



***GATE CITY TOWN COUNCIL MINUTES  
AUGUST 13, 2013  
156 E. JACKSON ST.  
6:30 PM***

**PUBLIC HEARING:**

**Revise Chapter 11, Business License of the Gate City Ordinance**

**I.** Mayor, Frances Perry called Public Hearing to order at 6:30 P.M.

**II. ROLL CALL** Town Clerk, Kathy Riley

Present: Mayor, Frances Perry  
Vice Mayor, Allan "Cotton" Roberts  
Council Member, Robin Richards  
Council Member, Wallace W. Ross, Jr.  
Absent: Council Member, Walter Salyers  
Council Member, Roger Cassell

Others present: Town Attorney, M. Brooks, Town Manager, G. Jones, Debbie Kindle, Chief Birchfield

**III. NEW BUSINESS**

- **Revise Chapter 11, Business License – No comments from Council.**

**IV PUBLIC COMMENT – No comments from the public.**

**Close Public Comment at 6:32 P.M.**

**V. Public Hearing closes at 6:32 P.M.**

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Mayor Frances Perry

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Town Clerk, Kathy Riley

**PUBLIC HEARING:**

**Sale of Town Owned Property Ordinance**

I. Mayor, Frances Perry called Public Hearing to order at 6:32 P.M.

II. **ROLL CALL** Town Clerk, Kathy Riley

Present: Mayor, Frances Perry  
Vice Mayor, Allan "Cotton" Roberts  
Council Member, Robin Richards  
Council Member, Wallace W. Ross, Jr.  
Absent: Council Member, Walter Salyers  
Council Member, Roger Cassell

Others present: Town Attorney, M. Brooks, Town Manager, G. Jones, D. Kindle, Chief Birchfield

III. **NEW BUSINESS**

- **Sale of Town Owned Property Ordinance** –

**Council Member, R. Richards** – Questioned if all properties the town has is for sale.  
**Town Attorney, M. Brooks** – Advised Council of properties that deeds have not been found.  
**Town Clerk, K. Riley** – Asked Council of their receipt of email regarding the Option 1 and 2 for the Starnes building lot.

IV **PUBLIC COMMENT – No comment from the public.**

**Close Public Comment at 6:33 P.M.**

V. **Public Hearing closes at 6:35 P.M.**

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Mayor Frances Perry

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Town Clerk, Kathy Riley

**GATE CITY TOWN COUNCIL MEETING**  
**AUGUST 13, 2013**

I. COUNCIL MEETING CALLED TO ORDER AT 6:35 P.M. BY: Mayor - Frances Perry

II. ROLL CALL – Town Clerk - Kathy Riley

PRESENT: Mayor, Frances Perry  
Vice Mayor, Allan “Cotton” Roberts  
Council Member, Robin Richards  
Council Member, Wallace W. Ross, Jr.  
ABSENT: Council Member, Walter Salyers  
Council Member, Roger Cassell

Others present: Town Attorney, M. Brooks, Town Manager, G. Jones, Ronald and Jan Laney, Benny Reed, Chuck and Arletha Newton, Andy Miles, Debbie Kindle, Chief Birchfield

III. INVOCATION Don Muncie

IV. PLEDGE OF ALLEGIANCE Sergeant of Arms, Chuck Newton

V. APPROVAL OF AGENDA

Motion made to approve the agenda.

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas, 3  
Nays, 0  
Absent, 2-W. Salyers, R. Cassell  
Abstain, 0

VI. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS AND INTRODUCTION OF GUESTS.

VII. APPROVAL OF MINUTES

Mayor Perry - Are there any corrections to the minutes for the:

- **Public Hearing – Revision of Chapter 9-Gate City Ordinance** of July 9, 2013 as presented?
- **Public Hearing – Flea Market Ordinance** of July 9, 2013 as presented?
- **Council Meeting** of July 9, 2013 as presented?
- **Special Called Meeting – Selection of Financial Institution** of July 22, 2013 as presented?

All minutes listed above were approved as presented.

## VIII. APPROVAL OF PAYMENTS

### Motion made for approval for payment of bills for June, 2013

Motion by: Vice Mayor, A. Roberts 2nd by: Council Member, W.W. Ross, Jr.

VOTE:	Yeas,	3
	Nays,	0
	Absent,	2-W. Salyers, R. Cassell
	Abstain,	0

## IX. PUBLIC COMMENT

**Jan and Randall Laney, 185 Lombard Street** – Discussed water drainage problem, paving of street, driveway washing out, clogged drain and presented pictures as documentation to Council to review.

**Council Member, W. W. Ross, Jr.** – Stated he looked at condition of street and agrees it needs paving, but it is not as bad as other streets that need attention and suggested placement of a barrier to divert water.

**Randall Laney** – Made suggestions to correct the problem.

**Mayor Perry** – Suggested Street Committee, R. Cassell and W.W. Ross, Jr. to look at it.

**Town Manager, G. Jones** – Asked the Laney's of best time to contact them to look at it.

Mayor Perry closed the public comment session at 6:45 P.M. and opened the consent agenda session.

## X. COMMUNICATIONS – No communications

## XI. REPORTS

### A. Engineer's Status Report –

**Andy Miles** –

- Presented Council a report regarding the results of the sealed bids received for the E. Jackson Street Sidewalk Enhancement Project with the Engineer's recommendation of which bid to accept.
- Discussed the status of the Water System Hydraulic & Energy Efficiency Enhancements (HEEE) project.

**\*\*Council Member, W. Salyers arrived to the Council Meeting at 6:47 p.m.**

### B. Treasurer's Report –

**Vice Mayor, A. Roberts** – Had questions regarding the Business License figures of 20%.

**Town Manager, G. Jones** - Provided an explanation of the figures.

**Council Member, W.W. Ross, Jr.** – Had questions regarding the street figures.

**Town Manager, G. Jones** – Provided an explanation of the figures along with explanation of percentage regarding expenditures and revenues.

**C. Codification Committee/Property Maintenance – No comments made.**

**D. Police Department Report – No comments made.**

**E. Council Reports –**

**Vice Mayor, A. Roberts – Discussed:**

- Speeding on Jackson Street
- Signs for pedestrians having the right of way, explaining other cities that currently have these signs.
- Crosswalk protocol
- Gate City becoming more pedestrian friendly
- If it is VDOT or the Town that would get the necessary signs
- Placement of signage in center of road would slow traffic down
- Questioned the difference between the color of yellow or white crosswalk
- Moving siren if Police Department building sells and if Fire Department does not want it to possibly convert it as notification for severe weather conditions.

**\*\*Council Member, R. Cassell arrived to the Council Meeting at 7:05 p.m.**

**Council Member, R. Cassell** – Informed Council of the Fire Department has ownership of the siren and Tutti is willing to relocate it to the 911 office.

**Mayor Perry** – Stated the Fire Department owns it and will need to negotiate its future placement.

**Council Member, W. W. Ross, Jr. – Discussed:**

- Condition of the metal trash cans in town
- Cigarette butts in street
- Attendance to the VML Conference

**Council Members, W. Salyers, R. Richards and R. Cassell had no input for Council Reports.**

**F. Economic Development Committee –**

**Vice Mayor, A. Roberts** – Stated they did meet, but there was nothing on the agenda and he is still looking into audio visual equipment for short videos of the merchants.

**Town Manager, G. Jones** – Complimented Office Manager, Judy Guinn, on her developing the Town's website from the ground up.

**G. Historical Committee –**

**Mayor Perry** – Asked when meeting with VDOT is to talk about signs above the four-lane.

**Vice Mayor and Town Manager, G. Jones** – Responded it had been discussed and explained the costs to the town.

**Council Member, W. W. Ross, Jr.** – Discussed placement of Gate City sign to be where town starts and overhead signs.

**Mayor Perry** – Informed him that is not our property and cannot place a sign on property that is not the towns.

**Council Member, R. Richards** – Addressed the overhead issue stating traffic requirements would have to be met for an overhead sign.

#### **H. Manager-**

**Town Manager, G. Jones** – Goes over his report as presented.

##### **Discussed:**

- Replacement of the high water service pump, with financing possibly attached to the BB&T loan
- Health departments requirement to have two high service pumps
- Discussed cigarette tax and personal property tax

**Council Member, W. W. Ross, Jr.** – Questioned about placing the movie “The River” with advertising with the Grillin at the Gate.

**Mayor Perry** – Read a text of thanks she received from Baylee Dockery’s mother.

**Vice Mayor, A. Roberts** – Informed Council of the Hope House 5K Run that will be in the morning prior to the Grill at the Gate event.

**Chief Birchfield** – Provided Council with a copy of his report.

**Vice Mayor, A. Roberts** – Stated the Grillin at the Gate event is in need of more volunteers.

**Jan Laney** – Informed Council of nurses who receive credit for volunteer hours.

**Vice Mayor, A. Roberts** – Stated for them to go to our website and sign the volunteer sheet.

**Vice Mayor, A. Roberts** – Asked about the status of the vehicles with Govdeals.

**Chief Birchfield** – Responded with status of the paperwork and it is close to being finalized for Judy.

**Mayor Perry** – Goes over the Police Report for Council.

#### **I. Park Committee –**

**Vice Mayor, A. Roberts** – Stated they met Wednesday and expressed his concern of placing the splash pad at the park with all the flooding. Took plans to Egan Construction for estimate of costs for the splash pad.

**Council Member, W.W. Ross, Jr.** – Asked what the cost of damage with the flooding at the park.

**Town Manager, G. Jones** – Responded with \$600-\$700 of mulch.

**Vice Mayor, A. Roberts** – Suggested rethinking the location, with parking lot as a possible alternative.

**Council Member, W. W. Ross, Jr.** – Suggested contacting the Core of Engineers come in and do a study.

#### **J. Planning Commission –**

**Council Member, R. Cassell** – **Discussed:**

- Clarifying the language regarding Mobile and Manufactured homes for better understanding.
- Five year plan and contacting Lenowisco for guidance
- Contact with Delegate Kilgore regarding the lease at the King Ford property

- Obtaining a Release of Liability regarding petroleum on King Ford property, with advise of Town Attorney to not to proceed without the release
- Up-coming conference call between Town Attorney, Town Manager and VDOT
- Possibly move the “LOVE” sign to King Ford property.

**K. Public Works – No comments made.**

**L. Sanitation Authority –**

**Council Member, R. Cassell – Discussed:**

- PSA billing based on flow
- Possible renegotiation of PSA contract
- Grant for interceptor line
- Placement of the Town meter and PSA’s meter with Rural Development to place a meter in as an independent

**M. Street Commission –**

**Council Member, W. W. Ross, Jr. – Discussed:**

- Status of the sidewalk on Kane Street
- Status of handrail at Bank of America
- Paving and flooding at Lombard Street

**Council Member, R. Cassell** – Responded to Lombard Street subject, stating if it is on the Town will set it right. Explained the limited funds, will compile a list of streets that need attention and stated there are other streets in town that is worse condition.

**N. Safety Committee – No comments made.**

**O. Water Plant –**

**Vice Mayor, A. Roberts** – Stated water loss is up.

**Town Manager, G. Jones** – Explained Rural Water who will do the smoke testing also has a circuit rider that does a water loss study and will go and check our lines for leaks.

**Mayor Perry** – Questioned about the railroad getting water behind the Quick Stop by the Life Saving Crew.

**P. Events Committee** – No additional comments made. Events were addressed earlier in the meeting.

**XII. UNFINISHED BUSINESS**

• **Scott County Life Saving Crew**

**Town Manager, G. Jones – Discussed:**

- Talks with Mr. Gilliam, who is a platinum sponsor, \$1,000, for the Grillin at the Gate and Mr. Gilliam’s request for the Town to donate the building or be a rent to own.

**Town Attorney, M. Brooks** – Stated she did not think the Town could do a rent to own. Explained the criteria you have to follow to sell real estate if you are a locality.

**Mr. Gilliam** – Explained the history of how the Life Saving Crew acquired use of the property. Explained the town’s desire to reduce insurance cost, with him stating insurance was a requirement of the lease and provided suggestions of how the Life Saving Crew can retain the property

**Mayor Perry** – Stated the Town will look at their options.

- **Flea Market Ordinance**

**Town Manager, G. Jones** – This item was tabled from prior meeting and he had made no changes and provided Council with an explanation of the ordinance.

**Vice Mayor, A. Roberts** – Stated it looked good and was thorough.

**Town Manager, G. Jones** – Can go with it and make adjustments.

### **XIII. NEW BUSINESS**

- **Decision on Chapter 11, Business License Ordinance**

**Motion made to adopt the Chapter 11, Business License Ordinance as presented.**

Motion by: Council Member, R. Cassell 2<sup>nd</sup> by: Vice Mayor, A. Roberts

VOTE: Yeas,           5  
      Nays,            0  
      Abstain,        0  
      Absent,         0

- **Decision on Sale of Town Owned Property Ordinance**

**Sale of Starnes Building Lot Property Ordinance – 8-13-2013E**

**Town Attorney, M. Brooks** – Explained the two options regarding the Starnes Building lot.

**Vice Mayor, A. Roberts** – Questioned the cost involved when the building was torn down.

**Town Manager, G. Jones** – Stated there were no costs to the Town.

**Vice Mayor, A. Roberts** – Stated his desire to stay with the minimum bid of \$17,600, where the Town does not lose.

**Council Member, R. Richards** – Agreed.

**Motion made to go with the ordinance on the \$17,600 for selling the property of the Starnes Building.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Cassell

VOTE: Yeas,           5  
      Nays,            0  
      Absent,         0  
      Abstain,        0

**Sale of Police Department Building Property Ordinance – 8-13-2013D**

**Town Manager, G. Jones** – Informed Council of the environmental test results coming back elevated and had a Pure Cleaner come out to look at building for estimate of costs to clean out the spores. The Pure Cleaner reviewed numbers from lab and told me if we removed the files in the



building and placed a good air cleaner in the building, it would take care of it. Town Manager explained the standards of labs that perform the tests.

**Town Attorney, M. Brooks** - Asked Council if they wanted to reconsider selling in light of what was found.

**Mayor Perry** – Asked if it would reoccur.

**Town Manager, G. Jones** – Responded if Town hired the company for \$2,000-\$3,000, they could clean it up, and in 2-3 months they would be back. The Pure Cleaner stated if we stayed up with cleaning and their recommendation of a Hepa filter on an air cleaner it would not be an issue.

**Vice Mayor, A. Roberts** – Asked if this piece of property should be tabled in light of this information and can the building be utilized again.

**Town Manager, G. Jones** – Explained there is nothing in there that is hazardous/bio hazardous and the building is okay to move back in the way it is now. It's just a little elevated, not much more than any other old building.

**Council Member, R. Cassell** – Questioned the water situation.

**Town Manger, G. Jones** – Responded it has been taken care of and it is fairly dry, with Mr. Quillen rerouting the water drainage from his building.

**Mayor Perry**- Asked if the building is big enough for Department to operate.

**Town Manager, G. Jones** – Responded with some remodeling, but with square footage absolutely, should not be a problem.

**Vice Mayor, A. Roberts** – Asked for assessed value of property and stated thought building was in disrepair, but with new information it is not that bad we may want to change the numbers.

**Council Member, R. Cassell** – Discussed conversation with Marvin (Egan) regarding remodeling options for Town versus private individual since the Town owned the building free and clear.

**Town Attorney, M. Brooks** – Provided tax assessed value figures of land \$22,800 and improvements of \$91,200 for total of \$114,000 with ½ of that to be \$57,000. The Town has had ownership of that property since 1944.

**Town Manager, G. Jones** – Informed Council of their right to reject any and all bids.

**Motion made to put it (Police Department) up for bid.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Cassell

VOTE: Yeas,	3
Nays,	2-R. Richards/W.W. Ross, Jr.
Absent,	0
Abstain,	0

**Sale of Old Theater Property Ordinance – 8-13-2013A**

**Council Member, R. Richards** – Asked for assessed value of the property.

**Town Attorney, M. Brooks** – Responded \$23,500.

**Motion made to adopt the ordinance, put it up for bid.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

**Sale of Red Hill and Jackson Street Property Ordinance – 8-13-2013B**

**Town Attorney, M. Brooks** – Informed Council of tax assessed value of \$1,000.

**Motion made to put it up for bid/sale.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, W.W. Ross, Jr.

VOTE: Yeas, 5  
Nays, 0  
Absent, 0  
Abstain, 0

**Sale of Corner of Margie and (415) Kane Street Property Ordinance – 8-13-2013C**

**Town Attorney, M. Brooks** – Informed Council of tax assessed value of \$12,400.

**Council Members** discussed actual location of property.

**Motion made to put it up for bid/sale.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Cassell

VOTE: Yeas, 5  
Nays, 0  
Absent, 0  
Abstain, 0

- **Decision on Flea Market Ordinance**

**Motion made to adopt Flea market Ordinance as written.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Cassell

VOTE: Yeas, 5  
Nays, 0  
Absent, 0  
Abstain, 0

- **Demolition/tearing down of building(s)**

**Town Attorney, M. Brooks** – Informed Council these are properties the Town has demolish orders on them.

**Town Manager, G. Jones** – Explained it would be cheaper for Town crew to do the tear down.

**Council Member, W. Salyers** – Stated he thought the crew did not feel safe tearing the Chapman Building down.

**Town Attorney, M. Brooks** – Stated if we keep track of the cost of demolition, the Town can place a lien against the property.

**Council Member, R. Richards** – Questioned if we demolish the property, do we get the land.

**Town Attorney, M. Brooks** – Stated no, it's a lien against the property.

**Council Member, R. Cassell** – Recommended the Chapman Building to be the first.

**Town Attorney, M. Brooks** – Stated it will cost some money.

**Town Manager, G. Jones** – Reminded Council of the \$15,000 in the budget that was earmarked for the CDBG Courthouse Hill Project that can be used for this.

**Council Member, R. Cassell** – Asked if there is a time limit.

**Town Attorney, M. Brooks** – Stated the order has been in effect for over a year on some of the properties.

**Town Manager, G. Jones** – Stated the Town would need to get prices for rental equipment to tear down the buildings.

**Council Member, R. Richards** – Recommended it be scheduled when school is out of session.

**Town Manager, G. Jones** – Suggested in the spring when the Town receives real estate property tax.

**Chief Birchfield** – Informed Council there are some companies who would tear down the building for the brick.

**Council Member, W. Salyers** – Asked if property owner can rebuild once torn down.

**Mayor Perry** – Stated yes, if they obtain proper permits.

**Council Member, W. Salyers** – Suggested the Town get prices for tearing down and for the fire department to burn them.

**Town Manager, G. Jones** – Informed Council that we are looking for permission to tear them down and prioritize what we need to do. We're just looking for a motion to get this thing in process.

**Motion made to move forward to demolish these properties on the list.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

- **Discuss Delinquent Property Tax of three years and over**

**Town Manager, G. Jones** – Explained the State Code process to sell property at auction for recovery of money. He provided the amount of delinquent property taxes for three plus years with estimation of 240 plots. Stated we need to send message out that if you don't pay the Town will have to do what is necessary to recover.

**Vice Mayor, A. Roberts** – Stated these people have been informed and is on the list through the firm that we hired.

**Town Manager, G. Jones** – Stated you will, basically, replace an irresponsible property owner with a responsible person and if we can entertain a motion for Michele to hammer out the legal aspects of it to get it done.

**Motion made to authorize our attorney to start the process in selling the delinquent property in taxes.**

Motion by: Council Member, R. Cassell 2<sup>nd</sup> by: Vice Mayor, A. Roberts

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

- **Discuss and decision regarding Property Maintenance Title**

**Town Manager, G. Jones** – Provided explanation to Council regarding position title changing from Property Maintenance Inspector to Property Maintenance Official. He also informed Council that

Kathy will have met the training requirements to take the Building Code Official exam and can be certified in that position as well.

**Town Clerk, K. Riley** – Provided information regarding communications with Sandi Morris, DHCD.

**Motion made to make Kathy Riley’s title be for the appointed position of Property Maintenance Official retroactive to her acceptance of the Property Maintenance position of January 23, 2013.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

• **Personnel Policy Revision**

**Town Manager, G. Jones – Discussed:**

- Organizational chart
- Job descriptions
- Accident reporting process
- Working hours – Comp. time policy
- Working hours for Public Works employee being called back into work
- Vehicle use and 15 mile radius with canine officer being except

**Motion made to adopt the personnel policy with the amendment of 15 instead of 5 on the mileage.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Cassell

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

• **Sidewalk Bid Award**

**Town Manager, G. Jones** – Informed Council of the need of a vote which is tentative to VDOT’s approval of the bids submitted by Andy for \$188,796.50 received from the DUCO Construction.

**Motion made to accept bid from DUCO Construction, LLC pending VDOT approval for the sidewalk project on East Jackson Street.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by Council Member, R. Richards

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

• **Employee Labor Day Picnic**

**Council** discussed options of places to have the picnic, type of food, who will attend with need of a head count and who will do the cooking. Decision was to have it at the Scott County Park, inside

facility, if the date is available, otherwise it would be at the Gate City First Baptist Church to be held on August 30, 2013.

- **Approval of Job Descriptions for Town Employees**

**Town Manager, G. Jones** – Informed Council of William Oakes passed the exam for the Class IV Water Operator Certificate and as part of his training he still needs to be at the level of Class II in order for him to operate the plant. Asked the Personnel Committee to consider giving him a 25 cent raise on the hour which will bring him up to \$12.67. Explained that currently 40% of Water Operators in the state of Virginia are eligible to retire.

**Motion made to, on the recommendation of Town Manager, to give Mr. Oakes a 25 cents on the hour increase now that he is certified as a Class IV Operator.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, W. W. Ross, Jr.

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

**XIV. PUBLIC COMMENT – NEW BUSINESS – No comments from the public.**

Mayor Perry closed the public comment session for new business at 9:07 P.M. and opened the consent agenda session.

**XV. CLOSED SESSION**

**Motion made for Council to enter into closed session to discuss legal and personnel matters.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

Mayor Perry opened the closed session at 9:20 P.M.

**XVI. RETURN FROM CLOSED SESSION**

Council returned from closed session at 9:34 P.M.

**Motion made for Council to return from closed session.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas,	5
Nays,	0
Absent,	0
Abstain,	0

**CERTIFICATION OF CLOSED MEETING – Read by: Town Attorney, M. Brooks**

**WHEREAS**, the Gate City Town Council has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, Section 2.2-7312 of the Code of Virginia requires a certification by the Town Council that such closed meeting was conducted in conformity with Virginia law;

**NOW, THEREFORE, BE IT RESOLVED**, that the Gate City Town Council hereby certifies that to the best of each member’s knowledge, (1) only public business matters lawfully exempted from open meeting requirement by Virginia law were discussed in closed meeting to which this certification applies and (2) only such business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Gate City Town Council.

VOTE: Yeas, 6  
Nays, 0  
Absent, 0  
Abstain, 0

**XVII. MOTIONS FROM CLOSED SESSION: There were no motions coming out of closed session.**

**XVIII. ADJOURN**

**Motion made to adjourn.**

Motion by: Vice Mayor, A. Roberts 2<sup>nd</sup> by: Council Member, R. Richards

VOTE: Yeas, 5  
Nays, 0  
Absent, 0  
Abstain, 0

\*Mayor Perry adjourned the meeting at 9:36 P.M., until the next regularly scheduled Council Meeting on September 10, 2013, at 6:30 P.M.

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Frances Perry – Mayor

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Kathy Riley – Town Clerk

## CHAPTER 11

### BUSINESS LICENSE

Except as may be otherwise provided by the laws of the commonwealth, and notwithstanding any other current ordinances or resolutions enacted by the Gate City Town Council, whether or not compiled in the Town Code, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within this locality.

#### Secton 11.1 License Requirement

- a. Every person engaging within the Town of Gate City in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:
  1. Such person maintains a definite place of business within the town;
  2. Such person does not maintain a definite office anywhere but does maintain an abode in the town, which abode, for the purposes of this article, shall be deemed a definite place of business; or
  3. There is no definite place of business but such person operates amusement machines; is engaged as a peddler or itinerant merchant, carnival or circus as specified in Code of Virginia, §§ 58.1-3717, 58.1-3718, or 58.1-3728, respectively; or is a contractor subject to Code of Virginia, § 58.1-3715; or is a public service corporation subject to Code of Virginia, § 58.1-3731.
- b. A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:
  1. Each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the town;
  2. All of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and
  3. The taxpayer agrees to supply such information as the Treasurer may require concerning the nature of the several businesses and their gross receipts. This

information may include Federal Income Tax Returns, including but not limited to, Schedule "C", Form 1120 or 1120S and Form 1065. If the Treasurer determines that the Tax Return does not accurately reflect the amount claimed as gross sales within the Town of Gate City, documentation from a tax preparer verifying gross sales may be accepted, in the discretion of the Treasurer.

- c. Exclusions [to this subsection are as follows:]
  1. No license tax shall be imposed upon or collected from any person for selling farm or domestic or nursery products, ornamental or otherwise, or for the planting of nursery products as an incident to the sale thereof, provided such products are grown or produced by such person.
  2. No license tax shall be required for the privilege or right of printing or publishing any newspaper or for the privilege or right of operating or conducting any radio or television broadcasting station.
  3. No license tax shall be required for the business of renting, as the owner of such property, real property, other than hotels, motels, motor lodges, auto courts, tourist courts, trailer parks, lodging houses, rooming houses, and boardinghouses.
  4. No license tax shall be required for the manufacturing and selling of goods, wares, or merchandise at the place of manufacture.

## **Secton 11.2 Due Dates and Penalties**

- a. Each person subject to a license tax shall apply for a license prior to beginning business, if he was not subject to licensing in the town on or before January 1 of the license year, or no later than May 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the Treasurer.
- b. Every application for a license shall have incorporated therein or annexed thereto the affidavit of the applicant to the effect that the statements contained in the application are true. If the applicant be [is] an individual, the affidavit must be made by him, if by one of the members and, if a corporation, by the officer having knowledge of the correctness of the statements made in the application.
- c. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before March 1 of each calendar year.
- d. The Treasurer may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the



correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date. Any request for extension must be received by the Treasurer prior to the due date. Any approved extension from the Internal Revenue Service does not automatically qualify for an extension from the Town.

- e. A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the Treasurer if both the application and payment are late; however, both penalties may be assessed if the Treasurer determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Treasurer, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Treasurer is not paid within 30 days, the Treasurer may impose a ten-percent late payment penalty. The penalties shall not be imposed or, if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.
- f. "Acted responsibly" means that:
  - 1. The taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; **and**
  - 2. The taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.
- g. "Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Treasurer, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.
- h. Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Treasurer is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded, together with interest on the refund from the date of payment or the due date,

whichever is later. Interest shall be paid on the refund of any tax paid under this article from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under Code of Virginia, § 58.1-3916.

- i. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund, or the due date of the tax, whichever is later.
- j. Any person who knowingly falsifies gross receipts or other material fact to obtain a license as required herein for an amount less than that which should be paid hereunder shall be guilty of a class 1 misdemeanor. Each day of violation shall constitute a separate and distinct offense.
- k. As one of the means of ascertaining the amount of any license tax, the Treasurer may propound interrogatories to each applicant and use such other evidence as he may procure. Such interrogatories shall be answered under oath, and any applicant refusing to answer such interrogatories under oath shall be fined not less than \$50.00 nor more than \$100.00 for each offense.
- l. Whenever a license is required by this ordinance, it shall be unlawful to engage in any such business without a license (Code of Virginia, § 58.1-3700). Any person who conducts business without a license shall be guilty of a Class IV Misdemeanor. Each day's violations shall constitute a separate offense. Enforcement of this ordinance shall be by the Town's Police Department under the direction of the Town Manager.

### **Secton 11.3 Situs of Gross Receipts**

- a. *General rule.* Whenever the tax imposed by this article is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the town. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:
  1. The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business

from which his services are directed or controlled, unless the contractor is subject to the provisions of Code of Virginia, § 58.1-3715.

2. The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures may apply to the department of taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.
  3. The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented, or if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.
  4. The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed, or if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.
- b. *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule (and the affected jurisdictions are unable to reach an apportionment agreement), except as to circumstances set forth in Code of Virginia, § 58.1-3709, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the town solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.
- c. *Agreements.* The Treasurer may enter into agreements with any other political subdivision of the state concerning the manner in which gross receipts shall be apportioned among definite places of business; however, the sum of the gross receipts apportioned by the

agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the Treasurer shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. When localities cannot reach an agreement over how gross receipts from a given business should be apportioned among them, the taxpayer or assessing official may seek an advisory opinion from the department of taxation. In cases where the taxpayer is able to demonstrate to a court that double assessment has occurred, the court shall enter such orders pending resolution of the litigation as are necessary to ensure that the taxpayer is not required to pay multiple assessments.

#### **Secton 11.4 Limitations and Extensions**

- a. Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this article, both the Treasurer and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- b. Notwithstanding Code of Virginia, § 58.1-3903, the Treasurer shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding years (this applies to only 1997 and later; prior to 1997 is current plus three preceding years).
- c. The period for collecting any local license tax shall not expire prior to the period specified in Code of Virginia, § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subsection, two years after the final determination of an appeal for which collection has been stayed pursuant to this ordinance, or two years after the final decision in a court application pursuant to Code of Virginia, § 58.1-3984, or similar law for which collection has been stayed, whichever is later.

#### **Secton 11.5 Appeals and Rulings**

- a. Any person assessed with a licensing tax under this article as the result of an audit may apply within 90 days from the date of the assessment to the Treasurer for a correction of the assessment. The application must be filed in good faith and sufficiently identify the

taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Treasurer may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The Treasurer shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the town (e.g., the name and address to which an application should be directed).

- b. Provided an application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the Treasurer, unless the Treasurer determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of this ordinance, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to:
  1. Depart quickly from the locality;
  2. Remove his property therefrom;
  3. Conceal himself or his property therein; or
  4. Do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.
- c. Any person assessed with a license tax under this article as a result of an audit may apply within 90 days of the determination by the Treasurer on an application pursuant to this ordinance to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the Treasurer are notified that a longer period will be required. The application shall be treated as an application pursuant to Code of Virginia, § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Code of Virginia, § 58.1-1822. Following such an order, either the taxpayer or the Treasurer may apply to the appropriate Circuit Court pursuant to Code of Virginia, § 58.1-3984; however, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.
- d. On receipt of a notice of intent to file an appeal to the tax commissioner under subsection (c) above, the Treasurer shall further suspend collection activity until a final determination is issued by the tax commissioner, unless the Treasurer determines that collection would be

jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of this ordinance, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth above.

- e. Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Treasurer. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if there is a change in the law [and/or] a court decision, or the Treasurer notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based; however, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect. Anything herein to the contrary notwithstanding, each person or entity who receives gross receipts from the operation of any business, trade, profession, occupation, or calling, as defined in this article, is subject to a license tax. Where two or more persons or entities receive gross receipts from the operation of any such business, trade, or profession, each such person or entity shall pay a license tax in proportion to the share of gross receipts attributable to such person or entity, unless such persons have clearly and unequivocally agreed otherwise.

#### **Secton 11.6 Record-keeping and Audits**

Every person who is assessable with a license tax shall keep sufficient records to enable the Treasurer to verify the correctness of the tax paid for the license years assessable and to enable the Treasurer to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts, and other information shall be open to inspection and examination by the Treasurer in order to allow the Treasurer to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the town. The Treasurer shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside of the town, copies of the appropriate books and records shall be sent to the Treasurer's office upon demand.

#### **Secton 11.7 Exclusions & Deductions From Gross Receipts**

- a. General rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

- b. The following items shall be excluded from gross receipts:
1. Amounts received and paid to the United States, the commonwealth, or any county, city or town for the state retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, or for any federal or state excise taxes on motor fuels.
  2. Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
  3. Any amount representing returns and allowances granted by the business to its customer.
  4. Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.
  5. Receipts representing the return of principal or a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
  6. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services, shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts, together with any handling or other fees related to the incentive.
  7. Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.
  8. Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

- c. The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:
  1. Any amount paid for computer hardware and software that are sold to a United States federal or state government entity, provided that such property was purchased within two years of the sale to such entity by the original purchaser, who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.
  2. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

#### **Section 11.8 License Fee & Taxes**

- a. Every person or business subject to licensure under this ordinance shall be assessed and required to pay annually such fees and taxes as set out in this ordinance from which this article derives and as determined from time to time by the Town Council.
- b. Business License rates shall be as follows:
  1. For contractors and persons constructing for their own account for sale, 11 cents per \$100.00 of gross receipts, or \$30.00, whichever is greater;
  2. For retailers, 14 cents per \$100.00 of gross receipts, or \$30.00, whichever is greater;
  3. For financial, real estate and professional services, 41 cents per \$100.00, or \$30.00, whichever is greater;
  4. For repair, personal, and business services, and all other occupations not specifically listed or exempted in this ordinance or otherwise by law, 25 cents per \$100.00 of gross receipts, or \$30.00, whichever is greater;
  5. For wholesalers, 5 cents per \$100.00 of purchases (see §58.1-3716 of the Code of Virginia for limitations), or \$30.00, whichever is greater;
  6. For fortune tellers, clairvoyants, and practitioners of psalmistry, 11 cents per \$100.00 of gross receipts, or \$30.00, whichever is greater;



7. For itinerant merchants or peddlers, 11 cents per \$100.00 of gross receipts (see §58.1-3717 of the Code of Virginia for limitations), or \$30.00, whichever is greater;

### **Secton 11.9 License Personal Privilege**

- a. Every license issued under this chapter shall be deemed to confer a personal privilege to transact, carry on or conduct the business, profession, trade or occupation in the town, and such privilege shall not be exercised except by the person licensed. The transfer of such license, except as authorized in this section, shall be invalid and shall not relieve the transferee from the obligation of procuring a license in accord with the provisions of this chapter.
- b. A license issued under this chapter shall be transferable, except where provided otherwise, only where the business for which the license was issued has been sold or disposed of, but is to be continued by the purchaser or transferee at the same or at some other location within the town. In no case shall the license transfer be legal or valid unless and until notice in writing is given to the director of finance. Such notice shall contain the name, trade name, if any, and the address of the proposed transferee, the proposed new location, if any, and the time of the proposed transfer. Failure to notify the director of finance of the transfer of the license, within thirty (30) days after such transfer, shall invalidate such license. The director of finance shall give written approval of the transfer, if such transfer is approved.
- c. If the transferor's license for the current license year has been based on an estimate of gross receipts or gross expenditures, the transferor shall reveal the gross receipts or gross expenditures for the period the transferor was in business during the current license year. If the accumulation of gross receipts by transfer shall exceed the original estimate, the transferee shall be required to amend the license by an estimate of the gross receipts or gross expenditures the transferee will incur between the day of beginning business and the end of the current license year.
- d. The director of finance shall collect ten dollars (\$10.00) for each license transfer, which sum shall be used to pay administrative costs incurred by such transfer.
- e. The Treasurer shall keep a record of all license transfers.
- f. No person shall transfer or attempt to transfer a license contrary to the provisions of this section.

### **Secton 11.10 Definitions**

For the purposes of this article, unless otherwise required by the context:

*Affiliated group* means:

- a. One or more chains of includable corporations connected through stock ownership with a common parent corporation, which is an includable corporation if:
  1. Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and
  2. The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.
- b. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
  1. At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and
  2. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.
- c. When one or more of the includable corporations, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this definition shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

*Assessment* means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of

assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed or, if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

*Assessor or assessing official* means the Treasurer.

*Base year* means the calendar year preceding the license year, except for contractors subject to the provisions of Code of Virginia, § 58.1-3715, and except for beginning businesses which shall use their probable gross receipts for the current license year as the basis for their license tax.

*Business* means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

1. Advertising or otherwise holding oneself out to the public as being engaged in a particular business; or
2. Filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

*Contractor* shall have the meaning prescribed in Code of Virginia, § 58.1-3714.B, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

*Definite place of business* means an office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis, and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

*Financial services* means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this chapter. [Furthermore:]

*Broker* shall mean an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

*Commodity* shall mean staples, such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

*Dealer*, for purposes of this article, shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

*Security*, for purposes of this article, shall have the same meaning as in the Securities Act (Code of Virginia, § 13.1-501 et seq.) or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

Buying installment receivables

Chattel mortgage financing

Consumer financing

Credit card services

\*Credit unions

Factors

Financing accounts receivable

Industrial loan companies

Installment financing

Inventory financing

Loan or mortgage brokers

Loan or mortgage companies

Safety deposit box companies

Security and commodity brokers and services

Stockbroker

Working capital financing

\*Federal credit unions are not subject to state or local license taxation under the Federal Credit Union Act, 12 U.S.C. 1768, are hereby declared exempt.

*Gross receipts* means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Code of Virginia, tit. 58.1, ch. 37.

*License year* means the calendar year for which a license is issued for the privilege of engaging in business.

*Personal services* means rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this article, or rendered in any other business or occupation not specifically classified in this article unless exempted from local license tax by Code of Virginia, tit. 58.1.

*Commission merchant* means any person buying or selling any kind of goods, wares, or merchandise for another on commission.

*Professional services* means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the state department of taxation may list in the BPOL guidelines promulgated pursuant to Code of Virginia § 58.1-3701. The department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

*Purchases* means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

*Real estate services* means rendering a service for compensation as lessor, buyer, seller, agent, or broker and providing a real estate service, unless the service is otherwise specifically provided for in this article, and such services include, but are not limited to, the following:

- Appraisers of real estate
- Escrow agents, real estate
- Fiduciaries, real estate
- Lessors of real property
- Real estate agents, brokers and managers
- Real estate selling agents
- Rental agents for real estate

*Retailer or retail merchant* means any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

*Peddler* means any person who carries from place to place any goods, wares, or merchandise and offers to sell or actually sells and delivers at the same time. Any person who does not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, with regular business hours, but at that place offers to sell goods, wares, and merchandise, is a peddler. Any person who keeps a regular place of business, with regular business hours at the same place, who other than at that regular place of business, personally or through agents, offers for sale or sells and, at the time of such offering for sale, delivers goods, wares and merchandise is a peddler.

*Itinerant merchant* means any person who engages in, does or transacts any temporary or transient business in the state, either in one locality or in traveling from place to place in the sale of goods, wares and merchandise, and who for that purpose of carrying on such business hires, leases, uses or occupies any building or structure, motor vehicle, tent, car, boat or public room or any part thereof, including rooms in hotels, lodging houses, or houses of private entertainment, or in any street, alley, or public place in any city or town, or in any public road in any county, for a period of less than one year, for the exhibition of or sale of such goods, wares, or merchandise.

1. A charitable institution or other not-for-profit organization that engages in the business of buying and selling merchandise may be subject to a local license tax as a retail or wholesale merchant, even though the proceeds are subsequently used for charitable purposes.
2. A lunch counter operated by an organization open to members only, the proceeds from which are used to maintain the organization, may be subject to a local license tax.
3. Any hotel, motel, boardinghouse, or lodging house which also furnishes or sells food or merchandise for compensation is engaged in retail sales as to the sales of the food or merchandise.
4. A person is not subject to local license tax if his business in this state is limited solely to the solicitation of orders by catalogs mailed from outside this state to mail-order buyers in this state and who fills orders from outside this state; however, if the catalogs are distributed by a state resident by mail or in person or if the person engaged in the mail-order business has a definite place of business in this state at which mail orders are received or filled, the mail order business may be treated the same as any other retail or wholesale business for purposes of local license taxes.
5. Any person who merely fills prescriptions for or fits corrective lenses and eyeglass frames is a retail merchant; however, any practitioner who examines eyes is engaged in rendering a professional service.

6. Any practitioner of a profession who sells goods, wares, or merchandise in connection with the practice of the profession may be engaged in making retail sales depending on the nature of the products sold and the service performed. Examples in this area are as follows:
  - a. A medical doctor who engages in the sale of drugs or other goods, wares or merchandise as well as the practice of medicine is a merchant as to those sales; however, a medical doctor is not a merchant as to the drugs used in giving an immunization to a patient.
  - b. A chiropractor who sells shoes in connection with his practice is a retail merchant as to such sales.
7. A job printer is a manufacturer and is engaged in either retail or wholesale sales as to the sales of the items printed.
8. The sales price alone is not determinative of whether the sale is at retail or wholesale. The fact that a person sells goods, wares or merchandise at wholesale prices, at cost, or at less than cost does not prevent the person from being classified as a retail merchant if the sales fall within the definition of a retail sale.
9. Any person who purchases rough stone already cut and who then polishes, glazes and cuts lettering in the stone is not a manufacturer and is engaged in either retail or wholesale sales.
10. Any person who sells goods at retail through a commission merchant may be held liable for a local license tax as to such sales.

*Services* means things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

*Wholesaler* or *wholesale merchant* means any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which, because of the quantity, price, or other terms, indicate that they are consistent with sales at wholesale.

### **Section 11.30 Flea Market Ordinance**

- a. Flea Market shall mean an occasional or periodic market held in an open area or within a structure where an individual, or groups of individuals, or organizations offer goods for sale to the public, and the event is held more than four (4) days in any twelve (12) month period, whether in the same or another location within the Town. Item sold included but are not limited to 2<sup>nd</sup> hand household items, antiques, rare items, decorations, used books and magazines, etc.
- b. Any person or organization who holds a Flea Market on more than four days in any twelve-month period anywhere in the Town of Gate City shall obtain an approved Flea Market application.

Application for each site of Flea Markets shall be made in writing and shall include the following information: Name and address of the applicant, location of property to be used, a plan of the premises showing such items as the location of buildings, parking area, tables, toilets, vehicular access, and street curbing, and any additional information the Town of Gate City deems necessary to issue the license. A non-refundable fee of \$50.00, shall accompany the application.

Town of Gate City will consider waiving the non-refundable fee if the recognized civic or charitable organization has an active 501©3 non-profit designation. A current 990 form filed with the IRS may be required to document the waiver.

- c. Each applicant shall provide the Town of Gate City with evidence that he/she can meet the following requirements of the site where the Flea Market is to be held.
  1. There shall be only one vehicular access to the premises. It shall consist of one entrance lane and one exit lane, signed as such.
  2. Off-street parking shall be available and of sufficient area to accommodate traffic.
  3. Signs relating to the Flea Market shall be allowed, provided that such signs not exceed six (6) square feet in area, and shall not exceed two (2) signs per premises. Signs shall not be placed in Virginia Department of Transportation right-of-way and shall have a setback at least ten (10) feet from all intersections. No sign shall extend higher than twenty (20) feet above ground.
  4. The applicant shall have the use of a building where all displays, tables, goods; rubbish containers, chairs, etc. shall be stored when sales are not occurring. If building is not available, all displays, tables, goods; rubbish containers, chairs, etc. shall be removed from the premises.
  5. There shall be no trash or debris left from Flea Market activities.



6. Hours/duration: Flea Markets may remain open for business between the hours of 6:00 AM and 6:00 PM, for a maximum of three (3) days a week, unless otherwise specified on the license by the Town of Gate City at the time of issuance.
  7. No other Flea Market activity or Yard Sales shall be conducted within 300 feet of the premises in which a licensed Flea Market has been approved.
  8. Each permanent vendor in any Flea Market activity, whether the operation be profit or non-profit, shall secure from the Town a business license for \$30.00 per year to conduct his/her activities.
  9. Where Flea Market activity is sponsored or promoted by a recognized civic or charitable organization and where it is deemed that the overall interest of the Town will be served through a waiver of the Business License, and then the Town may, in its discretion, waive such license.
  10. Use of the premises shall comply with all other ordinances, articles, by-laws or rules and regulations of the Town of Gate City.
- d. Any violation by the operator is a Class IV Misdemeanor and each day shall constitute a separate offense.
  - e. The effective date of this ordinance shall be on enactment. (8/13/2013)

**Secton 11.31 Prohibited Seller on Streets, Byways, Alleys, Thoroughfares, Sidewalks, Public Parking Lots or Right of Ways.**

- a. No person, agent, vendor, seller or other business shall engage, sell, distribute or offer for sale products, merchandise, goods or yard sale items on the streets, byways, alleys, thoroughfares, sidewalks, public parking lots, or own right of ways within the Town without the express written permission of the Town Council. (11/11/85)
- b. The possession of an approved Flea Market application doesn't justify defiance of this ordinance.
- c. Sellers in the local Flea Market on the public parking lot of the Town are deemed to have permission by virtue of an approved Flea Market Application by the Town of Gate City on market day and a signed lease agreement for the premises and no other day without separate express written permission from the Town.
- d. Exempt from this ordinance are persons selling farm or domestic products within the Town when the products to be sold are grown or produced by such person, but proof shall be shown that such products are so raised by the party offering them for sale, so long as the

seller is not impeding motor or foot traffic, and they are parked in a space or area in which it is legal to park. (11/11/85)

- e. Violation of this ordinance shall be a Class IV Misdemeanor.