

**TOWN OF DAYTON
REGULAR COUNCIL MEETING MINUTES
COUNCIL CHAMBERS, DAYTON TOWN HALL
August 9, 2021**

COUNCIL MEMBERS PRESENT: Mayor Cary Jackson, Dale Rodgers, Bradford Dyjak, Robert Seward (via electronic communication from his family vacation in the Outer Banks, NC, pursuant to Virginia State Code Section 2.2-3708.2), Emily Estes, and Susan Mathias.

COUNCIL MEMBERS ABSENT: Heidi Hoover.

ALSO PRESENT: Angela Lawrence, Town Manager; Jordan Bowman, Town Attorney; Justin Trout, Police Chief; Susan Smith, Town Treasurer; and Christa Hall, Clerk of Council and Community Development Coordinator.

CALL TO ORDER: Mayor Jackson called the meeting to order at 6:00 p.m., welcomed guests and reminded everyone that if there is anyone in attendance who wishes to address Council during the Public Hearing or the public comment portion of tonight's meeting, there is a signup sheet in order to do so and that speakers would be limited to five minutes each. He also outlined some basic guidelines for public decorum and how Council wished to conduct business. He advised that any outbursts would receive one warning and that any additional outbursts would result in the Mayor asking the Police Chief to escort the offender out of the meeting. Mayor Jackson advised that Ms. Hoover was unable to join us this evening and that Mr. Seward was joining us via telephone from vacation in the Outer Banks, NC. However, before he could participate in the proceedings, the Town Council needed to pass a policy allowing electronic participation and he asked that the agenda be amended to include that as an action item. Town Clerk Hall called the roll. Mayor Jackson led the Invocation and the Pledge of Allegiance.

AMEND AGENDA: Councilperson Dyjak made a motion to amend the agenda to add Item 1.1 the consideration of the adoption of an electronic participation policy; the motion was seconded by Councilperson Mathias and approved by a unanimous vote of 5 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; SEWARD—ABSTAIN; HOOVER—ABSENT.

CONSIDERATION OF THE ADOPTION OF AN ELECTRONIC PARTICIPATION POLICY: Mayor Jackson explained that during the height of COVID the rules for electronic meeting participation were more relaxed, but now that the Governor's executive orders had ended, the policy was necessary in order to allow for electronic participation pursuant to Virginia State Code Section 2.2-3708.2. Councilperson Dyjak made a motion to adopt the Electronic Participation Policy as written to be effective immediately; the motion was seconded by Councilperson Mathias and approved by a roll call vote of 5 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; SEWARD—ABSTAIN; HOOVER—ABSENT. The policy reads as follows:

**RESOLUTION AUTHORIZING ELECTRONIC PARTICIPATION IN
MEETINGS OF THE
TOWN COUNCIL FOR THE TOWN OF DAYTON**

WHEREAS, the General Assembly has authorized public bodies to meet via electronic means without a physical quorum during the COVID-19 global pandemic; and

WHEREAS, absent a declared state of emergency, the Virginia Freedom of Information Act authorizes certain limited electronic participation, provided that the public body has first adopted a written policy providing for electronic participation in meetings, and subject to certain other restrictions and requirements; and

WHEREAS, the Town Council for the Town of Dayton (the “Town Council”) desires to adopt a policy to enable its members to participate remotely in meetings of Town Council, and its committees, under certain circumstances.

NOW, THEREFORE, Town Council resolves and adopts the following policy:

1. Members are hereby approved to participate in a meeting of the Town Council or its committees through electronic communications, such as telephone or video participation, from a remote location as provided in Code of Virginia § 2.2-3708.2 subject to the following requirements:
 - A. A member wishing to participate from a remote location in a meeting shall notify the Chairperson, or other presiding officer, on or before the date of a meeting that the member is unable to attend the meeting due to (i) a personal matter, provided that the member identifies with specificity the nature of the personal matter, (ii) a temporary or permanent disability or other medical condition that prevents the member’s physical attendance, or (iii) because the member’s principal residence is more than 60 miles from the meeting location.
 - B. The minutes for the meeting shall record the remote location from which the absent member participated, as well as the specific nature of the personal matter, that the member participated in the meeting electronically due to a medical condition or disability, or that the member participated in the meeting electronically due to their principal residence being more than 60 miles away from the meeting location.
 - C. If the absent member’s remote participation would violate this policy, such remote participation is disapproved and the absent member shall not be allowed to participate. The reason for such disapproval shall be recorded in the minutes.
 - D. Participation in a meeting through electronic communication due to a personal matter shall be limited, for each member and in each calendar year, to two meetings of the public body.
 - E. A quorum must be physically assembled at the primary or central meeting location, unless otherwise provided by law.
 - F. Arrangements shall be made, to the maximum extent practicable, for the voice of the absent member to be heard by all persons in attendance at the primary or central meeting location.
 - G. Nothing herein shall be construed to restrict the ability of Town Council or its committees to meet without a quorum physically assembled at one location during a state of emergency as may be authorized by law, including without limitation Virginia Code § 2.2.3708.2.

OPEN PUBLIC HEARING: Mayor Jackson opened the public hearing regarding the Franchise Agreement / Bid Acceptance for Shenandoah Cable Television, LLC (glofiber) at 6:05 p.m. He asked Manager Lawrence for a staff report. Manager Lawrence explained that Shentel operating as glofiber has requested a 20-year Franchise Agreement with the Town to install and provide fiber optic cable for internet and telecommunication services. Manager Lawrence turned the meeting over to Attorney Bowman to explain the Public Hearing and bid process. He stated that pursuant to Virginia State Code Section 15.2-2101, there is a necessary process that localities must go through in order to enter into a Franchise Agreement. He stated that they must invite other bids and advised that the Town had received no bids and asked if there was anyone in attendance tonight that wished to place a bid. As there were no additional bids, he turned the meeting back over to Mayor Jackson who stated that Mr. Bud Zirkle was attending tonight on behalf of Shenandoah Cable Television (glofiber) in order to address any questions that the Council or citizens may have. Mr. Zirkle addressed several questions about the build out process and how the project would work and advised that the timeline for the project would be an estimated 18 months to complete from the time the agreement is executed. He stated that they will communicate directly with Town residents and will ensure all permits are secured. He stated that at this time, they are seeking permission to ask for permission. As there were no citizens signed up to speak, Mayor Jackson closed the Public Hearing at 6:12 p.m.

APPROVAL OF MINUTES: Councilperson Rodgers made a motion to approve the minutes as written for the Regular Council Meeting of July 12, 2021; the motion was seconded by Councilperson Mathias and approved by a roll call vote of 6 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; HOOVER—ABSENT.

ACTION ITEM: CONSIDERATION OF AN ORDINANCE GRANTING A 20-YR FRANCHISE AGREEMENT WITH SHENANDOAH CABLE TELEVISION, LLC (GLOFIBER): Councilperson Rodgers made a motion to adopt the ordinance granting a 20-yr Franchise Agreement with Shenandoah Cable Television, LLC (glofiber). The motion was seconded by Councilperson Dyjak. Mayor Jackson asked if there was any discussion. As there was no additional discussion, the motion was approved by a roll call vote of 6 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; HOOVER—ABSENT. The ordinance reads as follows:

**ORDINANCE TO APPROVE A NON-EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN THE TOWN OF DAYTON, VIRGINIA AND
SHENANDOAH CABLE TELEVISION, LLC**

WHEREAS, the Town of Dayton, Virginia (the “Town”) and Shenandoah Cable Television, LLC (“Franchisee”) have negotiated a non-exclusive franchise that would permit Franchisee to install, maintain, operate, replace, and remove fiber optic cables and related ancillary devices in the Town’s Public Rights-of-Way, subject to the terms and conditions of the Franchise Agreement dated August 9, 2021 (the “Franchise”) and attached hereto as Exhibit A; and

WHEREAS, the Town has held a public hearing after due advertisement and has invited additional bids concerning the subject matter of the Franchise; and

WHEREAS, the Town and the Franchisee desire to enter into the Franchise.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Dayton, Virginia, that the Franchise is granted and approved, and that the Town Manager is authorized and directed to execute the Franchise. (Exhibit A, Franchise Agreement follows.)

This Franchise Agreement (the “Franchise”) is granted this 9th day of August, 2021, by the **TOWN OF DAYTON, VIRGINIA**, a municipal corporation (the “Town”), and **SHENANDOAH CABLE TELEVISION, LLC**, a Virginia corporation (“Shentel”).

WHEREAS, Shentel intends to run one or more fiber optic cables with related ancillary devices (collectively, the “Equipment”) in public rights-of-way within the Town of Dayton for the purpose of providing internet and telecommunications services, and

WHEREAS, this Franchise has been authorized by an ordinance enacted by the Council of the Town, in the manner provided by Va. Code, §§ 15.2-2100, *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants set forth below,

1. For the period of this Franchise, Shentel shall have the right to install, maintain, operate, replace, and remove Equipment within the boundaries of all public streets and public alleys in the Town (the “Rights-of-Way”). Notwithstanding the foregoing:
 - a. This Franchise does not allow Shentel to install utility poles, although it may locate its Equipment on existing poles, should the owner of the poles agree.
 - b. This Franchise does not allow Shentel to install anything except for the Equipment, including without limitation wireless telecommunications facilities.
 - c. Shentel will provide the Town with written notice, at least 30 days in advance, before installing any Equipment. In this 30-day period, the Town may object to Equipment if, in the Town’s sole judgment, the Equipment would have an adverse impact on public safety or would unreasonably hinder or conflict with (i) pedestrian, cycle, or vehicular traffic, or (ii) other existing or planned future uses of the Rights-of-Way. This Franchise provides no authority for Equipment to which the Town has so objected or Equipment installed without the requisite 30-day notice. All Shentel Equipment installed before the date of this Franchise shall be deemed to have been installed with notice and without objection.

- d. For any Rights-of-Way within the Town that are controlled by the Virginia Department of Transportation, Shentel shall comply with any applicable VDOT requirements, including without limitation permitting requirements.
2. From time to time, the Town may adopt construction standards applicable to Shentel's Equipment or permitting standards for work in the Rights-of-Way. With respect to all Equipment installed and/or work performed after such adoption, Shentel will abide by such standards.
3. Shentel will be responsible to the Town for any damage to Town streets or other Town property caused by Shentel's activities hereunder. Shentel will immediately repair any portion of the Rights-of-Way damaged or disturbed by Shentel to a condition that meets or exceeds the condition of the Rights-of-Way immediately prior to such damage or disturbance. In performing such repair, Shentel shall comply with any applicable VDOT standards.
4. Utility "undergrounding," street repair or improvement, and other public projects may necessitate the relocation of Shentel's Equipment. If requested by the Town, Shentel will relocate its Equipment, at Shentel's own expense, to accommodate any such project.
5. Shentel shall indemnify and hold harmless the Town from any and all damages or injuries arising from Shentel's activities hereunder, including without limitation attorney's fees and costs incurred by the Town in enforcement of this Franchise.
6. This Franchise shall expire 20 years after the date of this agreement and shall provide no rights (carryover or otherwise) after such expiration.
7. This Franchise does not grant the right to operate a cable television system.
8. Shentel shall reimburse the Town for the Town's actual costs incurred in advertising this Franchise and legal review of this Franchise, not to exceed \$3,000.

ACTION ITEM: CONSIDERATION OF REVISION TO CHAPTER 3.1.2 SEWER ORDINANCE OF TITLE 6 OF THE DAYTON TOWN CODE: Manager Lawrence was asked to provide a staff report and advised that at its June 7, 2021 meeting, HRRSA's Board of Directors approved revisions to the HRRSA Operating Rules & Regulations (OR&R) that were mandated, approved and accepted by the Virginia Department of Environmental Quality (DEQ) based on the EPA's Streamlining Regulation. In accordance with our Interjurisdictional Pretreatment Agreement, HRRSA requests that the Town adopt its own local ordinance consistent with the revised OR&R no later than September 1, 2021. Councilperson Dyjak made a motion to pass the revision to Chapter 3.1.2 Sewer Ordinance of Title 6 of the Dayton Town Code, as written

with an effective date of September 1, 2021. Councilperson Mathias seconded the motion. Mayor Jackson asked if there was any discussion. After hearing none, the motion was approved by a roll call vote of 6 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; HOOVER—ABSENT. The revised Code section reads as follows:

SEWER ORDINANCE ADOPTING THE HARRISONBURG-ROCKINGHAM REGIONAL SEWER AUTHORITY OPERATING RULES AND REGULATIONS

WHEREAS, the Town of Dayton (the “Town”) has an interest in the safety, health, and welfare of the Town;

WHEREAS, the Town is a member of the Harrisonburg-Rockingham Regional Sewer Authority (the “Authority”), a public body created pursuant to the Virginia Water and Waste Authorities Act, Virginia Code Section 15.2-5100 *et seq.*;

WHEREAS, pursuant to the Interjurisdictional Pretreatment Agreement between the Authority and the Town, the Town is required to update its sewer ordinances to provide discharge limits at least as stringent as those established by the Authority;

WHEREAS, the Authority enacted new sewer rules and regulations on June 7, 2021 and has requested that the Town act to update the Town’s sewer ordinances by September 1, 2021;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town that Chapter 3.1.2 Sewer Ordinance of Title 6 of the Code of Ordinances of the Town of Dayton is amended, as follows:

**CHAPTER 3.1.2
Sewer Ordinance**

6.12 Definitions

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Ordinance, shall have the following meanings:

- 1) Act or “the Act”. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*
- 2) Authorized representative of Industrial User. The duly authorized representative of an Industrial User who is responsible for the overall operation of the facilities from which the Indirect Discharge originates. See Section 6-29(4).
- 3) Authority. Harrisonburg-Rockingham Regional Sewer Authority, a public body politic and corporate, created pursuant to the Virginia Water and Sewer Authorities Act, or its duly authorized representative.

- 4) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 6.13. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. Note: BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.
- 5) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of weight and concentration [milligrams per liter (mg/L)].
- 6) Building Sewer. A sewer conveying Wastewater from the premises of a User to the System.
- 7) Categorical Pretreatment Standards or Categorical Standards. National Categorical Pretreatment Standards applicable to a specific category of Industrial Users.
- 8) Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, and to which the only Pollutant added is heat.
- 9) Direct Discharge. The Discharge of treated or untreated Wastewater directly to the Waters of the State.
- 10) End of Pipe. The location at which any private or Industrial User connects to the public sewer (collection) System.
- 11) Environmental Protection Agency, or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the EPA Regional Administrator or other duly authorized official of said agency.
- 12) Executive Director. The person designated by the Authority to supervise the operation of the portion of the System owned by the Authority or her duly authorized representative.
- 13) Gender. The use of "his" or "her" shall include the other.
- 14) Grab Sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of duration.
- 15) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- 16) Human Waste. Water borne human excrement as may be present from residences, buildings, Industrial Users or other places.

- 17) Indirect Discharge or Discharge. The discharge or the introduction of Pollutants into the System from any non-domestic source.
- 18) Industrial User. A source of Indirect Discharge.
- 19) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- 20) Interference. The inhibition or disruption of the Town's or Authority's Wastewater conveyances, Treatment processes or operations. The term includes prevention of or Interference with sewage sludge use or disposal by the Town or Authority.
- 21) Local Limits. Concentration based or other limits for designated parameters (see section 6-13(13)). Local Limits apply at End of Pipe and are expressed as maximum per day limits, or as otherwise specifically provided.
- 22) Member Jurisdictions. The City of Harrisonburg, the County of Rockingham, and the Towns of Bridgewater, Dayton, and Mt. Crawford which individually collect Wastewater within their respective jurisdictions for Treatment by the Authority.
- 23) National Pretreatment Standard. Any regulation containing Pollutant Discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to Industrial Users.
- 24) New Source.
 - a) Any building, structure, facility or installation from which there is or may be a Discharge of Pollutants, the construction of which commenced after the publication of proposed National Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that: (i) the building, structure, facility or installation is constructed at a site at which no other source is located; or (ii) the building, structure, facility or installation totally replaces the process or production equipment that causes the Discharge of Pollutants at an existing source; or (iii) the production or Wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site
 - b) Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of (a)(ii) or (a)(iii) of this section but otherwise alters, replaces or adds to existing process or production equipment.
 - c) Construction of a New Source as defined under this section has commenced if the owner or operator has (i) begun, or caused to begin as part of a continuous onsite construction program (A) any placement, assembly, or installation of facilities or equipment, or (B) significant site preparation work including clearing, excavation, or

removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities or equipment; or (ii) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section.

- 25) National Pollutant Discharge Elimination System Permit (NPDES or VPDES). A permit issued pursuant to section 402 of the Act (33 U.S.C. § 1342).
- 26) North American Industry Classification System (NAICS). The standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and *publishing* statistical data related to the U.S. business economy. The NAICS industry codes define establishments based on the activities in which they are primarily engaged.
- 27) Pass Through. A Discharge which exits the System into Waters of the State in quantities or concentrations which, alone or in conjunction with a Discharge from other sources, are a cause of a violation of any requirement of the Authority's VPDES Permit (including an increase in the magnitude or duration of a violation). An Industrial User significantly contributes to such permit violation where it (i) Discharges a daily Pollutant loading or concentration in excess of that allowed by the Authority or by Federal, State or local law; (ii) discharges Wastewater which substantially differs in nature and constituents from the User's average Discharge; (iii) knows or has reason to know that its Discharge, alone or in conjunction with Discharges from other sources, would result in a permit violation; or (iv) knows or has reason to know that the Authority is, for any reason, violating its final effluent limitations in its permit and that such Industrial User's Discharge either alone or in conjunction with Discharges from other sources, increases the magnitude or duration of the Authority's violations.
- 28) Person. Any individual, partnership, firm, company, corporation, cooperative, association, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns.
- 29) pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions.
- 30) Pollution. The man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- 31) Pollutant. Any dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.
- 32) Pretreatment or Treatment. The reduction of the amount of Pollutants, the elimination of Pollutants or the alteration of the nature of Pollutant properties in Wastewater to a less

harmful state prior to or in lieu of discharging or otherwise introducing such Pollutants into the System.

- 33) Pretreatment Requirements. Any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard imposed on an Industrial User.
- 34) Publicly Owned Treatment Works (POTW). A treatment works, as defined by section 212 of the Clean Water Act (33 U.S.C. section 1292), which is owned by the Authority. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.
- 35) Significant Industrial User. (i) All Industrial Users subject to Categorical Pretreatment Standards; (ii) any Industrial User that discharges an average of 25,000 gallons per day or more of process Wastewater to the Authority (excluding Human Waste, noncontact cooling and boiler blowdown Wastewater); (iii) any Industrial User that contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the Authority Treatment Plant; or (iv) any Industrial User that is designated as such by the Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the Authority's operation or for violating any Pretreatment Standard or Requirement.
- 36) Significant Noncompliance. A User is in significant noncompliance if its violations meet one or more of the following criteria: (i) chronic violations of Wastewater Discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same Pollutant parameter, including instantaneous limits, as defined by 9VAC25-31-10; (ii) technical review criteria (TRC) violations defined as those in which thirty-three percent or more of all of the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit, including instantaneous limits, as defined by 9VAC25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other Pollutants except pH); (iii) any other violation of a Pretreatment effluent limit or requirement as defined by 9VAC25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Authority determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of Authority personnel or the general public); (iv) any Discharge of a Pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Authority's exercise of its emergency authority to halt or prevent such a Discharge; (v) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order for starting construction, completing construction, or attaining final compliance; (vi) failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules; (vii) failure to accurately report noncompliance; or (viii) any other violation or group of violations that may include a violation of Best Management Practices which the Authority determines will adversely

affect the operation or implementation of the Pretreatment program.

- 37) Slug Loading or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 6.13 of this ordinance. Any Discharge of non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.
- 38) Soluble BOD (sBOD). The BOD result on a sample that is filtered through a 0.45 µm pore size filter.
- 39) State. Commonwealth of Virginia.
- 40) Standard Industrial Classification (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.
- 41) Storm Water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.
- 41(a) Superintendent. Shall mean the Town Superintendent of the Town, or his authorized deputy, agent or representative.
- 42) System. The Treatment Plant, works and facilities owned by the Authority, including all sewer lines that convey Wastewater to the Treatment Plant, and in addition, such term shall include the sewer lines owned by the Town.
- 43) Total Kjeldahl Nitrogen (TKN). Organic nitrogen plus ammonia, as defined by the named analytical procedure.
- 44) Total Suspended Solids (TSS). The total suspended matter which floats on the surface of, or is suspended in, water, Wastewater or other liquids, and which is removable by laboratory filtering.
- 44(a) Town. The Town of Dayton, Virginia.
- 45) Toxic Pollutant. Any Pollutant or combination of Pollutants listed as toxic in regulations promulgated by the Administrator of EPA under the provision of section 307(a) of the Act.
- 46) Treatment Plant. That portion of the System designed to provide Treatment to Wastewater.
- 47) User. Any Person who causes or permits the contribution of Wastewater into the System.
- 48) Wastewater. The liquid or water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with all other wastes

which may be present, whether treated or untreated, which are contributed into or permitted to enter the System.

- 49) Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.
- 50) Wastewater Discharge Permit. As set forth in Section 6-28 of this Ordinance.

6.12.1 Abbreviations

The following abbreviations shall have the designated meanings.

- a) BOD - Biochemical Oxygen Demand
- b) CFR - Code of Federal Regulations
- c) COD - Chemical Oxygen Demand
- d) L - Liter
- e) mg - Milligrams
- f) mg/L - Milligrams per liter
- g) µm - Micrometer
- h) RCRA - Resource Conservation and Recovery Act
- i) SWDA - Solids Waste Disposal Act, 42 U.S.C. 6901, et seq.
- j) U.S.C. - United States Code
- k) TSS - Total Suspended Solids
- l) NPDES/VPDES - National/Virginia Pollutant Discharge Elimination System

6-13 General Discharge Prohibitions

No User shall contribute or cause to be contributed, directly or indirectly, any Pollutant or Wastewater which will cause a Pass Through or an Interference with the operation or performance of the System. This general prohibition applies to all Users of the System whether or not the User is subject to National Pretreatment Standards or any other national, State, or local requirements. A User may not contribute the following substances directly or indirectly to the System:

- 1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be sufficient either alone or by interaction with other substances to cause fire or explosion hazard including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR § 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.
- 2) Unusual concentrations of Total Suspended Solids (such as, but not limited to, Fullers earth, lime slurries and lime residue), or any solid or viscous Pollutants in amounts that will cause obstruction to the flow in the System.
- 3) Any Wastewater having a pH less than 5.5, or Wastewater having any other corrosive property capable of causing damage or creating a hazard to the System or personnel of the Authority or Town.
- 4) Any Wastewater containing or which result in the presence of Toxic Pollutants or gases, vapors or fumes in sufficient quantity, either alone or by interaction with other Pollutants, which injures any Wastewater Treatment process, may cause acute worker health or safety problems, creates a toxic effect in the receiving waters of the Authority or Town, or exceeds the limitation set forth in a Categorical Standard. A Toxic Pollutant shall include, but shall not be limited to, any Pollutant identified as such pursuant to section 307(a) of the Act.
- 5) Any noxious or malodorous liquids, gases or solids which either alone or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent personnel of the Authority or Town from entering into the sewers for maintenance and repair.
- 6) Any substance which may cause the Authority's effluent or any other product of the Authority such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall any substance discharged to the System cause the Authority to violate any applicable sludge use or disposal criteria, or regulations developed therefore.
- 7) Any substance which will cause the Authority to violate its VPDES Permit or applicable water quality standards of the receiving water.
- 8) Any Wastewater with objectionable color which cannot be removed by the Treatment Plant, such as, but not limited to, dye waste and vegetable tanning solutions.
- 9) Any Wastewater having a temperature which will inhibit biological activity in the Treatment Plant resulting in Interference, but in no case Wastewater with a temperature that causes the temperature of the combined Wastewater of all Users at the Treatment Plant to exceed 37° Centigrade (98.6° Fahrenheit).
- 10) Slug Loading(s) prohibited by this Ordinance.

- 11) Any Wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Authority.
- 12) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/L or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit.
- 13) Any Wastewater, which at the End of Pipe location, exceeds the following Local Limits for the listed parameters:

<u>Parameter</u>	<u>Maximum Daily Limit (mg/L)</u>
Arsenic	0.51
Cadmium	0.09
Chromium	4.4
Copper	1.7
Cyanide	2.2
Lead	1.21
Mercury	0.002
Nickel	1.5
Selenium	0.41
Silver	2.8
Zinc	5.0

Parameter	Maximum Daily Limit (mg/L)	Monthly Average Limit (mg/L)	Monthly Average Concentration (mg/L)
BOD	500	350	NA
TSS	500	350	NA
TKN	100	NA	70.0
Total Phosphorus	20	NA	14.0
Nitrate + Nitrite	10.0	NA	NA
Oil & Grease	100	NA	NA
pH	(Range in standard units) 5.5 - 9.5	NA	NA

The Executive Director of the Authority may impose mass limitations in place of the concentration-based limits above with respect to any User other than a Significant Industrial User. If any measured values of these parameters are over the limits listed above, the Authority will determine if an Industrial User designation is required.

The sample type for Oil & Grease and pH shall be a Grab Sample. The sample type for all other parameters shall be a 24-hour composite sample (or for the time period Discharges

occur if less than 24 hours). Compliance with a maximum daily limit shall be based on a single composite sample when there is only one sample in a 24-hour period, or an average of multiple composite samples in a day. Compliance with a monthly average limit shall be based on an average of all of the values for a specific parameter within a calendar month. Under no circumstances may Grab Samples be averaged.

Discharges of each single sample of TKN and Total Phosphorus in excess of the respective monthly average concentration shown in the table above but below the maximum daily limit shall not be considered an exceedance or a violation of the Local Limits. All Discharges of TKN and Total Phosphorus in excess of the respective monthly average concentration shall be subject to the Treatment Cost Recovery Fees in section 6-25.

- 14) Any trucked or hauled Pollutants except at discharge points designated by the Authority, and pursuant to specific authorization of a Wastewater Discharge Permit pursuant to this Ordinance or other written Authority authorization.
- 15) Petroleum oil, non-biodegradable cutting oil, or products containing mineral oil in amounts that will cause Interference or Pass Through.
- 16) Any Wastewater containing quantities of Pollutants which exceed the applicable limitations set forth in a National Pretreatment Standard as such standards may be revised from time to time.
- 17) Unusual concentrations of Biochemical Oxygen Demand, at a flow rate or Pollutant concentration that will cause Interference.
- 18) Any Storm Water or water from any roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains.

6-14 Prohibited Substances and Materials

No Person shall discharge or cause to be discharged, either directly or indirectly, any Wastewater, sewage or waste to the System which will cause a Pass Through or an Interference with the operation or performance of the Treatment Plant or the following described substances, materials, waters, or wastes if it appears likely, in the opinion of the Authority or Town, that such wastes can harm the System, have an adverse effect on the Waters of the State or can otherwise endanger life, limb, public property or constitute a nuisance. Consideration will be given to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage Treatment process, capacity of the Treatment Plant, degree of treatability of wastes in the Treatment Plant and other pertinent factors. The substances prohibited are:

- 1) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit.

- 2) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Town or the Authority.
- 3) Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions, whether neutralized or not.
- 4) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances or wastes exerting an excessive chlorine requirement to such degree that any such material received in the Wastewater at the Treatment Plant exceeds the limits established by the Authority for such materials.
- 5) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Authority as necessary, after Treatment of the Wastewater, to meet the requirements of the State, federal or other public agencies of jurisdiction for such discharge to the Waters of the State.
- 6) Materials which exert or cause unusual concentrations of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) not to exceed seven hundred and fifty (750) mg/L.

When the Authority or Town determines that a User is violating this section, the violator may be subject to the Enforcement Actions in section 6-32 through 6-40 of this Ordinance.

6-15 Federal Categorical Pretreatment Standards

Compliance by existing sources with Categorical Standards is required under federal law within three (3) years of the date the Standard is effective, unless a shorter compliance time is specified within the Standard. Compliance by New Sources is required under federal law on the date the Standard is effective.

1) Non-Significant Categorical Industrial Users

The Authority may determine that a Categorical Industrial User is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical Wastewater (excluding sanitary, non-contact cooling and boiler blowdown Wastewater, unless specifically included in the standard) and the following conditions are met:

- a) The Industrial User, prior to the Authority's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;
- b) The Industrial User annually submits the certification statement required in 40 CFR § 403.12(q) together with any additional information necessary to support the certification statement; and
- c) The Industrial User never discharges any untreated concentrated Wastewater.

2) Equivalent Limitations to Those Expressed as Mass

When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of Pollutant per unit of production, the Authority may convert the limits to equivalent limitations expressed either as mass of Pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

In any such case the Authority, in calculating equivalent mass-per-day limitations shall calculate such limitations by multiplying the limits in the Categorical Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For New Sources, actual production shall be estimated using projected production.

Further in any such case the Authority, in calculating equivalent concentration limitations shall calculate such limitations by dividing the mass limitations derived as stated immediately above by the average daily flow rate of the Industrial User's regulated process Wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

3) Equivalent Limitations to Those Expressed as Concentration

When the limits in a Categorical Pretreatment Standard are expressed only in terms of Pollutant concentrations, an Industrial User may request that the Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Authority. The Authority may establish equivalent mass limits only if the Industrial User meets all the following conditions specified below. To be eligible for equivalent mass limits, the Industrial User must:

- a) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its Wastewater Discharge Permit;
- b) Currently use control and Treatment technologies adequate to achieve compliance with the applicable Categorical Standard, and not have used dilution as a substitute for Treatment;
- c) Provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions;
- d) Not have daily flow rates, production levels, or Pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge;

and

- e) Have consistently complied with all applicable Categorical Standards during the period prior to the Industrial User's request for equivalent mass limits.

Further, an Industrial User subject to equivalent mass limits must:

- f) Maintain and effectively operate control and Treatment technologies adequate to achieve compliance with the equivalent mass limits;
- g) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
- h) Continue to record the facility's production rates and notify the Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined initially. Upon notification of a revised production rate, the Authority will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
- i) Continue to employ the same or comparable water conservation methods and technologies as those implemented so long as it discharges under an equivalent mass limit.

The Authority, if it establishes equivalent mass limits, will:

- j) Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average limits for the applicable Categorical Standard and the appropriate unit conversion factor;
- k) Upon notification of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
- l) Retain the same equivalent mass limit in a subsequent Wastewater Discharge Permit if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for Treatment. The Industrial User must also be in compliance with 40 CFR § 403.17 regarding the prohibition of bypass.
- m) The Authority will not express limits in terms of mass for Pollutants such as pH, temperature, radiation, or other Pollutants which cannot appropriately be expressed as mass.

6-16 Modification of Federal Categorical Pretreatment Standards

When the System achieves consistent removal (as defined by 40 CFR § 403.7) of Pollutants limited by Categorical Standards, the Authority may in its discretion apply for modification of specific limits in the Categorical Standards. The Authority may then modify Pollutant Discharge limits in the Categorical Standards to reflect such "Removal Credits" if the requirements contained in 40 CFR § 403.7 are met and prior EPA approval is obtained.

6-17 Specific Pollutant Limitations

The Authority has established Local Limits in section 6-13(13) of this Ordinance applicable to all Users. The Authority further reserves the right to set specific numerical limitations on the quantity of Pollutants discharged by any User to the System. Such further limitations may affect a single User, a category of Users, or all Users and will be set at such limits which will further the objectives of this Ordinance.

6-18 State Requirements

Any applicable State requirements and limitations on Discharges shall apply in any case where they are more stringent than requirements established by the Authority.

6-19 Authority's Right of Revision

The Authority reserves the right to modify the Wastewater Discharge Permits, limitations or requirements on Discharges to the System as it determines necessary to comply with the objectives of this Ordinance.

6-20 Excessive Discharge

No User shall ever increase the use of process water or, in any way, attempt to dilute a Discharge as a partial or complete substitute for adequate Treatment to achieve compliance with the limitations contained in this Ordinance, the Categorical Standards or any other federal, State or local law or regulation.

6-21 Accidental Discharges

Each User shall provide protection from accidental Discharge of prohibited Pollutants or other substances regulated by this Ordinance. In case of an accidental Discharge, it is the responsibility of the User to immediately telephone and otherwise notify the Authority of the incident. The notification shall include the location of the Discharge, type of waste, concentration, volume, and corrective actions.

- 1) Written Notice. Within five (5) days following an accidental Discharge, the User shall submit to the Authority and Town a detailed written report describing the cause of the

Discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the System, fish kills, or any other damage to Person or property; nor shall such notification relieve the User of any civil penalties or other liability which may be imposed under this Ordinance or other applicable law.

- 2) Notice to Employees. A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees whom to call in the event of a dangerous or accidental Discharge.

6-22 New or Increased Wastewater

The Authority may deny or condition new or increased contributions of Pollutants, or changes in the nature of Pollutants, to the System by any User where such contributions do not meet applicable Pretreatment Standards or Requirements or where such contributions would cause a risk of Pass Through or Interference to the System.

All Industrial Users shall promptly notify the Authority of any significant changes to the User's operations or systems which might alter the nature, quality, volume, or character of Pollutants in their Discharge including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under section 6-24 at least 30 days before the change. The Executive Director may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under 6-28(1) of this ordinance. The Executive Director may issue an individual wastewater discharge permit under Section 6-28 of this ordinance or modify an existing wastewater discharge permit under Section 6-28(2) of this ordinance in response to changed conditions or anticipated changed conditions.

6-23 Notification of Problem Discharges

All Industrial Users shall notify the Authority and Town immediately of all Discharges that could cause problems to the System, including but not limited to any Slug Loadings by such Users. This notification shall be followed up within five (5) days by written notification as provided in section 6-21. Significant Industrial Users are required to notify the Authority immediately of any changes at its facility affecting potential for a slug discharge.

6-24 Notification of Hazardous Wastes

All Industrial Users shall notify the Authority, the EPA Region 3 Waste Management Division Director, the Town and the Virginia Department of Environmental Quality Division of Land Protection and Revitalization in writing of any Discharge into the System of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261 or 9 VAC 20-60. Such notification must include the name of the hazardous waste as set forth in such regulations, the EPA hazardous waste number, and the type of Discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the System, the

notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve months. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed hazardous waste discharges must be submitted to the Authority and Town in advance of any substantial change in the volume or character of Pollutants.

Industrial Users are exempt from the above requirements during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR § 261.30(d) and § 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or any quantity of acute hazardous waste, requires a one-time notification. Subsequent months during which the Industrial User discharges additional quantities of such hazardous waste do not require additional notification.

In the case of new regulations identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Authority, the EPA Region 3 Waste Management Division Director, the Town and the Virginia Department of Environmental Quality Division of Land Protection and Revitalization of the discharge of such substance within 90 days of the effective date of such regulations.

In the case of any notification made under this section, the Industrial User shall certify that it has a program in place to reduce the volume or toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Industrial Users who commence discharging hazardous wastes after the effective date of these notification requirements shall provide notification no later than 180 days after the discharge of the hazardous waste.

6-25 Treatment Cost Recovery Fees

In accordance with the formula below, the Authority shall calculate and collect Treatment Cost Recovery Fees for any daily composite sample for BOD, TSS, TKN and Total Phosphorus concentrations in excess of the monthly average Wastewater Discharge Permit limit or monthly average concentration as provided in 6-13(13). Such fees shall be calculated as the sum of each Treatment Cost Recovery Fee calculated during the monitoring period. Treatment Cost Recovery Fees shall be paid by Industrial Users within 45 days of the end of the monitoring period.

$$\text{Treatment Cost Recovery Fee} = 8.345 * (X - Y) * \text{ADF} * Z * U$$

Where:

X is each single sample concentration when in excess of the monthly average Wastewater Discharge Permit limit (BOD=350 mg/L and TSS=350 mg/L) or monthly average concentration (TKN=70.0 mg/L and Total Phosphorus=14.0 mg/L)

Y is the monthly average Wastewater Discharge Permit limit (BOD=350 mg/L and TSS=350 mg/L) or monthly average concentration (TKN=70.0 mg/L and Total Phosphorus=14.0 mg/L)

ADF is the average daily Wastewater flow in million gallons recorded on the day the exceedance occurred

Z is the Pollutant parameter Treatment Cost Recovery Multiplier below

U is the Pollutant parameter Unit Cost for Treatment in dollars per pound

Treatment Cost Recovery Multiplier				
Parameter	1.0	1.5	2.0	3.0
BOD	>350-500 mg/L	>500-1,000 mg/L	>1,000-1,500 mg/L	>1,500 mg/L
TSS	>350-500 mg/L	>500-1,000 mg/L	>1,000-1,500 mg/L	>1,500 mg/L
TKN	>70.0-100 mg/L	>100-125 mg/L	>125-150 mg/L	>150 mg/L
Total Phosphorus	>14.0-20 mg/L	>20.0-25 mg/L	>25-30 mg/L	>30 mg/L
Nitrate + Nitrite	NA	NA	NA	>10.0 mg/L

The Unit Cost for Treatment (U) shall be as determined by the Authority on an annual or other basis and published on the Authority website.

Notwithstanding the above, for Industrial Users whose principal classification is industry 312120 (breweries), 312130 (wineries), 312140 (distilleries), 312111 (soft drinks), and other classifications (as approved by the Authority) pursuant to the North American Industry Classification System (NAICS), the factor X used for calculating the BOD Treatment Cost Recovery Fee may be computed by subtracting sBOD from BOD and using the difference, as determined by the Authority on a case-by-case basis.

Imposition and payment of such fees shall not excuse the exceedance of the underlying Pollutant parameter monthly average limit from section 6-13(13), and any such exceedance shall continue to be subject to Authority enforcement.

6-26 Industrial User Monitoring

Permitted Industrial Users shall be required to monitor their Wastewater Discharges at the following frequencies unless stipulated differently in their individual Wastewater Discharge Permit.

- 1) All Pollutant parameters except as specified below:

<u>Average Daily Flow</u>	<u>Monitoring Frequency</u>
<50,000 gpd	1/week
≥50,000 < 100,000 gpd	2/week
≥100,000 gpd	3/week

- 2) Metals: 1/year.
- 3) Oil & Grease: 2/month.
- 4) pH at least 1/hour each day for the time period of the Discharge.
- 5) If sampling performed by an Industrial User indicates a violation, the User shall notify the Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Authority within 30 days after becoming aware of the violation. Where the Authority has performed the sampling and analysis in lieu of the Industrial User, the Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:
 - a) The Authority performs sampling at the Industrial User at a frequency of at least once per month; or
 - b) The Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Authority receive the results of this sampling.

6-27 Wastewater Discharges

It shall be unlawful for any Significant Industrial User to discharge without a Wastewater Discharge Permit to the System any Wastewater except as authorized by the Authority in accordance with the provision of this Ordinance.

6-28 Wastewater Discharge Permits

All Significant Industrial Users proposing to connect to or contribute to the System shall obtain from the Authority a Wastewater Discharge Permit before connecting to or contributing to the System. The Authority may require any other IU to obtain from the Authority a Wastewater Discharge Permit before connecting to or contributing to the System, if the Authority determines

that a Wastewater Discharge Permit is beneficial in implementing this Ordinance.

1) Wastewater Discharge Permit Application

A User required to obtain a Wastewater Discharge Permit shall complete and file with the Authority an application in the form prescribed by the Authority. The Authority shall furnish the Town with a copy of the application upon receipt. Proposed new Users shall apply at least 90 days prior to their intent to connect to or contribute to the System. The application shall include the following information.

- a) Name, address of the User and the location of the Discharge if different from such address;
- b) SIC number(s);
- c) Wastewater constituents and characteristics, including but not limited to, those identified in subsection 6-13(13) of this Ordinance as determined by a reliable analytical laboratory; and sampling and analysis shall be performed in accordance with procedures established in 40 CFR Part 136;
- d) Time and duration of contribution;
- e) Average daily and 30-minute peak Wastewater flow rates, including daily, monthly and seasonal variations if any;
- f) Site plans showing all sewers and sewer connections by the size, location and elevation and any Pretreatment facilities;
- g) Description of Pretreatment facilities and processes on the premises, or those to be installed;
- h) Measurement of Pollutants. (i) The User shall identify the Pretreatment Standards applicable to each regulated process; and (ii) the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by an applicable standard or the Authority) of regulated Pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The samples shall be representative of daily operations. In cases where the standard or local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Authority or the applicable standards to determine compliance with the standard.

Further (iii) a minimum of four (4) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other Pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Authority may waive flow-proportional

composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) Grab Samples where the User demonstrates that this will provide a representative sample of the effluent being discharged. The User shall (iv) take a minimum of one representative sample to compile the data necessary to comply with the requirements of this section; (v) samples shall be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment, the User shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR § 403.6(e) in order to evaluate compliance with the Pretreatment Standards.

Where a proposed alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of 40 CFR § 403.6(e), this adjusted limit along with supporting data shall be submitted to the Authority. This paragraph pertains to Users subject to Categorical Standards.

In the case of Users not subject to Categorical Standards, the Authority shall specify on the Wastewater Discharge Permit application which Pollutants are to be sampled (including sample type and number) and tested.

- i) If additional Pretreatment and/or operation and maintenance will be required to meet the Pretreatment Standards or Requirements, the shortest schedule by which the User is able to provide such additional Pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard or otherwise by this Ordinance.

The following conditions shall apply to this schedule:

- (i) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional Pretreatment required for the User to meet the applicable Pretreatment Standards or Requirements (e.g. hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- (ii) No increment referred to in the preceding paragraph shall exceed nine (9) months.
- (iii) Not later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with such increment of progress, the reason for delay, and the steps being taken by the User

to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Authority.

- j) A list of products produced;
- k) Type of raw material processed; and
- l) Any other information as may be required by the Authority to evaluate the Wastewater Discharge Permit application. The Authority will evaluate the data furnished by the User and may require additional information. After evaluation and acceptance of the data furnished, the Authority may issue a Wastewater Discharge Permit subject to the terms and conditions provided herein; or the Authority may decline to issue the Wastewater Discharge Permit.

2) Wastewater Discharge Permit Modifications

The Authority may reopen and modify a Wastewater Discharge Permit for good cause, including without limitation for the following reasons.

- a) To incorporate any new or revised Pretreatment Standard or Requirement.
- b) To address significant alterations to the User's processes or Discharge.
- c) A change in the Authority's facilities or processes or the regulatory requirements applicable to the Authority.
- d) To correct typographical or other errors in the Wastewater Discharge Permit.
- e) On the request of the permittee for good cause shown.

3) Wastewater Discharge Permit Conditions

Wastewater Discharge Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, User charges and fees established by the Authority or the Town. Wastewater Discharge Permits shall contain the following:

- a) Statement of duration (in no case more than five (5) years);
- b) Statement of non-transferability without, at a minimum, prior notification to the Authority and Town, a signed agreement between the current and new permittees stating and agreeing to the date of transfer, and approval of the transfer by the Authority. The Authority may in its discretion require a new Wastewater Discharge Permit application from the proposed new owner;

- c) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards, Categorical Pretreatment Standards, and the requirements of this Ordinance;
- d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the Pollutants to be monitored, sampling location, sampling frequency, and sample type;
- e) Statement of applicable civil and criminal penalties for violation of the Wastewater Discharge Permit, Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;
- f) Limits on average and maximum rate and time of Discharge or requirements for flow regulations and equalization, if determined necessary by the Authority;
- g) Requirements for installation and maintenance of inspection and sampling facilities, if determined necessary by the Executive Director;
- h) Requirements for maintaining and retaining plant records relating to Wastewaters and Discharge as specified by the Authority, and affording the Authority access thereto;
- i) Requirements for notification of the Authority of any new introduction of Wastewater constituents or any substantial change in the volume or character of the Wastewater constituents being introduced into the System;
- j) Requirements for immediate notification of all Discharges that could cause problems to the System, including any Slug Loading;
- k) Requirements for slug discharge control, if determined necessary by the Authority. A slug control plan shall contain, at a minimum, the following elements: description of discharge practices, including non-routine batch discharges; description of stored chemicals; procedures for immediately notifying the Authority of slug discharges, with procedures for a follow-up written notification within five days; and, if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
- l) Statement that the Wastewater Discharge Permit may be reopened and modified as determined necessary by the Authority; and
- m) Other conditions as determined appropriate by the Authority to ensure compliance with this Ordinance.

4) Wastewater Discharge Permit Duration

Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years. The User shall apply for Wastewater Discharge Permit renewal at least 180 days prior to the expiration of the User's existing Wastewater Discharge Permit. The terms and conditions of the new Wastewater Discharge Permit may be subject to modification by the Authority. The User shall be informed of any proposed changes in its Wastewater Discharge Permit at least 30 days prior to the effective date of change. Any changes or new conditions in the Wastewater Discharge Permit shall include if necessary and consistent with legal requirements a reasonable time schedule for compliance.

If the permittee has submitted a complete reapplication no later than the date identified in the immediately preceding paragraph, and the Authority has not, through any fault of the permittee, made a decision on Wastewater Discharge Permit reissuance, the Wastewater Discharge Permit shall be administratively extended and remain in effect until a final decision on the Wastewater Discharge Permit by the Authority.

5) Supplemental Wastewater Discharge Permit Provisions

- a) *Performance Bonds Reserve*
- b) *Liability Insurance Reserve*
- c) *Payment of Outstanding Fees and Penalties Reserve*
- d) *Disclosure Statements (compliance information on User and key personnel) Reserve*

6) Wastewater Discharge Permit Transfer

Wastewater Discharge Permit shall be issued to a specific User for a specific operation at a specific location. A Wastewater Discharge Permit shall not be assigned, transferred or sold to another Person or User except as provided in subsection 6-28(3)(b), and shall not be applicable to a different premises or a new or changed operation without the approval of the Authority.

6-29 Reporting Requirements

1) Baseline Report

Within 180 days after the effective date of a Categorical Standard, existing Industrial Users subject to such standards and currently discharging to or scheduled to discharge to the System shall submit to the Authority a report which contains the information listed in subparagraphs (a) - (g) below. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Authority a report which contains the

information listed in subparagraphs (a) - (e) below. New Sources shall also be required to include in this report information on the method of Pretreatment the source intends to use to meet applicable Pretreatment standards. New Sources shall give estimates of the information requested in subparagraphs (d) and (e) of this section:

- a) *Identifying information.* The name and address of the facility including the name of the operator and owners;
- b) *Permits.* A list of any environmental control permits held by or for the facility;
- c) *Description of operations.* A brief description of the nature, average rate of production, and SIC of the operation(s) carried out by such Industrial User. This description shall include a schematic process diagram which identifies points of Discharge to the System from the regulated processes;
- d) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the System from each of the following:
 - i. Regulated process streams; and
 - ii. Other streams as necessary to allow use of the combined waste stream formula of 40 CFR § 403.6(e).

The Authority may allow for verifiable estimates of these flows were justified by cost or feasibility considerations.

- e) *Measurement of Pollutants.* The Categorical Standards applicable to each regulated process. In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or the Authority) of regulated Pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Authority or the applicable standards to determine compliance with the standard. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection. Samples shall be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment, the User shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR § 403.6(e) in order to evaluate compliance with the standards. Where an alternate concentration or mass limit has been calculated in accordance with this Ordinance, this adjusted limit along with supporting data shall be submitted to the Authority.

The Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial Pretreatment measures.

The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant Discharges to the System.

- f) *Certification.* A statement, reviewed by an Authorized representative of the Industrial User and certified to by a qualified professional, stating whether standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional Pretreatment is required for the Industrial User to meet the standards; and
- g) *Compliance schedule.* If additional Pretreatment and/or O&M will be required to meet the standards; the shortest schedule by which the Industrial User will provide such additional Pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable standard.

Where the Industrial User's Categorical Pretreatment Standard has been modified by a removal allowance (40 CFR § 403.7), the combined waste stream formula (40 CFR § 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR § 403.13) at the time the User submits the report required, the information required by subparagraphs (f) and (g) of this section shall pertain to the modified limits. If the Categorical Pretreatment Standard is modified by a removal allowance, the combined waste stream formula, and/or a Fundamentally Different Factors variance after the User submits the report required by this section, any necessary amendments to the information requested by paragraphs (f) and (g) shall be submitted by the User to the Authority within 60 days after the modified limit is approved.

- 2) Compliance schedule for meeting Categorical Standards. The following conditions shall apply to the schedule required by paragraph (1)(g) of this section: The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional Pretreatment required for the Industrial User to meet the applicable Categorical Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No increment shall exceed nine (9) months. Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Authority.

- 3) Categorical Standard Deadline Compliance

Within 90 days following the date for final compliance with applicable Categorical Standards or in the case of a New Source following commencement of the introduction of

Wastewater into the System, the User shall submit to the Authority a report including the information described in subsections (1)(d) – (f) above. For Industrial Users subject to equivalent mass or concentration limits established by the Authority, this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to Categorical Standards expressed in terms of allowable Pollutant Discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

4) Periodic Reports on Continued Compliance

After the compliance date of a Categorical Standard or, in the case of a New Source, after commencement of the Discharge into the System, any User subject to a Categorical Standard shall submit to the Authority during the months of June and December, unless required more frequently by the Authority, a report identifying the nature and concentration of Pollutants in the effluent which are limited by such standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period. At the discretion of the Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Authority may agree to alter the months during which the above reports are to be submitted. In cases where the standard requires compliance with a Best Management Practice or other pollution prevention alternative, the User shall submit documentation required by the Authority or the standard necessary to determine the compliance status of the User.

5) Reports and applications submitted by an Industrial User must be signed by a responsible corporate officer or a duly Authorized representative of that individual. (i) A responsible corporate officer is defined as the president, secretary, treasurer or vice president of the corporation in charge of the principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation. In addition, the manager of one or more manufacturing, production or operating facility(ies) of the corporation, provided, the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (ii) By a general partner or proprietor if the industrial user submitting the reports required by subsections 6-29(1), (2), and (3) of this section is a partnership or sole proprietorship, respectively. (iii) By a duly authorized representative of the individual designated in (i) or (ii) of this subsection if:

- a. The authorization is made in writing by the individual described in subdivision (i) or (ii) of this subsection;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such

as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the Authority.

(iv) If an authorization under subdivision (iii) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (iii) of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

The following statement shall be used on all reports, application and notices requiring certification, and with all submissions of data;

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

6) The reports required in 3) of this subsection must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable local limits, pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Authority. Where time-proportional composite sampling or grab sampling is authorized by the Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Authority, as appropriate.

- 7) For sampling required in support of baseline monitoring and 90-day compliance reports required by 6-29(1) and 6-29(2) in this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Authority may authorize a lower minimum. For the reports required by 6-29(3) and 6-29(9) of this section, the Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with applicable local limits, pretreatment standards and requirements.
- 8) The Authority may impose mass limitations on Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by the provisions above shall identify the mass of Pollutants regulated by the standards in the effluent of the User.
- 9) All analyses shall be performed in accordance with procedures established by EPA in 40 CFR Part 136. Sampling shall be performed in accordance with the techniques designed and implemented to obtain representative samples.

If an Industrial User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Authority using the procedures prescribed above in 8), the results of this monitoring shall be reported.

- 10) Reporting requirements for Industrial Users not subject to categorical pretreatment standards. The Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical pretreatment standards. Significant noncategorical Industrial Users must submit to the Authority at least once every six months (on dates specified by the Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. This sampling and analysis may be performed by the Authority in lieu of the Significant noncategorical Industrial User.
- 11) Any Industrial User subject to the reporting requirement established in this section shall maintain records of all information resulting from any monitoring activities required by this section including documentation associated with Best Management Practices. Such records shall include for all samples: (i) the date, exact place, method, and time of sampling and the names of the person or persons taking the samples; (ii) the dates analyses were performed; (iii) the individuals who performed the analyses; (iv) the analytic methods used; and (v) the result of such analyses.

Any Industrial User subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to

retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying on the request of the Authority. This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or when requested by the Authority.

6-30 Monitoring and Pretreatment Facilities

1) Monitoring Facilities

Each User required to monitor its Wastewater shall provide and operate at the User's expense, monitoring facilities to allow inspection, sampling and flow measurement of the Building Sewer and/or internal drainage systems. The monitoring facility should normally be situated on the User's premises, but when such location would be impractical or cause undue hardship on the User, if approved by the Town, the Authority may approve a facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the User.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the Authority's requirements and all applicable local construction standards and specifications, and shall be available for the Authority's inspection and use for sampling.

2) Pretreatment Facilities

Users shall provide necessary Pretreatment as required to comply with this Ordinance and shall achieve compliance with all Pretreatment Standards and Requirements within the time limitations as specified by this Ordinance, the Wastewater Discharge Permit, any Order or federal Pretreatment Standards, whichever is more stringent. Any facilities required to pretreat Wastewater to a level acceptable to the Authority shall be proven, operated and maintained at the User's expense. Detailed plans showing the Pretreatment facilities and operating procedures shall be submitted to the Authority for review, and shall be acceptable to the Authority before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Authority under the provisions of this Ordinance. Any subsequent changes in the Pretreatment facilities or method of operation shall be reported to and be acceptable to the Authority prior to the User's initiation of the changes. All records relating to compliance with Pretreatment Standards and Requirements shall be made available to officials of the EPA, the Virginia Department of

Environmental Quality, the Town and the Authority upon request.

6-31 Inspection and Sampling

The Authority shall (i) randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by the Industrial Users, occasional and continuing noncompliance with Pretreatment Standards or Requirements; (ii) inspect and sample the effluent from each Significant Industrial User at least once a year; and (iii) evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control Slug Loadings. In addition, Significant Industrial Users must be evaluated within one year of being designated a Significant Industrial User. If the Authority determines that a Slug Loading plan is needed, such plan shall contain at a minimum, the elements outlined in Section 6-28(3)(k) and set forth in 40 CFR § 403.8(f)(2)(vi). The Authority may inspect such facilities to ensure compliance. All Users shall allow representatives of the Town and the Authority access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination (including the right to copy such records) and the performance of any of their duties. The Town and the Authority shall have the right to set upon the User's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that upon presentation of suitable identification, personnel from the Town and/or the Authority will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

In addition, all Users shall pay to the Town or the Authority all reasonable and necessary costs incurred by the Town or the Authority in connection with inspections, Wastewater monitoring, sampling and testing.

6-32 Confidential Information

Information and data of a User obtained from reports, questionnaires, Wastewater Discharge Permit applications, Wastewater Discharge Permits, monitoring programs and inspections shall be available to the public without restriction unless the User specifically identifies such information as being business confidential or proprietary and requests that such information remain confidential. Information and data identified and marked by the User as business confidential or proprietary will be held confidential by the Authority and the Town to the extent permissible under law. Information and data concerning effluent data cannot be claimed as confidential.

6-33 Harmful Contributions

- 1) The Authority or Town may suspend the Wastewater Treatment service or a Wastewater Discharge Permit or cut off the sewer connection when the Authority or Town determines

such suspension or cut off to be necessary, in order to stop a Discharge which:

- a) presents or may present an imminent or substantial endangerment to the health or welfare of persons;
 - b) presents or may present an imminent or substantial endangerment to the environment;
 - c) may cause or actually causes an Interference or Pass Through; or
 - d) may cause the Authority to violate any condition of its VPDES Permit.
- 2) The Authority or Town may reinstate the Wastewater Discharge Permit or the Wastewater Treatment service upon proof of the elimination of the subject Discharge.
 - 3) In the event of a suspension or cut-off under this section, within 15 days the User shall submit a written report to the Authority and Town describing the event that caused the conditions of concern and the measures taken to prevent any recurrence.

6-34 Revocation of Wastewater Discharge Permit

The Authority may revoke any Wastewater Discharge Permit if it determines that:

- 1) A User has falsified information or records submitted or retained in accordance with this Ordinance or in connection with any Wastewater Discharge Permit issued pursuant to this Ordinance;
- 2) A User has violated the conditions of a Wastewater Discharge Permit;
- 3) A User has refused right of entry required by this Ordinance;
- 4) A User has failed to timely re-apply for a Wastewater Discharge Permit or request a required Wastewater Discharge Permit modification;
- 5) A User has discharged into the System in violation of this Ordinance; or
- 6) Changed circumstance(s) require a temporary or permanent reduction or elimination of the permitted Discharge.

6-35 Notice of Violation

- 1) Issuance. The Authority may issue a written Notice of Violation if there are reasonable grounds to believe that the Person to whom the Notice of Violation is directed has violated:
 - a) This Ordinance;

- b) Any requirement imposed under this Ordinance; or
 - c) Any Order or Wastewater Discharge Permit issued under this Ordinance.
- 2) Contents. A Notice of Violation issued under this section shall:
- a) Specify the provision(s) that allegedly has been violated;
 - b) State the alleged facts that constitute the violation;
 - c) Require a written response;
 - d) Require correction of the cause of the violation alleged; and/or
 - e) Require the User's appearance at an informal hearing at a time and place scheduled in order to respond to the charges in the Notice of Violation.

6-36 Issuance of Compliance Order

- 1) In general. After or concurrent with the issuance of a Notice of Violation under this Ordinance, the Authority may:
- a) Issue a Compliance Order that requires the Person to whom the Order is directed to take corrective action within a time set in the Order; and/or
 - b) To appear at an informal hearing at a time and place scheduled in order to respond to the charges in the Order.
- 2) Effective Date of Compliance Order. Unless and until the Person subject to the Order makes a timely request for an informal hearing, the Order is according to its terms a final and effective Order. If the Person to whom an Order is directed makes a timely request for a Hearing, the order becomes a final Compliance Order when the Authority renders its decision following the Hearing.
- 3) Emergency Compliance Order. Nothing herein shall prevent the Authority from issuing an Emergency Compliance Order, when conditions warrant, which shall be a final Order when it is delivered to the User and during any informal hearing process, subject to later withdrawal or change by the Authority.

6-37 User Informal Hearing Requests

- 1) Hearing. Within 10 days after the date of a Notice of Violation or Compliance Order for which the Authority has not scheduled an informal hearing, the Person to whom the Notice of Violation or Compliance Order is directed may request a hearing by written request to the Executive Director.

- 2) Upon such request by a User, the Executive Director shall schedule an informal hearing before such Person as the Executive Director designates, unless he/she determines that the request for a hearing is frivolous or insubstantial.
- 3) Following any such hearing, the Authority may take further enforcement or other action that it determines to be necessary.

6-38 Injunctive Relief.

The Authority or Town may bring an action for an injunction against any Person who violates any provision of this Ordinance or any Order or Wastewater Discharge Permit issued under this Ordinance.

6-39 Administrative Civil Penalties, Special Orders

In the event of a violation(s) of this Ordinance, or an Order or Wastewater Discharge Permit hereunder, the Executive Director or his designee may issue to the offending Person a Special Order assessing an administrative civil penalty and requiring other appropriate relief. No Special Order shall be issued until after the Person accused of the violation has been provided an opportunity for a hearing, except with the consent of such Person. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, on such Person or any Authorized representative of such Person at least 30 days prior to the hearing. The notice shall specify the time and place for the hearing, facts and legal requirements related to the alleged violation, and the amount of any proposed administrative civil penalty. At the hearing the Person accused of the violation may present evidence including witnesses regarding the occurrence of the alleged violation and the amount of the penalty, and may examine any witnesses for the Authority. A verbatim record of the hearing shall be made. Within 30 days after the conclusion of the hearing, the Executive Director or his designee shall make findings of fact and conclusions of law and either issue the Special Order, withdraw the matter, or take other appropriate action.

No Special Order shall assess an administrative civil penalty in excess of \$32,500 per violation, or \$100,000 in total, except with the consent of the subject of the Special Order. The actual amount of any administrative civil penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm or facility damage, the compliance history of the Person, any economic benefit realized from the noncompliance, and the ability of the Person to pay the penalty. In addition to administrative civil penalties, the Special Order may include a monetary assessment for actual damages to sewers, Treatment works and appurtenances and for costs, attorney fees and other expenses resulting from the violations, absent the consent of the Person in the Order. Civil penalties in excess of the maximum amounts established herein may be imposed only by a Virginia court of competent jurisdiction in amounts determined in its discretion but not to exceed the maximum amounts established in Virginia Code section 62.1-44.32.

This section shall not impair the Authority's right to proceed for penalty or other relief on other applicable authorities. Each day during which a violation is found to have occurred shall constitute

a separate violation, other than any violation that is by its nature only as to matters occurring over a period in excess of a single day. An admission or finding of liability under this section shall not be deemed an admission in any criminal proceeding, and no civil action authorized by the section shall proceed while a criminal action is proceeding.

Any Special Order issued by the Authority, whether or not assessing an administrative civil penalty, shall inform the Person of his right to seek reconsideration or review by the Executive Director and of his right to judicial review of any final Special Order. Reconsideration or review shall be initiated by written request to the Executive Director filed within 30 days of the date of the Special Order. The Executive Director's decision on reconsideration or review shall be provided in writing. Judicial review shall be available only if the subject of the Special Order has first exhausted his opportunity for administrative reconsideration or review. An appeal shall be to Circuit Court on the record of proceedings before the Authority. To commence an appeal, the Person shall file a Petition in Circuit Court within 30 days of the date of the final decision on the Special Order on reconsideration or review, and failure to do so shall constitute a waiver of the right to appeal. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support such findings.

6-40 Surcharge

The Authority may impose a surcharge on each Member Jurisdiction, User or Discharge which exceeds the limitations specified in this Ordinance, sufficient to recover any costs that result either directly or indirectly from such exceedance. The assessment or payment of any such surcharge shall not constitute an acceptance of such wastes by the Authority, and shall not prevent the Authority from any other enforcement or other actions under this Ordinance in response to such exceedance.

6-41 Defenses to Wastewater Discharge Permit Violations

1) Upset. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards or Pretreatment Requirements because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed Treatment facilities, inadequate Treatment facilities, lack of preventive maintenance, or careless or improper operation. An Upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards or Pretreatment Requirements if the requirements of subsection 4.9(1)(a) are met.

a) Conditions necessary for a demonstration of Upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
- (ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (iii) The Industrial User has submitted the following information to the Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):

A description of the Indirect Discharge and cause of noncompliance;

The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

- b) Burden of Proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.
 - c) Reviewability of Authority consideration of claims of Upset. No determinations made in the course of the review shall constitute final Authority action subject to judicial review. Industrial Users will have the opportunity for a determination on any claim of Upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.
 - d) User responsibility in case of Upset. The Industrial User shall production or all Discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its Pretreatment facility until the facility is restored or an alternative method of Treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the Pretreatment facility is reduced, lost or fails.
 - e) The treatment cost recovery fees, outlined in section 6-25, still apply regardless of the cause or length of the Upset.
- 2) Bypass. Bypass means the intentional diversion of waste streams from any portion of an Industrial User's Pretreatment facility. Severe property damage means substantial physical damage to property, damage to the Treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a Bypass. Severe property damage does not mean economic loss caused by delays in production.
- a) Bypass not violating applicable Categorical Standards or Pretreatment Requirements. An Industrial User may allow any Bypass to occur which does not cause Categorical Standards or Pretreatment Requirements to be violated, but only if it also is for essential

maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this subsection.

- b) Notice. If an Industrial User knows in advance of the need for a Bypass, it shall submit prior notice to the Authority, if possible at least ten days before the date of the Bypass. An Industrial User shall submit oral notice of an unanticipated Bypass that exceeds applicable standards to the Authority within 24 hours from the time the Industrial User becomes aware of the Bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the Bypass. The written submission shall contain a description of the Bypass and its cause; the duration of the Bypass, including exact dates and times, and, if the Bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the Bypass. The Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- c) Prohibition of bypass. Bypass is prohibited, and the Authority may take enforcement action against an Industrial User for a Bypass, unless;
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There were no feasible alternatives to the Bypass, such as the use of auxiliary Treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a Bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (iii) The Industrial User submitted notices as required under subsection 6-41(2)(b). The Authority may approve an anticipated Bypass, after considering its adverse effects, if the Authority determines that it will meet the three conditions listed in this subsection (c).
- d) The treatment cost recovery fees, outlined in section 6-25, still apply regardless of the cause or length of the Bypass.

6-42 Public Notice of Significant Noncompliance

At least annually the Authority shall give public notification in the largest daily newspaper published in Rockingham County (Daily News-Record), of Industrial Users which were in significant noncompliance with applicable Pretreatment Standards or other Pretreatment Requirements. For the purposes of this provision, a User is in significant noncompliance if its violations meet one of more of the following criteria: (i) chronic violations of Wastewater Discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the

average limit for the same Pollutant parameter, including instantaneous limits, as defined by 9VAC25-31-10; (ii) technical review criteria (TRC) violations defined as those in which thirty-three percent or more of all of the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit, including instantaneous limits, as defined by 9VAC25-31-10; multiplied by times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other Pollutants except pH); (iii) any other violation of a Pretreatment effluent limit or requirement as defined by 9VAC25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Authority determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of Authority personnel or the general public); (iv) any Discharge of a Pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Authority's exercise of its emergency authority to halt or prevent such a Discharge; (v) failure to meet within 90 days after the scheduled date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order, for starting construction, completing construction, or attaining final compliance; (vi) failure to provide within 45 days after the due date required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules; (vii) failure to accurately report noncompliance; or (viii) any other violation or group of violations that may include a violation of Best Management Practices which the Authority determines will adversely affect the operation or implementation of the Pretreatment program.

6-43 Severability

If any provision, paragraph, word, section or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

ACTION ITEM: APPOINTMENT ACTION: Mayor Jackson stated that the next action item on the agenda was appointments to HRRSA and the EDA and asked Manager Lawrence for a staff report. Manager Lawrence stated that in order for Adam Meek to serve as an alternate member on the HRRSA, Council appointment is required. She continued to state that there remains one vacancy on the EDA and that two members of Council have expressed interest, Susan Mathias and Emily Estes. The EDA will need to meet soon as the EDA will now be responsible for awarding businesses with the Façade Grant.

Councilperson Dyjak made a motion to appoint Adam Meek as the alternate member to the Harrisonburg Rockingham Regional Sewer Authority. The motion was seconded by Councilperson Rodgers. Mayor Jackson asked if there was any discussion. After hearing none, the motion was approved by a roll call vote of 6 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; HOOVER—ABSENT.

Mayor Jackson asked for a motion to appoint either Susan Mathias or Emily Estes to the Town's Economic Development Authority. Councilperson Rodgers made a motion to appoint Susan

Mathias to the Town's Economic Development Authority. The motion was seconded by Councilperson Dyjak. The motion was approved by a roll call vote of 6 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; ESTES—AYE; MATHIAS—AYE; JACKSON—AYE; HOOVER—ABSENT. For the record, Ms. Mathias was appointed to the EDA with a term expiration date of July 10, 2023.

MANAGER'S REPORT

Town Manager Angela Lawrence provided a written report, which is attached. Manager Lawrence added that they are still waiting on information regarding the Water Plant Upgrade and once she receives the required information she will take it to the Infrastructure and Finance Committees for further review and discussion. She provided an update of the meeting live streaming equipment. The last piece needed has been shipped and will be installed for the September meeting.

TREASURER'S REPORT

Treasurer Susan Smith provided a written report.

POLICE REPORT

Chief Justin Trout provided a written report and added an update on the COPS Hiring Grant, which will help the Town fund an additional officer, stating that they received 100 applications nationwide and will be awarding \$4.5 million, so he feels that it looks promising and that the awards should be announced by mid-September. He concluded by asking Council's consideration for two items. The first is a request that the full-time officers be allowed to take home their police vehicles as an added benefit. As the Police Committee Chair was absent, he turned it over to Mayor Jackson to provide a report from the committee. Mayor Jackson asked Chief Trout to highlight the maintenance benefits for the vehicles when officers are allowed to take them home and the added benefits of quicker response times when an off-duty officer is called in. Chief Trout also advised that currently there is one officer who lives too far away and therefore that officer will not be entitled to this benefit. Manager Lawrence added that she had taken this matter to the Personnel Committee Chair, who was also in support of allowing this benefit. It was further explained that this had no impact on insurance at all. Mayor Jackson stated that the Police Committee recommends this be allowed.

CONSIDERATION OF TAKE HOME VEHICLES FOR OFFICERS: Councilperson Mathias made a motion to allow full-time officers to take home police vehicles if they live within 14 miles of Town Hall and after signing an agreement that the vehicles will not be used for personal use of any type and meeting other eligibility criteria. The motion was seconded by Councilperson Estes. The motion was approved by a roll call vote of 6 to 0, the voting recorded as follows: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; MATHIAS—AYE; ESTES—AYE; JACKSON—AYE; HOOVER—ABSENT.

CONSIDERATION OF A PROPOSAL TO CONSIDER AN ORDINANCE TO PROHIBIT ANY PERSON TO USE AN AUTOMOBILE FOR SLEEPING QUARTERS: Chief Trout's second request for consideration by Council is a proposal regarding people sleeping in vehicles on

public property. He reported that he has received multiple complaints from residents about people sleeping in their vehicles at Dove Park and that the Town does not currently have anything in place to adequately address this problem. He is proposing that the Town consider adopting an ordinance to prohibit sleeping on public property and make it punishable with a fine. Local resident Deb Crank spoke from the gallery to add her first-hand experience with someone who had recently been sleeping in a vehicle at Dove Park. After further discussion, it was determined that this matter will be referred to the Police Committee for their consideration and recommendation to Council.

PUBLIC WORKS REPORT

Public Works Supervisor Adam Meek provided a written report.

WATER DEPARTMENT REPORT

Water Plant Operator Jennifer Reppe provided a written report.

COMMUNITY DEVELOPMENT REPORT

Community Development Coordinator Christa Hall provided a written report.

ECONOMIC DEVELOPMENT REPORT

Economic Development Coordinator Meggie Roche provided a written report. Manager Lawrence added that the August concert following the Muddler had a lower than expected crowd and that staff would revisit the idea of having a concert on the same evening as a major event in the future.

TOWN ATTORNEY REPORT

No report.

ECONOMIC & COMMUNITY DEVELOPMENT COMMITTEE REPORT

Councilperson Dyjak began by reminding everyone of the return of the in-person Business Community Conversation Series. He stated that the committee met to review and discuss the potential yard sale/festival ordinance. He reiterated that there will be no action at this time, but a new proposed ordinance will be brought to Council at the September meeting for potential action at that time. He wants to allow time for the draft ordinance to go out prior to the meeting so that the Council can hear any feedback prior to taking any action. The Committee's recommendation is to not have any restrictions on the number of yard sales allowed each year and to focus on the issue at hand, which is the coordination of holding yard sales on Town festival days and to make the distinction between yard sales and the re-selling of goods which are not typical household items that would customarily be found at a yard sale. The Committee hopes to find a fair balance between the residents and the vendors. Accordingly, the Committee is asking staff to take these things into account and bring a draft back to Council for their consideration and public comments for the September meeting.

FINANCE COMMITTEE REPORT

Councilperson Rodgers stated that he had no report.

INFRASTRUCTURE COMMITTEE REPORT

Councilperson Dyjak added that they had a joint meeting with the Finance Committee to discuss the changes and budget for the Mill Street project. They are also looking at policies and procedures moving forward to help streamline engineered projects such as this one and the Water Plant Upgrade. Councilperson Rodgers added that the Town was very pleased with the work that A & J Excavating conducted on the Mill Street Project and wanted to publicly recognize them for that.

PARKS, RECREATION & BEAUTIFICATION COMMITTEE REPORT

Councilperson Rodgers stated that there was no report but added that he heard one common comment about the Muddler this year, and that was that it was done very well. It was a proud moment for the Town and all those involved in organizing that event. Councilperson Estes added a thank you to DJ Sam Lee for providing his services at the Police National Night Out.

PERSONNEL COMMITTEE REPORT

As Councilperson Hoover was not present, Councilperson Seward stated that the Committee had no report.

POLICE COMMITTEE REPORT

As Councilperson Hoover was not present, Mayor Jackson stated that they had met in July and discussed the take-home vehicle idea. He stated that Chief Trout was doing a great job with writing grants to help save the Town a tremendous amount of money.

MAYOR AND COUNCIL REPORT

Mayor Jackson stated with great sadness that Jim Dove had recently passed away at age 72, noting that Jim's Drive-In was an institution in Dayton. You could get a great meal with fresh hand-patted burgers and milkshakes and always a smiling face. He always appreciated the sign on the wall inside that read "The best things in life are still free – kind words and a smile." He continued that we all need to remember that it doesn't take any effort to be kind and smile. He provided a little history on Jim's Drive-In, stating that Jim Dove bought it from Stan Thomas in 1977 and operated it until December 30, 2011, when it closed. The site is now home to Dayton's Dove Park. Jim's passing is a great loss to the Dayton community as he was involved in many ways in the Town. There will be a memorial at Dove Park to honor his memory at a later date. He asked that everyone keep the family in their thoughts and prayers. He concluded by stating that all the departments within the Town work so well together and Dayton is fortunate to have that as not all localities are as fortunate. He reminded everyone that there is an open council seat available at a special election in November and encouraged any interested parties to apply. No additional Council comments were made.

UNFINISHED BUSINESS

None.

NEW BUSINESS

None.

PUBLIC COMMENT

Phil Way addressed the Mayor and Council to ask that all Council members take time to visit the old downtown area of Dayton and the local businesses.

CLOSED SESSION

Mayor Jackson called for a motion to convene into closed session pursuant to Virginia Code Section 2.2-3711(A)(1) for the purpose of discussing the performance and possible reprimand of a specific public officer. Councilperson Estes then stated she was against the closed session and would not go into the closed session, that she was going to the ER to have her heart rate checked because she was having blood pressure issues. Councilperson Estes then commented about various issues she has with the Town Council, Town Manager and Mayor. The Mayor and Town Manager responded taking exception with, and disputing the truth of, the comments by Councilperson Estes.

In an effort to bring order to the meeting, Mayor Jackson sounded his gavel and made the following statement: "As Council Members it is our responsibility to represent the citizens who elected us and every Council Member has the opportunity to participate in discussion during each Council Meeting. As these discussions take place, differences of opinion may occur. Disruptive behavior including profanity, name-calling, yelling, interrupting fellow Council Members or leaving a meeting during discussion without good cause is not appropriate. At the Town's July 12th meeting, Ms. Estes exhibited all of these behaviors. This type of behavior makes it difficult to conduct a meeting and is a poor reflection of the community. Each year, Council adopts a Code of Ethics which each Council Member signs affirming their understanding of the Code of Ethics. Council Members should be passionate about their Town but that passion must be funneled in a positive manner."

Councilperson Dyjak made a motion to convene into closed session in accordance with Section 2.2-3711(A)(1) of the Virginia Code for discussion, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the Town Council. The subject matter of the closed session is the performance and possible reprimand of a specific public officer. Throughout the motion, Councilperson Estes protested that Council does not have the right to convene a closed session on this matter. Councilperson Estes then left the meeting and refused to go into the closed session. The motion was seconded by Councilperson Mathias and passed unanimously by the five remaining members present. Council recessed the open session at 7:17 p.m.

OPEN SESSION

A motion to adjourn the closed session was made by Councilperson Dyjak, and seconded by Councilperson Mathias, and passed unanimously with a vote of 5-0. The open session reconvened at 7:36 p.m.

CERTIFICATION

Mayor Jackson read the certification with respect to the just-concluded closed session, and to the best of each member's knowledge that (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the Council. Town Clerk Hall took a roll call with each Council Member so certifying: RODGERS—AYE; DYJAK—AYE; SEWARD—AYE; MATHIAS—AYE; JACKSON—AYE; HOOVER—ABSENT; ESTES—ABSENT.

After the roll call, Mayor Jackson noted that the minutes should reflect that the reason for Ms. Estes' absence was that she had refused to enter into the closed session and had left the meeting.

RESOLUTION REPRIMANDING EMILY ESTES

Mayor Jackson asked for a motion to amend the agenda to add, following the Closed Session, the Consideration of a Resolution Reprimanding Emily Estes and that the Town Council adopt said Resolution. The motion was made by Councilperson Dyjak. Councilperson Seward stated that he felt that they needed to preserve the respect of the office, no matter who it is and that they have a responsibility to the Town and that there are certain procedures that they have to follow in order to be efficient and do things effectively. Councilperson Dyjak stated that it does not give Council any pleasure to have to bring this forward and that it is unfortunate that we are at this point. He stated that the concerns are not about the content or the issues, but about the conduct and the delivery and that we need to have civil and mutual respect for one another and to conduct these meetings in such a manner that all residents feel comfortable attending. He further stated that he had hoped that Ms. Estes would remain at the meeting so that they could work on a positive working relationship and he hopes that they can move forward in that manner as they owe it to the residents to not have such a spectacle at the meetings. He feels that Ms. Estes has many great ideas and he would like to continue in an atmosphere conducive to respectful dialogue and get the people's business done, as that is what we are here to do. He further stated that the attack on the Town Manager was baseless and incredibly unconscionable and unfortunate. This has a negative effect and is chilling on staff and he stated he was sorry that occurred. He again called for mutual respect between all parties. The motion was seconded by Councilperson Mathias. As there were no additional comments, Mayor read the Resolution, which follows:

RESOLUTION REPRIMANDING EMILY ESTES

WHEREAS, at its January 11, 2021 meeting, the Town Council for the Town of Dayton, Virginia adopted a Code of Ethics (the "Code of Conduct"); and

WHEREAS, the Code of Conduct contains general standards for the conduct of members of the Town Council; and

WHEREAS, these general standards of conduct provide that members of the Town Council shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of the public, other members of the Town Council, commissions, committees, or the Town staff; and

WHEREAS, the Code of Conduct also contains standards specific to the conduct of Councilmembers during public meetings; and

WHEREAS, these standards for conduct during meetings provide that members of the Town Council should listen courteously and attentively to all public discussions before the Town Council, refrain from interrupting other speakers, and refrain from interfering with the orderly conduct of meetings; and

WHEREAS, the Town Council desires to formally address certain behavior by one of its members, Emily Estes, at the July 12, 2021, Town Council meeting, which behavior did not meet the standards set forth in the Code of Conduct; and

WHEREAS, specific examples of Ms. Estes' unacceptable and disruptive behavior include, but are not limited to, her use of profanity, name-calling, yelling, interrupting fellow Councilmembers, and leaving the meeting during Council's discussion without good cause.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Dayton, Virginia, that the Town Council hereby formally rebukes and reprimands Ms. Estes for her behavior during the July 12, 2021, meeting, and encourages the Mayor to temporarily or permanently remove Ms. Estes from her committee assignments. Furthermore, the Town Council encourages Ms. Estes to develop a constructive working relationship with her fellow Council members through mutual respect.


The Resolution passed by a roll call vote of 5-0, with voting recorded as follows: MATHIAS—AYE; RODGERS—AYE; SEWARD—AYE; DYJAK—AYE; JACKSON—AYE; HOOVER—ABSENT; ESTES—ABSENT.

Resident Yolanda Waggy asked to be recognized to speak. Mayor Jackson allowed it. Ms. Waggy made comments in support of Ms. Estes.

ADJOURNMENT

With there being no further business to come before the Council, Mayor Jackson adjourned the meeting at 7:47 p.m.

Respectfully Submitted,



Mayor, Cary Jackson



Clerk of Council, Christa Hall

ATTACHMENT TO DTC 8.9.21 REGULAR MEETING MINUTES

Town Manager

Staff Report

July 2021

Personnel

Cost of living and merit increases took effect July 4, 2021 as budgeted.

Public Works, Roads, Facilities

1) **Water Plant Upgrade:**

- a) A verbal report will be given at the meeting, as I am awaiting additional information.
- b) All necessary reports have been filed for an environmental impact categorical exclusion (CE), which is expected to be approved, saving us money.
- c) The engineer continues to work with the equipment manufacturer and surveyor regarding the property. We are expecting the survey and cost estimates very soon.

2) **Mill Street Project:**

- a) The project is complete. We expect to receive an invoice from the county for 50% of the construction costs and final VDOT administration cost soon.
- b) After careful review, the final invoice was revised which resulted in a significant decrease in the bill. The project construction cost came in over the Town's budget; however, it was within the VDOT budget. We do have available funds in appropriate areas of the budget. Components that related to sidewalks will be taken from the sidewalk budget line item 10-4410-820, portions related to water or sewer will be taken from the water & sewer contingency line item 20-4410-990 as approved by council last month. The remaining construction cost will be taken from Mill Street Capital Funds 15-4910-830.
- c) The budget overrun was a result of misinformation or understanding regarding the number of water connections and other conditions discovered after excavation; additional paving needed to complete both lanes on Main Street; miscalculation of sidewalk needed in construction documents, miscalculation of handicapped ramps in construction documents; and adjustments made to driveway entrances.

American Rescue Plan Act (ARPA)

Nothing to report at this time.

Other

1) Staff met with the City regarding several issues:

- a) Cook's Creek Park: The City of Harrisonburg owns a portion of property that Cook's Creek sits on. During the interim, it was believed that it was a small parcel and that the City would allow a transfer of the property to the Town. In fact, the City owns property on both sides of the creek including a good portion of Cook's Creek Park and going up the creek toward the Mill. They are not interested in transferring the land for reasons related to DEQ and water issues. We have a long standing agreement with them that we can use the land for our park. Unless Council directs otherwise, I do not believe we need to change anything.

- b) Water Connection near Walmart: We continued our discussions with the City regarding tapping into their water line near Walmart for emergency use. We are researching a few outstanding issues, but should be able to move forward soon.
- c) Water Lines at Silver Lake: The City would like to tap into our water line at Silver Lake for emergency use. We are continuing those discussions and hope to bring back a proposal for all issues at the September or October Council Meeting.

2) Yard Sale/Festival Ordinance: The committee met to discuss. The Chair will report out during committee reports. Further council discussion is needed before coming back to Council for a September vote.

Items for Discussion and/or consideration

Nothing at this time.

Respectfully submitted,

Angela A. Lawrence