer Fire and Rescue Company for more than forty years. He has been a member of the Berryville Town Council since 2006, and has recently served a four-year term of office as the Town Council's Recorder. Mr. Arnold also owns and operates Berryville Auto Parts, Inc., located at 111 W. Main St. in Berryville. (See Exhibit 1 for a copy of Mr. Arnold's statement of economic interests required pursuant to Va. Code § 2.2-3115.)

Town of Berryville personnel, especially the Police Department's staff, routinely use Berryville Auto Parts for vehicle repairs, diagnostic services, and part replacements. (See Exhibit 2 for a compilation of publicly-accessible Berryville Town Council meeting minutes' sections reflecting town government staff's credit card usage. Payments to Berryville Auto Parts are highlighted by yellow outline boxes.) Upon information and belief, there is a policy in place requiring staff to preference goods and services from local businesses, but there are no formal policies requiring town government staff to purchase goods or services from Berryville Auto Parts over any other local mechanic or automotive parts store.

For Fiscal Year 2017, Berryville Auto Parts was paid \$9,373.24 (including two occasions where money was credited back) from government-issued staff credit cards that are paid for by the Town of Berryville. (See Exhibit 3 for a spreadsheet summarizing monies paid to Berryville Auto Parts from Exhibit 2.)

On March 13, 2018, a concerned citizen of Berryville contacted the Virginia Conflict of Interest and Ethics Advisory Council ("VCIEAC") requesting an informal opinion as to whether Mr. Arnold's position as a Town Council member while owning and operating his business, Berryville Auto Parts, Inc. as it receives payments from town government personnel constitutes a

violation of COIA. (See Exhibit 4 for a redacted version of the e-mail communications between a citizen of Berryville and the counsel for the Virginia Conflict of Interest and Ethics Council.) VCIEAC counsel opined that based on the factual scenario the citizen presented, that Mr. Arnold appeared to maintain a "personal interest in the contract with the [town] council" per the COIA definitions. She further cited common permissible exemptions used that permit such "personal interests," but was unable to opine if there was an actual violation due to insufficient information.

Relevant Portions of the Virginia State and Local Government Conflict of Interests Act.

The Virginia State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 *et seq.*) was passed to ensure that the "judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests." Va. Code § 2.2-3100. The law is to be "liberally construed to accomplish its purpose." *Id.*

COIA defines an "officer" as "any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office." Va. Code § 2.2-3101.

COIA defines "governmental agency" as any "component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties." *Id.*

COIA defines a "contract" as:

"any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof."

Id.

COIA further defines a "personal interest" as:

"a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership of a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed \$5,000 annually . . ."

Id.

COIA further defines "personal interest in a contract" as "a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is party to the contract." *Id.*

COIA provides that "[n]o person elected or appointed as a member of the governing body of a county, city, or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member . . ." Va. Code § 2.2-3107.

Exceptions for "personal interest in contract" situations involving local government officials are provided for in Va. Code § 2.2-3107 and § 2.2-3110.

Most civil and criminal remedies for violations of COIA trigger once an officer has knowledge that his conduct violates COIA, but continues engaging in that same conduct. *See generally* Va. Code §§ 2.2-3120 through 3122; § 2.2-3124.

COIA's Application to Mr. Arnold's Situation as Town Recorder.

The Town of Berryville is unquestionably, a legally recognized local government, and its town council is the legislative component of that government. (*See Exhibit 5 for a copy of Berryville's Town Charter, last amended in 1994.*) As such, the town council of Berryville constitutes a "governmental agency" under COIA.

Mr. Arnold is the Recorder of the Town of Berryville Town Council, which is an elected official position. Exhibit 5, § 3.1; § 3.8. As such, Mr. Arnold is an "officer" under COIA.

Per COIA's definition of "personal interest," Mr. Arnold maintains a personal interest in Berryville Auto Parts, Inc. as an owner and employee of the business. Exhibit 1.

Each time that a Town of Berryville staff member paid Berryville Auto Parts with a government-issued credit card, that transaction constitutes a "contract" under COIA since the monies paid were appropriated from the Town of Berryville budget, as well as each staff member was acting in their official capacities as Town of Berryville employees. *See also* Exhibit 4 for VCIEAC counsel's opinion that "money paid by the town to the town recorder's auto shop for services provided by the shop qualifies as a contract under [COIA]."

Since Mr. Arnold maintains a personal interest in Berryville Auto Parts as an owner and employee, he also maintains personal interests in each contract that Berryville Auto Parts engages in with Berryville government staff. Va. Code § 2.2-3107 prohibits Mr. Arnold from having personal interests in contracts between himself (or his businesses) and the Town of Berryville.

My office has reviewed Va. Code §§ 2.2-3107 and 2.2-3110 for possible exceptions that permit Mr. Arnold to maintain personal interests in contracts with the Town of Berryville and have reviewed two apparently applicable provisions.

Personal interests in contracts are permissible between: (1) the government of a town with a population of less than 10,000; (2) and an officer of that town government; (3) when the total of such contracts between the government and the officer of that government, or a business controlled by him does not exceed \$5,000 per year; (4) and that the officer filed an economic disclosure statement pursuant to § 2.2-3115. *See* Va. Code § 2.2-3110(A)(3).

The Town of Berryville's population is within the threshold for the first element of the exception (per U.S. Census 2010, it maintained a population of 4,185 people), and it has already been established that Mr. Arnold is an officer of the Town of Berryville. Upon information and belief, Mr. Arnold has also complied with requirements to file his economic disclosure statements in prior years.

However, upon review of the Town of Berryville monthly credit card statements, in 2017 alone, town staff paid Berryville Auto Parts a total of \$9,373.24 across more than seventy contracts. Since the payments total more than \$5,000, it appears that the excess payments may be in violation of COIA.

Another notable exception is for contracts for the purchase of goods or services that do not exceed \$500. See Va. Code § 2.2-3110(A)(7).

Upon review of those same documents mentioned, six contracts exceeded \$500.00 (totaling \$5,162.11). Those contracts appear to be in violation of COIA.

Unlike in corporate law, COIA does not permit the remainder of a disinterested governmental agency body from "waiving" an officer's interest in a contract to permit an otherwise prohibited personal interest in a contract. The Office of the Attorney General has previously opined that in the case of a private charter school relying on laws to relieve it from adhering to "state regulations," that:

"[t]he provisions of the State and Local Government Conflict of Interests Act are not "regulations" within the ordinary meaning of the term. It is reasonable to conclude that the Board of Education has the power to exempt public charter schools from the requirements of its own regulations, but nothing in the public charter school laws suggests that the Board may waive the requirements of state law, let alone state laws unrelated to the Board's authority."

Office of Attorney General Op. No. 03-041.

My office is unaware of any other law that would relieve Mr. Arnold of his personal interests in the contract that would take precedence over COIA. COIA expressly laid out applicable exemptions within its chapter, and maintains a scope inclusive of both state and local government officers. Further, the Virginia Conflict of Interest and Ethics Advisory Council has opined that:

"... an impermissible personal interest in a contract under either the General Assembly Conflicts of Interests Act or the State and Local Government Conflict of Interests Act does not become permissible merely because the contract fits into one of the exceptions or limitations provided for in the Virginia Public Procurement Act. In order for such a contract to be permissible, it must meet one of the exceptions that are specifically listed in the appropriate conflict act."

VCIEAC Formal Advisory Opinion 2017-F-002.

Legal Conclusions.

Based upon the information presented, attached exhibits, and legal sources reviewed, I opine as to the following legal conclusions:

1. Mr. Harold "Jay" Arnold is an officer of the Town of Berryville, which is a governmental agency, as those terms are defined under the Virginia State and Local Government Conflict of Interests Act.
2. Per the definitions of the Virginia State and Local Government Conflict of Interests Act, by owning and/or being an employee of Berryville Auto Parts, Inc., Mr. Arnold has a personal interest in any contract where Berryville Auto Parts, Inc. exchanges money for goods or services with Town of Berryville staff members whom are paying for those goods or services with monies appropriated from the Town of Berryville.
3. In fiscal year 2017, Mr. Arnold appears to have violated the Virginia State and Local Government Conflict of Interests Act, on six specific occasions by permitting Berryville Auto Parts, Inc. to engage in contracts with the Town of Berryville with each contract's value exceeding \$500.00.
4. In fiscal year 2017, Mr. Arnold appears to have violated the Virginia State and Local Government Conflict of Interests Act by permitting Berryville Auto Parts, Inc. to engage in contracts with the Town of Berryville totaling \$9,373.24 of contract value, exceeding the permissible amount of \$5,000, by \$4,373.24.
5. If Mr. Arnold were re-elected to Town Council as its Recorder, to ensure compliance with the Virginia State and Local Government Conflict of Interests Act, he would need to impose restrictions on Berryville Auto Parts, Inc. while engaging in contracts with the Town of Berryville by limiting contracts to no more than \$500.00, and capping the total of contract values to \$5,000.00.

This opinion is based upon my office's review of the information provided, and the legal sources reviewed. If new information is presented that impacts the factual circumstances or applicability of the laws reviewed, I would be more than happy to review that information, and if necessary, revise my legal opinion accordingly. If you have any questions or requests for additional information that may help you understand this legal opinion, please do not hesitate to contact me.

Truly yours,

/ s /

Timothy R. Johnson

Payments to Berryville Auto Parts from Town Personnel in FY 2017

Statement

| January | Payment |
|---------|------------|
| 5-Jan | \$9.99 |
| 6-Jan | \$74.65 |
| 6-Jan | \$77.87 |
| 12-Jan | \$48.99 |
| 12-Jan | \$192.26 |
| 13-Jan | \$97.98 |
| 16-Jan | \$1,053.52 |
| 17-Jan | \$63.63 |

| February | Payment |
|----------|---------|
| 8-Feb | \$36.00 |
| 20-Feb | \$7.64 |

Statement

| March | Payment |
|--------|----------|
| 2-Mar | \$185.15 |
| 22-Mar | \$9.72 |
| 23-Mar | \$103.21 |
| 24-Mar | \$25.98 |
| 27-Mar | \$29.67 |
| 27-Mar | \$14.39 |
| 27-Mar | -\$14.39 |

*veh repair
veh Rep*

| April | Payment |
|--------|----------|
| 6-Apr | \$41.02 |
| 26-Apr | \$605.46 |
| 26-Apr | \$22.00 |
| 26-Apr | \$7.59 |

Statement

| May | Payment |
|--------|----------|
| 1-May | \$7.44 |
| 4-May | \$322.87 |
| 8-May | \$9.99 |
| 8-May | \$92.23 |
| 29-May | \$465.97 |

Statement

Statement

| June | Payment |
|--------|-----------|
| 1-Jun | \$143.10 |
| 1-Jun | -\$465.97 |
| 2-Jun | \$4.39 |
| 19-Jun | \$15.20 |
| 19-Jun | \$362.31 |
| 20-Jun | \$32.62 |
| 22-Jun | \$1.57 |
| 22-Jun | \$12.00 |
| 26-Jun | \$35.90 |

| July | Payment |
|--------|---------|
| 5-Jul | \$82.99 |
| 12-Jul | \$16.00 |
| 21-Jul | \$14.56 |
| 24-Jul | \$24.20 |
| 24-Jul | \$67.45 |
| 26-Jul | \$4.04 |
| 31-Jul | \$8.56 |
| 31-Jul | \$5.21 |

| August | Payment |
|--------|----------|
| 9-Aug | \$55.95 |
| 16-Aug | \$54.97 |
| 21-Aug | \$13.68 |
| 21-Aug | \$37.37 |
| 23-Aug | \$679.97 |
| 28-Aug | \$4.62 |
| 31-Aug | \$5.98 |

| September | Payment |
|-----------|----------|
| 11-Sep | \$19.39 |
| 14-Sep | \$5.96 |
| 21-Sep | \$34.99 |
| 21-Sep | \$223.47 |
| 25-Sep | \$5.96 |

| October | Payment |
|---------|---------|
| 2-Oct | \$20.89 |
| 9-Oct | \$38.68 |
| 9-Oct | \$2.99 |
| 13-Oct | \$53.69 |
| 30-Oct | \$6.57 |

| November | Payment |
|----------|----------|
| 1-Nov | \$2.81 |
| 6-Nov | \$27.92 |
| 6-Nov | \$20.11 |
| 6-Nov | \$19.70 |
| 10-Nov | \$8.63 |
| 13-Nov | \$923.98 |
| 13-Nov | \$9.67 |

| December | Payment |
|----------|------------|
| 1-Dec | \$250.41 |
| 1-Dec | \$70.69 |
| 1-Dec | \$3.91 |
| 4-Dec | \$34.07 |
| 8-Dec | \$12.89 |
| 21-Dec | \$1,899.18 |

Statement

Total Amount Paid Including Amounts Under \$500.00

\$8,504.06

Total Amount Paid Excluding Amounts Under \$500.00

\$5,162.11

COPY

MEMORANDUM

January 26, 2018

Patricia Dickinson, Mayor
Town of Berryville
413 Montgomery Court
Berryville, Virginia 22611

Dear Pat,

As you will recall over the last several months at work sessions and council meetings the council has expressed concerns over the continued number of projects and tasks being asked of staff and the use of time and resources. In the last several weeks we have watched the number of emails that request information and the handling of citizen concerns and the lack of support of staff. Each council member on their own accord has reviewed this information. Based on this information you have clearly violated the Town of Berryville Code of Conduct as unanimously established by council. Specifically:

1. "Respect of council members, citizens, staff and employees"

Your accusations of Police Department Officers of inaccurate information to citizens regarding your contact information. Statement to citizens of "your disappointment with response from Police Chief White"

2. "Direction of Town Staff for a meeting with Chief White"

Clearly states that any action must go through the Town Manager.

3. "Forwarding of any citizen complaints to the Town Manager"

In the matter of refuse disposal, the whole matter should have been handled by the Town Manager and staff. You continued to try to investigate and draw conclusion for several days when the bigger concern was a police matter with neighbor against neighbor. Typically, a citizen will most always complain when they do not get the answer that supports their complaint.

4. "Concerns about employees or staff to the Town Manager"

Your attempt to investigate the Police Officer that handled this call and what was said, here again is a police matter that they were handling. Your request for information and to setup a meeting with Police Chief White without inclusion of the Town Manager. Whereas you should have taken your concerns to the Town Manager then if necessary a meeting could be held seeking additional information and clarification.

COPY

The continued request to gain information about the Josephine Street incident. This is strictly a police investigation and not a Town Council issue. Often Mr. Dalton attempts to keep us informed of these incidents although it is not required of him to do so. We receive limited information due to the ongoing police investigation, the Police Department is not able to provide us with specific information. Regardless of what rumors may be going around we are in a position that we cannot provide any information or clarification related to any active criminal investigation.

All councilors are certainly aware that we wish to help the citizens as best as we can to provide a response to their inquiries, however, sometimes we are limited in the amount of information we have or are allowed, to provide them. As you are aware the Town and Council are always under a microscope and subject to litigation on most anything. That is why it is important we handle all citizen concerns in the same manner by forwarding all concerns to the Town Manager to handle. This way each incident is documented, and the proper response is made and recorded for any future actions that may be necessary and the whole council is notified of any future incidents that may arise that council would have to deal with. Often, we as councilors want to provide answers when in fact it may not be accurate and then becomes confusing when Council says one thing and Staff has to say something else. If we have the same person handling all these things it provides continuity. It is imperative that we support our staff.

Regarding FIOA requests, as you know we are required to have designated staff that have been provided training to meet very strict guidelines and time lines. We are required to respond, however providing improper information or comments subjects the Town to possible litigation. In the case of Mr. Poe, you submitted this as a FIOA request and Chief White responded to this inquiry as a FIOA request. This was not a request for a copy of a document that was available, but rather a series of questions and inquiry as to the operations and procedures of the Police Department. Many of the questions that were submitted involved the active investigation of the incident and would not be available for citizens to see or receive a response. Chief White made the proper response in this matter.

As you know town staff is busy working on all aspects of the budget and are on a tight deadline. They are working on three leases, the home owner's association trash collection project, day to day operations as well as assisting the Council as our needs arise. All of this at the direction of council. Recently you had requested information about PCard charges of 62 cents for several months. As we have seen the emails going through we are concerned that this has involved at least three different staff working several days to reproduce information, purchase orders etc. to justify these minimum charges. This was not a good use of resources.

The Town of Berryville is governed under the Council-Manager form of Government. Most of the Council is supportive of Mr. Dalton and his day to day operations of the Town and to all the staff and departments. This Council including the Mayor and Town Recorder should not find themselves in a position, of managing day to day operations as we have very capable staff if we allow them to perform their duties. If the entire council feels that the Town Manager is not operating in a manner that we feel would be beneficial to the Town, then the Council should meet and provide additional directions and responsibilities.

COPY

We hope you understand our position and that this gives you the opportunity to re-evaluate your actions and the way we operate as a Town and the Council. This Council is always available to offer and provide guidance whenever necessary to assist you.

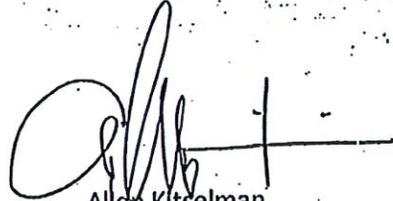
Sincerely,



Harry Lee "Jay" Arnold Jr.
Town Recorder



Donna McDonald
Councilor Ward 1



Allen Kitselman
Councilor Ward 2



Erecka Gibson
Councilor Ward 3



Dave Toilett
Councilor Ward 4

**Berryville Town Council Item Report Summary
January 14, 2020**

Item Title

Staff Reports - Public Works

Prepared By

Rick Boor, Director of Public Works

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. Report of the Department of Public Works JAN 6 2020

Recommendation

Sample Motion

Report of the Department of Public Works January 6, 2020

We experienced one water break last month. On December 22, I was notified by Central Alarm about a possible water main break on Rice Street. Public Works responded and found the four inch water main had broken and was causing a moderate amount of water loss.

After calling in our emergency Miss Utility Ticket we began to mobilize and set up our street closure and getting our equipment to the scene. Once we excavated we found the four inch water main had a circular break. We were able to abate the problem by using a four inch stainless rap around sleeve. . We were able to reduce the water pressure and apply the repair sleeve without any customers losing water.

On December 17th we encountered a sewer pump station failure. While Public Works was conducting are daily sewer pump stations inspections, we found the Josephine Street East Pump Station was experiencing a pump failure.

Since this repair was going to require us to pull the pump we contacted Broy & Son Pump Service to assist us with this repair. Once the pump was removed they found a large number of heavy towels and rags had impacted the pump impeller and were causing the pump failure. Once the pump was cleared of all debris, it was returned to the wet well, and the station was put back into service.

Our area experienced two small rounds of winter precipitation last month. Both winter weather events were small, but still required Public Works to apply salt and abrasives to the roadways and town owned sidewalks. Our snow removal equipment worked well and has been serviced and ready for our next round of winter weather.

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Staff Reports - Public Utilities

Prepared By

Dave Tyrrell, Utilities Director

Background/History/General Information

December 2019 Operations Report

The Water Treatment Plant continues to meet requirements and operational parameters for the month of December. We have provided the Town with a total of 9.86 MG of water with a daily average production of 0.394 MG and a max daily production of 0.539 MG.

There are no concerns for drought at this time but the river continues to flow below averaged historical levels.

The wastewater plant continues to operate well. We had total discharge flow of 8.94 MG with an average daily flow of 0.29 MG and a daily max of 0.51 MG.

NOTE - Due to a computer glitch at the wastewater treatment plant we are not able to provide the operational report for your review at this time. The first page of the Water Treatment Plant monthly operation report is attached. Please note this report has not yet received final review for submittal to VDH.

Findings/Current Activity

Water Treatment Operational Issues and Info

We have had several operational issues with finish pump #2 simply shutting down for no apparent reason. Working with Consolidated Electric, we went through all wiring in the motor feed and control system looking for a problem. The pump is currently working and we believe that our going through and checking the wiring connections may have eliminated an issue from corrosion. Like wise we had some minor issues with electrical circuits feeding several outlets in the process control area. Staff had to replace the breaker, GFI, and all outlets on the circuit to fully return power to all areas of the facility. This work was completed in house.

A new pressure sensor has been installed on the finish water transmission main by Instrulogic. This sensor is monitored by the SCADA system and is set to trip an alarm and start calling personnel any time the line pressure drops below 55 psi. This alarm will aid in getting staff on site more quickly in the event of a transmission line break. This sensor will also shut down the finish pump in the event of a low pressure condition to prevent the pump from further exacerbating any damage that may occur from a transmission line break when the water facility is operating.

Pennoni Engineering has found a company that can supply us with replacement finish pumps and a

quote for the replacements has been received. They are also putting the finishing touches on the electrical design to more fully meet our needs and preparing bid documents for the electrical portion of the finish pump upgrade and replacement project.

Wastewater Treatment Operational Issues and Info

Nutrient removal at the wastewater plant was very good in December. We expect to be in full compliance for the 2019 calendar year with nutrient discharge limitations once all data is received from our laboratory.

On 12/27/2019 we started losing solids through membrane train #4. Operations staff found the problem immediately and was able to isolate the problem and avoid a biosolids discharge. We have isolated the train from service and have pulled and found damaged membrane cartridges. Conversations with SUEZ has told us these units can be repaired. A quote is coming for repair parts and a special tool to perform the work in house.

Non potable pump #1 is out of service for repair. We have replaced the rotating assembly but are in need of a new wear plate. The part has been ordered and the pump will be returned to service once the part is in.

Operations has processed 252,654 gallons of biosolids in December and completed 150 work orders between all facilities.

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. Water Treatment Plant MOR Page #1

Recommendation

Sample Motion

No. Connections Served: 1690
 Population Served: 4185

FLOWS AND CHEMICAL DOSAGES

| DATE | Raw Water Treated MGD | Finished Water Produced MGD | Finished Water Delivered MGD | Hours in Service | Alum | | Carbon | | Chlorine | | Fluoride | | Polymer | | KMnO4 | | Soda Ash | | Chlorine | | Corr Inhibitor | |
|---------|-----------------------|-----------------------------|------------------------------|------------------|-------------|-------|-------------|------|-------------|---------|-------------|------|-------------|-------|-------------|------|-------------|---------|-------------|-------|----------------|---------|
| | | | | | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L | Lbs per Day | mg/L |
| 2 | 0.516 | | 0.440 | 15.5 | 41 | 9.4 | 3 | 0.6 | | | 6.6 | 1.54 | 4.851 | 1.127 | 4.1 | 1.0 | | | 17.2 | 4.0 | | |
| 3 | 0.601 | | 0.531 | 17.5 | 41 | 8.1 | 3 | 0.5 | | | 7.0 | 1.40 | 0.071 | 0.014 | 4.6 | 0.9 | | | 16.1 | 3.2 | | |
| 4 | 0.626 | | 0.539 | 18.5 | 41 | 7.8 | 3 | 0.5 | | | 3.3 | 0.63 | 0.079 | 0.015 | 4.9 | 0.9 | | | 20.4 | 3.9 | | |
| 5 | 0.559 | | 0.482 | 17.5 | 41 | 8.7 | 3 | 0.7 | | | 3.3 | 0.70 | 0.088 | 0.019 | 4.6 | 1.0 | | | 18.3 | 3.9 | | |
| 6 | 0.374 | | 0.519 | 12.0 | 41 | 13.0 | 7 | 2.2 | | | 7.0 | 2.23 | 0.071 | 0.023 | 3.2 | 1.0 | | | 15.1 | 4.8 | | |
| 7 | 0.277 | | 0.235 | 8.0 | 15 | 6.6 | 2 | 0.7 | | | 3.3 | 1.44 | 0.035 | 0.015 | 0.9 | 0.4 | | | 8.6 | 3.7 | | |
| 9 | 0.460 | | 0.399 | 11.0 | 35 | 9.2 | 3 | 0.7 | | | 3.4 | 0.89 | 0.062 | 0.016 | 1.3 | 0.3 | | | 14.0 | 3.6 | | |
| 10 | 0.558 | | 0.484 | 16.0 | 41 | 8.7 | 4 | 0.8 | | | 6.6 | 1.43 | 0.071 | 0.015 | 1.9 | 0.4 | | | 15.1 | 3.2 | | |
| 11 | 0.541 | | 0.472 | 15.0 | 41 | 9.0 | 4 | 0.8 | | | 3.6 | 0.79 | 0.071 | 0.016 | 1.8 | 0.4 | | | 14.0 | 3.1 | | |
| 12 | 0.540 | | 0.474 | 15.0 | 41 | 9.1 | 5 | 1.1 | | | 6.9 | 1.54 | 0.034 | 0.008 | 1.8 | 0.4 | | | 15.1 | 3.3 | | |
| 13 | 0.540 | | 0.468 | 15.0 | 35 | 7.9 | 4 | 0.8 | | | 3.2 | 0.71 | 0.066 | 0.015 | 1.8 | 0.4 | | | 17.2 | 3.8 | | |
| 14 | | | | | | | | | | | | | | | | | | | | | | |
| 15 | 0.238 | | 0.207 | 6.5 | 20 | 10.2 | 1 | 0.7 | | | 3.6 | 1.61 | 0.028 | 0.014 | 0.8 | 0.4 | | | 6.5 | 3.2 | | |
| 16 | 0.448 | | 0.361 | 13.3 | 35 | 9.5 | 2 | 0.6 | | | 3.1 | 0.84 | 0.055 | 0.015 | 1.6 | 0.4 | | | 9.7 | 2.6 | | |
| 17 | 0.396 | | 0.348 | 13.0 | 25 | 7.7 | 2 | 0.7 | | | 3.4 | 1.03 | 0.048 | 0.015 | 1.5 | 0.5 | | | 11.8 | 3.6 | | |
| 18 | 0.477 | | 0.415 | 14.0 | 35 | 8.9 | 3 | 0.8 | | | 3.5 | 0.87 | 0.061 | 0.015 | 1.6 | 0.4 | | | 11.8 | 3.0 | | |
| 19 | 0.335 | | 0.467 | 14.0 | 30 | 6.8 | 4 | 0.8 | | | 3.6 | 0.80 | 0.061 | 0.014 | 1.6 | 0.4 | | | 10.8 | 2.4 | | |
| 20 | 0.201 | | 0.296 | 13.0 | 25 | 15.1 | 3 | 1.7 | | | 3.4 | 2.00 | 0.070 | 0.042 | 1.5 | 0.9 | | | 10.8 | 6.4 | | |
| 21 | 0.169 | | 0.149 | 5.0 | 15 | 10.8 | 1 | 0.9 | | | 3.3 | 2.31 | 0.035 | 0.025 | 0.6 | 0.4 | | | 7.5 | 5.3 | | |
| 23 | 0.498 | | 0.427 | 13.3 | 35 | 8.5 | 4 | 0.9 | | | 3.5 | 0.84 | 0.060 | 0.014 | 1.6 | 0.4 | | | 15.0 | 3.6 | | |
| 24 | | | | | | | | | | | | | | | | | | | | | | |
| 25 | | | | | | | | | | | | | | | | | | | | | | |
| 26 | 0.513 | | 0.461 | 14.4 | 35 | 8.3 | 3 | 0.8 | | | 6.6 | 1.54 | 0.060 | 0.014 | 1.7 | 0.4 | | | 16.1 | 3.8 | | |
| 27 | 0.542 | | 0.482 | 15.2 | 46 | 10.1 | 3 | 0.8 | | | 3.5 | 0.77 | 0.070 | 0.015 | 1.8 | 0.4 | | | 15.0 | 3.3 | | |
| 28 | 0.224 | | 0.196 | 6.1 | 10 | 5.4 | 2 | 0.9 | | | 3.3 | 1.77 | 0.030 | 0.016 | 0.7 | 0.4 | | | 6.5 | 3.5 | | |
| 29 | 0.148 | | 0.128 | 4.0 | 10 | 8.2 | 2 | 1.3 | | | 0.1 | 0.11 | 0.015 | 0.013 | 0.5 | 0.4 | | | 4.3 | 3.5 | | |
| 30 | 0.470 | | 0.415 | 15.0 | 35 | 9.0 | 2 | 0.6 | | | 3.5 | 0.88 | 0.057 | 0.015 | 1.6 | 0.4 | | | 14.0 | 3.6 | | |
| 31 | 0.531 | | 0.467 | 15.5 | 41 | 9.2 | 3 | 0.7 | | | 6.6 | 1.48 | 0.071 | 0.016 | 1.8 | 0.4 | | | 14.0 | 3.2 | | |
| Total | 10.983 | 0.000 | 9.860 | 323.2 | 612 | 225.3 | 75 | 21.7 | 0.0 | 0.00 | 106.2 | 30.4 | 6.22 | 1.524 | 50 | 13.2 | 0.0 | 0.00 | 324.8 | 91.70 | 0.0 | 0.00 |
| Maximum | 0.626 | 0.000 | 0.539 | 18.5 | 46 | 15.1 | 7 | 2.2 | 0.0 | 0.00 | 7.0 | 2.3 | 4.85 | 1.127 | 5 | 1.0 | 0.0 | 0.00 | 20.4 | 6.41 | 0.0 | 0.00 |
| Minimum | 0.148 | 0.000 | 0.128 | 4.0 | 10 | 5.4 | 1 | 0.5 | 0.0 | 0.00 | 0.1 | 0.1 | 0.02 | 0.008 | 0 | 0.3 | 0.0 | 0.00 | 4.3 | 2.41 | 0.0 | 0.00 |
| Average | 0.439 | 0.000 | 0.394 | 12.9 | 32 | 9.0 | 3 | 0.9 | #DIV/0! | #DIV/0! | 4.2 | 1.2 | 0.25 | 0.061 | 2 | 0.5 | #DIV/0! | #DIV/0! | 13.0 | 3.67 | #DIV/0! | #DIV/0! |

SIGNED: (OPERATOR IN RESPONSIBLE CHARGE)

RAW WATER SOURCE(S) USED DURING MONTH: (SOURCE/DATES)

PRINTED NAME: David A Tyrell

Shenandoah River - Entire Month

TITLE: OPERATOR CLASSIFICATION
 DPOR CERTIFICATION NO.

Class 1
 1955002813

**Berryville Town Council Item Report Summary
January 14, 2020**

Item Title

Staff Reports - Police Department

Prepared By

Neal White, Chief of Police

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. Council Jan 20
2. December 2019

Recommendation

Sample Motion



Berryville Police Department

101 Chalmers Ct., Suite A, Berryville, Virginia 22611

policeadmin@berryvilleva.gov

(540) 955-3863 (540) 955-0207 (Fax)

W. Neal White – Chief of Police

MEMO

DATE: 01/06/2020

TO: Town Council

FROM: Chief W. Neal White

CC:

RE: Police Department Monthly Report – 01/14/2020

Monthly Activity Report

The activity report for the month of December 2019 is attached to this memo.

Annual Activity Report

The year end report for 2019 is in the process of being compiled. The department did see a 14% increase in calls for service in 2019 over the previous year. Additionally, total arrests were up 17% over 2018 with arrests for drug offenses spurring a majority of the increase.

Public Safety Committee

The Public Safety Committee did not meet in December 2019. The next scheduled meeting for the Committee is January 27, 2020 at 13:00 pm in the A/B meeting room.

Community Events

The holiday toy drive was a huge success with several cruiser loads of toys going to the Clarke County Department of Social Services for distribution. A huge thanks is in order for everyone who donated to this effort and to Officer Joe Shoremount and Leslie Kelley for again organizing and spreading the word about this program.



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Police and Security Report

| | Year To Date | December | November |
|-----------------------------------|--------------|------------|------------|
| Month: December | 2019 | 2019 | 2019 |
| Year: 2019 | | | |
| <u>Complaints Answered</u> | | | |
| 911 Hang Up: | 28 | 8 | 4 |
| Alarms: | 194 | 13 | 10 |
| Animal Complaint: | 142 | 7 | 8 |
| Assault: | 11 | 0 | 3 |
| Assist County: | 29 | 5 | 2 |
| Auto Larceny: | 1 | 1 | 0 |
| Burglary: | 6 | 0 | 2 |
| Civil Complaints: | 68 | 6 | 5 |
| Disturbance: | 31 | 3 | 4 |
| Domestic Disturbance: | 23 | 1 | 4 |
| Drunk In Public: | 8 | 0 | 1 |
| Assist EMS and Fire: | 95 | 54 | 41 |
| Fraud: | 33 | 3 | 5 |
| Larceny: | 41 | 5 | 2 |
| Harassment/Intimidation: | 42 | 3 | 1 |
| Homicide: | 0 | 0 | 0 |
| Juvenile Related: | 29 | 1 | 2 |
| Noise: | 65 | 6 | 7 |
| Public Service: | 9 | 1 | 0 |
| Rape: | 0 | 0 | 0 |
| Robbery: | 1 | 0 | 0 |
| Runaway: | 0 | 0 | 0 |
| Shoplifting: | 0 | 0 | 0 |
| Suspicious Activity: | 149 | 15 | 9 |
| Trespassing: | 7 | 0 | 0 |
| Vandalism: | 29 | 0 | 3 |
| Welfare Check: | 132 | 16 | 7 |
| Mental Health Crisis | 84 | 10 | 4 |
| Miscellaneous Complaints: | 1029 | 40 | 45 |
| Total Complaints Answered: | 2286 | 198 | 169 |



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W. Neal White – Chief of Police

Police and Security Report (Continued)

| | Year To Date | December | November |
|--|--------------|-----------|-----------|
| | 2019 | 2019 | 2019 |
| <u>Traffic</u> | | | |
| Accidents Investigated: | 45 | 4 | 3 |
| Assist Motorist: | 1 | 0 | 0 |
| Child Safety Seat Install: | 18 | 1 | 0 |
| Funeral Escort: | 28 | 1 | 4 |
| Hit & Run: | 10 | 3 | 4 |
| Parking Tickets: | 696 | 8 | 20 |
| Traffic Warnings: | 368 | 25 | 45 |
| <u>Traffic Summons Issued</u> | | | |
| Defective Equipment: | 0 | 0 | 0 |
| Driving Suspended: | 7 | 0 | 0 |
| Expired Inspection: | 58 | 1 | 4 |
| Expired Registration: | 23 | 2 | 4 |
| Fail to Obey Highway Sign: | 64 | 4 | 2 |
| Fail to Obey Traffic Signals: | 10 | 2 | 0 |
| Fail to Stop/Lights & Siren: | 0 | 0 | 0 |
| Fail to Yield Right of Way: | 6 | 1 | 0 |
| Hit and Run: | 0 | 0 | 0 |
| No Liability Insurance: | 1 | 0 | 0 |
| No Operator's License: | 13 | 2 | 0 |
| No Seat Belt: | 3 | 0 | 0 |
| Reckless Driving: | 13 | 1 | 1 |
| Speeding: | 154 | 9 | 15 |
| Miscellaneous Summons: | 42 | 7 | 5 |
| Total Traffic Summons Issued: | 394 | 29 | 31 |
| <u>Found Open at Businesses in Town</u> | | | |
| Doors: | 17 | 3 | 1 |
| Windows: | 0 | 0 | 0 |
| Garage Doors: | 0 | 0 | 0 |



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W. Neal White – Chief of Police

Police and Security Report (Continued)

| | Year To Date | December | November |
|---|--------------|----------|----------|
| | 2019 | 2019 | 2019 |
| <u>Criminal Arrests Made</u> | | | |
| Abduction: | 0 | 0 | 0 |
| Arson: | 0 | 0 | 0 |
| Assault and Battery: | 8 | 0 | 1 |
| Assault and Battery on Police Officer: | 0 | 0 | 0 |
| Auto Larceny: | 0 | 0 | 0 |
| Breaking and Entering: | 0 | 0 | 0 |
| Capias: | 5 | 0 | 1 |
| Disorderly Conduct: | 0 | 0 | 0 |
| Driving Under the Influence: | 10 | 2 | 1 |
| Drunk In Public: | 9 | 0 | 1 |
| Fail to Obey Police Officer: | 0 | 0 | 0 |
| Fail to Pay Parking Ticket: | 9 | 0 | 0 |
| Forgery: | 0 | 0 | 0 |
| Fraud: | 2 | 0 | 0 |
| Grand Larceny: | 0 | 0 | 0 |
| Homicide: | 0 | 0 | 0 |
| Illegal Drugs/Paraphernalia: | 15 | 2 | 1 |
| Petty Larceny: | 1 | 0 | 0 |
| Possess Alcohol Underage: | 5 | 0 | 0 |
| Protective Order Violations: | 1 | 0 | 0 |
| Rape: | 0 | 0 | 0 |
| Resisting Arrest: | 1 | 0 | 0 |
| Robbery: | 0 | 0 | 0 |
| Shoplifting: | 0 | 0 | 0 |
| Trespassing: | 1 | 0 | 1 |
| Vandalism: | 2 | 0 | 1 |
| Weapons Violation: | 0 | 0 | 0 |
| Miscellaneous Criminal Arrests: | 37 | 7 | 4 |
| Juvenile Detention Order Totals: | 0 | 0 | 0 |
| Total Criminal Arrests: | 106 | 11 | 11 |

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Staff Reports - Community Development

Prepared By

Christy Dunkle, Planner

Background/History/General Information

A redesign of the final phase of the Hermitage subdivision occurred due to changes in the storm water management regulations by the Virginia Department of Environmental Quality. The original layout included a t-intersection where Tyson Drive met Dunlap Drive. The new layout continues from Tyson into Dunlap.

The last significant address changes in the Town of Berryville occurred when Blackburn Street was changed to Bundy Street in 2004 and affecting 14 properties.

The following items are included with this staff report:

- Original Phase V layout;
- Updated Phase V layout identifying the proposed three-way stop; and
- Vicinity map identifying 13 existing lots in the area that would be affected by changing the name of Dunlap Drive to Tyson Drive from the southern intersection of Dunlap and Hermitage to the current end of Town maintenance.

Findings/Current Activity

Staff is recommending that the existing 13 lots addressed on Dunlap from the intersection of Hermitage Boulevard to the south be changed to Tyson Drive addresses. Staff has discussed this scenario with Clarke County E-911 staff who indicated this is the clearest option.

The Streets and Utilities Committee discussed the matter at their October 22, 2019 meeting.

Mayor Dickinson said she had discussed the matter with those who would be affected by address changes on Dunlap Drive and said the property owners were against the proposed modifications citing costs associated with changing their respective addresses.

The Berryville Area Development Authority discussed options for street names and addressing at their December 18, 2019 meeting. Mayor Dickinson forwarded an email to Berryville representatives urging them to not approve the option of readdressing properties on Dunlap Drive. BADA members recommended changing the street name to Dunlap at the first intersection of Norris and Tyson (top of the attached Exhibit B) and to install a three-way stop to

identify the street name.

Financial Considerations

The developer is required to provide street signs for each subdivision at their cost.

Schedule/Deadlines

Hermitage Phase V is currently under review. Final plats have not been received by Town staff for review.

Other Considerations

N/A

Attachments

1. Hermitage V layouts 011420
2. TC Staff Report Community Development Update 011420
3. TC Staff Report Construction Update 011420

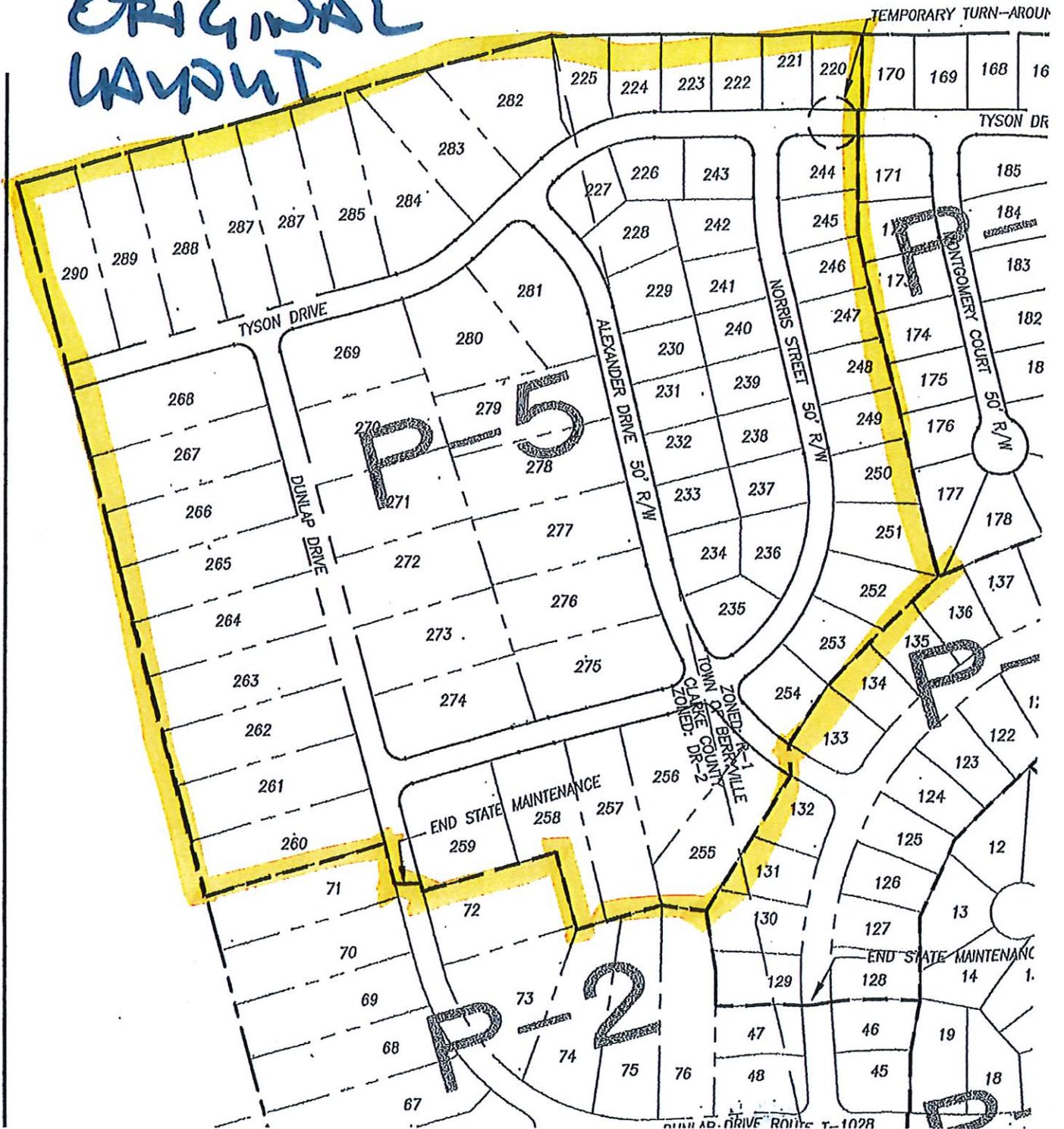
Recommendation

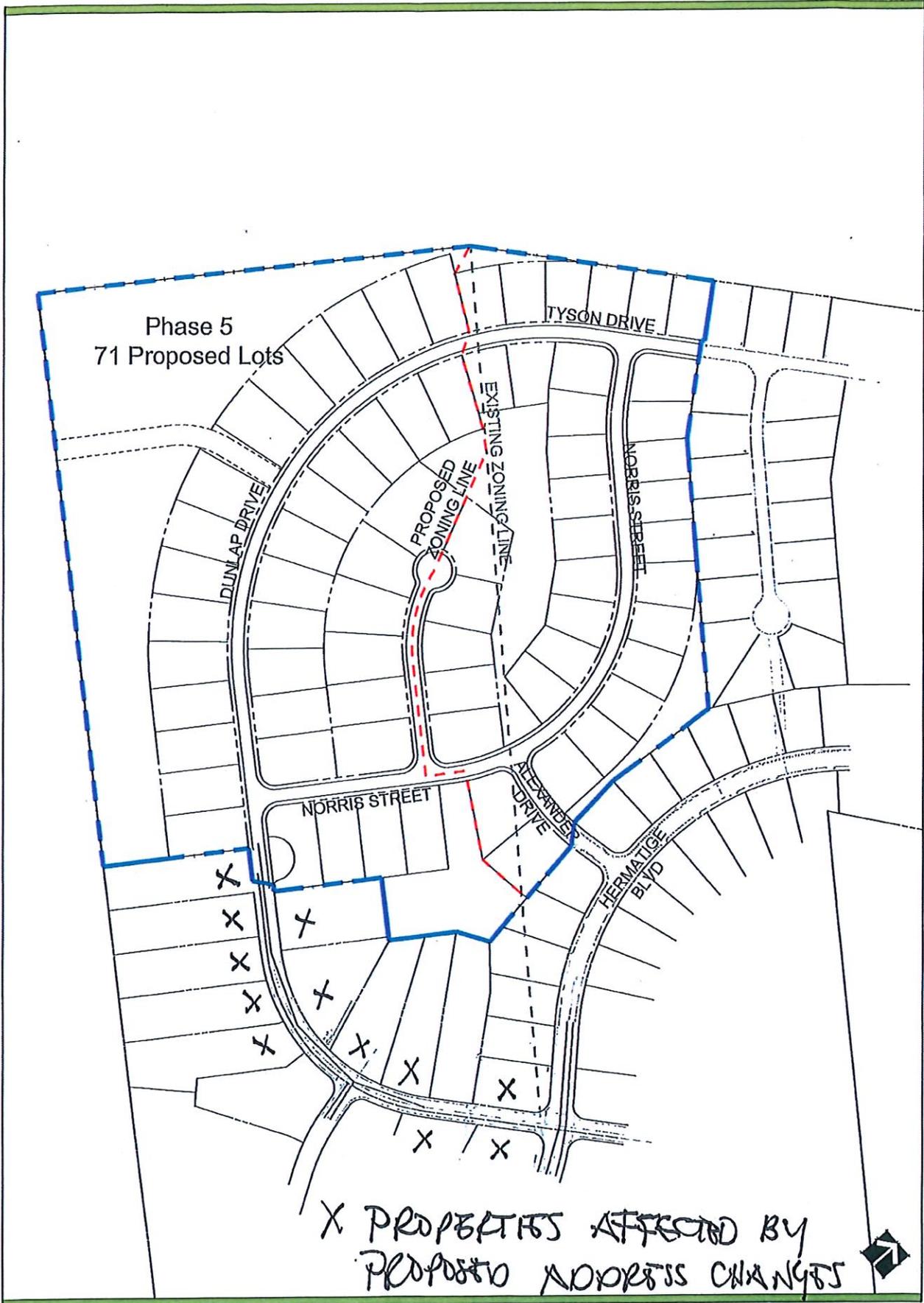
Council request public input on the matter.

Sample Motion

N/A

ORIGINAL LAYOUT





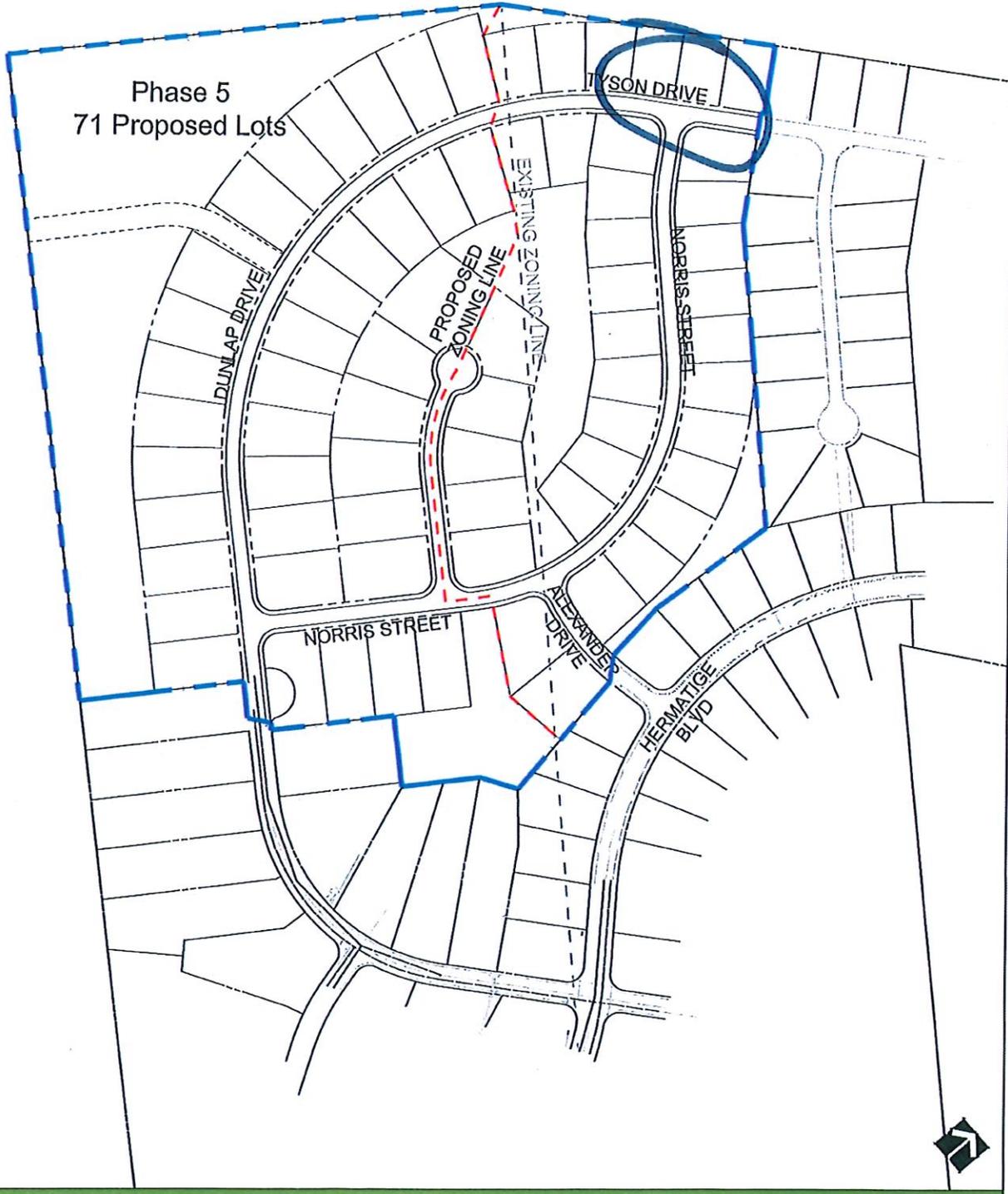
Hermitage Section 5, Exhibit B

proposed zoning line



PENNONI ASSOCIATES INC.

PROPOSED
3-WAY STOP



Hermitage Section 5, Exhibit B

proposed zoning line



PENNONI ASSOCIATES INC.

Town Council Agenda Item Report Summary

January 14, 2020

Item Title

Community Development Update

Prepared By

Christy Dunkle

Planning Commission

The Planning Commission met on Tuesday, December 18, 2019 and discussed the following item:

Fellowship Square Foundation, Owner (Patrick J. Williams, D.R. Horton, Inc., Agent) is requesting final subdivision plat approval for the creation of 50 single-family residential lots on the property identified as Tax Map Parcel numbers 14A2-((A))-17 and 14A2-((A))-17A consisting of 8.1287 acres and 11.4963 acres, respectively, zoned DR-4 Detached Residential. MASD 02-19

They voted to approve the final plat as presented. Their organizational meeting is scheduled for Tuesday, January 28, 2020.

Berryville Area Development Authority

The BADA met on Wednesday, December 18, 2019 at 7:00pm. They approved a Boundary Line Adjustment and discussed street names in Hermitage phase V. Their organizational meeting is scheduled for Wednesday, January 22, 2020.

Architectural Review Board

Met on Wednesday, December 4, 2019 at 12:30pm to judge Berryville Main Street's Parking Meter Contest. Their organizational meeting is scheduled for Wednesday, January 8, 2020.

Tree Board

The Tree Board has not met since the last Town Council meeting. The Tree Board's organizational meeting is scheduled for Wednesday, January 8, 2020 at 7:30pm.

Board of Zoning Appeals

The BZA has not held a meeting since the last Council meeting.

Town Council Agenda Item Report Summary

January 14, 2020

Item Title

Construction Project Update

Prepared By

Christy Dunkle

Robert Regan Village

- 120 age- and income-restricted apartments
- Construction underway
- Staff attends monthly progress meetings
- Anticipating substantial completion by August, 2020

Shenandoah Crossing Subdivision

- 82 single-family homes
- Owned by D.R. Horton, Inc.
- To be developed by D.R. Horton, Inc.
- Zoned DR-2 Detached Residential
- Cluster layout
- HOA maintained
- Review of construction plans has been completed
- Public hearing for final plat held September 25, 2019, BADA approved as presented
- Pre-construction meeting held on Thursday, December 19
- Staff is awaiting final plats and storm water permits from the Virginia Department of Environmental Quality before issuing land disturbance permits

Fellowship Square Subdivision

- 50 single-family homes
- Owned by Fellowship Square Foundation
- To be owned (currently under contract) and developed by D.R. Horton, Inc.
- Zoned DR-4 Detached Residential
- Cluster layout
- HOA maintained
- Review of construction plans has been completed
- Planning Commission approved the final plat on December 18, 2019
- Pre-construction meeting held on Thursday, December 19
- Staff is awaiting final plats and storm water permits from the Virginia Department of Environmental Quality before issuing land disturbance permits

Hermitage Phase V

- 71 single-family homes

- Owned by Silver Lake Development
- Final phase of Hermitage subdivision (started 2000)
- Zoned R-1 and DR-1
- Rezoning approved by Town Council at the September 10, 2019 meeting to align new layout with proposed parcel lines
- Phase V will have HOA oversight, other phases will not be affected
- Review of construction plans currently underway
- No anticipated start

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Staff Reports - Administration and Finance

Prepared By

Greg Jacobs, Treasurer

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. Council Memo - Dec 2019

Recommendation

Sample Motion

Memo

To: Town Council
From: Gregory C. Jacobs, Assistant Town Manager / Treasurer
Date: January 8, 2020
Re: December 2019 activity

End of Calendar Year Payroll Reports and New Tax Rates

The fourth quarter IRS Form 941 has been prepared and reviewed. We are working on the State fourth quarter and end of year forms. It is expected that the W-2's will go out next week along with 1099's.

The payroll tax withholding rates for 2020 have been entered into the system. The first payroll for 2020 has been prepared and in the process of review.

Business License renewals

The Business License renewal process is underway and we expect to send out renewals the week of January 12, 2020.

DMV Stops and Set Off Debt processing

DMV Stops for delinquent Personal Property Taxes are scheduled to be applied by January 10, 2020.

Set off Debt is scheduled to be processed the week of January 12, 2020.

Fiscal Year End June 30, 2019 Audit

The June 30, 2019 Auditor suggested adjustments have been reviewed and posted to our General Ledger. I have reviewed the Towns' General Ledger Trial Balance and confirmed that the Towns' General Ledger Trial Balance agrees to the Auditors General Ledger Trial Balance and the June 30, 2019 Audit report.

Budget Software

The "FMS Analytics" (Budget) software has been installed on our server. We have not completed implementation yet due to a problem with our General Ledger Software caused by an update done last week. Southern Software's programmers are working on the issue. I want to make sure that issue is resolved before we proceed with implementation.

On-line Payments and New Bank Accounts

During discussions with the Budget and Finance Committee regarding the On-line Payment processing, it was determined that two new bank accounts would need to be opened. One account to receive payments and another to pay the annual fees and other miscellaneous charges. It was determined that this would provide more transparency and better tracking of transactions. The concern is that the company processing our on-line payments, might only provide the "net" transaction which would make tracing the activity difficult.

I would also like the council to consider a third bank account to be used for contributions the Police Department receives. Currently when the Police Department receives contributions, they are deposited into the Police Department Asset Forfeiture account. It is my opinion that these accounts should be segregated and not co-mingled.

I will take this request to the Budget and Finance committee meeting on January 28, 2020 unless the council would like to act on this request at the January 14, 2020 Town Council Meeting.

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Staff Reports - Town Manager

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

Members of the Virginia General Assembly have prefiled firearm related bills (e.g. Senate Bill 16 (Patron - Saslaw)) that are expected to be taken up during the next term.

The proposed legislation has raised concerns about the ability of Virginians to exercise their rights as guaranteed in the Bill of Rights portion of the United States Constitution. Specifically, there is concern that the proposed legislation violates both the second and fourth amendments.

Some of those who are concerned about the proposed legislation violating their rights, led by the Virginia Citizens Defense League, have pursued resolutions from Virginia local government governing bodies that would declare their jurisdictions "Second Amendment Sanctuaries".

A local citizen requested that the Town Council adopt a Second Amendment Sanctuary resolution and provided the Council with a sample resolution.

Findings/Current Activity

To date, the governing bodies of approximately 91 counties, 12 cities, and 22 towns in the Commonwealth have adopted a resolution either declaring their community as a second amendment sanctuary or evidencing the support of the Second Amendment to the U.S. Constitution.

The Clarke County Board of Supervisors adopted such a resolution on January 6, 2020. Given that this resolution was vetted by the County's legal counsel, staff has modified it so that it would work for the Town and suggests that this modified document be the starting point for Town Council discussions.

Financial Considerations

None

Schedule/Deadlines

There is no required deadline for action by the Town Council.

Other Considerations

None

Attachments

1. Senate Bill 16 prefiled November 16 2019
2. Sample Second Amendment Sanctuary Town Resolution
3. Resolution adopted by Clarke County Board of Supervisors on January 6 2020

4. Draft Town Resolution from modified adopted Clarke County resolution

Recommendation

Staff recommends that the Town Council:

- review the sample resolutions and provide feedback to staff regarding the wording of a draft that would be forwarded to the Council for consideration, and
- determine what process will be followed for review of this request, including whether/when/how public comment will be sought and received.

Sample Motion

None

2020 SESSION

SB 16 Assault firearms and certain firearm magazines; prohibiting sale, transport, etc., penalties.

Introduced by: Richard L. Sinsaw | all patrons ... notes | add to my profiles

SUMMARY AS INTRODUCED:

Prohibiting sale, transport, etc., of assault firearms and certain firearm magazines; penalties. Expands the definition of "assault firearm" and prohibits any person from importing, selling, transferring, manufacturing, purchasing, possessing, or transporting an assault firearm. A violation is a Class 6 felony. The bill prohibits a dealer from selling, renting, trading, or transferring from his inventory an assault firearm to any person. The bill also prohibits a person from carrying a shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered in a public place; under existing law, this prohibition applies only in certain localities. The bill makes it a Class 1 misdemeanor to import, sell, barter, or transfer any firearm magazine designed to hold more than 10 rounds of ammunition.

FULL TEXT

11/18/19 Senate: Prefiled and ordered printed; offered 01/08/20 20100507D pdf | impact statement

HISTORY

11/18/19 Senate: Prefiled and ordered printed; offered 01/08/20 20100507D

11/18/19 Senate: Referred to Committee for Courts of Justice

2020 SESSION
20100507D

SENATE BILL NO. 16

Offered January 8, 2020

Prefiled November 18, 2019

A BILL to amend and reenact §§ 16.1-278.9, 18.2-287.4, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.7, and 18.2-308.8 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.9, relating to prohibiting sale, transfer, etc., of assault firearms and certain firearm magazines; penalties.

Patron-- Saslaw

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.9, 18.2-287.4, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.7, and 18.2-308.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.9 as follows:

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a breath test in violation of § 18.2-268.2, (iii) a felony violation of § 18.2-248, 18.2-248.1 or 18.2-250, (iv) a misdemeanor violation of § 18.2-248, 18.2-248.1, or 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase, possession or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below *an assault firearm as defined in § 18.2-308.8*, or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii) or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a *sticker-12, commonly called a "streetsweeper," or any semi-automatic folding-stock shotgun of like kind with a spring-tension drum magazine capable of holding 12 shotgun shells an assault firearm as defined in § 18.2-308.8*, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days.

If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation of § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel or whether the order was issued pursuant to subsection A1 or A2. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial under subsection E.

D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of subsection A or a violation designated under subsection A2, the child may be referred to a certified alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such terms and conditions as the court may set forth.

The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted license shall be issued for travel to and from home and school when school-provided transportation is available and no restricted license shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of any offense designated in subsection A, a second finding by the court of failure to comply with school attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed and contain such information regarding the child as is reasonably necessary to identify him. The child may operate a motor vehicle under the court order in accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

E. Upon petition made at least 90 days after issuance of the order, the court may review and withdraw any order of denial of a driver's license if for a first such offense or finding as provided in subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be reviewed and withdrawn until one year after its issuance.

F. If the finding as to such child involves a first violation designated under clause (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license has been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or §

18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of under § 16.1-278.8.

§ 18.2-287.4. Carrying loaded shotguns in public areas prohibited; penalty.

It shall be unlawful for any person to carry a loaded ~~(a) semi-automatic center fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine that will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (b)~~ shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond, or Virginia Beach or in the Counties of Arlington, Fairfax, Henrico, Loudoun, or Prince William.

The provisions of this section shall not apply to law-enforcement officers, licensed security guards, military personnel in the performance of their lawful duties, or any person having a valid concealed handgun permit or to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

The exemptions set forth in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the provisions of this section.

§ 18.2-308.2:01. Possession or transportation of firearms by certain persons.

A. It shall be unlawful for any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence to knowingly and intentionally possess or transport any assault firearm or to knowingly and intentionally carry about his person, hidden from common observation, an assault firearm.

B. It shall be unlawful for any person who is not a citizen of the United States and who is not lawfully present in the United States to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any firearm. A violation of this section shall be punishable as a Class 6 felony.

C. For purposes of this section, "assault firearm" means any semi-automatic center fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.

Any person who sells, barter, gives or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be guilty of a Class 4 felony. However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1, or § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had his political disabilities removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United States.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-

308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense that demonstrates that the prospective purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo identification presented to a dealer by the prospective purchaser is a driver's license or other photo identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence.

Upon receipt of the request for a criminal history record information check, the State Police shall (a) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (I) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (II) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver; any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock *the same as that term is defined in § 18.2-308.8.*

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another state, in which case the laws and regulations of that state and the United States governing the purchase, trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade or transfer of firearms.

J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C or on such firearm transaction records as may be required by federal law, shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.21, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally aids or abets such person, shall be

guilty of a Class 6 felony. This subsection shall not apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9,1-101, in the performance of his official duties, or other person under his direct supervision.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to § 18,2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

O. Any mandatory minimum sentence imposed under this section shall be served consecutively with any other sentence.

P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate or renewed driver's license.

Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his inventory to any other person, a dealer may require such other person to consent to have the dealer obtain criminal history record information to determine if such other person is prohibited from possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.

§ 18,2-308.7. Possession or transportation of certain firearms by persons under the age of 18; penalty.

~~It shall be unlawful for any person under 18 years of age to knowingly and intentionally possess or transport a handgun or assault firearm *shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered* anywhere in the Commonwealth. For the purposes of this section, "handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand and "assault firearm" means any (i) semi-automatic centerfire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a clip or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered. A violation of this section shall be a Class 1 misdemeanor.~~

This section shall not apply to:

1. Any person (i) while in his home or on his property; (ii) while in the home or on the property of his parent, grandparent, or legal guardian; or (iii) while on the property of another who has provided prior permission, and with the prior permission of his parent or legal guardian if the person has the landowner's written permission on his person while on such property;
2. Any person who, while accompanied by an adult, is at, or going to and from, a lawful shooting range or firearms educational class, provided that the weapons are unloaded while being transported;
3. Any person actually engaged in lawful hunting or going to and from a hunting area or preserve, provided that the weapons are unloaded while being transported; and
4. Any person while carrying out his duties in the Armed Forces of the United States or the National Guard of this Commonwealth or any other state.

§ 18,2-308.8. Importation, sale, possession, etc., of assault firearms prohibited; penalty.

A. For the purposes of this section:

"Assault firearm" means:

1. A semi-automatic center-fire rifle that expels single or multiple projectiles by action of an explosion of a combustible material with a fixed magazine capacity in excess of 10 rounds;
2. A semi-automatic center-fire rifle that expels single or multiple projectiles by action of an explosion of a combustible material that has the ability to accept a detachable magazine and has one of the following characteristics: (i) a folding or telescoping stock; (ii) a pistol grip that protrudes conspicuously beneath the action of the rifle; (iii) a thumbhole stock; (iv) a second handgrip or a protruding grip that can be held by the non-trigger hand; (v) a bayonet mount; (vi) a grenade launcher; (vii) a flare launcher; (viii) a silencer; (ix) a flash suppressor; (x) a muzzle brake; (xi) a muzzle compensator; (xii) a threaded barrel capable of accepting (a) a silencer; (b) a flash suppressor; (c) a muzzle brake, or (d) a muzzle compensator; or (xiii) any characteristic of like kind as enumerated in clauses (i) through (xii);
3. A semi-automatic center-fire pistol that expels single or multiple projectiles by action of an explosion of a combustible material with a fixed magazine capacity in excess of 10 rounds;
4. A semi-automatic center-fire pistol that expels single or multiple projectiles by action of an explosion of a combustible material that has the ability to accept a detachable magazine and has one of the following characteristics: (i) a folding or telescoping stock; (ii) a thumbhole stock; (iii) a second handgrip or a protruding grip that can be held by the non-trigger hand; (iv) the capacity to accept a magazine that attaches to the pistol outside of the pistol grip; (v) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the pistol with the non-trigger hand without being burned; (vi) a manufactured weight of 50 ounces or more when the pistol is unloaded; (vii) a threaded barrel capable of accepting (a) a silencer; (b) a flash suppressor; (c) a barrel extender; or (d) a forward handgrip; or (viii) any characteristic of like kind as enumerated in clauses (i) through (vii);
5. A shotgun with a revolving cylinder that expels single or multiple projectiles by action of an explosion of a combustible material; or
6. A semi-automatic shotgun that expels single or multiple projectiles by action of an explosion of a combustible material that has one of the following characteristics: (i) a folding or telescoping stock, (ii) a thumbhole stock, (iii) a pistol grip that protrudes conspicuously beneath the action of the shotgun, (iv) the ability to accept a detachable magazine, (v) a fixed magazine capacity in excess of seven rounds, or (vi) any characteristic of like kind as enumerated in clauses (i) through (v).

"Assault firearm" includes any part or combination of parts designed or intended to convert, modify, or otherwise alter a firearm into an assault firearm, or any combination of parts that may be readily assembled into an assault firearm. "Assault firearm" does not include (i) a firearm that has been rendered permanently inoperable, (ii) an antique firearm as defined in § 18.2-308.2:2, or (iii) a bow or relic as defined in § 18.2-308.2:2.

B. It shall be unlawful for any person to import, sell, possess or transfer the following firearm: the Striker-12, commonly called a "streetsweeper," or any semi-automatic folding-stock shotgun of like kind with a spring-tension drum magazine capable of holding twelve shotgun shells, manufacture, purchase, possess, or transport an assault firearm. A violation of this section shall be punishable as a Class 6 felony.

§ 18.2-308.9. Sale, transfer, etc., of certain firearm magazines prohibited; penalty.

A. Any person who imports, sells, barter, or transfers any firearm magazine that is designed to hold more than 10 rounds of ammunition is guilty of a Class 1 misdemeanor:

B. The provisions of this section shall not apply to (i) the manufacture by, transfer to, or possession by the Commonwealth or a department, agency, or political subdivision of the Commonwealth; (ii) the transfer to or possession by a law-enforcement officer employed by such an entity for purposes of law enforcement; or (iii) the possession by an individual who is retired from service with a law-enforcement agency and who is not otherwise prohibited from receiving ammunition transferred to the individual by the law-enforcement agency upon his retirement of such firearm magazines.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of

imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

**RESOLUTION OF THE TOWN OF _____, VIRGINIA
TOWN COUNCIL**

WHEREAS, the Second Amendment of the United States Constitution reads "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." and

WHEREAS, the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), affirmed an individual's right to possess firearms, unconnected with service in a militia, for traditionally lawful purposes, such as self-defense within the home, and

WHEREAS, the United States Supreme Court in *McDonald v. Chicago*, 561 U.S. 742 (2010), affirmed that the right of an individual to "keep and bear arms," as protected under the Second Amendment, is incorporated by the Due Process Clause of the Fourteenth Amendment against the states, and

WHEREAS, the United States Supreme Court in *United States v. Miller*, 307 U.S. 174 (1939), opined that firearms that are a part of ordinary military equipment, or with use that could contribute to the common defense are protected by the Second Amendment, and

WHEREAS, Article 1, Section 13, of the Constitution of Virginia provides "that a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed," and

WHEREAS, Article 1, Section 1, of the Constitution of Virginia reads "That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into the state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety, and

WHEREAS, Article 1, Section 2, of the Constitution of Virginia reads "that all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.", and

WHEREAS, certain legislation that has or may be introduced in the Virginia General Assembly, and certain legislation which has or may be introduced in the United States Congress could have the effect of infringing on the rights of law abiding citizens to keep and bear arms, as guaranteed by the Second Amendment to the United States Constitution and Article 1, Section 13 of the Constitution of Virginia, and

WHEREAS, the Town of _____ Town Council is concerned about the passage of any bill containing language which could be interpreted as infringing the rights of the citizens of the Town of _____ to keep and bear arms, and

WHEREAS, the Town of _____ Town Council wishes to express its deep commitment to the rights of all citizens of the Town of _____ to keep and bear arms, and

WHEREAS, the Town of _____ Town Council wishes to express opposition to any law that would unconstitutionally restrict the rights of the citizens of the Town of _____ to keep and bear arms, and

WHEREAS, the Town of _____ Town Council wishes to express its intent to stand as a Sanctuary Town for Second Amendment rights and to oppose, within the limits of the Constitution of the United States and the Commonwealth of Virginia, any efforts to unconstitutionally restrict such rights, and to use such legal means at its disposal to protect the rights of the citizens of the Town of _____ to keep and bear arms, including through legal action, the power to appropriate public funds, the right to petition for redress of grievances, and the power to direct law enforcement and employees of the Town of _____ to not enforce any unconstitutional law.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of _____, Virginia:

That the Town _____ Town Council hereby declares the Town of Berryville, Virginia, as a "Second Amendment Sanctuary", and

That the Town of _____ Town Council hereby expresses its intent to uphold the Second Amendment rights of the citizens of the Town of _____, Virginia, and

That the Town of _____ Town Council hereby expresses its intent that public funds of the town not be used to restrict the Second Amendment rights of the citizens of the Town of _____, or to aid federal or state agencies in the restriction of said rights, and

That the Town of _____ Town Council hereby declares its intent to oppose any infringement on the right of law-abiding citizens to keep and bear arms using such legal means as may be expedient, including, without limitation, court action.

The undersigned clerk of the Town of _____ Town Council of the Town of _____, hereby certifies that the resolution set forth was adopted during an open meeting on <DATE>, 2019, by the Town of _____ Town Council with the following votes:

Clarke County Board of Supervisors



Berryville Voting District
Mary L.C. Daniel
(540) 955-1971

Millwood Voting District
Terri T. Catlett
(540) 837-2328

Russell Voting District
Doug Lawrence
(540) 955-2144

Buckmarsh Voting District
David S. Weiss – Chair
(540) 955-2151

White Post Voting District
Bev B. McKay – Vice Chair
(540) 837-1331

County Administrator
Chris Boies
(540) 955-5175

Resolution of the Clarke County Board of Supervisors Expressing Its Intent to Uphold and Defend the Constitution of the United States and the Constitution of the Commonwealth of Virginia 2020-01R

WHEREAS, the Constitution of the United States, including the Bill of Rights, forms the foundation of our nation and the rule of law; and

WHEREAS, the Bill of Rights enumerates certain inherent citizens' rights, such as "the freedom of speech," "the right of the people peaceably to assemble, and to petition the government for a redress of grievances," "being necessary to the security of a free state, the right of the people to keep and bear arms," "the right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures, "nor be deprived of life, liberty, or property, without due process of law; and

WHEREAS, the members of the Board of Supervisors each pledged a solemn oath to uphold these laws, which reads, "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as a member of the Clarke County Board of Supervisors according to the best of my ability, (so help me God); and

WHEREAS, the Board of Supervisors of Clarke County, Virginia, has only those powers granted to it by the General Assembly and Article VII of the Virginia Constitution; and

WHEREAS, the Second Amendment of the United States Constitution states, “A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed.”; and

WHEREAS, Article I, Section 13, of the Constitution of Virginia provides “that a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed”; and

WHEREAS, the right of the law-abiding citizens of Clarke County to keep and bear arms for the purpose of lawful self-defense and hunting pursuant to the rights bestowed upon them by the Second Amendment of the United States Constitution and Article I, Section 13 of the Constitution of Virginia is a part of the fabric of this County and must be respected and upheld; and

WHEREAS, certain legislation that has or may be introduced in the Virginia General Assembly, and certain legislation which has or may be introduced in the United States Congress could have the effect of infringing upon the right of law abiding citizens to keep and bear arms, in violation of the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of Virginia; and

WHEREAS, the Clarke County Board of Supervisors wishes to express its deep commitment to the right of the citizens of Clarke County to keep and bear arms; and

WHEREAS, the Clarke County Board of Supervisors wishes to express opposition to any law that would unconstitutionally restrict the rights of the citizens of Clarke County to keep and bear arms.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Clarke County:

That the Clarke County Board of Supervisors hereby expresses its intent to uphold and defend the Constitution of the United States and the Constitution of the Commonwealth of Virginia; and

That the Clarke County Board of Supervisors urges the Virginia General Assembly and the United States Congress not to adopt or enact any law that would infringe on the right to keep and bear arms in violation of the Second Amendment; and

That the County Administrator is directed to cause true copies of this resolution to be forwarded to the County's representatives in the Virginia General Assembly and the United States Congress and to the Governor of Virginia.

Adopted this 6th day of January, 2020

ATTEST 2020-01R

David S. Weiss, Chair

**Resolution of the Berryville Town Council Expressing Its Intent to Uphold and
Defend the Constitution of the United States and the Constitution of the
Commonwealth of Virginia**

WHEREAS, the Constitution of the United States, including the Bill of Rights, forms the foundation of our nation and the rule of law; and

WHEREAS, the Bill of Rights enumerates certain inherent citizens' rights, such as "the freedom of speech," "the right of the people peaceably to assemble, and to petition the government for a redress of grievances," "being necessary to the security of a free state, the right of the people to keep and bear arms," "the right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures, "nor be deprived of life, liberty, or property, without due process of law; and

WHEREAS, the members of the Town Council each pledged a solemn oath to uphold these laws, which reads, "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as a member of the Berryville Town Council according to the best of my ability, (so help me God); and

WHEREAS, the Town Council of Berryville, Virginia, has only those powers granted to it by the General Assembly and Article VII of the Virginia Constitution; and

WHEREAS, the Second Amendment of the United States Constitution states, “A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed.”; and

WHEREAS, Article I, Section 13, of the Constitution of Virginia provides “that a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed”; and

WHEREAS, the right of the law-abiding citizens of Berryville to keep and bear arms for the purpose of lawful self-defense and hunting pursuant to the rights bestowed upon them by the Second Amendment of the United States Constitution and Article I, Section 13 of the Constitution of Virginia is a part of the fabric of this Town and must be respected and upheld; and

WHEREAS, certain legislation that has or may be introduced in the Virginia General Assembly, and certain legislation which has or may be introduced in the United States Congress could have the effect of infringing upon the right of law abiding citizens to keep and bear arms, in violation of the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of Virginia; and

WHEREAS, the Berryville Town Council wishes to express its deep commitment to the right of the citizens of Berryville to keep and bear arms; and

WHEREAS, the Berryville Town Council wishes to express opposition to any law that would unconstitutionally restrict the rights of the citizens of Berryville to keep and bear arms.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Berryville:

That the Town Council hereby expresses its intent to uphold and defend the Constitution of the United States and the Constitution of the Commonwealth of Virginia; and

That the Town Council urges the Virginia General Assembly and the United States Congress not to adopt or enact any law that would infringe on the right to keep and bear arms in violation of the Second Amendment; and

That the Town Manager is directed to cause true copies of this resolution to be forwarded to the Town's representatives in the Virginia General Assembly and the United States Congress and to the Governor of Virginia.

Adopted this ____ day of _____, 2020

ATTEST

Harry Lee Arnold, Jr., Recorder

**Berryville Town Council Item Report Summary
January 14, 2020**

Item Title

Committee Updates - Budget and Finance

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Budget and Finance Committee is one of five standing committees of the Town Council.

The Committee advises the Council on matters related to the Town's finances.

Findings/Current Activity

Chair Gibson will present any issues of concern on behalf of the Committee and other Council members may request that the Committee review or provide comment on matters of importance to the Council.

Financial Considerations

N/A

Schedule/Deadlines

N/A

Other Considerations

N/A

Attachments

Recommendation

N/A

Sample Motion

N/A

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Committee Updates - Community Development

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Community Development Committee is one of five standing committees of the Town Council. The Committee advises the Council on matters related to growth/development, economic development, downtown development and preservation, and issues related to Town properties (not including streets, Public Works facilities or Public Utilities facilities).

Findings/Current Activity

Chair Rodriguez will present any issues of concern on behalf of the Committee and other Council members may request that the Committee review or provide comment on matters of importance to the Council.

Financial Considerations

N/A

Schedule/Deadlines

N/A

Other Considerations

N/A

Attachments

Recommendation

N/A

Sample Motion

N/A

Berryville Town Council Item Report Summary
January 14, 2020

Item Title

Committee Updates - Personnel, Appointments, and Policy

Recommendations to the Clarke County Board of Supervisors:

Appointment to the Clarke County Economic Development Committee

Appointment to the Clarke County Parks and Recreation Advisory Board

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Personnel, Appointments, and Policy Committee is one of five standing committees of the Town Council. The Committee advises the Council on matters related to employee policies, pay, and benefits, appointments to Town boards and commissions, and Town policies in general.

Findings/Current Activity

Chair Arnold will present any issues of concern on behalf of the Committee, and other Council members may request that the Committee review or provide comment on matters of importance to the Council.

The Clarke County Economic Development Committee is an advisory board that provides counsel to the Clarke County Board of Supervisors on matters of economic development and economy. One member of the Committee is considered a Town representative and is recommended for appointment by the Town Council.

The Clarke County Parks and Recreation Advisory Board provides counsel to the Clarke County Board of Supervisors on matters related to parks and recreation. One member of the Board is considered a Town representative and is recommended for appointment by the Town Council.

Appointments for review and discussion:

The term of the Town's representative (Christy Dunkle) on the Clarke County Economic Development Committee expired on 12/31/19.

Ms. Dunkle has been an asset to the Committee and is willing to be re-appointed.

The term of the Town's representative (Ronnie Huff) on the Clarke County Advisory Board expired on 12/31/19.

Mr. Huff has been an asset to the Board and is willing to be re-appointed.

Financial Considerations

None

Schedule/Deadlines

These terms have expired; therefore, it is desirable to provide the recommendation to the Board of Supervisors as soon as possible.

Other Considerations

None

Attachments

Recommendation

Recommend that the Clarke County Board of Supervisors re-appoint Christy Dunkle to a four-year term on the Clarke County Economic Development Committee and Ronnie Huff to a four-year term on the Clarke County Parks and Recreation Advisory Board.

Sample Motion

I move that the Council of the Town of Berryville recommend that the Clarke County Board of Supervisors re-appoint Christy Dunkle to a four-year term on the Clarke County Economic Development Committee and Ronnie Huff to a four-year term on the Clarke County Parks and Recreation Advisory Board.

**Berryville Town Council Item Report Summary
January 14, 2020**

Item Title

Committee Updates - Public Safety

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Public Safety Committee is one of five standing committees of the Town Council. The Committee advises the Council on matters related to the provision of emergency services to the Town's residents and guests. The Committee also reviews the Town Code to ensure that it complies with applicable law and continues to meet the needs of the Town, its residents, and its guests and makes suggestions for amendments thereto.

Findings/Current Activity

Chair McDonald will present any issues of concern on behalf of the Committee and other Council members may request that the Committee review or provide comment on matters of importance to the Council.

Financial Considerations

N/A

Schedule/Deadlines

N/A

Other Considerations

N/A

Attachments

Recommendation

N/A

Sample Motion

N/A

**Berryville Town Council Item Report Summary
January 14, 2020**

Item Title

Committee Updates - Streets and Utilities

Prepared By

Keith Dalton, Town Manager

Background/History/General Information

The Streets and Utilities Committee is one of five standing committees of the Town Council. The Committee advises the Council on matters related to Town and VDOT maintained streets, water service, wastewater service, and other utilities serving the residents and guests of the Town.

Findings/Current Activity

Chair Harrison will present any issues of concern on behalf of the Committee and other Council members may request that the Committee review or provide comment on matters of importance to the Council.

Financial Considerations

N/A

Schedule/Deadlines

N/A

Other Considerations

N/A

Attachments

Recommendation

N/A

Sample Motion

N/A