August 14, 1964

The regular meeting of the Elkton Town Council was held August 14, 1964 at 8:00 PM with the mayor, R. J. Lough, presiding and the following councilmen present: E. F. Garber, J. C. Black, M. W. Lough, R. B. Hutton, and R. H. Painter.

The minutes of the last meeting and the treasurer's finance report were approved.

J. C. Black presented a bid from Snyder Pump Company to drill a well in Memorial Park for a cost of $9,200.00.

Mayor R. J. Lough appointed a committee for the Development of New Water Resources consisting of J. C. Black as chairman and E. F. Garber and R. B. Hutton.

J. C. Black presented a bid from Painter and Mundy Inc. to pave Terrace Avenue and joining parking lot for a price of $2,889.60.

E. F. Garber moved, secinded by J. C. Black and passed to hire Bauserman and Ould to audit the town books for 1964.

R. H. Painter moved, seconded by J. C. Black and passed to employ Earl L. Brill as a regular policeman for the town.

R. H. Painter moved, seconded by J. C. Black and passed to pay Earl L. Brill $325.00 per month.

E. F. Garber moved, seconded by M. W. Lough and passed the following ordinance:

BE IT ORDAINED by the Council of the Town of Elkton that the General Ordinances of the Town of Elkton shall be amended by the addition of the following ordinances to Article 5, Chapter 7, MOTOR VEHICLES:

Sec. 7-82.1 ALLOWING VEHICLE TO REMAIN PARKED MORE THAN FIFTEEN DAYS CONTINUOUSLY. It shall be unlawful for the owner of any motor vehicle to allow such vehicle to remain continuously parked upon any street of the town or in any municipal parking lot for a period of more than fifteen days.

Sec. 7-82.2 DISPOSITION OF VEHICLES ALLOWED TO REMAIN PARKED MORE THAN THIRTY DAYS. If any motor vehicle shall remain parked or left upon any street of the town or in any municipal parking lot for thirty days or more, then it shall be the duty of the mayor to advertise such vehicle as an abandoned car in a newspaper published in the County of Rockingham twice a week for two successive weeks.

If such vehicle be then claimed, the claimant must establish his ownership before the trial justice and pay the cost of such advertisement, a storage charge of one dollar per day and the costs of the proceeding. Upon the establishment of the claim and the payment of the charges and costs, the vehicle shall be delivered to the claimant. If no person claims such vehicle, that fact shall be reported by the mayor to the trial justice, who thereupon shall enter an order declaring the vehicle abandoned property and awarding it to the town as such. The vehicle shall be then appropriated to the uses of the town by the mayor.

Sec.7-82.3 PENALTY FOR VIOLATION OF SECTIONS 7-82.1 and 7-82.2. Except as other wise specifically provided any personviolating any provisions of Sections 7-82.1

and 7-82.2 shall be punished by a fine of one dollar for the first offense; for a second offense within a year, by a fine of two dollars; and for a third or subsequent offense within a year, by a fine of three dollars.

An emergency existing, this ordinance shall be in full force and effect immediately on its adoption.

Adopted by the Council of the Town of Elkton, on this 14 day of Aug, 1964.

R. B. Hutton moved, seconded by M. W. Lough and passed the following ordinance:

AN ORDINANCE TO AMEND AND REORDIAN SECTIONS 7-39. 7-40, 7-41 and 7-42 OF THE GENRAL ORDINANCES OF THE TOWN OF ELKTON, VIRGINIA, RELATING TO CONSENT FOR THE TAKING O F BLOOD SAMPLES AND HOW SUCH CONSENT SHALL BE IMPLIED; TESTING SAME FOR ALCOHOLIC CONTENT; CONSEQUENCE OF REFUSAL OF CONSENT; SUSPENSION O F DRIVING PRIVILEGES AND APPEAL TO CIRCUIT COURT; ADMINISTRATION OF TEST; COST; EVIDENTIARY EFFECT OF TEST; TERM OF SUSPENSION OF SUCH PRIVILEGE AND LICENSE UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTION 7-43.

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BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELKTON, VIRGINIA;

(1) That Sections 7-39, 7-40, 7-41 and 7-42 of the General Ordinances of the Town of Elkton, Virginia 1961, are hereby amended and reordained so as to read as follows:

Section 7-39. (a) As used in this section "License" means any pperstor's, Chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person, whether licensed by Virginia or not, who operates a motor vehicle within the corporate limits of the Town of Elkton on and after July _____, 1964, shall be deemed thereby, as a condition of such operation, to have consented to ahve a sample of his blood taken for a chemical test to determine the alcoholic content thereof, if such person is arrested for a violation of Section 7-38 within two hours of the alleged offense.

(c) If a person after being arrested for a violation of Section 7-38 and after ahving been advised by the arresting officer that a person who operates a motor vehicle within the corporate limits of the Town of Elkton shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood taken for a chemical test to determine the alcoholic content thereof, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of the State of Virginia, then refuses to permit the taking of a sample of his blood for such tests, the arresting officer shall take the person arrested before a warrant justice of the Town and if he does again so refuse after having been further advised by such warrant justice of the law requiring a blood test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Chief Medical Examiner of Virginia (hereinafter referred to as Chief Medical Examiner), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a court of record acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposal syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof.

(d-1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Chief Medical Examiner, which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Chief Medical Examiner, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Chief Medical Examiner. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of said container give to the accused a form provided by the Chief Medical Examiner which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the State Health Commissioner; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at ahat time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused choice, in which even the officer shall do so) shall deliver said second container to the Chief of Police of Elkton, who shall keep it in his possession for a period of seventy-two (72) hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief of Police having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list.

(d-2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Chief Medical Examiner, and all procedures established herein for the transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Chief Medical Examiner.

(d-3) A fee not to exceed $15.00 shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of Section 7-38, the fee charged by the laboratory for testing the blood sample shall be taxes as part of the costs of the criminal case and shall be paid into the general fund of the Town treasury.

(d-4) If the Chief of Police having possession of the second container is not directed as herein provided to mail it within seventy-two (72) hours after receiving said container then said officer shall destroy same.

(e) Upon receipt of the blood sample forwarded to his office for analysis, the Chief Medical Examiner shall cause it to be examined for alcoholic content and he or an Assistant Chief Medical Examiner shalll execute a certificate which sahll indicate the name fo the accused, the date, time, and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Chief Medical Examiner and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard, and such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the State Health Comminnioner.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the office of the Chief Medical Examiner, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificateas provided for in this section shall, when duly attested by the Chief Medical Examiner, or any Assistant Chief Medical Examiner, be admissible in any court, in any criminal proceeding, as ecidense of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood sample was taken for a chemical test to determine the alcoholic content thereof, the results of such test ot tests shalll be made availalbe to him.

(h) A fee not exceeding $5.00 shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of Section 7-38. the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be apid into the general fund of the Town treasury.

(i) In any trial for a violation of Section 7-38 this section shall not otherwise limit the intorduction of any revelant evidense bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissable in evidence. The failure of the accused to permit a sample of his blood to be withdrawn for a chemical test to determine the alcoholic content thereof is not evidence and shall not be subject to comment at at the trial of the case; nor shall the fact that a blood test had been offered the accused be evidence or the subject of comment.

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood sample and the penalty for refusal, a declaration of refusal and lines for the signature of the person from whom the blood sample is sought, the date and the signature of a witness to the signing.

If such person refuses or fails to execute such declaration, the warrant officer shall certify such fact, and that the warrant officer advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The warrant officer shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrants.

(k) The execute declaration of refusal or the certificate of the warrant officer, as the case may be, shall be attached to the warrant and shall be forwarded by the warrant officer to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood taken for the determination of the alcoholic content thereof, the court shall fix a date for the trial of said warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood to determine the alcoholic content thereof as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood to determine the alcoholic content thereof. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty in the warrant, the court shall suspend the defendant's license for a period of 90 days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: The date of the first offense and the date of the second or subsequent offense.

(o) The court shall forward the defendant's license to the Commissoner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shalll return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors.

(q) No person arrested for a violation of Section 7-38 shalll be required to execute in favor of any person or corporation a waiver of release ofliability in connection with the withdrawl ofblood and as a condition precedent to the withdrawl of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood samples are procedural in nature and not

substantive. Substantial compliance therewith shall bedeemed to be sufficient. Failure to comply with nay one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be condidered as set forth above with all the evidence in the case, provided that the defendant shall ahve the right to introduce evidence on his own behalf to show non-compliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

Section 7-40. In any prosecution for a violation of Section 7-38, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood in accordance with the provisions of Section 7-39, shall give rise to the following presumptions:

(1) If there was at that time 0.05 per cent or less by weight of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants.

(2) If there was at that time in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determinging the guilt or innocence of the accused;

(3) If there was at that time 0.15 per cent or more by weight of alcohol in the accused's blood, it shall be preaumed that the accused was under the influence of alcoholic intoxicants.

Section 7-41. The judgment of conviction, or finding of not innocent in the case of a juvenile, if for a first offense under Section 7-38 shall of itself operate to deprive the person so convicted or found not innocent of the right to drive or operate any such vehicle, convyeance, engine or train in this State for a period of one year from the date of such judgment, and if for a second or other subsequent offense within ten years thereof for a period of three years from the date of the judgment of conviction or finding of not innocent thereof, sny such period in either case to run consecutively with any period of suspension for failure to permit a blood sample to be taken as required by Section 7-39. If any person has heretofore been convicted or found not innocent of violating the provisions of Section 7-38, such conviction or finding shall for the purpose of this section and Section 7-42 be a subsequent offense and shall be punished accordingly; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted or found not innocent.

Section 7-42. (1) Any person violating any provision of Section 7-38 shall be guilty of a misdemeanor, punishable by a fine of not less than $200.00 nor more than $1,000.00 or imprisonment for not less than one month nor more than six months, either or both in the discretion of the court or jury trying the same. or the court trying the case without a jury, for a first offense. Any person convicted of a second or subsequent offense within ten years thereof shalll

be punishable by a fine of not less than $200.00 nor more than $1,000.00 and by imprisonment for not less than one month nor more than one year. For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under the provisions of Section 7-38, the ordinance of any county, city, or town in this state or the laws of this or any other state substantially similar to the provisions of Section 7-38 through Section 7-41 shall be considered a prior conviction.

(2) That Section 7-43 of the General Ordinances of the Town of Elkton Virginia, 1961 is repealed.

(3) An emergency is declared to be existing, and this ordinance shall be in full force and effect immediately on its adoption.

Adopted by the Town of Elkton, July_____, 1964.

R. B. Hutton moved, seconded by J. C. Black and passed the following ordinance to become effective 30 days after its adoption, M. W. Lough opposed the ordinance stating that the town had inadequate equipment and men to enforce such ordinance:

BE IT ORDAINED by the Council of the Town of Elkton that Section 18-7 of the General Ordinances of the Town of Elkton, Virginia, be amended and re-enacted so as to read as follows:

Section 18-7. Allowing dogs to run at large on public and private property; leash required; impounding; redemption; notice to owner; disposition; or unredeemed dogs.

It shall be unlawful for the owner of any dog to allow the same to go at large upon any public street, alley or square, or to go upon the private property of another person, unless accompanied and held in leash by a responsible person.

It shall be the duty of the police department to catch and pen any dog found off the owner's premises, unless such dog is accompanied and held in leash by a resposnibke person, as hereinbefore provided.

Upon a dog being so caught and penned, the owner thereof shall have the exclusive right for a period of forty-eight hours of redeeming the same by paying to the police department the sum of two dollars to cover the cost of penning, maintaining and keeping such dog, and exhibiting to the person in charge of the dog pen the receipt therefor and the receipt for the license tax required by Rockingham County and the State of Virginia to be paid.

If any dog is caught and penned as hereinbefore provided, it shall be the duty of the police department, if the address of the owner is known, to notify the owner within the period of forty-eight hours.

If such dog is not redeemed by its owner within said period of forty-eight hours, it shall be kept and cared for in said dog pen for an additional period of forty-eight hours, during which additional period it amy be redeemed by the owner or any other person paying to the police department the sum of one dollar per day for each day the same shall have been penned and kept.

If not redeemed by the owner within said original foryt-eight hour period, or by the owner or any other person during said addtional forty-eight hour period, such dog shall be turned over to the county dog warden.

This ordinance shall be effective thirty days after adoption.

Adopted by the Council of the Town of Elkton, on this _____ day of July, 1964.

R. B. Hutton moved, seconded by J. C. Black and passed the following amendment to the town's license tax ordinance:

The following amendment to Chapter 7-27, Operation without Town License and Display of Same:

Add: as Section (b) No license shall be issued by the town treasurer hereunder unless and until the applicant for such license shall have produced satisfactory evidence that all personal property taxes upon the motor vehicle, trailer or semi-trailer to be licensed have been paid which have been properly assessed or are assesable against the applicant by the town, as provided and enabled by Section 46. 1-65 of the Code of Virginia, 1950, as amended.

Make present section (b) Section (c), and present Section (c) Section (d).

R. H. Painter moved, seconded by M. W. Lough and passed to grant Blue Ridge Garden Club permission to erect signs stating that the town is a bird sanctuary.

Mayor Lough appointed a committee on Development of Newly Acquired Property consisting of M. W. Lough chairman, and R. B. Hutton, E. F. Garber, and J. C. Black as members.

R. B. Hutton moved, seconded by E. F. Garber and passed to accept the Elkton Club property from Merck and Co. as a gift.

E. F. Garber moved, seconded by M. W. Lough and passed to write Merck and Co, a letter of appreciation and to erect a plaque at the property.

J. C. Black moved, seconded by M. W. Lough and passed to appropriate $180.00 to purchase a 100 KVA transformer.

D. C. Liskey reported that the town had donated $1,405.30 in time and material to the Elkton High School football field lights.

With no further business, the meeting was adjourned.

APPROVED R. J. Lough
Mayor

RECORDER Leon L. Lawson
Leon L. Lawson