

**AN ORDINANCE AMENDING CHAPTER 17 “OFFENSES -
MISCELLANEOUS” OF THE CHRISTIANSBURG TOWN CODE
WITH REGARD TO NOISE PROVISIONS**

WHEREAS, the Town Council for the Town of Christiansburg wants to update its noise ordinance in response to the Supreme Court of Virginia’s ruling in Tanner v. City of Virginia Beach; and,

WHEREAS, members of the planning commission and police department for the Town of Christiansburg have offered their recommendations on revising Christiansburg’s current noise ordinance; and,

WHEREAS, notice of the intention of the Town Council to pass said ordinance was published (xxxxxxx xx, 2010) in the New River Valley Current, a newspaper published in and having general circulation in the Town of Christiansburg; and,

WHEREAS, the Christiansburg Town Council has found that the public necessity, convenience, and general welfare deem it proper to do so,

NOW THEREFORE, BE IT ORDAINED by the Council of the Town of Christiansburg, Virginia that Chapter 17 “Offenses – Miscellaneous” be amended and reenacted by deleting Section 17-5(a)(18), the loud and unnecessary noise provision of “Disorderly conduct – Generally” and deleting Section 17-7 “Disorderly houses” of Article I “In General”; and, adding Article III “Regulation of Noise,” Sections 17-80 through 17-88 as follows:

Article III. Regulation of Noise

Sec. 17-80. Short title and application of article generally.

This article shall be known and referred to as the “Noise Ordinance of the Town of Christiansburg, Virginia.” It shall be applicable to the control of noises originating within the jurisdictional limits of the Town of Christiansburg and from town-owned lands outside the jurisdictional limits of the town.

Sec. 17-81. Declaration of policy.

At certain levels, noise can be detrimental to the health, welfare, safety, peace, and quality of life of the citizens of Town of Christiansburg, and in the public interest, noise should be controlled. Therefore, it is hereby declared to be the public policy of the Town of Christiansburg to promote an environment for its citizens that is free from excessive, unnecessary, harmful, or annoying noises, which jeopardize their health or welfare or degrades the quality of life within the Town of Christiansburg.

Sec. 17-82. Administration and enforcement.

This article shall be enforced and administered by the chief of police of the town, with the assistance of other town departments as required.

Sec. 17-83. Definitions.

For purposes of this article, the following words and phrases shall have the meaning assigned to them in this section.

Chief: the chief of police of the Town of Christiansburg, Virginia, or his/her duly appointed designees.

Dwelling unit: one or more rooms arranged, designed, or intended to be occupied as separate living quarters by one or more persons and including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Motor vehicle: every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia (1950), as amended.

Noise: any sound which (a) endangers or injures the safety or health of any person; (b) annoys or disturbs a reasonable person of normal sensitivities; or (c) endangers or injures personal or real property.

Owner: the person owning, controlling, or possessing land, premises, or personalty.

Person: any individual, partnership, corporation, firm, association, trust, estate, society, club, private institution, group of persons acting in concert, organization or agency, or any legal successor, representative, agent or agency of the foregoing. This term shall not include the federal, state, county, town, city or local government, or any agency or institution thereof.

Plainly audible: any sound that can be detected by a person using his or her unaided hearing faculties.

Property boundary: an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

Public property: any real property owned or controlled by the town or any other governmental entity.

Residential: reference to any area of the town, regardless of zoning district, where a person maintains a permanent or temporary place of abode.

Sound: an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium, and which propagates at finite speed. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

Sound-amplifying equipment: any machine, device or equipment for the amplification of the human voice, music, or any other sound. This term shall not include warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic-safety purposes.

Sec. 17-84. Loud noises prohibited.

It shall be unlawful for any person:

(1) To use, operate, or play a radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound-amplifying equipment, or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible (i) inside the confines of the dwelling unit, house, or apartment of another person or (ii) at a distance of 50 feet or more from the device, except for devices permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events.

(2) To allow noise between the hours of 10:00 p.m. and 7:00 a.m. that is plainly audible either inside the confines of the dwelling unit, house, or apartment of another person or at a distance of 50 feet or more.

(3) To allow any animal (except farm animals in agricultural districts) to create noise that it is plainly audible at least once a minute for ten consecutive minutes (i) inside the confines of the dwelling unit, house, or apartment of another or (ii) at a distance of 50 feet or more from the animal. This provision shall not apply if the noise is due to harassment of or injury to the animal, or due to a trespass upon the premises where the animal is located.

(4) To operate, install, have or permit on the inside or outside of any store, shop, business establishment, warehouse or commercial building, any loudspeaker, sound-amplifying equipment, or other sound-producing or reproducing device capable of emitting music, noise, sounds, tapes or voice in such manner that it is plainly audible on any public sidewalk or street unless it is used only intermittently for announcing or paging an individual or unless it signals the ringing of a telephone, danger from smoke, a fire or a burglary or the beginning or stopping of work or school, or unless it is operated in accordance with conditions of zoning.

(5) To play or permit the playing of any radio, stereo, tape player, compact disc player, loud speaker, sound-amplifying equipment or other electronic device or

mechanical equipment used for the amplification of sound, within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of 50 feet or more from the vehicle. This provision shall not apply to sirens, loud speakers, and emergency communications radios in public safety vehicles; nor shall this provision apply to motor vehicle alarms or other security devices.

(6) To create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with the loading and unloading of refuse, waste, or recycling.

(7) To create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or tree removal, and other landscaping, lawn or timbering activities.

(8) To operate or cause to be operated any equipment used on an active site in the construction, repair, alteration or demolition of buildings, streets, roads, alleys or appurtenances thereto between the hours of 10:00 p.m. and 7:00 a.m. The use of construction vehicles as transportation to and from an active construction site may be done at any time.

(9) To repair, rebuild, or modify any motor vehicle or other mechanical equipment or device between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at a distance of 50 feet or more from the source.

(10) To fail to deactivate an alarm system plainly audible at a distance of 50 feet or more from such alarm within 30 minutes of hearing the alarm or receiving notice of the alarm's activation.

Sec. 17-85. Exemptions from this article.

The following specific activities or sources of noise shall be exempt from the regulations set forth in this article:

(1) Sounds generated in business, industrial, and mixed-use zoning districts that are necessary and incidental to the uses permitted therein.

(2) Sounds generated from any agricultural activity or agribusiness.

(3) Activities or land use for which a permit has been issued or an exception has been granted by the Christiansburg Town Council.

(4) Activities for which the regulation of noise has been preempted by federal law.

(5) Sounds emitted in the performance of emergency work or for the purpose of alerting persons to the existence of an emergency.

- (6) Sounds generated by the performance of any governmental function.
- (7) Lawful activities on or in public and school athletic facilities and on or in publicly owned properties and facilities.
- (8) Activities which are part of any town- or state-sponsored festival or activity.
- (9) Military activities of the Commonwealth of Virginia or of the United States of America.
- (10) Religious services, religious events, or religious activities or expressions—including, but not limited to, music, singing, bells, chimes and organs—that are a part of such service, event, activity or expression.
- (11) Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.
- (12) Sounds generated from or incidental to emergency repairs to public and private utilities.
- (13) Sounds generated from or incidental to any emergency public works function.
- (14) Sounds generated from construction and maintenance to public roads, highways, and bridges.
- (15) Sounds generated from erosion and sediment mitigation.
- (16) Sounds generated from airplanes and trains.

Sec. 17-86. Penalties.

- (a) Any person violating any of the provisions of this article shall be subject to the following penalties.
 - (1) For the first offense, either imprisonment of not more than ten days or a fine of not less than \$75.00.
 - (2) For the second offense within 12 months of a previous conviction, either imprisonment of not more than ten days or a fine between \$250.00 and \$750.00.
 - (3) For the third offense within 24 months of a previous conviction, either imprisonment of not more than ten days or a fine between \$500.00 and \$1,000.00.

(4) For the fourth or subsequent offense within 24 months of a previous conviction, the person shall be guilty of a Class 1 misdemeanor.

(b) Each separate act on the part of the person violating this article shall be deemed a separate offense, and each day a violation is permitted to continue unabated shall constitute a separate offense.

(c) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that person cannot be determined, any owner, tenant, or resident physically present in or on the property where the violation is occurring is rebuttably presumed to be guilty of the violation.

(d) In addition to and not in lieu of the criminal penalties prescribed in this section, the Town of Christiansburg may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article, and the Town of Christiansburg may seek any other remedy or relief authorized by law.

Sec. 17-87. Undue hardship waiver.

(a) Any person responsible for a noise source may apply to the town manager or town designee for a waiver, or partial waiver, from the provisions of this article. The town manager or town designee may grant such waiver, or partial waiver, upon a finding that any of the following circumstances exists:

(1) The noise does not endanger the public health, safety or welfare; or

(2) Compliance with the provisions of this article from which a waiver is sought would produce serious economic hardship without producing substantial benefit to the public.

(b) In determining whether to grant such waiver, the town manager or town designee shall consider the time of day the noise will occur, the duration of the noise, whether the noise is intermittent or continuous, the technical and economic feasibility of bringing the noise into conformance with this article, and such other matters as are reasonably related to the impact of the noise on the health, safety, and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this article.

(c) No waiver, or partial waiver, issued pursuant to this article shall be granted for a period to exceed one year, but any such waiver or partial waiver may be renewed for successive like periods if the town manager or town designee shall find such renewal is justified pursuant to the standards set forth in this ordinance. No renewal shall be granted except upon written application therefore.

Sec. 17-88. Other remedies.

No provision of this article shall be construed to impair any common law or statutory cause of action or legal remedy of any person for injury or damage to person or property arising from violation of this article or arising from noise that either is exempted or does not violate this article.

This ordinance shall become effective upon adoption.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held _____, 2010, the members of the Council of the Town of Christiansburg, Virginia present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mayor Richard G. Ballengee*				
D. Michael Barber				
Ann H. Carter				
Henry Showalter				
Bradford J. "Brad" Stipes				
James W. "Jim" Vanhoozier				
H. Earnest "Ernie" Wade				

*Votes only in the event of a tie vote by Council.

SEAL:

Michele M. Stipes, Town Clerk

Richard G. Ballengee, Mayor



Proposed Schedule Changes

Current Service

	Explorer	Go Anywhere	Shopper Express
Monday-Thursday	10 a.m. - 4 p.m.	9 a.m. - 5 p.m.	9:45 a.m. - 4:45 p.m.
Friday	10 a.m. - 6 p.m.	9 a.m. - 10 p.m.	9:45 a.m. - 9:15 p.m.
Saturday	Noon - 8 p.m.	11 a.m. - Midnight	11:45 a.m. - 11:15 p.m.
Sunday	No Service	No Service	No Service

Proposed Service

	Explorer	Go Anywhere	Shopper Express
Monday-Thursday	7 a.m. - 5 p.m.	7 a.m. - 6 p.m.	No Service
Friday	7 a.m. - 5 p.m.	7 a.m. - 10 p.m.	11:45 a.m. - 6:15 p.m.
Saturday	No Service	8 a.m. - 11 p.m.	11:45 a.m. - 6:15 p.m.
Sunday	No Service	No Service	No Service

- Earlier hours of operation were added to support commuter service within Christiansburg.
- The Explorer and Shopper Express routes will connect at the Rec Center.

- Earlier hours of operation were added to support commuter service within Christiansburg.

- The Shopper Express hours of operation have been reduced.
- The Explorer and Shopper Express routes will connect at the Rec Center.

Commuter Service

Phase II of the Christiansburg service expansion includes start-up of commuter service between the Town of Christiansburg and the Town of Blacksburg. Staff is working on this project and will present it for Council consideration by the end of this year. Tentatively, the service could begin early next year.



Proposed Fare Changes

Current Fares

- Go Anywhere\$2.00 Roundtrip + \$1.00 for each additional stop with a maximum of \$5.00 per day
- The Explorer\$0.50 Per Trip (\$0.25 Ages 65+ and persons with disabilities and Medicare Card Holders)
- Shopper Express\$0.50 All Day (\$0.25 Ages 65+ and persons with disabilities and Medicare Card Holders)

Proposed Fare Reduction – Go Anywhere ONLY

It is the recommendation of the Working Group to lower the Go Anywhere fare to \$0.50 per trip.

- This fare change to \$0.50 per trip would be consistent with fares across the system.
- The lower per trip fare would be more affordable for citizens traveling to go shopping, to the doctor, or commuting to work.
- During these hard economic times, citizens on fixed incomes or those trying to save money, would have greater access to an affordable transportation option.

RESOLUTION NO. __
TOWN OF CHRISTIANSBURG, VIRGINIA
AUTHORIZING SOLE SOURCE PROCUREMENT OF MICROTURBINE

WHEREAS: In November of 2009, the Town submitted an application for special stimulus funding made available under the American Recovery and Reinvestment Act of 2009 for the conversion of biomass to energy; and

WHEREAS: The application requested funds in the amount of \$336,550 to be used together with \$150,000 in local funds, to enable the Town to produce both heat and power from the excess digester biogas that is generated at the Town's Wastewater Treatment Plant (the Energy Recovery Project), and

WHEREAS: In March 2009, the Town was awarded \$336,550 in grant funds for its proposed Energy Recovery Project by the Virginia Department of Mines, Minerals, and Energy, said funds were made available by the United States Department of Energy.

WHEREAS: In May of 2010, the Town awarded a contract to Olver – A CHA Company, to design its Energy Recovery Project; and

WHEREAS: By letter dated September 2, 2010, Shawn Veltman, P.E. of Olver – A CHA Company, sets forth available options for the technology that may be incorporated into the Energy Recovery Project and has recommended that the Town proceed with the selection and use of a 65 KW microturbine; and

WHEREAS: the letter from Olver – A CHA Company identifies that there is only one United States manufacturer (Capstone) of a microturbine in the size required for the Town's application; and

WHEREAS: Capstone is represented in Virginia by E-finity Distributed Generation, LLC, a firm located in Wayne, PA; and

WHEREAS: Olver – A CHA Company has recommended that the Town utilize the sole source procurement provisions in the Virginia procurement code to negotiate a purchase price for the microturbine with E-finity; and

WHEREAS: the Department of Mines, Minerals, and Energy has determined that sole source procurement may be used by the Town to purchase the microturbine, subject to the Town's compliance with the Virginia procurement code.

NOW, THEREFORE, BE IT RESOLVED;

THAT: Based on the facts set forth herein, the Town Council has determined that procurement of the microturbine using a negotiated sole source procurement procedure is in the best interests of the project and the public; and

RESOLUTION NO. __

THAT: The interim Town Manager is hereby authorized and directed to enter into negotiations with E-finity for the purchase of the microturbine; and

THAT: Upon completion of said negotiations, the interim Town Manager shall report the negotiated price of the microturbine to the Town Council and post notice of same on the Town's notice board; and

THAT: After providing the notice described above, the acting Town Manager is hereby authorized to enter into a contract for purchase of the microturbine for an amount not to exceed the line item price for this item that was included in the estimate used to establish the appropriation for the Energy Recovery Project.

This ordinance shall become effective upon adoption.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held _____, 2010, the members of the Council of the Town of Christiansburg, Virginia present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mayor Richard G. Ballengee*				
D. Michael Barber				
Cord Hall				
Steve Huppert				
Henry Showalter				
Bradford J. "Brad" Stipes				
James W. "Jim" Vanhoozier				

*Votes only in the event of a tie vote by Council.

SEAL:

MICHELE M. STIPES, TOWN CLERK

RICHARD G. BALLENGEE, MAYOR



September 7, 2010

Mr. Barry Helms, P.E.
Assistant Town Manager
Town of Christiansburg
100 East Main Street
Christiansburg, VA 24073

**Re: Christiansburg Energy Recovery Project; Microturbine Procurement Recommendations;
CHA Project No.: 21637**

Dear Barry:

We are continuing to move forward with the design of the Town's Biomass to Energy project. One issue we need to address at this time is the procurement of the proposed 65 KW microturbine that is referenced in the original grant application to DMME. Specifically, we note that Capstone is presently the only United States manufacturer of a microturbine in this size range (they make both 30 KW and 65 KW units). Competition is available in larger sizes (250 kW and above) but units of this size are far too large for your application. As a result, we suggest proceeding with direct negotiations with Castone (E-finity is their authorized representative in Virginia) to establish the sale prices and terms of sale for the microturbine for your application. Proprietary equipment is not uncommon in the water and wastewater industry and as a result this is a procedure we frequently employ on other federally funded projects (e.g. Virginia Clean Water Revolving Loan Fund and Rural Development) when equipment needs to be sole sourced. The procedure works as follows:

- 1) We establish the specification requirements for the equipment (in this case the microturbine).
- 2) We submit our specifications to the manufacturer with a request for firm pricing for the requested scope of supply with required terms. In these requests we require copies of invoices from past sales to verify that the price proposed represents the fair market price.
- 3) Once pricing is received we negotiate the price and terms until both parties are in agreement.
- 4) The agreed upon price is then included as a line item on the bid form in the contract documents that we will advertise and publically bid for completion of the project. The successful contractor (low bidder) receiving the contract, is assigned the contract with Capstone. The contractor is required to include all costs for installation.

In evaluating this procedure and recommendation, I note that we always consider the interests of our clients before suggesting the purchase of proprietary equipment. In this case there are three possible options for you to consider in order transform your excess digester gas into both heat and power:

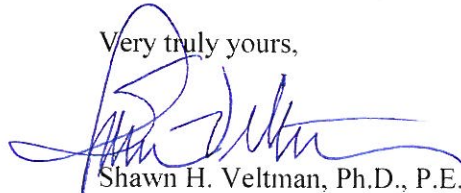
- 1) An internal combustion engine/generator with jacket and exhaust gas heat recovery.
- 2) A Stirling (external combustion) engine/generator with both jacket and exhaust gas heat recovery.
- 3) A Microturbine with generator and exhaust gas heat recovery.

At the present time, there are no viable small scale manufacturers of internal combustion engines for a project of your size that could operate without extensive gas cleanup. Thus Option 1 is not viable for your project. This leaves the microturbine and Stirling engine options and the only available microturbines and Stirling engines in your size range are proprietary and available through only one source (Capstone and Stirling Biopower, respectively).

Knowing the above, we bid two similar small energy recovery projects in Virginia in 2009 (one in Covington, VA and the other in Abingdon, VA) where we pitted Capstone against Stirling Biopower (the manufacturer of a proprietary 43 KW Stirling engine) and we found in both cases that the microturbine yielded the lowest installed cost per KW. Although the microturbine has a higher annual cleanup cost (for gas cleanup system maintenance and media replacement), the Stirling engine has a higher rebuild cost after five years and these costs tend to balance each other over time. Given this, and the fact that Stirling Biopower has recently run into production issues with their engine, we believe that sole procurement of the Capstone microturbine is the best option for the Town to pursue.

We appreciate the opportunity to continue to serve the Town and we request your authorization to proceed as noted above. If you have any questions regarding our analysis and recommendations, please do not hesitate to contact us.

Very truly yours,



Shawn H. Veltman, Ph.D., P.E.
Senior Engineer VIII

SHV/mlc

cc: Denny Fisher, Superintendent, Wastewater Treatment Plant
Lawrence Hoffman, Director of Technical Services-Environmental/Planning

TOWN OF CHRISTIANSBURG

Established November 10, 1792

Incorporated January 7, 1833



**RESOLUTION
OF
THE TOWN OF CHRISTIANSBURG, VIRGINIA
SEEKING ACTION BY THE
GENERAL ASSEMBLY AND GOVERNOR
TO PROHIBIT
ALL PREDATORY, USURIOUS LENDING PRACTICES
IN THE
COMMONWEALTH OF VIRGINIA**

WHEREAS, the Town Council of the Town of Christiansburg, Virginia, represents the citizens of the Town of Christiansburg, Virginia;

WHEREAS, the Town Council of the Town of Christiansburg, Virginia, believes the citizens of the Town of Christiansburg remain concerned over what are perceived to be predatory, usurious lending practices in the Town of Christiansburg and elsewhere in the Commonwealth, including practices that can exploit dedicated, brave women and men called to serve in the United States armed services;

WHEREAS, the Town Council of the Town of Christiansburg of Christiansburg, Virginia, shares these continuing concerns and intends through this Resolution to express the collective sentiments and will of Staunton citizens that the General Assembly and Governor of Virginia need to take action to prohibit all predatory, usurious lending practices; and

WHEREAS, it is essential that the General Assembly and the Governor of Virginia address this matter as a high priority at the next legislative session, leading to enactment of laws strictly prohibiting and deterring all predatory, usurious lending practices in the Commonwealth of Virginia.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Christiansburg of Christiansburg, Virginia that, at the next legislative session, the General Assembly and the Governor of the Commonwealth of Virginia are hereby requested to enact laws strictly prohibiting and deterring all predatory, usurious lending practices, including but not limited to provisions that would:

1. Impose an interest rate cap of thirty-six percent (36%), calculated as an effective annual percentage rate including all fees or charges of any kind, for any consumer credit extended in the Commonwealth of Virginia;
2. Prohibit a creditor's use of a personal check or other device as a means, directly or indirectly, to gain access to a consumer's bank account; and

3. Incorporate into the Virginia Code the protections regarding consumer credit to military personnel as reflected in the Military Lending Act, 10 United States Code Section 987.

Adopted this 21st day of September, 2010.

Richard G. Ballengee, *Mayor*

Attest: _____
Michele Stipes, *Clerk of Council*

Stephen F. Owen
City Manager

**Birthplace of the
Council-Manager
Form of Government**



**116 W. BEVERLEY STREET
P.O. Box 58
STAUNTON, VA 24402**

**540.332.3812 (O)
540.851.4000 (F)**

September 9, 2010

Dear Colleague:

Since 2007, the City of Staunton has led the payday lending (or usury) reform movement in Virginia. In 2007, the governing bodies of 60 cities, towns and counties passed resolutions backing payday lending reform. These resolutions led to an initial reform effort by the Virginia General Assembly. Unfortunately, the consumer credit industry spent \$3.2 million to block reform, and the final reform bill that passed in 2008 was watered down to the point of reform in name only. Please refer to the first attachment for a chart of interest rates allowed after "reform".

"Staunton II" has started, with a new resolution attached, and solid support from the Virginia Municipal League, Virginia Association of Counties, Virginia First Cities, Virginia Interfaith Center for Public Policy, Virginia Poverty Law Center, Virginia Organizing Project, Virginia Partnership to Encourage Responsible Lending, Virginians Against Payday Loans, and the Center for Responsible Lending. We believe this non-partisan issue should be one that all local governments can rally behind for the health of Virginia's communities.

Eighteen states now prohibit these types of loan products, and in many of these the practice is a felony, with mandatory prison time. Since 2008, six states have reconsidered their position on these products and re-instituted their usury laws, placing caps on APR of 36% or less, inclusive of "fees". These include New Hampshire, Ohio, Arizona, Colorado, Wisconsin, and Illinois. Virginia is surrounded by states and the District of Columbia, all of which prohibit payday-style lending. The West Virginia Attorney General recently cracked down on internet lending and indicted eight companies. The first one has already paid a \$300,000 fine. Such usury lending was actually illegal in Virginia until 2002, when the industry first gained a foothold under the guise of benevolent emergency micro lending.

A tidal wave is building, which is needed to overcome the lobbying influence that the payday and car title lenders are able to buy to continue "legalized loan sharking" in the Commonwealth. We have yet to hear how the payday lenders

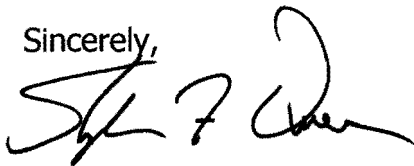
have actually helped anyone overcome financial problems. In testimony before the Staunton City Council, the Executive Director for Blue Ridge Legal Services indicated that his clients' use of payday lending was a consistent contributing factor to their financial woes.

If your jurisdiction has already passed the 2010, "Staunton II" resolution, we sincerely thank you. If not, please consider putting this on your next agenda for adoption. A few jurisdictions have advised that they plan to simply make payday lending reform part of their 2011 Legislative Program. Please let me know if that is an option for your locality. Obviously, discussing this with your legislators will be critical to real reform.

Finally, if your jurisdiction does adopt the resolution, please send me a copy via email at owensf@ci.staunton.va.us.

Thanks for any assistance you can provide.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen F. Owen", written over a horizontal line.

Stephen F. Owen
City Manager

Attachments

The APR of payday loans under the legislation passed by the General Assembly in March 2008

Loan Amount	Borrower paid weekly¹	Borrower paid biweekly²	Social Security recipients and others on monthly income³
\$100	688%	362%	188%
\$200	623%	329%	173%
\$300	601%	318%	167%
\$400	590%	313%	165%
\$500	584%	310%	164%

¹ Calculated at \$20.00 per \$100.00 + \$5.00 verification fee + 36% APR for 2 weeks. (double the pay cycle of the borrower paid weekly)

² Calculated at \$20.00 per \$100.00 + \$5.00 verification fee + 36% APR for 4 weeks. (double the pay cycle of the borrower paid biweekly)

³ Calculated at \$20.00 per \$100.00 + \$5.00 verification fee + 36% APR for 2 months. (double the pay cycle of the borrower with monthly income)

**RESOLUTION
OF
THE COUNCIL OF THE CITY OF STAUNTON, VIRGINIA
SEEKING ACTION BY THE
GENERAL ASSEMBLY AND GOVERNOR
TO PROHIBIT
ALL PREDATORY, USURIOUS LENDING PRACTICES
IN THE
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WHEREAS, the Council of the City of Staunton, Virginia, represents the citizens of the City of Staunton, Virginia;

WHEREAS, the Council of the City of Staunton, Virginia, believes the citizens of the City of Staunton remain concerned over what are perceived to be predatory, usurious lending practices in the City of Staunton and elsewhere in the Commonwealth, including practices that can exploit dedicated, brave women and men called to serve in the United States armed services;

WHEREAS, the Council of the City of Staunton, Virginia, shares these continuing concerns and intends through this Resolution to express the collective sentiments and will of Staunton citizens that the General Assembly and Governor of Virginia need to take action to prohibit all predatory, usurious lending practices; and

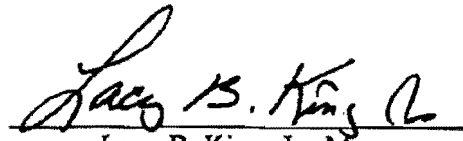
WHEREAS, it is essential that the General Assembly and the Governor of Virginia address this matter as a high priority at the next legislative session, leading to enactment of laws strictly prohibiting and deterring all predatory, usurious lending practices in the Commonwealth of Virginia.

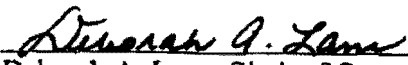
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia that, at the next legislative session, the General Assembly and the Governor of the Commonwealth of Virginia are hereby requested to enact laws strictly prohibiting and deterring all predatory, usurious lending practices, including but not limited to provisions that would:

1. Impose an interest rate cap of thirty-six percent (36%), calculated as an effective annual percentage rate including all fees or charges of any kind, for any consumer credit extended in the Commonwealth of Virginia;

2. Prohibit a creditor's use of a personal check or other device as a means, directly or indirectly, to gain access to a consumer's bank account; and
3. Incorporate into the Virginia Code the protections regarding consumer credit to military personnel as reflected in the Military Lending Act, 10 United States Code Section 987.

Adopted this 27th day of May 2010


Lacy B. King, Jr., Mayor

Attest: 
Deborah A. Lane, Clerk of Council

amended Pub. L. 107-107, div. A, title X, §1048(c)(3), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108-375, div. A, title X, §1062, Oct. 28, 2004, 118 Stat. 2056.)

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108-375, §1062(a), substituted “, was sentenced” for “and sentenced” and inserted before period at end “, and was incarcerated as a result of that sentence for not less than one year”.

Subsec. (d). Pub. L. 108-375, §1062(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.”

2001—Subsec. (a). Pub. L. 107-107 substituted “October 30, 2000,” for “the date of the enactment of this section.”.

§ 987. Terms of consumer credit extended to members and dependents: limitations

(a) **INTEREST.**—A creditor who extends consumer credit to a covered member of the armed forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such credit, except as—

- (1) agreed to under the terms of the credit agreement or promissory note;
- (2) authorized by applicable State or Federal law; and
- (3) not specifically prohibited by this section.

(b) **ANNUAL PERCENTAGE RATE.**—A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) **MANDATORY LOAN DISCLOSURES.**—

(1) **INFORMATION REQUIRED.**—With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) **TERMS.**—Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) **PREEMPTION.**—

(1) **INCONSISTENT LAWS.**—Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent

that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) **DIFFERENT TREATMENT UNDER STATE LAW OF MEMBERS AND DEPENDENTS PROHIBITED.**—States shall not—

(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections for the benefit of residents of the State on the basis of non-resident or military status of a covered member or dependent of such a member, regardless of the member's or dependent's domicile or permanent home of record.

(e) **LIMITATIONS.**—It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which—

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act;

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the borrower as a condition for legal action;

(5) the creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) **PENALTIES AND REMEDIES.**—

(1) **MISDEMEANOR.**—A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) **PRESERVATION OF OTHER REMEDIES.**—The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) **CONTRACT VOID.**—Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) **ARBITRATION.**—Notwithstanding section 2 of title 9, or any other Federal or State law,

rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(g) **SERVICEMEMBERS CIVIL RELIEF ACT PROTECTIONS UNAFFECTED.**—Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

(h) **REGULATIONS.**—(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of "creditor" under paragraph (5) and "consumer credit" under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

(3) In prescribing regulations under this subsection, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The Office of Thrift Supervision.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) **DEFINITIONS.**—In this section:

(1) **COVERED MEMBER.**—The term "covered member" means a member of the armed forces who is—

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

(B) on active Guard and Reserve Duty.

(2) **DEPENDENT.**—The term "dependent", with respect to a covered member, means—

(A) the member's spouse;

(B) the member's child (as defined in section 101(4) of title 38); or

(C) an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of consumer credit covered by this section.

(3) **INTEREST.**—The term "interest" includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember's dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) **ANNUAL PERCENTAGE RATE.**—The term "annual percentage rate" has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(5) **CREDITOR.**—The term "creditor" means a person—

(A) who—

(i) is engaged in the business of extending consumer credit; and

(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

(6) **CONSUMER CREDIT.**—The term "consumer credit" has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

(Added Pub. L. 109-364, div. A, title VI, §670(a), Oct. 17, 2006, 120 Stat. 2266.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (c)(1)(B), (2), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Servicemembers Civil Relief Act, referred to in subsecs. (e)(2) and (g), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

EFFECTIVE DATE

Pub. L. 109-364, div. A, title VI, §670(c), Oct. 17, 2006, 120 Stat. 2269, provided that:

"(1) **IN GENERAL.**—Except as provided in paragraph (2), section 987 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2007, or on such earlier date as may be prescribed by the Secretary of Defense, and shall apply with respect to extensions of consumer credit on or after such effective date.

"(2) **AUTHORITY TO PRESCRIBE REGULATIONS.**—Subsection (h) of such section shall take effect on the date of the enactment of this Act [Oct. 17, 2006].

"(3) PUBLICATION OF EARLIER EFFECTIVE DATE.—If the Secretary of Defense prescribes an effective date for section 987 of title 10, United States Code, as added by subsection (a), earlier than October 1, 2007, the Secretary shall publish that date in the Federal Register. Such publication shall be made not less than 90 days before that earlier effective date."

INTERIM REGULATIONS

Pub. L. 109-364, div. A, title VI, § 670(d), Oct. 17, 2006, 120 Stat. 2269, provided that: "The Secretary of Defense may prescribe interim regulations as necessary to carry out such section [this section]. For the purpose of prescribing such interim regulations, the Secretary is excepted from compliance with the notice-and-comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of section 987 of title 10, United States Code [see Effective Date note above], as added by this section."

CHAPTER 50—MISCELLANEOUS COMMAND RESPONSIBILITIES

Sec.	
991.	Management of deployments of members.
992.	Consumer education: financial services.

AMENDMENTS

2006—Pub. L. 109-183, div. A, title V, § 578(a)(2), Jan. 6, 2006, 119 Stat. 3276, added item 992.

§ 991. Management of deployments of members

(a) MANAGEMENT RESPONSIBILITIES.—(1) The deployment (or potential deployment) of a member of the armed forces shall be managed to ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed—

(A) out of the preceding 365 days would exceed the one-year high-deployment threshold; or

(B) out of the preceding 730 days would exceed the two-year high-deployment threshold.

(2) In this subsection:

(A) The term "one-year high-deployment threshold" means—

(i) 220 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(B) The term "two-year high-deployment threshold" means—

(i) 400 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(3) A member may be deployed, or continued in a deployment, without regard to paragraph (1) if the deployment, or continued deployment, is approved by the Secretary of Defense. The authority of the Secretary under the preceding sentence may only be delegated to—

(A) a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate, or a member of the Senior Executive Service; or

(B) a general or flag officer in that member's chain of command (including an officer in the

grade of colonel, or in the case of the Navy, captain, serving in a general or flag officer position who has been selected for promotion to the grade of brigadier general or rear admiral (lower half) in a report of a selection board convened under section 811(a) or 14101(a) of this title that has been approved by the President).

(b) DEPLOYMENT DEFINED.—(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(2) In the case of a member of a reserve component who is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to in paragraph (1) is any housing (which may include the member's residence) that the member usually occupies for use during off-duty time when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(3) For the purposes of this section, a member is not deployed or in a deployment when the member is—

(A) performing service as a student or trainee at a school (including any Government school);

(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or

(C) unavailable solely because of—

(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or

(ii) a disciplinary action taken against the member.

(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.

(c) RECORDKEEPING.—The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.

(d) NATIONAL SECURITY WAIVER AUTHORITY.—The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.

(e) INAPPLICABILITY TO COAST GUARD.—This section does not apply to a member of the Coast

PayDay Resolutions Adopted

Date Adopted	Locality	Received
8/4/2010	Albemarle County	8/4/2010
8/3/2010	Alleghany County	8/5/2010
6/16/2010	Amelia County	Endorsed our resolution
6/21/2010	Appomattox County	6/28/2010
7/13/2010	Bath County	7/28/2010
7/12/2010	Bluefield, Town of	7/15/2010
7/1/2010	Bowling Green, Town of	7/15/2010
6/13/2010	Boydton, Town of	6/17/2010
6/7/2010	Charlottesville, City of	7/19/2010
8/10/2010	Colonial Heights, City of	8/18/2010
7/13/2010	Dillwyn, Town of	7/19/2010
7/14/2010	Farmville, Town of	7/19/2010
6/28/2010	Franklin City	8/3/2010
7/20/2010	Franklin County	7/21/2010
6/23/2010	Frederick County	6/30/2010
8/9/2010	Front Royal, Town of	8/16/2010
7/6/2010	Gloucester, County of	8/23/2010
8/9/2010	Grottoes, Town of	8/12/2010
8/16/2010	Harrisonburg, City of	8/10/2010
6/21/2010	Kilmarnock	6/23/2010
7/23/2010	Leesburg, Town of	7/13/2010
8/5/2010	Lexington, City of	8/20/2010
7/6/2010	Marion, Town of	7/15/2010
7/27/2010	Matthews County	8/2/2010
7/22/2010	Middleburg, Town of	7/27/2010
6/21/2010	Narrows, Town of	6/28/2010
7/13/2010	Nelson County	7/19/2010
7/13/2010	Newport News, City of	7/14/2010
6/10/2010	Northumberland County	6/15/2010
6/27/2010	Nottaway County	6/30/2010
7/13/2010	Pearisburg, Town of	7/26/2010
7/26/2010	Poquoson, City of	7/27/2010
6/28/2010	Pulaski County	6/28/2010
7/8/2010	Quantico, Town of	7/19/2010
7/26/2010	Rockbridge County	8/12/2010
7/12/2010	Rocky Mount, Town of	7/13/2010
6/22/2010	Rural Retreat, Town of	8/2/2010
6/21/2010	St. Paul, Town of	6/30/2010
7/7/2010	Scott County	7/14/2010
6/22/2010	Shenandoah, Town of	6/24/2010
7/6/2010	Smithfield, Town of	7/21/2010

7/12/2010	South Boston, Town of	7/21/2010
6/16/2010	Stanley, Town of	7/26/2010
5/27/2010	Staunton, City of	5/27/2010
6/21/2010	The Plains, Town of	7/15/2010
7/13/2010	Waverly, Town of	7/19/2010
6/30/2010	Wythe County	7/15/2010
8/3/2010	York County	8/5/2010

<i>Rejected</i>	<i>Amherst, Town of</i>
<i>Rejected</i>	<i>Henrico County</i>
<i>Rejected</i>	<i>Wise County</i>

<i>Will consider later</i>	<i>James City County</i>
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