



TOWN COUNCIL
Regular Meeting & Work Session
February 18, 2021
Cape Charles Civic Center
6:30 PM

1. Call to Order
 - A. Roll Call
 - B. Establish quorum
2. Moment of Silence and Pledge of Allegiance
3. Recognition of Visitors / Presentations / Recognitions
 - A. Concerned Citizens of Cape Charles – Bill Ballard
4. Public Comments (3 minutes per speaker)
5. *Consent Agenda
 - A. Approval of Agenda Format
 - B. [Approval of Minutes](#)
 - C. [Approval of December 31, 2020 Financial Report](#)
6. Unfinished Business:
 - *A. [2021 Harbor Fees and Rates](#)
7. New Business:
 - *A. [Revisions to Town Code – Chapters 19, 34 and 42](#)
 - *B. [Consideration to Advance PPEA Unsolicited Proposals for Further Evaluation](#)
 - *C. [Appointment of Zoning Administrator](#)
 - *D. [USDA Rural Development Loan Resolution](#)
 - *E. [COVID-19 Victims and Survivors Memorial Day Resolution](#)
8. Town Manager Comments
9. Mayor & Council Comments (5 minutes per speaker)
10. Announcements
 - February 20, 2021 – Town Council Strategic Planning Retreat – Day 3
 - February 23, 2021 – Town Council Executive Session
 - March 4, 2021 – Town Council Special Meeting
 - March 6, 2021 – 3rd Annual Cape Charles Day
 - March 18, 2021 – Town Council Regular Meeting
11. Motion to Close Regular Meeting and Move to Work Session
12. Work Session Discussion Topic:
 - A. [Discussion of Current Town Priorities](#)
13. Adjournment

Due to late notice of an extraordinary request for public attendance at the February 18, 2021 Cape Charles regular Town Council meeting, and the inability to ensure current Covid-19 restrictions can be met, the Town is forced to invoke provisions of our state and local declarations of emergency and close this Town Council meeting to in-person general public attendance. The Mayor, Town Council, staff, and those persons conducting business on the published agenda will meet in person. The general public is invited to observe this meeting live on Facebook, and to provide public comments in writing, hand delivered to Town Hall (2 Plum Street) before 5:00 pm on February 18, 2021, or via email to the Town Clerk at clerk@capecharles.org. We apologize for any inconvenience, but this action is being taken to ensure public safety.



DRAFT
TOWN COUNCIL
Regular Meeting
Cape Charles Civic Center
January 21, 2021
6:30 PM

At approximately 6:30 p.m. Mayor William "Smitty" Dize, having established a quorum, called to order the Regular Meeting of the Town Council. In addition to Mayor Dize, in attendance were Vice Mayor Bennett, Councilmen Bannon, Buchholz, Follmer and Grossman, and Councilwoman Holloway. Also, in attendance were Town Manager John Hozey, Chief Jim Pruitt, Project Manager Bob Panek, Community Relations Manager Jennifer Lewis and Town Clerk Libby Hume. There were nine members of the public physically in attendance, and 31 viewers on Facebook Live.

A moment of silence was observed followed by the recitation of the Pledge of Allegiance.

RECOGNITION OF VISITORS / PRESENTATIONS:

A. Recognition of Employee Celebrating a Significant Anniversary

Mayor Dize recognized Permit Technician Connie Drummond for five years of service to the town effective January 5, 2021.

PUBLIC COMMENTS:

Bill Ballard, Concerned Citizens of Cape Charles

Mr. Ballard addressed the Town Council regarding Coastal Precast Systems. (Please see attached.)

Mark Henry, Commodore, Cape Charles Yacht Club

Mr. Henry address the Town Council regarding the Cape Charles Yacht Center. (Please see attached.)

Tim Wivell, Waterman

Mr. Wivell stated that he was a full-time waterman and had worked in Cape Charles over 30 years and had been paying a year-round rate for his slip at the harbor. He brought in a lot of money into the Town with fuel sales, slip rentals, etc. He understood that rates were going up all over the bay, but the proposed rates were rough. He worked odd hours and could no longer get fuel when he needed it due to the discontinuation of the fuel cards. This was his business, and it was getting hard.

Brian Harman

Mr. Harman began by thanking the Mayor and Council for the jobs they did, which was mostly thankless. They were elected by the citizens and did a fine job. He was a 37-year resident and would be starting a new business at the Town Harbor. He suggested that if the dockage fees at the harbor had to be raised, that they be done in intervals that people could afford. This was logical and by increasing the fees gradually, it would enable people to set their goals for the future and determine what they needed to make over the next several years. Many other users agreed with this method. He had worked with athletics for 32 years and had managed different groups and several businesses and he felt that he knew how to survive and make a business manageable and profitable. The people who had been using the harbor for years, especially watermen, needed to be taken into consideration. They had to make a living. He felt that good, reasonable fees could be determined.

Town Clerk Libby Hume read comments submitted in writing from David Gay, Edward Wells, Retired Lt. Colonel Justin McCarthy, Rob Harris, and Stuart Smith. (Please see attached.)

There were no other comments to be heard nor any other comments received in writing prior to the meeting or during the public comment period.

CONSENT AGENDA

A. Approval of Agenda Format

B. Approval of Minutes:

i. December 17, 2020 Regular Meeting & Executive Session

C. Approval of November 30, 2020 Financial Report

Motion made by Vice Mayor Bennett, seconded by Councilman Grossman, to approve the Consent Agenda as presented. The motion was approved by unanimous vote.

UNFINISHED BUSINESS:

There was no unfinished business to review.

NEW BUSINESS:

A. *Harbor Management Q&A:*

Town Manager John Hozey stated that on September 17, 2020, the Town Council approved a management agreement with the Cape Charles Yacht Center (CCYC) to handle the day-to-day operations of the Town Harbor, adding that he put this item on the agenda as an opportunity for Council to address their questions and concerns. JB Turner from CCYC was here to answer questions.

Mayor Dize asked about the fuel card situation adding that he was having a hard time with its discontinuation.

Mr. Turner responded that the card system was on a 2006 computer system operating on Windows 7 which was no longer being supported. CCYC was using a 2020-2021 computer system and it was not possible for data from the antiquated system from 2006 to be imported into their newer system. Mr. Turner suggested that the simplest solution was for the Town to install card readers on the pumps. CCYC wanted to sell fuel but it was important to make the systems work and with the current situation, there was no way to import the data.

Mayor Dize stated that he had the Phoenix system set up while he was the harbor master. He used to print a report from the Phoenix System and manually input the data into Town's point-of-sale system and suggested that CCYC do the same. Mr. Turner advised Council that CCYC did not have a point-of-sale system but used an integrated global system. There was much discussion between Mayor Dize and Mr. Turner.

CCYC Dockmaster Spencer Travis interjected that the current system was outdated and reiterated Mr. Turner's suggestion to install credit card readers on the pumps as the simplest solution. Mr. Travis added that Pep-Up had remote readers that could be installed. These readers would also notify Pep-Up when a refuel of the tanks was needed. The Town needed to invest in the infrastructure. Much discussion continued.

John Hozey recognized this as a problem adding that CCYC was committed to researching options for the next budget cycle.

Councilwoman Holloway asked whether the antiquated system could continue to be used for the watermen until a new system could be installed and added that she did not want to start off the relationship in this manner.

Mayor Dize noted that the police department still had the ability to fuel their vehicles using the current fuel card system and suggested that the watermen be permitted to continue using their fuel cards as well. Spencer Travis stated that the fuel cards were being used for town vehicles only.

Councilwoman Holloway added that something was needed to accommodate the watermen during the interim until the issue could be resolved. Spencer Travis stated that if the watermen were allowed to continue to use their fuel cards, golf cart owners would want the same. CCYC maintained the same standard for everyone.

Councilman Follmer stated that a distinction was already made for watermen and a provisional allowance was needed for the watermen to access fuel until a work-around could be determined. Watermen were an important industry to the Town's heritage and he completely agreed with providing special treatment for the watermen. Councilman Follmer went on to state that he could

not argue that a 15-year-old computer system was out-of-date. He heard that the watermen got letters informing them that their fuel cards were turned off. The watermen needed to be shown more respect. They were businesspeople whose livelihood depended on the harbor. The issue should have been communicated to them in advance. This could not happen again.

John Hozey stated that a separate meeting would be scheduled regarding an interim process until a solution was found.

Councilman Grossman asked whether there were other issues, other than rates, that needed to be discussed. There were none. John Hozey stated that Town and CCYC staff were working well together.

B. 2021 Harbor Fees and Rates:

John Hozey stated that the last public comment read for the record was correct regarding the residential seasonal slip holder. He misinterpreted the information and confused the resident seasonal rate with the monthly rate and proceeded to distribute corrected rate sheets to the Mayor and Council. Rate sheets showing 20% and 30% resident discounts were distributed along with a sheet for electrical service. John Hozey went on to state that the only approved electrical rates were daily rates for 30- and 50-amp service. Monthly rates had never been approved but harbor staff made up the current, unofficial monthly rates of \$30 for 30 amp and \$50 for 50-amp service since they could not charge the approved daily rates for monthly usage. The amounts were not based on actual cost. In reviewing the proposed electrical rates, the daily cost for 30-amp service would be reduced by \$2 per day and the cost for 50-amp service would increase by \$1 per day. The CCYC numbers were based on industry standard.

There was much discussion as follows: i) Mayor Dize stated that all electric pedestals had working meters when he left the harbor in 2015. Spencer Travis stated that the meters were not maintained, and the cost of reinstalling was not feasible; ii) John Hozey stated that one of the efficiencies being sought was the ability to use the entire basin. Having different rates made it complicated. CCYC stated all along that it was their desire to standardize the rates. The Town also had an incredible number of different variations of rates that were inconsistently applied and could not be kept track of. Some boaters were not even charged what was published. There was a good argument to simplifying and consolidating the rates. The proposed rates represented a significant increase to the current rates. Discounted rates were developed for residents and commercial watermen. Currently, residents got a 5% discount and CCYC proposed a 20% discount. Full-time watermen would get a 40% discount and transient watermen would get 20%. If the individual was in good standing, the increases could be eased in over three years. The comparison report showed costs for a hypothetical 40' vessel with discounts applied. There was an issue with resident slip holders, but the goal was to try to keep the rates as low as possible for them. He spoke to CCYC earlier today about increasing the resident discount to 30% which would make it more reasonable; iii) Councilwoman Holloway stated that last year, Charlie Farlow did a rate comparison of various marinas along the bay and the rates were approved based on those comparisons. She expressed her concern that bringing the rates in line with CCYC would price Cape Charles out for our clientele. She asked whether the rates had been compared to other marinas; iv) Mr. Turner stated that CCYC looked at the rates more globally – marinas up and down the east coast from Maine to Florida, not just the neighboring marinas. Councilwoman Holloway stated that the majority of the transients coming to Cape Charles were more regional with boaters coming from Virginia Beach and surrounding areas. This was a new process and people needed to understand the changes; v) Mr. Turner stated that watermen and residents would receive a considerable discount. The proposed rates were proven year after year up and down the east coast. The transients would still come. He was told that Cape Charles was superior, and transients would come back here regardless of the rate; vi) Councilman Follmer stated his acceptance of the argument regarding transient boaters but questioned why it all needed to happen at once versus being staggered over the next couple of years. He would also like to see some regional comparisons before making a decision. He expressed his concern of a 50% increase in one year for the watermen. It was a business expense for them and would be a sharp increase for one year. He understood the matter of bringing the rates up to market standards but

did not think it should be done in one year; vii) Councilwoman Holloway agreed with Councilman Follmer and added that it would be really difficult for a business to find out that their rates would be increasing by \$X in a couple of months. When she agreed to the harbor management, her one hesitation was with rates. Everyone heard Council's concern with rates. She stated that the spreadsheets only showed the base rates and noted the discount. She suggested that the spreadsheets be updated to show the base and discounted rates for residents and watermen to make it easier to understand. Councilman Follmer agreed that with such sharp increases, the numbers needed to be better substantiated; viii) Mayor Dize agreed that the increases were hefty adding that he would like to see more discounts for watermen this year with a reduction in the discount next year. Town Council voted to have a harbor management company run the harbor and now were micromanaging things. CCYC thought they could bring boaters here even with the proposed rates. His concern was that the Town would lose the local yacht clubs; ix) Project Manager Bob Panek stated that over the years, a lot had been spent on harbor projects. In budget reviews over the past several years, the harbor operating budget sometimes broke even and sometimes lost money. Just to get to that point, there had been a tremendous amount of deferred maintenance. After investing so much money, we had a deteriorating facility. More revenue was needed to maintain the harbor. Councilman Follmer stated that he understood this, but it needed to be communicated as it was not mentioned in the staff report; x) Vice Mayor Bennett expressed his disappointment with the staff report and handouts. They were difficult to understand. Residents should be given a 30% discount and watermen needed a similar accommodation since they made their living here. The bottom line was how much more would they be paying. He also felt that the increase needed to be taken over two years versus one year; xi) Vice Mayor Bennett asked Mr. Turner about the impact on the harbor from the dust from the concrete plant. Mr. Turner responded that with the southwesterly breeze, the majority of the dust went into the Town. Vice Mayor Bennett asked whether there had been any detrimental issues from the concrete plant with boaters. Mr. Turner stated that they received occasional comments about the noise since the plant had more activity; xii) Vice Mayor Bennett stated that he did not think Council had enough information to make a decision tonight. He was not opposed to increasing rates, but more information was needed. He also commented that he did not understand the treasurer's report showing a huge increase in revenue at the harbor. Since the rates would be effective April 1, a decision could be made at the February meeting; xiii) Mayor Dize asked whether John Hozey recommended Council approval of the proposed rates. John Hozey responded that he recommended approval of the updated rates that he distributed with residents getting a 30% discount. There would be no problem with a delay in the decision until the February meeting.

Motion made by Councilman Grossman, seconded by Councilwoman Holloway, to delay the decision regarding the harbor rates until the February meeting so more information could be presented addressing the comments and concerns raised tonight. The motion was approved by unanimous vote.

C. *Revisions to Town Code - Chapters 14, 42, 70, 71 and 72:*

Bob Panek stated that revisions to the Town Code were periodically required to reflect policy initiatives, conform to new federal or state law, recognize changes in organizational structure, etc. Bob Panek proceeded to review the changes as follows: i) Contracting for management of the Town Harbor necessitated revisions to Chapter 14 – Beaches and Waterways. Upon review, other inconsistent and out of date items were also updated; ii) A section in the Town Code addressed boating safety which was pretty complicated. The issue was that state law governed boating safety and provided the ability for localities to enact special laws in territorial limits. Cape Charles had very little water in territorial limits so there was no need to enact special ordinances or replicate any ordinances for so little area. State law provided for any law enforcement officer to enforce the law. The proposed changes recognized this, and he was able to strike a lot of boating regulations from the Town Code; iii) Councilman Grossman had asked him a question regarding traffic which did not belong under Chapter 14 – Beaches and Waterways. After Councilman Grossman's questions, he did some more research of the Town Code and there were some conflicts with the state law regarding operation of bicycles on sidewalks. He would be

working on a complete revision to Section 42.7 of the Town Code; and iv) Recent organizational changes necessitated revisions to Chapters 70 – Water Supply, 71 – Sewers and Sewer Use, and 72 – Water and Sewer Service. These changes were limited to the deletion of an obsolete organizational reference in certain sections.

Bob Panek stated that if Council wanted to adopt Ordinance 20200121 tonight, the changes to Section 42.7 needed to be stricken. He added that he was working on some additional sections, such as governing of junk yards and commercial recreation centers which were both superfluous and predated the zoning ordinance. Section 42.7 could be reviewed and approved when reviewing these additional changes.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Ordinance 20210121 – Adopting Revisions to Cape Charles Town Code Chapters 14, 70, 71 and 72 and removing changes within Chapter 42 as discussed. Mayor Dize moved for adoption of Ordinance 20210121 as noticed and forewent reading of the ordinance. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

Vice Mayor Bennett thanked Bob Panek for his work on these revisions.

D. *Authorization for Town Manager to Negotiate and Settle Pending Lawsuit with Kevcor, Inc. Within Budget Constraints:*

John Hozey stated that he and Bob Panek participated in a lengthy mediation session and a tentative agreement was reached. The fine details were still being worked out. If everything worked out as discussed during the mediation, the settlement would be \$1,600 more than the budgeted amount, but there were sufficient funds in the budget to cover the settlement. The Town's attorney stated that the town manager had the broad authority to settle the case, but he preferred to bring it to Council for authorization.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to authorize the Town Manager to finish negotiations and settle the pending lawsuit with Kevcor, Inc. within currently budgeted resources. The motion was approved by unanimous vote.

TOWN MANAGER COMMENTS

John Hozey commented on the following:

- 1) He asked about the upcoming strategic planning retreat currently scheduled for February 6 and 7, 2021. He was working on the agenda but wanted to check with Council to make sure they were still comfortable with moving forward. The retreat was delayed a month due to COVID-19 and the number of cases were continuing to increase. The Cape Charles Volunteer Fire Company was secured to ensure adequate social distancing. He felt it would be possible to hold the retreat in person and spread everyone out. The public was invited to attend to observe but would not be participating in the discussion. The Planning Commission was invited to participate for discussion related to the comprehensive plan. Northampton County was also working on their comprehensive plan and it was scheduled to be released on February 5 with 30 days for comments. He didn't want to comment on the county's plan until after our strategic planning. He would prefer not to delay the retreat again. If the retreat was pushed back again, it would place a crunch on the budget planning.

The Mayor and Council were okay to move forward with the February dates in person.

- 2) Typically, Jodi Outland presents the health plan options to Council in February. Since there would not be a special meeting in February, due to the strategic planning retreat, the health plan presentation would be scheduled for the March 4 meeting.
- 3) We did not have a special meeting in January because the strategic planning retreat was initially scheduled for January. He was not planning a special meeting in February for the same reason. Unless there was a business reason, he was inclined not to have a special meeting the first week of February.

- 4) He had been overwhelmed with a lot going on. He was behind schedule with projects. He would try to develop the next steps and scope of work for the unsolicited proposal for the sale of the utility systems. The second, confidential, proposal was received from Virginia American Water. We now had two complete proposals, but he had not had time to review them to recommend the next steps. The scope of work was needed in order to put out the request for proposals for a consultant to assist in the review of the proposals. He thanked Council for their input.

Vice Mayor Bennett asked if Council could see the proposal from Virginia American Water. John Hozey would provide the confidential proposal to Council.

MAYOR AND COUNCIL COMMENTS

Councilman Grossman commented as follows: i) He recognized Libby Hume for being selected as first vice president of the Virginia Municipal Clerks Association; ii) He thanked Bob Panek for his efforts on the Town Code and comparisons with the state law; iii) Progress in the Kevcor issue would not be this far along without Bob Panek's contract oversight and maintenance. He appreciated Bob Panek's project management expertise; and iv) He asked about the town planner and zoning administration for near term projects. John Hozey responded that he had some thoughts but was unprepared to share them at this time.

Councilwoman Holloway stated that she realized everyone was busy, but the season would be here before we knew it. There were a couple of items that had been postponed that needed to be resolved. i) Short-term rentals – We needed to get back on this issue to figure out how to manage them; ii) Boat parking; iii) Golf carts. Council needed to designate time to discuss these items. Chief Jim Pruitt stated that he sent an email to Council regarding some of these issues several weeks ago and had not received any responses. Councilwoman Holloway asked Chief Pruitt to resend the email.

Councilwoman Holloway went on state that the issue of the Historic District Review Board guidelines and Council's expectations needed to be addressed. She had never received so many citizen complaints in the past. Many times, she agreed with the citizens. There were issues and a board member was unhappy and wrote in to express his concerns. There was an elephant in the room. Council was dealing with appeals, not the elephant.

Vice Mayor Bennett stated his agreement with Councilwoman Holloway regarding the historic district guidelines. It kept dragging on but needed to be a higher priority.

Councilman Follmer, Bannon and Buchholz did not have any additional comments.

Mayor Dize commented as follows: i) He thanked Bob Panek for his work on the Town Code. He realized that the Town Code and Zoning Ordinance needed review and updating, as well as the comprehensive plan. He was hopeful that a vision to moving forward could be identified during the strategic planning retreat. There were lots of things needing to be done and all needed to be prioritized and completed; and ii) He wished everyone a happy new year.

Mayor Dize read the announcements.

Motion made by Vice Mayor Bennett, seconded by Councilman Bannon, to adjourn the Town Council Regular Meeting. The motion was approved by unanimous vote.

The meeting adjourned at 8:12 p.m.

Mayor Dize

Town Clerk

**Comments & Information Provided in Writing
January 21, 2021 Town Council Regular Meeting**

Bill Ballard

Honorable Mayor and members of the Council.

My name is Bill Ballard.

I live at 115 Mason Ave. #302.

I am a member of Concerned Citizens of Cape Charles, a grass roots group of property owners and taxpayers.

I am here to voice our concern about the future of Cape Charles. There are issues that exist that will shape the future of our town and, if left unaddressed, will cause its death as we know it today.

Simply put, those issues are captured in two words: noise and dust. Noise and dust generated by Coastal Precast Systems.

I ran into a successful businessman the other day and asked him when he had come to Cape Charles. About 15 years ago, he said. What was it like? It was a dump. Why did you stay? Because I saw potential. Fortunately, others saw potential, and Cape Charles has become a destination for boaters and tourists. For retirees and young families. For vacationers and permanent residents. It has risen out of boarded up houses and empty storefronts, crime and few jobs. It has become a town of rising real estate values, of growing retail sales, of increasing visitor traffic. It has prospered not because of the presence of Coastal Precast or its predecessor but in spite of it.

Should these two issues go unaddressed, the tourist and boaters will come less and less. Retail sales and vacation rentals will decrease. With that, the real estate bubble we see today will burst and values will fall. Real estate taxes, sales taxes, and lodging taxes will decrease. Lower tax revenue will result in reduced services provided for the community. That will result in people leaving the town. The downward spiral will accelerate. We could, once again, become the dump that man found 15 years ago.

We recognize that Coastal Precast is the largest employer in the county. We recognize their purpose is to make money, but we demand that their success not be to the detriment of the lifestyle, livelihood, peace and quiet of the other businesses, citizens, and residents of this town.

We call on you, the town council, to take steps to resolve these issues and others that may arise. As a first step, we recommend the formation of a standing ombudsman group, made up of some of the members of our Concerned Citizens and at least one member of Town Council to serve as a liaison between the town and Coastal Precast. This will be an ongoing process.

The future of our town is before us.

Mark Henry



Cape Charles Yacht Club
Celebrating the Chesapeake

January 21, 2021

Good Evening Mayor, Town Council Members, and other here and all those watching from somewhere else.

I am Mark Henry, current Commodore of the Cape Charles Yacht Club, representing over 150 members and our mission to promote boating in Cape Charles.

When I was here several months ago speaking on the topic of the Cape Charles Yacht Center's proposal for managing the Cape Charles Harbor, I noted that residents should not have to pay more for boat slips in the Town Harbor.

JB Turner, of the Yacht Center, said that evening that he would try not to increase rates for residents. Town Council said that it had control of rates even under the proposed harbor management contract, and the Yacht Center could do things like raising rates for certain size and types of slips which it felt may be underpriced.

Well, here we are in 2021, with the proposed slip rates increasing pretty much across the board. Of major interest to Cape Charles Yacht Club members is the approximately 25% increase in the Residential Seasonal Slip Rate that applies to most locals that use the Town Harbor slips from May through November.

A 25% increase is too much all at once! This is a dramatic, and sudden change in terms for boat owners planning to keep a boat at the Harbor. We do not see this size increase year-to-year for other things like taxes, or utilities for our homes, and we should not see it in the amount residents pay for Harbor boat slips.

The Yacht Center has already increased land storage rates by 17% in one year and has proposed increased charges for just about everything else in the Harbor. The Yacht Center could make money on non-resident slips, transient slip users, and all other services they offer. This increase for residents' slips is not necessary, and since the number of residents compared to the total slips is relatively small, the revenue impact for not raising residents' rates would be minimal to the Yacht Center and the town. This could apply to slips for local waterman too.

Many residents feel as one Yacht Club member put it: There aren't many residents who have a seasonal slip, so overall a low resident slip rate would not impact revenue much. Non-residents and tourists could mediate the increase just like with the recent Northampton County school construction tax!

Many residents are happy to see the Cape Charles Yacht Center here. The Yacht Center offers excellent services we may not have otherwise, and it creates some jobs. Many are also hopeful that the Yacht Center will maintain, repair and make improvements within the harbor.

But Yacht Center revenue increases should not come at the expense of Town residents with an increase in slip rates. Town residents are already paying taxes which support the harbor and other taxes that have supported the grants and other improvements for the harbor. This has laid the groundwork for the Yacht Center's operations. To add an increase in slip rates for residents is like adding another tax upon them.

I would also strongly suggest that the town conduct a rate comparison analysis comparing proposed rates for residents to other marinas in the Tidewater area. A quick look at several in the area revealed public rates from \$5.75 per foot to \$9 per foot with those higher than \$5.75 having pools, tiki bars, indoor marina facilities and the like. These are rates before residential discounts. The only one at \$9 per foot was addressing services including larger, luxury yachts.

A survey of our Cape Charles Yacht Club had an overwhelming response indicating members do not want to see slip rate increases within the Harbor. Only one response indicated a desire to see increased rates and two indicated no preference one way or another mainly because they were not currently, or likely to use the boat slips in the future. All other member responses expressed a desire not to have these increases for slip rates for residents.

Also, rather than using meters for electricity usage, the proposal is for a fixed fee. For example: \$35 per month for a 30A Electric pedestal

Very few locals use much electricity. For someone just using enough electricity for something like a battery charger a \$35/month fee is too much!

Transient slip users, and out-of-towners keeping their boats here typically use much more electricity for things like air conditioning and cooking on board. Electricity should be billed on a metered usage basis. Otherwise, locals are subsidizing heavy users, and at the same time could be making electricity revenues exceed actual electricity usage. This can inflate the Yacht Center's gross receipts not based on actual usage. Meters can remedy this fairly, and this is what most marinas do.

Lastly, it is unknown what policies will be around future slip availability and retention of slips by residents from year-to-year. Currently the town makes a designated number of slips available, and generally lets a resident have the same slip from year-to-year for seasonal/annual slip holders. Our members want this to remain the same.

Members would also like a few public slips to be able to dock temporarily within the Harbor for visiting local restaurants.

Thank you for taking our input, and please consider putting the need for more revenue on non-residents and transient boaters and not put an additional burden on town residents.

Sincerely,
Mark Henry
Cape Charles Yacht Club – Commodore

David Gay

Subject: Re: Updates for Cape Charles VA

My name is David Gay. I live at 506 Monroe Avenue, Cape Charles, VA. I wish to voice my objection to the Harbor Rate Proposal that is being presented at the Town Council Meeting on 1/21/2021. The proposal does not address the number of slips available by boat length. The proposal does not indicate how many slips are available for boats under 20' in length. The proposal does not address the number of slips available for full time town residents. I request that the proposal be revised to answer the concerns I have stated above. Thank you for your consideration of my concerns.

Edward Wells

Subject: Town Council Meeting January 21 , 2021

Good Evening

Thank you, Mayor Dize and members of town council, for your service.

I would like to address the meeting of the town council on December 17th, 2020. I believe council's decision not to re-appoint Mr. Kerry Shackelford to chair the HDRB was a disservice to the town of Cape Charles. I have served with Kerry for almost two years. In that time, I believe he has served with fairness, respect, honesty and integrity. He has not shown any vindictiveness to any applicant that has come before our board. His experience and professionalism in the area of historic homes and architecture is exceptional. Certain members of council suggested the HDRB guidelines needed work, but that was not the entire fault of the guidelines suggesting Mr. Shackelford or other members were at fault? It was also stated that members were treating Cape Charles as a museum along the lines of a "Williamsburg ". I find that statement totally absurd. We try to use our "guidelines " to the best of our abilities. We were in the process of updating guidelines for new construction and infill work. We were told to stop working on them until a later date. In the agenda at your meeting on the 17th of December 2020 it is recommended by "staff" to council to re- appoint Mr Shackelford. Obviously, this was not considered in your determination. Council did not follow protocols in their decision. HDRB By-laws Article 2 states how a member can be removed. In less than two years I have witnessed soon to be 4 different Chairmen and Chairwomen and at least 7 board members resign or not be reappointed. So, there is some inconsistency with that much turnover. However, the HDRB responsibilities have also changed we now encounter zoning ordinances and building code overlap with our guidelines. We have encountered some residents and contractors who are not getting the permits required also some do not have a town business license or a state contractor's license. This has caused some consternation among some of the board members and myself. I believe we as a Board try to be fair and consistent (it's not easy) and I think we are doing better. In the months from July 2020- December 2020 we heard a total of 37 pre applications and certificates of appropriateness applications we had 2 go to town council appeal. Some council members have stated members of the community are not aware of the procedures in place (permits, zoning and building codes). I would agree to a certain extent. However, ignorance is no excuse. I believe new and old members of our community tourists and contractors alike would be more aware of our community requirements if we placed a sign Designating that they are entering " CAPE CHARLES" HISTORIC DISTRICT. not just historic downtown. Along with that sign i might suggest a smaller one stating" Contractors permits required " this will let them know to make sure they find out the proper requirements for doing work in the" Historic District".

Thank You,
Edward Wells
Vice - Chair Historic District Review Board

Lt. Colonel Justin McCarthy USA, CE, (Ret.)

Subject: Fwd: Item 7b (Harbor Fees and rates) on the town Council agenda for Jan.21, 2021

Hello Mayor Dize and Council Members,

By way of introduction, my name is Lt. Colonel Justin McCarthy USA, CE (Ret.). I own a 53' Hatteras M/Y which has been moored on "D" dock in the Cape Charles Town marina since last May. My wife Terry and I reside in Virginia Beach but have been frequent visitors to Cape Charles for the past several years. We have enjoyed Cape Charles so much that we decided to moor our boat year-round in your very friendly marina. Family members have joined us and are now summer cottage renters in Cape Charles.

Upon retiring from active military service in 2000 I became the village manager of a private, family oriented, barrier beach community off the coast of Long Island, New York. That position covered 15 years at which time I retired again, hopefully for good. I mention this because **part** of my responsibility included managing a 100+ slip marina with a private ferry boat, fuel sales, parking etc. and a large Yacht Club complete with sail training for residents and children. During my tenure as manager, I worked with the U.S. Army Corps of Engineers to successfully get my community through hurricane Sandy recovery in 2014. Hurricane Sandy devastated our village of 150 historic homes, stores, tennis courts, dormitories, church, dune system and general infrastructure. Being an Army Engineer was a big plus as I knew the folks in the New York District Headquarters and how disaster recovery works. Point being, I know how to run a successful marina!

Mr. Mayor and Council Members, I have just become aware of the Towns' management agreement with Cape Charles Yacht Center and the subsequent plan to raise dockage fees in the marina. My recent comparison of fees now (2020) shows the proposed 2021 fees to be **substantially more**. If approved, they will cause boat owners such as myself to re-evaluate their 2021 plans.

For example, from April 1st, 2020 to October 31, 2020, the "In Season ", I paid \$2,854.25 or \$407.75 per month for our berth which **included \$50.00** per month for 30 AMP electric service. Now the proposed rate to \$10.00 per foot will increase our seasonal rate to \$530.00 per month **PLUS \$105.00** per month for electric. **A total of \$635.00 a month** for a slip that cost us \$407.75 this past year. That represents an **increase of \$227.25 per month or an increase of 56% which I find to be unfair to all residents and visitors**. With the Federal CPI hovering around 1.4% the proposed increase is lacking in explanation, candor and reasonableness which causes folks to wonder "what is going on?" Were any improvements made recently to the marina which have not been brought to our attention. I further suggest that an electric increase of **\$55.00 per month or 110%**. is completely unfair to all marine residents and visitors to Cape Charles. Have the Council's personal electric costs gone up 110%? this past year? I think not.

May I suggest a phased introduction to increased rates which will take the "sting" out of these large proposed increases and will foster goodwill among resident and visitor yachtsmen. I thank you for your time, assistance and understanding of this matter and look forward to meeting you tonight.

Respectfully,

Lt. Colonel Justin McCarthy USA, CE, (Ret.).

Owner M/V Hooch

Rob Harris

Subject: Marina Rate Increases

To the Town Council,

I am very concerned about the rate increases. It appears these increases are well beyond the rate of inflation. And I have seen no comparison data that justifies these increases.

Please make sure any rate increases are justified.

Sincerely,

Rob Harris

Stuart Smith

Subject: Proposed New Rates for the Cape Charles Harbor

I am writing to express my concerns and strong objection to the radically increased slip charges and new fees for Cape Charles **residents** in the Cape Charles Harbor.

I have been boating on the Chesapeake Bay since 1983 and have never seen proposed rate increases of this magnitude in a single year.

As we neared retirement and transition to a fixed income, we choose Cape Charles for many reasons. The small-town atmosphere, ready access to many activities, the opportunity to meet new friends, a close by harbor that did not require a long commute, and a moderate cost of dockage all contributed to our decision. Until now all of those attributes have validated our decision to retire here.

We expect that rates do creep up over time, especially where marinas make substantial new investments that are complimented by new amenities adding value. However, most of these marinas are private investments unlike the Town Harbor, where infrastructure improvements are mostly funded by grants (Federal, State) and supported by local contributions (tax dollars) from **residents**.

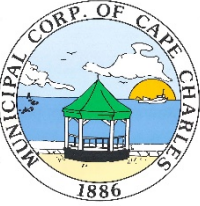
At the August 2020 workshop to allow the public to comment on the pending contract with the Cape Charles Yacht Center (a private company), many attendees expressed concerns of substantial price increases for recreational boaters and watermen. Council pointed to the fact that it would still control pricing, and JB Turner (principal owner of CCYC) in response committed that prices for residents would not be raised. Clearly, that commitment has not been honored.

With the posting of the new proposed rates and fees it's clear that harbor rates are going up substantially for residents if approved as proposed. And the new rates are on top of 30% increases put in place over the past few seasons.

The principal category of rates that most resident boaters have preferred is a Seasonal Rate plan that provided seven months of dockage (May thru Nov). The 2021 resident rate represents a 25%+ increase over 2020. This is simply an unacceptable plan.

The line in the table presented by Manager Hozey labelled Resident Monthly (3+ months) is simply an invalid comparison and flawed by using a very short term Quarterly in Season rate which is rarely if ever used by residents. The only valid compare is against the 2020 Seasonal Rate category. Choosing a Quarterly in Season rate to represent resident boaters mainstream choice is a massive distortion which distracts attention away from actual rate changes most residents will actually experience. In reality there is no rate decrease for the majority of resident boaters.

I call upon Council to hold rates at the same price levels of 2020 for **residents** (expressed in the new 2021 structure) especially in consideration that rates have already been increased by 30% over the past several seasons. Even at these levels residents will still be making considerable contributions to the harbor revenue.

 TOWN OF CAPE CHARLES	AGENDA TITLE: 2021 Harbor Rates and Fees		AGENDA DATE February 18, 2021
	SUBJECT/PROPOSAL/REQUEST: Approval of 2021 rates and fees for the Town Harbor		ITEM NUMBER: 6A
	ATTACHMENTS: Comparison Reports and Wharfage Rates		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

At the January 21, 2021 regular Town Council meeting, the Council was presented with proposed new harbor rate structures for the upcoming season. Development of the presentation provided at that meeting was rushed and therefore of poor quality. As a result, the matter was deferred until this meeting so that information could be better researched and better explained. The town manager accepts full responsibility for this lapse and apologizes for any confusion.

Additional background: on September 17, 2020, the Town Council approved a new management agreement with the Cape Charles Yacht Center (CCYC) to handle the day-to-day operation of the Town Harbor. This is a new concept, where the Town retains ownership, control, and responsibility for the harbor, but contracts out operations and marketing. One of the main reasons the CCYC was chosen was because they already manage and market a portion of the basin. Having one agency handle all of it would allow for more efficient use of the resource and provide a more business minded approach to the customer service experience of mariners.

ITEM SPECIFICS:

While working with CCYC to prepare for this transition, the town had to transfer billing data from its antiquated system into CCYC's cloud-based system. It wasn't until we saw this raw data late in the transition process, that we realized the full extent of how convoluted the harbor rate structure had become. It is not our intention to purposely throw anyone under the bus, I'm sure previous decisions were all made in good faith at the time. But over these many years of discretionary implementation of harbor rates, coupled with a huge number of unnecessary published rates, we have wound up with an extremely confusing system that was not consistently applied. It seems most non-transient vessels (and even some transient vessels) had their own unique billing situations.

So when it came time to make these necessary changes to streamline the rate categories and develop a system that could be consistently applied, it becomes very difficult to develop accurate comparison data/tables, as there are so many different situations to compare to the new rate structures. This is why the presentations to date have been hard to follow, and why it's so easy to poke holes in them. Therefore, the comparison data/tables provided should be considered "generalized" and may not accurately reflect everyone's situation.

There are also two types of comparison data provided. One is to show how changes in rates could affect "some" harbor users. The other is to show how our rates compare with other harbors/marinas. The rate categories are not identical between the two, as they are telling two different stories.

There are two primary reasons for recommending these new rates. The first is to improve the financial position of the harbor. We do not currently bring in sufficient revenue to cover both operations and needed major maintenance of the infrastructure. Based on research conducted by CCYC, we believe the new rates will increase revenue without reducing occupancy.

The second reason for these rates is to help achieve the efficiencies we sought by contracting with CCYC in the first place. Streamlining our harbor rates to match those of CCYC will enable them to manage the entire harbor much more effectively without getting tripped up over what rates apply to where.

Therefore, to simplify/coordinate our rate structure, the following dockage categories/rates are proposed:

Dockage Seasonal/Long-Term Monthly (3-month min)	\$10/ft
Dockage Transient Monthly	\$15/ft
Dockage Transient Daily (up to 70')	\$3/ft
Dockage Transient Daily (over 70')	\$4/ft

Note that when developing these new rates there were two specific users that we wanted to remain particularly sensitive to, our local residents and our commercial watermen. Therefore, we wanted to provide cover for both from what otherwise would represent significant increases. The discounts that were recommended at the last meeting were a good faith effort to address this concern. However, the more we dug into the existing convoluted rate structure, the more we realized additional adjustments were required. We also took to heart the comments offered at the last Council meeting. As a result, we have revised the recommended discounts for these users.

The following dockage discounts would apply:

- Town Residents – thirty percent (30%)
- Commercial/Waterman (long-term) – fifty percent (50%)
- Commercial/Waterman (transient) – twenty percent (20%)
- Current annual slip holders (in good standing):
 - Twenty percent (20%) in 2021
 - Ten percent (10%) in 2022
- Yacht Clubs may be considered for discounts depending on availability

Note that the existing practice of charging for the minimum slip length will remain in place.

It should also be noted that the Town has historically provided discounts on fuel sales. These discounts have been \$0.05/g for charter boats and annual slip holders, and \$0.12/g for watermen. Since we no longer have the dockage category of annual slip holder, we propose extending this \$0.05/g discount to charter boats and residents using long-term monthly dockage. We also recommend keeping the \$0.12/g for watermen in place.

Electric rates have also been an issue. While not quite as convoluted as dockage, electric rates have not been consistent either. The town did not have published monthly rates for electricity and charging the daily rate for a month became exorbitant. So monthly rates were charged arbitrarily. In the case of 30 amp service, monthly rates were reasonable to industry standard. But when it came to 50 amp service we were grossly undercharging. Therefore, anyone who was paying the monthly rate for 50 amp service will see a significant increase. This is unfortunate, but necessary. These users should consider themselves lucky for getting such reduced rates for so long until now. The proposed rates going forward for monthly 50 amp service are consistent with industry standards.

Proposed electric rates:

Water Monthly	\$5/mo
30A Electric Daily	\$5/day
30A Electric Monthly	\$35/mo
50A Electric Daily	\$15/day
50A Electric Monthly	\$105/mo
100A Electric Daily	\$25/day
100A Electric Monthly	\$175/mo

Other Rates

Commercial Gear, Pots, and Non-motorized Equipment Storage rate:

- \$30/week, per 20-foot by 20-foot area
- \$10/day, Improper gear storage (left on the walkway)

Pressure Washing:

- \$10/Event

Rentals:

- Gazebo: \$150/Event
- West Parking Lot: \$75/Event

Part of the vision statement adopted for CCYC in their first year of operation is to clean up the harbor uplands and develop a more aesthetic appeal to the area around the harbor. A huge part to this cleanup effort would be to reduce the storage in the area along the east side of the inter harbor. Much of that storage need can be accommodated elsewhere on CCYC property. However, that would shift a revenue source from the Town to the CCYC. To compensate the Town for this additional business, the CCYC would credit back 20% of all storage revenue attributable to those who would otherwise use the town property. This allows for some additional Town revenue while simultaneously achieving the Town stated goal of cleaning up that area. While the goal is to reduce storage on town property, there may still be an occasional need (boats/trailers only), and to prevent a financial incentive for continued use of town property, we recommend charging the same rate as CCYC:

- Boats: \$7.00/ft/mo
- Trailers: \$2.50/ft/mo

Wharfage:

The Town Council is required to approve wharfage rates as well as dockage. These charges have not been changed or updated in many years. While it is not our intention to significantly increase these rates, in bringing them forward and updating them, we did need to change the unit of measurement calculation for some and included small increases in others to make rates more consistent and easier to apply. The attached wharfage rate chart is therefore included by reference and recommended for adoption as well.

RECOMMENDATION:

Staff recommends adoption of harbor rates and fees as outlined herein, to take effect on April 1, 2021.



2021-22 Proposed Dockage & Electric Rates

PRESENTED TO THE CAPE CHARLES TOWN COUNCIL

Item 6A - Attachment #1
2/18/21 TC Regular Mtg

“Cape Charles is the perfect destination for boaters.”

(*Power & Motoryacht* magazine, January 2021.)

We’re lucky to be in a region that’s growing — both in economy and popularity. *The Washington Post* says we’re in a “renaissance.” Our town isn’t just a stopover point for yachts, it’s a destination. Let’s leverage our burgeoning reputation to make our harbor more successful.

For years Cape Charles Harbor has been under-priced for transients. Based on a comparison of Chesapeake Bay marinas — including two in the very same town — Cape Charles Harbor has been sacrificing much-needed revenue. Not only are the rates significantly lower on a regional and national scale, but additional discounts are often extended during historically busy times, like summer holidays.

A dropoff in visits due to an increase in rates is unlikely; a recent report from Association of Marina Industries (AMI) presented at the Virginia Marine Trades Association (VMTA) 2021 annual conference shows that Virginia marinas average 90% occupancy at rates much higher than those of Cape Charles.

To increase transient traffic to Cape Charles, we need to live up to the town’s reputation. Cape Charles Harbor has deferred maintenance needs that will begin to affect its reputation. The harbor needs to be

more attractive, provide more amenities, offer more events on and off the water, and generate more good times and goodwill for visitors. Developing the harbor requires a financial commitment that can only be met by generating more revenue.

Let’s view Cape Charles in the bigger picture. Our town is competing on a much larger stage than that of southern Chesapeake Bay. We’re actively advertising to cruisers who sail between New England and the Caribbean. We’re positioning the harbor in marketing media as the ideal mid-Atlantic location for international vessels seeking long-term stays, particularly during the shoulder seasons. When captains and owners who haven’t visited the region research dockage rates, the low price point is often actually a deterrent since so many boaters believe in the old adage, “you get what you pay for.”

This isn’t just about transients, of course. We want to support Cape Charles residents and watermen in the same way they’ve supported the harbor — particularly before it was popular. As we raise transient rates to be more aligned with comparable regional and national marinas, we’ll provide deep discounts to residents and long-term slipholders. We’ll also extend discounted group rates to yacht clubs and others on a case-by-case basis. For most boaters, these new rates for residents represent small net increases that remain well below market value.

	Cape Charles Harbor 2020		Proposed 2021 Rates	Cape Charles Yacht Center	Kings Creek	Ocean Yacht Marina	Bluewater Yachting Center	Tidewater	Cobbs Marina	Sunset Marina	Charleston Harbor Marina	Hatteras Harbor Marina	Annapolis City Marina	St. Augustine Municipal Marina	Front Street Shipyard
	Cape Charles, VA	Cape Charles, VA	Cape Charles, VA	Cape Charles, VA	Portsmouth, VA	Hampton, VA	Portsmouth, VA	Norfolk, VA		Ocean City, MD	Charleston, SC	Hatteras, NC	Annapolis, MD	St. Augustine, FL	Belfast, ME
Transient Daily <70'	\$2.25	\$3.00	\$3.00	\$2.50	\$1.75	\$2.00	\$2.00	\$2.00	\$3.00	\$2.20	\$1.50	\$2.50	\$2.35	\$3.50	\$3.50
Transient Daily >70'	NA	\$4.00	\$4.00	NA	NA	NA	NA	NA	NA	NA	NA	NA	\$3.50	\$4.25	
Transient Monthly	\$11.50	\$15.00	\$15.00	\$14.00	\$13.50	\$24.00	\$16.25	\$13.00	\$70.00	\$28.00	\$17.00	\$25.00	\$22.25	\$37.50	
Resident Monthly	\$10.92	\$10.50	\$12.00	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Long-Term (<3 mo) Monthly	\$5.83-\$8.00	\$10.00	\$10.00	\$8.50	\$9.00	\$9.00	\$10.60	\$12.00	\$15.00	\$18.75	\$12.00	NA	\$19.50	\$21.60	
Resident Long-Term Monthly	\$5.54-\$7.60	\$7.00	\$8.00	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Repeat Annual Monthly*	\$5.54	\$8.00	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Watermen Long-Term Monthly	\$4.68	\$5.00	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Watermen Short-Term Monthly	NA	\$8.00	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
30-Amp Daily	\$7.00	\$5.00	\$5.00	\$10.00	\$7.00	\$7.00	\$7.00	\$7.50	\$10.00	\$10.00	Incl.	\$7.00	\$7.50	\$10.00	
30-Amp Monthly	\$30.00	\$35.00	\$35.00	Meter	Meter	Meter	\$210.00	Meter	Meter	\$90.00	Incl.	\$85.00	\$85.00	\$150.00	
50-Amp Daily	\$14.00	\$15.00	\$15.00	\$15.00	\$12.00	\$10.00	\$12.00	\$15.00	\$20.00	\$18.00	Incl.	\$13.00	\$15.00	\$20.00	
50-Amp Monthly	\$50.00	\$105.00	\$105.00	Meter	Meter	Meter	\$360.00	Meter	Meter	\$180.00	Incl.	\$125.00	\$165.00	\$300.00	
100-Amp Daily	\$28.00	\$25.00	\$25.00	\$35.00	\$50.00	\$25.00	\$80.00	NA	\$40.00	\$40.00	NA	NA	\$35.00	\$40.00	
100-Amp Monthly	TBD	\$175.00	\$175.00	Meter	Meter	Meter	Quote	NA	Meter	\$400.00	NA	NA	\$350.00	\$600.00	
3-Phase Daily	NA	NA	\$50.00	NA	\$80.00	NA	\$100.00	NA	NA	\$100.00	NA	NA	\$125.00	\$60.00	
3-Phase Monthly	NA	NA	\$350.00	NA	Meter	NA	Quote	NA	NA	Quoted	NA	NA	\$2,250.00	Quoted	

*For multi-year annual slipholders

Comparison Report

Item 6A - Attachment 2
2/18/2021 TC Regular Mtg

Type	Length	2020 Mo or		2021 rate		2021 Mo or		difference %	difference \$
		2020 rate	Day subtotal	2021 rate	w/Discount	2021 Mo or	Day Subtotal		
Transient monthly	40	\$ 11.50	\$ 460.00	\$ 15.00	\$ 15.00	\$ 600.00		30.4%	\$ 140.00
Transient daily	40	\$ 2.25	\$ 90.00	\$ 3.00	\$ 3.00	\$ 120.00		33.3%	\$ 30.00
Waterman (long term) monthly	40	\$ 4.68	\$ 187.20	\$ 10.00	\$ 5.00	\$ 200.00		6.8%	\$ 12.80
Current annual slip holder monthly	40	\$ 5.83	\$ 233.20	\$ 10.00	\$ 8.00	\$ 320.00		37.2%	\$ 86.80
New seasonal slip-holder monthly	40	\$ 6.75	\$ 270.00	\$ 10.00	\$ 10.00	\$ 400.00		48.1%	\$ 130.00
Resident seasonal slip holder	40	\$ 6.41	\$ 256.40	\$ 10.00	\$ 7.00	\$ 280.00		9.2%	\$ 23.60
Resident monthly (<3 months)	40	\$ 10.93	\$ 437.20	\$ 15.00	\$ 10.50	\$ 420.00		-3.9%	\$ (17.20)

Discounts:

Town Residents – thirty percent (30%)

Commercial/Waterman (long-term) – fifty percent (50%)

Commercial/Waterman (transient) – twenty percent (20%)

Current annual slip holders (in good standing):

o Twenty percent (20%) in 2021

o Ten percent (10%) in 2022

Electric

Proposed

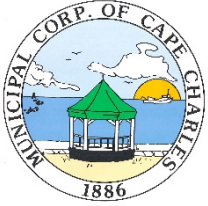
Current

Unofficial

30A Electric Daily	\$5/day		\$7/day	
30A Electric Monthly	\$35/mo			\$30/mo
50A Electric Daily	\$15/day		\$14/day	
50A Electric Monthly	\$105/mo			\$50/mo
100A Electric Daily	\$25/day			
100A Electric Monthly	\$175/mo			

2021 Recommended Wharfage Rates

Item	Description	Price		Old price	
WharfageClams	Clam Basket or two bags	0.50		0.50	
WharfageConchs	Conchs Bushel	0.50	new	0.40	
WharfageCrabs	Crabs Bushel	0.50		0.50	
WharfageFish	Fish 32 gallon barrel	1.50	new	0.008/lb	Change in unit of measurment
WharfageFish	Fish Bushel/Box	0.50	new		Change in unit of measurment
WharfageScallops	Scallops Bushel	0.50	new	0.40	
WharfageHorse Shoes	Horse Shoe Crabs Cardboard Crate	15.00	new		Change in unit of measurment
WharfageHorse Shoes	Horse Shoe Crabs Bushel	0.50		0.50	
WharfageOysters	Oyster Basket or Two Bags	0.50		0.50	

 TOWN OF CAPE CHARLES	AGENDA TITLE: Revisions to Town Code		AGENDA DATE: February 18, 2021
	SUBJECT/PROPOSAL/REQUEST: Consider an ordinance revising various sections of the Town Code.		ITEM NUMBER: 7A
	ATTACHMENTS: 1. Code of Virginia Sec. 46.2-904 2. Proposed revision of Sec. 42-7, with explanation 3. Existing Chapter 19 4. Existing Chapter 34 5. Proposed Ordinance		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT(S): Bob Panek/Chief Pruitt/Libby Hume	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

The Town Code is a compilation of ordinances enacted by Town Council. Revisions to the Code are periodically required to reflect policy initiatives, conform the code to new federal or state law, recognize changes in organizational structure, etc. The proposed revisions to Chapter 14 last month would have moved provisions governing use of the Bay Avenue boardwalk to Chapter 42, Sec. 42-7. However, during consideration of this change it was discovered that the existing Sec.42-7 did not comport with the Code of Virginia regarding operation of bicycles and other non-motor vehicles on sidewalks. Council requested that a comprehensive revision to that section be drafted. Additionally, review of the Town Code has revealed that Chapter 19, Commercial Recreation Centers, and Chapter 34, Junkyards, are superfluous.

DISCUSSION:

The fundamental flaw in Sec. 42-7 is that it omits the requirement to install official signage where a locality chooses to prohibit the operation of non-motor vehicles on sidewalks. There is no authority for a blanket prohibition without signage; see attachment 1. The proposed revision, attachment 2, conforms this section to state law. If adopted, Council will then need to designate by separate action those sidewalks subject to the prohibition. Official signage will then need to be implemented through the VDOT process.

Chapter 19 (attachment 3) was enacted in 1997 and no changes have since been made. It is an odd combination of land use regulation and provisions prohibiting gambling, obscene behavior, intoxication and prostitution. The Town's first Zoning Ordinance (Z.O.) was adopted in 1995, revised in 1997 with the first Zoning Map, and has been periodically updated over the years. The Z.O. allows commercial recreation centers in only two districts, Harbor (conditional use) and Planned Unit Developments. Moreover, Chapter 50, Offenses and Miscellaneous Provisions, contains similar restrictive provisions related to the operation of poolrooms (Article I), and prohibits illegal gambling (Article III), obscene behavior (Article IV), prostitution (Article V), and public intoxication (Article VI). Particularly, Sec. 50-108, Disorderly Houses, addresses a trifecta of prohibited behaviors. Land use is governed by the Z.O. and undesirable behaviors are robustly addressed in Chapter 50. Chapter 19 is unnecessary and should be struck.

Chapter 34 (attachment 4) was enacted in 1975, twenty years before the first Z.O., and no changes have since been made. Clearly, the intent is to prohibit junkyards; see fencing setback requirement in Sec. 34-3. The Z.O. does not allow junkyards in any district. Chapter 34 is unnecessary and should be struck.

Attachment 5 is the proposed ordinance adopting these revisions.

RECOMENDATION:

Consider the proposed changes. If acceptable, staff recommends a roll call vote to adopt the ordinance.

Code of Virginia
Title 46.2. Motor Vehicles
Subtitle III. Operation
Chapter 8. Regulation of Traffic
Article 12. Bicycles

§ 46.2-904. Use of roller skates and skateboards on sidewalks and shared-use paths; operation of bicycles and certain motorized and electric items and devices on sidewalks, crosswalks, and shared-use paths; local ordinances

The governing body of any county, city, or town may by ordinance prohibit the use of roller skates, skateboards, and personal delivery devices, and/or the riding of bicycles, electric personal assistive mobility devices, motorized skateboards or scooters, motor-driven cycles, or electric power-assisted bicycles on designated sidewalks or crosswalks, including those of any church, school, recreational facility, or any business property open to the public where such activity is prohibited. Signs indicating such prohibition shall be posted in general areas where use of roller skates, skateboards, and personal delivery devices, and/or bicycle, electric personal assistive mobility devices, motorized skateboards or scooters, motor-driven cycles, or electric power-assisted bicycle riding is prohibited.

A person riding a bicycle, electric personal assistive mobility device, motorized skateboard or scooter, motor-driven cycle, or electric power-assisted bicycle on a sidewalk or shared-use path or across a roadway on a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing any pedestrian. A personal delivery device operated on a sidewalk or shared-use path or across a roadway on a crosswalk shall yield the right-of-way to, or otherwise not unreasonably interfere with, pedestrians.

No person shall ride a bicycle, electric personal assistive mobility device, motorized skateboard or scooter, motor-driven cycle, or electric power-assisted bicycle or operate a personal delivery device on a sidewalk, or across a roadway on a crosswalk, where such use of bicycles, electric personal assistive mobility devices, personal delivery devices, motorized skateboards or scooters, motor-driven cycles, or electric power-assisted bicycles is prohibited by official traffic control devices. No person shall park a bicycle, electric power-assisted bicycle, or motorized skateboard or scooter in a manner that impedes the normal movement of pedestrian or other traffic or where such parking is prohibited by official traffic control devices.

A person riding a bicycle, electric personal assistive mobility device, motorized skateboard or scooter, motor-driven cycle, or electric power-assisted bicycle on a sidewalk or shared-use path or across a roadway on a crosswalk shall have all the rights and duties of a pedestrian under the same circumstances. A personal delivery device operated on a sidewalk or shared-use path or across a roadway on a crosswalk shall have all the rights and duties of a pedestrian under the same circumstances.

Except as otherwise expressly provided, the governing body of a county, city, or town may not enact or enforce any ordinance or resolution related to (i) the design, manufacture, maintenance, licensing, registration, taxation, assessment or other charges, certification, or insurance of a personal delivery device or (ii) the types of property that may be transported by a personal delivery device.

A violation of any ordinance adopted pursuant to this section or any provision of this section shall be punishable by a civil penalty of not more than \$50.

1981, c. 585, § 46.1-229.01; 1984, c. 124; 1989, c. 727; 1999, c. [943](#); 2001, c. [834](#); 2002, c. [254](#); 2003, cc. [29](#), [46](#); 2006, cc. [529](#), [538](#); 2013, c. [783](#); 2017, cc. [251](#), [788](#); 2019, c. [780](#); 2020, c. [1269](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Sec. 42-7. - Operation of vehicles on sidewalks, shared-use paths, etc-prohibited.

- (1) No motor vehicle shall be operated on the sidewalks, shared-use pedestrian paths, boardwalk or public pier of the town, unless directed by the police department ~~or~~ unless a motor vehicle is passing over ~~at~~ the sidewalk to access a driveway ~~where it passes over the sidewalk~~. Parked motor vehicles are prohibited from obstructing the sidewalks. For the purpose of this ~~paragraph~~section, the term motor vehicle ~~"vehicle"~~ shall mean ~~any and all wheeled modes of transportation, including but not limited to, automobiles passenger cars, trucks of all kinds, motorcycles, mopeds, bicycles, skateboards, roller skates, rollerblades and golf carts, but shall specifically exclude wheelchairs and other wheeled modes of transportation for use by handicapped persons.~~
- (2) Operation of roller skates, skateboards, personal delivery devices, bicycles, electric personal assistive mobility devices, motorized skateboards or scooters, motor-driven cycles, or electric power-assisted bicycles is allowed unless specifically prohibited by official signage.
- (3) Operation of wheelchairs or wheelchair conveyances, including those self-propelled, for use by mobility impaired persons is allowed.

Explanation of Proposed Changes

The existing section of the Town Code is inconsistent with the Code of Virginia, Sec. 46.2-904, attached. It currently prohibits the operation of non-motor vehicles, such as bicycles and skateboards, on all sidewalks and pedestrian paths. However, the state code allows localities to prohibit these non-motor vehicles only in areas where official signage is posted. In the case of sidewalks and shared-use paths in the state right-of-way, this would require signs compliant with the Manual for Uniform Traffic Control Devices under a land use permit approved by VDOT.

It is proposed that Sec. 42-7 be broken into three paragraphs. The first would address the prohibition of motor vehicles on sidewalks, etc. The second would address the operation on non-motor vehicles, i.e., allowed unless prohibited by official signage. The third would address conveyances for mobility impaired persons, i.e., allowed.

The types of motor and non-motor vehicles enumerated in the proposed revision mirror the definitions in the state code.

It is recommended that Council separately consider those areas where non-motor vehicles should be prohibited on sidewalks and adopt an ordinance specifying these locations. Implementation would then follow through the VDOT process.

Chapter 19 - COMMERCIAL RECREATION CENTERS

ARTICLE I. - IN GENERAL

Sec. 19-1. - Definitions.

For the purpose of this chapter, a commercial recreation center is defined as any establishment where pinball, billiards, pool, foosball, table tennis, shuffleboard, video games or any other game of recreation amusement is displayed and available for public patronage, where the insertion of a coin, slug or token is required and where two or more such game machines are in use. The definition shall not apply to private clubs, retail stores, or restaurants in which no more than three such game machines are a secondary and accessory use for the incidental entertainment of persons frequenting such private clubs, retail stores, or restaurants in respect to its primary purpose.

(Ord. No. 97211, 2-11-97)

Sec. 19-2. - Violations.

Any person operating a commercial recreation center, as defined herein, in the Town of Cape Charles shall only operate such facility in compliance with the provisions of this chapter. Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 3 misdemeanor.

(Ord. No. 97211, 2-11-97)

Sec. 19-3. - Operation on ground floor; plate glass windows.

Each commercial recreation center shall be located on the ground level floor of the building in which it is situated. Such facilities shall also have a window or windows with a total of not less than 100 square feet of clear glass facing the street, which shall not be covered or otherwise obstructed during hours of business.

(Ord. No. 97211, 2-11-97)

Sec. 19-4. - Partitions prohibited.

No commercial recreation center shall have partitioned or closed off areas other than those for toilet facilities, office space, and storerooms.

(Ord. No. 97211, 2-11-97)

Sec. 19-5. - Interior lighting.

Each commercial recreation center shall be illuminated throughout its interior at a level of at least 40 foot candles.

(Ord. No. 97211, 2-11-97)

Sec. 19-6. - Restroom facilities.

Each commercial recreation center shall provide separate working restroom facilities for both sexes.

(Ord. No. 97211, 2-11-97)

Sec. 19-7. - Management.

Each commercial recreation center shall at all times be under the management and control of a person at least 18 years of age, who shall be on the premises at all times during the hours of operation.

(Ord. No. 97211, 2-11-97)

Sec. 19-8. - Connection with gambling or immoral establishment.

No person operating a commercial recreation center in the town shall maintain or permit to be maintained any open or secret connections through doors, windows or trap doors, panels, stairways, or other devices, with any place where gambling is conducted or where persons congregate for immoral purposes.

(Ord. No. 97211, 2-11-97)

Sec. 19-9. - Betting pools prohibited.

No racing, football parley, or other betting pool shall be allowed, promoted, or sold in any commercial recreation center.

(Ord. No. 97211, 2-11-97)

Sec. 19-10. - Loud or profane language.

No loud, profane, obscene, or indecent language shall be permitted in any commercial recreation center.

(Ord. No. 97211, 2-11-97)

Sec. 19-11. - Playing or loitering by intoxicated persons.

No person operating a commercial recreation center in the town shall allow any person who is intoxicated to play or loiter in or on such premises.

(Ord. No. 97211, 2-11-97)

Sec. 19-12. - Hours of operation.

- (a) It shall be lawful for any person owning, managing, or operating a commercial recreation center to keep open or operate such center between the hours of 12 noon until 10 p.m. weekdays and 10 a.m. until 10 p.m. on Saturday and 2 p.m. until 10 p.m. on Sundays. No minor under the age of 18 shall be permitted in such center after 8 p.m. on any given night. No person operating such a facility in the town shall allow play on any table, alley, or game machine when such center is closed.
- (b) It shall be unlawful for any person, except employees or emergency personnel, to enter a commercial recreation center during the hours in which it is closed.

(Ord. No. 97211, 2-11-97)

Sec. 19-13. - Right to entry of police.

Each commercial recreation center shall be open for observation without warrant by any law enforcement official at any time during normal hours of operation.

(Ord. No. 97211, 2-11-97)

Sec. 19-14. - Payment of town real estate and personal property taxes and town utility bills as prerequisite to issuance.

The town treasurer shall not issue a license for any commercial recreation center unless the applicant for such license shall have provided satisfactory evidence that all taxes and utility bills have been paid which have been properly assessed or are assessable against the applicant by the town for the recreation center to be licensed.

(Ord. No. 97211, 2-11-97)

Secs. 19-15—19-25. - Reserved.

ARTICLE II. - PERMIT PROCEDURE

Sec. 19-26. - Permit required.

No person shall operate a commercial recreation center within the town unless he has a current permit to do so issued by the town.

(Ord. No. 97211, 2-11-97)

Sec. 19-27. - Application.

The application for a permit required by this article shall contain the following information:

- (1) Name, address, age, social security number, and date and place of birth of the applicant and, where pertinent, the relationship of the applicant to any company, corporation, or other entity which has an interest in the ownership or management of the center;
- (2) Prior criminal convictions, excluding traffic offenses, of the applicant, if any;
- (3) Location of the center;
- (4) Maximum number of patrons the center will accommodate;
- (5) A list of the names and addresses of all employees which are expected to serve in a managerial capacity in the center; and
- (6) A certification by the applicant that all the requirements of this chapter have been complied with.

(Ord. No. 97211, 2-11-97)

Sec. 19-28. - Application fee.

At the time of filing his application, the applicant for a permit required by this article shall pay a fee of \$50.00, which shall not be refundable.

(Ord. No. 97211, 2-11-97)

Sec. 19-29. - Investigation of applicant and center.

Upon receipt of an application for a permit required by this article, the chief of police or his authorized designee shall immediately cause an investigation to be made concerning the qualifications of the applicant and whether the proposed center is in compliance with all applicable laws and ordinances.

(Ord. 97211, 2-11-97)

Sec. 19-30. - Issuance and denial.

- (a) The town council shall grant or deny any permit after consideration and shall notify the applicant of their action with 60 days of the filing of the application. If the town council denies such permit, they shall state in writing the reasons for such action.
- (b) The following factors shall constitute ground for the denial of a permit for operation of a commercial recreation center:
 - (1) A finding by the chief of police or his authorized designee that the applicant has falsified his application in a material manner;
 - (2) A finding by the chief of police or his authorized designee that the applicant or any of his designated managerial employees has a criminal record which reveals any convictions for violation of any drug control law or any other pattern of criminal misconduct involving moral turpitude;
 - (3) A finding by the town council or their authorized designee that the application is not properly completed as required herein; and
 - (4) A finding by the chief of police or his authorized designee that the proposed center fails to comply with the provisions of this article and any other provision of this Code or state law.

(Ord. No. 97211, 2-11-97)

Sec. 19-31. - Display.

A permit issued under this division shall be displayed in a conspicuous manner in the commercial recreation center for which it was issued.

(Ord. No. 97211, 2-11-97)

Sec. 19-32. - Assignment.

No permit issued under this article shall be assignable in any manner whatsoever.

(Ord. of 2-11-97)

Sec. 19-33. - Expiration.

Any permit issued under the provisions of this article shall expire when the commercial recreation center for which the permit was issued ceases to operate for a period of 30 consecutive calendar days.

(Ord. 97211, 2-11-97)

Sec. 19-34. - Revocation or suspension.

- (a) The town council or their authorized designee may revoke or suspend the permit for the operation of a commercial recreation center if it finds:
 - (1) The premises have been declared a common nuisance by a court of competent jurisdiction;
 - (2) The permittee has failed to take prompt and vigorous action to prevent violations of criminal statutes occurring on or about the premises, which are known or should have been known to the permittee;
 - (3) The circumstances exist which would have justified a denial of such permit at the time of its issuance; or
 - (4) The permittee has failed to comply with the provisions of this article and any other provisions of this Code or state law.
- (b) A permittee under this article shall be entitled to a hearing before the town council before such permit is revoked or suspended. The town shall give the permittee five days' notice of the intention to revoke or suspend such permit, along with the grounds for revocation or suspension, and the date, time, and place of the hearing, by certified mail, return receipt requested, or by personal service by an appropriate law enforcement officer. The hearing shall be held not more than 20 days after giving of the notice.

(Ord. No. 97211, 2-11-97)

Chapter 34 - JUNKYARDS

Sec. 34-1. - Definitions.

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

Automobile graveyard means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

Junk means old or scrap copper; brass; rope; rags; batteries; paper; trash; rubber; debris; waste or junked, dismantled or wrecked automobiles, or parts thereof; iron, steel, and other old or scrap ferrous or nonferrous material.

Junkyard means an establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(Ord. No. 15, § 1, 7-15-75)

Sec. 34-2. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 3 misdemeanor.

(Ord. No. 15, § 12, 7-15-75)

Sec. 34-3. - Fencing.

Each junkyard in the town shall be completely enclosed by a masonry fence of eight feet or more in height to be kept neatly painted and in good repair for the purpose of excluding such use from the public view. The fence shall not be constructed closer than 500 feet to the nearest right-of-way of any highway or street and shall not be used for the purpose of advertising anything other than the place of business. Such advertisement shall be limited to four feet by eight feet. The contents of the junkyard shall not be placed or deposited to a height greater than the height of the fence herein described.

(Ord. No. 15, § 2, 7-15-75)

Sec. 34-4. - Cleanliness of abutting sidewalks and streets.

Sidewalks and streets abutting a junkyard shall be kept clear of all vehicles incapable of being operated under their own power and trash or other waste matter.

(Ord. No. 15, § 3, 7-15-75)

Sec. 34-5. - Automobile graveyard records.

The proprietor of an automobile graveyard shall maintain an accurate record, open for inspection to all town officials and law-enforcement officers, showing the make, state license number, state certificate of title, motor number, body number, style and seating capacity of each vehicle purchased, together with such other information concerning the vehicle as may be necessary to establish ownership of the vehicle.

(Ord. No. 15, § 4, 7-15-75)

ORDINANCE 20210218

**ADOPTING REVISIONS TO CAPE CHARLES TOWN CODE
CHAPTER 42, AND DELETING CHAPTERS 19 AND 34**

WHEREAS, the Cape Charles Town Code is a compilation of ordinances enacted by the Cape Charles Town Council and periodic revisions are required to reflect policy initiatives, conform to new federal or state law, and to recognize changes in organizational structure, etc.; and

WHEREAS, upon review of Chapter 42, a provision inconsistent with the Code of Virginia was discovered; and

WHEREAS, upon review of Chapters 19 and 34, these chapters were found to be incongruent with the Cape Charles Zoning Ordinance and, in the case of Chapter 19 duplicative with several other provisions of the Town Code;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Cape Charles, this 18th day of February 2021, that Cape Charles Town Code Chapter 42 – Motor Vehicles and Traffic be revised per the attached, and that Chapters 19 and 34 be deleted, to become effective immediately.

Adopted by the Town Council of Cape Charles on February 18, 2021.

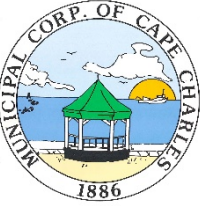
By: _____
Mayor

ATTEST:

Town Clerk

Sec. 42-7. - Operation of vehicles on sidewalks, shared-use paths, etc.

- (1) No motor vehicle shall be operated on the sidewalks, shared-use pedestrian paths, boardwalk or public pier of the town, unless directed by the police department or unless a motor vehicle is passing over a sidewalk to access a driveway. Parked motor vehicles are prohibited from obstructing the sidewalks. For the purpose of this paragraph, the term motor vehicle shall mean passenger cars, trucks of all kinds, motorcycles, mopeds, and golf carts.
- (2) Operation of roller skates, skateboards, personal delivery devices, bicycles, electric personal assistive mobility devices, motorized skateboards or scooters, motor-driven cycles, or electric power-assisted bicycles is allowed unless specifically prohibited by official signage.
- (3) Operation of wheelchairs or wheelchair conveyances, including those self-propelled, for use by mobility impaired persons is allowed.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Consideration to advance PPEA unsolicited proposals for further evaluation		AGENDA DATE February 18, 2021
	SUBJECT/PROPOSAL/REQUEST: Advance PPEA unsolicited conceptual proposals to the detailed stage		ITEM NUMBER: 7B
	ATTACHMENTS: PPEA Local Guidelines		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

In May of 2020 the Town was approached regarding an unsolicited proposal for a private utility company to acquire and operate the Town's water and wastewater utilities. As this was not expected, it took some time for the Town to consider how to vet such a proposal and to become familiar with the procurement laws that applied. It was determined that the best way to consider this possibility was under the provisions of the Public-Private Education Facilities and Infrastructure Act (PPEA). This Act required the Town to develop and adopt formal local guidelines for the process. Following much work over the summer, the Town Council adopted our local PPEA guidelines on September 3, 2020.

On September 17, 2020, AQUA Virginia submitted an unsolicited proposal in conformance with the new guidelines. According to these guidelines the AQUA proposal was offered at the conceptual stage of development. Following review of this conceptual submission, the town manager accepted the AQUA unsolicited proposal on October 9, 2020, which started a mandatory public notice period. The purpose for this notice was to invite additional unsolicited proposals. The notice period ran through November 30, 2020.

As a result of the public notice, the town received an additional unsolicited proposal from Virginia American Water (VAW). Upon review of the initial VAW submission, the town manager requested additional information, to be provided by January 8, 2021. Following review of this additional information, the town manager accepted the VAW proposal at the conceptual stage.

ITEM SPECIFICS:

At this point the Town is not committed to anything regarding the sale of our utilities. We have simply been approached by two qualified companies who would like to engage in a discussion about possibility acquiring these assets; both having submitted a conceptual proposal consistent with our PPEA guidelines. The next step is for the Town Council to decide if either (or both) of the companies involved should be invited to advance their proposal to the detailed stage.

Based on the information provided so far, both companies have made a good faith effort, and it would appear to be in the Town's best interest to continue this investigation to determine if sale of our utilities could be in the best interest of the Town. Advancing the proposals to the detailed stage of the PPEA process in no way commits the town any further, but it would provide critical information necessary to help make any final decision as to the appropriateness of the concept.

Staff has prepared a solicitation for third party consultants to assist in the evaluation of detailed proposals should the Council vote to advance either, or both of these companies.

RECOMMENDATION:

Staff recommends Council advance the AQUA Virginia and Virginia American Water unsolicited proposals to the detailed stage of the Town's PPEA guidelines.



**TOWN OF CAPE CHARLES
COMBINED GUIDELINES
FOR THE**

**Public-Private Education Facilities and
Infrastructure Act of 2002, as revised**

and

Public-Private Transportation Act of 1995, as revised

(Adopted September 3, 2020)

TABLE OF CONTENTS

	PAGE
I. Introduction	3
A. Guideline Overview	3
B. Qualifying Facilities and Projects	4
C. Reservation of Town Rights	5
II. Definitions	5
III. General Provisions	8
A. Proposal Submission.....	8
B. Affected Jurisdictions (PPEA and Affected Local Jurisdictions (PPEA)).....	8
C. Proposal Review Fee.....	8
D. Virginia Freedom of Information Act.....	10
E. Use of Public Funds	12
F. Applicability of Other Laws	12
G. Schedule.....	12
IV. Solicited Proposals	13
V. Unsolicited Proposals	13
A. Step One: Decision to Accept and Consider an Unsolicited Proposal.....	14
B. Step Two: Decision to Proceed with Conceptual Phase Review Notice	15
C. Step Three: Conceptual Phase Review	17
D. Step Four: The Detailed Review Phase	20
VI. Proposal Evaluation and Selection Criteria	22
A. Qualifications and Experience	22
B. Project Characteristics	22
C. Project Financing	23
D. Project Benefit and Compatibility	23
E. Other Factors.....	24
VII. Interim and Comprehensive Agreements	25
A. Interim Agreement Terms.....	25
B. Comprehensive Agreement Terms	26
C. Comprehensive Agreement Provisions Relating to Construction Projects.....	28
D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure	29
E. Notice and Posting Requirements.....	29
F. Audits for Certain Qualifying Transportation Facilities.....	30
G. Filing of Comprehensive Agreement with Auditor of Public Accounts.....	30

I. Introduction

The Public-Private Transportation Act of 1995 (Va. Code §§ 33.2-1800 et seq.) ("PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code §§ 56-575.1, et seq.) ("PPEA"), grant responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines: (i) that there is a need for the facility or project; (ii) that the estimated cost of the facility or project is reasonable in relation to similar facilities or projects; (iii) that the public-private partnership plans will result in the timely development or operation of the project and, in the case of transportation facilities, the more efficient operation of a transportation facility; and, (iv) in the case of transportation facilities, that the proposed development and/or operation of the facility or facilities and the proposed interconnection with existing transportation facilities are reasonable and will address the needs identified in an appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

While substantial private sector involvement is encouraged, qualifying facilities must be devoted primarily to public use. Individually negotiated interim or comprehensive agreements between a private entity and the Town will define the respective rights and obligations of the Town and the private entity.

A. Guideline Overview

The PPTA and PPEA define "responsible public entity" to include any public entity that "has the power to develop or operate the applicable qualifying project." **The Town of Cape Charles (the "Town") is a municipal corporation with the authority to acquire, construct, and operate facilities within the Town's boundaries, and therefore, is a "responsible public entity"** as that term is used in the PPTA and PPEA. The PPEA provides that a responsible public entity shall not proceed to consider any proposal by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with the provisions of the PPEA. Guidelines are also required by the PPTA.

These Guidelines contain the implementation procedures and guidelines developed by the Town to guide the selection of projects as authorized by the PPEA and PPTA. These Guidelines shall apply to all PPEA or PPTA projects and shall be made publicly available. The Town reserves the right to waive or modify these Guidelines on a case-by-case basis, unless such waiver or modification is contrary to, or prohibited by, state law. The Town Manager shall be the person designated as the primary point of contact for information on, or waiver or modification of, these Guidelines, and for submission of solicited or unsolicited proposals under the PPEA or PPTA. As used in these Guidelines, the term "Town Manager" may include any other designee authorized by the Town Council to take action under these Guidelines.

The Guidelines apply to proposals submitted under the authority of the PPTA or PPEA, or both. While the PPTA and PPEA are similar in purpose and intent, prospective proposers should review both statutes closely as there are significant differences between the PPTA and PPEA. It is incumbent upon all proposers to comply with the provisions of the PPTA and PPEA, as the case may be.

In the event the PPEA or PPTA is amended in a manner that conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, the Town shall appropriately amend the Guidelines. If the Guidelines are not amended prior to the effective date of the new law, the Guidelines nonetheless shall be interpreted in a manner to conform to the new law. In the event of a conflict between the Guidelines and the Code of Virginia, the Code shall control.

B. Qualifying Facilities and Projects

Under the PPEA, a "qualifying project" includes:

- (i) Any education facility, including, but not limited to, a school building, any functionally-related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (ii) Any building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (iii) Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iv) Utility and telecommunications and other communications infrastructure;
- (v) A recreational facility;
- (vi) Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; and
- (vii) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

Under the PPTA, a "qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to the PPTA. Transportation facilities must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances and other property needed to operate such facility, not including a commercial or retail use or other enterprise not essential to the transportation of person or goods.

C. Reservation of Town Rights

As set forth in these Guidelines, the Town reserves all rights available to it by law in administering these Guidelines including, without limitation, the right in its sole discretion to:

- (i) Reject any and all proposals at any time, provided that if the Town rejects a proposal that purports to develop specific cost savings, the Town shall specify the basis for the rejection.
- (ii) Terminate consideration or evaluation of any and all proposals at any time;
- (iii) Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties;
- (iv) Suspend or eliminate conceptual phase review and proceed directly to detailed phase review;
- (v) Negotiate with a proposer without being bound by any provision in its proposal;
- (vi) Negotiate with fewer than all proposers at any given time;
- (vii) Request and/or receive additional information regarding any proposal;
- (viii) Issue addenda to and/or cancel any RFP or IFB;
- (ix) Revise, supplement or withdraw all or any part of these Guidelines;
- (x) Modify the standard fee schedule contained in these Guidelines;
- (xi) Assess, retain and/or waive any and all fees required to be paid by proposers in accordance with these Guidelines;
- (xii) Request revisions to, or clarification of, conceptual or detailed phase proposals.
- (xiii) Submit a proposal for review by outside consultants or advisors selected by the Town without notice to the proposer. Such consultants or advisors shall be required to maintain the confidentiality or information that has been designated as confidential.

II. Definitions

Definitions are applicable to both PPTA and PPEA unless otherwise specified. Additional definitions may appear in the text of these Guidelines.

"Affected Jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility. (PPTA)

"Affected Local Jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located. (PPEA)

"Comprehensive Agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-566 of the PPTA and § 56-575.9 of the PPEA.

"Concession" under the PPTA means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term, during which the private entity provide transportation-related services, including operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, reduce congestion, or otherwise manage the facility, in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

"Develop" or "Development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim Agreement"

- under the PPTA means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.
- under the PPEA means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project. (PPEA)

"Maintenance" means that term as defined in Va. Code § 33.1-23.02. (PPTA)

"Material Default" means any default by the private entity in performance of its duties under subsection E of § 56-565 (PPTA) or § 56-575.8 (PPEA) that jeopardizes adequate service to the public from a qualifying transportation facility (PPTA) or qualifying project (PPEA). Under the

PPTA the default remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

"Operate" or "Operation" means to finance, maintain improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city, or town and any other political subdivision of the Commonwealth (PPTA and PPEA). Under the PPTA, "public entity" shall not include any public service company. Under the PPEA, "public entity" includes any public body politic and corporate, or any regional entity that serves a public purpose.

"Responsible Public Entity" means a public entity, including local government and regional authorities, that has the power to develop and/or operate the applicable qualifying transportation facility (PPTA) or qualifying project (PPEA).

"Revenues" means all revenues, including but not limited to income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility (PPTA) or qualifying project (PPEA), including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service Contract" means a contract entered into between a public entity and the private entity pursuant to § 56-561 (PPTA) or § 56-575.5 (PPEA).

"Service Payments" means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility (PPTA) or qualifying project (PPEA) pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation Facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility. (PPTA)

"User fees" means the rates, tolls (PPTA), fees or other charges imposed by the private entity for the use of all or a portion of a qualifying transportation facility (PPTA) or qualifying project (PPEA) pursuant to the Comprehensive Agreement under § 56-575.9 (PPEA) or pursuant to the Interim or Comprehensive agreement (PPTA).

III. General Provisions

A. Proposal Submission

1. Proposals may be submitted by private entities to the Town either on an unsolicited basis ("Unsolicited Bid/Proposal") or in response to a solicitation for such proposals by the Town ("Solicited Bid/Proposal").
2. The Town Manager may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.

B. Affected Jurisdictions (PPTA) and Affected Local Jurisdictions PPEA)

1. Any private entity submitting a proposal to the Town must provide any other affected jurisdiction (PPTA) or affected local jurisdiction (PPEA) with a copy of the proposal by certified mail, express delivery, or hand delivery within 5 business days of submission of a proposal to the Town. Any such other jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the Town (to the attention of the Town Manager). Such written comments shall indicate whether the proposed project or facility is compatible with the affected local jurisdiction's (i) local comprehensive plan; (ii) local infrastructure development plans; or (iii) capital improvements budget, or other government spending plans. The Town will consider comments received within the 60-day period prior to entering into a Comprehensive Agreement pursuant to the PPEA and PPTA regarding the proposal. No negative inference shall be drawn from the absence of comment by an affected local jurisdiction. However, the Town may begin or continue its evaluation of any such proposal during the 60-day period.
2. Affected jurisdictions submitting comments to the Town under the PPTA shall additionally indicate whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

C. Proposal Review Fee

1. The Town shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. The Town is authorized by the PPEA and PPTA to charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any Unsolicited Proposal or Competing Unsolicited Proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants. Fees charged for such review of a proposal are set forth in Article III.C.3 and are intended to be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying

project. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal; and (ii) the out-of-pocket costs for attorneys, consultants and financial advisors engaged by the Town in its sole discretion to assist in such review.

2. Proposal fees will not normally be charged for the review of proposals solicited by a Request for Proposal or Invitation for Bid. Any such fee will only be charged if permitted under applicable state and local laws and ordinances.
3. Review fees shall be charged for an Unsolicited Proposal as provided below. Such review fees shall be based on the reasonably anticipated costs of the Town in accordance with the following schedule:
 - (i) **Submission Review Fee:** The Town may charge a submission review fee assessed in an amount adequate to (i) determine whether the proposal is a qualifying project under the PPEA or a qualifying transportation project under the PPTA, (ii) determine whether the proposal meets all other requirements for further consideration under the Acts and these Guidelines, and (iii) assess the merits of the proposal as being in the best interest of the Town. In the event the Unsolicited Proposal is not accepted for further consideration, the Town shall return the fee to the proposer.
 - (ii) **Conceptual Phase Review Fee:** If the Town accepts the Unsolicited Proposal for further consideration, the Conceptual Phase Review Fee shall be a minimum of Five Thousand Dollars (\$5,000) and must be submitted at the time an Initial Submission is accepted for further consideration in the Conceptual Phase. If upon initial review of the Conceptual Phase Proposal to determine its scope and complexity, the Town Manager decides additional resources are needed for proper evaluation, he may request an additional Conceptual Phase Review Fee.
 - (iii) **Detailed Phase Review Fees.** Upon the Town's decision to proceed with a Detailed Phase Proposal, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, or other amount stipulated by the Town Manager, but not more than \$50,000 at the time of the submittal of the Detailed Phase Proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal if and as the Town Manager reasonably anticipates incurring costs in excess of the initial Detailed Phase Review Fee. The Town shall notify the applicant of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the Town will continue the process, review, and evaluation of the proposal.

4. The Town may at its sole discretion at any time before or during the Detailed Phase Review enter into an Interim Agreement with the proposer in accordance with Article VII.A under which the Town may compensate the proposer for Detailed Phase Proposal activities described therein.
5. In the event the total fees paid by the proposer exceed the Town's reasonably estimated total costs incurred in processing, reviewing, and evaluating the proposal, the Town shall reimburse the difference.

D. Virginia Freedom of Information Act

1. General Provisions Relating to Disclosure:

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) ("FOIA"), except as provided by Va. Code §§ 56-575.4(G) (PPEA) and 33.2-1803(H) (PPTA), and the provisions of the FOIA (§ 2.2-3705.6) that exempt certain documents from public disclosure. Proposers are advised to familiarize themselves with the FOIA provisions applicable to these Guidelines. Some FOIA exemptions, however, are discretionary, and the Town may elect to release some or all of documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336, *et seq.*);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or,
- c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an Interim or Comprehensive Agreement the financial interest or bargaining position of the Town or private entity would be adversely affected.

At no time shall the Town be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.

2. Protection from Mandatory Disclosure for Certain Documents Submitted by a Private Entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the Town at the time the documents are submitted by identifying with specificity the trade secret or other proprietary documents for which protection is being sought and providing a clear statement of the reasons for invoking the protection with reference to one or more of the three classes of records listed in Article III.D.1.

Upon the receipt of a written request for document protection, the Town shall determine whether the documents contain: (i) trade secrets; (ii) financial records; or (iii) other information that would adversely affect the financial interest or bargaining position of the Town or private entity in accordance with Article III.D.1. The Town shall make a written determination of the nature and scope of the protection to be afforded by the Town under this subdivision.

The Town is authorized and obligated to protect only confidential information and thus, will not protect any portion of a proposal from disclosure unless expressly permitted by law. If the written determination provides less protection than requested by the private entity, the private entity shall be accorded an opportunity to withdraw its proposal. A proposal withdrawn under this Article will be treated in the same manner as a proposal not accepted for publication and conceptual phase consideration as provided below in Article V.B.2, except that all or a portion of the proposal review fee may be retained by the Town at its sole discretion to cover the costs of processing the proposal, including determinations regarding disclosure pursuant to this Article.

Once a written determination has been made by the Town Manager, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the Town or any affected local jurisdiction to which such documents have been provided.

3. In accordance with Va. Code § 2.2-3705.11, the Town and a private entity may enter a written confidentiality agreement upon mutually acceptable terms regarding the treatment of confidential and proprietary data or materials included in a proposal submitted under these guidelines.
4. Protection from Mandatory Disclosure for Certain Documents Produced by the Town.

Memoranda, staff evaluations, or other records prepared by or for the Town for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA or PPTA would adversely affect the financial interest or bargaining position of the Town or private entity and the basis for the determination of adverse effect is documented in writing by the Town.

5. If a private entity fails to earmark confidential or proprietary information, records or documents for protection from disclosure, such information, records or documents shall be subject to disclosure under the FOIA.
6. The Town may not withhold from public access: (i) procurement records other than those subject to the written determination of the Town; (ii) information concerning the terms and conditions of any Interim or Comprehensive Agreement, service contract, lease, partnership, or any agreement of any kind entered into by the Town and the private entity; (iii) information concerning the terms and conditions of any financing arrangement that involves the use of public funds; or, (iv) information

concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

7. Once a Comprehensive Agreement has been entered into, and the process of bargaining of all phases or aspects of the Comprehensive Agreement is complete, the Town shall make available, upon request, procurement records in accordance with Va. Code § 2.2-4342.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to the appropriation and expenditure of public funds apply to any Interim or Comprehensive Agreement entered into under the PPEA or PPTA. Accordingly, the Town shall incorporate all of the processes and procedural requirements associated with the expenditure or obligation of public funds into planning for any PPEA or PPTA project(s).

F. Applicability of Other Laws

Nothing in the PPEA or PPTA shall affect the duty of the Town to comply with all other federal, state, and local laws including provisions of the Town's ordinances and resolutions not in conflict therewith. In particular, the applicability of the Virginia Public Procurement Act shall be as set forth in the PPEA and PPTA. Nothing in these Guidelines or an Interim or Comprehensive Agreement shall be deemed to enlarge, diminish or affection the authority or supremacy of any federal, state or local laws or regulations.

G. Schedule

The Town will make every attempt to complete the procurement process expeditiously. However, variations in any schedule may be necessary due to the volume, complexity of proposals received, the need for further information, timely cooperation by proposer, or other unanticipated circumstances. The following schedule is provided for illustrative purposes and depicts the time frames within which the Town anticipates completion of each phase of the proposal selection process. The Town Manager may adjust the timeline for a particular proposal, except for those time periods required by the PPEA and PPTA.

Initial Submission Review	1 - 3 Months
Publication & Receipt of Competitive Proposals	2 - 4 Months
Conceptual Phase Review	1 - 3 Months
Selection of Proposal for Detailed Phase Review	1 - 2 Months
Detailed Phase Review & Selection	3 - 9 Months
Negotiation of Interim or Comprehensive Agreement	3 - 6 Months

Any proposals submitted pursuant to these Guidelines will contain estimated schedules for each phase.

IV. Solicited Proposals

The procedures and requirements applicable to a solicited bid or proposal shall be specified in the proposal and shall be consistent with the requirements of the PPEA or PPTA and other applicable law. All such solicitations shall be by issuance of a written Invitation for Bid ("IFB") or Request for Proposal ("RFP"), in accordance with the Town's ordinances and resolutions. For transportation facilities, the Town shall provide a finding of public interest pursuant to Section 33.2-1803.1 of the Code of Virginia.

The RFP or IFB should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of the Town's notices, including the Town's website. Notices may be advertised in *Virginia Business Opportunities* on the Commonwealth's electronic procurement site commonly known as "eVA". Notices can also be published in a newspaper or other publications of general circulation. The RFP or IFB should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the Town Manager.

Any proposal submitted pursuant to the PPEA or PPTA that is not received in response to an IFB or RFP shall be deemed an Unsolicited Proposal under Article V. Unsolicited Proposals shall include (a) proposals received in response to a notice issued by the Town that it has received another Unsolicited Proposal, and (b) proposals received in response to publicity by the Town concerning particular needs but where the Town has not issued a formal IFB or RFP.

V. Unsolicited Proposals

The Town may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA or PPTA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an Unsolicited Proposal. The Town will evaluate an unsolicited proposal if it meets the requirements under the PPEA or PPTA, as applicable, and these Guidelines.

The following four-step procedure for evaluating Unsolicited Proposals shall serve as the Town's general process for encouraging the receipt and consideration of proposed projects under the PPEA or PPTA. This procedure shall not preclude the Town, however, from discontinuing its evaluation of any proposal at any time, for any reason. Furthermore, if the Town determines that it is in the Town's interest to do so with respect to any Unsolicited Proposal, the Town may cease or eliminate review at the initial or conceptual phase and proceed directly to the detailed review phase.

A. Step One: Decision to Accept and Consider an Unsolicited Proposal

1. Delivery of Initial Submission

Any private entity seeking to submit an Unsolicited Proposal under the PPEA or PPTA to the Town shall deliver ten (10) complete copies, as provided below, to the Town Manager. The term "Public Private Education Facilities and Infrastructure Proposal" or "Public Private Transportation Proposal" must be clearly labeled on the outside of the envelope or package. A working group may be designated by the Town Manager to review and evaluate any such proposal. A list of all local jurisdictions being provided a copy of the proposal must accompany the initial or conceptual proposal with the name and address of recipient and date delivered.

Upon receipt of any Unsolicited Proposal, the Town Manager will conduct a preliminary review of the proposal to determine if additional information is needed to make an initial determination of whether (i) the proposal is a qualifying project under the PPEA or a qualifying transportation project under the PPTA, (ii) the proposal meets all other requirements for further consideration under the Acts and these Guidelines, and (iii) it is in the Town's interest to proceed with further review of the proposal. The Town Manager may consult other Town employees, the Town Council, or outside resources, as he may deem necessary. If the Town Manager decides to proceed with consideration of the Unsolicited Proposal, the Town Manager, will notify the proposer of acceptance for consideration and collect Conceptual Phase Review Fees as may be required.

If the Town Manager determines not to accept the initial proposal for further consideration, he shall notify the proposer and Town Council in writing, with an explanation of why no further consideration is warranted. All documents and fees charged for the initial review of the Unsolicited Proposal will be returned to the proposer.

2. Contents of Initial Submission

- (i) An Unsolicited Proposal must contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. Required format and information to satisfy these requirements are included in Article V.C.4. Initial information may be brief but must be sufficient to enable the Town to evaluate the practicality and sufficiency of the proposal.
- (ii) Unsolicited Proposals shall provide a concise description of the applicant's capability to complete the proposed qualifying project and the benefits to be derived from the project by the Town. Project benefits to be considered may include benefits to be realized during the construction, renovation, expansion, acquisition, or improvement phase as well as during the life cycle of the project. Proposals also shall include a scope of work and a financial plan for the project containing enough detail to allow an analysis by the Town

of the financial feasibility of the proposed project, including but not limited to: (a) identity of any parties expected or provide financing for the project; and (b) a statement indicating whether the applicant intends to request the Town to provide resources for financing the project and the nature and extent of any such resources.

- (iii) To become subject to the evaluation and selection process under the PPTA, the proposal must comply with the following additional criteria. First, the proposal must seek approval for a private entity to acquire, construct, improve, maintain, finance, and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods. The Town must currently have either the power itself, or the ability to assert the power, to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.
- (iv) The Town may require additional data or submissions to clarify information previously provided or to address other areas of concern to the Town.

B. Step Two: Notice of Decision to Proceed with Conceptual Phase Review

1. Upon review of the Initial Submission, the Town may choose to accept an Unsolicited Proposal for Conceptual Phase consideration and will so notify the proposer of its decision.
2. If the Town chooses not to accept an Unsolicited Proposal for Conceptual Phase consideration, the Initial Review Fee shall be promptly returned to the proposer.
3. Within 10 working days of a determination to accept an Unsolicited Proposal for Conceptual Phase consideration, the Town shall post and publish a notice of the Town's decision to accept the proposal for Conceptual Phase consideration. Such notice is intended to encourage competition and must be posted in a public area regularly used by the Town for the posting of public notices for a period of not less than 120 days for PPTA proposals and 45 days for PPEA proposals. If the Town accepts the proposal for consideration under the PPEA, the Town shall also publish such notice in *Virginia Business Opportunities* (VBO) on the eVA site. Said notices shall state that the Town: (i) has received and accepted an Unsolicited Proposal under the Act; (ii) intends to evaluate proposal; (iii) may negotiate an interim and/or Comprehensive Agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than 120 days for PPTA proposals or 45 days for PPEA proposals, any competing proposals that comply with Town regulations. The notice shall also summarize the proposed qualifying project and identify its proposed location. Note: The Town at its sole discretion may extend these notice periods.

4. During the 120-day or 45-day period for receiving competing Unsolicited Proposals, the Town may continue to evaluate the original Unsolicited Proposal. Representatives of the Town are encouraged to answer question from private entities that are contemplating submission of a competing unsolicited proposal.
5. Posting Requirements:
 - a. A conceptual proposal, whether solicited or unsolicited, shall be posted by the Town within 10 working days after the acceptance of such proposals. Posting shall be on the Town's website. In addition, a summary of the conceptual proposal may be posted by publication, in a newspaper of general circulation in the area in which the contract is to be performed. The posting shall identify the location where copies of the proposal are available for public inspection. At its discretion, the Town may also post on the VBO site.
 - b. Nothing shall be construed to prohibit the posting of a conceptual proposal by additional means deemed appropriate by the Town so as to provide maximum notice to the public of the opportunity to inspect the proposals
 - c. In addition to the posting requirements, at least one copy of the proposal shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - d. If state or federal funds are anticipated in a PPTA proposal, the proposer will be responsible for notifying the Virginia Department of Transportation or the Federal Highway Agency, as the case may be.
 - e. A copy of the proposal shall be sent by the proposer to each affected local jurisdiction, as defined in the Act, that is not a responsible public entity. The Town will send a request for comments on any proposed qualifying transportation facility indicating whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity and/or enhancing economic efficiency. Affected local jurisdictions shall have 60 days from receipt of the request for comments to submit written comments to the Town. If no comments are received within the 60-day period, the Town will conclude that the affected local jurisdiction has no comments on the proposal.

C. Step Three: Conceptual Phase Review

1. Only conceptual proposals complying with the requirements of the PPEA or PPTA and these Guidelines, containing sufficient information for a meaningful evaluation, and provided in an appropriate format, as described below, will be considered by the Town for further review at the Conceptual Phase.
2. After reviewing the Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the Town may determine: (i) not to proceed further with any proposal; (ii) to proceed to the Detailed Phase with the original proposal; (iii) to proceed to the Detailed Phase review with a competing proposal; or (iv) to proceed to the Detailed Phase review with multiple proposals.
3. Discussions between the Town and private entity about the need for infrastructure improvements shall not limit the ability of a public entity to later determine to use standard procurement procedures to meet its infrastructure needs. The Town retains the right to reject any proposal at any time for any reason prior to the execution of an Interim or Comprehensive Agreement.
4. Format for Submissions at the Conceptual Phase: Unsolicited Proposals at the Conceptual Phase shall contain as a minimum, general information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; and (iv) anticipated public support and/or opposition. More in-depth information about these areas may be required at the Detailed Phase. Unless waived by the Town Manager, the following format and general information are required in the proposal at this phase. The Town Manager may request additional information as he deems appropriate.

(i) Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal (i.e. corporation, partnership, joint venture, limited liability corporation.). Identify the organizational structure for the project, the management approach, and how each principal (i.e. major shareholder, member, partner) and major subcontractor in the structure fit into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project, including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

- c. Provide the names, addresses, e-mail and telephone numbers of persons who may be contacted for further information.
- d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of five percent (5%) or greater.
- e. Identify any persons known to the applicant who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act (Va. Code §§ 2.2-3100 *et seq.*).

(ii) Project Characteristics

- a. Provide a description of the project, including the conceptual design and in the case of transportation facilities, all proposed interconnections with other transportation facilities. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Provide the proposed date for development and/or operation of the transportation facility or other facilities, along with an estimate of the life-cycle cost of the facility as proposed.
- c. Provide a statement setting forth the risks, liabilities and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility or other facility, including revenue risk and operations and maintenance.
- d. Identify and fully describe any work to be performed by the Town or any other private entity.
- e. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- f. Include a list of public utilities or other facilities that will be crossed by the proposed facility and a statement of the plans of the private entity to accommodate such crossings.
- g. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate such impacts of the project.
- h. Identify the projected positive social, economic and environmental impacts of the project.

- i. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- j. Propose allocation of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- k. Provide assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the Town's use of the project.
- l. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- m. Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet or exceed.
- n. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property that the Town is expected to condemn.
- o. Provide safety records for contractors and subcontractors for the past five years, including a list of any OSHA violations. Describe steps to be taken to prevent the spread of communicable disease.

(iii) Project Financing

- a. Provide a preliminary estimate and describe the estimating methodology of the cost of the work by phase, segment, or both.
- b. Provide a statement setting forth the private entity's general plan for developing and/or operating the transportation facility or other facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity
- c. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds.
- d. Include a list and discussion of assumptions underlying all major elements of the plan.
- e. Identify the proposed risk factors and methods for dealing with these factors.

- f. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify of each such source) and the timing of any anticipated commitment.
- g. Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the applicant contemplates will provide financing for the project, and describe the nature and timing of each such commitment.
- h. Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

(iv) Project Benefit and Compatibility

- a. Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of the Town, and identify who will benefit from the project and how they will benefit.
- b. Identify any anticipated public support or opposition as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Explain whether the project is likely to attract or maintain industries and businesses to the Town or the surrounding region and, if so, explain how.
- e. Explain whether the project is compatible with the Town's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan and, if so, explain how.
- f. For PPTA projects, explain whether the proposed improvements are compatible with present and planned regional and local transportation systems, and whether the project will provide continuity with existing local and state facilities.

D. Step Four: The Detailed Review Phase

- 1. If the Town decides to proceed to the Detailed Phase review with one or more Unsolicited Proposals, then the following information, along with detailed information concerning the items listed in Article V.C.4, shall be provided by the proposer unless included in the Conceptual Phase proposal or expressly waived by the Town Manager:

- (i) A topographical map (1:2000 or other appropriate scale) depicting the location of the proposed project.
- (ii) A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
- (iii) A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the Town to condemn.
- (iv) A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
- (v) A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
- (vi) A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- (vii) Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
- (viii) Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- (ix) Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
- (x) Identification of any known conflicts of interest or other disabilities that may impact the Town's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 *et seq.*).

- (xi) Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the Town. Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the Town, and all underlying data supporting any conclusions reached in the analysis or the selection by the applicant of the financing plan proposed for the project.
- (xii) Additional material and information as the Town may request.

VI. Proposal Evaluation and Selection Criteria

In addition to evaluation of materials and detailed information described in Article V above, some or all of the following matters may be considered in the evaluation and selection of PPEA or PPTA proposals.

A. Qualifications and Experience

Factors to be considered in either phase of the Town's review to determine whether the proposer possesses the requisite qualifications and experience may include but shall not be limited to:

1. Experience with similar projects.
2. Demonstration of ability to perform work.
3. Leadership structure.
4. Project manager's experience.
5. Management approach.
6. Financial condition.
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include but shall not be limited to:

1. Project definition.
2. Proposed project schedule.

3. Operation of the project.
4. Technology, technical feasibility.
5. Conformity to laws, regulations, and standards.
6. Environmental impacts.
7. Condemnation impacts.
8. State and local permits.
9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but shall not be limited to:

1. Cost and cost benefit to the Town.
2. Financing and the impact on the debt or debt burden of the Town.
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies.
4. Estimated cost.
5. Life-cycle cost analysis.
6. The identity, credit history, past performance of any third party that will provide financing or performance guaranties for the project and the nature and timing of their commitment.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but shall not be limited to:

1. Community benefits.
2. Community support or opposition, or both.

3. Public involvement strategy.
4. Compatibility with existing and planned facilities.
5. Compatibility with local, regional, and state economic development efforts.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the Town, or if financing such a project may impact the Town's debt rating or financial position, the Town may select its own finance team, source and financing vehicle.

E. Other Factors

Other factors that may be considered by the Town in the evaluation and selection of PPEA and PPTA proposals include:

1. The proposed cost of the qualifying project or qualifying transportation facility.
2. The general reputation, industry experience, and financial capacity of the private entity.
3. The proposed design of the qualifying project or qualifying transportation facility.
4. The eligibility of the project for accelerated documentation, review, and selection.
5. Local citizen and government comments.
6. Benefits to the public.
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plans.
8. The private entity's plans to employ local contractors and residents.
9. Other criteria that the Town deems appropriate.

In evaluating a proposal, the Town may rely on internal staff reports or the advice of outside advisors or consultants having relevant experience. The Town shall engage the services of qualified professionals to provide independent analysis regarding the specifics, advantages, disadvantages and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the Town Council determines that such analysis of a request shall be performed by the Town's employees.

Proposals shall be evaluated on the basis of how well the proposer or proposers have met the criteria in Articles V and VI above. In the case of transportation facilities, the Town shall engage in the analysis required by Virginia Code Section 33.2- 1803.1:1, as may be applicable. In the case of

PPEA projects, the Town shall consult Virginia Code Section 56-575.4 in determining whether (i) the project will serve a public need or provide a public benefit, (ii) the estimated cost of the project is reasonable in relation to similar facilities, and (iii) the proposal will result in the timely development or operation of the project.

VII. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project or qualifying transportation facility, the selected private entity shall enter into a Comprehensive Agreement with the Town and may enter into an Interim agreement as described in Article VII.A. The Town may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any Interim or Comprehensive Agreement shall define the rights and obligations of the Town and the selected proposer with regard to the project. Any such Interim or Comprehensive Agreement, and any amendment thereto, shall be approved by the Town Council and contain the terms outlined (unless deemed by the Town Manager to be unnecessary or inapplicable).

A. Interim Agreement Terms

Prior to entering into a Comprehensive Agreement with the Town, an Interim Agreement may be entered into that permits a private entity to perform compensable activities related to the project.

The scope of an Interim Agreement may permit the private entity to commence activities for which it may be compensated relating to the proposed facility, including, but shall not be limited to, the following:

1. Project planning and development.
2. Design and engineering.
3. Environmental analysis and mitigation.
4. Site planning and survey.
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.
6. Establishing a process for and timing of the negotiation of the comprehensive agreement.
7. Any other provisions related to any aspect of the development or operation of a qualifying project or qualifying transportation facility that the parties deem appropriate prior to the execution of a Comprehensive Agreement.

B. Comprehensive Agreement Terms

Prior to the development or operation of a qualifying transportation facility or a PPEA facility, the private entity shall enter into a Comprehensive Agreement with the Town. The scope of a Comprehensive Agreement shall include, but not be limited to, the following:

1. Delivery of maintenance, performance, and payment bonds or letters of credit or guaranties in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project or qualifying transportation facility, in the forms and amounts satisfactory to the Town.
2. Review and approval of plans and specifications for the qualifying project or qualifying transportation facility by the Town.
3. The right of the Town to inspect the qualifying project or qualifying transportation facility to ensure compliance with the Comprehensive Agreement and with regulatory and other standards.
4. Maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the Town and reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project or qualifying transportation facility.
5. The design, construction, operation, and maintenance standards with which the private entity must comply and means of monitoring operation and maintenance practices of the private entity.
6. The terms under which the private entity will reimburse the Town for services provided.
7. Policies and procedures governing the rights and responsibilities of the Town and the private entity in the event that the Comprehensive Agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the private entity by the Town and the transfer or purchase of property or other interests of the private entity by the Town.
8. Duties of the Town required by law or as agreed upon by the parties.
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. In addition:
 - (i) A copy of any service contract shall be filed with the Town.

- (ii) A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - (iii) Classifications according to reasonable categories for assessment of user fees may be made.
- 10. The terms and conditions under which the Town may contribute financial resources, if any, for the qualifying project or qualifying transportation facility.
- 11. The terms and conditions under which existing site conditions will be assessed and addressed, including indemnification of the Town for conducting the assessment and taking necessary remedial action.
- 12. Provisions for the development or operation of phases or segments of a qualifying project.
- 13. The obligation of the private entity to maintain any transportation facility, building or structure to be constructed under the Comprehensive Agreement and the rights of the Town, and/or VDOT or FHWA if appropriate, to monitor such maintenance.
- 14. The date of termination of the private entity's authority and duties and dedication of facilities to the Town or other appropriate public entity.
- 15. Filing of appropriate financial statements in a form acceptable to the Town on a periodic basis.
- 16. Compensation to the private entity that may include a reasonable development fee, a reasonable maximum rate of return on investment, and/or reimbursement of development expenses in the event of termination for convenience by the Town. Where applicable, include the formula by which the maximum rate of return will be calculated, the distribution of any earning in excess of the negotiated maximum rate of return, and the payment of remaining revenues to the private entity upon occurrence and during the continuation of material default.
- 17. The rights of the Town to dedicate or convey property interests to the private entity for public use, which may include licenses, franchises, easements, or any other right or interest the Town deems appropriate.
- 18. Events that will constitute default, rights to notice and available remedies. In the event of a material default in a Comprehensive Agreement entered under the PPTA, the Town may exercise the remedies provided in Section 33.2-1813 of the Code of Virginia. In the event of a material default in a Comprehensive Agreement entered under the PPEA, the Town may exercise the remedies provided in Section 56-575.11 of the Code of Virginia.

19. Events that will constitute force majeure and the remedies the parties will have in the event of occurrence.
20. Guaranteed costs and completion guarantees related to the development and/or operation of the transportation facility or other facility and payment of liquidated damages for failure to meet the completion guarantee.
21. User fees to be set at a level that takes into account lease payments, service payments, compensation to the private entity, and which fees are the same for persons using the facility under like conditions.
22. The obligation of the private entity to maintain records, to allow inspection and audit and to file appropriate financial statements in form and frequency acceptable to the Town.
23. The conditions under which the private entity or the Town may assign its rights under the Comprehensive Agreement and/or its rights in the transportation facility or other public facility.
24. Any other agreed upon terms and conditions.
25. All requirements of the PPEA, PPTA, and other applicable law.

In the case of construction or design-build agreements under either the PPEA or PPTA, the Town is likely to require the following additional provisions: liquidated damages for delayed completion; warranties regarding workmanship, materials, guarantees that the project will be fully operational and suitable for the Town's intended purposes; retainage of progress payments; disputes resolution; mutual waivers of subrogation and of consequential damages. Private entities are urged to address such risk allocation provisions in the preparation of conceptual and/or detailed proposals.

Any changes to the terms of the Interim or Comprehensive Agreement may be agreed upon by the parties from time to time shall be added to the Interim or Comprehensive Agreement only by written amendment.

C. Comprehensive Agreement Provisions Relating to Construction Projects

With respect to construction projects considered under the PPEA or PPTA, the Town generally anticipates addressing the following in the Comprehensive Agreement. Private entities are encouraged to include a discussion of these matters in proposals relating to construction projects.

1. In design-build construction projects the private entity will be expected to assume single-point responsibility and liability for all design and construction activities.
2. To the fullest extent possible, the private entity shall perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the

geotechnical investigation will be allocated to the private entity in the Comprehensive Agreement. The Town will consider assuming part or all of the risk of subsurface conditions that could not reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.

3. The Town encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed maximum price with saving sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated in the Comprehensive Agreement.

D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

The Town is willing to enter Comprehensive Agreements with private entities that have formed business associations such as joint ventures and limited liability corporations ("LLC"). In such cases, however, the Town will expect one or more of the principal members of the association to provide a performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Individuals, corporations and other businesses interested in entering public-private partnerships with the Town under the PPEA or PPTA must be willing to provide this security if their proposal is submitted as part of a joint venture, LLC or other business entity that limits the liability of its members, owners or partners.

E. Notice and Posting Requirements

1. In addition to the posting requirements of Article V, 30 days prior to entering into an Interim or Comprehensive Agreement, the Town shall provide an opportunity for public comment of the proposals. Such public comment period may include a duly advertised public hearing in the sole discretion of the Town.
2. Once the negotiation phase for the development of an Interim or a Comprehensive Agreement is complete and a decision to award has been made by the Town, the Town shall (i) post the major business points of the Interim or Comprehensive Agreement, including the projected use of any public funds, and (ii) outline how the public can submit comments on those major business points. Posting shall be the following manner:
 - a. Posting shall be on the Town's website and for transportation facilities, on the Virginia Department of General Services' central electronic procurement website. In addition, the Town may publish a summary of the agreement in a newspaper of general circulation in the area in which the contract is to be performed. At its discretion, the Town may also post on the VBO site and eVA.

- b. In addition to the posting requirements, at least one copy of the Interim or Comprehensive Agreement shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Prior to entering either an Interim or Comprehensive Agreement, the major business points of such agreements, including the use of any public funds, shall be presented to the Town Council at a meeting open to the public. Note that a public hearing may be required under Virginia Code Section 15.2-1800, if the Town's real property is being conveyed. A three-fourths vote of approval by the members elected to the Town Council may also be required under Virginia Code Section 15.2-2100.

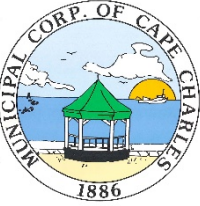
- 3. Once an Interim or a Comprehensive Agreement has been entered into, the Town shall make procurement records available for public inspection, upon request.
 - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adversely affected the financial interest or bargaining position of the Town or private entity in accordance with Section II.D.2.
 - b. Such procurement records shall not include (i) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336, *et seq.*); or financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements.

F. Audits for Certain Qualifying Transportation Facilities

For any qualifying transportation facility project with an estimated construction cost of over \$50 Million, the responsible public entity also shall require the private entity to pay the costs for an independent audit of any and all traffic cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed. This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

G. Filing of Comprehensive Agreement with Auditor of Public Accounts

Within 30 days of entering into a Comprehensive Agreement, the Town submit a copy of the Comprehensive Agreement to the Virginia Auditor of Public Accounts.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Appointment of Zoning Administrator		AGENDA DATE February 18, 2020
	SUBJECT/PROPOSAL/REQUEST: Appoint Zoning Administrator		ITEM NUMBER: 7C
	ATTACHMENTS: Zoning Ordinance Section 2.4.1		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Section 2.4.1 of the Cape Charles Zoning Ordinance states that the Town Council shall appoint a Zoning Administrator to serve under the direction of the Town Manager. Section 2.4.1 of the Zoning Ordinance outlines the Zoning Administrator's authority to enforce the Town's Ordinance and is attached for reference purposes.

ITEM SPECIFICS:

The Town Planner/Zoning Administrator's duties include guiding long-range land use planning and natural resource management for the Town and to implement related programs and regulations, including zoning, subdivision, erosion and sediment control, and flood plain management. This position serves as the staff liaison for the Planning Commission, Historic District Review Board, the Harbor Area Review Board, Wetlands & Coastal Dune Board and the Board of Zoning Appeals. This position also monitors changes in the state and federal law and is responsible for initiating modifications to the Comprehensive Plan, Zoning Ordinance and Subdivision Ordinance. The duties further include conferring with the Town Manager on zoning and subdivision topics and enforcing compliance with the Town's zoning, subdivision and wetland ordinances.

Our current Planner/Zoning Administrator, Allyson Finchum, recently resigned and I want to thank Allyson for the extraordinary effort she put into this important function while she was here. The Town is now actively recruiting for a permanent full-time replacement. However, this is a very difficult position to fill and it could take some time to find a qualified candidate.

Since the function of Zoning Administrator is too important to leave vacant for any extended period of time, we reached an agreement with Katherine Nunez to perform this function on a part-time, temporary basis while we continue our recruitment for the permanent position. Ms. Nunez's experience in this area is extensive, as is her familiarity with the Eastern Shore and Northampton County.

It is important to note however, that since this is only a part-time, short-term measure; only the most critical business will be performed. We ask for the Council's, Planning Commission's, and the public's understanding and patience while we continue to seek additional capacity.

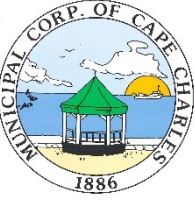
This appointment is only expected to last until a permanent Zoning Administrator is hired.

RECOMMENDATION:

Recommend Council appoint Katherine Nunez as the Town Zoning Administrator.

Section 2.4.1 Enforcement of Ordinance, Guarantees

- A. In accordance with Section 15.2-2286 of the Code of Virginia, there is hereby created the office of Zoning Administrator. The Zoning Administrator, who may also hold another office in Town, shall be appointed by the Town Council and shall serve under the direction of the Town Manager, who will coordinate department actions and such assistance as may be required to carry out the responsibilities of this ordinance. In the event that the Town Manager is appointed to serve as Zoning Administrator, same shall serve under the direction of the Mayor.
- B. The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce the provisions of this ordinance, including:
1. the ordering in writing of the remedying of any condition found in violation of this ordinance;
 2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the provisions of this ordinance, such action to include injunction, abatement, or other appropriate action or proceedings;
 3. in specific cases, making findings of fact and, with the concurrence of the Town Attorney, conclusions of law regarding determinations of rights accruing under Section 2.5 of this ordinance and Section 15.2-2307 of the Code of Virginia.
- C. Pursuant to Section 15.2-2299 of the Code of Virginia, the Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:
1. the ordering in writing of the remedy of any noncompliance with the conditions;
 2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
 3. requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.
- D. The Zoning Administrator shall respond within 20 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period.

 TOWN OF CAPE CHARLES	AGENDA TITLE: USDA RD Loan Resolution for Application 2		AGENDA DATE: February 18, 2020
	SUBJECT/PROPOSAL/REQUEST: Approval of loan resolution		ITEM NUMBER: 7D
	ATTACHMENTS: USDA RD Loan Resolution 20210218		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Deborah Pocock, Treasurer	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

The Town applied for a 35% Grant and 65% Loan for fiscal year 2021 from USDA Rural Development for Utility Fund projects as follows:

Replacement pickup truck

Remote read water meters (software, equipment, 100 water meters, 100 conversion kits, and training.)

The application has been approved and closing documents are being prepared.

DISCUSSION:

The resolution before you will accept the grant and loan funding, and the terms for each of the funding sources. The first debt payment will not occur until FY 2022 and will be made once a year for five years. The grant amount is a maximum of \$29,000, and the loan amount not to exceed \$55,800.

Both items listed above are included in the approved 2021 budget.

The interest rate will be a maximum of 2.125%.

RECOMMENDATION:

Staff recommends Council adoption of Resolution 20210218 as presented to fund the purchases listed above.

LOAN RESOLUTION (TOCC #20210218)
(Public Bodies)

A RESOLUTION OF THE _____
 OF THE _____
 AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING
 A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

 FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the _____
 _____ (Public Body)
 (herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of _____

 pursuant to the provisions of _____; and

WHEREAS, the Association intends to obtain assistance from the Rural Housing Service, Rural Business - Cooperative Service, Rural Utilities Service, or their successor Agencies with the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U. S. C. 1983 (c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$ 10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by the Government. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established and maintained, disbursements from that account may be used when necessary for payments due on the bond if sufficient funds are not otherwise available. With the prior written approval of the Government, funds may be withdrawn for:
 - (a) Paying the cost of repairing or replacing any damage to the facility caused by catastrophe.
 - (b) Repairing or replacing short-lived assets.
 - (c) Making extensions or improvements to the facility.Any time funds are disbursed from the reserve account, additional deposits will be required until the reserve account has reached the required funded level.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain the Government's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ _____

under the terms offered by the Government; that the _____

and _____ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee

The vote was: Yeas _____ Nays _____ Absent _____.

IN WITNESS WHEREOF, the _____ of the
_____ has duly adopted this resolution and caused it
to be executed by the officers below in duplicate on this _____ day of _____,

(SEAL)

By

Attest:

Title

Title

 TOWN OF CAPE CHARLES	AGENDA TITLE: COVID-19 Victims and Survivors Memorial Day Resolution		AGENDA DATE: February 18, 2020
	SUBJECT/PROPOSAL/REQUEST: Adoption of Resolution recognizing the first Monday of March as COVID-19 Victims and Survivors Memorial Day		ITEM NUMBER: 7E
	ATTACHMENTS: Resolution #20210218B		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Libby Hume	REVIEWED BY: John Hozey, Town Manager	

ITEM SPECIFICS:

Mayor Dize received correspondence from Smart City Policy Group which is working with local governments across the country and the United States Conference of Mayors to declare the first Monday in March as COVID Memorial Day.

A listing of 60 localities that have adopted the resolution were included in the email and include localities in Arizona, Arkansas, California, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. The other locality in Virginia is Alexandria.

RECOMMENDATION:

Staff recommends Council discussion, and if deemed appropriate, adoption of Resolution 20210218B designating March 1, 2021 as COVID-19 Victims and Survivors Memorial Day.

RESOLUTION 20210218B

**COVID-19 VICTIMS AND SURVIVORS
MEMORIAL DAY RESOLUTION**

WHEREAS, the first Monday in March, has been designated as COVID-19 Victims and Survivors Memorial Day; and

WHEREAS, COVID-19 (SARS-CoV-2) is an illness caused by a virus that can transmit from person to person and has spread across the world, creating a global pandemic that is having catastrophic effects on human life, our community, and our economy; and

WHEREAS, to mitigate the spread of COVID-19, observance of public health orders to social distance and stay at home have created challenges for small businesses, workers, and schools which are working to comply with limited resources; and

WHEREAS, school districts, teachers, students, and parents are grappling with the challenges of distance learning and working to prevent any potential learning loss due to not being in-person; and

WHEREAS, local and state governments, health departments, and public servants have taken bold actions to protect residents, support struggling local economies, and find innovative ways to provide services; and

WHEREAS, in response to rapid spread of COVID-19 and stay-at-home orders, essential workers have stepped up to provide critical services to help protect our communities and save lives, sacrificing their own health and safety; and

WHEREAS, COVID-19 has had a disproportionate impact on low-income communities and communities of color, exacerbating inequities already prevalent in our systems that we must address as a nation; and

WHEREAS, the symptoms and severity of COVID-19 can vary dramatically by individual and the long-term health implications for survivors is largely unknown, as many survivors suffer with lingering side-effects of the disease long after they no longer test positive; and

WHEREAS, more than 2.34 million people worldwide and 463 thousand in the United States have lost their lives due to COVID-19, and, in the Commonwealth of Virginia alone, more than 6,800 lives have been lost to this deadly virus; and

WHEREAS, each life lost to COVID-19 mattered and leaves a hole in the hearts of loved ones, family members, and surrounding community; and

WHEREAS, public health guidance and policies targeted at prevention, such as social distancing, wearing masks in public, and staying home help mitigate the spread of COVID-19, prevent illness, and lessen the burden on individuals and society,

NOW, THEREFORE, BE IT RESOLVED the United States Conference of Mayors supports the designation of the first Monday in March as “COVID-19 Memorial Day,” in remembrance of those who have lost their lives and in honor of those who continue to suffer from the impact of this virus,

BE IT FURTHER RESOLVED the United States Conference of Mayors urges cities to individually designate the first Monday in March as “COVID-19 Memorial Day,” in remembrance of those who have lost their lives and in honor of those who continue to suffer from the impact of this virus and to commemorate them in an appropriate manner each year on that day.

BE IT FURTHER RESOLVED the United States Conference of Mayors urges cities to continue taking preventative measures such as social distancing and following public health orders to mitigate spread of this virus, in tribute to essential workers and those who rose in service to protect the public.

Adopted by the Town Council of Cape Charles on this 18th day of February 2021.

Mayor William “Smitty” Dize

ATTEST: _____
Clerk of the Council