AN ORDINANCE TO AMEND SECTIONS 63-198 AND 63-199 IN CHAPTER 63, UTILITIES (SEWER USE REGULATIONS) OF THE CODE OF THE COUNTY OF WASHINGTON, VIRGINIA TO CONFORM TO WASHINGTON COUNTY SERVICE AUTHORITY REGULATIONS

WHEREAS, on April 23, 2013, the Board of Supervisors of the County of Washington, Virginia, repealed the County's sewer use regulations and adopted a new set of sewer use regulations updated to conform to the current version of Virginia Code section 15.2-2122; and

WHEREAS, after such action, it was discovered that two sections of the newly adopted sewer use regulations did not conform to the sewer use regulations used by the Washington County Service Authority; and

WHEREAS, the Board finds it in the best interests of the public health, safety, and welfare for the Washington County regulations to conform to the Service Authority regulations because the Service Authority administers the program on behalf of the County

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING, and in the best interests of the public health, welfare, and safety, having held a public hearing for consideration of these matters, the Board of Supervisors of the County of Washington, Virginia (Board), hereby ordains the following:

1. That this ordinance shall become effective immediately;

2. That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance or the Washington County Code;

3. That Chapter 63 of the Code of the County of Washington, Virginia, is hereby adopted to contain the text as follows, with the understanding that Article, Division, Section, and Subsection titles and numbers may be amended by the Editor as necessary for consistency:

CODE OF THE COUNTY OF WASHINGTON, VIRGINIA (2002, as amended)

CHAPTER 63 – Utilities
ARTICLE I – Generally

~~SEC. 63-198. SAME--ADMINISTRATIVE PENALTIES~~

~~(A) WHEN THE TOWN OR AUTHORITY FINDS THAT A USER HAS VIOLATED, OR CONTINUES TO VIOLATE, ANY PROVISION OF THESE REGULATIONS, A PERMIT, OR ORDER ISSUED HEREUNDER, OR ANY OTHER PRETREATMENT STANDARD OR REQUIREMENT, THE TOWN OR AUTHORITY MAY FINE SUCH USER IN AN AMOUNT NOT TO EXCEED THE MAXIMUM AMOUNTS ESTABLISHED IN SUBDIVISION (8A) OF VIRGINIA CODE SECTION 62.1-44.15. SUCH FINES SHALL BE ASSESSED ON A PER-VIOLATION, PER-DAY BASIS. EACH DAY DURING WHICH A VIOLATION IS FOUND TO HAVE EXISTED SHALL CONSTITUTE A SEPARATE VIOLATION. IN THE CASE OF MONTHLY OR OTHER LONG TERM AVERAGE DISCHARGE LIMITS, FINES SHALL BE ASSESSED FOR EACH DAY DURING THE PERIOD OF VIOLATION. THE AMOUNT OF ANY PENALTY ASSESSED SHALL BE BASED UPON THE SEVERITY OF THE VIOLATION, THE EXTENT OF ANY POTENTIAL OR ACTUAL ENVIRONMENTAL HARM OR FACILITY DAMAGE, THE COMPLIANCE HISTORY OF THE USER, ANY ECONOMIC BENEFIT REALIZED FROM THE NONCOMPLIANCE, AND THE ABILITY OF THE USER TO PAY THE PENALTY. IN ADDITION TO CIVIL PENALTIES, THE ORDER MAY INCLUDE A MONETARY ASSESSMENT FOR ACTUAL DAMAGES TO SEWERS, TREATMENT WORKS AND APPURTENANCES AND FOR COSTS, ATTORNEY FEES AND OTHER EXPENSES RESULTING FROM THE VIOLATION. CIVIL PENALTIES IN EXCESS OF THE MAXIMUM AMOUNTS ESTABLISHED IN SUBDIVISION (8A) OF VIRGINIA CODE SECTION 62.1-44.15 MAY BE IMPOSED ONLY BY A COURT IN AMOUNTS DETERMINED IN ITS DISCRETION BUT NOT TO EXCEED THE MAXIMUM AMOUNTS ESTABLISHED IN VIRGINIA CODE SECTION 62.1-44.32.~~

~~(B) UNPAID CHARGES, FINES, AND PENALTIES SHALL, AFTER TWENTY (20) CALENDAR DAYS, BE ASSESSED AN ADDITIONAL PENALTY OF TEN PERCENT (10%) OF THE UNPAID BALANCE, AND INTEREST SHALL ACCRUE THEREAFTER AT A RATE OF TEN PERCENT (10%) PER MONTH. A LIEN AGAINST THE USER'S PROPERTY MAY BE SOUGHT FOR UNPAID CHARGES, FINES, AND PENALTIES.~~

~~(C) ISSUANCE OF AN ADMINISTRATIVE FINE SHALL NOT BE A BAR AGAINST, OR A PREREQUISITE FOR, TAKING ANY OTHER ACTION AGAINST THE USER.~~

~~(D) CIVIL PENALTIES IMPOSED UNDER THIS ARTICLE SHALL BE APPLIED TO THE PURPOSE OF ABATING, PREVENTING OR MITIGATING ENVIRONMENTAL POLLUTION.~~

~~SECTION 63-199. RECONSIDERATION OR REVIEW OF ADMINISTRATIVE ORDER – COMPLIANCE, CEASE AND DESIST, EMERGENCY SUSPENSION, TERMINATION OF DISCHARGE.~~

~~THE RECIPIENT OF AN ADMINISTRATIVE ORDER WITH OR WITHOUT ASSESSMENT OF CIVIL PENALTIES, INCLUDING WITHOUT LIMITATION, COMPLIANCE, CEASE AND DESIST, EMERGENCY SUSPENSION, AND TERMINATION OF DISCHARGE, HAS THE RIGHT TO SEEK RECONSIDERATION OR REVIEW OF SUCH ORDER BY THE TOWN COUNCIL OR WASHINGTON COUNTY SERVICE AUTHORITY BOARD OF COMMISSIONERS, AS THE CASE MAY BE, AND TO APPEAL TO THE CIRCUIT COURT OF WASHINGTON COUNTY FOR REVIEW OF ANY FINAL ORDER AFFIRMED BY SUCH REVIEWING ENTITY. TO COMMENCE AN APPEAL FOR CIRCUIT COURT REVIEW, THE APPELLANT SHALL FILE A PETITION IN CIRCUIT~~

~~COURT WITHIN 30 DAYS OF THE DATE OF THE REVIEWING ENTITY'S DECISION ON ITS RECONSIDERATION OR REVIEW. FAILURE TO MEET SUCH TIME LIMITATION SHALL CONSTITUTE A WAIVER OF THE RIGHT TO APPEAL. WITH RESPECT TO MATTERS OF LAW, THE BURDEN SHALL BE ON THE PARTY SEEKING REVIEW TO DESIGNATE AND DEMONSTRATE AN ERROR OF LAW SUBJECT TO REVIEW BY THE COURT. WITH RESPECT TO ISSUES OF FACT, THE DUTY OF THE COURT SHALL BE LIMITED TO ASCERTAINING WHETHER THERE WAS SUBSTANTIAL EVIDENCE IN THE RECORD TO REASONABLY SUPPORT SUCH FINDINGS.~~

SEC. 63-198. SAME--ADMINISTRATIVE PENALTIES

(A) WHEN THE AUTHORITY FINDS THAT A USER HAS VIOLATED, OR CONTINUES TO VIOLATE, ANY PROVISION OF THESE REGULATIONS, A PERMIT, OR ORDER ISSUED HEREUNDER, OR ANY OTHER PRETREATMENT STANDARD OR REQUIREMENT, THE AUTHORITY MAY FINE SUCH USER IN AN AMOUNT NOT TO EXCEED THE MAXIMUM AMOUNTS ESTABLISHED IN SUBDIVISION 8A OF VIRGINIA CODE SECTION 62.1-44.15. SUCH FINES SHALL BE ASSESSED ON A PER-VIOLATION, PER-DAY BASIS. IN THE CASE OF MONTHLY OR OTHER LONG-TERM AVERAGE DISCHARGE LIMITS, FINES SHALL BE ASSESSED FOR EACH DAY DURING THE PERIOD OF VIOLATION.

(B) NO ORDER ASSESSING A CIVIL PENALTY FOR A VIOLATION SHALL BE ISSUED UNTIL AFTER THE USER HAS BEEN PROVIDED AN OPPORTUNITY FOR A HEARING, EXCEPT WITH THE CONSENT OF THE USER. THE NOTICE OF THE HEARING SHALL BE SERVED PERSONALLY OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ON ANY AUTHORIZED REPRESENTATIVE OF THE USER AT LEAST 30 DAYS PRIOR TO THE HEARING. THE NOTICE SHALL SPECIFY THE TIME AND PLACE FOR THE HEARING, FACTS AND LEGAL REQUIREMENTS RELATED TO THE ALLEGED VIOLATION, AND THE AMOUNT OF ANY PROPOSED PENALTY. AT THE HEARING THE USER MAY PRESENT EVIDENCE INCLUDING WITNESSES REGARDING THE OCCURRENCE OF THE ALLEGED VIOLATION AND THE AMOUNT OF THE PENALTY, AND THE USER MAY EXAMINE ANY WITNESSES FOR THE AUTHORITY. A VERBATIM RECORD OF THE HEARING SHALL BE MADE. WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, THE AUTHORITY SHALL MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ISSUE THE ORDER.

(C) NO ORDER ISSUED BY THE AUTHORITY SHALL ASSESS CIVIL PENALTIES IN EXCESS OF THE MAXIMUM AMOUNTS ESTABLISHED IN SUBDIVISION 8A OF CODE OF VIRGINIA SECTION 62.1-44.15, EXCEPT WITH THE CONSENT OF THE USER. THE ACTUAL AMOUNT OF ANY PENALTY ASSESSED SHALL BE BASED UPON THE SEVERITY OF THE VIOLATIONS, THE EXTENT OF ANY POTENTIAL OR ACTUAL ENVIRONMENTAL HARM OR FACILITY DAMAGE, THE COMPLIANCE HISTORY OF THE USER, ANY ECONOMIC BENEFIT REALIZED FROM THE NONCOMPLIANCE, AND THE ABILITY OF THE USER TO PAY THE PENALTY, PROVIDED, HOWEVER, THAT IN ACCORDANCE WITH SUBDIVISION 10 D, THE AUTHORITY MAY ESTABLISH A UNIFORM SCHEDULE OF CIVIL PENALTIES FOR SPECIFIED TYPES OF VIOLATIONS. IN ADDITION TO CIVIL PENALTIES, THE ORDER MAY INCLUDE A MONETARY ASSESSMENT FOR ACTUAL DAMAGES TO SEWERS, TREATMENT WORKS AND APPURTENANCES AND FOR COSTS, ATTORNEY FEES AND OTHER EXPENSES RESULTING FROM THE VIOLATION. CIVIL PENALTIES IN EXCESS OF THE MAXIMUM AMOUNTS ESTABLISHED IN SUBDIVISION 8A OF CODE OF VIRGINIA SECTION 62.1-44.15 MAY BE IMPOSED ONLY BY A COURT IN AMOUNTS DETERMINED IN ITS DISCRETION BUT NOT TO EXCEED THE MAXIMUM AMOUNTS ESTABLISHED IN CODE OF VIRGINIA SECTION 62.1-44.32.

(D) UNPAID CHARGES, FINES, AND PENALTIES SHALL, AFTER TWENTY (20) CALENDAR DAYS, BE ASSESSED AN ADDITIONAL PENALTY OF TEN PERCENT (10%) OF THE UNPAID BALANCE, AND INTEREST SHALL ACCRUE THEREAFTER

AT A RATE OF TEN PERCENT (10%) PER MONTH. A LIEN AGAINST THE USER'S PROPERTY MAY BE SOUGHT FOR UNPAID CHARGES, FINES, AND PENALTIES.

(E) ISSUANCE OF AN ADMINISTRATIVE FINE SHALL NOT BE A BAR AGAINST, OR A PREREQUISITE FOR, TAKING ANY OTHER ACTION AGAINST THE USER.

SECTION 63-199. RECONSIDERATION OR REVIEW OF ADMINISTRATIVE ORDER – COMPLIANCE, CEASE AND DESIST, EMERGENCY SUSPENSION, TERMINATION OF DISCHARGE.

ANY ORDER ISSUED BY THE AUTHORITY, WHETHER OR NOT SUCH ORDER ASSESSES A CIVIL PENALTY, SHALL INFORM THE USER OF HIS RIGHT TO SEEK RECONSIDERATION OR REVIEW WITHIN THE AUTHORITY, IF AUTHORIZED, AND OF HIS RIGHT TO JUDICIAL REVIEW OF ANY FINAL ORDER BY APPEAL TO CIRCUIT COURT ON THE RECORD OF PROCEEDINGS BEFORE THE AUTHORITY. TO COMMENCE RECONSIDERATION BY THE AUTHORITY, WITHIN TWENTY (20) DAYS AFTER BEING NOTIFIED OF THE PENALTY, THE USER MUST FILE WITH THE AUTHORITY IN WRITING A REQUEST FOR RECONSIDERATION AND MAKE FULL PAYMENT OF THE PENALTY, AND FAILURE TO DO SO SHALL CONSTITUTE A WAIVER OF THE RIGHT TO RECONSIDERATION. TO COMMENCE AN APPEAL TO CIRCUIT COURT, THE USER SHALL FILE A PETITION IN COURT WITHIN 30 DAYS OF THE DATE OF THE ORDER, AND FAILURE TO DO SO SHALL CONSTITUTE A WAIVER OF THE RIGHT TO APPEAL. WITH RESPECT TO MATTERS OF LAW, THE BURDEN SHALL BE ON THE PARTY SEEKING REVIEW TO DESIGNATE AND DEMONSTRATE AN ERROR OF LAW SUBJECT TO REVIEW BY THE COURT. WITH RESPECT TO ISSUES OF FACT, THE DUTY OF THE COURT SHALL BE LIMITED TO ASCERTAINING WHETHER THERE WAS SUBSTANTIAL EVIDENCE IN THE RECORD TO REASONABLY SUPPORT SUCH FINDINGS.