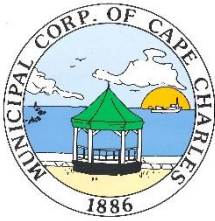




TOWN COUNCIL
Regular Meeting
January 21, 2021
Cape Charles Civic Center
6:30 PM

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. Recognition of Employee Celebrating a Significant Anniversary
4. Public Comments (3 minutes per speaker)
5. *Consent Agenda
 - A. Approval of Agenda Format
 - B. [Approval of Minutes](#)
 - C. [Approval of November 30, 2020 Financial Report](#)
6. Unfinished Business: None
7. New Business:
 - A. [Harbor Management Q&A](#)
 - *B. [2021 Harbor Fees and Rates](#)
 - *C. [Revisions to Town Code – Chapters 14, 42, 70, 71 and 72](#)
 - *D. [Authorization for Town Manager to Negotiate and Settle Pending Lawsuit with Kevcor, Inc. Within Budget Constraints](#)
8. Town Manager Comments
9. Mayor & Council Comments (5 minutes per speaker)
10. Announcements
 - February 6-7, 2021 – Town Council Strategic Planning Retreat
 - February 15, 2021 – Town Offices Closed for Presidents' Day
 - February 18, 2021 – Town Council Regular Meeting
11. Adjournment

After careful consideration of health and safety concerns related to the COVID-19 pandemic and due to the nature of the business to be discussed, this Town Council meeting is being held in-person at the Cape Charles Civic Center to facilitate more effective discussion with representatives from the Cape Charles Yacht Center regarding the management of the harbor. The Mayor, Town Council and management are confident that the Civic Center can safely accommodate ten guests and members of the public for in-person attendance while meeting the social distancing guidelines. The first ten individuals arriving at the Civic Center will be admitted. Masks will be required. This meeting will be [live streamed on Facebook](#) and the computer lab at the Cape Charles Memorial Library will be open for those who do not have internet or computer access at their homes. Public comments may be emailed to clerk@capecharles.org prior to the meeting and will also be accepted via Facebook during the Public Comment period.



DRAFT
TOWN COUNCIL
Regular Meeting & Executive Session
Cape Charles Civic Center
December 17, 2020
6:30 PM

At approximately 6:30 p.m. Mayor William “Smitty” Dize, having established a quorum, called to order the Regular Meeting & Executive Session 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 and Town Clerk Libby Hume. There were five members of the public physically in attendance, and ten viewers on Facebook Live.

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

RECOGNITION OF VISITORS / PRESENTATIONS:

A. Commendation Awards

Mayor Dize presented two commendations to Officers Michael Charlton and Juana Diaz for their quick thinking and heroic actions on November 11, 2020 in performing the necessary life-saving measures on an unresponsive individual. Officers Charlton and Diaz were in attendance to accept their commendations.

B. Proclamation – Cape Charles School Choice Week

Mayor Dize read Proclamation 20201217-Cape Charles School Choice Week.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adopt Proclamation 20201217 Cape Charles School Choice Week. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

PUBLIC COMMENTS:

There were no comments to be heard nor any 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. November 18, 2020 Executive Session & Special Called Meeting
- ii. November 19, 2020 Public Hearings & Regular Meeting

C. Approval of October 31, 2020 Financial Report

Motion made by Councilman Buchholz, seconded by Vice Mayor Bennett, 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. Ordinance #20201217 – Declaring a Local Emergency and Disaster Created by the COVID-19 Pandemic:

Town Manager John Hozey stated that the Town Council adopted Ordinance 20200330 declaring a local emergency which expanded the Town’s ability to respond to the COVID-19 pandemic while conducting routine necessary business. The Ordinance expired on September 30, 2020. At that time, the pandemic appeared to be waning, so it was not readopted. On December 10,

Governor Northam issued Executive Order 72 increasing restrictions, which included lowering the number for public gatherings to 10 and establishing a nightly curfew. As a result of the increased restrictions and the large numbers of new cases, it was prudent to consider readopting the local emergency ordinance.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Ordinance 20201217 An Emergency Ordinance of the Town Council of the Town of Cape Charles, Virginia, Declaring a Local Emergency and Disaster Created by the COVID-19 Pandemic; Appointing the Town Manager as the Town's Director of Emergency Management; and Adopting Temporary Changes in Practices and Procedures, Public Meetings and Deadlines as Necessary to Address Continuity of Government Associated with the Pandemic Disaster. Mayor Dize moved for adoption of Ordinance 20201217 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.

B. *Appeal of Historic District Review Board Decision – 627 Monroe Avenue:*

Town Planner Allyson Finchum joined the meeting via phone and stated the following: i) An appeal of the December 1, 2020 Historic District Review Board's (HDRB) decision regarding the replacement of windows at 627 Monroe Avenue was received; ii) The windows being replaced were on the first floor of the dwelling and the replacement windows were vinyl versus the original wood and there was a difference in the muntin size; iii) The property owner had asked three window contractors and was told that no permits were necessary. One of the contractors stated that a historic review might be necessary. The selected contractor had informed the property owner that he thought that he had received all the proper approvals for the project. Allyson Finchum stated that she felt the property owner was misled; iv) The property owner had saved for several years to replace the old windows, but now had mismatched windows since the work had been stopped; and v) Allyson Finchum added that she felt that Council might grant relief to the owner.

Mr. Robert Mucha, the applicant, distributed additional photographs depicting the windows to the Council and proceeded as follows: i) He and his wife chose to relocate to Cape Charles due to the proximity to the water and had met someone from every family that previously owned his house. The windows were rattling and inefficient. He even fractured a finger when one of the windows fell on it; ii) He researched various windows and chose a style that closely resembled the existing windows. They were very difficult to find especially one with a grid; iii) He wanted a contractor who specialized in windows and interviewed several of them. He asked about permits and other requirements and was told by the contractors that if he was replacing like with like, no permits were necessary. One contractor stated that he would contact the Town regarding the requirements, so that was the contractor he hired, and the contract was signed in September 2020; iv) Five of the six windows were installed. The sixth window was damaged so could not be replaced at that time. About a week after the first set of windows was installed, he received notification that he was in violation of the Town's ordinance and was informed that he had to apply for HDRB approval; v) He and his contractor went to the HDRB regarding the sixth window which was larger than the others and did not have a grid. The window would be obstructed from view since it was blocked by the front porch and a crape myrtle tree. The application was denied. He felt that the new window improved the exterior appearance since it didn't have a storm window; vi) He understood the job of the HDRB, but Cape Charles was not Williamsburg and a compromise was needed. He asked for consideration since he had asked the contractor and assumed that the contractor did what was required by the Town; and vii) He felt that he did his due diligence and asked the right questions. He went to great lengths to duplicate the look of the original windows. He trusted his contractor and was not trying to violate any ordinances. He respectfully requested that the Council overturn the HDRB's decision and allow him to install the last window.

Councilman Grossman asked Mr. Mucha whether the additional photographs were provided to the HDRB for review since it would be inappropriate for Council to deliberate this appeal with

additional information that wasn't provided to the board. Councilman Grossman added that he attended the HDRB meetings and didn't recall these photographs.

Mr. Mucha responded that the first two photographs that showed the rotted wood were provided to the HDRB, but he had circled the areas for tonight's appeal.

Herbert Thom represented the HDRB in the proceedings and stated the following: i) He was the one who discovered the windows being installed and concrete sills being painted. He contacted Allyson Finchum who came to the property. Ms. Finchum determined that the muntins were too small noting that they were between the glass which was not permitted in the historic district; ii) The contractor told the property owner that the correct windows were not available in wood, but that was incorrect; and iii) Five windows had been installed and the one large window, which was fairly invisible, still needed to be replaced.

Councilman Grossman countered by stating that he went to the property and saw the window which was not obscured.

Allyson Finchum stated that the HDRB confirmed that the property owner believed he was acting in good faith and held the contractor responsible.

There was discussion as follows: i) Vice Mayor Bennett stated that in the photograph included in the packet, the muntin appeared to be between the glass, but in photograph 4 provided this evening, the muntin looked like it was outside. Herbert Thom stated that the muntin was between the glass; ii) It was noted that the property owner worked with his contractor to find a window close to the originals in size and style and rot was a good reason to replace a window. The contractor could be assessed the penalty; iii) Allyson Finchum interjected that in building code violations, the contractor was held liable, but in zoning ordinance violations, the owner was held responsible; iv) Councilwoman Holloway added that the bigger problem was that the residents did not know the regulations. People were just trying to make their houses look better and safer. Cape Charles was a coastal town and wood rotted faster than in other areas. Property owners needed to be allowed to use other materials. Until recently, a lot of houses in the historic district were permitted to install vinyl windows; v) Allyson Finchum added that she had spoken with John Hozey about notifying new owners of the regulations, so they were aware of the need to go before the HDRB before doing any work on their houses. Property transfers would be reviewed, and letters sent to the new owners. Notices could also be placed in utility bills; vi) Councilman Follmer stated that Mr. Mucha asked questions and performed a fair amount of due diligence. Unless there was a way to hold the contractor responsible, he did not think the property owner should be punished. The ordinance lacked clarity and there was a lack of constancy with the board's decisions; vii) Councilman Bannon stated that the real estate agents should also be notifying potential buyers of the requirements; and viii) There was much discussion about the requirement that contractors from outside the area obtain a business license from the Town. Other areas did not require permits for windows or roofs. People were not aware of these requirements. They were not intentionally trying to violate the ordinances.

Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway, to uphold the appeal and grant relief to the applicant to install the sixth window. The motion was approved by majority vote with Councilman Grossman opposed.

C. *Conditional Use Permit Application – 401 Madison Avenue:*

Allyson Finchum stated that a conditional use permit application was received to convert the second story of a finished detached garage to an accessory dwelling unit at 401 Madison Avenue. The unit would be used as a long-term rental. A Town Council/Planning Commission joint public hearing was held on October 6, 2020. The Planning Commission reviewed the application following the public hearing and deferred their decision until the November meeting so additional information could be gathered. At their November 4, 2020 meeting, the Planning Commission recommended Council approval of a conditional use permit with the following eight conditions:

- 1) The accessory dwelling shall comply with all local, state, and federal regulations.
- 2) The accessory dwelling shall comply with all provisions of the Town of Cape Charles Zoning Ordinance Article IV, § 4.2(J) Accessory Dwellings and subject to the following:
 - A. Physical characteristics:
 - i. The accessory dwelling shall be located in an accessory building.
 - ii. The accessory dwelling shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
 - iii. The accessory dwelling shall have one kitchen and one bathroom.
 - iv. The accessory dwelling shall not have the appearance of a single-family dwelling.
 - B. Occupancy characteristics:
 - i. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles, the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to § 4.3.F.
 - ii. Inspections – The accessory dwelling unit shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.
 - C. Other requirements:
 - i. The accessory dwelling located in accessory building may have a separate water meter from the principal dwelling.
 - ii. The lot on which the accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
 - iii. Three on-site parking spaces shall be provided at all times.
 - iv. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
- 3) The accessory dwelling unit shall be limited to no more than one-bedroom accommodation.
- 4) The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the accessory dwelling unit as a permanent residence. If at any time the owner occupies neither unit, the accessory dwelling unit shall automatically become a non-inhabitable space, shall not be used as a dwelling, and shall not be rented.
- 5) The effective period of the conditional use permit shall be three years. At the end of every three years, renewal shall be automatically extended upon receipt of certification by the Town Planner that the primary dwelling unit remains the principal residence of the owner and that all other conditions met at the time of the original application remain unchanged.
- 6) The accessory dwelling unit shall not be sold separately from the single-family home.
- 7) Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a covenant in a form approved by the Town to notify subsequent owners of the requirements of this permit.
- 8) Violation of any of these conditions may result in review and revocation of the conditional use permit by Town Council.

Allyson Finchum recommended approval of the conditional use permit with the proposed conditions.

Vice Mayor Bennett asked whether the applicant was in agreement with all the conditions. Allyson Finchum responded that the applicant did not express any disagreement or concerns.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to approve the conditional use permit with the eight proposed conditions for 401 Madison Avenue to convert the second story of a finished detached garage to an accessory dwelling unit for use as a long-term rental. The motion was approved by unanimous vote.

D. *VDOT Warning Signage Request:*

John Hozey stated that Ms. Dianne Davis addressed Council at the November 19, 2020 Regular Meeting and asked that the Town submit a request to VDOT regarding the installation of warning signage to alert motorists of pedestrians and individuals with disabilities who might also be on or near active roadways, especially in the areas around the Myrtle Landing Apartments. VDOT was contacted and a resolution needed to be adopted by the Town Council requesting the signage. He had asked Town Clerk Libby Hume and Community Relations Manager Jen Lewis to work with Ms. Davis regarding her request. Staff recommended Council adoption of Resolution 20201217.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adopt Resolution 20201217 – Request to VDOT for Warning Signage on Cape Charles' Streets for Persons with Disabilities. Mayor Dize moved for adoption of Resolution 20201217 as noticed and forewent reading of the resolution. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

E. *Re-Appointment of Historic District Review Board Member:*

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to re-appoint Mr. Kerry Shackelford to the Historic District Review Board for another five-year term.

There was much discussion as follows: i) Councilman Follmer began by thanking Kerry Shackelford and all the HDRB members for their service. He went on to state that he wanted to assure that Council would be making their decision based on results or a reasonable expectation of results. There was a consensus among our citizens that the historic review process had gotten off track. While the guidelines certainly needed work, he didn't think it could be said that everything was the fault of the guidelines. Council's responsibility was to the Town and to ensure the preservation of the integrity of our historic district and to ensure we remained a vibrant living Town. Council demonstrated that commitment by initiating support of the Main Street program. Treating Cape Charles as a museum, along the lines of Colonial Williamsburg, rather than a living town with reasonable expectations of a quality of life, proved to be a deterrent to the preservation of our historic treasures as citizens and investors were reluctant to engage in what was perceived as an adversarial and frustrating review process. As discussed during the recent board interviews, the current perception of the HDRB was a deterrent for qualified candidates to apply for or accept appointments to the board. Nearly without exception, those who had gone before the HDRB this year had expressed that they were not treated well, irrespective of whether their application was approved or not, and irrespective of any individuals or specific cases, it was indisputable that there was a broad perception that the current board was excessively difficult and consistent in not achieving the results this Council wished to see. If this continued, the accountability clearly rested squarely with this Council, who were the people responsible for the composition of the HDRB. He believed the goals of the Council, our historic district, and our Town as a whole would benefit from a change in leadership and some fresh perspectives on the board. Councilman Follmer concluded by stating that he did not support this reappointment; ii) Councilwoman Holloway expressed her agreement with Councilman Follmer adding that the number of appeals had increased significantly in recent years. She appreciated Mr. Shackelford's service but did not think the HDRB was listening to the Council. Council should not be receiving so many appeals. In the past two months, at least four residents had contacted her about the HDRB. It also felt like the board was on a witch hunt looking at properties to see what was being done. Councilwoman Holloway concluded her comments by expressing her concern with the reappointment of Mr. Shackelford; iii) Councilman Bannon added that there was a belief that if the application was denied by the HDRB, the Town Council would always override their decision; iv) Vice Mayor Bennett stated that there had been an unprecedented number of appeals. A joint meeting was held with the HDRB and representatives from the Department of Historic Resources (DHR) and six appeals were reviewed in detail. DHR agreed with five of the six. There was so much discussion that an opinion wasn't issued on the sixth. Council had stated for years that the guidelines needed to be revised. He had vocalized his opinion about the HDRB many times in the past. Vice Mayor Bennett concluded by stating his agreement with Councilman Follmer; v) Councilman Buchholz stated that Vice Mayor Bennett had told him that in his first ten years on

Council, only one appeal had been heard. There were now too many appeals coming to Council. Part of the problem was that the HDRB was holding the property owners to the highest standards of the National Historic Preservation Regulations which dealt with historic restorations versus improvements to dwellings; vi) Councilwoman Holloway added that a change was necessary. When Council recently held interviews to fill vacancies on the boards, no one wanted to be on the HDRB due to the stigma. Council appointed the team. Just like a coach, when the team wasn't performing, changes needed to be made; vii) Councilman Grossman stated that the HDRB was trying to implement the Town's guidelines. The members of the board were being attacked versus the guidelines. He attended every meeting and the HDRB tried to do their best and were being consistent with following the guidelines; viii) Councilman Follmer interjected that the decisions weren't consistent. The problem was that Council was seeing more and more appeals. Council granting the appeals showed that we weren't getting the desired results; ix) Until the guidelines were revised, the appeals would continue; and x) Mayor Dize thought the HDRB went too far at times and added that it was up to Council to come up with a solution. Mayor Dize called for a vote.

The motion was denied by majority vote. Councilmen Bannon and Grossman were in favor of reappointing Mr. Shackelford to the Historic District Review Board. Vice Mayor Bennett, Councilmen Buchholz and Follmer, and Councilwoman Holloway were opposed.

Councilwoman Holloway added that a work session with Council and the HDRB needed to be scheduled and asked that the Mayor, John Hozey and Allyson Finchum provide guidance.

John Hozey stated that this was on his to-do list and he would target January – February to tackle the issue.

TOWN MANAGER COMMENTS

John Hozey commented on the following:

- 1) The Strategic Planning Retreat was initially discussed and planned for January 9 and 10. Although government was exempt from the Governor's restrictions, with the recent number of COVID-19 cases, a couple of which were in the Town, it would not look good for the Town not to lead by example. He proposed delaying the retreat to the first weekend of February. The Governor's orders were set to expire on January 31. By holding the retreat on February 6 and 7, there was still time to get things done in time for the budget review.

Mayor Dize, Vice Mayor Bennett, and Councilman Follmer agreed that it would be best to move the retreat to February 6 and 7.

- 2) He and Councilman Grossman discussed the relation of the Strategic Planning Retreat with the Comprehensive Plan. He suggested inviting the Planning Commission to participate in discussions for a portion of the retreat so both groups would be informed on the others' ideas. If there was no objection, he would contact the chairman of the Planning Commission.
- 3) He had been receiving an extraordinary number of complaints about the streetlights. ANEC was replacing the streetlights with LED bulbs of the same wattage but they were much brighter than the older ones. ANEC had not been receptive to working with us until Chincoteague also started complaining. He had heard from some residents who would be okay with the removal of some of the streetlights. The bright lights took away from the small-town appeal. He would ask ANEC for dimmer lights, then possibly for the removal of some of the lights.

Councilwoman Holloway stated that Cape Charles was a walkable Town and some of the sidewalks were not in good condition. She would be concerned about the safety of the residents if lights were removed. Chief Pruitt added that lighting was a deterrent and helped ensure safety.

John Hozey noted that he would focus on dimming the lights versus removal.

Mayor Dize stated that he received a number of complaints last year and had contacted an engineer with ANEC. He was told that the lights could be dimmed in place if the Town provided the pole numbers. Nothing was ever done.

- 4) The Town was moving forward with reversing the reverse-angle parking on Mason Avenue. VDOT informed us that a traffic engineer was needed so money was added to the budget and a request for proposal was published last week. The first phase would be to obtain a design exception. The proposals were due on January 15.
- 5) The mobile restroom facility on Peach Street was worth a try but was not meant for permanent service. There had been significant problems all summer. The unit would be adequate for events where most people respected the property. Unfortunately, some people do not have respect for the facility. It was poorly constructed. The doors did not close all the way and blew open with the wind. Public works would try to retrofit the facility and replace the equipment. A second unit was budgeted for with funding assistance from a USDA grant/loan. Since the unit could not handle the usage, it would not be feasible to order a second unit. The Capital Asset Management Program addressed a restroom on the east end. There was no way to add a restroom in phase 4 of the trail project with the funding available.

Councilman Follmer stated that John Hozey assessment of the mobile unit was spot on and added that the idea of retrofitting the unit seemed good.

Councilwoman Holloway expressed her disappointment adding that Cape Charles Main Street (CCMS) worked hard to get the funding for the unit. CCMS moved forward with the purchase of this unit based on research by staff. \$25K was a lot of money and CCMS was told that this unit would work. It was disappointing that the unit wasn't adequate especially after CCMS was told that research showed that it would. She added that staff needed to take responsibility for this issue.

Mayor Dize disagreed with Councilwoman Holloway adding that sometimes things looked great on paper but didn't work as well when implemented.

John Hozey added that the unit could handle normal use but not abuse.

MAYOR AND COUNCIL COMMENTS

Councilman Follmer commented as follows: i) He loved the idea of integrating the comprehensive plan with the strategic planning session; and ii) He added that the county was also working on their comprehensive plan and asked whether staff was keeping up with the county's work. Councilman Grossman interjected that the Board of Supervisors were reviewing the final draft and it would be made available for public review mid-January. Councilman Grossman asked that a joint work session with Council and Planning Commission be scheduled in early February to review the county's final draft to provide comments.

Councilman Grossman commented as follows: i) He informed Council that he was serving on the ANPDC's Community Committee; and ii) He asked who would contact Kerry Shackelford regarding Council's decision. Mayor Dize stated that he would contact Mr. Shackelford.

Councilwoman Holloway commented as follows: i) Some of the Christmas lights in Central Park were out. John Hozey stated that most were on GFI outlets which were constantly failing. Public Works was working on the issue; and ii) The lights on the Central Park gazebo were on all day. John Hozey would get Public Works to look at them.

Councilman Buchholz stated that staff was doing an outstanding job with COVID-19. It was mind-blowing what staff has had to deal with. All staff of all facilities had done an excellent job. He asked that John Hozey pass along his comments to staff.

Vice Mayor Bennett and Councilman Bannon had no additional comments.

Mayor Dize commented as follows: i) He reiterated Councilman Buchholz' comments. It had been a crazy year and he appreciated staff and all the first responders for their hard work; and ii) He believed that the crab pot would be set up on Mason Avenue for about two days to provide photo opportunities. He requested that everyone observe the social distancing guidelines.

Mayor Dize read the announcements.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, and unanimously approved to go into Closed Session in accordance with Section 2.2-3711-A of the Code of Virginia of 1950, as amended for the purpose of:

Paragraph 3: Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

Specifically: Review of unsolicited proposals from AQUA Virginia, Inc. and Virginia America Water to acquire the water and wastewater utility system assets of the town, to include strategies for process and negotiation regarding future operational, financial, and capital implications, as well as impacts on current and future utility rates.

Mayor Dize asked the members of the public in attendance to leave the room and advised them that they would be invited back into the room at the conclusion of the executive session.

Council went into executive session at 8:10 p.m.

Motion made by Councilman Buchholz, seconded by Vice Mayor Bennett, to return to open session. The motion was approved by unanimous vote.

The open portion of the meeting resumed at 8:53 p.m.

Libby Hume went outside to notify the members of the public of the end of the closed portion of the meeting. There were no members of the public waiting to return to the meeting.

Certification, to the best of each member's knowledge, that (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the meeting by the public body. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

Motion made by Councilman Buchholz, seconded by Councilman Grossman, to adjourn the Town Council Regular Meeting & Executive Session. The motion was approved by unanimous vote.

The meeting adjourned at 8:55 p.m.

Mayor Dize

Town Clerk

November 2020 Treasurer's Report

Page 1 – Cash Position

- Five dollars of interest was transferred from the US Bank VRA debt covenant account to the operating account.
- Note that the E-summons reserved revenue is for future purchase of software for the police dept when it becomes required use by the state.

Page 2 – Revenue vs. Expenditures

- No comments.

Page 3 – Capital Projects

- The ad requesting bids for the video surveillance camera system was published.
- The public works shop heating system was installed.

Page 4 – Tax Collection Rate

- Tax collection rate is typical for November.

Page 5 – Tax Revenue Trends

- Harbor dockage is 64% higher than it was November 2019.
- Meals tax revenue is still lagging by 8.4% from 2019, but transient occupancy taxes have surpassed 2019 year to date amounts by 23.4%.
- Business License (BPOL) is higher by 184% than 2019, however the due date for BPOL was extended from April to September.
- Sales and Use tax revenue is 7.2% higher than in 2019.

MUNICIPAL CORPORATION OF CAPE CHARLES
TREASURER'S REPORT
November 30, 2020

<u>Cash on Hand</u>	<u>10/31/2020</u>	<u>11/30/2020</u>	<u>Increase/ (Decrease)</u>
Atlantic Union Bank Checking Account	\$595,239	\$1,073,837	\$478,598
Atlantic Union Bank Money Market Account	\$1,227,592	\$1,227,884	\$293
LGIP Account 1 - Unrestricted	\$104,152	\$104,165	\$13
LGIP Account 2 - Unrestricted	\$299,593	\$299,635	\$42
Total Cash On Hand	\$2,226,576	\$2,705,522	\$0

<u>Restricted and Reserved Cash Balances</u>	<u>10/31/2020</u>	<u>11/30/2020</u>	<u>Increase/ (Decrease)</u>
Atlantic Union Bank Savings Account - Facility Fees Rsrvd (Utilities)	\$1,079,091	\$1,079,091	\$0
Atlantic Union Bank Checking Account - Police Funds	\$431	\$431	\$0
LGIP Account 2 - Restricted for USDA loan covenant	\$31,454	\$31,454	\$0
Atlantic Union Bank Checking Acct - E-Summons Revenue Rsrvd	\$3,542	\$3,879	\$337
US Bank - Reserved per VRA Interest Free Loan Requirements	\$257,587	\$257,582	-\$5
Wells Fargo 2010 Debt Service pass through account #300	\$2,898	\$2,898	\$0
Wells Fargo 2010 Debt Service pass through account #308	\$761	\$761	\$0
Total Cash Held in Reserve	\$1,375,765	\$1,376,096	\$331
Total Cash - All Accounts	\$3,602,341	\$4,081,618	\$479,277

DEBT SERVICE

Net Debt as of Current Reporting Month End (Excludes USDA vehicle and equipment loans)	\$6,998,081
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MUNICIPAL CORPORATION OF CAPE CHARLES

TREASURER'S REPORT

November 30, 2020

REVENUE VS. EXPENDITURES

<u>FUND</u>	<u>CURRENT MONTH</u>	<u>PRIOR YEAR-TO-DATE</u>	<u>CURRENT YEAR-TO-DATE</u>	<u>INCREASE/ (DECREASE) YTD</u>	<u>ANNUAL BUDGET</u>	<u>% REALIZED/ EXPENDED FY19</u>
GENERAL						
REVENUE - Operating	\$609,360	\$698,485	\$1,307,846	\$82,421.34	\$3,580,706	36.52%
EXPENDED - Operating	\$181,265	\$909,790	\$1,091,308	\$181,517.83	\$2,805,563	38.90%
NET	428,095	(211,305)	216,537	427,843	775,143	
REVENUE - CAPITAL GRANTS & LOANS	0	0	0	0	813,867	0.00%
EXPENDED - CAPITAL PROJECTS & DEBT SVC	0	70,793	76,848	6,055	1,589,010	4.84%
TRANSFER TO HARBOR TO TRUE UP FUND						
BALANCE	0	0	0	0	0	
TOWN CONTRIB. & PENDING GRANTS	0	(70,793)	(76,848)	(6,055)	(775,143)	
PUBLIC UTILITIES						
REVENUE - Operating	145,940	571,736	764,904	193,168	1,689,134	45.28%
EXPENDED - Operating	50,539	182,857	281,232	98,375	1,146,690	24.53%
NET	95,402	388,879	483,672	94,793	542,444	
REVENUE - CAPITAL GRANTS, LOANS, & FACILITY FEES	5,300	176,200	134,364	(41,836)	169,600	79.22%
EXPENDED - CAPITAL PROJECTS, DEBT SVC, & FACILITY FEES	5,300	341,121	299,285	(41,836)	712,044	42.03%
TOWN CONTRIB. & PENDING GRANTS	0	(164,921)	(164,921)	0	(542,444)	
HARBOR						
REVENUE - Operating	45,085	542,158	587,244	45,085	1,060,080	55.40%
EXPENDED - Operating	37,694	368,219	408,106	39,887	692,473	58.93%
NET	7,391	173,939	179,138	5,198	367,607	
REVENUE - GRANTS & LOANS	0	0	0	0	375,765	0.00%
TRANSFERRED FM GEN FUND TO TRUE UP FUND BALANCE	0	0	0	(94,314)	0	
EXPENDED - Capital Projects, Debt Svc	70	94,314	96,734	191,048	743,372	13.01%
TOWN CONTRIB. & PENDING GRANTS	(70)	(94,314)	(96,734)	(191,048)	(367,607)	
SANITATION						
REVENUE	17,277	67,528	84,805	17,277	214,546	39.53%
EXPENDED	17,711	64,980	82,692	17,711	214,546	38.54%
NET	(434)	2,548	2,113	(434)	0	

FY 2021 Capital Improvement Project Tracking Report

As of:
11/30/2020

	FY21 Status or Start Date	Percent of Completion	FY21 Budgeted	FY21 QTR 1 Expended	FY21 QTR 2 Expended	FY21 QTR 3 Expended	FY21 QTR 4 Expended	FY21 YTD Expended	(Over)/Under Budget
<u>General Fund</u>									
Police Vehicle	Pending	0%	\$ 38,940	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,940
Permit Department Software	Pending	0%	\$ 7,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,000
Public Works Shop Heaters	Complete	100%	\$ 6,868	\$ -	\$ 6,055	\$ -	\$ -	\$ 6,055	\$ 813
Grounds Maintenance Equipment	Pending	0%	\$ 22,240	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 22,240
Portable ADA Equipped Restroom Trailer	On Hold	0%	\$ 35,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,000
Mason Avenue Re-striping	On Hold	0%	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,000
Parking Lots (Mason & Harbor Shanty Area)	Pending	0%	\$ 10,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,000
Video Surveillance System	Bid reviews	0%	\$ 35,000	\$ -	\$ 56	\$ -	\$ -	\$ 56	\$ 34,944
Multi-Use Trail Phase 2 Closeout	Pending	0%	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 300,000
subtotal			\$ 470,048	\$ -	\$ 6,110	\$ -	\$ -	\$ 6,110	\$ 463,938
<u>Water Fund</u>									
SCADA System	pending	0%	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,000
Remote Read Water Meters - starter setup	pending	0%	\$ 51,985	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 51,985
Pickup Truck	pending	0%	\$ 32,766	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 32,766
subtotal			\$ 99,751	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 99,751
<u>Harbor Fund</u>									
Inner Harbor Rehabilitation Phase I carryover	Complete	100%	\$ -	\$ 60,390	\$ 70	\$ -	\$ -	\$ 60,460	\$ (60,460)
Inner Harbor Rehabilitation Phase II	pending	0%	\$ 118,470	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 118,470
subtotal			\$ 118,470	\$ 60,390	\$ 70	\$ -	\$ -	\$ 60,460	\$ 58,010
<u>Sanitation Fund</u>									
Trash Can Replacements	on order	100%	\$ 11,796	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,796
subtotal			\$ 11,796	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,796
TOTAL			\$ 700,065	\$ 60,390	\$ 6,180	\$ -	\$ -	\$ 66,570	\$ 633,495

*ITEMS WITH CURRENT MONTH ACTIVITY ARE IN BOLD PRINT

MUNICIPAL CORPORATION OF CAPE CHARLES
November 30, 2020

YTD 2020 Real Estate Tax Collections

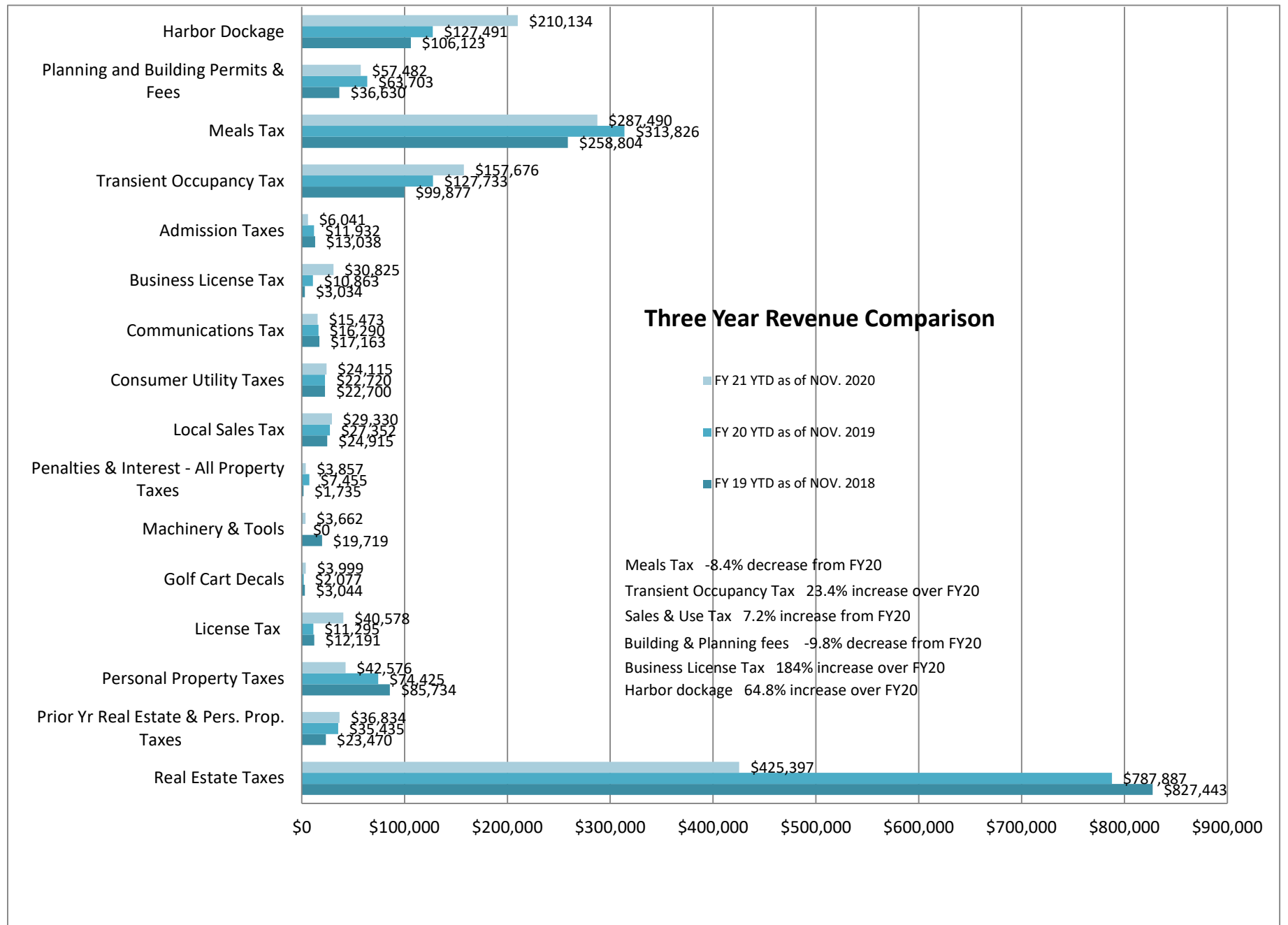
Total Taxable Land Value	\$	182,295,434	
Total Improvement Value	\$	293,203,847	
Exemptions	\$	(2,650,000)	
Additional Assessments (SCC Utility)	\$	-	
Total Real Estate Value (taxable)	\$	472,849,281	
Total Budgeted	\$	1,223,505	
Total Tax Billed	\$	1,291,310	
Total Adjustments	\$	(3,636.20)	
Total Collected YTD (percent of billed)	\$	<u>425,397</u>	33%
Amount Due per Accounts Receivable	\$	862,276.84	

**YTD 2020 Personal Property Tax, Machinery and Tools Tax
& 2020 License Tax Collections**

Total Personal Property Value	\$	13,824,800	
2020 Initial Assessment Exonerations	\$	(393,342)	
Personal Property Value, billed	\$	13,431,458	
Total Budgeted	\$	175,000	
Total Tax Billed less PPTRA	\$	207,905	
Total Adjustments & Additional Exonerations	\$	(3,047)	
Total Collected YTD (percent of billed)	\$	<u>86,816</u>	42%
Amount Due per Accounts Receivable	\$	118,041.14	

YTD Prior Year Real Estate Tax, Personal Property Tax, Interest and Penalty Collections

Total Budgeted	\$	75,300	
Total Collected (percent of budget)	\$	<u>40,692</u>	54%
Amount Due Per Budget	\$	34,608	



 TOWN OF CAPE CHARLES	AGENDA TITLE: Harbor Management Q & A		AGENDA DATE January 21, 2021
	SUBJECT/PROPOSAL/REQUEST: Discussion Item		ITEM NUMBER: 7A
	ATTACHMENTS: N/A		FOR COUNCIL: Action () Information (X)
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

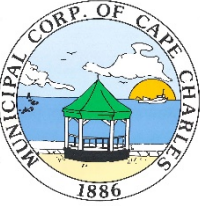
On September 17, 2020, the Town Council approved a new management agreement with the Cape Charles Yacht Center (CCYC) to handle the day-to-day operation of the Town Harbor. This is a new concept, where the Town retains ownership, control, and responsibility for the harbor, but contracts out operations 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:

As this is a new concept, we have been in transition from October to December. On January 1, 2021 the hand off was finalized. Town staff and CCYC have been working very well together during this time, yet still ran across some unanticipated issues getting started. Working out all the bugs will no doubt continue for the next several months. But to help provide transparency and alleviate concerns or misinformation, it was thought it would be helpful to provide a general update on the transition and allow for questions and answers.

RECOMMENDATION:

No action required.

 TOWN OF CAPE CHARLES	AGENDA TITLE: 2021 Harbor Fees and Rates		AGENDA DATE January 21, 2021
	SUBJECT/PROPOSAL/REQUEST: Approval of 2021 rates and fees for the Town Harbor		ITEM NUMBER: 7B
	ATTACHMENTS: Comparison Report		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

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:

In order to achieve some of the efficiencies sought through this new arrangement, a more streamlined harbor rate structure is needed. Over the years there have been a plethora of different rates developed for many different situations, to the point it has become overly confusing, inefficient to manage, and inconsistently applied. There is also a benefit to aligning the town rates with the rates of CCYC to promote the efficiencies we seek of using the entire harbor effectively without getting tripped up on what rates apply to where.

To simplify this rate structure, the following dockage categories are proposed:

Dockage Seasonal 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

The following dockage discounts would apply:

- Town Residents – twenty percent (20%)
- Commercial/Waterman (long-term) – forty percent (40%)
- 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

Other 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

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 do away with the storage area along the east side of the inter harbor. That storage need can still be accommodated elsewhere on the CCYC property. However, this 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. Since the rates for this storage would be charged by CCYC, there are no boat/trailer storage rates needed here.

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

- \$30/week, per 20-foot by 20-foot area

Rentals:

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

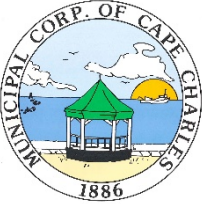
RECOMMENDATION:

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

Comparison Report

Type	Length	2020 rate	Day subtotal	2021 rate*	Day Subtotal	difference %	difference \$
Transient monthly	40	\$ 11.50	\$ 460.00	\$ 15.00	\$ 600.00	30.4%	\$ 140.00
Transient daily	40	\$ 2.25	\$ 90.00	\$ 3.00	\$ 120.00	33.3%	\$ 30.00
Waterman (long term) monthly	40	\$ 5.24	\$ 209.60	\$ 6.00	\$ 240.00	14.5%	\$ 30.40
Current annual slip holder monthly	40	\$ 5.83	\$ 233.20	\$ 8.00	\$ 320.00	37.2%	\$ 86.80
New seasonal slip-holder monthly	40	\$ 6.75	\$ 270.00	\$ 10.00	\$ 400.00	48.1%	\$ 130.00
Resident monthly (3+ months)	40	\$ 9.00	\$ 360.00	\$ 8.00	\$ 320.00	-11.1%	\$ (40.00)
Resident monthly (<3 months)	40	\$ 10.93	\$ 437.20	\$ 12.00	\$ 480.00	9.8%	\$ 42.80

* Discounts applied

 TOWN OF CAPE CHARLES	AGENDA TITLE: Revisions to Town Code		AGENDA DATE: January 21, 2021
	SUBJECT/PROPOSAL/REQUEST: Consider an ordinance revising various sections of the Town Code.		ITEM NUMBER: 7C
	ATTACHMENTS: 1. Proposed revision of Chapter 14 and Section 42-7 2. Explanation of Chapter 14 revision 3. Proposed revision to Chapter 70 4. Proposed revision to Chapter 71 5. Proposed revision to Chapter 72 6. Proposed Ordinance #20210121		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Bob Panek/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.

DISCUSSION:

Contracting for management of the Town Harbor necessitates revisions to Chapter 14 – Beaches and Waterways. In reviewing this chapter, many other now inconsistent and out of date items were discovered. Attachment 1 is the recommended revision of Chapter 14 in its entirety. Attachment 2 is an explanation of each change.

Recent organizational changes necessitate revisions to Chapter 70 – Water Supply, Chapter 71 – Sewers and Sewer Use, and Chapter 72 – Water and Sewer Service. Unlike Chapter 14, these revisions are limited to the deletion of an obsolete organizational reference in certain sections. Attachments 3, 4 and 5 contain the recommended revisions to these sections of each chapter. No detailed explanation is provided, as these chapters are otherwise up to date.

Attachment 6 is the proposed ordinance adopting these revisions.

RECOMMENDATION:

Consider the proposed changes. If acceptable, staff recommends a roll call vote to adopt Ordinance 20120121 Adopting Revisions to Cape Charles Town Code Chapters 14, 70, 71 and 72.

Proposed Revisions

Chapter 14 – BEACHES AND WATERWAYS

ARTICLE I. - IN GENERAL

Sec. 14-1. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 4 misdemeanor.

Sec. 14-~~16~~ 2. - Littering beaches, shores, harbor, ~~boardwalk~~, etc.

- (a) It shall be unlawful for any person to throw or deposit, or cause or permit to be thrown or deposited, any glass, bottle, glassware, can, or pieces thereof, or any garbage, waste or refuse of any kind on the public beaches along the Chesapeake Bay and other waters and waterways in the town or in the waters adjacent to the beaches and shores thereof.
- (b) It shall be unlawful for any person to deposit, or cause or permit to be deposited, in any of the waters of the harbor, beaches, or along the shores thereof, or in any of the streams or ditches emptying therein, or on any of the land adjacent or contiguous to the harbor, any refuse, offal, waste matter or other substance or material, whether earth, oil, liquid, animal, fish or vegetable matter, or other matter that may injuriously affect the sanitary, clean and safe condition of the water in the harbor or diminish the depth thereof.
- (c) A violation of any provision of this section shall constitute a class 3 misdemeanor.

Sec. 14-~~20~~ 3. - Charges and fees.

- (a) The charges and fees for use of the grounds and property at the town beaches, waterways, harbor and harbor docks shall be established from time to time by the Cape Charles Town Council in its sole discretion. A copy of the current fee schedule shall be available at the town office and the ~~harbor office of the harbormaster~~.
- (b) A receipt for all fees collected under this section, and a report for such receipts along with all other money shall be submitted to the town treasurer the next business day.

ARTICLE II. - BEACHES

Sec. 14-~~8~~ 4. - Placing obstructions on beach.

It shall be unlawful for any person to put, place or set any equipment, such as dugouts, chairs, umbrellas, windbreaks, surfboards, air floats, kayaks, rafts, boats, personal watercraft or similar paraphernalia not actually occupied or engaged, or to build or erect any fence or other obstruction, on any public beach, so as to obstruct, impede or retard the free and unconstrained use and occupancy of such beach by the public.

Sec. 14-~~9~~ 5. - Operating vehicles on beach.

- (a) It shall be unlawful for any person to operate or drive a vehicle of any kind, including, but not limited to motor vehicles, bicycles, tricycles and similar devices, but not including wheelchairs and other power-driven mobility devices, on the public beaches within the town.

- (b) Town vehicles operated while cleaning or working on the beach, town police and emergency vehicles, and other governmental vehicles operating under proper jurisdiction shall be exempt from the application of this section.

Sec. 14-~~10~~ 6. - Riding horses or other animals on beach.

It shall be unlawful for any person to ride a horse or other animal on the public beaches within the town.

Sec. 14-~~11~~ 7. - Bathing suit or other clothing required on beach.

It shall be unlawful for any person not wearing a complete bathing suit or other clothing to bathe or be on the beach in the town. Females must be covered both top and bottom.

~~Sec. 14-12. - Driving motor vehicles on boardwalk.~~

~~(a) It shall be unlawful for any person to drive or otherwise operate any motor propelled vehicle, other than a wheelchair or other power driven mobility devices, upon the boardwalk along the Chesapeake Bay. Golf carts used as mobility devices are prohibited due to safety considerations.~~

~~(b) Town vehicles operating while cleaning or working on the boardwalk, town police and emergency vehicles, and other governmental vehicles operating under proper jurisdiction shall be exempt from the application of this section.~~

Sec. 14-~~17~~ 8. - Removal of sand from shores, beaches, etc.

In order to conserve the beaches and shores in the town and to protect those areas adjacent to the beaches and shores, it shall be unlawful for any person to carry away or remove, or to cause to be carried away or removed, any sand from the shores, beaches or dunes or high land along the shores, beaches or dunes in the town; provided, however, that if it shall satisfactorily appear to the town manager or ~~proper authority~~ designee that the removal of sand, in any instance, will not be harmful to the conservation and protection of the beaches and shores or property adjacent thereto, a permit for such removal may be granted. Removal under such permit shall not constitute a violation of this section.

Sec. 14-~~18~~ 9. - Designation and marking of swimming areas.

The town council may designate areas for public swimming or public bathing and ~~may to~~ mark such areas with buoys which comply with state and federal laws or with the rules and regulations of the appropriate federal and state agencies and to place the same offshore.

Sec. 14-~~19~~ 10. - Unsafe swimming areas.

The town manager ~~or~~ designee may prohibit swimming in such areas or places as may be determined to be unsafe. Areas determined to be unsafe shall be designated with appropriate markers.

ARTICLE III. – WATERWAYS

Sec. 14-~~4~~ 11. - Removal or repair of hazardous or obstructing piers or other structures or vessels.

- (a) The owners of property in the town shall, at such times as the council may prescribe, remove, repair or secure any wharf, pier, piling, bulkhead or any other structure or vessel

which might endanger the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within the town. If such property is deemed to be abandoned, the council may designate and empower an official to ascertain the lawful owner of such property and to have the owner repair, remove or secure such property.

- (b) The council, through its own agents or employees, may remove, repair or secure any wharf, pier, piling, bulkhead, or other structure or vessel which might endanger the public health or safety of other persons or which might constitute a hazard or obstruction to the lawful use of the waters within the town, if the owner of such property, after reasonable notice and reasonable time to do so, has failed to remove, repair or secure such wharf, pier, piling, bulkhead or other structure or vessel.
- (c) If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of any known owner, the council, through its agents or employees, may repair such wharf, pier, piling, bulkhead or other structure or vessel or remove such property after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located.
- (d) If the council, through its own agents or employees, removes, repairs or secures any wharf, pier, piling, bulkhead or other structure or vessel after complying with the provisions of this section, the cost or expense thereof shall be chargeable to and paid by the owner of such property and, to the extent applicable, may be collected by the town as taxes and levies are collected.
- (e) Every charge authorized by this section with which the owner of any property has been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against such property, and such lien shall be recorded in the judgment lien docket book in the circuit court of the county. Such lien may be reduced to a personal judgment against the owner.

Sec. 14-~~5~~ **12**. - Sinking or abandoning vessels, barges, etc.; floating loose timbers, logs or debris.

It shall be unlawful and a class 3 misdemeanor for any person to voluntarily sink or abandon, or permit or cause to be sunk or abandoned, any vessel, barge, scow or other craft in the waters in the town, or to float loose timbers, logs or other debris therein.

Sec. 14-~~6~~ **13**. - Marking and removal of wrecked or sunken vessels, barges, etc.

Whenever any vessel, barge, scow or other craft is wrecked or sunk in any of the waters in the town, accidentally or otherwise, the owner of such vessel, barge, scow or other craft shall immediately mark it with a buoy and a lighted lantern at night and maintain such markers until such craft is removed, and it shall be the responsibility of such person to immediately remove the same and to prosecute such removal with diligence. The neglect or failure of the owner to so mark and remove the craft shall be unlawful and a class 3 misdemeanor. Each day the craft remains abandoned and unmarked shall constitute a separate violation of this section.

ARTICLE IV. - MOORING, DOCKING, ETC., IN HARBOR

Sec. 14-~~57~~ 14. - Violations of article.

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

Sec. 14-~~58~~ 15. - Mooring or anchoring generally.

No boat of any kind shall be moored or anchored inside the harbor elsewhere than at points designated by the ~~harbor committee~~ town manager or designee, and in no event shall any craft be allowed to anchor in the harbor except in case of emergency.

~~Sec. 14-59. - Anchoring or tying up houseboats and monitors.~~

~~Houseboats and monitors shall be anchored or tied up in the harbor at such points and in such manner as are designated, located and directed by the harbor committee.~~

~~Sec. 14-60. - Mooring, anchoring or drawing up boats used in seafood industries.~~

~~Boats used for oystering, fishing, clamming or other seafood industries shall be moored, anchored or drawn up on that portion of the harbor which is leased or rented to others by the harbor committee, and all such boats within the harbor shall be located, moored and placed at such points as are designated and directed by the harbor committee.~~

Sec. 14-~~61~~ 16. - Obstructing other vessels; mooring or tying up ~~along bulkhead~~.

It shall be unlawful for any person to moor, anchor, tie up, lay off or stop any boat or other craft in the harbor in such manner as to prevent or obstruct the passage, approach, berthing or anchoring of other vessels or craft, except when specifically so authorized. No boat or other craft shall utilize in any way any bulkhead or pier space ~~inside in the town harbor~~, except only that portion which is leased from the ~~town harbor master and with respect only to the boats of such lessees, without first obtaining the permission of the harbor committee.~~

~~Sec. 14-62. - Docking more than four abreast.~~

~~No more than four boats shall be docked abreast in the harbor. Exceptions will be made only on authority of the harbor master.~~

Sec. 14-~~64~~ 17. - Transfer of leased docking space.

No person leasing any ~~stall slip~~ or docking space in the town harbor shall transfer such ~~stall slip~~ or space to any other person, ~~without authority of the harbor committee.~~

Sec. 14-~~65~~ 18. - Mooring or berthing charges generally.

- (a) The charges for mooring or berthing at designated points in the town harbor, other than those reserved for free public use, shall be established from time to time by the Cape Charles Town Council in its sole discretion. A copy of the current rate schedule shall be available at the town office and at the harbor office ~~of the harbormaster.~~
- (b) All charges prescribed in this section are to be paid ~~to the harbormaster~~ in advance. No permit will be issued unless payment of the specified amount is made upon issuance of the permit. Failure to pay such charges shall constitute cause to revoke the permit and for the removal of the boat ~~from the harbor~~. Failure to remove any such boat ~~from the harbor~~, when ordered to do so ~~by the harbormaster~~, shall constitute a violation of this section.

Sec. 14-~~66~~ 19. - Charges for electricity, water, etc., for houseboats.

Any person renting a ~~stall slip~~ or docking space in the ~~town~~ harbor and using ~~his such~~ boat as a residence or for purpose of living thereon shall pay ~~to the harbormaster~~ for utility services (electric, water, etc.) and garbage disposal such fees as may be established from time to time by the Cape Charles Town Council in its sole discretion, which fees shall be in addition to the mooring charges assessed pursuant to section 14-~~65~~ 18. A copy of the current fee schedule shall be available at the town office and the ~~harbor~~ office ~~of the harbormaster~~.

Sec. 14-~~67~~ 20. - Fees for loading or unloading ~~crabs or fish~~ commercial fisheries commodities ~~at municipal docks~~.

(a) The Cape Charles Town Council in its sole discretion shall establish fees for the loading or unloading of commercial fisheries commodities ~~at the town harbor~~. A copy of the current fee schedule shall be available at the ~~town~~ office ~~and the harbor office of the harbormaster~~.

~~(b) The harbormaster shall issue a receipt for all fees collected under this section, and a report for such receipts along with all other money shall be submitted to the town treasurer the next business day.~~

Sec. 14-~~46~~ 21. - Limitations on use of small boat launching ramps.

(a) It shall be unlawful for any person to dock a boat or vessel at or near the walkways or docking structures connected with the small boat launching ramps for ~~a period of time exceeding more than~~ 30 minutes. No person shall block the ~~boat~~ ramps with a boat or vessel at any time. The parking of boat trailers shall be sufficient distance from the ramps in areas designated for parking so that the ramps are not blocked.

(b) It shall be unlawful for any person to load or unload any commercial commodities or equipment at or on the small boat ramps or their appurtenant walkways or docking structures or to store, pile or otherwise block such structures with any commodity or equipment in any manner.

(c) A violation of this section shall constitute a class 3 misdemeanor.

Sec. 14-~~14~~ 22. - Parking vehicles adjacent to ~~harbor~~ docks.

No vehicle of any type or kind shall be parked adjacent to docks in the ~~town~~ harbor. Immediately upon loading or unloading, vehicles shall move to sections provided for parking.

Sec. 14-~~15~~ 23. - Restriction on use of ~~harbor~~ catwalks, walkways, etc.

No nets, crab pots, baskets, barrels, dredges or any other equipment or commodity shall be stored, piled or stacked on the catwalks or walkways ~~on the perimeter~~ of the ~~town~~ harbor or ~~lands~~ surrounding ~~the harbor lands~~, except upon approval of the ~~harbormaster~~ town manager or designee.

~~ARTICLE II. GENERAL BOATING, SKIING, ETC., REGULATIONS~~

ARTICLE V. – GENERAL BOATING REGULATIONS

Sec. 14 - 24. Adoption of state law.

Pursuant to the authority of Code of Virginia, § 29.1-744, all the provisions and requirements of the laws of the state contained in Code of Virginia, Title 29.1, Chapter 7, Articles 3 and 4, pertaining to boating and personal watercraft operation, as in force and effect on the date of the adoption of this Code, and as amended in the future, are hereby adopted and incorporated in this chapter by reference and made applicable within the town. Such provisions and requirements are hereby adopted, *mutatis mutandis*, and made a part of this chapter as fully as though set forth at length herein. It shall be unlawful for any person within the town to violate or fail, neglect or refuse to comply with any provision or requirement which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under the Code of Virginia.

~~Sec. 14-30. Regattas, races and exhibitions.~~

~~The provisions of this article shall not be construed to prohibit regattas, the running of races or exhibitions, during an approved, publicly announced, properly supervised and adequately patrolled regatta, race, speed trial or exhibition. Written approval for such events from the mayor pursuant to the rules and regulations of the United States Coast Guard, or from the board of game and inland fisheries of the commonwealth, shall be deemed sufficient evidence of approval.~~

Sec. 14-~~31~~ 25. Muffling devices for motorboats; use of cutouts.

~~The cutouts of every~~ Internal combustion engines used on any motorboat on the waters within the town shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The muffling device shall exhaust at or below the water line or it shall be equipped with mechanical baffles. The use of cutouts is prohibited, ~~except for motorboats competing in a regatta or boat race and for such motorboats while on trial runs preceding the regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race.~~

Sec. 14-~~32~~ 26. ~~"No wake zone" for vessels.~~ No wake zone.

Vessels entering, leaving or moving about in the waters of the harbor shall not be operated in such manner as to create a wake or swell disruptive or injurious to other boats or craft anchored, tied up or plying in the harbor or fastened to bulkheads or shorelines, and such area shall be designated a "no wake zone" ~~as designated by the department of game and inland fisheries.~~

~~Sec. 14-33. Observer required in towing boat unless skier or surfboarder wears life preserver.~~

~~It shall be unlawful for any person to operate a motorboat on any of the waters in this town for towing a person on water skis or a surfboard or other similar device, unless there is in such motorboat a person, in addition to the operator, in a position to observe the progress of the person being towed, or unless the skier or surfboarder wears a life preserver.~~

~~Sec. 14-34. Skiing or surfboarding prohibited during certain hours.~~

~~It shall be unlawful for any person to operate a motorboat on any waters in this town towing a person on water skis or a surfboard or other similar device, between the hours from one hour after sunset to one hour before sunrise, and it shall be unlawful for any person to engage in water skiing or other similar activity on any of the waters in the town during these hours.~~

~~Sec. 14-35. Exceptions from sections 14-33 and 14-34.~~

~~The provisions of sections 14-33 and 14-34 shall not apply to a performer engaged in a professional exhibition or a person engaged in an activity authorized by section 14-30.~~

~~Sec. 14-36. Passing too close to capsized boats.~~

~~It shall be unlawful for any person operating any motorboat or motorboat towing water skis, surfboard or other similar device, or for the person being towed to pass within 100 feet of any motorboat, sailboat or other watercraft which has capsized, unless such boat is effecting a rescue or rendering aid or assistance, or unless such boat is operated wholly within a marked channel and has reduced its speed to three miles per hour.~~

~~Sec. 14-37. Passing too close to swimmers.~~

~~It shall be unlawful for any person operating a motorboat or a motorboat towing water skis, surfboard or other similar device or for the person being towed to pass within 100 feet of any swimmer or bather. For the purpose of this section, a fallen water skier or surfboarder shall be considered a swimmer. The provisions of this section shall not apply to any person operating a motorboat while effecting a rescue or rendering aid or assistance, or to any motorboat operating wholly within a marked channel, if such boat has reduced its speed to three miles per hour.~~

~~Sec. 14-38. Operation of motorboat in designated swimming area.~~

~~It shall be unlawful for any person to operate a motorboat or motorboat towing water skis or a surfboard or other similar device within the area of water designated and marked for swimming as provided in section 14-18.~~

~~Sec. 14-39. Skiing or surfboarding near piers, shores, bulkheads, etc.~~

~~It shall be unlawful for any person operating a motorboat and towing a person on water skis, surfboard or other similar device, or for the person being towed to pass within 100 feet of any pier, shoreline, bulkhead, bridge or anchored or drifting boat or vessel or people in the water, unless such motorboat is operated wholly within a marked channel or unless such person is "taking off" on water skis, surfboard or other similar device or "landing" from water skis, surfboard or other similar device from private property with the consent of the owner.~~

~~Sec. 14-40. Motorboats following too close to skiers or surfboarders.~~

~~It shall be unlawful for any person operating any motorboat to follow any person on water skis, surfboard or other similar device closer than 100 feet.~~

~~Sec. 14-41. — Causing skis or surfboard or person thereon to collide with object or person.~~

~~It shall be unlawful for any person to operate or manipulate any motorboat, tow rope or other device by which the direction or location of water skis, surfboards and other similar devices may be affected or controlled in such a way as to cause the water skis, surfboard or other similar device or any person thereon to collide with any object or person.~~

~~Sec. 14-42. — Reckless boating, skiing, etc.~~

~~(a) — It shall be unlawful for any person to operate any motorboat or other vessel, or to manipulate any water skis, surfboard or other similar device or engage in any spearfishing while skin diving or scuba diving, in a reckless manner so as to endanger or be likely to endanger the life, limb or property of any person.~~

~~(b) — A violation of this section shall constitute a class 1 misdemeanor.~~

~~Sec. 14-43. — Improper boating.~~

~~Notwithstanding the provisions of section 14-42, upon the trial of any person charged with reckless boating where the degree of culpability is slight, the court, in its discretion, may find the accused not guilty of reckless boating but guilty of improper boating. Improper boating shall be punishable as a class 3 misdemeanor.~~

~~Sec. 14-44. — Operating boat while under influence of alcohol or drugs.~~

~~(a) — No person shall operate any watercraft, as defined in Code of Virginia, § 29.1-712, or motorboat which is underway:~~

~~(1) — While such person has a blood alcohol concentration of 0.10 percent or more by weight by volume, as indicated by a chemical test administered in accordance with Code of Virginia, § 29.1-738.2;~~

~~(2) — While such person is under the influence of alcohol;~~

~~(3) — While such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to operate the watercraft or motorboat safely; or~~

~~(4) — While such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to operate the watercraft or motorboat safely.~~

~~Sec. 14-45~~ 27. - Creation of loud, disturbing, etc., noise by persons aboard boat.

It shall be unlawful for any person, while aboard any motorboat, vessel, barge or any other watercraft, whether under way, drifting, berthed or at anchor, to make or create any loud, disturbing or unreasonable noise of such character, intensity or duration as to be detrimental to the health or life of any person or to unreasonably disturb or annoy the quiet, comfort or repose of any person.

Chapter 42 – MOTOR VEHICLES AND TRAFFIC

Sec. 42-7. - Operation of vehicles on sidewalks prohibited.

- (a) No vehicle shall be operated on the sidewalks, pedestrian paths, boardwalk or public pier of the town, unless directed by the police department and unless a vehicle is passing over the sidewalk to access a driveway where it passes over the sidewalk. Parked vehicles are prohibited from obstructing the sidewalks. For the purpose of this section, the term "vehicle" shall mean any and all wheeled modes of transportation, including but not limited to, automobiles, motorcycles, mopeds, bicycles, skateboards, roller skates, rollerblades and golf carts, but shall specifically exclude wheelchairs and other ~~wheeled modes of transportation~~ power-driven mobility devices for use by handicapped persons.
- (b) Non-motorized vehicles, such as bicycles, skateboards, roller skates and rollerblades, may be operated on sidewalks, pedestrian paths and the boardwalk when designated as part of the Cape Charles Community Trail.
- (c) Town police, maintenance and emergency vehicles, and other governmental vehicles operating under proper jurisdiction shall be exempt from this section.

Explanation of Proposed Revisions

- 14-2 Chapter addresses beaches and waterways; boardwalk is neither. General littering provision exists in town code, Sec. 58-2.
- 14-3 Reflects elimination of harbormaster position.
- 14-12 Chapter addresses beaches and waterways; boardwalk is neither. Vehicle use on boardwalk is largely addressed in Sec. 42-7. Amplification can be added there.
- 14-8 Clarifies that “proper authority” is a designee of the town manager.
- 14-9 Reduces liability if swim areas are not always properly marked.
- 14-10 Provides flexibility that a designee of the town manager may act.
- 14-15 Replaces outdated reference to harbor committee.
- 14-59 Unnecessary, as 14-15 covers all boats. Eliminates outdated reference to harbor committee.
- 14-60 Unnecessary, as 14-15 covers all boats. Eliminates outdated reference to harbor committee.
- 14-16 Removes “along bulkhead”, as boats may also be moored at the fixed pier or floating docks. Clarifies that leasing space applies to the town harbor, as a private entity (CCYC) now leases docking space in the harbor. Eliminates outdated reference to harbor committee.
- 14-17 Clarifies that prohibition applies to town harbor, as a private entity (CCYC) now leases docking space in the harbor. Updates “stall” to more common usage of “slip”. Eliminates outdated reference to harbor committee.
- 14-62 Removes unnecessary detail and reflects elimination of harbormaster position. Authority to regulate mooring exists in Sec. 14-15 and Sec. 14-16.
- 14-18 Clarifies that leasing space applies to the town harbor, as a private entity (CCYC) now leases docking space in the harbor. Reflects elimination of harbormaster position.
- 14-19 Updates “stall” to more common usage of “slip”. Clarifies that provision applies to the town harbor. Reflects elimination of harbormaster position.
- 14-20 Conforms title of Section with content. Clarifies that provision applies to town harbor. Reflects elimination of harbormaster position. Eliminates duplication with Sec. 14-3 relative to delivering receipts and fees collected to treasurer.
- 14-21 Eliminates unnecessary words.
- 14-22 Eliminates unnecessary words. Clarifies that provision applies to town harbor.

14-23 Eliminates unnecessary words. Clarifies that provision applies to town harbor. Reflects elimination of harbormaster position.

Article V General Boating Regulations –

Renumbers and adopts state law pertaining to boating and personal watercraft operation, per Code of Virginia Sec. 29.1-744. This is consistent with the adoption of state law pertaining to motor vehicles and traffic in Sec. 42.3 of the Town Code. It allows removal of many sections addressing boating operation and avoids future conflicts as state law is revised. Sections pertaining to noise and no wake zones are retained. These provisions can have a direct impact on vessels docked within the town limits.

Sec. 29.1-744 authorizes localities to enact parallel ordinances to govern waters within their territorial limits. This is a very small geographic area for the Town of Cape Charles, essentially consisting of the waters above Town-owned bottom in the harbor starting from the floating docks eastward to the head of the harbor. It would also include our limited inland waters, such as the lakes and ponds within the Bay Creek development, none of which are available for public boating. It does not include the waters of the Chesapeake Bay, Kings Creek, Plantation Creek, or west of the Town-owned bottom in the harbor.

Sec. 29.1-745 authorizes any law enforcement officer of the Commonwealth and its subdivisions, e.g., the Town, to enforce the state boating and personal watercraft operation laws.

42-7 Adds certain provisions from Sec. 14-12.

Sec. 70-3. - Administration.

The ~~director of public utilities, under the direction of the~~ town manager or designee, shall administer, implement, and enforce the provisions of this chapter. ~~The director of public utilities is the manager of the waterworks.~~

Sec. 70-5. - Inspections.

- (1) The ~~director of public utilities,~~ town manager or authorized town, state or federal officials, bearing the proper credentials and identification, shall be permitted to enter all user premises or buildings to examine the pipes and fixtures and the manner in which the water is used and such user must frankly and without concealment answer questions relative to the use of water on such premises or in such building, and the town shall have the right, upon giving reasonable notice, to discontinue the service when such access is refused or not permitted.
- (2) The ~~director of public utilities or~~ town manager or designee, bearing proper credentials and identification, shall be permitted to access all private property through which the town holds an easement for the purposes of inspection, observation, measurement, sampling, repair, and maintenance of any of the town's waterworks lying within the easement. All entry, and any subsequent work on the easement, shall be done in accordance with the terms of the easement pertaining to the private property involved.
- (3) While performing any necessary work on private properties referred to in subsections (1) and (2) above, the town ~~director of public utilities~~ shall observe all safety and occupational rules established by the owner or occupant of the property and applicable to the premises.

Sec. 70-21. - Specific definitions.

Unless the context of usage indicates otherwise, the meaning of specific terms in this chapter shall be as follows:

Backflow shall mean the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

Backflow prevention device shall mean any approved device, method, or type of construction intended to prevent backflow into a waterworks.

Consumer shall mean any person who drinks or otherwise uses water from a waterworks.

Consumer's water system shall mean any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

Cross connection shall mean any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

Curb stop shall mean the device between the water main and the water meter utilized for stopping water flow to the meter.

~~*Director* shall mean the director of public utilities, who is responsible for managing the Town of Cape Charles Waterworks, or an authorized designee.~~

Distribution main shall mean a water main whose primary purpose is to provide treated water to service connections.

Domestic use shall mean normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

Groundwater shall mean all water obtained from sources not classified as surface water (or surface water sources).

Industrial user (class II) shall mean premises consuming water for all non-residential uses.

Nonpotable water shall mean water not classified as pure water.

Owner or water purveyor shall mean an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government which supplies or proposes to supply water to any person within this state from or by means of any waterworks.

Pure water or potable water shall mean water fit for human consumption and domestic use which is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served.

Residential user (class I) shall mean a premises consuming water for domestic use only.

Service connection shall mean the point of delivery of water to a customer's building service line as follows:

- (1) If a meter is installed, the service connection is the downstream side of the meter;
- (2) If a meter is not installed, the service connection is the point of connection to the waterworks;
- (3) When the water purveyor is also the building owner, the service connection is the entry point to the building.

Surface water shall mean all water open to the atmosphere and subject to surface runoff.

Water meter shall mean the device installed between the water main and the service connection to measure the volume of water supplied to a house or other premises.

Water purveyor the same meaning as "owner".

Water supply shall mean water that has been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term water supply shall not include any waters above the point of intake of such waterworks.

Water supply main or main shall mean any water supply pipeline that is part of a waterworks distribution system.

Waterworks shall mean a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term waterworks shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Sec. 70-31. - Application for service; permit for connection.

Every person requiring a supply of water, or desiring any change, alteration or repair to any lines furnishing such supply must make application therefore upon such form as may be prescribed and provided for that purpose. The application must state truly and fully all the uses to which the water is to be applied and no different or additional use will be allowed except by written permission issued by the town director upon proper application being made. There shall be two classes of permits for connection to the town's waterworks: class I - residential, class II - industrial. The connection permit shall be applied for at the same time as the building permit. The permit for connection to the service pipes or water mains shall be issued by the director to a licensed contractor employed by the applicant to make such connection. Not more than one dwelling unit or premises shall be supplied from one connection, except by written permission of the town manager. Where such connection is made, the owner is ultimately responsible for payment of all accounts.

Sec. 70-36. - Protection of capacity for existing users.

~~The director shall not issue a~~A permit for any class of connection to the town's waterworks shall not be issued unless there is sufficient capacity, not legally committed to other users, in the waterworks to supply the quantity of water which the requested connection will require. The town director may permit such a connection if there are legally binding commitments to provide the needed capacity.

Sec. 70-43. - Turning water on or off without authority.

- (1) Except in emergency situations, it shall be unlawful for any person, not acting under the authority of the town director, to turn the water of the town on or off for any premises whatsoever.
- (2) It shall be unlawful for any person to take any water from the waterworks system of the town except in accordance with the provisions of this article.
- (3) This section shall not be construed to prohibit plumbers from turning water into pipes to test the same or for purposes of testing plumbing connected thereto.

Sec. 70-62. - Inspections.

- (1) The [town director](#) shall require inspections to be made of properties served by the waterworks where cross-connection with the waterworks is deemed possible. The frequency of inspections shall be established based on potential health hazards involved.
- (2) Representatives of the town shall have the right to enter, at any reasonable time, properties served by a connection to the town waterworks for the purpose of inspecting the piping system for cross-connections. Upon request, the owner or occupant of property so served shall furnish to the inspector pertinent information regarding the piping system on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections.

Sec. 70-64. - Denial or discontinuance of service for lack of required device.

The town may deny or discontinue water service to a consumer if a required backflow prevention device is not installed. If it is found that the device has been removed or bypassed, or if a cross-connection exists on the premises, or if the pressure in the waterworks is lowered below ten pounds per square inch, the town shall take action to ensure that the waterworks is adequately protected at all times. Water service to such premises shall not be restored until the deficiencies have been corrected or eliminated in accordance with this article and to the satisfaction of the [town director](#).

Sec. 70-72. - Low flow devices and fixtures.

- (1) Low flow devices and fixtures, as specified in the Virginia Uniform Statewide Building Code, are required in all new construction and in all remodeling and/or replacement of plumbing fixtures in existing structures.
- (2) Lavatories in a public facility restroom shall be equipped with standard valve or spring self-closing faucets having outlet devices that limit the flow rate to a maximum of 0.5 gallons per minute or self-closing metering valves which limit flow of 0.25 gallons per cycle.
- (3) All new car wash installations shall be equipped with a water recycling system approved by the [town director](#).
- (4) All new construction, repair or replacement of continuous flow devices and any other water connector device or appliance requiring a continuous flow of five gallons per minute or more shall be equipped with a recycling system approved by the [town director](#).

Sec. 70-76. - Penalties for noncompliance.

- (1) Any person who shall violate any provision of this article, shall, upon conviction thereof, in addition to additional charges and/or other actions set forth herein, be fined not more than \$250.00. Each act or each day's continuation of a violation shall be considered a separate offense.
- (2) In addition to the foregoing, the town director may suspend water service to any person violating the provisions of this article. If water service is terminated, the person shall pay a reconnection fee of \$50.00 plus all outstanding fines and fees before service will be restored.

Sec. 71-3. - Administration.

The ~~director of public utilities, under the direction of the~~ town manager or designee, shall administer, implement, and enforce the provisions of this chapter. ~~The director of public utilities is the manager of the town's treatment works.~~

Sec. 71-5. - Inspections.

- (1) The ~~director of public utilities,~~ town manager or authorized town, state or federal officials, bearing the proper credentials and identification, shall be permitted to enter all premises where an effluent source or treatment system is located at any reasonable time for the purposes of inspection, observation, measurement, sampling and/or copying records of the wastewater discharge to ensure that discharge to the treatment works is in accordance with the provisions of this chapter and the Virginia Sewage Collection and Treatment Regulations.
- (2) The ~~director of public utilities or~~ town manager or designee, bearing proper credentials and identification, shall be permitted to access all private property through which the town holds an easement for the purposes of inspection, observation, measurement, sampling, repair, and maintenance of any of the town's treatment works lying within the easement. All entry, and any subsequent work on the easement, shall be done in accordance with the terms of the easement pertaining to the private property involved.
- (3) While performing any necessary work on private properties referred to in subsections (1) and (2) above, the town ~~director of public utilities~~ shall observe all safety and occupational rules established by the owner or occupant of the property and applicable to the premises.

Sec. 71-21. - Specific definitions.

Unless the context of usage indicates otherwise, the meaning of specific terms in this chapter shall be as follows:

Act shall mean the Federal Clean Water Act, 33. U.S.C. 1251 et seq.

Approval authority means the Executive Director or Director of the Department of Environmental Quality.

ASTM shall mean the American Society for Testing and Materials.

Authorized representative of industrial user shall mean:

- (1) A principal executive officer of at least the level of vice president, if the industrial user is a corporation; or
- (2) A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively; or

- (3) A duly authorized representative of the individual designated in #1 or #2, above, if such representative is responsible for the overall operation of the facility from which the discharge to the POTW originates. The authorization must be submitted to the director of public utilities prior to or together with any reports to be signed by the authorized representative.

BOD (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C, expressed in milligrams per liter.

Building sewer shall mean the extension from a building wastewater plumbing facility to the treatment works.

Categorical pretreatment standard or categorical standard shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(a) and 307(c) of the Act, which apply to specific categories of industrial users which appear in 40 CFR Chapter I, Subchapter N, Parts 405—471.

Combined sewer shall mean a sewer intended to receive both wastewater and storm or surface water.

Day shall mean the 24-hour period beginning at 12:01 a.m.

~~*Director* shall mean the director of public utilities, who is responsible for managing the Town of Cape Charles Wastewater System, or an authorized designee.~~

Discharger shall mean person or persons, firm, company, industry or other similar sources of wastewater who introduce such into the POTW.

Easement shall mean an acquired legal right for the specific use of land owned by others.

EPA shall mean the United States Environmental Protection Agency.

Establishment shall mean any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal processing operations, quarry, oil refinery, boat, vessel, and each and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

Existing source shall mean any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

Garbage shall mean the solid animal and vegetable wastes resulting from the domestic or commercial handling, storage, dispensing, preparation, cooking, and serving of foods.

Ground water shall mean any water beneath the land surface in the zone of saturation.

Indirect discharge shall mean the introduction of (nondomestic) pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act.

Industrial user or significant discharger means a source of indirect discharge, or a nondomestic discharge to a treatment works.

Industrial wastes shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

Interference shall mean an inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, which clearly causes, in whole or in part, a violation of any requirement of the POTW's VPDES permit, including those discharges that prevent the use or disposal of sludge by the POTW in accordance with any federal or state laws, regulations, permits or sludge management plans.

May is permissible; *shall* is mandatory.

Municipality shall mean a city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal of sewage, industrial, or other wastes.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake, or any other body of surface or groundwater.

New source shall have the same meaning as provided in 40 CFR Part 403.3(k) (1990).

Owner shall mean the commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this or any other state or country, or any person or group of persons acting individually or as a group.

Pass-through shall mean the discharge of pollutants through a POTW into State waters in quantities or concentrations which are a cause in whole or in part of a violation of any requirement of the POTW's VPDES permit, including an increase in the magnitude or duration of a violation.

Person shall mean any individual, firm, company, association, society, partnership, corporation, municipality, or other similar organization, agency or group.

pH shall mean the logarithm of the reciprocal of the hydrogen ion concentration expressed in grams per liter of solution as determined by standard methods.

Pollutant shall mean any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical waste, industrial waste, biological materials, radio active material, heat wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial waste, and certain characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).

POTW, publicly owned treatment works shall mean any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

Pretreatment shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to discharge to the town treatment works.

Pretreatment requirements shall mean any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.

Pretreatment standard shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users.

Process water shall mean liquid resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources, excluding sanitary wastewater.

Properly shredded garbage shall mean garbage that has been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in the treatment works, with no particle greater than ½ inch in any dimension.

Residential user (class I) shall mean all premises used only for human residency and which is connected to the treatment works.

Sanitary wastewater shall mean wastewater discharged from the sanitary conveniences of dwellings, office buildings, industrial plants, or institutions.

Significant industrial user shall be defined as follows:

- (1) Has a process wastewater flow of 25,000 gallons or more per average work day, excluding sanitary, non-contact cooling and boiler blowdown wastewater;
- (2) Contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW;
- (3) Is subject to categorical pretreatment standards; or
- (4) Has significant impact, either singularly or in combination with other significant dischargers, on the treatment works or the quality of its effluent.

Slug load shall mean any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standard in section 71-63 of this chapter or any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge.

Standard methods shall mean the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, Water Pollution Control Federation and American Water Works Association.

State shall mean the Commonwealth of Virginia.

Storm sewer shall mean a sewer for conveying storm, surface, and other waters, which is not intended to be transported to a treatment works.

Surface water shall mean:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters, such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (c) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as surface waters under this definition;
- (5) Tributaries of waters identified in subsections (1)—(4) of this definition;
- (6) The territorial sea; and
- (7) "Wetlands" adjacent to waters other than waters that are themselves wetlands, identified in subsections (1)—(6) of this definition.

Suspended solids shall mean the total suspended matter that either floats on the surface of, or is in suspension in, water or wastewater as determined by standard methods.

Treatment facility shall mean only those mechanical power-driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

Treatment works shall mean any devices and systems used for the storage, treatment, recycling and/or reclamation of sewage or liquid industrial waste, or other waste necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvements, remodeling, additions, or alterations, and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment, or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

Toxics shall mean any of the pollutants designated by federal regulations pursuant to Section 307(a)(1) of the Act.

User shall mean a source of wastewater discharge into a POTW.

User permit shall mean a document issued by the POTW to the user that permits the connection and/or introduction of wastes into the treatment works under the provisions of this chapter.

VPDES shall mean Virginia Pollutant Discharge Elimination System permit program, as administered by the Commonwealth of Virginia.

Wastewater shall mean a combination of liquid and water-carried wastes from residences, commercial buildings, industries, and institutions, together with any groundwater, surface water, or storm water that may be present.

WPCF shall mean the Water Pollution Control Federation.

Sec. 71-32. - Wastewater discharges.

It shall be unlawful under state and federal law to discharge without a VPDES permit to any natural outlet within the town or in any area under its jurisdiction. Wastewater discharges to the town's treatment works are not authorized unless permitted by the [town director](#) in accordance with provisions of this chapter.

Sec. 71-41. - Connection permit.

- (1) No person shall uncover, make any connections with, use, alter, or disturb any wastewater sewer or storm sewer without first obtaining a written permit from the [town director](#).
- (2) There shall be two classes of permits for connections to the town's treatment works and treatment facilities: class I - residential, class II - industrial. In all cases, the owner shall make application for a permit to connect to the town's treatment works on a form furnished by the town. The permit application shall be supplemented by wastewater information required to administer this chapter. The connection permit shall be applied for at the same time as the building permit.

Sec. 71-45. - Existing building sewers.

Existing building sewers may be used for connection of new buildings only when they are found, on examination and testing by the [town director](#), to meet the requirements of this chapter.

Sec. 71-49. - Conformance to applicable codes.

The connection of a building sewer into a treatment works shall conform to the requirements of the building and plumbing code or other applicable requirements of the town, or the procedures set forth in appropriate specifications of the Commonwealth of Virginia Sewerage Regulations, Uniform Building Code of Virginia, and American Society of Testing Materials. The connections shall be made gas-tight and water-tight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved in writing by the town director before installation.

Sec. 71-50. - Connection inspection.

The applicant for a building sewer connection permit shall notify the town director when such sewer connection, including laterals, is ready for inspection prior to its connection to the town's treatment works. Such connection inspections and testing as deemed necessary ~~by the director~~ shall be made by ~~the director or~~ a designated town inspector. No connection to the treatment works shall be authorized unless such materials and workmanship are approved by the inspector. Lateral lines and connections shall be left completely exposed until the inspection has been completed.

Sec. 71-51. - Protection of capacity for existing users.

~~The director shall not issue a~~ permit for any class of connection to the town's treatment works or treatment facilities shall not be issued unless there is sufficient capacity, not legally committed to other users, in the treatment works and treatment facilities to convey and adequately treat the quantity of wastewater which the requested connection will add to the treatment works or treatment facility. The town director shall permit such a connection if there are legally binding commitments to provide the needed capacity.

Sec. 71-63. - Restricted discharges.

- (1) No person shall discharge or cause to be discharged to any of the town's treatment works any substances, materials, waters, or wastes in such quantities or concentrations which do or are likely to:
 - (a) Create a fire or explosion hazard including, but not limited to, gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas; waste stream with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using test methods specified in 40 CFR 261.21;

- (b) Cause corrosive damage or hazard to structures, equipment, or personnel of the wastewater facilities, but in no case discharges having a pH lower than 5.0 or greater than 11.0;
 - (c) Cause obstruction to the flow in sewers, or other interference with the operation of treatment facilities due to accumulation of solid or viscous materials;
 - (d) Constitute a rate of discharge or substantial deviation from normal rates of discharge, ("slug discharge"), sufficient to cause interference in the operation and performance of the treatment facilities;
 - (e) Contain heat in amounts which are likely to accelerate the biodegradation of wastes, causing the formation of excessive amounts of hydrogen sulfide in the treatment works or inhibit biological activity in the treatment facilities, but in no case shall the discharge of heat cause the temperature in the Town's wastewater sewer to exceed 65 degrees C (150 degrees F) or the temperature of the influent to the treatment facilities to exceed 40 degrees C (104 degrees F) unless the facilities can accommodate such heat and the town has obtained prior approval from the approval authority;
 - (f) Contain more than 100 milligrams per liter of non-biodegradable oils of mineral or petroleum origin;
 - (g) Contain floatable oils, fat, or grease;
 - (h) Contain noxious gases, vapors or fumes, malodorous gas or substance in quantities that may cause a public nuisance or cause acute human or safety problems;
 - (i) Contain radioactive wastes in harmful quantities as defined by applicable state and federal regulations;
 - (j) Contain any garbage that has not been properly shredded;
 - (k) Contain any odor or color producing substances exceeding concentration limits which may be established ~~by the director~~ for purposes of meeting the town's VPDES permit;
 - (l) Petroleum oil, nonbiodegradeable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through;
 - (m) Any trucked or hauled pollutants except at designated discharge points.
- (2) If, in establishing discharge restrictions, discharge limits, or pretreatment standards pursuant to this article, the ~~town director~~ establishes concentration limits to be met by a user, the ~~town director~~ in lieu of concentration limits, may establish mass limits of comparable stringency for an individual user at the request of such user. Upon approval by the state, such limits should become pretreatment standards.

Sec. 71-64. - Categorical pretreatment standards.

- (1) No person shall discharge or cause to be discharged to any treatment works wastewater containing substances subject to an applicable categorical pretreatment standard

promulgated by EPA in excess of the quantity prescribed in such applicable pretreatment standards except as otherwise provided in this section. Compliance with such applicable pretreatment standards shall be within three years of the date the standard is promulgated, provided, however, compliance with a categorical pretreatment standard for new sources shall be required upon commencement of discharge to the treatment works.

- (2) The ~~town director~~ shall notify any industrial user affected by the provisions of this section and establish an enforceable compliance schedule for each.
- (3) No person shall discharge trucked hazardous wastes to the town's treatment works.

Sec. 71-66. - Water and energy conservation.

The conservation of water and energy shall be encouraged ~~by the director~~. In establishing discharge restrictions upon users, the ~~town director~~ shall take into account already implemented or planned conservation steps revealed by the user. Upon request ~~of the director~~, each user will provide the ~~town director~~ with pertinent information showing that the quantities of substances or pollutants have not been and will not be increased as a result of the conservation steps. Upon such a showing to the satisfaction of the ~~town director~~, ~~he shall make~~ adjustments shall be made to discharge restrictions, which have been based on concentrations to reflect the conservation steps.

Sec. 71-68. - Accidental discharges.

- (1) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the town for review, and shall be approved by the town before construction of the facility. No user who commences contribution to the POTW after the effective date of this chapter shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the town. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.
- (2) Within five days following an accidental discharge; the user shall submit to the ~~town director~~ a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the treatment works and treatment facility, fish kills, or any other

damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

- (3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

Sec. 71-71. - Information requirements.

- (1) All industrial dischargers shall file with the town wastewater information deemed necessary by the ~~town director~~ for determination of compliance with this chapter, the town's VPDES permit conditions, and state and federal law. Such information shall be provided by completion of a questionnaire designed and supplied by the ~~town director~~ and by supplements thereto as may be necessary. Information requested in the questionnaire and designated by the discharger as confidential is subject to the conditions of confidentiality as set out in subsection (3) of this section.
- (2) Where a person owns, operates or occupies properties designated as an industrial discharger at more than one location, separate information submittals shall be made for each location.
- (3) Information and data on an industrial discharger obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the discharger specifically requests and is able to demonstrate to the satisfaction of the town that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the discharger. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this chapter, the Virginia Pollutant Discharge Elimination System (VPDES) Permit, the state disposal system permit and/or the pretreatment programs, provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the town as confidential shall not be transmitted to any governmental agency or to the general public by the town until and unless a ten-day notification is given to the discharger.

Sec. 71-73. - Reporting requirements for permittee.

- (1) Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the wastewater treatment facilities, any user subject to pretreatment standards and requirements shall submit to the [town director](#) a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operations and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. In addition, the report shall contain the results of any sampling and analysis of the discharge as specified in subsection (2)(b) below. This statement shall be signed by an authorized representative of the user, and certified to by a qualified professional.
- (2)
 - (a) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of such pretreatment standard or in the case of a new source, after commencement of the discharge into the treatment works, shall submit to the [town director](#) during the months of June and December, unless required more frequently in the pretreatment standard ~~or by the director~~, a report indicating the nature and concentration, of pollutants in the effluent which are limited by such pretreatment standard. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow reported. At the discretion of the [town director](#) and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the [town director](#) may agree to alter the months during which the above reports are to be submitted.
 - (b) The [town director](#) may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subsection (2)(a) shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the [town director](#), of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the permit. All analysis shall be performed in accordance with procedures established by EPA pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136 and amendments thereto or with any other test procedures approved by EPA. Sampling shall be performed in accordance with the techniques approved by EPA. All samples analyzed by this method should be reported.

Sec. 71-74. - Provision for monitoring.

- (1) When required by the town director, the owner of any property serviced by a building sewer carrying class II wastewater discharges shall provide suitable access and such necessary meters and other devices in the building sewer to facilitate observation, sampling, and measurement of the wastewater. Such access shall be in a readily and safely accessible location and shall be provided in accordance with plans approved by the town director. The access shall be provided and maintained at the owner's expense so as to be safe and accessible at reasonable times.
- (2) The town director shall consider such factors as the volume and strength of discharge, rate of discharge, quantities of toxic materials in the discharge, treatment facility removal capabilities, and cost effectiveness in determining whether or not access and equipment for monitoring class II wastewater discharges shall be required.
- (3) Where the town director determines access and equipment for monitoring or measuring class II wastewater discharges is not practicable, reliable, or cost effective, ~~the director may specify~~ alternative methods of determining the characteristics of the wastewater discharge which will, ~~in the director's judgment,~~ provide a reasonably reliable measurement of such characteristics may be specified.
- (4) Measurements, tests, and analyses of the characteristics of wastewater required by this chapter shall conform to 40 CFR, Part 136 and be performed by a qualified laboratory. When such analyses are required of a discharger, the discharger may, in lieu of using the town's laboratory, make arrangement with any qualified laboratory, including that of the discharger, to perform such analyses.
- (5) Fees for any given measurement, test, or analysis of wastewater required by this chapter and performed by the town shall be the same for all classes of dischargers, regardless of the quantity or quality of the discharge and shall reflect only direct cost. Costs of analyses performed by an independent laboratory at the option of discharger shall be borne directly by the discharger.

Sec. 71-75. - Costs of damage.

If the drainage or discharge from any establishment causes a deposit, obstruction, or damage to any of the town's treatment works or treatment facility, the town director shall cause the deposit or obstruction to be promptly removed or cause the damage to be promptly repaired. The cost for such work, including materials, labor, and supervision shall be borne by the person causing such deposit, obstruction, or damage.

Sec. 71-81. - Wastewater with special characteristics.

- (1) While the ~~town will~~director should initially rely upon the National Categorical Pretreatment Standards to protect wastewater facilities or receiving waters, if any wastewater which contains substances or possesses characteristics shown to have deleterious effect upon the treatment works or treatment facilities, processes, equipment, or receiving waters, or constitutes a public nuisance or hazard, is discharged or is proposed for discharge to the wastewater sewers, the town director may require any or all of the following:
 - (a) Pretreatment by the user or discharger to a condition acceptable for discharge to the treatment works;
 - (b) Control over the quantities and rates of discharge;
 - (c) Development of compliance schedules to meet any applicable pretreatment requirements;
 - (d) Submission of reports necessary to assure compliance with applicable pretreatment requirements;
 - (e) Inspection, surveillance, and monitoring necessary to determine compliance with applicable pretreatment requirements;
 - (f) Remedies for noncompliance by any user. Such remedies may include injunctive relief, the civil penalties specified in article IX of this chapter, or appropriate criminal penalties; or
 - (g) Rejection of the wastewater if evidence discloses that discharge will create unreasonable hazards or have unreasonable deleterious effects on the treatment works or treatment facilities.
- (2) When considering the above alternatives, the town director shall assure that conditions of the town's permit are met. The town director shall also take into consideration cost effectiveness, the economic impact of the alternatives, and the willful noncompliance of the discharger. If the town director allows the pretreatment or equalization of wastewater flows, the installation of the necessary facilities shall be subject to review. The town director shall review and recommend any appropriate changes to the program, within 30 days of submittal.
- (3) Where pretreatment or flow-equalizing facilities are provided or required for any wastewater, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

Sec. 71-82. - Compliance with pretreatment requirements.

Persons required to pretreat wastewater in accordance with section 71-81 shall provide a statement, reviewed by an authorized representative of the user and certified by such

representative indicating whether applicable pretreatment requirements are being met on a consistent basis and, if not, describe the additional operation and maintenance or additional pretreatment required for the user to meet the pretreatment requirements. If additional pretreatment or operation and maintenance will be required to meet the pretreatment requirements, the user shall submit a plan (including schedules) to the [town director](#) as described in section 71-72(2)(i). The plan shall be consistent with applicable conditions of the town's permit or other local, state or federal laws.

Sec. 71-104. - Show cause hearing.

- (1) The town may order any user who causes or allows an unauthorized discharge to show cause why the proposed enforcement action should not be taken. Such hearings shall be preceded by a notice being served on the user specifying the time and place of the hearing, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.
- (2) The [town manager director](#) may conduct the hearing and take the evidence, or may designate any officer or employee of the town to:
 - (a) Issue in the name of the [town director](#) notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
 - (b) Take the evidence;
 - (c) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the [town manager director](#) for action thereon.
- (3) At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the transcript costs.
- (4) After the [town manager director](#) has reviewed the evidence, he may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances have been installed and existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

Sec. 71-105. - Legal action.

If any person discharges sewage, industrial wastes or other wastes into the town's treatment works contrary to the provisions of this chapter, applicable federal or state pretreatment requirements, or any order of the town, or if any industrial user refuses access to the ~~town director or his designee~~ for purposes of inspection, the town may commence an action for appropriate legal and/or equitable relief in the circuit court.

Sec. 71-113. - Permit.

Before commencement of construction of a private sewage disposal system, the owner shall obtain a permit signed by the ~~town manager or designee~~ ~~director~~. The application for such permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications and other information deemed necessary by the ~~town director~~. A permit and inspection fee, in such amount as prescribed by the town council, shall be paid to the town at the time the application is filed.

Sec. 71-115. - Inspection.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the ~~town director~~. The ~~town manager or director,~~ ~~or his~~ designee, shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the ~~town director~~ when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice ~~by the director~~.

Sec. 72-4. - Testing meters; adjustment of account for error; estimates for meter out of order.

- (a) Any consumer may request that his or her water meter be tested by filing a request to that effect with the town manager or designee ~~director of public utilities~~. The town director will ensure that the meter is properly tested.
- (b) Whenever a meter is found to have an overage in registration an adjustment shall be made between the town and the consumer on the basis of the error found. If the metering equipment is found to be out of order or fails to register for a certain period, the amount of water consumed shall be estimated, using as a basis the amount consumed during a similar period and under comparable conditions.

Sec. 72-6. - Adjustment for filling pools.

There shall be an adjustment of the sewage portion of the utilities bill for the annual filling of pools. The consumer must notify the town manager or designee ~~director~~ in advance of filling the pool. The adjustment will be based either on the volume of the pool to be filled or a pre and post filling read of the meter.

ORDINANCE 20210121

**ADOPTING REVISIONS TO CAPE CHARLES TOWN CODE
CHAPTERS 14, 42, 70, 71 AND 72**

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, contracting for management of the Town Harbor necessitates revisions to Chapter 14 – Beaches and Waterways; and

WHEREAS, upon review of Chapter 14, other inconsistent and out-of-date items were discovered; and

WHEREAS, as part of the revisions to Chapter 14, a necessary revision is being made to Chapter 42, Section 42-7; and

WHEREAS, recent organizational changes necessitate revisions to Chapter 70 – Water Supply, Chapter 71 – Sewers and Sewer Use, and Chapter 72 – Water and Sewer Service.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Cape Charles, this 21st day of January 2021, that Cape Charles Town Code Chapter 14 – Beaches and Waterways, Chapter 42 Section 42-7 – Motor Vehicles and Traffic, and various sections in Chapters 70 – Water Supply, 71 – Sewers and Sewer Use, and 72 – Water and Sewer Service be revised per the attached, to become effective immediately.

Adopted by the Town Council of Cape Charles on January 21, 2021.

By: _____
Mayor

ATTEST:

Town Clerk

Chapter 14 – BEACHES AND WATERWAYS

ARTICLE I. - IN GENERAL

Sec. 14-1. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 4 misdemeanor.

Sec. 14-2. - Littering beaches, shores, harbor, etc.

- (a) It shall be unlawful for any person to throw or deposit, or cause or permit to be thrown or deposited, any glass, bottle, glassware, can, or pieces thereof, or any garbage, waste or refuse of any kind on the public beaches along the Chesapeake Bay and other waters and waterways in the town or in the waters adjacent to the beaches and shores thereof.
- (b) It shall be unlawful for any person to deposit, or cause or permit to be deposited, in any of the waters of the harbor, beaches, or along the shores thereof, or in any of the streams or ditches emptying therein, or on any of the land adjacent or contiguous to the harbor, any refuse, offal, waste matter or other substance or material, whether earth, oil, liquid, animal, fish or vegetable matter, or other matter that may injuriously affect the sanitary, clean and safe condition of the water in the harbor or diminish the depth thereof.
- (c) A violation of any provision of this section shall constitute a class 3 misdemeanor.

Sec. 14-3. - Charges and fees.

- (a) The charges and fees for use of the grounds and property at the town beaches, waterways, harbor and harbor docks shall be established from time to time by the Cape Charles Town Council in its sole discretion. A copy of the current fee schedule shall be available at the town office and the harbor office.
- (b) A receipt for all fees collected under this section, and a report for such receipts along with all other money shall be submitted to the town treasurer the next business day.

ARTICLE II. - BEACHES

Sec. 14-4. - Placing obstructions on beach.

It shall be unlawful for any person to put, place or set any equipment, such as dugouts, chairs, umbrellas, windbreaks, surfboards, air floats, kayaks, rafts, boats, personal watercraft or similar paraphernalia not actually occupied or engaged, or to build or erect any fence or other obstruction, on any public beach, so as to obstruct, impede or retard the free and unconstrained use and occupancy of such beach by the public.

Sec. 14-5. - Operating vehicles on beach.

- (a) It shall be unlawful for any person to operate or drive a vehicle of any kind, including, but not limited to motor vehicles, bicycles, tricycles and similar devices, but not including wheelchairs and other power-driven mobility devices, on the public beaches within the town.
- (b) Town vehicles operated while cleaning or working on the beach, town police and emergency vehicles, and other governmental vehicles operating under proper jurisdiction shall be exempt from the application of this section.

Sec. 14-6. - Riding horses or other animals on beach.

It shall be unlawful for any person to ride a horse or other animal on the public beaches within the town.

Sec. 14-7. - Bathing suit or other clothing required on beach.

It shall be unlawful for any person not wearing a complete bathing suit or other clothing to bathe or be on the beach in the town. Females must be covered both top and bottom.

Sec. 14-8. - Removal of sand from shores, beaches, etc.

In order to conserve the beaches and shores in the town and to protect those areas adjacent to the beaches and shores, it shall be unlawful for any person to carry away or remove, or to cause to be carried away or removed, any sand from the shores, beaches or dunes or high land along the shores, beaches or dunes in the town; provided, however, that if it shall satisfactorily appear to the town manager or designee that the removal of sand, in any instance, will not be harmful to the conservation and protection of the beaches and shores or property adjacent thereto, a permit for such removal may be granted. Removal under such permit shall not constitute a violation of this section.

Sec. 14-9. - Designation and marking of swimming areas.

The town council may designate areas for public swimming or public bathing and may mark such areas with buoys which comply with state and federal laws or with the rules and regulations of the appropriate federal and state agencies and to place the same offshore.

Sec. 14-10. - Unsafe swimming areas.

The town manager or designee may prohibit swimming in such areas or places as may be determined to be unsafe. Areas determined to be unsafe shall be designated with appropriate markers.

ARTICLE III. – WATERWAYS

Sec. 14-11. - Removal or repair of hazardous or obstructing piers or other structures or vessels.

- (a) The owners of property in the town shall, at such times as the council may prescribe, remove, repair or secure any wharf, pier, piling, bulkhead or any other structure or vessel which might endanger the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within the town. If such property is deemed to be abandoned, the council may designate and empower an official to ascertain the lawful owner of such property and to have the owner repair, remove or secure such property.
- (b) The council, through its own agents or employees, may remove, repair or secure any wharf, pier, piling, bulkhead, or other structure or vessel which might endanger the public health or safety of other persons or which might constitute a hazard or obstruction to the lawful use of the waters within the town, if the owner of such property, after reasonable notice and reasonable time to do so, has failed to remove, repair or secure such wharf, pier, piling, bulkhead or other structure or vessel.
- (c) If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of

any known owner, the council, through its agents or employees, may repair such wharf, pier, piling, bulkhead or other structure or vessel or remove such property after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located.

- (d) If the council, through its own agents or employees, removes, repairs or secures any wharf, pier, piling, bulkhead or other structure or vessel after complying with the provisions of this section, the cost or expense thereof shall be chargeable to and paid by the owner of such property and, to the extent applicable, may be collected by the town as taxes and levies are collected.
- (e) Every charge authorized by this section with which the owner of any property has been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against such property, and such lien shall be recorded in the judgment lien docket book in the circuit court of the county. Such lien may be reduced to a personal judgment against the owner.

Sec. 14-12. - Sinking or abandoning vessels, barges, etc.; floating loose timbers, logs or debris.

It shall be unlawful and a class 3 misdemeanor for any person to voluntarily sink or abandon, or permit or cause to be sunk or abandoned, any vessel, barge, scow or other craft in the waters in the town, or to float loose timbers, logs or other debris therein.

Sec. 14-13. - Marking and removal of wrecked or sunken vessels, barges, etc.

Whenever any vessel, barge, scow or other craft is wrecked or sunk in any of the waters in the town, accidentally or otherwise, the owner of such vessel, barge, scow or other craft shall immediately mark it with a buoy and a lighted lantern at night and maintain such markers until such craft is removed, and it shall be the responsibility of such person to immediately remove the same and to prosecute such removal with diligence. The neglect or failure of the owner to so mark and remove the craft shall be unlawful and a class 3 misdemeanor. Each day the craft remains abandoned and unmarked shall constitute a separate violation of this section.

ARTICLE IV. - MOORING, DOCKING, ETC., IN HARBOR

Sec. 14-14. - Violations of article.

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

Sec. 14-15. - Mooring or anchoring generally.

No boat of any kind shall be moored or anchored inside the harbor elsewhere than at points designated by the town manager or designee, and in no event shall any craft be allowed to anchor in the harbor except in case of emergency.

Sec. 14-16. - Obstructing other vessels; mooring or tying up.

It shall be unlawful for any person to moor, anchor, tie up, lay off or stop any boat or other craft in the harbor in such manner as to prevent or obstruct the passage, approach, berthing or anchoring of other vessels or craft, except when specifically so authorized. No boat or other craft shall utilize in any way any bulkhead or pier space in the town harbor, except only that portion which is leased from the town.

Sec. 14-17. - Transfer of leased docking space.

No person leasing any slip or docking space in the town harbor shall transfer such slip or space to any other person.

Sec. 14-18. - Mooring or berthing charges generally.

- (a) The charges for mooring or berthing at designated points in the town harbor, other than those reserved for free public use, shall be established from time to time by the Cape Charles Town Council in its sole discretion. A copy of the current rate schedule shall be available at the town office and at the harbor office.
- (b) All charges prescribed in this section are to be paid in advance. No permit will be issued unless payment of the specified amount is made upon issuance of the permit. Failure to pay such charges shall constitute cause to revoke the permit and for the removal of the boat. Failure to remove any such boat, when ordered to do so, shall constitute a violation of this section.

Sec. 14-19. - Charges for electricity, water, etc., for houseboats.

Any person renting a slip or docking space in the town harbor and using such boat as a residence or for purpose of living thereon shall pay for utility services (electric, water, etc.) and garbage disposal such fees as may be established from time to time by the Cape Charles Town Council in its sole discretion, which fees shall be in addition to the mooring charges assessed pursuant to section 14-18. A copy of the current fee schedule shall be available at the town office and the harbor office.

Sec. 14-20. - Fees for loading or unloading commercial fisheries commodities.

The Cape Charles Town Council in its sole discretion shall establish fees for the loading or unloading of commercial fisheries commodities at the town harbor. A copy of the current fee schedule shall be available at the town office and the harbor office.

Sec. 14-21. - Limitations on use of small boat launching ramps.

- (a) It shall be unlawful for any person to dock a boat or vessel at or near the walkways or docking structures connected with the small boat launching ramps for more than 30 minutes. No person shall block the ramps with a boat or vessel at any time. The parking of boat trailers shall be sufficient distance from the ramps in areas designated for parking so that the ramps are not blocked.
- (b) It shall be unlawful for any person to load or unload any commercial commodities or equipment at or on the small boat ramps or their appurtenant walkways or docking structures or to store, pile or otherwise block such structures with any commodity or equipment in any manner.
- (c) A violation of this section shall constitute a class 3 misdemeanor.

Sec. 14-22. - Parking vehicles adjacent to docks.

No vehicle of any type or kind shall be parked adjacent to docks in the town harbor. Immediately upon loading or unloading, vehicles shall move to sections provided for parking.

Sec. 14-23. - Restriction on use of catwalks, walkways, etc.

No nets, crab pots, baskets, barrels, dredges or any other equipment or commodity shall be stored, piled or stacked on the catwalks or walkways of the town harbor or surrounding lands, except upon approval of the town manager or designee.

ARTICLE V. – GENERAL BOATING REGULATIONS

Sec. 14-24. - Adoption of state law.

Pursuant to the authority of Code of Virginia, § 29.1-744, all the provisions and requirements of the laws of the state contained in Code of Virginia, Title 29.1, Chapter 7, Articles 3 and 4, pertaining to boating and personal watercraft operation, as in force and effect on the date of the adoption of this Code, and as amended in the future, are hereby adopted and incorporated in this chapter by reference and made applicable within the town. Such provisions and requirements are hereby adopted, *mutatis mutandis*, and made a part of this chapter as fully as though set forth at length herein. It shall be unlawful for any person within the town to violate or fail, neglect or refuse to comply with any provision or requirement which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under the Code of Virginia.

Sec. 14-25. - Muffling devices for motorboats; use of cutouts.

Internal combustion engines used on any motorboat on the waters within the town shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The muffling device shall exhaust at or below the water line or it shall be equipped with mechanical baffles. The use of cutouts is prohibited.

Sec. 14-26. - No wake zone.

Vessels entering, leaving or moving about in the waters of the harbor shall not be operated in such manner as to create a wake or swell disruptive or injurious to other boats or craft anchored, tied up or plying in the harbor or fastened to bulkheads or shorelines, and such area shall be designated a "no wake zone".

Sec. 14-27. - Creation of loud, disturbing, etc., noise by persons aboard boat.

It shall be unlawful for any person, while aboard any motorboat, vessel, barge or any other watercraft, whether under way, drifting, berthed or at anchor, to make or create any loud, disturbing or unreasonable noise of such character, intensity or duration as to be detrimental to the health or life of any person or to unreasonably disturb or annoy the quiet, comfort or repose of any person.

Chapter 42 – MOTOR VEHICLES AND TRAFFIC

Sec. 42-7. - Operation of vehicles on sidewalks prohibited.

- (a) No vehicle shall be operated on the sidewalks, pedestrian paths, boardwalk or public pier of the town, unless directed by the police department and unless a vehicle is passing over the sidewalk to access a driveway where it passes over the sidewalk. Parked vehicles are prohibited from obstructing the sidewalks. For the purpose of this section, the term "vehicle" shall mean any and all wheeled modes of transportation, including but not limited to, automobiles, motorcycles, mopeds, bicycles, skateboards, roller skates, rollerblades and golf carts, but shall specifically exclude wheelchairs and other power-driven mobility devices for use by handicapped persons.
- (b) Non-motorized vehicles, such as bicycles, skateboards, roller skates and rollerblades, may be operated on sidewalks, pedestrian paths and the boardwalk when designated as part of the Cape Charles Community Trail.
- (c) Town police, maintenance and emergency vehicles, and other governmental vehicles operating under proper jurisdiction shall be exempt from this section.

Chapter 70 – WATER SUPPLY

Sec. 70-3. - Administration.

The town manager or designee shall administer, implement, and enforce the provisions of this chapter.

Sec. 70-5. - Inspections.

- (1) The town manager or authorized town, state or federal officials, bearing the proper credentials and identification, shall be permitted to enter all user premises or buildings to examine the pipes and fixtures and the manner in which the water is used and such user must frankly and without concealment answer questions relative to the use of water on such premises or in such building, and the town shall have the right, upon giving reasonable notice, to discontinue the service when such access is refused or not permitted.
- (2) The town manager or designee, bearing proper credentials and identification, shall be permitted to access all private property through which the town holds an easement for the purposes of inspection, observation, measurement, sampling, repair, and maintenance of any of the town's waterworks lying within the easement. All entry, and any subsequent work on the easement, shall be done in accordance with the terms of the easement pertaining to the private property involved.
- (3) While performing any necessary work on private properties referred to in subsections (1) and (2) above, the town shall observe all safety and occupational rules established by the owner or occupant of the property and applicable to the premises.

Sec. 70-21. - Specific definitions.

Unless the context of usage indicates otherwise, the meaning of specific terms in this chapter shall be as follows:

Backflow shall mean the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

Backflow prevention device shall mean any approved device, method, or type of construction intended to prevent backflow into a waterworks.

Consumer shall mean any person who drinks or otherwise uses water from a waterworks.

Consumer's water system shall mean any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

Cross connection shall mean any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

Curb stop shall mean the device between the water main and the water meter utilized for stopping water flow to the meter.

Distribution main shall mean a water main whose primary purpose is to provide treated water to service connections.

Domestic use shall mean normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

Groundwater shall mean all water obtained from sources not classified as surface water (or surface water sources).

Industrial user (class II) shall mean premises consuming water for all non-residential uses.

Nonpotable water shall mean water not classified as pure water.

Owner or water purveyor shall mean an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government which supplies or proposes to supply water to any person within this state from or by means of any waterworks.

Pure water or potable water shall mean water fit for human consumption and domestic use which is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served.

Residential user (class I) shall mean a premises consuming water for domestic use only.

Service connection shall mean the point of delivery of water to a customer's building service line as follows:

- (1) If a meter is installed, the service connection is the downstream side of the meter;
- (2) If a meter is not installed, the service connection is the point of connection to the waterworks;
- (3) When the water purveyor is also the building owner, the service connection is the entry point to the building.

Surface water shall mean all water open to the atmosphere and subject to surface runoff.

Water meter shall mean the device installed between the water main and the service connection to measure the volume of water supplied to a house or other premises.

Water purveyor the same meaning as "owner".

Water supply shall mean water that has been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term water supply shall not include any waters above the point of intake of such waterworks.

Water supply main or main shall mean any water supply pipeline that is part of a waterworks distribution system.

Waterworks shall mean a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term waterworks shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Sec. 70-31. - Application for service; permit for connection.

Every person requiring a supply of water, or desiring any change, alteration or repair to any lines furnishing such supply must make application therefore upon such form as may be prescribed and provided for that purpose. The application must state truly and fully all the uses to which the water is to be applied and no different or additional use will be allowed except by written permission issued by the town upon proper application being made. There shall be two classes of permits for connection to the town's waterworks: class I - residential, class II - industrial. The connection permit shall be applied for at the same time as the building permit. The permit for connection to the service pipes or water mains shall be issued to a licensed contractor employed by the applicant to make such connection. Not more than one dwelling unit or premises shall be supplied from one connection, except by written permission of the town manager. Where such connection is made, the owner is ultimately responsible for payment of all accounts.

Sec. 70-36. - Protection of capacity for existing users.

A permit for any class of connection to the town's waterworks shall not be issued unless there is sufficient capacity, not legally committed to other users, in the waterworks to supply the quantity of water which the requested connection will require. The town may permit such a connection if there are legally binding commitments to provide the needed capacity.

Sec. 70-43. - Turning water on or off without authority.

- (1) Except in emergency situations, it shall be unlawful for any person, not acting under the authority of the town, to turn the water of the town on or off for any premises whatsoever.
- (2) It shall be unlawful for any person to take any water from the waterworks system of the town except in accordance with the provisions of this article.
- (3) This section shall not be construed to prohibit plumbers from turning water into pipes to test the same or for purposes of testing plumbing connected thereto.

Sec. 70-62. - Inspections.

- (1) The town shall require inspections to be made of properties served by the waterworks where cross-connection with the waterworks is deemed possible. The frequency of inspections shall be established based on potential health hazards involved.
- (2) Representatives of the town shall have the right to enter, at any reasonable time, properties served by a connection to the town waterworks for the purpose of inspecting the piping system for cross-connections. Upon request, the owner or occupant of property so served shall furnish to the inspector pertinent information regarding the piping system on such

property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections.

Sec. 70-64. - Denial or discontinuance of service for lack of required device.

The town may deny or discontinue water service to a consumer if a required backflow prevention device is not installed. If it is found that the device has been removed or bypassed, or if a cross-connection exists on the premises, or if the pressure in the waterworks is lowered below ten pounds per square inch, the town shall take action to ensure that the waterworks is adequately protected at all times. Water service to such premises shall not be restored until the deficiencies have been corrected or eliminated in accordance with this article and to the satisfaction of the town.

Sec. 70-72. - Low flow devices and fixtures.

- (1) Low flow devices and fixtures, as specified in the Virginia Uniform Statewide Building Code, are required in all new construction and in all remodeling and/or replacement of plumbing fixtures in existing structures.
- (2) Lavatories in a public facility restroom shall be equipped with standard valve or spring self-closing faucets having outlet devices that limit the flow rate to a maximum of 0.5 gallons per minute or self-closing metering valves which limit flow of 0.25 gallons per cycle.
- (3) All new car wash installations shall be equipped with a water recycling system approved by the town.
- (4) All new construction, repair or replacement of continuous flow devices and any other water connector device or appliance requiring a continuous flow of five gallons per minute or more shall be equipped with a recycling system approved by the town.

Sec. 70-76. - Penalties for noncompliance.

- (1) Any person who shall violate any provision of this article, shall, upon conviction thereof, in addition to additional charges and/or other actions set forth herein, be fined not more than \$250.00. Each act or each day's continuation of a violation shall be considered a separate offense.
- (2) In addition to the foregoing, the town may suspend water service to any person violating the provisions of this article. If water service is terminated, the person shall pay a reconnection fee of \$50.00 plus all outstanding fines and fees before service will be restored.

Chapter 71 – SEWERS AND SEWER USE

Sec. 71-3. - Administration.

The town manager or designee shall administer, implement, and enforce the provisions of this chapter.

Sec. 71-5. - Inspections.

- (1) The town manager or authorized town, state or federal officials, bearing the proper credentials and identification, shall be permitted to enter all premises where an effluent source or treatment system is located at any reasonable time for the purposes of inspection, observation, measurement, sampling and/or copying records of the wastewater discharge to ensure that discharge to the treatment works is in accordance with the provisions of this chapter and the Virginia Sewage Collection and Treatment Regulations.
- (2) The town manager or designee, bearing proper credentials and identification, shall be permitted to access all private property through which the town holds an easement for the purposes of inspection, observation, measurement, sampling, repair, and maintenance of any of the town's treatment works lying within the easement. All entry, and any subsequent work on the easement, shall be done in accordance with the terms of the easement pertaining to the private property involved.
- (3) While performing any necessary work on private properties referred to in subsections (1) and (2) above, the town shall observe all safety and occupational rules established by the owner or occupant of the property and applicable to the premises.

Sec. 71-21. - Specific definitions.

Unless the context of usage indicates otherwise, the meaning of specific terms in this chapter shall be as follows:

Act shall mean the Federal Clean Water Act, 33. U.S.C. 1251 et seq.

Approval authority means the Executive Director or Director of the Department of Environmental Quality.

ASTM shall mean the American Society for Testing and Materials.

Authorized representative of industrial user shall mean:

- (1) A principal executive officer of at least the level of vice president, if the industrial user is a corporation; or
- (2) A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively; or
- (3) A duly authorized representative of the individual designated in #1 or #2, above, if such representative is responsible for the overall operation of the facility from which the discharge to the POTW originates. The authorization must be submitted to the director of public utilities prior to or together with any reports to be signed by the authorized representative.

BOD (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C, expressed in milligrams per liter.

Building sewer shall mean the extension from a building wastewater plumbing facility to the treatment works.

Categorical pretreatment standard or categorical standard shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(a) and 307(c) of the Act, which apply to specific categories of industrial users which appear in 40 CFR Chapter I, Subchapter N, Parts 405—471.

Combined sewer shall mean a sewer intended to receive both wastewater and storm or surface water.

Day shall mean the 24-hour period beginning at 12:01 a.m.

Discharger shall mean person or persons, firm, company, industry or other similar sources of wastewater who introduce such into the POTW.

Easement shall mean an acquired legal right for the specific use of land owned by others.

EPA shall mean the United States Environmental Protection Agency.

Establishment shall mean any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal processing operations, quarry, oil refinery, boat, vessel, and each and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

Existing source shall mean any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

Garbage shall mean the solid animal and vegetable wastes resulting from the domestic or commercial handling, storage, dispensing, preparation, cooking, and serving of foods.

Ground water shall mean any water beneath the land surface in the zone of saturation.

Indirect discharge shall mean the introduction of (nondomestic) pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act.

Industrial user or significant discharger means a source of indirect discharge, or a nondomestic discharge to a treatment works.

Industrial wastes shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

Interference shall mean an inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, which clearly causes, in whole or in part, a violation of any requirement of the POTW's VPDES permit, including those discharges that prevent the use or disposal of sludge by the POTW in accordance with any federal or state laws, regulations, permits or sludge management plans.

May is permissible; *shall* is mandatory.

Municipality shall mean a city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal of sewage, industrial, or other wastes.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake, or any other body of surface or groundwater.

New source shall have the same meaning as provided in 40 CFR Part 403.3(k) (1990).

Owner shall mean the commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this or any other state or country, or any person or group of persons acting individually or as a group.

Pass-through shall mean the discharge of pollutants through a POTW into State waters in quantities or concentrations which are a cause in whole or in part of a violation of any requirement of the POTW's VPDES permit, including an increase in the magnitude or duration of a violation.

Person shall mean any individual, firm, company, association, society, partnership, corporation, municipality, or other similar organization, agency or group.

pH shall mean the logarithm of the reciprocal of the hydrogen ion concentration expressed in grams per liter of solution as determined by standard methods.

Pollutant shall mean any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical waste, industrial waste, biological materials, radioactive material, heat wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial waste, and certain characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).

POTW, publicly owned treatment works shall mean any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

Pretreatment shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to discharge to the town treatment works.

Pretreatment requirements shall mean any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.

Pretreatment standard shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users.

Process water shall mean liquid resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources, excluding sanitary wastewater.

Properly shredded garbage shall mean garbage that has been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in the treatment works, with no particle greater than ½ inch in any dimension.

Residential user (class I) shall mean all premises used only for human residency and which is connected to the treatment works.

Sanitary wastewater shall mean wastewater discharged from the sanitary conveniences of dwellings, office buildings, industrial plants, or institutions.

Significant industrial user shall be defined as follows:

- (1) Has a process wastewater flow of 25,000 gallons or more per average workday, excluding sanitary, non-contact cooling and boiler blowdown wastewater;
- (2) Contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW;
- (3) Is subject to categorical pretreatment standards; or
- (4) Has significant impact, either singularly or in combination with other significant dischargers, on the treatment works or the quality of its effluent.

Slug load shall mean any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standard in section 71-63 of this chapter or any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge.

Standard methods shall mean the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, Water Pollution Control Federation and American Water Works Association.

State shall mean the Commonwealth of Virginia.

Storm sewer shall mean a sewer for conveying storm, surface, and other waters, which is not intended to be transported to a treatment works.

Surface water shall mean:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters, such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (c) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as surface waters under this definition;
- (5) Tributaries of waters identified in subsections (1) – (4) of this definition;
- (6) The territorial sea; and
- (7) "Wetlands" adjacent to waters other than waters that are themselves wetlands, identified in subsections (1) – (6) of this definition.

Suspended solids shall mean the total suspended matter that either floats on the surface of, or is in suspension in, water or wastewater as determined by standard methods.

Treatment facility shall mean only those mechanical power-driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

Treatment works shall mean any devices and systems used for the storage, treatment, recycling and/or reclamation of sewage or liquid industrial waste, or other waste necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvements, remodeling, additions, or alterations, and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment, or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

Toxics shall mean any of the pollutants designated by federal regulations pursuant to Section 307(a)(1) of the Act.

User shall mean a source of wastewater discharge into a POTW.

User permit shall mean a document issued by the POTW to the user that permits the connection and/or introduction of wastes into the treatment works under the provisions of this chapter.

VPDES shall mean Virginia Pollutant Discharge Elimination System permit program, as administered by the Commonwealth of Virginia.

Wastewater shall mean a combination of liquid and water-carried wastes from residences, commercial buildings, industries, and institutions, together with any groundwater, surface water, or storm water that may be present.

WPCF shall mean the Water Pollution Control Federation.

Sec. 71-32. - Wastewater discharges.

It shall be unlawful under state and federal law to discharge without a VPDES permit to any natural outlet within the town or in any area under its jurisdiction. Wastewater discharges to the town's treatment works are not authorized unless permitted by the town in accordance with provisions of this chapter.

Sec. 71-41. - Connection permit.

- (1) No person shall uncover, make any connections with, use, alter, or disturb any wastewater sewer or storm sewer without first obtaining a written permit from the town.
- (2) There shall be two classes of permits for connections to the town's treatment works and treatment facilities: class I - residential, class II - industrial. In all cases, the owner shall make application for a permit to connect to the town's treatment works on a form furnished by the town. The permit application shall be supplemented by wastewater information required to administer this chapter. The connection permit shall be applied for at the same time as the building permit.

Sec. 71-45. - Existing building sewers.

Existing building sewers may be used for connection of new buildings only when they are found, on examination and testing by the town, to meet the requirements of this chapter.

Sec. 71-49. - Conformance to applicable codes.

The connection of a building sewer into a treatment works shall conform to the requirements of the building and plumbing code or other applicable requirements of the town, or the procedures set forth in appropriate specifications of the Commonwealth of Virginia Sewerage Regulations, Uniform Building Code of Virginia, and American Society of Testing Materials. The connections shall be made gas-tight and water-tight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved in writing by the town before installation.

Sec. 71-50. - Connection inspection.

The applicant for a building sewer connection permit shall notify the town when such sewer connection, including laterals, is ready for inspection prior to its connection to the town's treatment works. Such connection inspections and testing as deemed necessary shall be made by a designated town inspector. No connection to the treatment works shall be authorized unless such materials and workmanship are approved by the inspector. Lateral lines and connections shall be left completely exposed until the inspection has been completed.

Sec. 71-51. - Protection of capacity for existing users.

A permit for any class of connection to the town's treatment works or treatment facilities shall not be issued unless there is sufficient capacity, not legally committed to other users, in the treatment works and treatment facilities to convey and adequately treat the quantity of wastewater which the requested connection will add to the treatment works or treatment facility. The town shall permit such a connection if there are legally binding commitments to provide the needed capacity.

Sec. 71-63. - Restricted discharges.

- (1) No person shall discharge or cause to be discharged to any of the town's treatment works any substances, materials, waters, or wastes in such quantities or concentrations which do or are likely to:
 - (a) Create a fire or explosion hazard including, but not limited to, gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas; waste stream with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using test methods specified in 40 CFR 261.21;
 - (b) Cause corrosive damage or hazard to structures, equipment, or personnel of the wastewater facilities, but in no case discharges having a pH lower than 5.0 or greater than 11.0;
 - (c) Cause obstruction to the flow in sewers, or other interference with the operation of treatment facilities due to accumulation of solid or viscous materials;
 - (d) Constitute a rate of discharge or substantial deviation from normal rates of discharge, ("slug discharge"), sufficient to cause interference in the operation and performance of the treatment facilities;
 - (e) Contain heat in amounts which are likely to accelerate the biodegradation of wastes, causing the formation of excessive amounts of hydrogen sulfide in the treatment works or inhibit biological activity in the treatment facilities, but in no case shall the discharge of heat cause the temperature in the Town's wastewater sewer to exceed 65 degrees C (150 degrees F) or the temperature of the influent to the treatment facilities to exceed 40 degrees C (104 degrees F) unless the facilities can accommodate such heat and the town has obtained prior approval from the approval authority;
 - (f) Contain more than 100 milligrams per liter of non-biodegradable oils of mineral or petroleum origin;
 - (g) Contain floatable oils, fat, or grease;
 - (h) Contain noxious gases, vapors or fumes, malodorous gas or substance in quantities that may cause a public nuisance or cause acute human or safety problems;
 - (i) Contain radioactive wastes in harmful quantities as defined by applicable state and federal regulations;
 - (j) Contain any garbage that has not been properly shredded;
 - (k) Contain any odor or color producing substances exceeding concentration limits which may be established for purposes of meeting the town's VPDES permit;
 - (l) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through;
 - (m) Any trucked or hauled pollutants except at designated discharge points.

- (2) If, in establishing discharge restrictions, discharge limits, or pretreatment standards pursuant to this article, the town establishes concentration limits to be met by a user, the town in lieu of concentration limits, may establish mass limits of comparable stringency for an individual user at the request of such user. Upon approval by the state, such limits should become pretreatment standards.

Sec. 71-64. - Categorical pretreatment standards.

- (1) No person shall discharge or cause to be discharged to any treatment works wastewater containing substances subject to an applicable categorical pretreatment standard promulgated by EPA in excess of the quantity prescribed in such applicable pretreatment standards except as otherwise provided in this section. Compliance with such applicable pretreatment standards shall be within three years of the date the standard is promulgated, provided, however, compliance with a categorical pretreatment standard for new sources shall be required upon commencement of discharge to the treatment works.
- (2) The town shall notify any industrial user affected by the provisions of this section and establish an enforceable compliance schedule for each.
- (3) No person shall discharge trucked hazardous wastes to the town's treatment works.

Sec. 71-66. - Water and energy conservation.

The conservation of water and energy shall be encouraged. In establishing discharge restrictions upon users, the town shall take into account already implemented or planned conservation steps revealed by the user. Upon request, each user will provide the town with pertinent information showing that the quantities of substances or pollutants have not been and will not be increased as a result of the conservation steps. Upon such a showing to the satisfaction of the town, adjustments shall be made to discharge restrictions, which have been based on concentrations to reflect the conservation steps.

Sec. 71-68. - Accidental discharges.

- (1) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the town for review and shall be approved by the town before construction of the facility. No user who commences contribution to the POTW after the effective date of this chapter shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the town. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.
- (2) Within five days following an accidental discharge; the user shall submit to the town a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the treatment works and treatment facility, fish kills, or any other damage to person or

property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

- (3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

Sec. 71-71. - Information requirements.

- (1) All industrial dischargers shall file with the town wastewater information deemed necessary by the town for determination of compliance with this chapter, the town's VPDES permit conditions, and state and federal law. Such information shall be provided by completion of a questionnaire designed and supplied by the town and by supplements thereto as may be necessary. Information requested in the questionnaire and designated by the discharger as confidential is subject to the conditions of confidentiality as set out in subsection (3) of this section.
- (2) Where a person owns, operates or occupies properties designated as an industrial discharger at more than one location, separate information submittals shall be made for each location.
- (3) Information and data on an industrial discharger obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the discharger specifically requests and is able to demonstrate to the satisfaction of the town that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the discharger. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this chapter, the Virginia Pollutant Discharge Elimination System (VPDES) Permit, the state disposal system permit and/or the pretreatment programs, provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the town as confidential shall not be transmitted to any governmental agency or to the general public by the town until and unless a ten-day notification is given to the discharger.

Sec. 71-73. - Reporting requirements for permittee.

- (1) Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the wastewater treatment facilities, any user subject to pretreatment standards and requirements shall submit to the town a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operations and maintenance and/or pretreatment is necessary to bring the user into compliance with the

applicable pretreatment standards or requirements. In addition, the report shall contain the results of any sampling and analysis of the discharge as specified in subsection (2)(b) below. This statement shall be signed by an authorized representative of the user, and certified by a qualified professional.

- (2) (a) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of such pretreatment standard or in the case of a new source, after commencement of the discharge into the treatment works, shall submit to the town during the months of June and December, unless required more frequently in the pretreatment standard, a report indicating the nature and concentration, of pollutants in the effluent which are limited by such pretreatment standard. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow reported. At the discretion of the town and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the town may agree to alter the months during which the above reports are to be submitted.
- (b) The town may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subsection (2)(a) shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the town, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the permit. All analysis shall be performed in accordance with procedures established by EPA pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136 and amendments thereto or with any other test procedures approved by EPA. Sampling shall be performed in accordance with the techniques approved by EPA. All samples analyzed by this method should be reported.

Sec. 71-74. - Provision for monitoring.

- (1) When required by the town, the owner of any property serviced by a building sewer carrying class II wastewater discharges shall provide suitable access and such necessary meters and other devices in the building sewer to facilitate observation, sampling, and measurement of the wastewater. Such access shall be in a readily and safely accessible location and shall be provided in accordance with plans approved by the town. The access shall be provided and maintained at the owner's expense so as to be safe and accessible at reasonable times.
- (2) The town shall consider such factors as the volume and strength of discharge, rate of discharge, quantities of toxic materials in the discharge, treatment facility removal capabilities, and cost effectiveness in determining whether or not access and equipment for monitoring class II wastewater discharges shall be required.
- (3) Where the town determines access and equipment for monitoring or measuring class II wastewater discharges is not practicable, reliable, or cost effective, alternative methods of determining the characteristics of the wastewater discharge which will provide a reasonably reliable measurement of such characteristics may be specified.

- (4) Measurements, tests, and analyses of the characteristics of wastewater required by this chapter shall conform to 40 CFR, Part 136 and be performed by a qualified laboratory. When such analyses are required of a discharger, the discharger may, in lieu of using the town's laboratory, make arrangement with any qualified laboratory, including that of the discharger, to perform such analyses.
- (5) Fees for any given measurement, test, or analysis of wastewater required by this chapter and performed by the town shall be the same for all classes of dischargers, regardless of the quantity or quality of the discharge and shall reflect only direct cost. Costs of analyses performed by an independent laboratory at the option of discharger shall be borne directly by the discharger.

Sec. 71-75. - Costs of damage.

If the drainage or discharge from any establishment causes a deposit, obstruction, or damage to any of the town's treatment works or treatment facility, the town shall cause the deposit or obstruction to be promptly removed or cause the damage to be promptly repaired. The cost for such work, including materials, labor, and supervision shall be borne by the person causing such deposit, obstruction, or damage.

Sec. 71-81. - Wastewater with special characteristics.

- (1) While the town will initially rely upon the National Categorical Pretreatment Standards to protect wastewater facilities or receiving waters, if any wastewater which contains substances or possesses characteristics shown to have deleterious effect upon the treatment works or treatment facilities, processes, equipment, or receiving waters, or constitutes a public nuisance or hazard, is discharged or is proposed for discharge to the wastewater sewers, the town may require any or all of the following:
 - (a) Pretreatment by the user or discharger to a condition acceptable for discharge to the treatment works;
 - (b) Control over the quantities and rates of discharge;
 - (c) Development of compliance schedules to meet any applicable pretreatment requirements;
 - (d) Submission of reports necessary to assure compliance with applicable pretreatment requirements;
 - (e) Inspection, surveillance, and monitoring necessary to determine compliance with applicable pretreatment requirements;
 - (f) Remedies for noncompliance by any user. Such remedies may include injunctive relief, the civil penalties specified in article IX of this chapter, or appropriate criminal penalties; or
 - (g) Rejection of the wastewater if evidence discloses that discharge will create unreasonable hazards or have unreasonable deleterious effects on the treatment works or treatment facilities.
- (2) When considering the above alternatives, the town shall assure that conditions of the town's permit are met. The town shall also take into consideration cost effectiveness, the economic impact of the alternatives, and the willful noncompliance of the discharger. If the town allows the pretreatment or equalization of wastewater flows, the installation of the necessary facilities shall be subject to review. The town shall review and recommend any appropriate changes to the program, within 30 days of submittal.

- (3) Where pretreatment or flow-equalizing facilities are provided or required for any wastewater, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

Sec. 71-82. - Compliance with pretreatment requirements.

Persons required to pretreat wastewater in accordance with section 71-81 shall provide a statement, reviewed by an authorized representative of the user and certified by such representative indicating whether applicable pretreatment requirements are being met on a consistent basis and, if not, describe the additional operation and maintenance or additional pretreatment required for the user to meet the pretreatment requirements. If additional pretreatment or operation and maintenance will be required to meet the pretreatment requirements, the user shall submit a plan (including schedules) to the town as described in section 71-72(2)(i). The plan shall be consistent with applicable conditions of the town's permit or other local, state or federal laws.

Sec. 71-104. - Show cause hearing.

- (1) The town may order any user who causes or allows an unauthorized discharge to show cause why the proposed enforcement action should not be taken. Such hearings shall be preceded by a notice being served on the user specifying the time and place of the hearing, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.
- (2) The town manager may conduct the hearing and take the evidence, or may designate any officer or employee of the town to:
 - (a) Issue in the name of the town notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
 - (b) Take the evidence;
 - (c) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the town manager for action thereon.
- (3) At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the transcript costs.
- (4) After the town manager has reviewed the evidence, he may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances have been installed and existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

Sec. 71-105. - Legal action.

If any person discharges sewage, industrial wastes or other wastes into the town's treatment works contrary to the provisions of this chapter, applicable federal or state pretreatment requirements, or any order of the town, or if any industrial user refuses access to the town for

purposes of inspection, the town may commence an action for appropriate legal and/or equitable relief in the circuit court.

Sec. 71-113. - Permit.

Before commencement of construction of a private sewage disposal system, the owner shall obtain a permit signed by the town manager or designee. The application for such permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications and other information deemed necessary by the town. A permit and inspection fee, in such amount as prescribed by the town council, shall be paid to the town at the time the application is filed.

Sec. 71-115. - Inspection.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the town. The town manager or designee shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the town when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice.

Chapter 72 – WATER AND SEWER SERVICE

Sec. 72-4. - Testing meters; adjustment of account for error; estimates for meter out of order.

- (a) Any consumer may request that his or her water meter be tested by filing a request to that effect with the town manager or designee. The town will ensure that the meter is properly tested.
- (b) Whenever a meter is found to have an overage in registration an adjustment shall be made between the town and the consumer on the basis of the error found. If the metering equipment is found to be out of order or fails to register for a certain period, the amount of water consumed shall be estimated, using as a basis the amount consumed during a similar period and under comparable conditions.

Sec. 72-6. - Adjustment for filling pools.

There shall be an adjustment of the sewage portion of the utilities bill for the annual filling of pools. The consumer must notify the town manager or designee in advance of filling the pool. The adjustment will be based either on the volume of the pool to be filled or a pre- and post-filling read of the meter.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Authorization for Town Manager to Negotiate and Settle Pending Lawsuit with Kevcor, Inc.		AGENDA DATE January 21, 2021
	SUBJECT/PROPOSAL/REQUEST: Authorization for Town Manager to Negotiate and Settle Pending Lawsuit with Kevcor, Inc. within budget constraints		ITEM NUMBER: 7D
	ATTACHMENTS: N/A		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Kevcor Construction was hired as the lead contractor for the Multi Use Trails, Phase 2 Project, which was a locally administered, VDOT and federally funded project. At conclusion, the Town accessed liquidated damages for certain late performance and missing material certifications. Kevcor contested these assessments, and on November 14, 2019, Kevcor filed suit against the Town claiming remission of the liquidated damages.

ITEM SPECIFICS:

The Town and Kevcor have attempted good faith negotiations to reach a fair settlement. When it became clear that there appeared to be an impasse, both sides agreed to mediation. This mediation process has proceeded well, and a potential settlement now appears likely. To continue this effort the Town Manager requests the authority to finish negotiations and formally settle the case, avoiding the cost of future litigation. The Town Manager is confident this matter can be concluded within currently budget resources.

RECOMMENDATION:

Staff recommends the Council authorize the Town Manager to finish negotiations and settle the pending lawsuit with Kevcor Inc., within currently budgeted resources.