August 10, 1962

The regular meeting of the Elkton Town Council was held August 10, 1962 at 8:00 PM in the council chamber with the mayor, R. K. Babington, presiding and the following councilmen present: J. H. Early, Jr., H. L. Coffey, R. H. Painter, Joe Black, H. A. Workman, and E. F. Garber.

Guest present were: R. J. Lough, Tim Haden, Mrs. Tom Eadie, Penny Hutton, Welty Hensley, R. D. Schunder, Jr.

The minutes of the last meeting and the treasurers report were approved.

Tim Haden asked council that he be permitted to construct an emtrance to his new store without an island as stated in a motion made at July 6, 1962 council meeting. Joe Black moved, seconded by H. L. Coffey and passed that the word island be withdrawn from the motion mentioned above.

Welty Hensley was present and told council that the Lions Club had purchased flashing lights for the Elkton school. He asked council if the town would install the lights and furnish free electricity for the operation of the lights. J. H. Early, Jr. moved, seconded by Joe Black and passed to install and furnish free electricity for the lights.

H. L. Coffey moved, seconded by J. H. Early, Jr. and passed that emblems used in the golden jubilee be used on town letter heads and insignas on town police uniforms.

H. A. Workman made a progress report on the rebuilding of the electric system. He reported that all the material needed to finish the job had been purchased and that the town would have 10 3/4 miles service lines when the job is completed.

H. A. Workman moved, seconded by R. H. Painter and passed that D. C. Liskey be authorized to purchase wire for the radio tower at a reasonable cost.

E. F. Garber reported that a float for fields day parade had been ordered for a price of $75.00.

E. F. Garber moved, seconded by H. L. Coffey and passed that the following ordinance be adopted:

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

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

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

Sec. 7-39. Use of chemical analysis to determine alcohol in blood; implied consent; procedure; cost; evidence.

(a) As used in this section "license" means any operators, chauffeur's or learner's permit 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 August 1, 1962, shall

be deemed thereby to have agreed as a condition of such operation to consent to and shall be entitled to, have a sample of his blood taken for a chemical test to determine the alcohol content thereof if he is arrested for a violation of Sec. 7-38 within two hours of the alleged offense and in compliance with all the provisions of Sec. 7-39 and Sec. 7-40. If the person arrested refuses to permit the taking of blood for such test, then the arresting officer forthwith shall take the person arrested before a warrant justice of the Town, who shall comply with the profisions of this section applicable to a warrant justice, but if the person arrested does not refuse to permit the taking of blood, or having refused, thereafter and within two hours of the time of arrest requests that a blood sample be taken, the person arrested shall be entitled to the benefit of such test. It then shall be the duty of the arresting officer, or whoever has custody of the person arrested at the time such request is made, forthwith to carry the person arrested to a person qualified under this section to withdraw the blood sample.

(c) Only a physician, registered professional nurse or graduate technician, using some type of a cleanser or sterilizer for the instruments used and for the part of the body from which the blood is taken, other than alcohol or other substance which might in any way affect the accuracy of the test, shall withdraw blood for the purpose of determining the alcoholic content therein; where practicable, the physician of such person's choice shall withdraw the blood. The blood sample shall be placed in each of two sealed containers provided by the Chief Medical Examiner of the State of Virginia. Upom completion of taking the sample, the containers shall be reseealed in the presence of the accused after claaing the fact to his attention. The containers shall be especially equipped with a sealing device, sealed so as not to allow tampering, labelled and identified showing the person making the test, the name of the accused, the date and time of taking. One sample shall then be delivered by the person who withdrew it to the police officer for transporting or mailing to the Chief Examiner of the State of Virginia; and the other sample shall be delivered to the person accused, or if he is unable by reason of physical or mental disability to receive it, to the accused or the attorney for the accused within a twenty-four hour period following the withdrawl of the blood, and the accused, or the attorney for the accused, shall deliver by transporting or by amiling the same to a laboratory supervised by a pathologist or a laboratory approved by the Health Commissioner of the State of Virginia as one having sufficient equipment and personnel competent to make such test for testing in the same manner as hereafter set forth as procedure to be followed by the Chief Medical Examiner of the State of Virginia, and provided further that all procedures established herein for use in transmittal testing and admission of results in trial of the case for the sample sent to the Chief Medical Examiner of the State of Virginia shall apply to sample sent by or on behalf of the accused to an approved testing laboratory. Upon the receipt of the blood sample, the Chief Medical Examiner of the State of Virginia shall cause it to be examined for alcoholic content by the Toxicologist or by an Assistant Toxicologist of the State of Virginia, who, upon the completion of such examination shall execute a certificate which certificate shall indicate the name of the accused, the date, the time and by whom the same was received and examined, a statement that the container was one provided by the Chief Medical Examiner of the State of Virginia and s statement of the alcoholic content of the sample. The certificate attached to the container shall be returned to either the police officer making the arrest, the department from which it came, or to the clerk of the court in which the matter will be heard; and the certificate attached to the container forwarded by or on behalfof the accused shall be returned to the clerk of the court in which the matter will be heard, and such certificate shall be admissible in evidence with attested

by the pathologist or by the supervisor of the laboratoey approved by the Health Commissioner of the State of Virginia.

(d) Upon the request of the person who has given a chemical test of blood, the results of each test shall be made available to him.

(e) An amount not to exceed five dollars to cover the costs of taking blood and making analysis thereof shall be taxed as part of the costs of the criminal case; provided further that all costs incident to analysis made by a laboratory other than that of the Chief Medical Examiner of the State of Virginia shall be paid by the accused.

(f) If the person arrested refuses to permit the taking of blood for such test, the provisions of this section shall not otherwise limit the introduction of any competent evidence hearing upon any question at issue before the court. The failure of the accused to submit to such a blood test for the determination of alcoholic content thereof is not evidence and shall not be subject to comment in the trial of the case, but when the person arrested within two hours of the time of his arrest requests or consents to the taking of a blood sample for chemical analysis, if the result of such chemical analysis of the blood sample taken is not received in evidence at the trial for any reason whatever, including but not limited to the failure on the part of any person, except the person arrested, to comply strictly with every provision of this section, then the rights of the person arrested shall be deemed to have been prejudiced, and he shall be found not guilty of any offense under Section 7.38 and his license shall not be revoked under any provision of this section.

In the event that the Commonwealth or Town fails to comply with any of the requirements of this section, then this failure shall be deemed a reasonable doubt of defendant's guilt.

(g) If a person, after being arrested and after having been advised by the arresting officer that the law of Virginia requires a person accused of the violation of Section 7.38 to permit a sample of his blood to be taken so that a test may be made of his blood to determine the alcoholic content thereof and that refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this State, Then refuses to permit the taking of blood for such a test and foes furhter so refuse upon being taken before a warrant justice and being there again by the warrant justice advised of the law requiring a blood test to be taken and the penalty for refusal, all within two hours of the alleged offense, and so declares again his refusal in writing upon a form provided by the warrant justice, then no blood sample shall be taken.

(h) The form provided for in paragraph (g) above 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 spaces for the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the warrant justice shall certify such fact and that the warrant justice advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for revocation of such person's license to drive upon the form and sign same. The warrant justice 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, which warrant shall be executed as any other criminal warrant. The defendant shall be given a copy of said warrant.

(i) The executed declaration of refusal or certificate of the warrant justice shall be attached to the warrant,

as the case may be, and shall be forwarded by the Warrant justice to the court in which the offense of driving under influence will be tried.

(j) When the court receives the certifiacte of refusal referred to in paragraph (i) together with the warrant charging the defendant with violation of Section 7.39, the court shall fix a date for the trial of said warrant at such time as the court may designate, but subsequent to the defendant's trial for driving under the influence of intoxicants. If the court shall find the defendant guilty as charged in the warrant, then the court shall usspend the defendant's licnese for a period of ninety days for the first offense, and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals and the effective dates thereof.

The court shall forward the defendant's license to the Division of Motor Vehicles as in other cases of similar nature for suspension of licnese, unless, lowever, the defendant shall appeal his conviction, in which case the court shall return the license to defendant upon his appeal being perfected.

The procedure for appeal and trial in the appellate court shall be the same as provided by law for other misdemeanors.

Sec. 7-40. Forfeiture of drivers licenses; suspension of sentence.

The judgment of conviction, or finding of not innocnet in the case of a juvenile, if for a first offense under Section 7-38, or for a similar offense under a Town Ordinance, shall of itself operate to deprive the person so convicted or found of the right to drive or operate any such vehicle, conveyance, engine or train in this Stste for a period of one year from the date of such judgment, and/if for a second or other subsequent offense within ten years there of for a period of three years from the date of the judgment of conviction or finding of not innocent thereof, any 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 any simialr act of the State and thereafter is convicted of found not innocent of violating the provision 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.

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

Adopted by the Council of the Town of Elkton, August 10, 1962.

R. J. Fowler - Mayor elect

_____ Clerk

APPROVED:

R. R. Babington, Mayor

H. A. Workman moved, seconded by H. L. Coffey and passed that the following ordinance be adopted:

Sec. 6-18. Abandoned buried fuel tanks.

BE IT ORDAINED by the Council of the Town of Elkton, that after a one year period of discontinuance of use, all buried fuel tanks within the corporate limits of the Town shall be either removed or filled with water or approved sand by the owner of the property on which the tank is buried.

Any person violating this ordinance shall be fined

not less than $5.00 nor more than $50.00 and every day such violation shall continue to exist after notice from the Chief of Police, shall constitute a separate offense.

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

Adopted by the Council of the Town of Elkton, August 10, 1962.

R. J. Foster - Mayor Elect

Clerk

APPROVED:

R. K. Babington

Mayor

Joe Black moved, seconded by H. L. Coffey and passed that $500.00 be appropriated to repair sidewalks when bids are received by the town.

J. H. Early, Jr. moved, seconded by R. H. Painter and passed to grant William H. Hensley a building permit for a carport.

J. H. Early, Jr. moved, seconded by R. H. Painter and passed to grant H. A. Workman a building permit for a carport.

E. F. Garber moved, seconded by H. L. Coffey and passed that the bid on a new truck presented by Hensley Sales and Service be tabled.

J. H. Early, Jr. moved, seconded by H. L. Coffey and passed that the judges for the 1962 town election receive $10.00 each. J. H. Early, Jr. suggested that L. L. Lawson check with Everett Miller and try to correct the statement that he presented to the town for the election.

With no further business, the meeting was adjourned.

Approved: R. K. Babington
Mayor

Recorder: L. L. Lawson
Leon L. Lawson