



**Urbanna Town Council
Monthly Meeting
AGENDA
Town Council Chambers
390 Virginia St., Suite B
Thursday, May 9, 2024 6:00 PM**

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Approval of Agenda
5. Special Recognition-Friends of Urbanna essay contest winner
6. Minutes
7. Reports
 - a. Town Administrator
 - b. Treasurer
 - c. Finance Committee
 - d. Water Committee
 - e. Planning Commission
8. Public Comment
9. Council Comment
10. Old Business
 - a. Pool Rules
 - b. Marshall Family Pool opening celebration
 - c. Pickett-Special Use Permit
11. New Business
 - a. July 4th contracts
 - b. Lindke v. Freed
12. Public Comment
13. Announcements
14. Adjourn



**Agenda Item Summary
May 9, 2024**

Agenda Item: 4-Approval of Agenda

Staff Recommendation: Approve

Council Action Requested: Yes

Sample Motion(s): Motion to approve agenda as presented.



TOWN OF URBANNA

390 VIRGINIA ST. SUITE B, PO BOX 179, URBANNA, VA 23175
PHONE: 804-758-2613, FAX: 804-758-0389

To: The Honorable Mayor and Members of the Town Council
From: P. S. T. (Ted) Costin, Administrator
Date: May 6, 2024
Subject: Special Presentation/Friends of Urbanna

Members of the Friends of Urbanna will be present to present the winner of the John Mitchell Essay Contest. The winner, Lazarus Doiron, and his parents were invited to attend council's meeting to be recognized.

At this time, and as has been discussed, a representative of the Friends of Urbanna will likely present a quarterly report. Going forward, such reports can be received as staff and committee reports are presented.

I have not had an opportunity to work on a draft Memorandum of Understanding.

If you have any questions or concerns, please bring them forward.

Thank you.

Friends of Urbanna Quarterly Report

April 25, 2024

The Friends of Urbanna Museum is a 501c3 organization that exists to work with the Town of Urbanna to assist in the enhancement and preservation of the Urbanna Scottish Factor Store Museum and Visitors Center properties, grounds and contents owned or on loan. The goal of the organization is to attract residents and visitors to learn about the history of Urbanna and the surrounding area; the Scottish Factor Store Museum (a unique structure and the last one remaining) and the Mitchell Map housed in the Museum. All of the activities of the Friends of Urbanna are intended to foster continued use and enjoyment of these one-of-a-kind town assets.

Current Activities at the Scottish Factor Store Museum:

- Inside: Friends of Urbanna have been working to restore the front room of the Museum to its original use and look. We engaged Mark Wenger of Messick Cohen Baker Architects (many of the council members may have met Mr. Wenger at an earlier reception held in the museum) to prepare drawings of counters that were in the Factor Store in the 18th century. These were derived from the markings on the floor in the store and are like the floor cabinets found in a similar building in Colonial Williamsburg. We engaged a local craftsman to build these based on the drawings by Mr. Wenger. They are nearing completion and should be finished and installed in the museum by early May.
- Outside: Friends of Urbanna raised funds to engage the Historic Architectural Firm of Messick Cohen Baker to assess and report on the condition of the porch of the Factor Store. That report concluded that the porch is pulling away due to water infiltration from the floor of the porch due to improper work that was done on this porch some years ago. We took the report and obtained a cost estimate for this repair work. Additionally, we are concerned about cracks in the brick work on the back corners on both sides of the building.

Future building work:

- Inside: Complete the restoration of the 18th century factor store appearance and function to include obtaining artifacts for display.
- Repair the brick work and porch

Fundraising:

- We are working on large grants to fund the porch work (estimated to be \$250,000) and the brick work we do not have an estimate on this yet.
 - Currently have obtained one matching grant to be matched by the end of 2024 and there is a request out for another grant that should be announced by the end of June
- We have received two grants from The River Counties Foundation one has funded the architectural study mentioned above and the second is funding the current cabinet work in the store.

Support for Scottish Factor Store Museum activities:

- Friends of Urbanna provide docent support as needed and requested for special events or holidays. Founders Day, Wine / Oyster Stroll, Oysterfest, Arts in the Middle booth support



**Agenda Item Summary
May 9, 2024**

Agenda Item: 6-Minutes

Background: Draft minutes attached

Fiscal Impact: NA

Staff Recommendation: Approve

Council Action Requested: Yes

Sample Motion(s): Motion to approve the minutes of the January 11, 2024 organizational meeting.

Note: If changes are requested at the meeting, approval of the minutes will be postponed to the next meeting.

**Town of Urbanna
Town Council
Monthly Meeting
Council Chambers-390 Virginia St. Suite B
January 11, 2024**

CALL TO ORDER & ROLL CALL

Mayor Goldsmith called the meeting to order at 6:00pm

Present-Members of Council

Mayor Bill Goldsmith
Marjorie Austin
Larry Chowning
Alana Courtney
Merri Hanson -arrived at 6:03pm
Beth Justice
Sandy Sturgill

Other Attendees

Ted Costin-Town Administrator
Roy Kime-Zoning Administrator
Andrea Erard-Town Attorney-via Zoom
Michele Hutton-Town Treasurer
Martha Rodenburg-Town Clerk

Members of press and public

All stood for the Pledge of Allegiance

APPROVAL OF AGENDA

Councilmember Austin made a motion to approve the agenda as presented

Councilmember Sturgill seconded

**Austin, Chowning, Courtney, Hanson, Justice, Sturgill and Goldsmith voted yes
Motion passed 7-0**

MINUTES

Councilmember Austin made a motion to approve the minutes of the October 12, 2023 meeting, and the minutes of the November 30, 2023 special meeting

Councilmember Courtney seconded

**Austin, Chowning, Courtney, Hanson, Justice, Sturgill and Goldsmith voted yes
Motion passed 7-0**

REPORTS

Town Administrator

Mr. Costin reported:

- He continues to familiarize himself with topical files and processes
- Has taken over the planning & zoning duties from Mr. Kime
- Attended various meetings with residents and professionals regarding the museum, trolley, trash contract, committee assignments, and regional matters
- Had an in-person meeting with the Town Attorney to map out priorities

- Has meetings scheduled with County Administrator and insurance carrier
- Recommends committees meet as soon as possible to begin budget process
- Sent Council suggestions on agenda and application deadlines, as well as public hearing processes for Council and committees
- Recommends short-term rental (STR) matter be sent to the Planning Commission to consider eliminating R1 by-right uses in B1 district, and eliminating requirement for residential units be associated with the business in the B1 uses by Special Use Permit (SUP)
- Local restaurant week will be held January 18-28

Treasurer

Michele Hutton presented the Treasurer’s Report for December 2023



Treasurer’s Report

The Balances Below, Reflect Bank Statements as Of Month’s End.

Account Balance thru 1/31/2023	Prior Year 12/30/22	Prior Month 11/30/23	Statement Date 12/31/23
Primis Bank General Operating Bank Account	883,066.45	957,916.63	1,074,889.37
Renter Water Deposits	-17,776.66	-16,326.66	-16,326.66
Net Operating General Bank Account	864,119.96	930,523.60	1,073,031.70
C & F Bank Pool Replacement Account (new 2/28/23)	(Truist) 594,770.35	Closed 11/1/23	n/a
C&F Bank Historic Trust (new 3/1/2023)	(Truist) 31,201.57	46,315.99	46,718.19
C&F Bank Building Fund (new 6/8/23) CD	n/a	236,856.41	Closed 12/12/23
Primis Bank Water Fund Reserve	114,471.80	115,315.11	115,388.41
Primis Bank General Fund Reserve	95,002.58	95,439.46	95,477.37
Primis Bank Cares Local Recovery	475,403.06	239,507.68	239,659.92
Primis Bank DMV	4,273.35	2,876.63	2,876.63
Primis Bank USDA Well Replacement-new 10/14/22	2,501.61	2,508.53	2,509.13
Taber Trust – Account Value	841,834.25	846,246.84	932,715.71
Taxes listed below are collected for prior month(s)	12/31/22	11/30/23	12/31/23
Meals Tax collected in December	14,659.22	15,123.86	5,777.51
Lodging Tax collected in December	2,527.39	2,909.03	514.88
Cigarette Tax collected in December	554.88	1,351.82	402.20

EXPENDITURES:

- \$173,858.67 final pool payment

REVENUE as of 12/31/2023

- 12/12/2023 Closing withdrawal building fund account = \$239,513.74 w/total interest received = \$5,313.74
- Real estate as of 1/8/24 = \$248,476.75 + Del \$4,744.46
- RE Delinquent = **\$19,786.15**
- Personal Property = \$9,490.42 + Del \$162.87

REVENUE Con’t

Due to holidays & me being out of the office, some of the taxes posted in the month of January for December.

- Lodging tax total = \$3,465.22
- Meals tax total = \$14,588.35

January 8, 2024
08:52 AM

Lodging Tax

Town of Urbana
2024 Revenue Summary by Month

Range of Accounts: 100-12100-0001 to 100-12100-0001 Start Month: July Start Year: 2023
Type: Revenue Activity Includes Accounts with Zero Activity: N Year To Date As Of: 01/08/24
Subtotal CAFR: No

Account No	Description	Total	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
100-12100-0001	Lodging Tax	20513.71	4520.69	3970.51	3693.25	1955.01	2909.03	514.88	2950.34	0.00	0.00	0.00
Fund Total		20513.71	4520.69	3970.51	3693.25	1955.01	2909.03	514.88	2950.34	0.00	0.00	0.00
Grand Total Count: 1		20513.71	4520.69	3970.51	3693.25	1955.01	2909.03	514.88	2950.34	0.00	0.00	0.00

January 8, 2024
09:23 AM

Meals Tax

Town of Urbana
2024 Revenue Summary by Month

Range of Accounts: 100-12110-0001 to 100-12110-0001 Start Month: July Start Year: 2023
Type: Revenue Activity Includes Accounts with Zero Activity: N Year To Date As Of: 01/08/24
Subtotal CAFR: No

Account No	Description	Total	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
100-12110-0001	Meals Tax - Local	105340.22	25538.77	18916.41	17037.21	14135.62	15123.86	5777.51	8810.84	0.00	0.00	0.00
Fund Total		105340.22	25538.77	18916.41	17037.21	14135.62	15123.86	5777.51	8810.84	0.00	0.00	0.00
Grand Total Count: 1		105340.22	25538.77	18916.41	17037.21	14135.62	15123.86	5777.51	8810.84	0.00	0.00	0.00

Water Sales

January 8, 2024
09:24 AM

Town of Urbana
2024 Revenue Summary by Month

Range of Accounts: 500-17010-0001 to 500-17010-0001 Start Month: July Start Year: 2023
Type: Revenue Activity Includes Accounts with Zero Activity: N Year To Date As Of: 01/08/24
Subtotal CAFR: No

Account No	Description	Total	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
500-17010-0001	Water Sales Charges	195116.71	6051.18	54319.81	20768.56	52703.73	14894.81	46378.62	0.00	0.00	0.00	0.00
Fund Total		195116.71	6051.18	54319.81	20768.56	52703.73	14894.81	46378.62	0.00	0.00	0.00	0.00
Grand Total Count: 1		195116.71	6051.18	54319.81	20768.56	52703.73	14894.81	46378.62	0.00	0.00	0.00	0.00

- There are approximately \$14,542 in delinquent Personal Property Taxes, going back to 2017DMV stops have been placed on delinquent accounts through Middlesex County
 - Working on getting authority to do stops through the Town, so stops can be put on DMV accounts if delinquent with Town, but not County
- Ms. Hutton is doing research on moving some accounts in order to earn more interest, including the water reserve account
- In response to a question from Councilmember Courtney, Ms. Hutton responded many of the delinquent tax owners have moved and it's unlikely the money will be recouped
- Approximately \$19,786 in delinquent Real Estate taxes

Discussion took place regarding delinquent water accounts and current status of the Taber Fund, as well a need to re-pay the account for monies removed for pool construction

PUBLIC COMMENT

- Matt Gobush spoke in support of Small Town Burger
- Kathy Vesley spoke regarding Small Town Burger

COUNCIL COMMENT

- Councilmember Austin asked for clarification on the proposed agenda deadlines presented by Mr. Costin
 - Mr. Costin explained it was an administrative function and did not need Council action
- Councilmember Courtney spoke regarding a Southside Sentinel article related to pool fundraising and acknowledged Councilmember Sturgill's efforts to raise money for the pool
- Discussion took place regarding the Meals Tax collected for December were higher than in the Treasurer's report due to the holidays, and other circumstances
- Councilmember Chowning spoke to remind everyone there are three Town Council seats that will be open for election in 2024, and applications to run are available at the Middlesex County Registrar's Office

OLD BUSINESS

Trash Contract-Status Update

- Mr. Costin updated Council on his research regarding trash collection options, including the costs and requirements involved in the Town bringing it in-house
- Mr. Costin will continue to research options and pursue bids from trash collection companies

NEW BUSINESS

Meeting/Work Session 2024 schedule

Mayor Goldsmith presented the proposed 2024 Town Council Meeting and Work Session schedule, with the main changes being moving the monthly meetings to the second Thursday of the month, and the work sessions to the fourth Thursday of the month, due to the Town Attorney's schedule.

Councilmember Austin made a motion to approve the proposed 2024 Urbanna Town Council Meeting and Work Session calendar as presented and all meetings will occur at the Town Hall at 6:00pm.

Councilmember Sturgill seconded

Austin, Chowning, Courtney, Hanson, Justice, Sturgill and Goldsmith voted yes

Motion passed 7-0

Urbanna Town Council Proposed 2024 Meeting/Work Session Schedule Following January 11, 2024		
	Monthly Meeting	Work Session
January	25*	
February	8	22
March	14	28
April	11	25
May	9	23
June	13	27
July	11	25
August	8	22
September	12	26
October	10	24
November	14	
December	12	

*All meetings and work sessions to be held at 6:00pm
unless otherwise noted
Urbanna Town Hall
390 Virginia St.
Suite B
Urbanna, VA 23175*

**-The January 25th meeting will begin at 7:00pm, due to
previously advertised public hearings*

Electronic Meeting policy

Andrea Erard explained the policy updates the current policy to be consistent with State Code, with no significant changes.

Councilmember Austin moved for the adoption of the Electronic/Remote Participation in Meetings Policy.

Councilmember Justice seconded

Austin, Chowning, Courtney, Hanson, Justice, Sturgill and Goldsmith voted yes

Motion passed 7-0

Electronic/Remote Participation in Meetings Policy

A. It is the policy of the Urbanna Town Council that individual members of the Council may participate in meetings of the governing body by electronic communication as permitted by Virginia Code § 2.2.3708.3, 1950, as amended, provided that a quorum is physically assembled.

B. A Council member who seeks to participate electronically must notify the Mayor in advance of the public meeting that:

1 - The member is unable to attend the meeting due to:

- (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance (medical condition or disability need not be identified) or
- (ii) A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance; or

2 - The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or

3 - The member is unable to attend the meeting due to a personal matter and the member identifies with specificity the nature of the personal matter; participation electronically due to a personal matter is limited to two meetings, or 25 percent of the meetings held per calendar year, rounded up to the next whole number, whichever is greater.

C. At the meeting, prior to conducting any business, the Council must vote to allow the participation of the Council member electronically. **A Council member shall be permitted to participate electronically so long as the participation is consistent with this policy.** If a member's electronic participation is disapproved because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.

D. Once participation by a member through electronic communication means is approved by a vote of the quorum that is physically assembled (electronic participation may only be disapproved for failure to follow this policy), the minutes must reflect the reason why the member participated electronically and the location from which the member participated. (The location need not be open to the public unless three or more members are gathered at the same remote location.) If electronic participation is due to the distance between the member's principal residence and the meeting location this shall be included in the minutes along with the location of the Council meeting. If electronic participation is due to a personal matter, minutes should reflect the specific nature of the personal matter.

E. Whenever an individual member participates from a remote location that is open to the public there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Council. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Code of Virginia § 2.2-3708.2, 1950, as amended.

Committee/Commission Appointments

Mayor Goldsmith presented the proposed committee and commission appointments; he noted some ad hoc committees had been dissolved.

Councilmember Hanson noted the Waterfront Committee wants to start again.

Discussion took place regarding the VA250 committee.

Councilmember Austin made a motion to adopt the Committees and Commission assignments as presented, with the proposed Board of Zoning Appeals appointees to be recommended for approval by the Middlesex County Circuit Court.

Councilmember Courtney seconded

Austin, Chowning, Courtney, Hanson, Justice, Sturgill, and Goldsmith voted yes

Motion passed 7-0

**Town of Urbanna
2024 Committee/Board
PROPOSED**

Planning Commission	
Name	Term Expires
Merri Hanson (Council Member)	12/31/2026
Lewis Hall (Citizen)	12/31/2024
Donald Drayer (Citizen)	12/31/2024
Penelope (Gari) Lister (Citizen)	12/31/2024
Katherine "Katie" Wilson (Citizen)	12/31/2027
Martha Rodenburg (Staff)	
Ted Costin (Staff)	

Historic Architecture Review Board	
Name	Term Expires
Amy Denney (Citizen)	12/31/2025
Barbara Hartley (Citizen)	12/31/2025
Meriweather (Tammie) Putney (Citizen)	12/31/2024
Peni Roberts (Citizen)	12/31/2024
Patricia Wheeler (Citizen)	12/31/2028
Ted Costin (Staff)	

Board of Zoning Appeals	
Name	Term Expires
Lewis Hall	12/31/2024
John Anzivino	12/31/2025
Kelly Pollak	12/31/2026
JD Magness	12/31/2027
Martha Lowe	12/31/2028
Martha Rodenburg (Staff)	
Ted Costin (Staff)	

Finance Committee	
Name	
Bill Goldsmith (Mayor)	
Sandy Sturgill (Council Member)	
Larry Chowning (Council Member)	
Marnie Harte (Citizen)	
Roy Kime (Citizen)	
Michele Hutton (Staff)	
Ted Costin (Staff)	

Personnel Committee	
Name	
Bill Goldsmith (Mayor)	
Merri Hanson (Council Member)	
Larry Chowning (Council Member)	
Ted Costin (Staff)	

Water Committee	
Name	
Bill Goldsmith (Mayor)	
Alana Courtney (Council Member)	
Marjorie Austin (Council Member)	
Roy Kime (Citizen)	
David Overman (Citizen)	
Martha Rodenburg (Staff)	
Ted Costin (Staff)	

Middle Peninsula Planning (MPPDC)	
Name	
Ted Costin (Town Administrator)	
Bill Goldsmith (Mayor)	

Middle Peninsula Chesapeake Bay Public Access Authority (PAA)	
Name	
Ted Costin-Primary	
Larry Chowning-Alternate	

Main Street Memorandum of Understanding

Ted Costin gave an overview of the Memorandum of Understanding between the Town of Urbanna and the Department of Housing and Community Development (DHCD) regarding the FY 2024 Community Vitality Grant. The purpose of the grant is to fund the Urbanna Main Street project.

- MOU must be executed to acquire additional funds to undertake a strategic plan for future projects
- Next step in formalizing the governing structure and developing a 501(c)(3)

Discussion took place regarding the grant which will fund the following

- Organization formation, including attaining 501(c)(3) status
- Assistance with developing a strategic plan

Councilmember Austin made a motion that Mayor Goldsmith be authorized by the Town Council of Urbanna to sign the Memorandum of Understanding for a Community Vitality Grant (CVG) between the Town of Urbanna and the Virginia Department of Community Development as presented for the desired purpose of overall economic development. I further move that Councilmember Hanson serve as council's liaison to any Main Street entity.

Councilmember Courtney seconded

Austin, Chowning, Courtney, Hanson, Justice, Sturgill, and Goldsmith voted yes

Motion passed 7-0



Glenn Youngkin
Governor

Caren Merrick
Secretary of
Commerce and Trade

Bryan W. Horn
Director

COMMONWEALTH of VIRGINIA

DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT

MEMORANDUM OF UNDERSTANDING FY 2024 Community Vitality Grant (CVG)

Between
Town of Urbanna
And

Department of Housing and Community Development (DHCD)

CONTRACT #: 24-VMSCVG-Appn-08

PURPOSE:

The purpose of this Memorandum of Understanding (the "MOU") between the Town of Urbanna (Grantee), a unit of local government, and the Department of Housing and Community Development (DHCD), is to fund the Urbanna Main Street project.

PERIOD OF AGREEMENT:

This MOU is entered into as of January 15, 2024. Grantee must satisfactorily complete the project, along with a final report no later than December 31, 2024.

SCOPE OF WORK:

WHEREAS, Grantee is tasked with economic vitality, public relations, marketing, event coordination, community support, and program administration of the Main Street Approach to revitalize downtown Urbanna, and;

WHEREAS, the matching funds including \$500 cash from a private donor and \$2,520 of in-kind support of staff and volunteer hours have been committed to this project;

NOW, THEREFORE, in consideration of mutual covenants and promises in this MOU and for other good and valuable consideration, the receipt and sufficiency of which are to be solely determined by DHCD, the parties hereto agree as follows:

DHCD will provide Grantee a Community Vitality Grant (CVG) in the amount of \$5,500.00 for the exclusive purpose of funding a consultant to secure 501c3 tax exemption status and create a strategic plan for Urbanna's Main Street organization and Urbanna's historic commercial district. The grant will be paid as follows:



Virginia Department of Housing and Community Development | Partners for Better Communities
Main Street Centre | 600 East Main Street, Suite 300 Richmond, VA 23219
www.dhcd.virginia.gov | Phone (804) 371-7000 | Fax (804) 371-7090 | Virginia Relay 7-1-1

1. \$5,500 will be paid to Grantee upon submission of a remittance request by Grantee with a copy of this executed MOU as an attachment. If Grantee does not request the first remittance within 30 days of the final execution of this MOU, the full grant amount will be forfeited.

Grantee will be required to submit progress and final reports, as well as any other supporting documentation requested by DHCD, via CAMS, providing updates on all project activities and noting if there have been any challenges, delays or issues with executing required activities. Progress reports will be due on a quarterly basis and the final report will be due on the contract end date.

A fully executed copy of this MOU must be uploaded to CAMS before any remittance requests will be processed. All remittance requests must be submitted via CAMS and should be accompanied by relevant support documentation such as a fully executed copy of this MOU or project invoices. Grantee will be required to submit a final project budget, along with financial support documentation for all project related expenses and leverage before the grant can be closed, and all grant files must be retained for five (5) years.

This program will result in the following required activities:

1. Hire a consultant to secure 501c3 status and develop a strategic plan for the Main Street organization

The activities above are anticipated to:

1. Secure 501c3 tax exemption status for the Main Street organization
2. Complete a strategic plan to create a robust Main Street and tourism program

Grantee agrees to the following audit requirements as a pre-requisite to apply for remittances of funding allotments outlined in this MOU:

All grantees, sub-grantees, CHDOs, sub-recipients, localities, developers, or any other organizations that receive funding during a program year and/or have projects in progress are required to submit financial statements to DHCD. Required statements are as followed: Financial Statement(s)**, Reviewed Financial Statement(s) prepared by an independent Certified Public Accountant (CPA), Financial Statement(s) that have been audited by an independent CPA or an audit required by the Code of Federal Regulations (CFR), (2 CFR 200 Subpart F), audited by an independent CPA. Please see the table below to determine which document your organization is required to submit.

The threshold requirements outlined below are the minimal standards required by DHCD. We strongly encourage all organizations receiving funds from DHCD to undertake the highest level of financial management review to ensure practices and procedures are fully examined and evaluated.

Threshold Requirement	Document
Total annual expenditures ≤\$100,000 (Regardless of source)	Financial Statement(s) prepared by organization**
Total annual expenditure between \$100,001 and \$300,000 (Regardless of source)	Reviewed Financial Statement(s) prepared by an Independent Certified Public Accountant (CPA)
Total annual expenditures >\$300,000 (Regardless of source)	Financial Statement(s) that have been audited by an Independent CPA



Federal expenditures \geq \$750,000	2 CFR 200 Subpart F Audit – Audited by an Independent CPA
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** Does not require preparation by a CPA

SUBMISSION REQUIREMENTS:

Required financial statements must be submitted yearly, within nine (9) months after the end of your fiscal year or 30 (thirty) days after it has been accepted (reviewed financial statement, audited financial statements, and Single Audit only) - whichever comes first.

Entities must electronically submit their financial statement(s), reviewed financial statements, audited financial statements, or Single Audit in DHCD’s Centralized Application and Management System (CAMS) which requires the organization to register in CAMS at <https://dmz1.dhcd.virginia.gov/camsportal/Login.aspx>

Entities are required to have a DHCD reviewed and approved current audit or reviewed financial statement(s) in order to submit a remittance request.

DEFAULT:

Should Grantee fail to comply with terms and conditions set forth in this MOU, DHCD reserves the right to require reimbursement of the entire granted amount of \$5,500 from Grantee, or any portion thereof.

EXECUTION:

In witness whereof, the parties have executed or caused to be executed by their duly authorized official this AGREEMENT to be bound thereby.

Department of Housing and Community Development (DHCD)

DocuSigned by:
BY: *Sara J. Brumgar* DATE: 1/24/2024
80E80B946EF6414...

TITLE: Deputy Director

Town of Urbanna (Grantee)

BY: *[Signature]* DATE: 1/17/2024

TITLE: *Mayor*



Virginia Department of Housing and Community Development | Partners for Better Communities
Main Street Centre | 600 East Main Street, Suite 300 Richmond, VA 23219
www.dhcd.virginia.gov | Phone (804) 371-7000 | Fax (804) 371-7090 | Virginia Relay 7-1-1

ANNOUNCEMENTS

There were no announcements

ADJOURN

Councilmember Austin made a motion to adjourn

Councilmember Courtney seconded

Austin, Chowning, Courtney, Hanson, Justice, Sturgill, and Goldsmith voted yes

Motion passed 7-0

Meeting adjourned at 6:54pm

Submitted by:

Martha J. Rodenburg

Town Clerk

Approved by Town Council xx/xx/xxxx



**Agenda Item Summary
May 9, 2024**

Agenda Item: 7-Reports

Town Administrator-Ted Costin (report attached)

Treasurer Report-Michele Hutton (report attached)

Finance Committee-Mayor Goldsmith

Water Committee-Mayor Goldsmith

Planning Commission-Councilmember Merri Hanson



TOWN OF URBANNA

390 VIRGINIA ST. SUITE B, PO BOX 179, URBANNA, VA 23175
PHONE: 804-758-2613, FAX: 804-758-0389

To: The Honorable Mayor and Members of the Town Council
From: P. S. T. (Ted) Costin, Administrator
Date: May 2, 2024
Subject: Monthly Report –May 2024

Since my last report I met with citizens, council members, and professionals in various combinations regarding the FY 24-25 budget, River Realm, pool operations, purchase of the town hall, July 4 events, and public access assessment for watermen (with County Administrator and consultants retained by MPPDC). With the mayor I attended the awards ceremony for the Essay Winner.

As to the pool, the opening assessment revealed leaf debris was in the pool when the cover was placed over it. This required draining the pool and cleaning. As to the Grand Opening, staff has put together an invitation and those will be delivered promptly; many by hand.

Meetings and much discussion involving many persons have occurred concerning July 4th related events. Some items will be before you to review and support to include a Draft Ad that lists the events confirmed to date. As to the Grand Opening, staff has put together an invitation and those will be delivered promptly; many by hand.

As to the purchase of the current town offices, the Town Attorney will report that status, but a good deal of time has been given to this.

A draft of the No Parking Sign follows for your review. If suitable, staff will move forward with ordering and installation.

Security camera installation for all three sites in Phase I, which includes the pool, is complete. We have negotiated an early start for a camera here that will be a Fiscal Year 24-25 Budget expense.

I have seen no activity on the part of Verizon and will elevate the issue again.

At my suggestion the Planning Commission did not meet because no progress on Comp Plan approach has been made. I have an approach in mind (Part Time hire supervising an intern), but need to develop that further, while the Town Attorney and have discussed short term rentals in light of law effective July 1, beyond that nothing on ordinance amendments pertaining to R1 in B1, etc., and there were no cases this month; likely one next month.

As is typical in the Spring, we are seeing an uptick in complaints concerning grass, vehicles, general maintenance and responding as promptly as possible.

The "No Wake" concern for Urbanna Creek has also been raised again and I am attempting to convene a meeting of town staff, county staff and DWR personnel.

If you have any questions or concerns, please bring them forward.

Thank you.

Use Of This Property Is At Your Own Risk

NO PARKING

Stopping/Standing Permitted Only For

UNLOADING/LOADING

Parking



Town Marina



Town Boat Ramp





Treasurer's Report

The Balances Below, Reflect Bank Statements as Of Month's End.

	Prior Year 3/31/23	Prior Month 2/29/24	Statement Date 3/31/24
Account Balance thru 3/31/2024			
Primis Bank General Operating Bank Account	799,760.39	959,677.59	910,471.10
Renter Water Deposits	-15,386.66	-17,226.66	-17,326.66
Net Operating General Bank Account	791,354.71	956,238.66	910,090.83
C&F Bank Historic Trust (new 3/1/2023)	32,903.96	48,262.05	48,775.97
C&F Bank - Water Fund Reserve (11 mo CD) 1/17/24	114,700.27	115,433.93	Interest 4/15/24
C&F Bank - General Fund Reserve (11 mo CD) 1/17/24	95,121.06	95,500.91	Interest 4/15/24
C&F Bank -Operating Reserve (11 mo CD) 1/17/24	n/a	400,000.00	Interest 4/15/24
Primis Bank DMV	1,439.46	3,079.58	4,403.02
Primis Bank USDA Well Replacement-new 10/14/22	2,503.49	2,510.41	2,511.01
Taber Trust - Account Value	857,356.55	962,972.60	982,294.68
Taxes listed below are collected for prior month(s)	3/31/23	2/29/24	3/31/24
Meals Tax collected in March	7,459.65	10,765.55	10,188.85
Lodging Tax collected in March	1,298.55	681.66	2,406.02
Cigarette Tax collected in March	618.19	618.19	513.92

EXPENDITURES:

- \$

REVENUE as of 3/31/2024

- Note: Cig Tax is correct, ironic 3/23 & 2/24 are the same amount.
- Projected interest on three CD's, April 15th = \$7,478.68

Lodging Tax

Town of Urbanna
2024 Revenue Summary by Month

April 5, 2024
11:52 AM

Range of Accounts: 100-12100-0001 to 100-12100-0001		Start Month: July	Start Year: 2023								
Type: Revenue Activity		Includes Accounts with Zero Activity: N									
Subtotal CAFR: No		Year To Date As Of: 04/05/24									
Account No	Description	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
100-12100-0001	Lodging Tax										
24763.82	4520.69	3970.51	3693.25	1955.01	2909.03	514.88	4112.77	681.66	2406.02	0.00	
Fund Total		4520.69	3970.51	1955.01	2909.03	514.88	4112.77	681.66	2406.02	0.00	
Grand Total	Count: 1	4520.69	3970.51	1955.01	2909.03	514.88	4112.77	681.66	2406.02	0.00	

Meals Tax

Town of Urbanna
2024 Revenue Summary by Month

April 5, 2024
11:54 AM

Range of Accounts: 100-12110-0001 to 100-12110-0001		Start Month: July	Start Year: 2023								
Type: Revenue Activity		Includes Accounts with Zero Activity: N									
Subtotal CAFR: No		Year To Date As Of: 04/05/24									
Account No	Description	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
100-12110-0001	Meals Tax - Local										
138948.74	25538.77	18916.41	17037.21	14135.62	15123.86	5777.51	21041.61	10765.55	10188.85	423.35	
Fund Total		18916.41	17037.21	14135.62	15123.86	5777.51	21041.61	10765.55	10188.85	423.35	
Grand Total	Count: 1	18916.41	17037.21	14135.62	15123.86	5777.51	21041.61	10765.55	10188.85	423.35	

Water Sales

Town of Urbanna
2024 Revenue Summary by Month

April 5, 2024
11:57 AM

Range of Accounts: 500-17010-0001 to 500-17010-0001 Start Month: July Start Year: 2023
 Type: Revenue Activity Includes Accounts with Zero Activity: N Year To Date As Of: 04/05/24
 Subtotal CAFR: No

Account No	Description	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
500-17010-0001	Water Sales Charges										
267983.04	6051.18 54319.81 20768.56 52703.73 14894.81 46378.62 12287.71 52062.21	6051.18	54319.81	20768.56	52703.73	14894.81	46378.62	12287.71	52062.21	8516.41	0.00
Fund Total	267983.04	6051.18	54319.81	20768.56	52703.73	14894.81	46378.62	12287.71	52062.21	8516.41	0.00
Grand Total	Count: 1	6051.18	54319.81	20768.56	52703.73	14894.81	46378.62	12287.71	52062.21	8516.41	0.00



Agenda Item Summary

May 9, 2024

Agenda Item: Updated Pool Rules

Background: Council established rules for the Marshall Community Pool at Taber Park. Finalized construction of the new pool, insurance consultation, and review by Signature Pools Management, LLC has resulted in the need to revise those rules. The most notable is the prohibitions on diving (exempting sanctioned competitive diving) for the entirety of the pool as well as vaping. There is additional language concerning guardian proximity to non-swimmers under six or using floatation devices.

The attached has been altered based on council input from its April work session to prohibit “offensive language”.

Fiscal Impact: Production of signage which would be incurred regardless of verbiage.

Staff Recommendation: Adopt as presented.

Council Action Requested: Adopt as presented.

Optional Sample Motion(s): Motion to accept the pool rules for the Marshall Community Pool at Taber Park as presented, and authorize staff to purchase the necessary signage.

Pool Rules

Failure to adhere to the following rules subject the offender to removal, banning, and/or law enforcement action.

- All patrons and their guardians accept use of the pool at their own risk.
- Hours: Noon to 6 pm Tuesday through Saturday. 1 pm to 6 pm Sunday.
Closed Mondays except Memorial Day and Labor Day.
Pool may be closed at the discretion of on-site management due to weather, staffing, or other issues. Patrons will comply as directed.
- Shower before entering the pool.
- No Diving. Sanctioned competitive events are exempted.
- No horseplay or offensive language.
- No glass containers allowed.
- No spitting or clearing of nose/sinuses in the pool or deck.
- No tobacco use of any kind, vaping, or consumption of alcoholic beverages is allowed.
- No bikes, skateboards, or roller blades permitted in the pool or deck area.
- No pets permitted in the pool or deck area; licensed /credentialed assist animals may be exempted on a case-by-case basis, but those animals will not be allowed in the pool.
- Admission may be refused to anyone with skin abrasions, colds, coughs, inflamed eyes, infections or wearing bandages.
- All infants and toddlers who are not potty trained must wear a swim diaper in the pools.
- Non-swimmer under the age of six, or children using floatation devices need to be within arm's reach of their guardian.
- All children ages 8 through 13 will be permitted within the pool area unaccompanied if they have passed the basic swimming test. Otherwise, they must be accompanied by an adult.

The basic swimming test consists of:

- Swim 2 lengths of the pool using any stroke and not stopping or touching the bottom
- Float for 1 minute
- Tread water for 1 minute



Agenda Item Summary

May 9, 2024

Agenda Item: Pool Opening Event

Background: With the town's pool completed and staffing/operation/maintenance turned over to Signature Ppool Management, LLC for the upcoming season, attention can now turn to a celebratory event. A revised draft of a program follows which notes date, time, and event order as well as an updated invitation list based on input by council from its April work session.

Staff has already begun drafting the invitations and communicating to some parties a Save the Date message. Also, food vendors have been approached about being available for the event starting at 11 and running there as long a desired. No firm commitment has been obtained.

Fiscal Impact: Minimal: Staff time on invitations and program, printing, PA system.

Staff Recommendation: Approve as presented

Council Action Requested: Approve as presented.

Sample Motion: Motion to direct staff to proceed with the implementation of the Pool Opening Event program as presented.

Proposed Pool Opening Event Schedule

Saturday, May 25, 2024 at 11:30 Rain or Shine

Greetings: Purpose/Mem. Day Reminder **(TC)**

Introduction of Distinguished Guests: Witman, St. Sen./Del./BoS and CA, ACA, and P&R Director/Con Offices/Town Council Past, Past Administrators/Staff, Sue and Teegan Harris **(Mayor)**

History of Park **(LC)**

History of the New Pool Process/Recognition of Design, Construction, and Operating Companies **(RK)**

Road Ahead: Swim Team/YMCA Reps to pitch programs **(TBD)**

Introduction/Appreciation of Very Special Guests: Pool Committee/Marshall Family **(Mayor)**

A Few Words: Pool Committee Member(BH)/Family Member(TBD) **(Mayor)**

Ribbon Cutting by Marshalls with Committee Members (BH/KA)/et.al.) holding ribbon **(Mayor)**

Marshall's, Mayor, and Committee Enter. All others gather on outside around the Pool. **(Mayor)**

Marshall family representatives jump/step into the pool with Mayor's countdown **(Mayor)**

That concludes the event/Everyone exists and then those with memberships planning to swim can enter. **(TC)**

Staff Report
2024-SUP Application-01
REVISED PURSUANT TO PLANNING COMMISSION FAVORABLE RECOMMENDATION
REVISED PURSUANT TO TOWN ATTORNEY REVIEW AS TO CONDITIONS

Location:	161 Cross Street
Property Owner:	Pickett Homes, LLC
Lessor:	N/A
Applicant:	Shawn Pickett
Request:	To allow for retail sales of food and drink together with arcade and board game access permitted with a special use permit by and subsequently a restaurant permitted with a special use permit
Acreage:	+/- .171 acres
Map:	20A-17-8
Zoning District:	B-1 for a depth of 80 feet from Cross Street; remainder R-1
Overlay District(s):	None
Use:	Two-story historically mixed-use building
Adjacent Composition:	Mix of Commercial and Residential Zoned B-1 for a depth of 80 feet from Cross Street; remainder R-1 or wholly R-1
Environmental:	This is a developed site and no exterior additions are proposed that would alter the land as it exists requiring any concerns to be addressed.
Comprehensive Plan:	General, Retail and Services

Supporting language for this request aligning to this designation follows:

Economic Goals and Objectives Goal: Expand the economic activities commensurate with the existing character and lifestyle of the local community.

Objectives: ... 2. Encourage a diversified, vibrant environment through mixed-use development, which combines residential, commercial and recreational functions. This follows a concept of a higher density, mixed use waterfront development. 3. Encourage light industrial uses (no nuisance problems) and commercial operations, especially those related to water and tourism related activities, in areas so designated on the Future Land Use Exhibit G. 5. Provide an environment for the types of employment that will sustain the local work force through their working years.

Zoning Compliance:

There are no setbacks or minimum lot sizes in the B-1 district. There is a 35-foot height restriction which a two-story building does not exceed. Various state agencies and contractors were contacted for comments on this case and none were received.

There is a provision in the Zoning Ordinance of Urbanna Virginia (ordinance) that requires new restaurants to have one parking space available for each three seats within the restaurant. The town does recognize that off street parking is difficult as a result of historic zero lot line construction which then prohibits off street parking. As no other restaurants in the area have been required to provide private parking spaces based on the number of seats made available Condition 9 is proposed.

The ordinance does not list specific concerns to consider when reviewing a Special Use Permit (light, noise, odor, etc). However, the ordinance recognizes the authority to impose conditions to mitigate adverse situations related to the general health, safety, and welfare of those on and about the property. The general health, safety, and welfare extends to the nature and condition of all adjacent uses and structures and the effect upon them by the use proposed. As this is an existing mixed-use area the proposed use can be considered generally compatible. The standards of consideration continue to consider impacts on the impairment of light and air. Conditions 6 addresses light. Condition 10 is offered for privacy and security of adjacent occupants although it will have some impact on air movement. Street congestion is noted and waived via Condition 9, but Condition 7 is designed to prevent sidewalk signage that impedes pedestrian traffic flow. Comprehensive Plan compliance is also a consideration and that is detailed above and, as noted, generally compatible. Preservation of land value is addressed and enhanced by way of general appearance (Condition 8). Thus, most conditions proposed are done so as to avoid nuisances such as Condition 5 (noise), Condition 2 (hours of operation as proposed by the applicant), Condition 5 (noise), and Condition 11 (odor).

Of particular note is conditions 3 and 4 as they relate to aspects of the use proposed. Board games and throwback video (arcade) games may be suitable, but skill games are of concern if only for the attention given them in recent General Assembly sessions. In addition, Condition 3 which is standard is detailed to adhere to youth protection standards. The remaining Conditions 1 and 12 are standard.

Suggested Permit Conditions:

- 1) Special Use Permit to operate an arcade and restaurant is granted to Pickett Homes, LLC represented by Shawn Pickett for a duration of time equivalent to the ownership of the property by Pickett Homes, LLC subject to the conditions imposed.
- 2) Operate between Noon and 9:00 PM three days a week (Thursday-Saturday) and on Sunday between Noon and 6:00 PM.
- 3) Comply with all local, county, state, and federal laws, rules and regulations concerning the conduct of its business to include, but not limited to, Virginia Department of Health and Virginia Alcohol Beverage Control Authority with particular compliance to alcohol service in the presence of underage persons.
- 4) As to Arcade operations, no game shall be offered that results in the award of monetary prizes in any form to include, but not limited to, cash, gift cards, or credit in any form.
- 5) To limit the amount of noise, no outside speaker system shall be utilized *and no outside seating provided with service*.
- 6) To limit light intrusion, outside lighting shall be utilized only to the extent necessary to allow safe egress and ingress. Lighting of signage visible to the outside shall not exceed 450 lumens (40w).
- 7) Signs shall be limited to 100 square feet total and must be incorporated (attached or painted) to the structure. No other signage is permitted.

- 8) Undertake and maintain efforts to keep the property in a clean and orderly manner.
- 9) Special Use Permit holder is relieved of the parking space requirements of Section 17.6.15 because of the inequity that enforcement of such a provision would create.
- 10) Erect privacy fencing around the perimeter of the commercial property excepting all areas subject to easements be they public or private. Such fencing shall be a minimum of 6 feet in height and made of uniform material (pressure treated wood or vinyl) with sections/slats flush to each other or support posts with finished side out.
- 11) Trash containers will be stored within the rear plane of the building shielded from public view.
- 12) If owner and/or applicant violates any of the conditions above or fails to adhere to the representations set forth in the application and supporting materials, this special use permit may be terminated upon notice being given the applicant and hearing by the Town Council.

Conditions below have been revised by staff; notably the town attorney for clarity, brevity, and currency. The applicant has reviewed and is agreeable with the exception of Condition 9. Staff recommends approval of the request (adoption of the ordinance).

1. All federal, state and local laws shall be observed at all times.
2. This Ordinance shall be recorded in the Middlesex County Clerk's Office by the property owner; the property owner shall provide a stamped copy of the recorded Ordinance to the Town Administrator.
3. Hours of operation shall be between noon and 9:00PM three days a week, Thursdays through Saturdays and on Sundays between noon and 6:00PM.
4. No game shall be offered that results in the award of monetary prizes of any type, including, but not limited to, cash, gift cards, or credit.
5. The uses permitted by this Special Use Permit are only permitted on the inside of the existing structure. There shall be no outside food or drink service or consumption and no outside service seating shall be permitted. Likewise, no outdoor speaker system may be utilized and there shall be no noise from inside of the structure that is audible outside of the structure.
6. Outside lighting shall be utilized only to the extent necessary to allow safe egress and ingress; lighting of signage visible to the outside shall not exceed 450 lumens (40w).
7. Signage shall be limited to 100 square feet total and must be attached or painted on the structure. There shall be no other signage.
8. The property shall be maintained in a clean and orderly manner at all times.
9. Privacy fencing shall be constructed around the perimeter of the commercial property except for areas that are subject to an easement. The fencing shall be a minimum of six (6) feet in height and made of uniform material, which shall be pressure treated wood or vinyl) with sections/slats that are flush to each other or with support posts where the finished side faces the outside of the property.
10. Trash containers shall be stored in the rear of the property and shielded from public view. Trash cans shall be securely covered at all times.
11. All vendor service deliveries shall be performed between the hours of 8:00 AM and 6:00 PM. Delivery vehicles shall park on the street and goods shall be carried into the structure.

12. Pursuant to Section 17-6.1 and 17-6.2 (1) the use is relieved of on-site parking space requirements.
13. If owner and/or applicant violates any of the conditions above or fails to adhere to the representations set forth in the application and supporting materials, this special use permit may be terminated upon notice being given the applicant and hearing by the Town Council.

ARTICLE 6.

PARKING AND LOADING FACILITIES

Section 17-6.1. Intent.

It is the intent of this Article to insure that adequate parking and loading spaces are provided within the Town of Urbanna when a building or structure is erected, substantially altered or undergoes a change in use or zoning. The provisions of this Article do not apply to existing buildings or structures unless there is a substantial change in its use.

Section 17-6.2. General Interpretation.

In the interpretation of this Article, the following rules shall govern:

- (1) Parking spaces required for permitted special uses or variances shall be determined by the Zoning Administrator or the Planning Commission.
- (2) Fractional numbers shall be increased to the next whole number.
- (3) Where for any reason parking requirements are unusually low, the parking space provisions cited in this Article may be reduced proportionally by the Zoning Administrator or the Planning Commission.

Section 17-6.3. General Requirements.

Whenever a building or structure constructed after the effective date of this chapter is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity, or otherwise to create a need for an increase in the number of existing parking spaces, additional parking spaces shall be provided on the basis of the enlargement or change. Whenever a building or structure existing prior to the effective date of this chapter is enlarged to the extent of fifty (50) percent or more in floor area, number of employees, number of housing units, seating capacity, or otherwise, said building or structure shall then and thereafter comply with the full parking requirements set forth herein.



Agenda Item Summary

May 9, 2024

Agenda Item: 11a-July 4th Festivities

Background: Meetings and much discussion involving many persons has taken place concerning July 4th and 6th events sponsored by the town to replace the Fireworks event. There are several activities being worked and more have been settled such as these opportunities. Related, please see the Draft Advertisement of events.

These are manageable expenses in consideration of the budgeted amount reserved for the Fireworks.

Fiscal Impact: \$2,500 for band and \$2,150 for carnival activities

Staff Recommendation: Authorize the Town Administrator to execute the contract and approve the invoice which follow.

Council Action Requested: Authorize the Town Administrator to execute the contract and approve the invoice attached.

Sample Motion(s): Motion to allow the Town Administrator to approve the invoice from Chapman's Magic for carnival activities as noted on the invoice.



INVOICE

INVOICE NO: TWNURBANA070424
Invoice Date: 4 July, 2024

CONTRACT NUMBER:

To: Town of Urbanna
Attention: Accounts Payable
390 Virginia Street
Urbanna, VA 23175
Off (804) 758-2613

Remit to: Chapman's Magic
7030 Motley Landing Dr
Gloucester, VA 23061
(757) 595-5917

TERMS OF PAYMENT

Due at Event

HOURS	DESCRIPTION	HOUR RATE	AMOUNT
4 hrs.	Foam Party	Discounted	\$ 800.00
	Tiki Rockwall with Attendants		\$ 800.00
	Batters Up		\$ 200.00
	Water Slide (6 July)		\$ 350.00
	12 to 4 pm. Water and Electric supplied. Ty		
		SUBTOTAL	\$ 2,150.00
		Delivery	\$ Free
		Deposit	\$ 00.00
		TOTAL	\$2,150.00

Make all checks payable to: **Chapman's Magic**

If you have any questions concerning this invoice, please telephone: **595-5917**



TOWN OF URBANNA JULY 4th ACTIVITIES

JULY 4 – CELEBRATION DAY

TABER PARK

- 12-4 Music by DJ
- Carnival Games
- Fire Truck Display
- Do Art
- 12-6 Pool Open with Memberships/Passes
- 12-9 Food/Drink Vendors (No Alcohol)
- 2:30 Hula Hoop Contest
- 3:30 Corn Hole Contest
- 6-9 Live Music:
Michael Clark Band featuring Tracy Clark

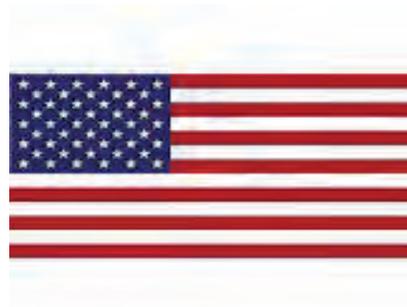
(Bring Blanket or Chairs to sit)

JULY 6 – WATER DAY

TOWN MARINA

- 12-9 Food/Drink Vendors
- 12-4 Music by DJ
- 12:30 Youth Paddleboard Races
- 1:30 Adult Paddleboard Races
- 2:30 Kayak Races
- 4:00 Boat Parade
- 5:30-9 Live Music:
The David Esleck Trio
Dance Candy

(Bring Blanket or Chairs to sit)





TOWN OF URBANNA

390 VIRGINIA ST. SUITE B, PO BOX 179, URBANNA, VA 23175
PHONE: 804-758-2613, FAX: 804-758-0389

To: The Honorable Mayor and Members of the Town Council
From: P. S. T. (Ted) Costin, Administrator
Date: May 6, 2024
Subject: Lindke v. Freed

The Town Attorney will discuss the above case which was heard and decided by the US Supreme Court last year. A summary of the case follows.

If you have any questions or concerns, please bring them forward.

Thank you.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LINDKE v. FREED**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

No. 22–611. Argued October 31, 2023—Decided March 15, 2024

James Freed, like countless other Americans, created a private Facebook profile sometime before 2008. He eventually converted his profile to a public “page,” meaning that *anyone* could see and comment on his posts. In 2014, Freed updated his Facebook page to reflect that he was appointed city manager of Port Huron, Michigan, describing himself as “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI.” Freed continued to operate his Facebook page himself and continued to post prolifically (and primarily) about his personal life. Freed also posted information related to his job, such as highlighting communications from other city officials and soliciting feedback from the public on issues of concern. Freed often responded to comments on his posts, including those left by city residents with inquiries about community matters. He occasionally deleted comments that he considered “derogatory” or “stupid.”

After the COVID–19 pandemic began, Freed posted about it. Some posts were personal, and some contained information related to his job. Facebook user Kevin Lindke commented on some of Freed’s posts, unequivocally expressing his displeasure with the city’s approach to the pandemic. Initially, Freed deleted Lindke’s comments; ultimately, he blocked him from commenting at all. Lindke sued Freed under 42 U. S. C. §1983, alleging that Freed had violated his First Amendment rights. As Lindke saw it, he had the right to comment on Freed’s Facebook page because it was a public forum. The District Court determined that because Freed managed his Facebook page in his private capacity, and because only state action can give rise to liability under §1983, Lindke’s claim failed. The Sixth Circuit affirmed.

Held: A public official who prevents someone from commenting on the official’s social-media page engages in state action under §1983 only if

Syllabus

the official both (1) possessed actual authority to speak on the State’s behalf on a particular matter, and (2) purported to exercise that authority when speaking in the relevant social-media posts. Pp. 5–15.

(a) Section 1983 provides a cause of action against “[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State*” deprives someone of a federal constitutional or statutory right. (Emphasis added.) Section 1983’s “under color of” text makes clear that it is a provision designed as a protection against acts attributable to a State, not those of a private person. In the run-of-the-mill case, state action is easy to spot. Courts do not ordinarily pause to consider whether §1983 applies to the actions of police officers, public schools, or prison officials. Sometimes, however, the line between private conduct and state action is difficult to draw. In *Griffin v. Maryland*, 378 U. S. 130, for example, it was the source of the power, not the identity of the employer, which controlled in the case of a deputized sheriff who was held to have engaged in state action while employed by a privately owned amusement park. Since *Griffin*, most state-action precedents have grappled with whether a nominally private person engaged in state action, but this case requires analyzing whether a *state official* engaged in state action or functioned as a private citizen.

Freed’s status as a state employee is not determinative. The distinction between private conduct and state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their own constitutional rights—including the First Amendment right to speak about their jobs and exercise editorial control over speech and speakers on their personal platforms. Here, if Freed acted in his private capacity when he blocked Lindke and deleted his comments, he did not violate Lindke’s First Amendment rights—instead, he exercised his own. Pp. 5–8.

(b) In the case of a public official using social media, a close look is definitely necessary to categorize conduct. In cases analogous to this one, precedent articulates principles to distinguish between personal and official communication in the social-media context. A public official’s social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media. The appearance and function of the social-media activity are relevant at the second step, but they cannot make up for a lack of state authority at the first. Pp. 8–15.

(1) The test’s first prong is grounded in the bedrock requirement that “the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*.” *Lugar v. Edmondson Oil Co.*, 457 U. S. 922, 937 (emphasis added). Lindke’s focus on appearance skips

Syllabus

over this critical step. Unless Freed was “possessed of state authority” to post city updates and register citizen concerns, *Griffin*, 378 U. S., at 135, his conduct is not attributable to the State. Importantly, Lindke must show more than that Freed had *some* authority to communicate with residents on behalf of Port Huron. The alleged censorship must be connected to speech on a matter within Freed’s bailiwick. There must be a tie between the official’s authority and “the gravamen of the plaintiff’s complaint.” *Blum v. Yaretsky*, 457 U. S. 991, 1003.

To misuse power, one must possess it in the first place, and §1983 lists the potential sources: “statute, ordinance, regulation, custom, or usage.” Determining the scope of an official’s power requires careful attention to the relevant source of that power and what authority it reasonably encompasses. The threshold inquiry to establish state action is not whether making official announcements *could* fit within a job description but whether making such announcements is *actually* part of the job that the State entrusted the official to do. Pp. 9–12.

(2) For social-media activity to constitute state action, an official must not only have state authority, he must also purport to use it. If the official does not speak in furtherance of his official responsibilities, he speaks with his own voice. Here, if Freed’s account had carried a label—*e.g.*, “this is the personal page of James R. Freed”—he would be entitled to a heavy presumption that all of his posts were personal, but Freed’s page was not designated either “personal” or “official.” The ambiguity surrounding Freed’s page requires a fact-specific undertaking in which posts’ content and function are the most important considerations. A post that expressly invokes state authority to make an announcement not available elsewhere is official, while a post that merely repeats or shares otherwise available information is more likely personal. Lest any official lose the right to speak about public affairs in his personal capacity, the plaintiff must show that the official purports to exercise state authority in specific posts. The nature of the social-media technology matters to this analysis. For example, because Facebook’s blocking tool operates on a page-wide basis, a court would have to consider whether Freed had engaged in state action with respect to any post on which Lindke wished to comment. Pp. 12–15.

37 F. 4th 1199, vacated and remanded.

BARRETT, J., delivered the opinion for a unanimous Court.