

CITY OF VIENNA
Regular Council Session
Council Chambers
609 29th Street, Vienna, WV
6:00pm

AGENDA
March 23, 2023

Invocation and Pledge of Allegiance

Call to Order

Roll Call

Public Forum

Report of the Minutes

Unfinished Business

1. None.

New Business

1. RESOLUTION: Authorizing For Sale By Internet Auction (govdeals.com) Of Personal Property Including A Milo Range Simulator, Wood Frame Church Chairs, Heavy Plastic Blue Chairs, Metal Folding Tables, An Auto Mop, A Floor Burnishing Machine, And A Jeep Liberty
(Sponsored by: Mayor Randy Rapp and Recorder Melissa Elam)
2. RESOLUTION: Appointing Garrett Holmes To The Position Of City Of Vienna IT Director
(Sponsored by: Mayor Randy Rapp and Recorder Melissa Elam)
3. RESOLUTION: Allocating \$316,755.00 In American Rescue Plan (ARP) Funds From The City Of Vienna To The Vienna Utility Board For The Completion Of The 45th Place Water Main Improvement Project, An Infrastructure Project
(Sponsored by: Mayor Randy Rapp and Councilwoman Kim Williams)
4. ORDINANCE – FIRST READING: Amending Vienna Municipal Code 1333.05, Uses Of Structures, Paragraph “E” – Amending The Definition For Abandonment
(Sponsored by: Councilman Chris Mancuso, Recorder Melissa Elam, and Councilwoman Kim Williams)
5. ORDINANCE – FIRST READING: Creating Exterior Lighting Standards
(Sponsored by: Councilman Chris Mancuso and Councilwoman Kim Williams)
6. ORDINANCE – FIRST READING: Defining Regulating The Location Of Vape/Smoke Shops
(Sponsored by: Councilman Chris Mancuso and Councilwoman Kim Williams)

Council Comments

Announcements

A RESOLUTION AUTHORIZING FOR SALE BY INTERNET AUCTION (GOVDEALS.COM) OF PERSONAL PROPERTY INCLUDING A MILO RANGE SIMULATOR, WOOD FRAME CHURCH CHAIRS, HEAVY PLASTIC BLUE CHAIRS, METAL FOLDING TABLES, AN AUTO MOP, A FLOOR BURNISHING MACHINE, AND A JEEP LIBERTY

Be it resolved by the Common Council of the City of Vienna:

As per West Virginia Code 8-12-18(b) and Vienna Municipal Code 107.05(c), the City of Vienna hereby offers for sale the following items:

1. MILO Range Simulator w/Equipment (Police Dept)
2. 27 Wood-frame stackable church chairs (Fire Dept)
3. 136 Heavy plastic blue chairs (Park Dept)
4. 15 Metal folding tables (Park Dept)
5. 2014 Cricket Auto Mop (Park Dept)
6. 2014 Clarke Floor burnishing machine (Park Dept)
7. 2005 Jeep Liberty

All items are sold, as is with no warranty, express or implied. Further, the mayor, finance directory, their agents or assigns, are authorized to publish, as is required by WV Code 8-12-18(b), a class II legal notice, notifying the public of the location of the sale and the items to be auctioned/sold.

Dated this ____ day of _____, 2023.

Randall C. Rapp, Mayor

ATTEST:

Melissa Elam, Recorder

List of Items for Auction – March 23, 2023

Below is a list of items that the departments have compiled and are requesting to sell on GovDeals.com:

- MILO Range Simulator w/Equipment (Police Dept)
- 27 Woodframe stackable church chairs (Fire Dept)
- 136 Heavy plastic blue chairs (Park Dept)
- 15 Metal folding tables (Park Dept)
- 2014 Cricket Auto Mop (Park Dept)
- 2014 Clarke Floor burnishing machine (Park Dept)
- 2005 Jeep Liberty

**RESOLUTION APPOINTING GARRETT HOLMES TO THE POSITION OF
CITY OF VIENNA IT DIRECTOR**

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, that Garrett Holmes, duly qualified, is hereby appointed to the position of City of Vienna IT Director with full benefits and an annual salary of \$50,000 effective as of March 1, 2023.

Dated this _____ day of _____, 2023

Randall C. Rapp, Mayor

ATTEST:

Melissa Elam, Recorder

RESOLUTION ALLOCATING \$316,755.00 IN AMERICAN RESCUE PLAN (ARP) FUNDS FROM THE CITY OF VIENNA TO THE VIENNA UTILITY BOARD FOR THE COMPLETION OF THE 45th PLACE WATER MAIN IMPROVEMENT PROJECT, AN INFRASTRUCTURE PROJECT

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, that it hereby assigns an additional \$316,755.00 of American Rescue Plan (ARP) funds received by, or allocated to, the City of Vienna by the federal government under the American Rescue Plan Act of 2021 to the Vienna Utility Board. The allocation of said funds to the VUB is for the purpose of planning, purchasing and/or leasing equipment, materials, hiring personnel (if necessary) and funding a necessary water infrastructure project, specifically the 45th Place Water Main Improvement Project, undertaken by the Vienna Utility Board and as is contemplated by the ARP.

Dated this ____ day of _____, 2023

Randall C. Rapp, Mayor

ATTEST:

Melissa Elam, Recorder

**AN ORDINANCE AMENDING VIENNA MUNICIPAL CODE 1333.05, USES OF STRUCTURES, PARAGRAPH
"E" – AMENDING THE DEFINITION FOR ABANDONMENT**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VIENNA THAT paragraph (e) of the Vienna Municipal Code is hereby amended as follows:

1333.05(e) Abandonment

- 1) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months, the structure or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.
- 2) For purposes of this section, abandonment means the complete cessation of the business's commercial, industrial, or residential use or activity.
- 3) That the non-conforming property is vacant with active utilities and/or is being actively marketed by the property owner as a commercial, residential, or industrial parcel or property is not sufficient for the property to retain its non-conforming use.
- 4) If the property is vacant and is not in use by a business with a valid active business license (if a commercial or industrial non-conforming use property), or if the property is vacant and not presently occupied by a tenant (if a residential non-conforming use property) and it is evident from an examination of the non-conforming property that the non-conforming business or industry is not actively in operation or the residential property is not occupied by a residential tenant, then the nonconforming use shall be considered abandoned.
- 5) Before issuing a building permit or certificate of occupancy for any non-conforming property, the Code Enforcement officer shall determine whether the non-conforming property has ceased its commercial, residential, or industrial activities for a period of twelve (12) months.
 - a) If twelve (12) months have passed since the commercial, residential, or industrial property has ceased its commercial, residential, or industrial activity, it is presumed that the non-conforming use has been abandoned and notice of the same shall be sent by certified mail, return receipt requested, to the property owner. Further, if the owner of the property cannot be served by certified mail, notice shall then be sent by Class II legal notice as per West Virginia Code.
- 6) The property owner may appeal any determination by the Code Enforcement officer to the Board of Zoning Appeals. All Board of Zoning appeals may be heard by the Vienna Municipal Court. All Vienna Municipal Court appeals may be heard by the aggrieved party petitioning the Wood County Circuit Court.

Randall C. Rapp, Mayor

ATTEST:

Melissa Elam, Recorder

First Reading: _____

Second Reading: _____

AN ORDINANCE CREATING EXTERIOR LIGHTING STANDARDS

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VIENNA THAT it hereby adopts the following ordinance with respect to the regulation of exterior lighting throughout the City of Vienna:

1) Intent and Purpose

- a) To provide clear regulations for lighting consistent with industry standards and practices, available technologies, and lighting sciences to minimize glare, excess brightness, harsh intensity, light trespass, and misdirection of lights and to protect both nighttime public safety, security, privacy, productivity, and movement of vehicles and persons as well as to minimize artificial sky glow.

2) General Provisions

a) Regulation

- i) Nothing in this article is intended to preclude compliance with the specific zone district regulations, other regulations within this Zoning Ordinance, or with County, State, and Federal regulations. Where Federal, State, or County requirements conflict with the provisions of this section, the more restrictive standard shall apply.
- ii) Nothing in this section is intended to prevent the use of any design, material, or installation method not specifically proscribed by this section if the City, through the Code Enforcement Office, has approved any such alternative. An alternate may be approved if the proposed design, material, or method provides approximate equivalence (or is superior) to the specific requirements of this section and complies with the intent of this section.

b) Definitions

- i) **Artificial sky glow:** The brightening of the night sky attributable to man-made light sources that obscure stars, comets, the moon, shooting stars, and other natural phenomena.
- ii) **Bollard:** a low-lying marker or lighting fixture typically placed in series or intervals and commonly used to illuminate pathways and landscapes for pedestrian use and safety.
- iii) **Bulb:** A generic term for a source of optical radiation (i.e., "light), often called a "bulb," "tube," or "lamp." Examples include incandescent, fluorescent, high-intensity discharge (HID) bulbs and low-pressure sodium (LPS) bulbs, as well as light-emitting diode (LED) modules and arrays.
- iv) **Canopy:** A roof-like covering over an area that allows pedestrians/vehicles to pass in or under and upon which a light source is mounted.

- v) **Development project:** Any residential, commercial, industrial, institutional, or mixed-use construction project submitted to the City for approval.
- vi) **Diffuser:** (also called a light diffuser or optical diffuser) is any material that diffuses or scatters light in some manner to transmit soft light.
- vii) **Display lot or area:** Outdoor areas where active nighttime sales activity occurs and where customers' accurate color perception of merchandise is required.
- viii) **Exposed Neon or Exposed Neon Light:** electric signs lighted by long luminous gas-discharge tubes that contain rarefied neon or other gases
- ix) **Fixed Light:** any type of fixed lighting equipment permanently mounted or attached to a pole, building, or other structure that is designed or used for illumination including, but not limited to: area lighting, billboard lighting, streetlights, search lights, and other lighting used for advertising purposes.
- x) **Foot-candle:** A measure of light falling on a surface. One foot-candle is equal to the amount of light generated by one candle shining on one square foot surface located one foot away.
- xi) **Fully shielded light fixture:** A lighting fixture constructed so that all light emitted by the fixture, either directly from the light source, lamp, or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal plane as determined by photometric test or certification by the manufacturer. Any structural part of the lighting fixture providing this shielding must be permanently affixed.
- xii) **Glare:** Light emanating directly from a light source, lamp, reflector, or lens that creates visual discomfort or momentary blindness when viewed.
- xiii) **Lighting level measurement:** The measurement of outdoor light output from a luminaire expressed in footcandles. Lighting shall be measured with a properly calibrated light meter. Measurements shall be taken at final grade or, in some cases, when light is reflected on a vertical surface.
- xiv) **Light trespass:** Light falling where it is not needed or wanted, typically across property lines.
- xv) **Luminaire: (light fixture):** A complete lighting device consisting of one or more bulbs, lamps, or light sources along with the other components sufficient to produce light.
- xvi) **Maximum outdoor light output:** The total light measured in footcandles from all outdoor light fixtures. For lamp types that vary their output as they age, such as high-pressure sodium, fluorescent, and metal halide, the initial output, as defined by the manufacturer, is the value to be considered.

- xvii) **Outdoor light fixture:** An outdoor illuminating device, outdoor lighting or reflective surface, lamp, or similar device used for illumination or advertisement.
- xviii) **Photometric data:** information collected from the measurement of the luminous intensity of a light source; or the information collected showing the light intensity level of a light source in a given area.
- xix) **ROW (Right of Way):** For this article, ROW means any public road, street, or highway.
- xx) **Streetlight or Road Light:** a raised light source often mounted on a lamp column or pole either on the side of the road, within the median, or suspended on a wire above the road to provide illumination.

c) Applicability

- i) All exterior luminaires that are newly designed, constructed, erected, or otherwise placed into operation, as well as any alterations, rehabilitation, relocation, or renovation to more than seventy-five (75) percent of existing luminaires begun after the adoption of this ordinance, shall be in conformance with the requirements of this section.
- ii) Parking lot additions/expansions over fifty percent (50%).
- iii) Luminaires pre-existing and legally installed and operating before the adoption of this ordinance are exempt from the requirements of this section for the life of the luminaires. For purposes of this requirement, the life of the luminaries means the life of the light source, bulb, lamp, diffuser, or diffusing element.

3) Prohibitions:

The installation, illumination, or maintenance of any of the following shall be prohibited in all zone districts unless approved by a permit issued by the Code Enforcement Office.

- i) Strobe lights.
- ii) Searchlights.
- iii) Lasers and other high-intensity beams.
- iv) Blinking, flashing, flickering, rotating, pulsing, or changing intensity lights.
- v) Any incident or reflected light that may be confused with or construed as a traffic control device, except as authorized by the State, Federal, or County government.
- vi) Exposed neon as a light source.

4) Exemptions:

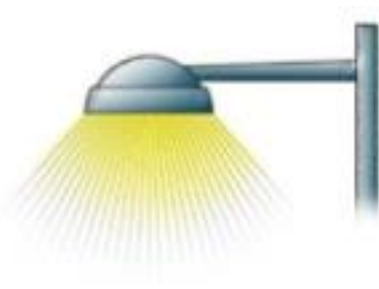
- a) The following shall be exempt from the requirements of this section:

- i) Holiday lights (decorations), clearly incidental and customary and commonly associated with any national, local, or religious holiday.
- ii) Any lighting required by the FAA for air traffic control, navigation, and warning purposes.
- iii) Emergency lighting as required by law enforcement or emergency services personnel to protect life or property, provided such lighting is temporary and is discontinued immediately upon abatement of the emergency necessitating said lighting.
- iv) Street or road lighting constructed, operated, or maintained by the City of Vienna or the West Virginia Department of Highways.
- v) Construction lighting provided such lighting is temporary and is discontinued immediately upon completion of the construction work.
- vi) Traffic control signals and devices.
- vii) Vehicular lights.
- viii) Any digital LED or incandescent billboard

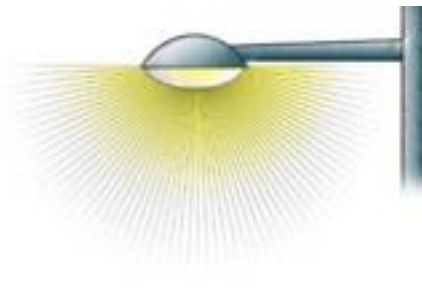
5) Standards:

- a) The following lamps shall be full cut-off fixtures unless otherwise specified in this section:

AREA	LAMPS	
	Residential Uses	All Other Uses
City of Vienna	All lamps over 2,800 lumens (approximately equivalent to a 200-watt incandescent bulb).	



Does meet standard



Does not meet standard

- b) Shielding shall not be required for lamps that accent entrances, art, water features/fountains, landscaping, sculptures, statuary, and other similar objects, provided the light is concealed and narrowly focused on the thing of interest. This exception does not include pathway lighting, bollards, or other pedestrian or trail circulation illumination.
- c) Luminares and their supporting structure shall be wholly confined to the property.

- d) All pole lights for public sports shall be sited to minimize the impacts on the surrounding residential properties, faced internally to the site and downcast.
- e) Maximum illumination levels resulting from on-site lighting shall not exceed the following as measured on the property line:

USE	MAXIMUM ILLUMINATION LEVEL (foot-candles)
Commercial, Industrial, Institutional property adjacent to similar uses	No limit
Commercial, Industrial, Institutional property uses adjacent to Residential, Active Recreational, or Agricultural uses	0.3
Commercial, Industrial, Institutional uses adjacent to ROW	0.6
Residential, Active Recreational, Agricultural uses adjacent to similar uses and ROW	0.3
All uses adjacent to Passive Recreational uses	0.1
Passive Recreational uses adjacent to all uses and ROW	0.1

- f) Maximum ground level illumination levels of parking lots shall not exceed the following:

USE	MAXIMUM ILLUMINATION LEVEL (foot-candles)
Commercial, Industrial, Institutional	12
Multifamily Residential	7
Recreational property	5
Luminaries and light fixtures associated with canopies	20

- g) Average ground level illumination of parking lots shall not exceed the following:

USE	MAXIMUM ILLUMINATION LEVEL (foot-candles) Plains
Commercial, Industrial, Institutional	4
Multifamily Residential	3
Active Recreational	3

- h) All illuminated signage or outdoor advertising devices shall comply with this section's requirements in addition to the Signs Section of the City of Vienna Municipal Ordinances, including, but not limited to Articles 1329, 951, 765, and 725.
- i) All lighting installations for special events shall comply with the requirements of this section and any additional requirements as set out elsewhere in the Vienna municipal code.

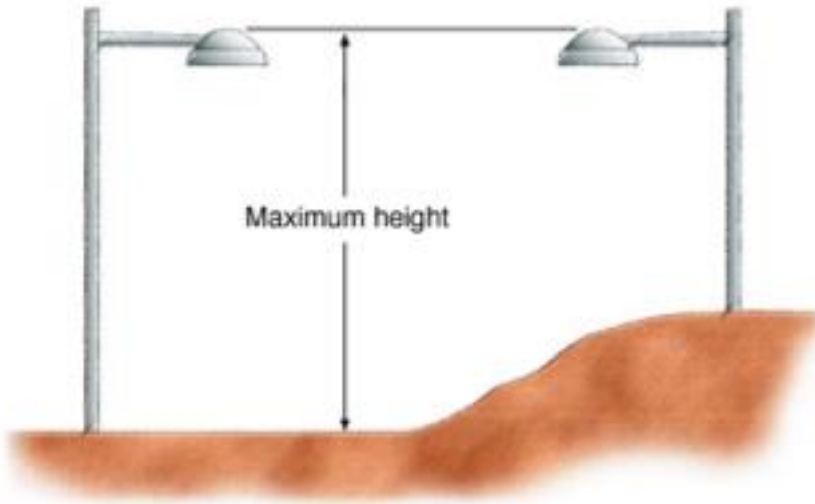
- j) Bollards or similar light fixtures shall not exceed four (4) feet in height. They shall be used with the intention of illuminating landscape features or pedestrian walkways.
- k) Pole-mounted light fixtures in parking and/or loading dock areas shall be placed a minimum of 5 feet outside the parking lot area or four (4) feet behind perimeter tire stop locations; or mounted on pedestals at least thirty (30) inches in height above the parking lot surface or protected by other means as deemed appropriate by the City of Vienna Planning Commission.
- l) All luminaires and light fixtures associated with canopies, including but not limited to fuel islands, seasonal outdoor sales areas, shopping malls, theaters, bank drive-throughs, and hotels, shall be full cut-off. All light emitted from the canopy shall be substantially confined to the ground directly beneath the canopy's perimeter. No lighting of any kind, except as permitted by the signage section of this Zoning Resolution, shall be allowed on the top or sides of a canopy.

6) Lighting Plan:

- i) A lighting plan certified by a lighting designer, lighting engineer, or licensed electrical contractor, shall show all the following:
 - (1) The location and height of all existing and proposed building and ground-mounted luminaries;
- ii) Photometric data indicating all the following items: the maximum foot candles at all property lines, the location of the highest calculated foot candles, and the average foot candles in a parking lot(s);
- iii) A description of all proposed luminaries, including lamp type, the manufacturer, lamp wattage, lumen output per lamp, mounting or support device, and shielding (manufacturer's catalog cuts and drawings may be submitted);
- iv) The Planning and Zoning Commission may require additional information to determine compliance with City regulations or support the Illuminating Engineering Society of North America's recommended practices. Exceptions to the Illuminating Engineering Society of North America's recommended practices can be made by the City where necessary for safety purposes;
- v) All calculations and results, including all sources and assumptions; and
- vi) A statement of certification addressing accountability for the content and accuracy of the submitted lighting plan and the installation of the lights according to the approved lighting plan. It is the responsibility of the owner to ensure compliance with all standards in effect.

7) Measurements

- i) Illumination shall be measured in foot candles. All on-site illumination readings shall be measured with a meter sensor in a horizontal position at ground level.
- ii) All foot candles in this section are initial horizontal levels.
- iii) All foot-candle measurements shall include the sum of all on-site lighting installations, including all illuminated signs, illuminated outdoor advertising devices, building-mounted lights, and any light spillage from inside buildings.
- iv) Pole-mounted luminaire heights shall be measured from the finished grade to the top of the luminaire. Where a pole is located on a berm, the berm height shall be included in the height of the luminaire.



8) Penalty and Enforcement:

- a) Violations of this article may be enforced by either Vienna Code Enforcement or the Vienna Police Department.
- b) Any person violating this section, whether as principal, agent, or employee, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five (25) nor more than one hundred (100) dollars, and such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of this section is committed or continued.
- c) If any luminaire poses a danger to the public health, safety, or welfare, every such luminaire is hereby declared to be a public nuisance. Upon receiving notice of any violation of this section, the Mayor shall cause the prohibited luminaires to be removed within ten (10) days. The Mayor

shall, in the name of the City of Vienna, recover from the persons who hereafter violate this section the amounts expended by the City of Vienna in removing the luminaire.

- d) Any person, business, agent, or employee may appeal the removal of any luminaire declared a public nuisance to the City of Vienna Planning Commission. An appeal of the Planning Commission's decision may be heard by Vienna Municipal Court and, ultimately, the Wood County Circuit Court.

Randall C. Rapp, Mayor

ATTEST:

Melissa Elam, Recorder

First Reading: _____

Second Reading: _____

AN ORDINANCE DEFINING REGULATING THE LOCATION OF VAPE/SMOKE SHOPS

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VIENNA THAT it hereby regulates the location of VAPE/SMOKE SHOPS as follows:

1. Purpose.
 - a. The section's purpose is to regulate the location of VAPE/SMOKE SHOPS within the C-1 Zoning District and within any district where they may be operated in a non-C-1 zone as a nonconforming use.
 - b. It is not the purpose of the section to permanently bar any VAPE/SMOKE SHOP now conducting business lawfully within the City of Vienna, or to expressly regulate the number of VAPE/SMOKE SHOPS within the C-1 Zoning District and those operating in a non-C-1 zone as a nonconforming use.
2. Authority.
 - a. Grant of Power: The authority to enact this section is established under W.Va. Code § 8A-1-1 et seq. and the laws of the State of West Virginia.
 - b. Affected District: This section shall apply to and be effective within the C-1 Zoning District and those parcels of property operating in a non-C-1 zone as a nonconforming use, in conformity with other ordinances previously adopted.
3. Definitions: For purposes of this section, the following words or terms shall have the meanings ascribed to them thereafter except when the context suggests otherwise.
 - a. "Abandonment" or "Abandoned" shall mean that the use with respect to a Premise, regardless of the intent of the user, has ceased or has discontinued for a period of more than sixty (60) consecutive days, or an explicit declaration by the user of a Premises that it has ceased a use with respect to the Premises that is nonconforming with this section.
 - b. "Applicant" shall mean a person with any legal or beneficial interest in a Premise who submits an application to the City of Vienna to obtain or re-obtain a Certificate of Occupancy with respect to the Premises.
 - c. "Application" shall mean the form or forms provided by the City of Vienna and completed by an Applicant, together with all required documents and items that the City of Vienna requires, by which the Applicant seeks to obtain a Certificate of Occupancy.
 - d. "Certificate of Occupancy" shall mean a written document or renewals or amendments thereto based on an application issued to an applicant with respect to a Premises by the Code Enforcement Officer that evidence that such person and the Premises comply or conform with the provisions of this section.
 - e. "City" means the City of Vienna.
 - f. "Effective Date" means the date upon which this section becomes effective which shall be immediately upon the adoption hereof.
 - g. "Existing Use" means the use or uses as a VAPE/SMOKE SHOP to which a parcel or parcels of land (or part thereof) within the C-1 Zoning District, and those operating in a non-C-1 zone as a nonconforming use, or part or all of any Improvement thereon, that are lawfully pursued by a VAPE/SMOKE SHOP Permittee, before the effective date.
 - h. "Improvement" means any structure or building with the designated use being a VAPE/SMOKE SHOP, whether existing or not, on the Effective Date located or, if there is a vested right to erect such structure or building with the designated use being a

VAPE/SMOKE SHOP, to be located within the C-1 Zoning District or operating in a non-C-1 zone as a nonconforming use.

- i. "Person" means any natural person or any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.
- j. "Responsible Person" shall mean the individual person whom an applicant has designated to attest to the Truthfulness and accuracy of the contents of an application.
- k. "VAPE/SMOKE SHOP" means any retail or service establishment including any improvement, existing or to be constructed, together with the lot, tract, or parcel on which it is situated, that devotes 33% or more of any existing or to be constructed structure's floor area to the sale and display of "e-cigarettes," "electronic cigarettes," or "e-cigarette liquid" as defined below.
- l. "E-cigarette" or "electronic cigarettes" means an electrical or electronic device that provides a smoke, vapor, fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled, simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that is composed of a heating element, battery, or electrical or electronic circuit, or a combination of heating element, battery, and electrical or electronic circuit, which works in combination with e-liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so-designed, or similarly designed product that is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other name or descriptor. The term "simulates the activity of smoking", in the context of this definition, means replicating, mimicking, or reproducing an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other product or material that can be used in a similar fashion.
- m. "E-cigarette liquid" means any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid, or e-liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in or with an e-cigarette, e-cigarette liquid is vaporized or converted into an inhalable product. E-cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin, or nicotine from any source or flavorings.

4. Regulations.

- a. On or after the Effective Date of this Ordinance, any Vape/Smoke Shop operating in the city of Vienna shall comply with the following:
 - i. No Vape/Smoke Shop Shall be located within 1500 feet of any church, synagogue, temple, mosque, or other places of worship;
 - ii. No Vape/Smoke Shop shall be located within 1500 feet of any daycare facility, childcare facility, parochial, charter, public or private elementary school, middle school, high school, or any related facilities including, but not limited to: athletic fields, auditoriums, stadiums, arenas, or other educational facilities operated by the Wood County Board of Education or operated by a charter school or parochial school for an educationally related purpose;
 - iii. Every Vape/Smoke Shop shall conform with all Federal, State, and Local laws relating to the sale of electronic cigarettes, tobacco products, and other vape products.
 - iv. No Vape/Smoke Shop shall be located within 1500 feet of any other VAPE/SMOKE SHOP between 10th Street and 20th Street.

- b. Permitted Locations. VAPE/SMOKE SHOPS shall be permitted within the C-1 Zoning District south of 10th Street and between 10th Street and 20th Street subject to the provisions of paragraph 4(a)(v) above.
 - c. Measurement. All measurements shall be by horizontal feet, structure to structure by a straight-line measurement. The beginning point shall be on the structure closest to the closest point on the adjacent structures. In the case of a multiple-use structure, the distance shall be from the closest point on that portion of the multiple-use structure leased (or owned) for the purpose of day business as a VAPE/SMOKE SHOP to the closest point on the structures adjacent thereto. In the case of a park, the measurement shall be taken to the nearest boundary of the park to the structure proposed to be used as a VAPE/SMOKE SHOP.
 - d. Square Footage. Any applicant who intends to derive more than 50% of its gross revenues from operating a VAPE/SMOKE SHOP as defined herein shall be limited to occupying a structure containing no more than 3,000 square feet, irrespective of the actual amount of square footage intended to be occupied by the VAPE/SMOKE SHOP. For purposes of this section "structure" is defined as a single free-standing building that does not contain individual and separate units available for occupancy.
5. Administration and Enforcement.
 - a. The Code Enforcement Officer of the City of Vienna, or his/her duly authorized agent, shall administer and enforce the provisions of this section, except as otherwise expressly provided in this section.
 - b. It shall be the duty of the Code Enforcement Officer to:
 - i. Receive and process any Application; and
 - ii. Issue a Certificate of Occupancy upon an Application; and
 - iii. Conduct investigations as necessary to determine compliance with or violation of this section;
 - iv. Abate any violation of this section;
 - v. Assist any law enforcement officer to abate or prosecute any violation of this section; and
 - vi. Provide any lawfully disclosable information about this section upon request of citizens and public agencies;
 - vii. Pursue enforcement of this section as this section and other law provides; and
 - viii. Administer this section in all respects;
6. Application.
 - a. Any person who desires to obtain a Certificate of Occupancy to own, lease, operate or manage a VAPE/SMOKE SHOP shall designate a responsible person who shall make an application to the Code Enforcement Officer, or his or her designated agent, in accordance with this section.
7. An application shall include, without limitation, a copy of the site plan of the Premises and the existing or proposed improvement or improvements, together with a letter describing the proposed VAPE/SMOKE SHOP.
8. The site plan shall be drawn to a scale of one inch (1") equals fifty feet or larger and shall include the following data:
 - i. Name and address of the individual who prepared the site plan; the date of preparation, north point, and scale, a metes and bounds description of the site; tax district, map and parcel number, and the names and addresses of the applicant and the responsible person; and

- ii. Existing and proposed contours of the premises; and
 - iii. Certification by a land surveyor or engineer that the dimensions and bearings on the site are accurately delineated and location of all easements and rights of ways with respect to the premises; and
 - iv. Number and type of proposed improvements on the premises along with gross floor area of each improvement on the premises; and
 - v. Location, shape, exterior dimensions, and number of stories of each improvement on the premises; and
 - vi. Location, grade, and dimensions of paved surfaces of the premises, and of all streets, alleys, roads and highways abutting the premises; and
 - vii. Complete traffic circulation and parking plan; and
 - viii. Signage plan; and
 - ix. Sediment and Erosion Control Plan by the State of West Virginia if required; and
 - x. Drainage plan for the premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and
 - xi. Certification of distances from adjacent properties.
- b. Exterior design and signage for each VAPE/SMOKE SHOP shall be approved by the Vienna City Planning Commission.
 - c. The Code Enforcement Officer shall not accept an application unless the responsible person shall attest that all of the statements contained in the Application and all documents attached thereto are true and accurate in all material respects.
 - d. The fee for the application shall be \$100.00.

9. Violation; Procedure; Penalty.

- a. If the Code Enforcement Officer finds that any of the provisions of this section are violated, he/she shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the person named and at the address stated in the application.
 - i. Any such notice of a violation of this section shall include the following:
 - 1. Street address or legal description of the property involved, including identification by the tax district and tax map and parcel numbers;
 - 2. A statement of the nature of the violation;
 - 3. A description of the action required to correct the violation;
 - 4. A statement of the time within which compliance with this section must be accomplished; and
 - 5. A statement that upon failure to comply with the requirements of the notice, the Code Enforcement Officer shall take such enforcement actions as this section authorizes.
 - ii. The individual responsible for the violation shall have thirty (30) days to appropriately rectify the violation and comply with all terms of this section. If said individual is in compliance with this section within the thirty day period, there shall be no penalty assessed against that individual.
 - iii. The Code Enforcement Officer may order discontinuance of any use of a parcel or parcels of land or any improvement that does not conform to this section by issuing

a written order. The City of Vienna may seek other remedies provided by law, including, without limitation, injunction, and abatement by judicial proceeding.

- iv. Failure to rectify the violation within the time stated in this section shall, in addition to any remedy, be punishable by a fine not to exceed \$1,000.00 a day upon the conviction thereof.
- v. Nothing contained in this section shall be deemed to prevent the City of Vienna from seeking other lawful actions or remedies as provided by law.

10. Appeal. Any person who is aggrieved by any order, requirement, decision or determination made by any administrative officer or body charged with the enforcement of this section may appeal the same to the Board of Zoning Appeals of the City of Vienna within the time and the manner prescribed by law and other similarly enacted ordinances.

11. Abandonment of Non-Conforming Use. Notwithstanding anything in this section to the contrary, if an existing use that is nonconforming with this section has been abandoned, any future use of such land or improvement shall conform with this section.

12. Severability. If any clause, paragraph, subparagraph, section, or subsection of this section shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this section shall not be affected thereby and shall remain in full force and effect.

Randall C. Rapp, Mayor

ATTEST:

Melissa Elam, Recorder

First Reading: _____

Second Reading: _____