

Chapter 8.1

**LICENSES AND TAXATION.**

**I. IN GENERAL**

**Sec. 8.1-1. Administration of this chapter.**

Unless otherwise specified, the Treasurer of the Town of Amherst shall have the responsibility and authority to administer all provisions of this chapter.

**Sec. 8.1-2. Refunds of erroneously assessed taxes.**

- (a) Local taxes which have been erroneously paid shall be refunded to the taxpayer. In order for a refund to be made, the treasurer must first be satisfied that the taxpayer has been erroneously assessed a local tax.
- (b) Upon a determination by the treasurer that the tax has been paid, he shall refund to the taxpayer the amount erroneously paid, together with the penalties and interest paid thereon.
- (c) No refund shall be made if application therefore is made more than three (3) years after the last day of the tax year for which the taxes were assessed.
- (d) Refunds shall bear interest at the same rate charged delinquent taxpayers if such an interest rate is charged by the town.

**Sec. 8.1-3. Delinquent taxes; interest; penalty.**

- (a) In accordance with the Code of Virginia, § 58.1-3916, it is deemed to be necessary that payment of interest and penalty on delinquent taxes be provided for.
- (b) Unless otherwise specified in this ordinance, interest on taxes paid after the due date for any tax shall be assessed at the rate of ten (10) percent per annum of the tax past due. Interest shall commence one month after the tax is due.
- (c) Unless otherwise specified in this ordinance, a penalty on taxes paid after the due date shall be assessed at the rate of ten (10) percent of the tax past due.

**Sec. 8.1-4. Recovery fee.**

There shall be imposed upon any person chargeable with delinquent taxes and other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed twenty (20) percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed thirty dollars (\$30.00) for taxes or other charges collected subsequent to thirty (30) or more days after notice of delinquent taxes or charges pursuant to Code of Virginia, § 58.1-3919, but prior to the taking of judgment with respect to such delinquent taxes or

charges, and thirty-five dollars (\$35.00) for taxes or other charges collected subsequent to judgment.

## II. REAL PROPERTY TAX

### **Sec. 8.1-200. Levy; tax rate; assessment of new buildings; when taxes payable; penalty and interest.**

- (a) All real estate within the corporate limits of the town subject to taxation under the constitution and laws of the Commonwealth of Virginia shall be taxed at the rate established annually by the Town Council and all taxes on such real property shall be due and payable to the town not later than December 5 of each year. Any payment of real estate taxes on a particular parcel of real property after a penalty has accrued shall be applied first to the payment of any balance due on such parcel of real property.
- (b) Except as otherwise provided by this section, if any real estate tax payment is past due, there shall be added and collected as part thereof a late payment penalty in an amount equal to ten (10) percent of the amount past due. In addition to such late payment penalty, interest shall be due on such past-due taxes and penalty, commencing the first day following the day such taxes are due at the applicable interest rate.
- (c) The treasurer may waive the penalty and interest for failure to pay a tax if such failure was not in anyway the fault of the taxpayer.

### **Sec. 8.1-201. Applicability of law.**

The provisions of Code of Virginia, tit. 58.1, applicable to local levies and real estate assessments and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis* including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments, and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

### **Sec. 8.1-202. Conformity with Amherst County.**

Tax rates notwithstanding, all adjustments to real estate assessments authorized by the Amherst County Board of Supervisors shall apply to assessments prepared by the Amherst County Commissioner of the Revenue.

Such adjustments shall specifically include adjustment for real estate devoted to agricultural, horticultural, forest and open space uses pursuant to Code of Virginia, § 58.1-3229 et seq. as provided for by the Amherst County Board of Supervisors.

Such adjustments shall specifically include the roll-back tax, and interest thereon, in such amounts as may be determined under Code of Virginia, § 58.1-3237, upon any property as to which the use changes to a nonqualifying use as provided for by the Amherst County Board of Supervisors.

Such adjustments shall specifically include adjustment for elderly persons, or permanently and totally disabled persons, pursuant to Code of Virginia, § 58.1-3218 as provided for by the Amherst County Board of Supervisors.

**Sec. 8.1-203. Delinquent taxes; interest; penalty.**

- (a) In accordance with the Code of Virginia, § 58.1-3916, it is deemed to be necessary that payment of interest and penalty on delinquent taxes be provided for.
- (b) Interest on taxes paid after December 5 of each year shall be assessed at the rate of ten (10) percent per annum of the tax and penalty past due. Interest shall commence on the following January 1 of each year.

Penalty on taxes paid after December 5 of each year shall be assessed at the rate of ten (10) percent of the tax past due.

- (c) Taxes due and owing to the Town, assessed for any year on real estate, shall be due and payable on December 5 of the year the tax is assessed pursuant to section 8.1-26 of this Code. On all such taxes remaining unpaid on the day after such tax is due date there shall be added a penalty of ten (10) percent of the payment then due and such penalty shall become a part of such tax; together with interest thereon at a rate of ten (10) percent per annum, which interest shall begin on the first day of the month next following the due date (January 1).
- (d) Any provision of this chapter that is in conflict with subsections (a) through (d) of this section shall control.

**Sec. 8.1-204. Recovery fee.**

There shall be imposed upon any person chargeable with delinquent taxes and other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed twenty (20) percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed thirty dollars (\$30.00) for taxes or other charges collected subsequent to thirty (30) or more days after notice of delinquent taxes or charges pursuant to Code of Virginia, § 58.1-3919, but prior to the taking of judgment with respect to such delinquent taxes or charges, and thirty-five dollars (\$35.00) for taxes or other charges collected subsequent to judgment.

### III. PERSONAL PROPERTY TAX

**Sec. 8.1-300. Machinery and tools, merchant's capital, and personal property taxes.**

All machinery and tools, merchant's capital, and tangible personal property with situs in the Town of Amherst not exempted under the Code of Virginia as amended or by this article shall be assessed and taxed at a rate or rates established annually by the Town Council.

**Sec. 8.1-301. Situs.**

The situs for machinery and tools, merchant's capital, and tangible personal property taxation shall be as set forth in the Code of Virginia, as amended.

**Sec. 8.1-302. Assessment.**

The assessed value of all machinery and tools, merchant's capital, and tangible personal property shall be as of January 1 each year and shall be determined as prescribed by the Code of Virginia, as amended.

**Sec. 8.1-303. Conformity with Amherst County.**

Tax rates notwithstanding, all adjustments to machinery and tools, merchant's capital, and tangible personal property assessments authorized by the Amherst County Board of Supervisors shall apply to assessments prepared by the Amherst County Commissioner of the Revenue.

Such adjustments shall specifically include exemptions related to personal property taxation, farm animals, and farm machinery and farm implements used exclusively for farming purposes pursuant to Code of Virginia, § 58.1-3505.

Such adjustments shall specifically include exemptions related to certified pollution control equipment and facilities pursuant to Code of Virginia, § 58.1-3660.

**Sec. 8.1-304. Delinquent taxes; interest; penalty.**

(a) In accordance with the Code of Virginia, § 58.1-3916, it is deemed to be necessary that payment of interest and penalty on delinquent taxes be provided for.

(b) Interest on taxes paid after December 5 of each year shall be assessed at the rate of ten (10) percent per annum of the tax and penalty past due. Interest shall commence on the following January 1 of each year.

Penalty on taxes paid after December 5 of each year shall be assessed at the rate of ten (10) percent of the tax past due.

(c) Taxes due and owing to the town, assessed for any year on personal property, shall be due and payable on December 5 of the year the tax is assessed. On all such taxes remaining unpaid on the day after such tax is due date there shall be added a penalty of ten (10) percent of the installment then due and such penalty shall become a part of such

tax; together with interest thereon at a rate of ten (10) percent per annum, which interest shall begin on the following January 1.

(d) Any provision of this chapter that is in conflict with subsections (a) through (d) of this section shall control.

**Sec. 8.1-305. Recovery fee.**

There shall be imposed upon any person chargeable with delinquent taxes and other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed twenty (20) percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed thirty dollars (\$30.00) for taxes or other charges collected subsequent to thirty (30) or more days after notice of delinquent taxes or charges pursuant to Code of Virginia, § 58.1-3919, but prior to the taking of judgment with respect to such delinquent taxes or charges, and thirty-five dollars (\$35.00) for taxes or other charges collected subsequent to judgment.

**Sec. 8.1-306. Personal property tax relief; purpose; definitions; relation to other ordinances.**

(a) The purpose of this and the following sections of the Town Code is to provide for the implementation of the changes to PPTRA affected by legislation adopted during the 2004 Special Session I and the 2005 Regular Session of the General Assembly of Virginia.

(b) Terms used in this ordinance that have defines meanings set forth in PPTRA shall have the same meanings as set forth in the Code of Virginia § 58.1-3523, as amended.

(c) To the extent that the provisions of this ordinance conflict with any prior ordinance or provision of the Town Code, this ordinance shall control.

**Sec. 8.1-307. Method of computing and reflecting tax relief.**

(a) For tax years commencing in 2006, the Town adopts the provisions of Item 503.E of the 2005 Appropriations Act, providing for the computation of tax relief as a specific dollar amount to be offset against the total taxes that would otherwise be due but for PPTRA and the reporting of such specific dollar relief on the tax bill.

(b) The Town shall, by resolution, set the rate of tax relief at such a level that it is anticipated fully to exhaust PPTRA relief funds provided to the Town by the Commonwealth. Any amount of PPTRA relief not used within the fiscal year shall be carried forward and used to increase the funds available for personal property tax relief in following fiscal year.

(c) Personal property tax bills shall set forth on their face the specific dollar amount of relief credited with respect to each qualifying vehicle, together with an explanation of the general manner in which relief is allocated.

**Sec. 8.1-308. Allocation of relief among taxpayers.**

(a) Allocation of PPTRA shall be provided in accordance with the general provisions of this section, as implemented by the specific provisions of the Town's annual budget relating to PPTRA relief.

(b) Relief with respect to qualifying vehicles shall be provided at a rate, applied to the first Twenty Thousand and 00/100 Dollars (\$20,000.00) in value of each such qualifying vehicle, which is estimated fully to use all available state PPTRA relief. The rate shall be established annually by resolution or other appropriate action of the Town Council.

**Sec. 8.1-309. Transitional provisions.**

(a) Pursuant to authority conferred in Item 503.D of the 2005 Appropriation Act, the Treasurer is authorized to issue a supplemental personal property tax bill in the amount of 100 percent of tax due without regard to any former entitlement to state PPTRA relief, plus applicable penalties and interest, to any taxpayer whose taxes with respect to a qualifying vehicle for a tax year 2005 or any prior tax year remain unpaid on September 1, 2006, or such dates as state funds for reimbursement of the state share of such bill have become available, whichever earlier occurs.

(b) Penalty and interest with respect to bills issued pursuant to subsection (a) of this section shall be computed on the entire amount of tax owed. Interest shall be computed at the rate provided in Town Code§ from the original due date of tax.

**Sec. 8.1-310. Delinquent taxes; interest; penalty.**

(a) In accordance with the Code of Virginia, § 58.1-3916, it is deemed to be necessary that payment of interest and penalty on delinquent taxes be provided for.

(b) Interest on taxes paid after December 5 of each year shall be assessed at the rate of ten (10) percent per annum of the tax and penalty past due. Interest shall commence on the following January 1 of each year.

(c) Penalty on taxes paid after December 5 of each year shall be assessed at the rate of ten (10) percent of the tax past due.

#### IV. FOOD AND BEVERAGE TAX

##### **Sec. 8.1-400. Definitions.**

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

*Beverage* means alcoholic beverage as defined in Code of Virginia, § 4.1-100, and nonalcoholic liquid served as part of a meal.

*Food* means any and all prepared edible refreshments and nourishments which are consumed.

*Person* means any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, syndicate, assignee, club, society, or other group or combination acting as a unit, and the plural of such term shall mean the same as the singular.

*Restaurant* means any one (1) of the following:

- (1) Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include, but are not limited to, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes and dining accommodations of public and private schools and colleges. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.
- (2) Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, pushcart operations, hotdog stands, and other mobile points for service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

Convenience stores and grocery stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax for that portion of the grocery store or convenience store selling such items. The food and beverage tax levied on meals sold by grocery store delicatessens and convenience stores shall be limited to prepared sandwiches and single meal platters.

##### **Sec. 8.1-401. Amount of tax levied.**

There is hereby imposed and levied by the town on each person a tax as set out in this article on the amount charged for food and beverage sold for human consumption. The tax shall be four (4) percent of the amount charged.



**Sec. 8.1-402. Duty to collect.**

Every person charging any amount for food and beverage with respect to which a tax is levied by the provisions of this article shall collect the amount of such tax from the person on whom the same is levied or from the person paying for such food and beverage at the time the charge for such food and beverage is made.

**Sec. 8.1-403. Tax held in trust.**

The taxes to be collected under the provisions of this article shall be deemed to be held in trust by the person required to collect such taxes until remitted to the treasurer.

**Sec. 8.1-404. Reports; remittance.**

The person collecting the tax shall use such forms and make a record thereof, setting forth such information as the treasurer may prescribe and require showing the amount of food and beverage charges collected and the tax required to be collected, and shall sign and deliver such reports to the treasurer with a remittance of such tax. Such report shall be made on or before the twentieth day of each month for taxes collected the preceding month. All payment of monies shall be made payable to the treasurer.

**Sec. 8.1-405. Records.**

It shall be the duty of every person liable for the collection and payment to the town of any tax imposed by this article to keep and preserve all records as may be necessary for a period of five (5) years. Those records should show accurately the amount of tax such person may have been responsible for collecting and the amount paid to the town. The treasurer may inspect such records at any reasonable time.

**Sec. 8.1-406. Penalties; interest.**

If any person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article there shall be added to such tax by the treasurer, a penalty in the amount of ten (10) percent thereof and interest thereon at the rate of eight (8) percent per annum which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

**Sec. 8.1-407. Enforcement.**

If any person shall fail or refuse to collect the tax imposed by the provisions of this article and to make monthly reports and remittances required by this article, the treasurer shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the treasurer procures such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who shall fail or refuse to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person such tax and penalty and interest provided by this article, and shall notify such person by registered mail sent to his last known place of address of the amount of such tax and penalty and interest, and the total amount thereof shall be payable within ten (10) days from the date of mailing of such notice. The treasurer shall have the power to

examine such records for the purpose of administering and enforcing the provisions of this article.

All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the Town of Amherst. The wrongful and fraudulent use of such collections other than remittance of the same on a monthly basis shall constitute embezzlement pursuant to § 18.2-111 and § 58.1-3833. C of the Code of Virginia.

**Sec. 8.1-408. Exemptions.**

Food and beverage furnished employees in the course of or in connection with their employment in establishments serving food and beverage and food and beverage sold or purchased under nonprofit nutrition programs for the elderly qualifying under 42 U.S.C. Section 3030(e) through (g), as amended, as administered by the Office of Aging of the Commonwealth of Virginia and food and beverage sold by educational institutions to students and employees for school lunches shall be exempt from the provisions of this article.

**Sec. 8.1-409. Compensation.**

For the purpose of compensating, a person for collecting, accounting or remitting the tax levied by this article, such person shall be allowed three (3) percent of the amount of the tax due and accounted for in the form of a deduction in submitting a return and paying the amount due by such person; providing the amount due was not delinquent at the time of payment. No commission shall be allowed if the account due is delinquent.

**Sec. 8.1-410. Penalty.**

Any person willfully failing or refusing to file the return required by section 8.1-404 of this article at the time, or times required therein or making false statements with intent to defraud in such return, shall be guilty of a class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less, or a class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars (\$1,000.00).

Any person violating or failing to comply with any of the other provisions of this article shall be guilty of a class 3 misdemeanor. Each violation or failure shall constitute a separate offense and conviction shall not relieve any person from payment, collection or remittance of the tax as provided in this article.

**Sec. 8.1-411. Exemption from state law.**

- (a) The provisions of Code of Virginia, Title 35.1, as amended, pertaining to the regulation of restaurants, shall not apply to concession stands at youth athletic activities when such stands are promoted or sponsored by either a youth athletic association or by any charitable nonprofit organization or group thereof.
- (b) It shall be the duty of the county's director of health, or a qualified person designated by him, to provide education and consultation, establish advisory standards and exercise appropriate supervision regarding the safe preparation,

handling, protection and preservation of food at concession stands at youth athletic activities, to protect the public health.

**Sec. 8.1-412. Procedure for cessation of business.**

Whenever any person required to collect and pay to the town any tax imposed by this article, shall cease to operate or dispose of his business, he shall notify the town treasurer of such fact in writing and any tax payable under this article shall become immediately due and payable on the date such person shall cease to operate or dispose of his business. Otherwise such person who fails to properly notify the treasurer of such cessation of business shall be liable for such taxes through the succeeding collection date.

## V. TRANSIENT OCCUPANCY TAX

### **Sec. 8.1-500. Definitions.**

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

*Hotel* means any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house or other lodging place within the town offering lodging for compensation to any transient.

*Lodging* means space or room furnished any transient.

*Transient* means any person who for a period of less than thirty (30) consecutive days either at his own expense or at the expense of another obtains lodging at any hotel.

### **Sec. 8.1-501. Amount of tax levied.**

The tax shall be five (5) percent of the amount of the charge for the occupancy of any room or space rented by any individual or groups for less than thirty (30) days.

### **Sec. 8.1-502. Collection procedure.**

Every person receiving any payment for lodging with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying for such lodging at the time payment for such lodging is made. The taxes collected under this article shall be deemed to be held in trust until such taxes are remitted to the town.

### **Sec. 8.1-503. Tax held in trust.**

The taxes to be collected under the provisions of this article shall be deemed to be held in trust by the person required to collect such taxes until remitted to the treasurer.

### **Sec. 8.1-504. Reports; remittance.**

The person collecting the tax shall use such forms and make a record thereof, setting forth such information as the treasurer may prescribe and require showing the amount of lodging charges collected and the tax required to be collected, and shall sign and deliver such reports to the treasurer with a remittance of such tax. Such report shall be made on or before the twentieth day of each month for taxes collected the preceding month. All payment of monies shall be made payable to the treasurer.

### **Sec. 8.1-505. Records.**

It shall be the duty of every person liable for the collection and payment to the town of any tax imposed by this article to keep and preserve all records as may be necessary for a period of five (5) years. Those records should show accurately the amount of such tax he may have been responsible for collecting and paid to the town. The treasurer may inspect such records at any reasonable time.

**Sec. 8.1-506. Penalties; interest.**

If any person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article there shall be added to such tax by the treasurer, a penalty in the amount of ten (10) percent thereof and interest thereon at the rate of eight (8) percent per annum which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

**Sec. 8.1-507. Enforcement.**

If any person shall fail or refuse to collect the tax imposed by the provisions of this article and to make monthly reports and remittances required by this article, the treasurer shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the treasurer procures such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who shall fail or refuse to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person such tax and penalty and interest provided by this article, and shall notify such person by registered mail sent to his last known place of address of the amount of such tax and penalty and interest, and the total amount thereof shall be payable within ten (10) days from the date of mailing of such notice. The treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this article.

All transient occupancy tax collections shall be deemed to be held in trust for the Town of Amherst. The wrongful and fraudulent use of such collections other than remittance of the same on a monthly basis shall constitute embezzlement pursuant to § 18.2-111 and § 58.1-3833. C of the Code of Virginia.

**Sec. 8.1-508. Exemptions.**

The following shall be exempted from the provisions of this article.

- (1) No charge for lodging paid to any hospital, medical clinic or convalescent home or home for the aged;
- (2) Charges for providing space in a mobile home park or travel trailer.

**Sec. 8.1-509. Compensation.**

For the purpose of compensating, a person for collecting, accounting or remitting the tax levied by this article, such person shall be allowed three (3) percent of the amount of the tax due and accounted for in the form of a deduction in submitting a return and paying the amount due by such person; providing the amount due was not delinquent at the time of payment. No commission shall be allowed if the account due is delinquent.

**Sec. 8.1-510. Penalty.**

Any person willfully failing or refusing to file the return required by section 8.1-504 of this article at the time, or times required therein or making false statements with intent to defraud in such return, shall be guilty of a class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars

(\$1,000.00) or less, or a class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars (\$1,000.00).

Any person violating or failing to comply with any of the other provisions of this article shall be guilty of a class 3 misdemeanor. Each violation or failure shall constitute a separate offense and conviction shall not relieve any person from payment, collection or remittance of the tax as provided in this article.

**Sec. 8.1-511. Exemption from state law.**

The tax imposed on transient room rentals pursuant to the authority of this ordinance shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes

**Sec. 8.1-512. Procedure for cessation of business.**

Whenever any person required to collect and pay to the town any tax imposed by this article, shall cease to operate or dispose of his business, he shall notify the town treasurer of such fact in writing and any tax payable under this article shall become immediately due and payable on the date such person shall cease to operate or dispose of his business. Otherwise such person who fails to properly notify the treasurer of such cessation of business shall be liable for such taxes through the succeeding collection date.

## VI. CONSUMER UTILITY TAXES

### Sec. 8.1-600. Communication utility consumer tax.

- (a) *Tax levied.* A tax will be charged on consumers of telephones, cellular telephones, mobile local telecommunication, as follows:
  - (1) For telephones--Twenty (20) percent of first fifteen dollars (\$15.00) of monthly bill for residential consumers and twenty (20) percent of first one hundred dollars (\$100.00) of monthly bill for commercial consumers.
  - (2) For cellular and mobile local telecommunication--Ten (10) percent of first thirty dollars (\$30.00) of monthly base charge.
- (b) *Effective date.* This tax will not be effective until sixty (60) days subsequent to written notice by certified mail from the town to the registered agent of the utility corporation that is required to collect the tax.
- (c) *Exceptions.* Public safety agencies as defined herein are exempt from this tax.
- (d) *Billing, collection and remittance of tax.* The service provider of local telecommunication services shall collect the tax from the consumer by adding the tax to the monthly gross charge for such services. The tax shall, when collected, be stated as a distinct item separate and apart from the monthly gross charge. Until the consumer pays the tax to the service provider, the tax shall constitute a debt of the consumer to the town. If any consumer refuses to pay the tax, the service provider shall notify the town. After the consumer pays tax to the service provider, the taxes collected shall be deemed to be held in trust by the service provider until remitted to the town. The service provider shall remit monthly to the town the amount of tax billed during the preceding month to consumers with a service address in the town, less discount allowed under § 58.1-3816.1 of the Code of Virginia, as amended.

### Sec. 8.1-601. Electric utility consumer tax.

- (a) In accordance with Code of Virginia, § 58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:
  - (1) *Residential consumers.* Such tax shall be eight (8) percent times the minimum monthly charge imposed by the service provider plus the rate of \$.00650 on each kwh delivered monthly to residential consumers by the service provider not to exceed one dollar and twenty cents (\$1.20) monthly.
  - (2) *Nonresidential consumers.* Such tax on nonresidential consumers shall be at the rates per month for the classes of nonresidential consumers as set forth below:
    - (a.) *Commercial/Industrial consumers.* Such tax shall be eight (8) percent times the minimum monthly charge imposed by the service provider plus the rate of \$0.00500 on each kwh delivered monthly.

- (b) The conversion of tax pursuant to this article to monthly kwh delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.
- (c) *Exemptions.* The following consumers of electric utilities shall be exempt from the tax imposed by this section:
  - (1) Any public safety agency as defined in Code of Virginia, § 58.1-3813, as amended.
  - (2) The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.
- (d) *Billing, collection and remittance of tax.* The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis. The service provider shall pay such taxes to the town in accordance with Code of Virginia, § 58.1-3814 (paragraphs F and G) and § 58.1-2901, as amended. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify the town of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction.

Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

- (e) *Computation of bills not on monthly basis.* Bills shall be considered as monthly bills for the purposes of this article if submitted twelve (12) times per year of approximately one (1) month each. Accordingly, the tax for a bi-monthly bill (approximately sixty (60) days) shall be determined as follows:
  - (1) The kwh will be divided by two (2);
  - (2) A monthly tax will be calculated using the rates set forth in paragraph (a) above;
  - (3) The tax determined by subsection (2) [above] shall be multiplied by 2; or,
  - (4) The tax in subsection (3) [above] may not exceed twice the monthly "maximum tax."

**Sec. 8.1-602. Local natural gas utility consumer tax.**

- (a) In accordance with Code of Virginia, § 58.1-3814, as amended, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers" as such term is defined in Code of Virginia, § 58.1-3814 (paragraph J), as amended, as follows:
  - (1) *Residential consumers.* Such tax on residential consumers of natural gas shall be twenty (20) percent times the minimum



monthly charge imposed by the service provider plus the rate of \$0.1867 per CCF delivered monthly to residential consumers, not to exceed three dollars (\$3.00) per month.

- (2) *Nonresidential consumers.* Such tax on nonresidential consumers shall be at the rates per month shown for each CCF delivered by a pipeline distribution company or a gas utility for the classes as set forth below:
  - a. *Commercial/Industrial consumers.* Such tax shall be twenty (20) percent times the minimum monthly charge imposed by the service provider plus the rate of \$0.15566 on each CCF delivered monthly to commercial/industrial consumers, not to exceed twenty dollars (\$20.00) per month.
- (b) The conversion of tax pursuant to this article to monthly CCF delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.
- (c) *Exemptions.* The following consumers of natural gas shall be exempt from the tax imposed by this section:
  - (1) Any public safety agency as defined in Code of Virginia, § 58.1-3813, as amended.
  - (2) The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.
- (d) *Billing, collection and remittance of tax.* The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to the town on a monthly basis. The service provider shall pay such taxes to the town in accordance with Code of Virginia, § 58.1-3814 (paragraphs H and I) and § 58.1-2901, as amended. If any consumer receives and pays for natural gas billed but refuses to pay the tax imposed by this section, the service provider shall notify the town of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge of electric service and the tax and remit the tax portion to the town.

Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the town.

- (e) *Computation of bills not on monthly basis.* Bills shall be considered as monthly bills for the purposes of this article if submitted twelve (12) times per year of approximately one (1) month each. Accordingly, the tax for a bi-monthly bill shall be determined as follows:
  - (1) The CCF will be divided by two (2);

- (2) A monthly tax will be calculated using the rates set forth in paragraph (a) above;
- (3) The tax determined by subsection (2) [above] shall be multiplied by two (2); or
- (4) The tax in subsection (3) [above] may not exceed twice the monthly "maximum tax."

**Sec. 8.1-603. Definitions.**

The following phrase shall have the following meaning:

*CCF* means the volume of gas at standard pressure and temperature in units of one hundred (100) cubic feet.

*Consumer* means every person whom, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas services in this jurisdiction.

*Gas utility* means a public utility authorized to furnish natural gas service in the Commonwealth of Virginia.

*Kilowatt hours (kwh) delivered* means one thousand (1,000) watts of electricity delivered in a one (1) hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in Code of Virginia, § 56-594, as amended, it means kwh supplied from the electric grid to such customer-generators, minus the kwh generated and fed back to the electric grid by such customer-generators.

*Person* means any individual, corporation, company or other entity.

*Pipeline distribution company* means a person which transmits by means of a pipeline natural gas, manufactured gas or crude petroleum and the products or by products thereof to a purchaser for purposes of furnishing heat or light. This definition does not include pipeline transmission company which transmits natural gas, manufactured gas or crude petroleum and the products or by products as a wholesale product.

*Public safety agencies* means functional division of a public agency which provides firefighting, police, medical, or other emergency services or a private entity which provides such services on a voluntary basis.

*Residential consumer* means the owner or tenant of property used primarily for residential purposes, including but not limited to, apartment houses and other multiple-family dwellings.

*Service provider* means a person who delivers electricity to a consumer or a gas utility or pipeline distribution company, which delivers natural gas to a consumer.

*Used primarily* refers to that use which consumes the largest annualized amount of total electric or natural gas utility service which is furnished.

**Sec. 8.1-604. Change in consumer status.**

- (a) The status of a consumer is upon initiation of service or upon adoption of this article whichever occurs first.
- (b) A consumer desiring a change of classification has the burden to produce sufficient evidence and documentation to the town for approval of a change in classification.

**Sec. 8.1-605. Penalties.**

- (a) Any consumer of electricity or natural gas failing, refusing or neglecting to pay the tax imposed and levied under this article violating the provisions of this article shall be guilty of a class 3 misdemeanor. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of the tax as provided in this article.
- (b) The willful failure of any officer, agent or employee of any service provider to pay over to the town funds collected pursuant to this article shall be deemed larceny under the Code of Virginia, as amended, and all other violations by such officers, agents, or employees shall be deemed a class 3 misdemeanor.
- (c) The remedies set forth herein are not exhaustive and the town reserves the right to seek all remedies in law or equity, civil or criminal under law for violation of this article.

## VII. GENERAL BUSINESS LICENSE TAXES

### **Sec. 8.1-700. Title.**

This article shall be known as a "Business, Professional, Occupational License Tax for the Town of Amherst, Virginia," and may be so cited.

### **Sec. 8.1-701. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Gross receipts* means the gross receipts from any business, trade, profession, occupation, vocation, calling or activity, including cash, credits, fees, commissions, brokerage charges and rentals, and property of any kind, nature or description from either sales made or services rendered without any deduction therefrom on account of cost of the property sold, the cost of material, labor or services or other costs, interest or discounts paid or any expense whatsoever, and such terms shall include in case of merchants the amount of the sale price of supplies and goods furnished to or used by the licensee or his or her family or other person for which no charge is made; provided, however, that the term "gross receipts" with respect to manufacturers, wholesale merchants and retail merchants manufacturing or dealing in articles upon which there is levied a direct excise tax or motor fuel tax by the United States or the state shall not include such excise tax or motor fuel tax by the United States or the state.

*Person* means individual, firm, copartnership, corporation, company, association or joint stock association. Such term shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a court appointed trustee, receiver or personal representative, in the liquidation of assets for immediate distribution or a sergeant or sheriff or any deputy, selling under authority of process of writ of a court of justice. Such term shall not include a volunteer fire department, a volunteer rescue squad or a nonprofit organization operating a community center, swimming pool, tennis court or other educational, cultural, recreational, and athletic facilities and facilities for the welfare of the residents of the area.

*Wholesale merchant* means any person who sells to others for resale or sells at wholesale to institutional, commercial or industrial users.

### **Sec. 8.1-702. Business, occupations, etc., subject to tax.**

Each and all of the taxes hereinafter imposed are in all cases imposed upon the privilege of doing business or exercising a trade, profession, occupation, vocation, calling or activity in the town, including all phases of the business, trade, profession, occupation, vocation, calling or activity conducted in the town.

### **Sec. 8.1-703. Levy of license taxes.**

For each year, beginning with January first (1st) of each year and ending December thirty-first (31st) following, there are hereby levied the annual license taxes set

forth in this article, except as otherwise specifically provided in this article, on persons conducting or engaged in any business, trade or occupation in the town set forth in this article.

**Sec. 8.1-704. Application for license.**

All persons embraced by this article shall make application for licenses to the treasurer at his office. The treasurer shall furnish the necessary forms which shall be properly filled in with such information as the treasurer may require. The treasurer shall compute the amount of license tax and, after payment to the treasurer, shall issue the license.

**Sec. 8.1-705. Information to be furnished by applicant.**

Every applicant for a license to conduct any business, profession, trade or occupation under the provisions of this article shall furnish the treasurer of the revenue, in writing, with his correct name and trade name, his correct residence address, the nature of the business, profession, trade or occupation to be pursued, the place where it is to be pursued, the date and/or number of the certificate of zoning compliance or letter permit secured, if applicable, and a record of gross receipts, verified by oath, for the past year, as well as such other information as may be required by the treasurer.

**Sec. 8.1-706. Each place of business to have separate license.**

No license shall be issued under the terms of this article to cover more than one (1) place of business, and applicants shall be required to take out separate licenses for each place of business in which the business, profession, trade or occupation to be licensed is pursued; provided, however, that if any applicant is engaged in two (2) or more businesses, professions, trades or occupations all subject to the same rate, all measured by the same base, and all carried on at the same place of business, he/she may obtain one (1) license for all such businesses, professions, trades or occupations, but all information for each, as otherwise required in this article shall be given and shall appear on the forms.

**Sec. 8.1-707. Computation of tax for beginning business, profession, trade.**

Every person beginning a business, profession, trade or occupation which is subject to a license tax under the provisions of this article and has been in operation for less than a year shall estimate the amount of the gross receipts he/she will receive between the date of beginning business and the end of the then current license year, and the license tax for the current year shall be computed on such estimate. Whenever a license tax is computed upon gross receipts, such estimate shall be subject to adjustment by the treasurer at the end of the tax year to reflect actual gross receipts and he/she shall give credit for any overpayment on the license tax payable the following year when requested.

**Sec. 8.1-708. Payment by corporations, partnerships.**

All licenses issued and license taxes imposed under the provisions of this article upon the gross receipts of a business, trade or occupation conducted by a corporation or partnership shall be issued to and paid by the corporation or partnership, and when so

paid, it shall be deemed to discharge the license tax liability of the members of such partnership insofar as it relates to partnership business.

**Sec. 8.1-709. When license taxes payable.**

All license taxes imposed by this article except as herein otherwise provided, shall become due and payable on or before May first (1st) of each license year. In all cases where the person shall begin the business, profession, trade or occupation upon which a license tax is imposed under such article after May first (1st) of the license tax year, such license tax shall become due and payable at the time which such person commences business. The assessing official may grant an extension of time in which to file an application for a license, for a reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with the 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, with a penalty of ten (10) percent of the portion paid after the due date.

**Sec. 8.1-710. Penalty for failure to pay license tax or file application when due.**

A penalty of ten (10) percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the due date, May first (1st ); provided that only the late filing penalty may be imposed. If both the application and payment are late; however, both penalties shall be assessed if the treasurer determines that the taxpayer has a history of noncompliance with either the timely filing of application or timely payment of the tax under this article. 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 assessing official is not paid within thirty (30) days, the treasurer may impose a ten (10) percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated. In order to demonstrate lack of fault, the taxpayer has the burden of showing and must show that he acted responsibly and that the failure was due to events beyond his control. Interest shall accrue on past due assessments at 10 percent per annum.

*Acted responsibly* means that:

- (a) 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
- (b) 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.

*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 assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

**Sec. 8.1-711. Records, report of gross receipts.**

- (a) Every person liable for a license tax under this article which is based on gross receipts or gross expenditures shall keep all records and accounts necessary to compute and to verify such gross receipts, and the report of such gross receipts or gross expenditures shall be taken from such records. All such records and general books of account shall be open to inspection and examination by the treasurer or his/her authorized representative, and shall be maintained for a period of three (3) years. Each licensee whose license is measured by gross receipts shall include actual gross receipts figures for the prior year in an application for a business license on a form provided by the treasurer..
- (b) In those cases in which the conduct of the business, profession, trade or occupation involves operations subject to more than one (1) rate or computed on more than one (1) base, as hereinafter set forth, the licensee is required to maintain separate accounts for each such operation and shall be separately licensed for such operation; provided, however, that the licensee may elect to maintain a single account for all operations taxed on gross receipts, in which case the entire business taxed on gross receipts shall be computed at the highest rate applicable to any part of the business taxed on gross receipts.

**Sec. 8.1-712. Transfer of license.**

- (a) Licenses issued under the provisions of this article, except as otherwise provided, may be transferred from one (1) location to another; provided, that no such transfer shall be valid unless and until notice in writing be given to the treasurer of the proposed transfer, which notice shall contain the name, trade name, if any, and the proposed transferee, the proposed new location, if any, as well as the time of the proposed transfer; and the treasurer may approve such transfer upon being satisfied of the good faith thereof. Failure to notify the treasurer of a transfer of a license within thirty (30) days of such transfer shall invalidate such license and such invalidated license shall not be subject to refund as provided by section 8.1-715.
- (b) It is specifically provided, however, that if the transferor's license for the current license year has been based on an estimate of gross receipts, or gross expenditures, as provided in section 8.1-707, that the transferor shall reveal his/her gross receipts or gross expenditures for the period he/she was in business during the current license year and 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 he/she will incur between the day of beginning business and the end of the current license year.

**Sec. 8.1-713. Display of form, tag, button or sign.**

Every person required to obtain a license under the provisions of this article shall keep the form, tag, button or sign issued in evidence thereof as prescribed by the treasurer in a convenient and conspicuous place, and whenever required to do so shall exhibit the same to any authorized enforcement officer of the town.

**Sec. 8.1-714. Assessment of license taxes found to be due.**

If the treasurer ascertains that any person has not been assessed with a license tax levied under the terms of this article for any license tax year of the five (5) license tax years last past, and the absence of such assessment was not due to the fraudulent intent to evade taxes on the part of such person, it shall be the duty of the treasurer to assess such person with the proper license tax for the year or years omitted, adding thereto the penalty and interest.

**Sec. 8.1-715. Certification of erroneous assessments; refunds.**

The treasurer is empowered to make refunds in instances of erroneous assessments.

**Sec. 8.1-716. Assessment and payment of additional license tax.**

If the treasurer ascertains that any person who has been assessed with a license tax levied under the provisions of this article for any license tax year of the five(5) license tax years last past or for the then current license tax year, but that upon a correct audit and computation of the license tax the assessment thereof should be in an increased amount, and the assessment of the license tax at the lesser amount was not due to fraudulent intent or to evade taxes, then the treasurer shall assess the taxpayer with the additional license tax found to be due, without penalty, and shall furnish written notice thereof to the taxpayer and at the same time shall transmit a copy of the assessment notice to the treasurer for collection. If the assessment of the additional license tax be not paid to the treasurer within fifteen (15) days after written notice to the taxpayer of such additional assessment, penalty at the rate of ten (10) percent per annum shall accrue from the date of the notice until payment and the treasurer shall collect such penalty along with the tax and in the same manner as the tax may be collected. Provided, however, that no action, suit or other proceeding at law or in equity shall be commenced in any court of the State of Virginia, nor shall any other legal action be taken, by the treasurer or other officer or agent of the town for the collection of any taxes or levies assessed under the authority of the town upon business licenses, or for the collection of any tax levied pursuant to this article, after the expiration of five (5) years from the date upon which any penalty was required by law to have been added to such tax or levy so assessed.

**Sec. 8.1-717. Assessment in case of fraud.**

If the treasurer ascertains that any person has fraudulently, or with intent to evade the payment of proper license taxes, failed or refused to obtain a proper license as required by the provisions of this article, for any one (1) or more of the five (5) license tax years last past, or for the then current license tax year, and the liability therefore is ascertained, such omitted or additional license tax and the normal penalty hereinbefore prescribed shall be assessed for each and every year of the five (5) license tax years last



past and for the current license tax year, for which he/she was assessable, together with an additional penalty thereon of fifty (50) percent of such unpaid license tax; and failure to obtain such license as is required by the provisions of this article shall be taken as prima facie evidence of intent to evade such taxes.

**Sec. 8.1-718. License as personal privilege.**

Every license issued under the provisions of this article shall be deemed to confer a personal privilege to transact, carry on or conduct the business, profession, trade or occupation which may be the subject of the license, and shall not be exercised except by the persons licensed.

(a) In the enforcement of the provisions of this article, the treasurer in addition to the powers specifically granted in this article, shall have all and the same enforcement authority with respect to town licenses that state law confers upon treasurers generally with respect to state licenses. As one of the means of ascertaining the amount of any license tax due under the provisions of this article, or of ascertaining any other pertinent information, the treasurer may propound interrogatories to each applicant and may use such other evidence as he/she may procure. Such interrogatories shall be answered under oath, and it shall be unlawful for any applicant for a town license to refuse to answer any such interrogatories.

(b) The treasurer of the town and his/her deputy or deputies shall have such duties, authority and power with respect to the enforcement of the provisions of this article as may be conferred by the Town Council.

(c) The treasurer or his/her duly qualified deputy or deputies shall have the power to summon any person by registered letter or otherwise to appear before his/her office at a time to be specified in such summons and to answer, under oath, questions touching such taxpayer's license tax liability. Failure to answer such summons without good cause or failing or refusing to answer under oath questions touching their tax liability shall be a misdemeanor and punishable as provided by section 8.1-719.

(d) The treasurer or his/her duly qualified deputy or deputies, after the hereinabove set out powers of enforcement have been exhausted, shall have the added power to proceed by warrant to enforce compliance with the provisions of this article.

**Sec. 8.1-719. Licenses required; compliance, penalty for violation.**

It shall be unlawful and constitute a misdemeanor of any person to conduct a business or to engage in a profession, trade or occupation before procuring a license as required under the provisions of this division. It shall also be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this division. Any person who is convicted for failing to procure a license as required, or convicted of a violation for any of the provisions of this article shall, except where some other penalty is specifically provided, be punished by a fine not to exceed three hundred dollars (\$300.00) or by imprisonment in jail for a period of thirty (30) days or both. Each day any person

shall continue to violate the provisions of this article after the due date of any license tax prescribed in this article shall constitute a separate offense.

**Sec. 8.1-720. Minimum license tax.**

Except as may be specifically otherwise provided by ordinance or other law, the annual license tax imposed hereunder shall be thirty dollars (\$30.00), or the rate set forth below for the class of enterprise listed in this article, whichever is greater.

**Sec. 8.1-721. Contractors--Fee; general definition.**

- (a) Every person conducting or engaging in the business of contracting and persons constructing on their own account for sale shall pay an annual license tax of sixteen cents (\$0.16) per one hundred dollars (\$100.00) of gross receipts.
- (b) A "contractor," for purposes of this classification, shall be any person who accepts or offers to accept:
  - (1) Orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead or other metal or any building material;
  - (2) Contracts to do any paving, curbing or other work on sidewalks, streets, alleys or highways, on public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;
  - (3) An order for or contract to excavate earth, rock or other material for foundation or any other purpose, or for cutting, trimming or maintaining rights-of-way;
  - (4) An order or contract to construct any sewer of stone, brick, terra-cotta or other material;
  - (5) Orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing or maintaining of electric wiring; or the erecting, installing, repairing or maintaining of lines for the transmission or distribution of electric light and power or other utility services;
  - (6) An order or contract to remodel, repair, wreck or demolish a building;
  - (7) An order or contract to bore or dig a well;
  - (8) An order or contract to install, maintain or repair air conditioning apparatus or equipment.

**Sec. 8.1-722. Same--Additional descriptions.**

- (a) Contracting generally includes, but is not limited to, persons engaged in the following occupations, businesses or trades:
  - Air conditioning;
  - Brick contracting and other masonry;
  - Building;
  - Cementing;
  - Dredging;
  - Electrical contracting;

Elevator installation;  
Erecting signs which are assessed as realty;  
Floor scraping or finishing;  
Foundations;  
House moving;  
Paint and paper decorating;  
Plastering;  
Plumbing, heating, steamfitting;  
Refrigeration;  
Road, street, bridge, sidewalk or curb and gutter construction;  
Roofing and tinning;  
Sewer drilling, and well digging;  
Sign painting;  
Structural metal work;  
Tile, glass, flooring and floor covering installation;  
Wrecking, moving or excavating.

- (b) A person is not a contractor if he is engaged in the business of selling and installing air conditioning units that are placed in windows or other openings with frames and require no ducts. The permanent installation of a unit in the wall of the building is contracting.
- (c) Any person engaged in the business of selling and erecting or erecting tombstones is not a contractor, but is engaged in either retail or wholesale sales.
- (d) Any person engaged in the business of wrecking or demolishing a building and who then sells the materials obtained is engaged in retail or wholesale sales as to the sale of the materials.
- (e) Soliciting business for a contractor is not contracting but is a business service.
- (f) Every contractor, whether a general contractor or a subcontractor, is a contractor for purposes of local license taxation. The imposition of a license tax on the gross receipts of a general contractor and also a subcontractor is not double taxation. Each is engaged in business in his/her own right and licensable accordingly.
- (g) A person who merely sells a prefabricated building or structure is not a contractor, but if the person or a subcontractor for that person erects the building or structure, then the seller is a contractor.
- (h) Any person who sells floor coverings and furnishes and installs the floor covering under a contract with a general contractor, whether the covering be carpet, linoleum, or other covering, is a contractor. If floor coverings are sold at retail and installed as part of or incidental to the sale, then the transaction is not contracting but a retail sale.
- (i) If the installation of an appliance requires the running of electrical, water or gas lines or service outlets, or the performance of any other function previously defined as contracting, then the installation is contracting.
- (j) The mere hauling of sand, gravel and dirt is not contracting but is a business service.
- (k) Whether a person is a contractor or employed as a laborer depends on the facts in each case. The elements to be considered in making the distinction include, but

are not limited to, the method of compensation, who supplies the materials and primarily who has the right of control.

- (l) Persons constructing for their own account for sale shall be included in the contracting category for the purpose of calculating the business license tax and this category shall include speculative builders.

**Sec. 8.1-723. Financial, real estate, professional services.**

Every person conducting or engaging in the business of financial, real estate and/or professional services shall pay an annual license fee of fifty cents (\$0.50) per one hundred dollars (\$100.00) of gross receipts.

**Sec. 8.1-724. Financial service.**

- (a) Any person rendering a service for compensation in the form of a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange is providing a financial service, unless such service is specifically provided for under another section.
- (b) Those engaged in rendering financial services include, but are not limited to, 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.
- (c) Any person other than a national bank or bank or trust company organized under the laws of this state, or duly licensed and practicing attorney-at-law, that engages in the business of buying or selling for others on commission or for other compensation, shares in any corporation, bonds, notes or other evidences of debt is a stockbroker. The fact that orders are taken subject to approval by a main office does not relieve the broker from local license taxation. Also, an insurance company engaged in selling mutual funds is a broker as to that portion of its business.

**Sec. 8.1-725. Real estate service.**

- (a) Any person rendering a service for compensation as lessor, buyer, seller, developer, agent or broker is providing a real estate service, unless the service is specifically provided for under another section.
- (b) Those rendering real estate 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.

**Sec. 8.1-726. Professional service.**

- (a) A person is engaged in providing a professional service if engaged in rendering any service specifically enumerated below or engaged in any 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 users for others as a vocation.
- (b) Those engaged in rendering a professional service include, but are not limited to, the following:
- Architects;
  - Attorneys-at-law;
  - Certified public accountants;
  - Dentists;
  - Engineers;
  - Land surveyors;
  - Pharmacists;
  - Practitioners of the healing arts (as defined in Code of Virginia, § 54.1-2900);
  - Surgeons;
  - Veterinarians.

**Sec. 8.1-727. Retailers.**

Every 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 shall pay an annual license fee of ten cents (\$0.10) per one hundred dollars (\$100.00) of gross receipts.

**Sec. 8.1-728. Wholesalers.**

Every 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 and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale shall pay an annual license fee of four cents (\$0.04) per one hundred dollars (\$100.00) of gross receipts.

**Sec. 8.1-729. Repair, personal, business and other services--Tax; general definitions.**

- (a) Every person conducting or engaging in the business of repair, personal or business service or any other business or occupation not specifically listed or

- excepted in this division or classified as retail, shall pay an annual license tax of thirty-one cents (\$0.31) per one hundred dollars (\$100.00) of gross receipts.
- (b) The repairing, renovating, cleaning or servicing of some article or item of personal property for compensation is a repair service, unless the service is specifically provided for under another section of this division.
  - (c) Any service rendered for compensation either upon or for persons, animals or personal effects is a personal service, unless the service is specifically provided for under another section hereof.
  - (d) Any service rendered for compensation to any business, trade, occupation or governmental agency is a business service, unless the service is specifically provided for under another section hereof.

**Sec. 8.1-730. Same--Additional descriptions.**

- (a) *Examples.* Those rendering a repair, personal or business service or other service as provided in section 8.1-729 include, but are not limited to, the following:

- Advertising agencies;
- Ambulance services;
- Amusements and recreation services (all types);
- Animal hospitals, grooming services, kennels or stables;
- Asphalt or other road-building materials;
- Auctioneers and common criers;
- Automobile driving schools;
- Barber shops, beauty parlors, and hairdressing establishments;
- Bid or building reporting service;
- Billiard or pool establishments or parlors;
- Blacksmith or wheelwright;
- Bondsman;
- Booking agents or concert managers;
- Bottle exchanges;
- Bowling alleys;
- Brokers and commission merchants other than real estate or financial brokers;
- Business research and consulting services;
- Carnivals (The term "carnival" means an aggregation of shows, amusements, concessions, eating places and riding devices or any of them, operated together on one (1) lot or street or on contiguous lots or streets, moving from place to place, whether or not the same are owned and actually operated by separate persons. The term includes but is not limited to sideshows, dog and pony shows, trained animal shows, circuses and menageries.);
- Chartered clubs;
- Child care attendants or schools;
- Collection agents or agencies;
- Commercial photography, art and graphics;
- Commercial sports;
- Dance house, studios and schools;
- Data processing, computer and systems development services;

Detective agency and protective services;  
Developing or enlarging photographs;  
Drafting services;  
Engraving;  
Erecting, installing, removing or storing awnings;  
Fortunetellers (The term "fortunetellers" includes a clairvoyant, a practitioner of palmistry, a phrenologist, a faithhealer, a star analyst, a handwriting analyst who attempts to predict the future, or any other person who attempts to predict the future. No license tax on fortunetellers imposed pursuant to this article shall exceed one thousand dollars (\$1,000.00) per year. *(State law reference: Maximum license tax on fortunetellers, Code of Virginia, § 58.1-3726.)*)  
Freight traffic bureaus;  
Fumigating or disinfecting;  
Funeral services and crematories;  
Golf courses, driving ranges and miniature golf courses;  
Hauling of sand, gravel or dirt;  
Hotels, motels, tourist courts, boarding and rooming houses and trailer parks and campsites;  
House cleaning services;  
Impounding lots;  
Information bureau;  
Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports and the like;  
Interior decorating;  
Janitorial services;  
Laundry, cleaning and garment services including laundries, dry cleaners, linen supply, diaper service, coin-operated laundries and carpet and upholstery cleaning;  
Mailing, messenger and correspondent services;  
Marinas and boat landings;

Movie theaters and drive-in theaters;  
Nickel plating, chromizing and electroplating;  
Nurses and physician registries;  
Nursing and personal care facilities including nursing homes, convalescent homes, homes for the retarded, old age homes and rest homes;  
Packing, crating, shipping, hauling or moving goods or chattels for others;  
Parcel delivery service;  
Parking lots, public garages and valet parking;  
Pawnbrokers;  
Personnel services, labor agents and employment bureaus;  
Photographers and photographic services;  
Piano tuning;  
Picture framing and gilding;  
Porter services;  
Press clipping services;

Private hospitals;  
Promotional agents or agencies;  
Public relations services;  
Realty multiple listing services;  
Renting or leasing any items of tangible personal property;  
Reproduction services;  
Secretarial services;  
Septic tank cleaning;  
Shoe repair, shoe shine and hat repair shops;  
Sign painting;  
Storage--all types;  
Swimming pool maintenance and management;  
Tabulation services;  
Taxidermist;  
Telephone answering services;  
Theaters;  
Theatrical performers, bands and orchestras;  
Towing services;  
Transportation services including buses and taxis;  
Travel bureaus;  
Tree surgeons, trimmers and removal services;  
Turkish, Roman or other like baths or parlors;  
Wake-up services;  
Washing, cleaning or polishing automobiles.

- (b) *Commission merchants.* Any person buying or selling any kind of goods, wares or merchandise for another on commission is a commission merchant and is engaged in a business service.
- (c) *Photographers.* Photographers who have no regularly established place of business in Virginia may be subject to local license taxation so long as the tax is not in excess of thirty dollars (\$30.00), as authorized by the Code of Virginia, § 58.1-3727.
- (d) *Amusements.* An amusement is a type of entertainment or show for which compensation is received and that is not specifically provided for under another section.
- (e) *Telephone, telegraph, light, heat and power companies.* For telephone, telegraph, light heat and power companies, one-half of one (1) percent of the prior year's gross receipts, excluding the charges for long distance telephone calls;
- (f) *Utilities.* For water or heat, light and power companies, one-half of one (1) percent of the prior year's gross receipts.
- (g) *Massage parlors.* For massage parlors, \$100 per year.
- (h) *Precious metals dealers.* For dealers in precious metals, \$100 per year.
- (i) *Coliseums, arenas and auditoriums.* For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000 per year.
- (j) *Savings and loan associations and credit unions.* For savings and loan associations and credit unions, \$200 per year.



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- (k) *Direct sellers.* For direct sellers as defined in Section 58.1-3719.1 of the Code of Virginia with total annual sales in excess of \$4,000, 10 cents per \$100 of total annual retail sales or 4 cents per \$100 of total annual wholesale sales, whichever is applicable.
- (l) *Beer, wine and tobacco.* For the privilege of selling beer, \$35 per year; for the privilege of selling wine, \$25 per year; and for the privilege of selling tobacco products, \$2.50 per year.
- (m) *Carnivals, circuses and speedways.* For carnivals, circuses and speedways, \$200 for each performance held in the Town of Amherst, provided, however, when such activities are sponsored by civic or charitable groups, the fee may be waived by the Town Council.

**VIII. CIGARETTE TAX**

(Reserved.)

**IX. ITINERANT MERCHANTS, ETC.**

**Sec. 8.1-900. License--Tax; duration.**

There shall be paid by itinerant merchants, or itinerant auctioneers and peddlers, as defined in the Code of Virginia, §§ 58.1-3717 and 58.1-3718, and regulated in Code of Virginia, §§ 58.1-3703--58.1-3706, a specific license tax of two hundred dollars (\$200.00) per month or fraction thereof, such license to be granted for a period of time of not less than one (1) month, which shall be assessed and collected as other taxes, but in no case shall any one (1) itinerant merchant or peddler as defined in this chapter be assessed a license fee of more than five hundred dollars (\$500.00) in any year. Provided, however, that the license tax on peddlers of fresh farm produce shall be fifty dollars (\$50.00) per year.

**Sec. 8.1-901. Same--Regulations.**

The license shall be renewed monthly during the continuance of the sale and shall be a personal privilege and shall not be transferable nor shall there be any abatement in any instance of the tax upon such license by reason of the fact that such person or persons so licensed shall have exercised such license for any period of time less than that for which it was granted. This section and section 8.1-900 also apply to the auction sale of diamonds or any other precious or semiprecious stones or imitations thereof, watches, clocks, jewelry, gold, silver, or plated ware, china, glassware, art goods, rugs, tapestries or leather goods when such business is conducted in the manner defined and regulated in the statutes referred to in section 8.1-900. The license shall at all times be kept publicly exposed by the licensee on his business premises.

**Sec. 8.1-902. Registration; permit.**

In accordance with Code of Virginia, § 15.2-913, persons not otherwise licensed by the state under Code of Virginia, tit. 38.2, and offering any item for sale within the Town of Amherst, when such persons go from one place of human habitation to another offering an item, other than newspapers and fresh farm products, shall register with the Police Chief, and obtain a permit from the treasurer. Provided, however, that activities conducted on behalf of a nonprofit, charitable, civic or religious organization shall be exempted from the provisions of this article. A fee in the amount of twenty dollars (\$20.00) per calendar year shall be collected from each person granted a permit to sell door to door.

## X. BANK FRANCHISE TAX

### **Sec. 8.1-1100. Definitions.**

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

*Bank* shall be as defined in Code of Virginia, § 58.1-1101.

*Net capital* shall mean a bank's net capital computed pursuant to Code of Virginia, § 58.1-1105.

### **Sec. 8.1-1011. Penalty upon bank for failure to comply.**

Any bank which fails to file a return or pay the tax required by this article or fails to comply with any other provision of this article shall be subject to a penalty of five (5) percent of the tax due. If the treasurer is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with the Code of Virginia, § 58.1-15.

### **Sec. 8.1-1012. Imposed.**

- (a) Pursuant to the provisions of Code of Virginia, § 58.1-1100 et seq., there is hereby imposed upon each bank located in the town a tax on net capital equaling eighty (80) percent of the state rate of franchise tax set forth in Code of Virginia, § 58.1-1104.
- (b) If such bank also has offices that are located outside the town, the tax shall be apportioned as provided in Code of Virginia, § 58.1-1111.

### **Sec. 8.1-1013. Filing of return, payment of tax.**

- (a) On or after the first day of January of each year, but not later than March 1 of any such year, all banks whose principal offices are located within the town shall prepare and file with the treasurer a return as provided by Code of Virginia, § 58.1-1107, in duplicate which shall set forth the tax on net capital computed pursuant to Code of Virginia, § 58.1-1100 et seq. (b) If a bank is located outside the boundaries of the town, in addition to the filing requirements set forth in subsection (a) hereof, any bank conducting such business shall file with the treasurer a copy of the real estate deduction schedule, apportionment and other items which are required by Code of Virginia, §§ 58.1-1107, 58.1-1111 and 58.1-1112.
- (c) Each bank, on or before the first day of June of each year, shall pay into the treasurer's office all taxes imposed pursuant to this article.

## **XI. BINGO GAMES**

### **Sec. 8.1-1100. Definitions.**

Wherever used in this article, the term "bingo games", and "bingo contests" shall include the terms "bingo", "instant bingo", "jackpot" and any bingo game in which all gross receipts from players for that game are paid as prize money back to the players as defined in Code of Virginia, §§ 18.2-340.16 and 18.2-340.33.

### **Sec. 8.1-1101. Penalties.**

- (a) Any person or organization violating the provisions of this article shall be guilty of a class 1 misdemeanor.
- (b) Additionally, the Town Attorney may, in addition to the criminal penalties under this article, apply to the circuit court for the Town for an injunction restraining the continued operation of bingo games wherein any person or organization violates this article.

### **Sec. 8.1-1102. Scope.**

This article is to supplement state laws as set forth in the Code of Virginia, § 18.2-340.15 et seq.; this article is in no way to amend or annul any provisions as set forth in Code of Virginia, §§ 18.2-340.15--18.2-340.38. The purpose of this article is to add to the same code and adopt in article regulating bingo games within the Town, not in conflict with the provisions of the aforesaid article, chapter and title. This article is to be read in concert with the aforesaid article of the Virginia Code and draws therefrom for this definitions.

### **Sec. 8.1-1103. Hours; frequency of operation of bingo.**

- (a) No bingo game or contest may be conducted in the Town for more than five (5) consecutive hours. Further, no bingo game or contest shall be operated in the Town past the hour of midnight.
- (b) No bingo game or contest shall be operated in the Town between the hours of midnight on Saturday and midnight on Sunday of any week.
- (c) No organization shall conduct more than one (1) session of bingo games or contests within a calendar week, beginning on Monday and ending on the following Sunday.

## XII. PRECIOUS METALS AND GEMS

### Sec. 8.1-1200. Definitions.

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

*Coin* means any piece of gold, silver or other metal fashioned into a prescribed shape, weight and degree of fineness, stamped by authority of a government with certain marks and devices, and having a certain fixed value as money.

*Dealer* means any person engaged in the business of:

- (1) Purchasing secondhand precious metals or gems;
- (2) Removing in any manner precious metals or gems from manufactured articles not then owned by such person; or
- (3) Buying, acquiring, or selling precious metals or gems removed from such manufactured articles.

Dealer means all employers and principals on whose behalf a purchase is made, and any employee or agent who makes any such purchase for or on behalf of this employer or principal.

This definition shall not be construed so as to include persons engaged in the following:

- (1) Purchases of precious metals or gems directly from other dealers, manufacturers or wholesalers for retail or wholesale inventories, provided the selling dealer has complied with the provisions of this article;
- (2) Purchases of precious metals or gems from a duly qualified fiduciary who is disposing of the assets of the estate being administered by such fiduciary in the administration of an estate;
- (3) Acceptance by a retail merchant of trade-in merchandise previously sold by such retail merchant to the person presenting that merchandise for trade-in;
- (4) Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business;
- (5) Purchases of precious metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers or by mail originating outside the Commonwealth of Virginia;
- (6) Persons regularly engaged in the business of purchasing and processing nonprecious scrap metals which incidentally may contain traces of precious metals recoverable as a by-product.

*Gems* means any item containing precious or semiprecious stones customarily used in jewelry.

*Precious metals* means any item except coins composed in whole or in part of gold, silver, platinum, or platinum alloys.

**Sec. 8.1-1201. Penalties.**

- (a) Any person convicted of violating any of the provisions of this article shall be guilty of a class 2 misdemeanor for the first offense. Upon conviction of any subsequent offense he shall be guilty of a class 1 misdemeanor.
- (b) Upon the first conviction by any court of a dealer for violation of any provision of this article, the sheriff may revoke his permit to engage in business as a dealer under this article for a period of one (1) full year from the date the conviction becomes final. Such revocation shall be mandatory upon a second conviction.

**Sec. 8.1-1202. Banking institutions exempt.**

The provisions of this article shall not apply to any bank, branch thereof, trust company or bank holding company, or any wholly owned subsidiary thereof, engaged in the business of buying and selling gold and silver bullion.

**Sec. 8.1-1203. When exhibitions or shows exempt.**

The Police Chief or his designee may waive by written notice implementation of any one (1) or more of the provisions of this article, except section 8.1-1206, for particular numismatic, gem or antique exhibitions or craft shows sponsored by nonprofit organizations, provided that the purpose of the exhibitions is nonprofit in nature, notwithstanding the fact that there may be casual purchases and trades made at such exhibitions.

**Sec. 8.1-1204. Records to be kept, furnished to local authorities.**

- (a) Every dealer shall keep at his place of business an accurate and legible record of each purchase of precious metals or gems. The record of each such purchase shall be retained by the dealer for not less than twenty-four (24) months. These records shall set forth the following:
  - (1) A complete description of all precious metals or gems purchased from each seller. The description shall include all names, initials, serial numbers or other identifying marks or monograms on each item purchased, the true weight or carat of any gem, and the price paid for each item;
  - (2) The date and time of receiving the items purchased;
  - (3) The name, address, age, sex, race, driver's license number or social security number, and signature of the seller; and
  - (4) A statement of ownership from the seller.
- (b) The information required by subsection (a) shall appear on each bill of sale for all precious metals and gems purchased by a dealer, and a copy shall be mailed or delivered within twenty-four (24) hours of the time of purchase to the sheriff.
- (c) Every dealer shall admit to his premises during regular business hours the sheriff, or his sworn designee, or any law-enforcement official of the state or federal government and shall permit such law-enforcement officer to examine all records required by this article, and to examine any article listed in a record which is believed by the officer or official to be missing or stolen.

**Sec. 8.1-1205. Credentials required from seller.**

No dealer shall purchase precious metals or gems without first:

- (1) Ascertaining the identity of the seller by requiring an identification issued by a governmental agency with a photograph of the seller thereon, and at least one (1) other corroborating means of identification; and
- (2) Obtaining a statement of ownership from the seller. The board of supervisors may determine the contents of the statement of ownership.

**Sec. 8.1-1206. Prohibited purchases.**

- (a) No dealer shall purchase precious metals or gems from any seller who is under the age of eighteen (18).
- (b) No dealer shall purchase precious metals or gems from any seller who the dealer believes or has reason to believe is not the owner of such items, unless the seller has written and duly authenticated authorization from the owner permitting and directing such sale.

**Sec. 8.1-1207. Dealer to retain purchases.**

- (a) The dealer shall retain all precious metals or gems purchased for a minimum of ten (10) calendar days from the date on which a copy of the bill of sale is received by the Police Chief. Until the expiration of this period, the dealer shall not sell, alter, or dispose of a purchased item in whole or in part, or remove it from the county, city or town in which the purchase was made.
- (b) If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of ten (10) days after receiving such article and precious metals or gems.

**Sec. 8.1-1208. Record of disposition.**

Each dealer shall keep and maintain for at least twenty-four (24) months an accurate and legible record of the name and address of the person, to which he sells any precious metal or gem in its original form after the waiting period required by section 8.1-1207. This record shall also show the name and address of the seller from whom the dealer purchased such item.

**Sec. 8.1-1209. Permit, bond required.**

- (a) Every dealer shall secure a permit as required by section 8.1-1211 and each dealer at the time of obtaining such permit shall enter into a recognizance to the Town secured by a corporate surety authorized to do business in this Commonwealth, in the penal sum of ten thousand dollars (\$10,000.00), conditioned upon due observance of the terms of this article. In lieu of a bond, a dealer may cause to be issued by a bank authorized to do business in the Commonwealth of Virginia a letter of credit in favor of the town in the sum of ten thousand dollars (\$10,000.00).



- (b) A single bond upon an employer or principal may be written or a single letter of credit issued to cover all employees and all transactions occurring at a single location.

**Sec. 8.1-1210. Action against dealer.**

If any person shall be aggrieved by the misconduct of any dealer who has violated the provisions of this article, he may maintain an action for recovery in any court of proper jurisdiction against such dealer and his surety, provided that recovery against the surety shall be only for that amount of the judgment, if any, which is unsatisfied by the dealer.

**Sec. 8.1-1211. Permit required; application; fee; requirements.**

- (a) No person shall engage in the activities of a dealer as defined in section 8.1-1200 without first obtaining a permit from the Police Chief.
- (b) To obtain a permit, the dealer shall file with the Police Chief an application form which shall include the dealer's full name, any aliases, address, age, date of birth, sex, and fingerprints; the name, address, and telephone number of the applicant's employer, if any; and the location of the dealer's place of business. Upon filing this application and the payment of a two hundred dollar (\$200.00) application fee, the dealer shall be issued a permit by the sheriff or his designee, provided that the applicant has not been convicted of a felony or crime of moral turpitude within seven (7) years prior to the date of application. The permit shall be denied if the applicant has been denied a permit or has had a permit revoked under any ordinance similar in substance to the provisions of this article.
- (c) Before a permit may be issued, the dealer must have all weighing devices used in his business inspected and approved by state weights and measures officials and present written evidence of such approval to the Police Chief.
- (d) This permit shall be valid for one (1) year from the date issued and may be renewed in the same manner as such permit was initially obtained with an annual permit fee of two hundred dollars (\$200.00). No permit shall be transferable.
- (e) If the business of the dealer is not operated without interruption, with Saturdays, Sundays and recognized holidays, excepted, the dealer shall notify the Police Chief of all closings and reopenings of such business. The business of a dealer shall be conducted only from the fixed and permanent location specified in his application for a permit.

### **XIII. CABLE TELEVISION**

#### **Sec. 8.1-1301. General Legal Purpose.**

The general purpose of this chapter, pursuant to section 15.1-23.1 of the Code of Virginia, 1950, as amended, is to establish the policies and procedures whereby the Town of Amherst, Virginia may grant unto certain companies, their successors and assigns, a non-exclusive franchise, to erect, operate and maintain poles, cables and all other electrical equipment, structures, or fixtures necessary and incidental to the construction, operation and maintenance of a cable television system under, over, upon and across the streets, public ways and public places of the Town and to provide cable service to the residents and citizens of said Town, and to the persons, firms, and corporations doing business therein, and to use the property of other companies in furtherance and support of the objectives of this chapter and any franchise granted hereunder upon such arrangement and under such conditions as the companies may agree. For the purposes of this chapter, the term "franchise" shall apply, unless otherwise distinguished, to either an initial franchise or renewal franchise.

#### **Sec. 8.1-1302. Statement of Intent.**

The residents of the Town have for a substantial number of years enjoyed the benefits of cable television service provided to such residents by its franchisee pursuant to authority granted by the Town to its franchisee. The Town deems it in the public interest to ensure to the maximum extent possible that the residents of the Town will continue to receive cable television service of no less quality and availability than that to which they have become accustomed. The Town deems it in the public interest to provide a mechanism whereby the company providing cable television service to the Town prior to the date of enactment of this chapter may have its grant of authority to provide such service renewed, and whereby authority may be granted to others to provide cable television service. Accordingly, the Town finds that the public welfare will be enhanced by authorizing the grant of a cable television franchise to that company providing cable service within the Town prior to the date of enactment of this chapter in accordance with the provisions of this chapter, and does hereby authorize such grant subject to such provisions.

#### **Sec. 8.1-1303. Short Title.**

This chapter shall be known and may be cited as the cable television franchise ordinance.

#### **Sec. 8.1-1304. Definitions.**

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein. Terms not otherwise defined herein, whether capitalized or not, shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984 (the "1984 Cable Act") and the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

*Cable television system* or "CATV", or "cable system", (sometimes also referred to as "system") shall have the same meaning as ascribed to the term "cable system" in the 1984 Cable Act.

*Council* shall mean the Town Council of the Town of Amherst, Virginia.

*County schools* are all buildings within the Town of Amherst operated by the Amherst County Public School System for the purposes of teaching and learning.

*FCC* shall mean the Federal Communications Commission or its successor.

*Franchise area*, for the purposes of establishing the Town's entitlement to regulate rates charged by a franchisee pursuant to section 3 of the 1992 Cable Act (Regulation of Rates)(amending section 623 of the Communications Act of 1934), or any subsequently adopted counterpart thereof or governing regulatory provision relating thereto, shall mean and be deemed as being contiguous with the lands inside the incorporated limits of the Town of Amherst, including all lands which may be annexed at any future date.

*Franchisee* shall mean the grantee of rights under a franchise granted pursuant to this chapter.

*Gross revenues* shall mean subscriber revenues derived from regular subscriber services, i.e., the carriage of broadcast signals and required nonbroadcast services provided by cable television systems pursuant to rules and regulations of the Federal Communications Commission.

*Highway department* means the Virginia Department of Transportation.

*Home* is any single-family dwelling unit whether a house, apartment, trailer, rented room or otherwise, but such definition shall not include any abandoned, derelict or other structure not fit or suitable for human habitation.

*Local government occupied buildings* are those buildings occupied in whole or in part by Town of Amherst or Amherst County officials or other persons in furtherance of government objectives, and shall include, without limiting the generality of the foregoing, all volunteer fire and/or rescue companies located within the Town.

*Person* is any individual, firm, partnership, association, corporation, company, trust, governmental entity or organization of any kind.

*Regular subscriber service* shall mean the simultaneous delivery by a franchisee to the television receivers (or any other suitable type of audio-video communications receivers) of all residential subscribers, to commercial, i.e., nonresidential, subscribers, and to public or governmental facilities or buildings in the Town of all signals, excluding those carried on an institutional network, that are carried by or on the delivering franchisee's cable system, subject to payment of permissibly imposed subscription, installation and other fees or charges associated with the delivery and receipt of such signals.

*Residential subscriber* shall mean a purchaser in good standing of any service that a franchisee delivers to any home provided that service is not utilized in connection with a business, trade, or profession.

*Senior citizen* shall mean any residential subscriber who is sixty-five (65) years of age or older.

*Service area* shall mean franchise area.

*Streets* shall mean all dedicated public streets, roads, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parkways, waterways, docks, bulkheads and alleys, and all other public rights-of-way and public grounds or waters within or belonging to the Town.

*Subscriber or user* shall mean any person or entity lawfully receiving any service provided by or carried on the franchisee's cable television system.

*Town Manager* shall mean the duly appointed Town Manager of the Town of Amherst or his designee.

**Sec. 8.1-1305. Grant Of Authority.**

(a) After having approved a franchise applicant's legal, character, financial, technical and other qualifications and the adequacy and feasibility of the applicant's construction arrangements, the Town shall have the authority, subject to compliance with the relevant provisions of section 15.1-23.1 of the Code of Virginia, to grant to such applicant, who shall thereafter be a franchisee hereunder, a nonexclusive franchise to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the Town poles, wires, cable, underground conduits manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable television system and to thereafter provide cable service and other communications and information services to any portion of the Town, subject to such applicant's agreement and obligation to construct, maintain and operate a cable television system within the service area as herein-before defined, to offer regular subscriber service within such service area, and to otherwise comply with all provisions of this chapter and any agreement relating to the grant of the franchise. No franchise granted hereunder shall limit or allow any franchisee to serving only one portion of the Town, it being the intent of this chapter to allow all franchisees to provide cable service to all portions of the Town, subject only to the requirements of this chapter and any relevant franchise agreement. A person not lawfully operating a cable television system within the Town prior to the date of this chapter shall not operate a cable television system within the Town unless and until such person is granted a franchise hereunder.

(b) No franchisee shall, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in any franchise granted hereunder shall be deemed to prohibit the establishment of a graduated scale of charges (1) to "senior citizen" subscribers, as to whom, at the franchisee's option, eligibility for a discount may be based on income, and (2) for multiple installations at the same time or within or proximate to the same building, nor shall a franchisee be prohibited from establishing reasonable categories of service and customers with separate rates and terms and conditions of service.

(c) Any franchise granted hereunder as an initial authorization shall be for a term not to exceed ten (10) years, and any renewal thereof shall be for a term not to exceed five (5) years.

**Sec. 8.1-1306. Rates.**

The Town specifically retains all rights to regulate rates charged by any franchisee for cable service, subject to the provisions of relevant federal and state legislation and the rules and regulations of administrative agencies with authority.

**Sec. 8.1-1307. System Operation.**

Every franchisee shall operate its cable system as required by the FCC's Rules and Regulations, including any and all minimum standards, and updates thereof, prescribed by the FCC pursuant to the provisions of section 16 of the 1992 Cable Act (amending section 624 (e) of the Communications Act of 1934), and pending the FCC's adoption of the aforereferenced

standards, shall ensure compliance with all provisions of FCC Rule section 76.605 (Technical Standards), and any amendments thereto, throughout all parts of the Town notwithstanding that some portions of the Town so served may be defined as a rural area pursuant to section 76.5 of the FCC's Rules and Regulations. Every franchisee shall submit to the Town, if requested by the Town, copies of its twice annual proof-of-performance tests required pursuant to FCC Rule section 76.601 within thirty (30) days after completion of same, and any other performance tests that may be required by subsequent amendment of the FCC's Rules and Regulations.

**Sec. 8.1-1308. Franchisee Liability Indemnification.**

(a) Every franchisee, as a condition to its continued entitlement to hold a franchise hereunder, shall save the Town harmless from all loss sustained by the Town on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from negligence on the part of the franchisee in the construction, operation or maintenance of its cable television system in the Town.

(b) Each franchisee shall take out and maintain throughout the term of its franchise comprehensive general liability insurance against personal injury with limitations of not less than five hundred thousand dollars (\$500,000.00) for injury to any person and one million dollars (\$1,000,000.00) for any one accident, and insurance against property damage, including damage to Town property, in an amount not less than one million dollars (\$1,000,000.00), and shall maintain comprehensive automobile liability insurance, including non-owned and hired car as well as owned vehicles coverage, with minimum bodily injury coverage for each occurrence of one million dollars (\$1,000,000.00) and property damage coverage of not less than one hundred thousand dollars (\$100,000.00) per occurrence. The above policies shall be written by a company rated "A" or better and licensed to do business in the Commonwealth of Virginia and the Town shall be named as an additional insured thereunder. A certificate of these policies shall be furnished to the Town as a condition to the grant of any franchise hereunder. The Town reserves the right to require an increase in the foregoing listed basic coverages by an amount not to exceed the greater of five (5) percent or the amount by which the National Consumer Price Index ("CPI") has increased during the immediately prior calendar year, for each year after the adoption of this chapter; provided, however, that no single increase exceeding twice the amount by which the CPI has increased for the immediately prior year shall be required, nor shall any increase be required without six (6) months advance notice to a franchisee.

(c) Every franchisee shall obtain workmen's compensation insurance as required by the laws of the State of Virginia.

(d) No insurance policy shall be cancelable or non-renewable until thirty (30) days after receipt by the Town of notice of intention to cancel or non-renew.

**Sec. 8.1-1309. Maintenance and service Problem Procedures.**

(a) Throughout the term of its franchise, every franchisee shall maintain all parts of its cable system in good working condition.

(b) Each franchisee shall, at a minimum, comply with customer service standards established by the FCC pursuant to section 8 of the 1992 Cable Act (amending section 631 of the Communications Act of 1934) upon adoption by the FCC of such standards. In addition to, and not in lieu of the notice requirements of FCC Rule section 76.607 or any notice requirements subsequently established by the FCC pursuant to section 8 of the 1992 Cable Act, notice of the procedures for reporting and resolving service problems will be given to each subscriber by the franchisee at the time of initial subscription to the cable system. Notwithstanding any other

provision of law or FCC Rule, unless specifically preempted thereby, every franchisee shall maintain a toll-free telephone number to be listed in the applicable telephone directories for the Town and available to all subscribers throughout the Town, answered by a company employee during normal business hours to provide adequate and prompt service to all subscribers; provided, however, that during non-business hours a franchisee shall ensure that at a minimum a twenty-four-hour answering service is available on a toll-free basis to receive subscriber calls. The Town Manager shall be directly responsible for assuring that all service problems have been satisfactorily resolved. The specific procedure for reporting service problems and, to the extent not subsequently preempted by law or FCC Rule, the minimum responsibilities of each franchisee and the responsibilities of the Town shall be as follows:

*Franchisee.*

- (1) Upon finding cable service problems, the subscriber shall report same to the franchisee who shall respond to all service problems and correct malfunctions as promptly as possible, and, under normal circumstances, shall respond on a priority basis to service outages involving more than one (1) subscriber in a localized service area and shall respond to service outages involving an individual subscriber only by the end of the business day next following receipt of notice of such outage. Upon written or oral request of the subscriber, the franchisee shall rebate a pro-rata portion of the monthly fee charged to any subscriber for any occurrence in any given calendar month in which such subscriber has experienced more than twenty-four (24) hours of continuous cable service outage, with such rebate to be based on the number of days in the month to which the rebate applies, and if the total cumulative hours of outage in any given calendar month exceeds thirty-six (36) hours, then the rebate shall be given based on the total hours of outage compared to the total number of hours in the month to which such rebate applies.
- (2) If requested, the franchisee shall provide to the Town Manager no more frequently than once every six (6) months aggregated data concerning the overall number and types of service problems received during the immediately preceding six (6) months, and the resolution thereof, and the number and duration of outages experienced, ensuring at all times that personally identifiable information concerning any subscriber is excluded therefrom. Such data may be in the form of a computer record kept in the Company's normal course of business.

*The Town.*

- (1) The Town Manager shall conduct such investigations of unresolved service problems brought to his attention by any subscriber as he deems necessary to effectuate resolution. Furthermore, he shall maintain records of all such service problems and disposition thereof and shall retain copies of same for a period of two (2) calendar years. Whenever the Town Manager believes that a franchisee is not following prescribed service problem resolution procedures, and after bringing such belief to the attention of the Company, the Town Manager shall then bring the matter to the attention of the Town Council and an appropriate conference shall be convened with the franchisee's representatives to effectuate resolution.

**Sec. 8.1-1310. Customer Needs and Evolving Technology.**

Each franchisee shall, at the discretion of the Town Council and at a time set by the Town Council, with reasonable notice to the franchisee, participate in a Town Council public hearing regarding cable television service. Such hearings shall not be more frequent than once per year. The franchisee shall prepare an itemized, written response to every issue raised during the hearing and shall forward the document to the Town Manager no more than 14 days after the hearing.

The franchisee shall periodically provide to the Town a report on the franchisee's plans to accommodate changing community needs and desires and evolving technology. The Town acknowledges that nothing contained in this section shall be deemed as interfering with or otherwise limiting any franchisee's entitlement to determine, pursuant to relevant federal statute, the specific services facilities and equipment that will be provided on its cable system; provided, however, that each franchisee shall exert its best efforts consistent with economic and other considerations, to provide such enhancements to its cable system as are consistent with the community's cable-related needs as determined through hearings, polls, surveys or other sources available to each franchisee. Such reports shall not be required more frequently than one every two years except in the case of significant pending construction at which time the Town expects to be notified.

**Sec. 8.1-1311. Filings With Town.**

(a) In addition to other filings that may be set forth herein, every franchisee shall file with the Town Manager true and accurate maps or plats of all existing and proposed line extensions, and the Town hereby reserves the right at all times to reject any proposed line extensions whose manner or place of construction it deems contrary to public interest, and may order and direct the franchisee, at its own expense, to move the location or alter the construction of any existing cable or other installation wherever the Council or the highway department deems it is in the public interest to require such removal or alteration, having due regard for the equities of the parties concerned and the purpose of a franchise granted hereunder.

(b) Every franchisee shall file with the Town Manager a statement setting forth the names and addresses of all its directors and officers and the position that each holds. In the event of a change in ownership of stock of a franchisee or any change of officers of directors, the franchisee shall promptly file information setting forth such change with the Town Manager.

(c) In addition, every franchisee shall file with the Town Manager:

- (1) Copies of rules, regulations, terms and conditions adopted the franchisee for the conduct of its business;
- (2) An annual summary report showing gross revenues received by the franchisee from its operations within the Town during the preceding year and such other information as the Town shall request with respect to properties and expenses related to the franchisee's service within the Town, and
- (3) An annual count of all subscribers within the Town and such other times as may be specifically requested by the Town Manager.

The Town shall have the right, upon providing reasonable advance written notice to franchisee, to have the franchisee's relevant books and records audited by an independent certified public accountant of its choice reasonably acceptable to its franchisee during normal

business hours at the franchisee's offices where such books and records are maintained, for the sole purpose of determining the accuracy of the franchisee's reported gross revenues upon which franchise fees are based. If such audit discloses that a franchisee's reporting of its gross revenues has been understated by five (5) percent or more, the franchisee shall compensate the Town for the audit expenses. The Town shall, and shall require its auditors to, treat and keep as proprietary and confidential all information so designated by a franchisee during the audit(s), and such information shall not be publicly disclosed except as necessary for franchise enforcement, renewal or termination proceedings, or judicial or administrative proceedings associated with the franchise. Consistent under-reporting of a franchisee's gross revenues shall be grounds for termination of a franchise.

(d) An applicant for an initial or a renewal franchise hereunder shall include in its application all information reasonably requested by the Town, including such information as the Town deems reasonably appropriate to allow it to evaluate such applicant's legal, financial and technical qualifications in compliance with the 1984 and 1992 Cable Acts or any similar Act subsequently adopted.

(e) In evaluating an initial or renewal application, the Town shall be governed by and comply with all relevant federal and state statutes.

**Sec. 8.1-1312. Construction And Installation Of The System.**

(a) The Town shall have the right to inspect all construction or installation work performed by a franchisee within the Town, and to make such inspections as the Town deems necessary to ensure compliance with the terms of this chapter, other pertinent provisions of law and any franchise granted hereunder. No poles, underground conduits, or other wire-holding structures shall be erected by a franchisee without prior approval of, or any required notice to, the Town or its duly authorized personnel or affected property owners where the Town does not own the area in which such are to be erected. No such approval shall be unreasonably withheld. To the extent required by section 8.30.13 (limits on rights-of-way) of this chapter, the franchisee shall negotiate agreements with the appropriate parties to permit it to utilize the existing poles and underground conduits throughout the Town. Any poles, underground conduit or fixtures that a franchisee is authorized by the Town to install must be placed in a manner not to interfere with or obstruct the usual travel on the public streets or to interfere with any existing utility services. All construction activities of a franchisee shall be conducted in a manner that will cause minimum interference with the rights and reasonable convenience of the property owners directly affected thereby. Every franchisee shall maintain all structures, cable and related CATV equipment that are located in, over, under, and upon the streets in a safe, suitable, substantial condition and in good order and repair at all times.

(b) All construction and installation by a franchisee shall be effectuated in a manner that is consistent with the FCC's Rules, relevant local building codes, zoning and other regulatory requirements, the National Electrical Safety Code, and other standard of general applicability to cable systems. No franchisee shall commence any construction without obtaining all local zoning and other approvals, permits and other licenses of general applicability to other entities performing such construction, and paying all costs and fees normally imposed or charged therefore.

(c) Every franchisee first lawfully providing cable service within the Town after the date of enactment of this chapter shall provide cable service throughout its entire service area as defined herein within one (1) year after the date it is granted a franchise hereunder.



(d) No franchisee shall be required to extend energized trunk cable beyond and outside the limits of its defined service area; provided, however, that a franchisee may elect to provide cable service outside its defined service area.

(e) In case of any disturbance of pavement, sidewalk, driveway or any other surfacing, a franchisee shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway or surface of any street or other part of the Town disturbed by such franchisee, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of one (1) year, provided that a franchisee's obligations hereunder shall not extend to maintaining any restored areas subsequently disturbed by third parties.

(f) In the event that at any time during the period of a franchise the Town or highway department shall lawfully elect to alter or change the grade of any street or other public way, the affected franchisee, upon reasonable notice by the Town or the highway department, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(g) No franchisee shall place any poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant, main, or sewer, and all such poles or other fixtures placed in any street or other public way shall be placed within easements dedicated for such placement, and if no such easement be dedicated then in such a manner as not to interfere with the usual travel on said streets and public ways.

(h) A franchisee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than five (5) business days' advance notice to arrange for such temporary wire changes.

(i) Every franchisee shall have the authority to trim trees upon and overhanging streets and other public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the franchisee, provided that all trimming shall be done at the expense of the franchisee and in a manner to minimize to the extent reasonably possible the damage to such trees. The Town or highway department specifically reserves the right to prohibit the trimming of trees where it deems that such trimming would damage or destroy the tree.

(j) No franchisee shall install aboveground facilities in any portion of the Town where all public utility lines are underground, and every franchisee shall be obligated to relocate its existing facilities underground in any portion of the Town within ninety (90) days after all public utility lines in that portion of the Town have been placed underground. Should any utility company be reimbursed for relocation of its facilities as a part of the same work that requires the franchisee to remove its facilities, the franchisee shall be reimbursed upon the same terms and conditions as is the utility.

**Sec. 8.1-1313. Limits On Rights-Of-Way.**

This chapter shall not be construed to mean that the Town, by granting any franchise hereunder, is giving any person the right to use any easement or right-of-way controlled by the highway department or by any person other than the Town. Every franchisee hereunder shall be

required to meet any and all highway department regulations and requirements set forth for the use of such easements or right-of-way controlled by the highway department and, to the extent not otherwise pre-empted by section 621 of the 1984 Cable Act (47 U.S.C. section 541) (authorizing the use by cable systems of easements and rights-of-way dedicated for compatible uses), or encompassed in existing easements, shall be required to obtain separately from private parties and others permission to use any other noncompatible rights-of-way or easements not controlled by or vested in the Town prior to the installation of any cable on, under of over the property so affected.

**Sec. 8.1-1314. Emergency Override Capability.**

Until such standards as the FCC may prescribe pursuant to section 16(b) of the 1992 Cable Act (amending section 614 of the Communications Act of 1934 relating to emergency information) are issued, each franchisee shall establish for use by and access to such authorized persons as are designated by the Town, in case of an emergency or disaster, an emergency override capability whereby the audible portion of all programming carried on all channels may be interrupted for the insertion of emergency information provided, however, that shared usage of such emergency override capability shall be allowed by other franchising authorities having cognizance over any portion of a franchisee's cable system contiguous to the Town.

**Sec. 8.1-1315. Channel Assignment Or Service Changes.**

Each franchisee shall use its best efforts to provide the Town not less than thirty (30) days advance written notice of any change in channel assignment or in the video programming service provided over any such channel, and shall also contemporaneously inform its subscribers in writing that comments on programming and channel position changes are being recorded by the Town Manager. Such notice to Town and subscribers may be by bulk mailing or by inclusion with monthly bills.

**Sec. 8.1-1316. Equipment Compatibility.**

Each franchisee shall comply with FCC Rules as may be required pursuant to section 17 of the 1992 Cable Act (requiring the FCC to issue regulations as are necessary to ensure compatibility between televisions and video cassette recorders and cable systems).

**Sec. 8.1-1317. Service To Local Government Occupied Buildings And Schools.**

Each franchisee shall, in furtherance and support of the local public, education and governmental channel requirements, and not as an in-kind equivalent to any franchise fee payment otherwise assessed hereunder, provide to not more than 8 local government occupied buildings within such franchisee's service area as may be specified from time to time by the Town and, in addition to the forgoing, to all county schools in the franchise area, basic cable service plus one (1) converter (if required for cable reception) and one (1) energized cable outlet at a location to be determined by the Town provided, however, that such franchisee shall provide additional outlets as may be requested by the Town. Installation costs and fees for additional outlets shall not exceed the franchisee's prevailing standard installation rates and monthly fees charged by such franchisee to residential subscribers for additional outlets. Except for schools, local government occupied buildings shall be located within 200 feet of a franchisee's existing facilities.

**Sec. 8.1-1318. Public Educational And Governmental Use Channel.**

Each franchisee shall provide one (1) channel on its system for public, educational and governmental use, which shall be part of the Town's public, educational and governmental ("PEG") channel requirements and shall be referred to as the PEG channel. The PEG channel shall at all times be carried as part of the lowest cost basic tier offered by the franchisee, pursuant

to section 3 of the 1992 Cable Act. At a minimum, the one PEG channel shall be operated through use of pre-recorded tapes on machinery located inside Amherst County. The PEG channel need not be dedicated to the exclusive use of the Town and its residents, but instead, subject to compliance with the requirements of this chapter, may also be used by the franchisee for other purposes that do not interfere unreasonably with its primary use as specified herein. Each franchisee shall carry on the PEG channel at times reasonably calculated to reach the maximum number of viewers all programming as may be requested by the Town, including to the extent technically feasible videotaped meetings of governing bodies, videotaped public safety programming, and other events or programming of local interest as specified by the Town. Subject to reasonable rules governing conditions for access and use, which rules are subject to Town review and approval prior to their implementation by a franchisee, each franchisee shall provide to all residents of the Town free access to the PEG channel for the purpose of placing on such channel any noncommercial programming produced by such resident(s) unless such programming is otherwise prohibited by law and provided that all such noncommercial programming, produced by such residents is technically compatible with the franchisee's existing facilities. Nothing contained herein shall, however, be construed to permit any franchisee of the Town to exercise editorial control over any programming, otherwise lawfully permissible, placed on such PEG channel by eligible members of the public.

**Sec. 8.1-1319. Leased Access Channels.**

Each franchisee shall establish and enforce a written, published policy of prohibiting programming on leased access channels that such franchisee reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

**Sec. 8.1-1320. Approval of Transfer.**

A franchise granted under this ordinance shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person without approval of the Council which shall not be unreasonably withheld or delayed. The provisions of this section shall only apply to the sale or transfer of all or a majority of the franchisee's assets, merger (including any parent and its subsidiary corporation), consolidation, or sale or transfer of stock of the franchisee so as to create a new controlling interest. The term "controlling interest" as used is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

**Sec. 8.1-1321. Town Right In Franchise.**

(a) The right is hereby reserved by the Town to adopt, in addition to the provisions herein contained and in existing applicable chapters, such additional regulations as it shall find necessary in the exercise of its "police" power.

(b) The Town shall have the right to supervise all construction of installation work performed by a franchisee subject to the provisions of this chapter and to make such inspections as it shall find necessary to ensure compliance with other relevant ordinances.

(c) All rights, rights-of-way, and easements herein above designated shall remain the property of the Town or the highway department. Until such time as poles or other equipment are actually installed by a franchisee, and in the event of future removal of said poles or other equipment, said rights shall remain vested or immediately revert to the Town or the highway department and, in the event of removal, a franchisee's rights therein shall be automatically canceled.

(d) At the time a franchise becomes effective, the franchisee shall furnish a bond to the Town, in such form and with such sureties as shall be acceptable to the Town, guaranteeing the payment of all sums which may at any time become due from the franchisee to the Town under the terms of this chapter and any franchise granted, and further guaranteeing the faithful performance of all obligations of the franchisee under the terms of this chapter and the agreement reflecting the grant of the franchise.

The initial bond for a franchisee lawfully providing cable service within the Town prior to the date of adoption of this chapter shall be five thousand dollars (\$5,000.00) for each two hundred (200) basic service subscribers of fraction thereof, on the franchisee's cable system as of the last day of the month immediately preceding the date of such franchisee's acceptance of a renewal franchisee hereunder, up to a maximum of fifty thousand dollars (\$50,000.00), and such bond requirement shall thereafter decrease to \$5,000 following installation of the system; provided, however, that no reduction in any bond amount shall occur unless first approved by the Town Council, which approval shall be contingent upon a franchisee's reasonable compliance with the conditions of its franchise and this chapter, and shall not unreasonably be withheld.

The initial bond for a franchisee first lawfully providing cable service within the Town after the date of adoption of this chapter shall be fifty thousand dollars (\$50,000.00) or such other amount as the Town may by resolution specify, with such required bond amount thereafter to be reduced to the amount and governed by the procedures specified above for franchisees lawfully providing service prior to the date of adoption of the chapter, upon a reasonably acceptable demonstration to the Town of system activation throughout said franchisee's service area.

In the event of default under this chapter or a franchise, the Town shall not assume any liability, obligation or responsibility, but shall instead be entitled to levy on and collect from such bond all amounts deemed necessary by the Town to render it whole, as determined by the Town Council after a public hearing.

(e) If at any time after the date a franchisee's cable system is energized the franchisee shall fail to comply with the material terms of this chapter or any franchise granted, and shall continue to fail to comply for a period of thirty (30) days after receiving notice in writing of noncompliance from the Town, and after a public hearing before the Amherst Town Council and a finding by the Town Council of a lack of good faith on the part of the franchisee, the franchisee shall be assessed liquidated damages of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each day's failure to comply from the date of the first noncompliance, with each day's failure to comply being a separate and distinct offense. Liability under this section is predicated on the Town's anticipated inability to determine the amount of actual damages arising from a franchisee's failure to comply with any provision hereof, and this section shall not apply if noncompliance is occasioned by events beyond the control of the franchisee. In the event the franchisee shall in good faith, as such good faith is reasonably determined by the Town, contest its liability under this section, no further assessment shall be imposed until such liability is established. Should such liability be established by a court of competent jurisdiction the franchisee shall have thirty (30) days within which to comply and within which to pay all assessed amounts. In the event the franchisee does not then comply and pay all sums assessed, the Town shall have the option to terminate the franchise or declare the bond forfeited, or both.

**Sec. 8.1-1322. Payment To Town.**

(a) Unless and until the Town shall require otherwise pursuant to the provisions of subsection (b) of this section, every person operating a cable system within the Town shall pay

the Town an annual franchise fee of five (5) percent of its gross revenues, as herein before defined. The obligation of each such person so operating a cable system as to this annual franchise fee shall accrue upon the effective date of the first franchise granted hereunder, and shall remain in effect for all such persons thereafter, unless superseded by actions of federal, state or other regulatory agencies.

(b) In the event that governing law or the rules of regulatory agencies applicable on the date of enactment of this chapter or thereafter permit a greater franchisee fee than set forth in this chapter, such payment obligation may be increased up to the maximum amount permissible; provided, however, that before any increase in the franchise fee shall become effective, the Town shall provide not less than six (6) months' notice in writing to each franchisee or other person so affected.

(c) No other fee, tax or payment required to be made by a franchisee or any other person to the Town, including payment of a business, professional or occupational license fee or tax, shall be deemed as part of the franchisee fee payable to the town hereunder, so long as other such fee, tax or payment obligation is imposed on a nondiscriminatory basis on other entities doing business within the Town.

(d) Franchise fee payments shall be made semi-annually, no later than October 15 and April 15 of each year, and shall be based upon the gross revenues received by each franchisee or other person operating a cable system within the Town for the immediately preceding six-month periods ending June 30 and December 31, respectively; provided, however, that unless deferred by the Town the first franchisee fee payment made by any franchisee or other person under this chapter shall be made no later than the earlier of October 15 or April 15 next following the effective date of the first franchise granted hereunder, and shall be based upon such franchisee's or other person's gross revenues received between the date of such grant and the next following June 30 or December 31, as the case may be.

**Sec. 8.1-1323. Records And Reports.**

To the extent reasonably necessary and appropriate for the enforcement of a franchise granted hereunder, the Town shall have access during normal working hours to the franchisee's relevant plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the cable system and its operation by the franchisee and to all other records required to be kept hereunder; provided, however, that nothing contained herein shall be construed to allow the Town or any person access to any personally identifiable information concerning any subscriber.

**Sec. 8.1-1324. Franchise Revocation.**

(a) Whenever any franchisee shall refuse, neglect or willfully fail to construct, operate or maintain its cable television system or to provide service to its subscribers in substantial accordance with the terms of the ordinance and any agreement representing the grant of a franchise, or any applicable rule or regulation, or materially breaches its franchise agreement, or practices any fraud or deceit upon the Town or its subscribers within the Town, or fails to pay franchise fees when due, or if such franchisee becomes insolvent, as adjudged by a court of competent jurisdiction, or is unwilling or unable to pay its uncontested debts, or is adjudged bankrupt, or seeks relief under the bankruptcy laws then the franchise may be revoked.

(b) In the event the Town believes that grounds for revocation exist or have existed, it may notify the affected franchisee in writing, setting forth the facts on which such belief is grounded. If, within thirty (30) days following such written notification, the franchisee has not

furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violations did not occur, or that the alleged violations, except those involving financial matters, were beyond the franchisee's control, the Town may call and give notice of a hearing, pursuant to the Notice of Requirements for Matters Affecting Existing Franchises as set forth in this chapter to consider revocation of the franchisee's franchise. If the Town, following such hearing, finds that grounds for revocation exist, it may thereupon by ordinance duly adopted revoke for cause the franchise granted to such franchisee.

(c) In the event that the franchise has been revoked, the town shall, to the extent then permitted by existing law, have the options to:

- (1) Submit to franchisee an offer to acquire, either by the Town or by a third party, at fair market value excluding any value attributable to the franchise itself, all the assets of the franchisee's system located within the Town; or
- (2) To require the removal of all such assets from the Town.

Unless some later date is agreed to by the franchisee, such option must be exercised by the Town within one (1) year from the date of the revocation of the franchise, or the entry of the final judgment by a court reviewing the question of the revocation of the entry of a final order upon appeal of same, whichever is later. Each franchisee, by its acceptance of a franchise granted under this chapter, agrees that the acceptance by franchisee of the Town's offer under the valuation provision set forth herein shall constitute acquisition or transfer of the franchisee's cable system at an equitable price as required by the Cable Communications Policy Act of 1984.

(d) The termination of a franchisee's rights as set forth herein shall in no way affect any other rights the Town or franchisee may have under the franchise agreement with such franchisee or under this chapter or any other provision of law or chapter.

**Sec. 8.1-1325. Hearing Requirements For Matters Affecting Franchisees.**

Whenever a requirement is set forth herein for a public hearing or meeting to be called concerning any matter related to the evaluation, modification, renewal, revocation or termination of any franchise issued pursuant to this chapter, such hearing or meeting shall not be held unless the Town shall have advised the franchisee in writing, at least thirty (30) days prior to such hearing or meeting, of the time, place and general purpose of such hearing or meeting, and published a notice setting forth the time, place and general purpose of such hearing at least ten (10) days before such hearing or meeting in a newspaper of general circulation within the area. In addition, the Town may require the affected franchisee to, and when so required the franchisee shall, give notice of such hearing, and any continuation thereof, by announcement on its cable system in such manner, on such channels and at such times as the Town and franchisee shall find to be reasonable under the circumstances. Any such hearing may be adjourned from time to time without further notice other than the announcement, at the time of adjournment, of the time and place of the continued hearing and such announcement, if any, as the Town may require the franchisee to make on its cable system.

**Sec. 8.1-1326. Costs.**

The costs to be paid by franchisee to the Town shall be the costs incidental to the awarding of the franchise, and specifically, but without limitation, shall not include any legal or consultants' fees incurred by the Town in the development of the Cable Television Franchise Ordinance or the award of a franchise or any renewal hereof.

**Sec. 8.1-1327. Severability.**

The provisions of this chapter are hereby declared to be severable. If any of its sections, provisions, exemptions, sentences, clauses, phrases or parts be held unlawful, unconstitutional or void, the remainder of this ordinance shall continue in full force and effect, it being the intent now hereby declared that this chapter would have been adopted even if such unlawful, unconstitutional or void matter had not been included therein.

**Sec. 8.1-1328. Amendments to this Chapter.**

At any time during the term of any franchise granted pursuant to this ordinance, the Town or any franchisee may propose amendments to this chapter by giving written notice of such proposed amendments to all other parties directly affected by such proposals (including all other franchisees), and the Town and all franchisees shall within a reasonable time after such notice negotiate in good faith to agree on a mutually satisfactory amendment; provided, however, that nothing herein shall be construed to require or limit the authority of the Town to enact any amendment proposed to this chapter.

**Sec. 8.1-1329. Acceptance of Franchise.**

No franchise shall be deemed as granted pursuant to this chapter unless such grant be approved by a resolution adopted by the Council and within thirty (30) days after such approval the applicant therefor acknowledges, in a writing provided by the Town, its acceptance of the provisions of this chapter and any additional conditions reasonably imposed in consideration of such grant as evidenced by a franchise agreement, and provides payment of all sums due hereunder and under any prior franchise and submits all documentation required herein.

**Sec. 8.1-1330. Notice.**

Whenever any notice is specified herein as being required between Town and franchisee, such notice shall be given in writing by first class certified U.S. mail, return receipt requested, and such notice shall be deemed as having been made on the date of delivery as indicated on the return receipt; provided, however, that any failure to comply with the foregoing notice provisions shall not render any notice legally defective if such notice has actually been received by the intended recipient.

**Sec. 8.1-1331. Force Majeure.**

Notwithstanding any provision to the contrary contained herein, neither the Town nor any franchisee shall be held liable for, or suffer any penalty or detriment for, any failure to comply with any provision of the ordinance or any franchise granted hereunder, if such failure to comply arises from any act of God or any other condition not within the reasonable control of such noncomplying person; provided, however, that this provision shall not apply to any franchisee's financial obligations hereunder or under any franchise granted pursuant to this chapter.

**Sec. 8.1-1332. Miscellaneous.**

As to any requirements imposed on a franchisee concerning the timeliness for completion of any actions hereunder, the Town may, but shall not be obligated to, waive the imposition of any monetary assessment or penalty for a franchisee's noncompliance with such requirements upon the franchisee's demonstration of its best good faith efforts to comply actively with such requirements.

**Sec. 8.1-1333. Delegation of Authority.**

Any action, approval, authority or other responsibility specified herein as accruing to or being vested in the Town, unless specifically reserved to the Town Council or requiring Council action by the context thereof, is hereby delegated to the Town Manager.

**XIV. SUNDAY SALES**

**Sec. 8.1-1400. Sunday sales.**

The provisions of the Code of Virginia, §18.2-341 as amended, commonly referred to as the Sunday Closing Law or Blue Law shall have no force or effect within the boundaries of the town.

**Sec. 8.1-1401. Sunday beer, wine sales.**

The time for Sunday beer and wine sales in the town shall be from 10:00 a.m. to 10:00 p.m.