

**LURAY TOWN COUNCIL**

**April 13, 2020 - 7:00 p.m.**

**MEETING AGENDA**

- |  |                  |
|--|------------------|
| <b>I. CALL TO ORDER &amp;<br/>PLEDGE ALLEGIANCE TO THE U.S. FLAG</b>   | Mayor Presgraves |
| <b>II. ROLL CALL</b>   | Danielle Babb    |
| <b>III. CONSENT AGENDA</b>   | Mayor Presgraves |
| <b>IV. GENERAL CITIZEN COMMENTS (other than agenda items)</b><br><i>Citizens with Comments are requested to email comments to <a href="mailto:sburke@townofluray.com">sburke@townofluray.com</a></i> |                  |
| <b>V. ACTION &amp; DISCUSSION ITEMS</b>  |                  |
| A) BB&T Partial Tax Refund Ordinance   | Steve Burke      |
| B) Emergency Ordinance – Continuity in the Government  | Steve Burke      |
| <b>VI. TOWN ATTORNEY’S REPORT</b>  | Jason Botkins    |
| <b>VII. MAYOR’S ANNOUNCEMENTS</b>  | Mayor Presgraves |
| <b>VIII. ADJOURN</b>   |                  |

*Version Date: April 6, 2020 11:00 a.m.*

Town of Luray  
PO Box 629  
45 East Main Street  
Luray, VA 22835  
[www.townofluray.com](http://www.townofluray.com)  
540.743.5511



**Mayor**

***Barry Presgraves***  
bpresgraves@townofluray.com  
Term: 2017-2020

**Council Members**

***Leroy Lancaster***  
llancaster@townofluray.com  
Term: 2017-2020

***Jerry Schiro***  
jschiro@townofluray.com  
Term: 2014-2022

***Joey Sours***  
jsours@townofluray.com  
Term: 2017-2020

***Jerry Dofflemyer***  
jdofflemyer@townofluray.com  
Term: 2015-2022

***Leah Pence***  
lpence@townofluray.com  
Term: 2017-2020

***Ronald Vickers***  
Rvickers@townofluray.com  
Term: 2014-2022

**Town Officials:**

Town Manager – Steven Burke  
Assistant Town Manager- Bryan Chrisman  
Town Clerk/ Treasurer- Mary Broyles  
Deputy Town Clerk/ Treasurer- Danielle Babb  
Chief of Police- Bow Cook  
Superintendent of Public Works- Lynn Mathews  
Superintendent Parks & Recreation-Dakota Baker

**Commissions & Committees:**

Luray Planning Commission  
Luray-Page County Airport Commission  
Luray Tree and Beautification Committee  
Luray Board of Zoning Appeals  
Luray Downtown Initiative  
Luray-Page County Chamber of Commerce

**I move to approve the following Consent Agenda (All items must be read):**

**CONSENT AGENDA**

- (A) Minutes of the Regular Council Meeting –3-9-2020
- (B) Accounts Payable checks totaling- \$ 269,026.91
- (C) Financial Statements ending March 31, 2020.

Prepared By:

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Mary F. Broyles, Treasurer

**A REGULAR MEETING OF  
THE TOWN COUNCIL  
OF  
THE TOWN OF LURAY, VIRGINIA**

**Monday, March 9, 2020**

The Luray Town Council met in regular session on Monday, March 9, 2020, at 7:00 p.m. in the Luray Town Council Chambers located at 45 East Main Street, Luray, Virginia at which time there were present the following:

**Presiding:** Mayor Barry Presgraves

**Council Present:**

Ron Vickers  
Jerry Dofflemyer  
Jerry Schiro  
Leroy Lancaster  
Leah Pence

**Council Absent:**

Joseph Sours

**Also Present:**

Steve Burke, Town Manager  
Bryan Chrisman, Assistant Town Manager  
Jason Botkins, Litten & Sipe  
Mary Broyles, Clerk-Treasurer  
Danielle Babb, Deputy Clerk-Treasurer  
Chief Carl "Bow" Cook, Luray Police  
Department

Bill Huffman, Luray Downtown Initiative  
Meredith Dees, Luray Downtown Initiative  
Jason Pettit, Luray Downtown Initiative  
Lee McWhorter, Citizen Comment  
Rodney Jenkins, Baker Development  
Ryanne Hodson, Business Owner

A quorum being present, Mayor Presgraves declared the Council to be in session for the transaction of business. All present stood for a moment of silence. Councilman Vickers led everyone in the United States Pledge of Allegiance. The roll was called with one member absent.

**CONSENT AGENDA**

**Motion:** Councilman Vickers motioned to approve the Consent Agenda as presented, motion seconded by Councilman Dofflemyer with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence. **Approved 5-0**

*Consent Agenda*

- (A) Minutes of the Regular Council Meeting –2-10-2020
- (B) Minutes of the Council Work Session- 2-25-2020
- (C) Accounts Payable checks totaling- \$ 147,913.67
- (D) Financial Statements ending February 29, 2020.

## **CHANGE OF AGENDA**

**Motion:** Councilman Schiro motioned to add Item 8F- Brown's Building Listing Agreement to the meeting agenda, motion seconded by Councilman Lancaster with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence. **Approved 5-0**

## **CITIZEN COMMENT**

Mayor Presgraves opened the Citizen Comment portion of the meeting for anyone present to speak.

### **Lee McWhorter, 1755 US Hwy Bsn 340-**

Mr. McWhorter spoke on behalf of the former Farmers Market board. Mr. McWhorter noted that he has located the speaker system and will pick the item up from the Parks Director. Mr. McWhorter hopes that the Town is able to find a board of directors and continue with the market. He feels it is a necessary component of the Town's Main Street designation. Mr. McWhorter stated that he intends to continue selling produce from his home.

## **PRESENTATIONS**

*The scheduled individuals were not present at the evening's meeting.*

## **PUBLIC HEARING**

### **Chapter 704 Satisfaction of Applicable Fees, Charges, Expenses & Liens**

Town Manager, Steve Burke, requested the Council conduct a Public Hearing to receive comments on the amendment to Chapter 704 of the Town Code. The amendment would include reference to delinquent real estate taxes, nuisance charges, and other liens and conform to state code. Applicants for special use permits, variances, and rezoning permits would need to satisfy any outstanding payments pertaining to these references before approval of such permit could be obtained.

Mayor Presgraves opened the Public Hearing for citizen comment. With no members present to speak on the issue, the hearing was then closed.

**Motion:** Councilman Schiro motioned that the Council adopt the Code Amendment to Chapter 704 as presented, effective upon adoption. Motion seconded by Councilman Lancaster with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence. **Approved 5-0**

## **DEPARTMENTS, TOWN BOARDS AND COMMISSIONS**

### **Luray Downtown Initiative**

Ms. Meredith Dees discussed the recent Mardi Gras downtown celebration. The event was a huge success and she has received very positive feedback. Ms. Dees discussed the LDI Façade Improvement Grant and is pleased to announce the award winners; Performing Arts Luray, Hawksbill Brewery, and the Briar

Lane House. The total grant awards amount to about \$4900. Those businesses have received letters of award and will have signage posted at their locations.

## **ACTION & DISCUSSION ITEMS**

### **2019 Planning Commission Annual Report**

Mr. Burke requested that Council consider accepting the 2019 Planning Commission Annual Report.

**Motion:** Councilman Dofflemyer motioned to accept the 2019 Planning Commission Annual Report as presented. Motion seconded by Councilman Schiro with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence. **Approved 5-0**

### **Luray Avenue Area School Speed Zone**

The Luray Town Council is requested to consider establishing a School Crossing Zone and School Speed Zone near Luray Elementary and Luray Middle Schools. The Page County Public School Board has adopted a Resolution requesting the maximum speed limit be decreased to 15mph from 7:30am to 8:45am and from 2:45pm to 3:45pm.

**Motion:** Councilman Schiro moved that the Town Council adopt the Ordinance designating a School Crossing Zone and a School Speed Zone near the Luray Elementary School and Luray Middle School as presented. Motion seconded by Councilman Vickers with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence. **Approved 5-0**

### **General Drive Acceptance**

Mr. Burke said that staff has reviewed all of the requested documentation and all items have been satisfied. Staff believed the road conforms to VDOT standards and can be accepted by the Town.

**Motion:** Councilman Schiro moved that the Town Council accept the dedication of the street improvements and the water, sewer, and storm sewer facilities located within the Right-of-Way commonly referred to as General Drive from the Luray Wal-Mart Access Road to Cave Hill Road from Baker Development Partnership as presented. Motion seconded by Councilman Dofflemyer with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Sours, Pence. **Approved 5-0**

### **General Drive Donation-McDonalds**

Assistant Town Manager, Bryan Chrisman, discussed the status of the donation of General Drive from Rt. 211 to Wal-Mart. The acceptance of the roadway by the Town would require deeds of gift from Luray Liberty LLC, Walmart Corporation, and McDonalds Real Estate in order to conform to VDOT roadway requirements. Mr. Chrisman has received positive feedback from all three parties of interest and hopes the dedication can be achieved within the next year.

## **Page County Conceptual Tourism Grant Program**

Town Manager, Steve Burke, stated that Liz Lewis of Page County Tourism would like Council's consideration of a proposed grant program. The Tourism Grant Program is in the initial phases and would provide funding to develop and expand business. Page County has requested consideration of funding for up to \$20,000. Council members indicated that they would like more information on the structure of the grant program and matching components. Town Council members expressed interest in furthering this discussion.

## **Browns Building Listing Agreement**

Mr. Burke said that the Council is requested to consider extending the Listing Agreement with Bill Dudley and Associates Real Estate Inc. to market and sell the Browns Building. The current agreement expires March 10, 2020.

Councilwoman Pence noted that she would like to see the Town solicit bids from other realtors. She does not believe this is fair and equitable to all agents. Councilman Schiro felt that Mr. Dudley has invested a great deal of time and effort at this point, and would like to continue with his firm.

**Motion:** Councilman Lancaster moved that the Town Council approve the extension of the Listing Agreement with Bill Dudley & Associates Real Estate Inc. to market and sell the Browns Building located at 36 West Main Street for a period of 90 days. Motion seconded by Councilman Schiro with the vote as follows: YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster. NAY: Pence.  
**Approved 4-1**

## **TOWN ATTORNEY**

Jason Botkins, Town Attorney, had no further business for the evening.

## **CLOSED MEETING**

*-Recess-*

## **EXECUTIVE SESSION**

### **Unannounced Business or Industry Section 2.2-3711 (A) (5)**

Mayor Presgraves requested a motion to adjourn into Executive Session for the purpose of discussing matters relevant to Section 2.2-3711.A.5 regarding the unannounced business or industry. The subject is a prospective business seeking potential connection to Town infrastructure.

**Motion:** Councilman Schiro motioned to recess the regular meeting and to convene in executive session; Councilman Dofflemyer seconded the motion with the following members voting YEA: Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence. Approved 5-0

***-Closed Meeting-***

**Certification:** Mayor Presgraves asked members of Council to certify that to the best of their knowledge only matters covered under Section 2.2-3711.A.5 were heard, discussed, or considered during the closed session. **Motion:** Councilman Schiro motioned to certify the closed session; Councilwoman Pence seconded the motion with the following members voting YEA: Mayor Presgraves, Council Members Vickers, Dofflemyer, Schiro, Lancaster, Pence.

**ANNOUNCEMENTS/ ADJOURN**

With no further business, the meeting was adjourned at 8:03 pm.

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Barry Presgraves  
Mayor

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Danielle Babb  
Deputy Clerk-Treasurer



**Town of Luray, Virginia**  
Town Council Agenda Statement

Item No: VIII-A

Meeting Date: April 6, 2020

- Agenda Item: TOWN COUNCIL CONSIDERATION  
Branch Banking & Trust Company – Partial Tax Refund
- Summary: The Town Council is requested to consider adoption of an Ordinance authorizing the partial tax refund for Branch Banking & Trust Company (BB&T). The Virginia Department of Taxation has determined that a portion of the taxes paid by BB&T to the Town and other Virginia localities from 2012 through 2014 were not owed and should be refunded. BB&T has agreed to waive any interest that would otherwise be due of the refund. The amount to be refunded is \$28,184 with funds available from 3-100-12060-0001 Bank Franchise Tax
- Council Review: N/A
- Fiscal Impact: N/A
- Suggested Motion: I move that Town Council adopt the Ordinance Authorizing a Partial Tax Refund for Branch Banking & Trust Company as presented.

**AN ORDINANCE AUTHORIZING A PARTIAL TAX REFUND FOR  
BRANCH BANKING & TRUST COMPANY**

**WHEREAS**, Branch Banking & Trust Company (“BB&T”) paid certain bank franchise taxes to the Town for 2012, 2013, and 2014 based upon assessments by the Virginia Department of Taxation; and

**WHEREAS**, BB&T appealed the Virginia Department of Taxation’s assessments concerning those taxes to the Virginia Tax Commissioner; and

**WHEREAS**, the Virginia Tax Commissioner recently determined that a portion of the taxes paid by BB&T to the Town and other Virginia localities from 2012 through 2014 was not owed and should be refunded; and

**WHEREAS**, the Council concurs with the reasoning of the Virginia Tax Commissioner’s ruling attached as Exhibit A and incorporated herein by reference; and

**WHEREAS**, BB&T has agreed to waive any interest that would otherwise be due on the refund from the Town.

**NOW, THEREFORE**, the Town Council of the Town of Luray, Virginia, hereby ordains as follows:

1. The Treasurer is authorized and directed to issue a partial refund to BB&T in the amount of \$28,184.
2. The sum of \$28,184 is accordingly appropriated.
3. The facts and conclusions stated in the preamble reflect findings of this Council.

Adopted: April 13, 2020

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Mayor

Approved:

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Town Attorney

**CERTIFICATE**

I certify that I am the Clerk of the Town of Luray, Virginia, and that the foregoing is a true copy of an Ordinance adopted by the Council of the Town of Luray, Virginia, on April 13, 2020, upon the following vote:

| NAME                          | AYE | NAY | ABSTAIN | ABSENT |
|-------------------------------|-----|-----|---------|--------|
| Mayor Presgraves <sup>1</sup> |     |     |         |        |
| Ronald "Ron" Vickers          |     |     |         |        |
| Jerry Dofflemyer              |     |     |         |        |
| Jerry Schiro                  |     |     |         |        |
| Leroy Lancaster               |     |     |         |        |
| Joey Sours                    |     |     |         |        |
| Leah Pence                    |     |     |         |        |

Date: April 13, 2020

[SEAL]

ATTEST: \_\_\_\_\_  
Clerk, Town Council of  
Town of Luray, Virginia

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<sup>1</sup> Votes only in the event of a tie.



# EXHIBIT A

## COMMONWEALTH of VIRGINIA

### *Department of Taxation*

October 1, 2019

Mr. David M. Vistica  
Washington National Tax  
Deloitte Tax LLP  
555 12<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004

Re: § 58.1-1824 Application: Bank Franchise Tax  
Branch Banking and Trust Company

Dear Mr. Vistica:

This is in response to your letter in which you seek correction of the bank franchise tax (BFT) assessments issued to Branch Banking and Trust Company (the "Bank") for the 2013 and 2014 tax years and protective claim for refund for the 2012 through 2014 tax years. I apologize for the delay in responding to your appeal.

#### FACTS

For the tax years at issue, the Bank had investments in numerous subsidiaries that were reported in the Bank's official report of condition (the "Call Report"). The Bank timely filed amended BFT returns for the taxable years at issue, reporting a significant increase in its deduction for retained earnings and surplus of subsidiaries and requested refunds.

Under review, the Department requested additional documentation concerning the deductions for the surplus of subsidiaries. Based on the additional documentation, the Department granted deductions that were less than originally claimed. The Department also increased taxable capital on the 2014 return. The refunds were denied and assessments were issued for the 2013 and 2014 tax years.

The Bank filed a protective claim for refund, contending it had correctly reported its capital on the 2014 return and the deductions on its amended returns. The Bank also asserts the Department assessed the 2013 tax year beyond the statute of limitations. Further, if relief is not granted on the issue of the deduction, the Bank



Mr. David M. Vistica  
October 1, 2019  
Page 2

claims the Department failed to allow a historic rehabilitation tax credit to which it was entitled.

## DETERMINATION

### Statute of Limitations

Pursuant to *Virginia Code* § 58.1-104, the Department generally has authority to issue an assessment within three years of the due date of a timely filed return. Under *Virginia Code* § 58.1-1207, the 2013 BFT return was due March 1, 2013. Thus, the Department had until March 1, 2016, to issue an assessment. The 2013 assessment was issued in February 2017, beyond the statute of limitations.

### Total Equity Capital

The BFT is imposed on the net capital of a bank. *Virginia Code* § 58.1-1205 provides the computation for determining a bank's net capital. There is no provision under Virginia statute that requires or permits banks to combine capital among affiliated banks for purposes of determining its BFT liability. Instead, each bank must make a separate determination of its capital.

For the 2014 tax year, the Department adjusted the Bank's "total equity capital" to equal the amount reported on the Call Report. While Title 23 of the Virginia Administrative Code (VAC) 10-330-20 B 7 starts the BFT computation with total equity capital as reported on the Call Report, the Department has recognized that changes in United States Generally Accepted Accounting Principles (GAAP) and federal banking regulations have included items reported in a bank's equity beyond those items identified in Virginia's statute. See Public Document (P.D.) 05-165 (12/5/2005).

Under *Virginia Code* § 58.1-1205, the computation of net capital begins "by adding together its capital, surplus, undivided profits and one half of any reserve for loan losses net of applicable deferred tax . . . ." Title 23 VAC 10-330-20 defines "gross capital" to mean "the total of capital stock, surplus, and undivided profits and one half of any reserve for loan losses net of applicable deferred tax . . . ." Under the regulation, the gross capital of a bank is computed by adding the following accounts as reported on the Call Report: (1) preferred stock, (2) common stock, (3) surplus, (4) undivided profits and reserve for contingencies and other capital reserves, and (5) 50% of reserve for loan losses reduced by deferred tax. Under Virginia's regulation, any amounts not included in these five categories are not included in a bank's computation of total equity capital.

For the 2012 through 2014 tax years, the Bank included "noncontrolling (minority) interests in consolidated subsidiaries" in computing its total equity capital reported on its Call Reports. The Bank argues this line was created as a result of the reclassification of liabilities related to minority interests in relegated entities from the liability section of the balance sheet. According to the Bank, it was required to report a lower-tiered subsidiary as a noncontrolling interest because it was held outside the consolidated group included in the Call Report.

Financial Accounting Standards Board (FASB) Statement No. 160 made a number of amendments to Accounting Research Bulletin (ARB) 51 with regard to consolidating financial statements of related entities. Included in the amendments was a change in the way noncontrolling interests in other entities were reported in the financial statements. Instead of reporting the noncontrolling or minority interests in the liability section of the balance sheet, FASB Statement No. 160 began requiring entities to report noncontrolling interests in the consolidated statement of financial position with equity but separate from the parent's equity. Under the provisions of FASB Statement No. 160, the total equity capital reported on the Call Report included a separate item in its equity section for "noncontrolling (minority) interests in consolidated subsidiaries." The description of the equity accounts included in determining a bank's capital subject to BFT does not include noncontrolling or minority holdings in a subsidiary.

#### Deduction for Surplus

Under GAAP, banks are required to include majority-owned subsidiaries in a consolidated Call Report. Accordingly, a Call Report filed by a bank may include the bank and its subsidiaries. Before consolidation, a parent bank will include the investment in its subsidiary as an asset. The subsidiary reports a corresponding equity owned by the parent bank in the equity section of its balance sheet. When the entities are consolidated, an elimination adjustment is made to offset the intercompany transaction. In the elimination, the parent bank's asset will be offset by the subsidiary's equity owned by the bank.

*Virginia Code* § 58.1-1206 A 4 permits a deduction equal to the "amount of retained earnings and surplus of subsidiaries to the extent included in the gross capital of the bank." Title 23 VAC 10-330-30 E explains that the intent of the deduction is to remove the amount of increase in the bank's recorded investment in its subsidiaries resulting from undistributed earnings of such subsidiaries from the gross capital of a bank. This reduces the possibility that the bank would be taxed on the activities of its subsidiaries. Under the regulation, the deduction is limited to the amount included in gross capital that represents the undistributed earnings of its subsidiaries during the period of the bank's investment in such subsidiaries.

For reporting purposes, the regulatory requirements applicable to the Call Report conform to GAAP. Under ARB No. 51, retained earnings of a purchased subsidiary at the date of acquisition are not included in consolidated financial statements. Consequently, the only undistributed earnings of a subsidiary that should be included in a bank's consolidated financial statement would be the subsidiary's retained earnings during the period of the bank's investment.

Such increases are generally reflected in a subsidiary's undivided profits or retained earnings. In some instances, however, the increase may be reflected in the subsidiary's surplus. As such, the deduction is permitted for the subsidiary's retained earnings and surplus.

Pursuant to Title 23 VAC 10-330-20 B, "surplus" is defined as the amount shown on the Call Report including "reserves for contingencies and other capital account reserves." For purposes of the Call Report, the surplus account includes capital contributions, adjustments arising from treasury stock transactions, and any amount received for common stock in excess of its par value.

Unlike retained earnings, a subsidiary's surplus at the date of acquisition is not eliminated in consolidated financial statements under GAAP. Consequently, the clear language of the statute permits a deduction for any amount of a subsidiary's surplus included in the Call Report of a bank. Such surplus, including reserves, treasury stock, and amounts paid in excess of par, should be readily identifiable on the subsidiary's year end financial statements. See P.D. 06-69 (8/18/2006).

The Department denied the deductions for surplus because Title 23 VAC 10-330-30 E restricts the deduction to undistributed earnings. In addition, the deduction reported on the 2014 return far exceeded the amount reported on the Call Report.

The term "undistributed earnings" is not defined for BFT purposes. Generally, the term "undistributed earnings" is used along with a number of terms to describe retained earnings, which are earnings or profits that are not paid as distributions to the entity's owners. The Virginia Supreme Court has used the terms "undistributed earnings" and "retained earnings" interchangeably. See *Segaloff v. Segaloff*, 59 Va. Cir. 55, 2002 Va. Cir. LEXIS 131 (2002). *Virginia Code* § 58.1-1206, however, permits a deduction for surplus in addition to retained or undistributed earnings. See also P.D. 06-69 (8/18/2006).

As to the amount of the deduction claimed by the Bank, *Virginia Code* § 58.1-1206 A 4 limits the deduction to the extent retained earnings and surplus are included in the gross capital of the bank. In conjunction with its review, the Department requested the Bank to provide a reconciliation of its deduction to amounts reported on

the Call Report. The reconciliation provided by the Bank indicated that a significant amount of the deduction for retained earnings and surplus claimed on its amended returns had been eliminated before being reported on the Call Reports. In accordance with the statute, the Bank would not be permitted to deduct retained earnings and surplus not included in gross capital.

#### Historic Rehabilitation Tax Credit

In 2009, the Bank received a Historic Rehabilitation Tax Credit (the "Credit") from a pass-through entity. In subsequent years, the Bank became eligible to claim additional Credits received through various pass-through entities.

Under *Virginia Code* § 58.1-339.2, any individual, trust, estate, or corporation is entitled to the Credit equal to 25% of eligible expenses. Credits granted to partnerships are allocated to the partners either in proportion to their ownership interest or as agreed. The credit may be carried over for up to 10 tax years.

As permitted under the statute, the portion of the Credit that was not used on the 2010 BFT return was carried forward to 2011 and 2012. Credits earned in subsequent taxable years were likewise carried forward to 2012, 2013 and 2014 and claimed on the Bank's original BFT returns. When the Bank filed amended returns, the state BFT tax liability was reduced to \$0. As a result, the Bank had no BFT liability on which to apply the Credits that had been carried forward. Thus, the Bank did not report any Credit on the amended returns.

The Bank asserts the Department has not reflected available Credits against the assessments made for the 2013 and 2014 tax years. A review of the audit reports confirms the Department failed to adjust Credit carryovers to reflect the full amounts that were eligible to be claimed in its audit findings and resulting assessments.

When the Bank amended its deduction of retained earnings, it also amended its claims for the Credit in accordance with the resulting state BFT liability. Because the Credit carryovers were amended, the Department was obligated to adjust the Credit carryovers when it disallowed the deduction.

#### Mathematical Errors

During the course of considering the Bank's appeal, a number of minor transposition errors were discovered on the amended returns. The Bank has provided documentation to verify the correct amounts.

Mr. David M. Vistica  
October 1, 2019  
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## CONCLUSION

In accordance with this determination, the adjustment to increase equity capital for the 2014 tax year by including noncontrolling (minority) interests in consolidated subsidiaries is reversed. In addition, the Department will allow a deduction for both retained earnings and surplus of the Bank's subsidiaries to the extent included in gross capital. Finally, the Credit carryovers must be corrected to show the amounts that should have been claimed for the 2012 through 2014 tax years. The enclosed schedules display the adjustments (including mathematical errors) to be made as a result of this determination. The overpayments of state BFT, including applicable interest, will be refunded shortly. The Department will notify the affected localities and refunds of the local portion of the BFT will be issued by those localities.

The *Code of Virginia* sections, regulations, and public documents cited are available on-line at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules & Decisions section of the Department's web site. If you have any questions regarding this determination, you may contact David T. Mason in the Department's Office of Tax Policy, Appeals and Rulings, at (804) 371-6041.

Sincerely,



Craig M. Burns  
Tax Commissioner

Enclosure

AR/1289o

**SUMMARY OF REFUNDS DUE TO BB&T**

| <b>LOCALITY</b>        | <b>2012 REFUND<br/>TO BANK</b> | <b>2013 REFUND<br/>TO BANK</b> | <b>2014 REFUND<br/>TO BANK</b> | <b>TOTAL DUE TO<br/>BANK</b> |
|------------------------|--------------------------------|--------------------------------|--------------------------------|------------------------------|
| City of Staunton       | \$9,941                        | \$9,020                        | \$10,393                       | \$29,355                     |
| City of Suffolk        | \$40,470                       | \$29,940                       | \$33,567                       | \$103,977                    |
| City of Virginia Beach | \$161,162                      | \$141,347                      | \$170,923                      | \$473,432                    |
| City of Waynesboro     | \$6,358                        | \$5,112                        | \$6,198                        | \$17,667                     |
| City of Williamsburg   | \$9,372                        | \$8,136                        | \$10,823                       | \$28,330                     |
| City of Winchester     | \$93,497                       | \$78,059                       | \$96,502                       | \$268,059                    |
| Cumberland County      | \$2,422                        | \$2,153                        | \$2,423                        | \$6,999                      |
| Dinwiddie County       | \$2,999                        | \$2,704                        | \$3,161                        | \$8,864                      |
| Fairfax County         | \$545,843                      | \$464,315                      | \$568,435                      | \$1,578,593                  |
| Fauquier County        | \$13,128                       | \$11,310                       | \$13,828                       | \$38,267                     |
| Fluvanna County        | \$11,613                       | \$9,529                        | \$11,812                       | \$32,954                     |
| Franklin County        | \$21,518                       | \$16,319                       | \$20,459                       | \$58,295                     |
| Frederick County       | \$22,204                       | \$19,391                       | \$21,987                       | \$63,583                     |
| Gloucester County      | \$15,836                       | \$14,101                       | \$16,491                       | \$46,429                     |
| Greene County          | \$6,368                        | \$5,318                        | \$6,726                        | \$18,413                     |
| Hanover County         | \$42,244                       | \$38,107                       | \$42,773                       | \$123,124                    |
| Henrico County         | \$144,178                      | \$123,029                      | \$161,870                      | \$429,077                    |
| Henry County           | \$20,330                       | \$15,515                       | \$18,527                       | \$54,373                     |
| James City County      | \$3,208                        | \$4,268                        | \$4,916                        | \$12,392                     |
| King & Queen County    | \$3,261                        | \$2,965                        | \$3,102                        | \$9,329                      |
| King George County     | \$10,581                       | \$9,017                        | \$10,268                       | \$29,866                     |
| Loudoun County         | \$57,965                       | \$53,224                       | \$67,850                       | \$179,038                    |
| Mecklenburg County     | \$3,011                        | \$2,544                        | \$3,093                        | \$8,648                      |
| Middlesex County       | \$9,517                        | \$7,963                        | \$9,532                        | \$27,012                     |
| Montgomery County      | \$2,556                        | \$2,117                        | \$2,494                        | \$7,167                      |
| Nelson County          | \$10,281                       | \$9,348                        | \$10,967                       | \$30,596                     |
| <b>Page County</b>     | <b>\$9,665</b>                 | <b>\$8,562</b>                 | <b>\$9,957</b>                 | <b>\$28,184</b>              |
| Patrick County         | \$3,723                        | \$3,067                        | \$3,965                        | \$10,755                     |
| Pittsylvania County    | \$6,240                        | \$5,138                        | \$6,048                        | \$17,425                     |
| Prince George County   | \$6,413                        | \$5,274                        | \$6,385                        | \$18,072                     |
| Prince William County  | \$86,598                       | \$77,827                       | \$94,538                       | \$258,962                    |
| Rappahannock County    | \$2,896                        | \$2,549                        | \$2,867                        | \$8,312                      |
| Roanoke County         | \$17,618                       | \$15,564                       | \$19,663                       | \$52,845                     |
| Rockbridge County      | \$15,615                       | \$13,117                       | \$16,958                       | \$45,690                     |
| Rockingham County      | \$4,689                        | \$3,929                        | \$4,539                        | \$13,157                     |
| Russell County         | \$2,491                        | \$2,236                        | \$2,549                        | \$7,276                      |
| Scott County           | \$2,751                        | \$2,108                        | \$2,439                        | \$7,298                      |
| Smyth County           | \$3,329                        | \$0                            | \$0                            | \$3,329                      |
| Spottsylvania County   | \$26,090                       | \$22,371                       | \$27,464                       | \$75,925                     |
| Stafford County        | \$38,767                       | \$34,048                       | \$41,920                       | \$114,734                    |
| Sussex County          | \$2,237                        | \$2,172                        | \$2,249                        | \$6,658                      |
| Town of Abingdon       | \$35,327                       | \$7,573                        | \$8,328                        | \$51,228                     |
| Town of Altavista      | \$4,789                        | \$3,768                        | \$4,388                        | \$12,944                     |
| Town of Amherst        | \$8,739                        | \$10,714                       | \$12,824                       | \$32,277                     |

Town of Luray





**Town of Luray, Virginia**  
**Town Council Agenda Statement**

Item No: VIII-B

Meeting Date: April 13, 2020

- Agenda Item: TOWN COUNCIL CONSIDERATION  
Emergency Ordinance – Providing for Continuity in the Government of Luray, Virginia
- Summary: The Town Council is requested to consider adoption of an Emergency Ordinance for the Continuity in the Government for the Town associated with Public Meetings, Public Hearings, and Deadlines. The Ordinance provides that COVID-19 makes it unsafe to assemble for public meetings of the Town Council, Planning Commission, Board of Zoning Appeals, and other Council appointed entities. The Ordinance will facilitate electronic meetings of these bodies.
- Council Review: N/A
- Fiscal Impact: N/A
- Suggested Motion: I move that Town Council adopt the Emergency Ordinance – Continuity in the Government of Luray, Virginia as presented.



## TOWN OF LURAY



### AN ORDINANCE PROVIDING FOR CONTINUITY IN THE GOVERNMENT OF LURAY, VIRGINIA

**WHEREAS**, the Town Council of the Town of Luray, Virginia, considers the safety and welfare of the residents of the Town to be of utmost importance; and

**WHEREAS**, the President of the United States has declared a national state of emergency to exist throughout the country as a result of the spread of the COVID-19 disease; and

**WHEREAS**, the Governor of Virginia has declared a state of emergency to exist throughout the Commonwealth of Virginia as a result of the spread of the COVID-19 disease; and

**WHEREAS**, the World Health Organization declared the COVID-19 outbreak a pandemic; and

**WHEREAS**, the Governor of Virginia and the State Health Commissioner have jointly declared a public health emergency to exist throughout the Commonwealth of Virginia as a result of the spread of the COVID-19 disease; and

**WHEREAS**, on March 17, 2020, the Chairman of the Page County Board of Supervisors and the Page County Director of Emergency Management declared that a local emergency exists in Page County; and

**WHEREAS**, on March 23, 2020, Governor Northam announced a ban on all gatherings of ten or more people statewide and closed all recreational and entertainment businesses; and

**WHEREAS**, due to the spread of the COVID-19 disease, the Town is facing a disaster and a condition of extreme peril to the lives and safety of the Town's residents and visitors; and

**WHEREAS**, as a result of this disaster and extreme peril, this Ordinance Providing for Continuity in the Government of the Town of Luray, Virginia, is necessary to permit the full powers of the government to deal effectively with the condition of the disaster and peril; and

**WHEREAS**, allowing the Town to limit in-person attendance will allow the Town's constituents to protect themselves and one another, while maintaining informed and active citizenship and will let the Town operate in an efficient and safe manner while the Town mitigates the effects of this public health crisis and disaster, and

**WHEREAS**, the Attorney General of Virginia issued an opinion dated March 20, 2020, stating that localities have the authority during disasters to adopt ordinances to ensure the continuity of government; and

**WHEREAS**, this ordinance in response to the disaster caused by the COVID-19 pandemic promotes public health, safety and welfare, and is consistent with the law of the Commonwealth of Virginia, the Constitution of Virginia and the Constitution of the United States of America.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LURAY, VIRGINIA AS FOLLOWS:**

1. The COVID-19 pandemic makes it unsafe to assemble in one location a quorum of this Council, the Planning Commission, the Board of Zoning Appeals, and all local and regional boards, commissions, committees, and authorities created by this Council or to which Council appoints members (collectively, “Public Entities”) or to conduct meetings in accordance with normal practices and procedures.

2. In accordance with Virginia Code § 15.2-1413, and notwithstanding any contrary provision of law, general or special, meetings of the Public Entities may be held through real time electronic means (including audio, telephonic, video, or other practical electronic medium) without a quorum physically present in one location to ensure the continuity of government during this emergency and disaster.

3. Nothing herein prohibits Public Entities from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration.

4. The following procedures are hereby adopted for electronic meetings by Council:
- A. Public notice shall be made available at least three days in advance stating that the meeting is being held pursuant to this Ordinance and identifying how the public may see and/or hear the meeting contemporaneously as well as any means of offering comment.
  - B. The presiding officer shall announce the following at the beginning of each meeting:
    - (i) The meeting is being held pursuant to this Ordinance;
    - (ii) The names of the members of Council physically and electronically present;
    - (iii) The name of any person responsible for receiving public comment; and
    - (iv) The means of public access and opportunities, if any, for public participation.
  - C. The meeting shall be open to electronic viewing and/or listening by a reasonable number of the public and shall be closed to in-person attendance by the public.
  - D. There will be no public participation in the meeting unless there is a public hearing. Public comment for public hearings shall be solicited by electronic

means in advance and may also be solicited through telephonic or other electronic means during the meeting. All public comments will be provided to Council and made part of the record.

- E. The minutes of an electronic meeting shall conform to the requirements of law and may be approved at a subsequent electronic meeting.
- F. Because technology occasionally fails and because Town government must continue, no failure to provide public access under Subsections 4(A), 4(C), or 4(D) shall invalidate any hearing or action by Council.

5. Notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by the Town, its officers and employees shall be suspended during this emergency and disaster; however, the Town's officers and employees are encouraged to take such action as is practical and appropriate to meet those deadlines. Failure to meet any such deadlines shall not constitute a default, violation, approval, recommendation, or otherwise.

6. The Town Manager or Mayor, either of whom may act, are hereby authorized to take any actions that are reasonable and necessary to effectuate the terms of this Ordinance.

7. This Ordinance shall expire six months after the disaster. Normal governmental authority and procedures shall resume upon the expiration of this Ordinance.

8. The facts recited in the preamble of this Ordinance reflect findings of Council.

Ordained this 13<sup>th</sup> day of April, 2020.

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Mayor

**CERTIFICATE**

I certify that I am the Clerk of the Town of Luray, Virginia, and that the foregoing is a true copy of an Ordinance adopted by the Council of the Town of Luray, Virginia, on April 13, 2020, upon the following vote:

| NAME                          | AYE | NAY | ABSTAIN | ABSENT |
|-------------------------------|-----|-----|---------|--------|
| Mayor Presgraves <sup>1</sup> |     |     |         |        |
| Ronald "Ron" Vickers          |     |     |         |        |
| Jerry Dofflemyer              |     |     |         |        |
| Jerry Schiro                  |     |     |         |        |
| Leroy Lancaster               |     |     |         |        |
| Joey Sours                    |     |     |         |        |
| Leah Pence                    |     |     |         |        |

Date: April 13, 2020

[SEAL]

ATTEST: \_\_\_\_\_  
Clerk, Town Council of  
Town of Luray, Virginia

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<sup>1</sup> Votes only in the event of a tie.